

Schultz, Michael

From: John Mellman <jamellman@verizon.net>
Sent: Monday, November 17, 2014 12:06 PM
To: Schultz, Michael
Cc: Larry Hudson
Subject: Calvary Worship Center appeal letter--comments

Hi Mike,

We've provided, below, our comments on Calvary Worship Center's (CWC) appeal of the Planning Commission's decision to the City Council, with deliberations scheduled for Dec 9, 2014. Please review, for your consideration and please forward as input to the City Council.

As with earlier inputs, we object to the zoning change and to the development plan as presented. As homeowners at 412 (the house has been in June's family since 1960) we believe the development is far too extensive for the neighborhood, does not respect the character of the neighborhood, and encroaches on the neighborhood rather than encouraging it to thrive. Problems with retaining walls, parking, traffic, and geological stability were inadequately addressed by CWC and were covered notably by resident Larry Hudson and others.

We were not able to attend the hearing; as you know, we've reviewed the proposal and listened to the entire hearing. "Sections" below indicate lettered sections of CWC's appeal dated October 25.

1. We feel that a change in zoning is appropriate only if there is no harm done to the neighborhood. **CWC cannot imply that property rights (based on maximum development) are abridged: property rights are limited to development acceptable to the Planning Commission.** The Planning Commission did not consider the development acceptable.
2. CWC's appeal appears to cite consistency with code in very limited ways, based on mischaracterization of legitimate and well-supported neighborhood concerns, and citing of limited reports by paid consultants regarding geologic stability and traffic, and on disregard for neighborhood sensibilities while expressing hurt feelings at City's or neighbors' interest in standing up for neighborhood rights. **CWC objection to neighbors' concerns about traffic that would result from reopening Willamette is inconsistent with CWC's decision many years ago to close off Willamette so that drivers would not pass through their parking lot.**
3. In Section C, Para 1, CWC states "Off-street parking at the toe of the slope is the best and most appropriate land use for this problematic parcel." **This is not relevant because off-street parking opposite our house at 412 Wilhelmsia (the toe of the slope) was excluded from the plan presented at the Planning Commission Hearing on Oct 16, and it is inappropriate to resurrect a part of the proposed development that the Planning Commission Staff rejected as unsuitable.**
4. **CWC comments in Section C, Para 2 through 4 conflict with testimony presented.** Neighbors identified problems that relate directly to instability of the proposed property, which is in a Hillside Overlay Zone and which includes landfill, contributing to instability, which is very relevant to any neighbor.
5. Section D states that proposed criblock walls are not visible to owners to the North and East. **It's equally true that criblock walls will be visible to neighbors to the South, like us, and to the West. The criblock walls are ugly for neighbors to look at all the time.**

6. Comments in Section F falls back on a ratio of one parking space per four seats in the Sanctuary regardless of other ongoing youth events. Comments at the hearing supported that the proposed development would turn 28th St and Wilhelmia (both narrow neighborhood streets,) into connector roads with traffic that would come to a standstill several times during the weekend as parking empties, and that King Street and adjacent neighborhood streets would remain choked with Church parking. We have no guarantee that a traffic management plan will be provided at time of Phase 3 or will solve any problems. **Dumping 500 cars during onto neighborhood streets above and below the CWC property several times does indeed encroach upon neighbors.**

7. In Section G, we specifically object to CWC's contention that the development satisfies Policy LU 401 and Objectives N1, N3, and CCA 6. **The plan does not provide appropriate uses (LU 401); ignores rather than focuses on neighborhood (N1); does not change residential neighborhood patterns (N3); and imposes alien development onto the adjacent/surrounding area (CCA6). We feel, and the Planning Commission members stated in their final remarks, that the uses of the land were not appropriate (because too large in scale for the adjoining neighborhoods) and did not focus on the neighborhoods (but rather treat neighborhoods as an obstacle to be dealt with in whatever form).**

8. **In summary, we support the Planning Commission's unanimous denial of the proposed development.**

June A. Mellman
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Neighborhood Comments to CWC's Appeal Letter

November 17, 2014

City of Colorado Springs
30 S Nevada Ave, Suite 101
Colorado Springs, CO 80903

Attention: City Council & Planning Department

VIA Hand Delivery

Re: **COMMENTS TO THE APPEAL** of Colorado Springs City Planning Commission (the "**Planning Commission**")

Decision on October 16, 2014 with Respect to Agenda Items 7A and 7B Regarding Property Collectively Referred to as 501 Castle Road (the "**Property**")

Dear Colorado Springs City Council & Planning Department:

As neighbors to the Property, we would like to submit our comments to Calvary Worship Center's (CWC's) Appeal to the Planning Commission's decision.

First, the core of CWC's Appeal is that they cannot be denied approval because the resulting development "*will result in identical building standards as those currently existing.*" This statement is INCORRECT. Both the existing PBC and R-2 zones require a 25' setback on the front yard. Their development plan indicates the proposed PUD zone will also have a 25' front, side and rear setback. However, the PUD plan also notes a 6" retaining wall setback on 4 sections of the front property lines. In ANY standard zone, the 16' high crib-lock retaining wall (described later in more detail) only inches from their front property lines WOULD REQUIRE A VARIANCE to be built. CWC believes that in order to meet the minimum parking requirements of this project, the retaining wall must be built this close to the property line. In short, the development **CANNOT MEET** the measurable standards of the zoning code without rezoning to PUD and changing the standards while also opening the project up to more judgmental criteria as to the appropriateness of the project in a residential area. The City would also be justified in maintaining the existing and required setbacks in the new PUD zone and denying any variance.

Second, we request that the members of the City Council personally view an example of the retaining wall system that CWC proposes to build across the street from homes in the neighborhood. The example, a 16 year old crib-lock wall, is located behind Sam's Club at N. Academy and Woodman Road. When you are standing next to the wall, **imagine this retaining wall directly across the street from your home!** Per City Zoning Code "7.4.102 General Standards:" Fences or walls over 6' are considered accessory structures and must meet setback requirements. In both PBC and R-2 zones, this 16' high retaining wall should be a minimum of 25' from the property line. The current development plan shows the retaining wall only inches from the property line.

Third, we would like to rebut CWC's characterization of the Planning Commission's decision as "*erroneous and based on misleading, irrelevant, and factually inaccurate data and assumptions*". We found the Planning Commission's questions and comments to be **very perceptive** even before any of the neighbors made presentations. It is the job of the Planning Commission to sift through all the information

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presented and come to a judgment about its validity. Based on what we heard and saw, we believe the Planning Commission did its job properly and without bias.

Our additional comments will be in the same order as the more detailed parts of CWC's Appeal letter.

CWC: "...prevents the highest and best use of the Property..."

Comment: The highest and best use of property does not mean it has to be commercially developed. The highest and best use can be as simple as green space like Central Park in New York City or Red Rock Canyon in Colorado Springs. Because of the geohazards, slope, and character of the existing R-2 zoned parcel, a green space *might* be the best use for this property.

CWC: "...unreasonably rejected Planning Commission's Staffs (the "Staff") recommendation to approve the Church's change of zone and development plan ..."

Comment: It is the responsibility of the Planning Commission to judge Development Plans and Zoning Changes under City Zoning Code 7.5.3. If the Planning Commission simply rubber stamped staff's recommendations, there would be no need for the commission. It has been my experience during my professional career as an architect that planning staff often works very hard to come to a compromise between parties to allow a project to proceed. In the case of this project, the staff made some early recommendations that the staff later backed away from. We feel that those original recommendations were on target and we do not understand why the staff changed their recommendations to allow CWC to move forward in their planning.

CWC: "A. Zoning ... religious use is currently permitted in zone PBC (City Zoning Code 7.3.203) and conditionally permitted in R-2 (City Zoning Code 7.3.103). Accordingly, the Planning Commission's decision with respect to zoning was unfounded and unreasonable." ... "the compromise agreed to by the Church not to expand beyond current zoning parameters and requirements, thus maintaining consistency with the neighborhood's current and past zoning and use expectations."

Comment: Religious use, as CWC stated, is a "Conditional Use" in the R-2 Zone. CWC agreed not to expand beyond current zoning parameters and requirements which included the requirements of R-2. The Planning Commission's decision, therefore, was founded and reasonable under City Zoning 7.2.201: "DEFINITIONS ENUMERATED: CONDITIONAL USE: A land use which is an allowed use in a zone district but has operating and/or physical characteristics which require careful consideration and public review of the impact upon the neighborhood and the public facilities surrounding the proposed location. Conditional uses are subject to special requirements and the approval of the Planning Commission." CWC's "Conditional Use" of the R-2 parcel apparently did not meet the approval of the Planning Commission. In addition, CWC DID NOT stay within the current zoning parameters for setback.

CWC: "B. USE DENSITY / GROUND AREA COVERAGE

The Planning Commission appeared influenced by density of proposed building structures following Phase 3 of development upon the site. These considerations are unwarranted, unreasonable, and not based on a matter of law." ... "The Church also objects to the Planning Commission's characterization of planned building expansion in Phase 3 as too large. Even post-construction, the total ground area coverage of improvements remains less than 15%. The Planning Commission's determinations are not based on existing PBC, the proposed PUD zone requirements, or any other legal requirement related to land use."

Comment: A PUD Zone does not have any specific zoning requirements such as density". A "Planned" zone is exactly what you would expect from the term. Requirements for a planned zone are established based on the unique characteristics of the project and site. We feel the Planning Commission in characterizing Phase 3 as too large was referring to more than the site density and was reasonable in their judgment.

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CWC: "C. GEOTECHNICAL, SOIL AND SLOPE INSTABILITY CONCERNS

The Planning Commission erroneously and unreasonably dismissed the Church's compliance with analyzing, identifying, and mitigating existing geotechnical, soil, and slope instability concerns." ... "The Church objects to the Planning Commission's apparent reliance on factually irrelevant materials presented by opposition at the October 16th meeting. Opposing neighbors presented photographs of individual property problems resulting from their own individual foundation problems, which are unrelated to and do not necessarily adjoin the parcels at issue in the Church's development plan."

Comment: How can it be determined that the Planning Commission dismissed the Church's compliance with geotechnical requirements since they did not directly address the issue other than to bring up the fact that staff did not inform the Planning Commission of all the details concerning past slope stability concerns in 2006 by the neighbors. We brought up the subject to express our frustration with the entire process in 1996 and 2006 and to make one simple request that the geotechnical report formally accept the existing drainage off of King Street and Mesa Vista Court to help protect the residences if there was a failure of any of the slopes and we had to go to litigation. In addition, the pictures presented were of properties that adjoin the "at issue" parcels and it is our belief that the "individual foundation problems" were the result of site work done on the "at issue" parcels in 1996 and not the fault of individual foundation designs.

CWC: "... The Church also objects to the Planning Commission's assertions that the Property should be treated as though it were designated in a Hillside Overlay Zone. ..."

Comment: The Planning Commission did not assert that the Property should be treated as though it were designated in a Hillside Overlay Zone. One commissioner stated that he was surprised that the area was not in the Hillside Overlay Zone. He DID NOT state that Hillside Overlay standards should be applied to this project.

CWC: "... Church notes that its proposed retaining wall systems arguably may reinforce and prevent further slope instability, thereby better protecting both the property to the North and South of the current R-2 zone than leaving the soil as it currently remains."

Comment: In fact, the Geological Hazard Report shows three slope stability analysis's for the proposed areas of the retaining walls. For post construction, two of the graphs show lower Factors of Safety (FOS) and one shows a higher FOS. Based purely on the FOS calculations, the retaining wall, if built properly, neither enhances nor is detrimental to the existing slopes.

CWC: "D. RETAINING WALL AESTHETICS AND FUNCTION

Opposing neighbors raised objections to installation of the retaining walls currently proposed, and specifically to the "crib-lock" design. As a preliminary note, the proposed retaining walls are generally not visible to the owners of the property to the North and East."

Comment: The "crib-lock" wall WILL be visible from the east because of the grades. The only residential area that may not see the retaining wall would be due north.

CWC: "... The proposed crib-lock design, with its open cells, will best prevent raised concerns regarding freeze-thaw" cycles because the open face / cellular design will allow groundwater to escape without expanding during a freeze into damaging cracks...."

Comment: CWC totally misunderstood the concern about the "crib-lock" freeze-thaw cycle concern. To understand, one simply has to look at the system behind Sam's Club that is failing and has required unsightly repairs after less than 16 years. When the long thin precast crib-lock pieces crack from movement, which is very probable with the local soils, the cracks will expose the rebar that is less than 2" from the concrete surface. Colorado Springs' 300 freeze-thaws per year will accelerate the expansion and depth of cracks in the concrete. Moisture will then enter and rust the rebar that will then expand, just as water expands when it freezes, to cause more cracks that will

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lead to further rust and damage. Moisture can come from rain, snow sitting on the sloped wall or from the irrigation that is planned.

CWC: "... *The gravity-type wall design proposed by the Church is also superior in stability and overall risk impact as it may be installed with shallower cuts into the existing slope required than alternative installation suggestions. It was also the design recommended in the Church's geotechnical analysis.*"

Comment: The crib-lock retaining wall is not the only gravity-type retaining wall available. There are other gravity systems available that are much more attractive, residential in scale, and less susceptible to freeze-thaw. We will present examples of one other such system at the City Council Meeting.

CWC: "*E. STORMWATER DRAINAGE*

The Church adequately has prepared a preliminary drainage report regarding impact of the proposed parking lots..."

Comment: We concur that the development will generally ... "prevent sedimentation and buildup along Willamette." But as we presented to the Planning Commission, the storm runoff will simply go into a drain on Willamette and come out a bubbler around the corner on 28th. It is a fact that although a detention pond (whose depth is incorrectly shown on the plans) will slow the runoff to historical flows, the time for the runoff to subside will be substantially increased to the detriment of the homes on 28th. We are only asking that the runoff be piped all the way to the Uintah storm drain.

CWC: "*F. PARKING AND TRAFFIC*

The Code requires that religious land use maintain a ratio of one parking space to every four seats, a ratio met in the current development plan."

Comment: The ratio of one parking space for every four seats is the minimum parking requirement for an assembly type use. Since this is a planned zone, the development plan is judged on whether it meets (which we believe it does not) numerous review criteria. We demonstrated by actual parking and car counts that the City Zoning Ordinance "7.3.606.E Overburdening of Public Facilities: [Will the proposed development overburden the capacities of existing and planned streets, utilities, parks, and other public facilities?]" criteria could not be met. We believe from our studies that show over 500 cars looking for a parking space in the middle of a residential area DOES overburden existing streets.

CWC: "*The City Traffic Engineering department requested that a traffic management plan be provided at the time of Phase 3, which the Church has accepted.*"

Comment: No amount of "Traffic Management Planning" can overcome a grossly under parked project in the middle of a residential area. We have studied the development plans of several other similar assembly facilities in Colorado Springs. In the cases where a marginal parking ratio was provided, the facilities were located directly adjacent to large parking areas and the development plans noted the adjacency. In other words, it was expected that the overflow parking would utilize the adjacent parking lots and not overburden the area with street parking.

CWC: "*G. RELIGIOUS USE*

The Church further requests that the City Council reverse the Planning Commission's denial in light of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq...."

Comment: From our point of view, any assembly type user that was requesting approval to develop a similar project that is grossly under parked (based on actual traffic studies) in the middle of a residential neighborhood should be rejected. CWC could provide structured parking or acquire adjacent PBC property to provide adequate parking and not overburden existing streets or

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facilities. CWC's development plan also does not set or meet setback standards that justifiably should be set for any PUD zone adjacent to a residential area.

Respectfully submitted,



Larry Hudson
Registered Architect, LEED AP
Representing Concerned Neighbors