

CITY OF COLORADO SPRINGS

**INTEROFFICE MEMORANDUM**

DATE: January 29, 2018  
TO: Peter Wysocki, Director of Planning  
FROM: Sarah Johnson, City Clerk  
SUBJECT: Notice of Appeal

ITEM NO. 6.A.1.: AR DP 17-00039; ITEM NO. 6.A.2.: AR FP 17-00040

An appeal has been filed by Dan Martin and Cynthia Grey on behalf of the Broadmoor Bluffs Neighborhood Association regarding the Planning Commission action of January 18, 2018.

I am scheduling the public hearing on this appeal for the City Council meeting of February 27, 2018 with the request for one time postponement to March 13, 2018. Please provide me a vicinity map.

CC: Hannah Van Nimwegen

Daryn Murphy  
The Commonwealth Companies  
2301 NW Thurman St. Ste. E  
Portland OR 97210

Lee Patke  
Greccio Housing  
1015 E Pikes Peak Ave Ste 110  
Colorado Springs CO 80903

Broadmoor Bluffs Neighborhood Assoc  
4729 Opus Dr  
Colorado Springs CO 80906

**EXHIBIT A**





Appeal of City Planning Commission's Decision to City Council

Project Name: The Ridge Apartments

Site Address: 4375 Broadmoor Bluffs Drive

Tax Schedule Number: 6506410108

Type of Application being appealed:

Include all file numbers associated with application: AR DP 17-00039 & AR FP 17-00040

Project Planner's Name: Hannah Van Nimwegen

City Planning Commission Hearing Date: January 18, 2018

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:
- 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:
- It was against the express language of this zoning ordinance, or
- It was against the express intent of this zoning ordinance, or
- It is unreasonable, or
- It is erroneous, or
- 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.
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: Broadmoor Bluffs Neighborhood Association Telephone (719) 291-5332

Address: 4729 Opus Drive City Colorado Springs

State: CO Zip Code: 80906 e-mail: MarDan1492@comcast.net

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 January 18, 2018

\*\* 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

**City Authorization:**

Payment \$ \_\_\_\_\_

Date Application Accepted \_\_\_\_\_

Receipt No: \_\_\_\_\_

Appeal Statement \_\_\_\_\_

Intake Staff: \_\_\_\_\_

Completed Form \_\_\_\_\_

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

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

CITY CLERK'S OFFICE  
2019 JAN 26 P 2:12



# Broadmoor Bluffs Neighborhood Association

CITY CLERK'S OFFICE

4729 OPUS DR

COLORADO SPRINGS CO 80906

2018 JAN 26 P 2:12

January 26, 2018

City Clerk's Office  
30 S. Nevada, Suite 101  
Colorado Springs, CO 80903

RE: Appeal of an Administrative Decision to City Council  
The Ridge-Multi Family Housing Project  
AR DP 17-00039 and AR FP 17-00040

In accordance with City Code 7.5.906.A.4 the Broadmoor Bluffs Neighborhood Association (BBNA) respectfully submits the following declarations and justifications of our appeal of a decision that was made administratively and then appealed to City Planning Commission.

## 1. Lot carved out of the Hillside Overlay Zone in error and without authorization.

- A. Violates City Code 7.5.503 by effectively removing this land from the Hillside Overlay Zone by administrative action without proper authority.
- B. Violates City Code 7.3.504.B.3a – which states if a property owner is requesting an exemption from all of the requirements of the hillside area overlay it will be necessary to rezone the property ...
- C. Violates City Code 7.3.504.D. 3. Hillside Development Plan Review Criteria in nearly every respect, by effectively removing this land from the Hillside Overlay Zone.
- D. Violates City Code 7.1.105 Planning Basis criteria of the Comprehensive Plan in nearly every respect.
- E. Violates City Code 7.5.502.E Development Plan Review Criteria – Fails 10 of the 12 planning criteria required for approval.
- F. Violates City Code 4.1.109 and 4.1.111 Legal Status and Use of the Comprehensive Plan by using this Comprehensive Plan as justification for waiving planning and Hillside Area Overlay criteria (7.3.504 and 7.5.502).
- G. Violates City Code 7.5.502 in that the specific impacts of the proposed land use and site design on the adjacent properties, neighborhood, schools, parks, road systems, and existing and planned infrastructure were not evaluated against all the circumstances weighing upon this individual case.
- H. Violates City Code 7.3.504 by failing to conform to the specified conditions and by violating the intent and purpose of these regulations. Decision essentially carves out this lot from the Hillside Overlay and destroys all features this Hillside Overlay is intended to protect. This decision jeopardizes safety by approving inadequate vehicular access, excessive use of cut and fill, and massive retaining walls to hold back that extensive fill.
- I. Violates City Code 7.3.501, HDDM page 23, and HDDM Apdx. B, Ordinance 96-82 in that building height of 45 feet violates maximum permissible building height in Hillside Overlay Zone. View methodology calculations, as per HDDM demonstrate an appropriate maximum height limit of between 11 feet and 26 feet. Specific violations include these, among others:
  - 1) HDDM page 5 requires City Planning to recognize community concerns related to development and its impact upon geological threats, visually significant hillsides, ridgelines, bluffs, and landforms.”

- 2) **HDDM page 22** places strict requirements on structures, including multi-family buildings explicitly, "To ensure" important hillside features are preserved and maintained from both on-site and off-site perspectives.
  - 3) **HDDM page 23** states: "Plans which make inordinate use of cuts and fills *will be denied.*" (emphasis as in the HDDM)
  - 4) **HDDM page 24** states: "Houses should be designed to fit the site rather than modifying the site to fit the house."
  - 5) **HDDM page 25** states: "Retaining walls are not acceptable when their purpose is to create flat yards."
  - 6) **HDDM page 34** states: "Mass/Height – Homes should not appear overly prominent or obtrusive as seen from the street, neighboring properties or off-site."
- J. Adverse Impact:**
- 1) Above documented violations nullify the protections codified by City Council to safeguard occupants and property of proposed project as well as the surrounding community.
  - 2) Detrimental to adjacent neighbors.
  - 3) Detrimental to tenants of The Ridge.
  - 4) Citizens denied community input subsequent to the waiving of city codes and ordinances.

**2. Violates existing condo association owners' consumer rights.**

- A. Condo buyers were sold their units on the basis that the development would be built out or completed in accordance with AR DP 98-329-A3(05), which was approved three times, at latest on Dec 18, 2007.
- B. Violates **City Code 7.5.504** in that the approved Development Plan AR DP 98-329-A3(05) does not expire. Land has not been legally subdivided with a new legal description. Previous Las Casas builder has yet to file the required "Certificate of Completion" with Clerk and Recorder per Las Casas Declarations, Section 17.2.
- C. Colorado Statute Chap 17 Subdivision: 17-2-30 (a)(4) – the subdivision will not result in significant adverse impacts on adjacent properties, or such impacts will be substantially mitigated.
- D. City Code 7.7.605 Lot Standards: para C. Access – Each lot in a new or replatted subdivision shall be provided with satisfactory access to a dedicated public street.
- E. **Adverse Impact:**
  - 1) Illegally violates City Code established to protect property rights.
  - 2) Incongruent with established procedure for certificate of completion and the creation of a new legal description for the protection of condominium owners.
  - 3) Development plan contrary to sales documentation and closing documentation with condominium buyers at time of purchase.
  - 4) Burdens condo owners and Safeway owners with significant liability with pedestrian use of truck delivery route as sole pedestrian access to apartments.



**3. Dangerous access via vehicular way to nearest public street (Broadmoor Bluffs Drive), to nearest bus stops, and discriminates against the disabled.**

- A. Violates **Federal ADA law**, specifically **2010 Standards** for Public Accommodations and Commercial Facilities Title III, **28 CFR 35.151**, subparagraph **206.2.1 Site Arrival Points** and Advisory pertaining to the **Site Arrival Points Exception 2**.
- B. Violates **City Ordinance No. 17-38** in that the development plan must illustrate the provision of ADA accessible routes in accord with the applicable ADA design standards and guidelines as published by the U.S. Department of Justice.
- C. Violates **HDDM Resolution 71-96** maximum dwellings limit, lot frontage strong recommendation, right-of-way width, two-way traffic lane requirement for sole access to nearest public right-of-way, and grade limits among other criteria.
- D. Shopping center ownership group and condo association object to increased liability and may prohibit pedestrian use of access easement due to increased liability, given existing 18-wheeler delivery traffic.
- E. Appears the development plan does not comply with CSFD Access Information Packet dated July 2016.
- F. **Adverse Impact:**
  - 1) Illegally violates Federal Law and City Code/Ordinance established to provide equal access to disabled citizens and additionally inhibits their right to housing which complies with written safety standards.
  - 2) Unsafe ingress/egress for all pedestrians. No sidewalks.
  - 3) Limited equipment access for emergency vehicles and the Colorado Springs Fire Department detracting from their ability to respond IAW established procedures.

**4. Geological hazards endanger surrounding properties**

- A. Intertek's Geological Hazard Report (File 106230.pdf) (§ 3.2 Geologic Hazards, 1st & 2nd bullets on pg. 4 of 18 and 3rd, 4th & 5th bullets on pg. 6 of 18) - Expansive Soils - There is HIGH swell potential at the base of the northern slope, endangering the houses at the top of that slope. There is also moderate swell potential near the proposed segmental retaining (SR) walls.
- B. Intertek's Geological Hazard Report (File 106230.pdf) (§ 3.2 Geologic Hazards, 5th & 6th bullets on pg. 5 of 18) - Intertek's discussion of shallow water tables and groundwater springs neglects to mention Neal Ranch Creek, which runs below the narrow shopping center delivery lane that serves as this development's sole access to a public street, Broadmoor Bluffs Drive.
- C. R.A. Smith's Geological Hazard Report both dated November 29, 2017 as PSI Project No. 05321287 (file 106887.pdf) page 2 of 15 and (file 106888.pdf) page 2 of 18 evaluated the January (the 1st) design. It did not reflect major design changes, such as the 4th floor on Building #1.
- D. R.A. Smith's Final Drainage Report dated October 30, 2017 did not consider the CDOT requirement that:
  - 1) "Drainage to the state highway right-of-way shall not exceed the undeveloped historic rate of flow. Any excess shall be detained on site and released at historic rates."
  - 2) Final Drainage Report was not reviewed by CDOT permits manager for Region 2.
- E. **Adverse Impact:**



# Broadmoor Bluffs Neighborhood Association

4729 OPUS DR  
COLORADO SPRINGS CO 80906

- 1) Incomplete and erroneous procedure which detrimentally affects the safety of the current surrounding residents as well as future residents.
- 2) Erroneously excludes requirements and compromises safety due to failure to coordinate with CDOT.

The Broadmoor Bluffs Neighborhood Association (BBNA) hereby appeals the recent City Planning Commission decision to City Council. Our application and check for the requisite \$176 is attached. We have a scheduling request, however.

One of the principles, Ms. Grey, will be out of the U.S. and is not expected back in the City before February 15th. We request, therefore, that this appeal hearing to City Council not be scheduled to occur until after her anticipated return.

We invite all City Council members for a guided site visit any day/time Feb 16 - Feb 23. We feel strongly that the physical features of the lot are not appreciable from the development plan alone. Of course, we would welcome the applicant to accompany Council on this tour and we ask for reciprocal courtesy. *Please postpone meeting until March 13<sup>th</sup>.*

Dan Martin  
Broadmoor Bluffs Neighborhood Association,  
Chair  
Broadmoor Downs HOA, President  
(719) 291-5332  
MarDan1492@comcast.net

Cynthia Grey  
Broadmoor Bluffs Neighborhood Association,  
Treasurer  
Las Casas Condominium Association, President  
(719) 210-8029  
CGreyBBR@comcast.net

cc: Mulliken Weiner Berg & Jolivet, P.C.

**\*\*HDDM:** Source. Hillside Development Design Manual, 2nd Printing; often referred to as the Hillside Design manual in City Code.

Atch:

1. Check for \$176.00 filing fee
2. Appeal application