



City of Colorado Springs

To Join By Phone
Call: 720-617-3426
Conf ID: 503 838 788#

Meeting Minutes - Draft Planning Commission

Thursday, June 16, 2022

8:30 AM

Open to the Public
720-617-3426 Conf ID: 181 325 870#
Blue River Board Room

Kum & Go Appeal

7.G. [AR DP
21-00813](#)

An appeal of the Planning Commission's decision to deny a Development Plan (AR DP 21-00813) for a Kum & Go gas station, convenience store and associated parking and landscaping on a 1.04-acre site located at the southeast corner of south 8th street and West Brookside Street.

(Quasi-Judicial)

Related File: AR FP 21-00814

Presenter:

Matthew Alcuran, Planner II, Planning and Community Development Department
Peter Wysocki, Planning and Community Development Director,
Planning and Community Development Department

Staff presentation:

Matthew Alcuran, City Planning, presented a PowerPoint with the scope and intent of this project.

- Site located on the SE corner of S. 8th St. and W. Brookside St.
- 1.04-acre site
- Zoned C5
- Not within a master plan area.
- Commercial uses to the north and south
- Residential uses to the east
- Vacant land and the Center for Creative Leadership to the west

Applications:

- Reviewed/approved administratively according to City Code on May 18, 2022
- Consistent with all standards and criteria
- Consistent with PlanCOS
- Establishes 1 lot
- Reviewed/approved administratively according to Code on May 18, 2022
- Complies with all subdivision standards
- Supported by accepted drainage report

Stakeholder Notice:

- Standard notice: poster and postcards at submittal and prior to appeal hearing
- A virtual neighborhood meeting was held on February 28, 2022
- An in-person neighborhood meeting was held on April 12, 2022, due to technical issues outside of the planning staff, the call-in feature was not functional
- The fourth notice was for the appeal to City Planning Commission

Appeal No. 1

- "Urban Strategies, Inc." on behalf of 352, LLC. filed an appeal of both applications on May 27, 2022
- Appeal Statement included as Appeal Statement Urban Strategies
- Numerous concerns
 - Intensity, hours of operation, traffic, noise, light pollution, drainage, and property values

Appeal No. 2

- Eric and Anna Nicole and Jon Severson an appeal of the development plan application on May 31, 2022
- Appeal Statement included as Appeal Statement Severson
- Numerous concerns
 - Traffic, light pollution, increased crime, transient problem, Ivywild neighborhood compliance and property values

Analysis

- The appeal statements are largely focused on meeting City code sections
 - Neighborhood Historic Ivywild neighborhood
 - Intensity of use of the site for traffic concerns
 - Consistency with PlanCOS
- Argue that adverse impacts outweigh benefits

Staff contends that

- All required standards are met
- All required criteria are addressed
- Drainage report correctly accepted by Stormwater Staff
- Appeal criteria are NOT met
- Appeal should be denied, upholding Staff's administrative approvals

Applicant Presentation:

Christa Houchens with Entitlements and Engineering Solutions

Michael Drago from EES

Robert Fiebig, Real Estate Development Manager, Kum & Go

Dan Garneau, Site Development Manager, Kum & Go

Ms. Houchens presented a PowerPoint with the scope and intent of this project.

- Kum & Go spent the past several months working closely with the city and community to identify areas of concern with this project
- This process included two neighborhood meetings, presentations, direct

- contact with neighborhood groups and other community members
- Outside of those meetings, written comment responses, offers to attend phone calls to answer the distributional questions and multiple calls and emails with various jurisdictional agencies
- Significant modifications were made to this project because of the feedback received

Response to Appeals:

- The existing site contains several nonconforming, some dangerous items, that will be improved at this proposed development
 - Lack of sidewalks and pedestrian ADA route along Brookside Street
 - Dangerous traffic conditions along both 8th Street and Brookside Street, which require cars to back up directly into the public right-of-way
 - This presents a safety hazard for cars and pedestrians and is not allowed in the City under current code
 - Abandoned construction activity on the eastern parcel
 - Minimal landscaping throughout all the lots
 - Drainage concerns because the entire site, as well as the portion of the public right-of-way drains towards the residential properties to the southeast corner

Proposed Site Plan:

- 3,968 sq. ft. convenience store with 6MPD fuel and canopy, and it is associated drives, parking, and landscaping
- There are three restricted accesses being proposed
 - Right in, right out off 8th Street
 - Two restricted access points onto Brookside that prohibit semi-trucks from going east towards the residential area
- The proposed gas station/convenient food sales use is an allowed use by right in the existing C5 zone district
 - The proposed building exterior materials are compatible and harmonious with the rest of the 8th Street corridor

Modifications Kum & Go made as a result of concerns:

- Use and Property Size
 - Gas station use is an allowed use within the existing C5 zone district
 - Currently, the site contains five separate parcels adding to approximately one acre; any development of this lot would require a replat as the five small parcels would not meet current city requirements
 - A four foot administrative relief was requested to accommodate the concern related to traffic congestion, noise, light pollution, and drainage issue
 - Reduction in landscape buffer allows improved site circulation and screening from canopy
 - Additional trees are proposed
 - Landscape buffer reduction on the eastern property line (15 feet to 11 feet)

- The drainage was rerouted towards the public road
 - Traffic congestion was minimized between delivery and pedestrian vehicles
- Building setback along Brookside Street
 - Development plan was modified after the second neighborhood meeting to shift the building and eliminate the nonuse variance, thus meeting code
- Concerns about the soil and groundwater
 - There are no existing, sensitive, or hazardous natural features associated with the site
 - Kum & Go has safety as its top priority and adheres to strict state and federal guidelines
 - The dual walled fiberglass underground storage tank, fueling systems, and fuel base provide 24-hour monitoring as well as leak detection
 - An overfill alarm, vapor recovery equipment, emergency shutoff links, and automatic shutoff dispensing nozzles limit any gas spillage
 - The proposed ADS underground storm sewer system will be wrapped with an isolator row plus for water quality treatment of any storm runoff
 - As a final precaution, all inlets on site will include inlet filter bags for any runoff or spillage that may occur
 - Some of these items exceed city code and provided based on community feedback
- Drainage
 - This development would reroute the existing drainage patterns to direct runoff from the residential parcels
 - Rerouting this existing drainage was not a requirement of the development, as code allows runoff to flow in its historic pattern, nor was Kum & Go required to enlarge the detention basin to provide water quality and detention for the public city right-of-way
 - The proposed development will now provide water quality and detention, holding the runoff on site. It will be released to S 8th Street at a lower rate than it currently does
 - There is a water quality isolation row within the detention basin and all inlets will have filter bags, which is above and beyond city code requirements, to capture any runoff prior to discharging into the city system
- Protecting the Air
 - Stage 1 Vapor Recovery and Equalization Vents
 - Vapor is trapped in the fueling truck or is contained within the vehicle during fueling
 - There is no exhaust out the roof vents
 - Kum & Go is conducting further modeling to evaluate particulate emissions and additional ways to reduce these emissions
 - Will be held to City regulated noise pollution standards
- Will minimize noise pollution
 - Lighting exceeds industry standards and meets or exceeds local

- lighting requirements
 - Will utilize downcast lighting and shielding on all lights
 - No light-candles over 1.0 will extend over the property boundary
 - Canopy will be shielded from residential properties to the east by the building
- Traffic Concerns
 - Traffic consultant prepared a traffic report based on City design standards. Data concluded there are no adverse impacts, and City Traffic confirmed those findings
 - Traffic safety improved due to removing non-compliant existing conditions where parking backs into the public ROW
 - Restricted access points
 - Internal access drive removes conflicts with large trucks and passenger vehicles
 - Pedestrian circulation will be improved
- Addressing Crime
 - Kum & God will continue to work with CSPD to implement extra safety measures
 - Redevelopment will improve safety
 - Kum & Go provides amenities that bring positive attributes to the community

PRESENTATION INSTRUCTIONS

Chair Hente informed the appellants of the process the hearing would follow:

- Each appellant will be allowed a 15 minute presentation
- Public Comment - each speaker has 3 minutes
- Applicant Rebuttal
- Back up to the dais for Commissioner Discussion

After the instructions were read by Chair Hente outlining the order in which the presentations would be presented, along with public comment and applicant rebuttal, Mr. Gruen objected that he would not have the right of rebuttal, as he was told he would be able to have that right. Mr. Gruen asked for that to be confirmed.

Lisa O'Boyle with the City Attorney's Office explained the rebuttal period is typically available when you are rebutting something from the applicant, and here, you have heard the applicant's arguments and statements, and so you can include your statements in rebuttal to what they said already because you have that information. It is appropriate for the applicant to have the rebuttal opportunity and the last say in this case.

Mr. Gruen said that was different than what he was notified and said he was not asking for the last say, he was asking for the opportunity to rebut. Mr. Gruen wanted to make it clear that it appeared that the applicant was going to have that opportunity to rebut, and he would not as the appellant.

Elena Lobato, Planning Department, said that usually the commission hears the

appellant before the applicant, and that she erred in not specifying that on Chair Hente's script. However, in the past, we have allowed rebuttals by both the applicant and the appellant.

Ms. O'Boyle explained further to Mr. Gruen that the purpose of a rebuttal is to rebut arguments from the party that went first here. As Elena noted, the order was switched, and Mr. Gruen heard all the arguments from the applicant at this point, so could loop anything that would be said in a rebuttal into this primary statement.

Chair Hente said they have always given the applicant the final word to anything that may be said, especially by the general public, because the general public could make misstatements of fact. That is why the applicant is allowed to have the final word in order to correct those misstatements.

Appellant #1 Presentation:

Les Gruen with Urban Strategies spoke on behalf of Clay Taylor, the owner of the 10-unit Brookside Garden apartment property located behind the proposed Kum & Go.

- The intent of the proposed use is not compatible with the site and surrounding neighborhood
 - Similar use in Ivywild that makes sense from a land use standpoint is the Maverick gas station on Tejon and Motor City
 - Kum & Go at Garden of the Gods across for the County Service Center is a great location that is buffered by nonresidential uses and there is a tremendous amount of traffic that flows by everyday
- Mr. Gruen said there was nothing fundamentally wrong with staff's review and that Mr. Alcuran was very courteous and responsive to every question
- Applicant and Staff's justification for this approval
 - This is a use by right within the C5 zone
 - The applicant was doing all they needed to do with respect to infrastructure development
 - Putting in a curb and gutter
 - Sidewalks
 - Drainage
 - Addressing noncompliant parking
 - By virtue of these things, they were somehow meeting the goals and objectives of the City's Comprehensive Plan and enhancing and approving the area
- This conclusion does not consider that the improvements they are being asked to do would have to be done by anyone that is doing a final plat on those five lots
- Staff's justification of its approval made a big deal about sidewalks
 - There is already a sidewalk in place and ADA accessibility available along 8th Street
 - Any new sidewalk would be along the northern portion of that lot, but it would be a sidewalk to nowhere because there is no

- sidewalk that it connects to on the other side
 - The whole notion that by putting in a sidewalk, we are going to be encouraging pedestrian traffic is somewhat disingenuous
- Put yourselves in the place of the people that live adjacent to where this Kum & Go would go if it were approved
- The final plat and development plan review criteria require compliance and consistency with all requirements of the subdivision code and any other applicable city policy standards and ordinances. In addition, the development plan must be consistent with the intent and purpose of the zoning code and compatible with the land uses surrounding the site
 - Overwhelming testimony and evidence that will be presented by citizens will tell you an entirely different story
 - There are multiple concerns
 - Increased criminal activities
 - Potential for increased noise
 - Potential for increased light
 - Potential for increased truck traffic
 - Potential for environmental pollution
 - Potential for increased blight due to the failure of nearby competitors
- The applicant's request to receive the landscape variance on the most sensitive portion of the site adjacent to the apartment on the east does not make much sense
 - The adverse impacts this proposed use would have on the adjacent residential property will be obvious after listening to testimony
- For all these reasons, this development project, if approved, would not be consistent with the intent and purpose of the zoning code, not would it be compatible with the land uses surrounding the site as required by section 7.4.502.E. which relates to development plan review criteria
- Final plat review criteria require appropriate development of the community through the implementation of the goals and policies of the comprehensive plan according to city ordinances 96-44 and 01-42
- Mr. Gruen provided a list of PlanCOS goals and policies that he believed the final plat and development plan violates
 - City Staff focused on one policy (VN-3-C)
 - Disagreed that this proposal meets that policy
 - It does not meet the traditional neighborhood recommendation to enhance walkability features because of the new off-site street improvements
 - It was already discussed that there are no sidewalks on Brookside, so that does not make any sense
 - Staff talked about the addition of the convenience store with different options for healthy food within walking distance as a way of promoting neighborhood level shopping makes no sense
 - There is a tremendous amount of neighborhood dining options in that neighborhood
 - Burrowing Owl
 - Little Nepal

- Sushi place
 - Hamburger place
 - Egg place
 - It is hard to imagine neighbors are going to be running to Kum & Go for their dining
- Neighbors do not have issues with commercial use on the site. The issue is with:
 - The intensity of use changing from low traffic
 - Normal business hours to 24-hours per day
 - Intensity use creates substantial difference in noise and light
 - Substantial difference in truck traffic and associated noxious fumes
 - Substantial difference in automotive traffic activity at Brookside and 8th Street
- It comes to the Planning Commission to be the guardians of the public interest with respect to making these tough land use decisions. While staff assures that the submittal is technically compliant, the Commission ultimately must decide whether there is consistency with the intent and purpose of the zoning code and compatibility issues
- The final plat does not meet all requirements of the subdivision code in other applicable city policies, standards, and ordinances
- The development plan is not consistent with the intent and/or purpose of the zoning code and is incompatible with the land uses surrounding the site

Mr. Gruen said something he was planning on discussing in rebuttal, but will just do now, is when he looks back 100 years ago to the dominant city in the country, it was Detroit. The decisions that decision makers make within cities play a huge, huge role in where cities end up. Cities that want to stay atop of the most desired cities in the country list probably do not put a Kum & Go at the entrance of their most historic neighborhoods.

Appellant #2 Presentation:

Eric Nichol and Severson

Eric Nichol, 1427 Avenue A Street, right across the street from the proposed location

- Concerns
 - Traffic and concerned with Brookside already having hard traffic
 - Seems to violate the final plat requirements under A. and D.
 - There were great recommendations as far as recommending that no trucks turn right onto Brookside, but where there is a lot of traffic in certain areas, people make their own decisions
 - Has an immense amount of concern that Brookside will still be utilized as a heavy entrance and exit
 - There is also only one entrance and exit on 8th Street and there are two off Brookside in the proposed plan
 - Increased noise, light, traffic, and people that are moving through

a space that is quiet after 9:00 PM, and now it would be somewhat of a bustling area between 10:00 PM and 5:00 AM

- Increase of potential crime, vagrancy, and trespassing
 - At a neighborhood meeting in Ivywild, they received information from Officer Wilkerson on gas stations around the City
 - The average number of calls was about 133
 - 50% or more were for trespassing
 - Kum & Go on Nevada had 452 calls in 2021
 - Kum & Go on Wooten had 319 calls in 2021
 - On average (every three nights), something would happen approximately 50 feet away from his residence and is concerned with his and his wife's safety
- Development Review Criteria and Final Plat Criteria
 - Final Plat criteria F - to ensure the appropriate development of the community through the implementation of goals and policies of the comprehensive plan
 - Development Plan criteria - the development plan substantially complies with any city adopted plans that are applicable to this site, such as Master Plans, Neighborhood Plans, Corridor Plans, Facility Plans, Urban Plans, etcetera, but nowhere on there when connecting to neighborhoods does it say gas station, but it says multiple times how we want to increase walkability, safety, unique places
 - There is a need for gas stations, but not so close to so many neighbors

John Severson, lived in Ivywild neighborhood for 20 years (background in gas stations)

- Concerns
 - Nobody is really going to use the 8th Street entry and exit. Everybody that is going to use the station who lives south of there and will exit on Brookside, and everyone else will be making a left onto Brookside to the controlled intersection instead of trying to go out on 8th Street
 - Traffic on Brookside will double
 - Gas stations with less than six pumps will go out of business in 3 to 5 years because they cannot compete (Everyday store on Tejon and 7-11 on 8th)
 - We do not need more gas stations
 - Healthy Food - the cheapest food because it gets thrown away; highest disposal of any food industry; so healthy food is a lie
 - Noise -
 - A diesel truck idles at 119 decibels (thought that city ordinance limited to 50 decibels), and they will come to Kum & Go at least 12 to 15 times a month
 - They cannot control semi's to not go down Brookside Street

- Coca-Cola, Pepsi, etcetera all use small semi-trucks to deliver to gas stations
- Intersection of 8th & Brookside - already has traffic that backs up past Avenue A on a regular basis
 - There will be cars pulling up that are inconsistent with the light
 - There will be heavy traffic issues on Brookside all day long
- This is inconsistent with what makes a great neighborhood
- Kum & Go will not maintain the charm of the Ivywild neighborhood

Questions:**Supporters:**

None

Opponents:

Clay Taylor, owner of Brookside Gardens Apartments, Appellant #1

- Never would have purchased the apartments if it were next to a large gas stations convenience store development
- Today, it is a safe, quiet, 10-unit, affordable apartment community with an atmosphere of respect and caring for others
 - Have intentionally kept rental rates below market value to house people with low incomes
 - Average length of tenancy is 7 years
 - Tenants live on a fixed income and do not have very good housing options
 - 9 out of 10 tenants have expressed very strong concern over increases in crime, traffic, litter, and compromised personal safety if the Kum & Go was built
- Currently, there is very little crime at Brookside Gardens, there are no break ins or bars on windows, and the police have only been called once. In contrast, the police data given for eight convenience stores and gas stations in Colorado Springs averaged 133 calls
- Kum & Go is a magnet for behaviors requiring calls to the police and threatens the safety of the tenants
- The landscape variance from 15 feet to 11 feet puts the Kum & Go 4 feet closer to the tenants' bedroom and bathroom windows
- Noise, diesel exhaust and traffic will have a severe impact on the rest, sleep, healthy air quality, and peaceful living environment of the tenants
- The administrative approval did not meet final plat review criteria that required this application to promote the health, safety, convenience, and general welfare of the citizens of Colorado Springs, nor does it create a healthy living environment for the residents

Gregory Kopelow, tenant of Brookside Gardens

- Bedroom is 100 feet away from the proposed station

- Very few cars after 9:00 PM and it is very peaceful and quiet
- Having a 24/7 gas station open in the midst of the bedrooms will affect sleep, health and well being
- Will harm ability to function the next day at work
- A gas station will bring crime according to the crime data made available by the police, which will affect the desirability and the property values
- Stats on the gas station on Nevada within a 500 foot buffer zone
 - 2013 before Kum & Go opened there were 279 events
 - 2014 after they opened there were 680 events
 - 2019 and 2020 there were over 1000 events
 - Gas stations do affect crime
- Traffic - ability to leave the driveway and not have a stream of traffic and trucks coming and going makes it desirable and relaxed living
- Affordable rent in the City is sorely lacking, even more so in this part of town
 - The landlord makes the rent affordable, and all the neighbors are decent folks and it is quite peaceful and clean
 - Building a gas station will affect this in a negative way
- Would you live next to a gas station?
 - Listen to the neighbors who are saying no to this because if this were beneficial to the neighborhood, it would pass quietly and with open arms

Reverend Kat Gaya, tenant of Brookside Gardens

- Likes Kum & Go very much, but just does not want to live next to one
- Clay Taylor has made this apartment affordable, but if it becomes untenable because of Kum & Go, she would essentially become homeless because there is no affordable housing in the City
- Right now, she is safe, has access to a bus, but added traffic on Brookside will be dangerous with a change of getting run over since the bus stop is right by the street
- As a senior with mobility issues, she would be at risk from the less than desirable elements that collect around a 24-hour convenience store
- With the construction there would be noise, pollution, and upheaval, which would make it unbearable
- Would you want this right next to you?

Janelle Walter, tenant of Brookside Gardens

- Showed pictures of Brookside Gardens and said it was a very nice place to live.
- At the end of our driveway there is a utility easement that can give easy access to any vagrants that could go right down in here and camp out, make campfires, smoke, drink, leave trash.
- Behind my building is someone's backyard where children play back all the time
- Ms. Walter's bedroom and bathroom is five feet to the property line
- Last year when they were doing construction, the noise was horrendous. It went on for 2-3 weeks, I think. And the dust got kicked up.

We were breathing dust and dirt and listening to this noise, it was nerve wracking. That is what we would have to tolerate from construction all the way through the operation of building the store itself

- Ms. Walter said she was just asking you to please listen to the people that live in this area, their views, and their desires to not, have this there
- Our health and safety are at risk, and it would ruin our neighborhood for a Kum & Go to come right there.

Steve Carlson, tenant of Brookside Gardens for 9 years

- Will be greatly impacted by all the pollutions
- There is no air conditioner and windows have to be left open for cooling
- Mr. Carlson's daughter started a petition with 308 signatures to prevent Kum & Go from building on that property
- Will ruin quality of life and security
- All the tenants will be placed in jeopardy

Julie Nedrow, President of Ivywild Improvement Society

- Ivywild neighborhood has around 1200 homes within its boundaries
- The compelling statements from the residents that are directly impacted by the Kum & Go proposal also are mirrored throughout the neighborhood
- The Ivywild Improvement Society is in opposition of the Kum & Go proposal and support the two appeals submitted to the Planning Commission
- The applicant's property is located within the boundaries of the Ivywild Historic neighborhood
- The Ivywild Improvement Society believes the administrative approval of the proposed Kum & Go was incorrect and was against the expressed intent of the zoning ordinance, specifically, 7.5.502.E(1)(2) and (7)
- Project is incompatible with the neighborhood
- The City classified Ivywild as a traditional neighborhood, but in reality it is a historic neighborhood
- One of the unique characters of Ivywild is the stability of the neighborhood
- The applicant's proposal does not preserve nor enhance Ivywild's unique character, but rather threatens the neighborhoods vitality and environment
- The proposed site threatens Ivywild's residents, safety, increases neighborhood noise and disturbances
- Traffic congestion creates another location for vagrancy, inappropriate development, and loss of identity
- Streets of Ivywild are narrow and do not support large fuel trucks and vendor trucks
- There is limited sight lines and lack of continuous sidewalks
- We have already had a lot of trickling of different individuals and cars coming through the neighborhood due to the increased development on the east side of our neighborhood
- The intensity of the use of the proposed site creates a substantial

change

- Through PlanCOS, there is a vibrant neighborhood initiative which promotes a shared planning problem solving process while addressing the individual needs and desires of neighborhoods
- We challenge the Planning Commission to really justify how a large corporation such as Kum & Go meets the priority needs and desires of the Ivywild neighborhood

Joanne Lucy, Vice President of Ivywild Improvement Society, mechanical engineer with a master's degree in process safety

- Gasoline is a complex mixture of multiple substance that contains harmful compounds, including benzene, which is a carcinogen with no safe level
- The higher the exposure to benzene and the longer the exposure, the more likely it is to cause health effects. These can be increased cancer risk, blood disorders, reproductive or development issues, kidney problems, and issues with the nervous, respiratory, or endocrine systems
- Benzene levels will be higher closer to the source and reduce over distance
- There are several reputable national and International Studies, some in the past few years, which show that similar gas stations to this one with similar controls and protections, still produce harmful levels of emissions over several hundred feet
- Since there are existing homes within 100 feet or less this is going to lead to unacceptable risk levels for the many years that people will live in those homes
- Does not feel these have been addressed by Kum & Go. In fact, they are representatives have used the same wording for the past three submissions since March, which basically state that there really are not concerns with the emissions
- Gas stations have several sources where emissions could occur during loading of delivery tanks, tank breathing, customer fueling and spills
- Kum & Go has a delivery vapor collection system; however, these are not completely closed systems because they cannot be designed to be 100% effective
- Maybe the seals will not be properly maintained, and the delivery drivers will not hook things up correctly. The bottom line is they do not work 100% of the time.
- The fact is those systems which protect from emissions while customer cars are being filled up, those do not work 100% of the time, even if those systems are on board.
- The issue is how close the Kum & Go will be to neighboring homes and the long term health risks for people living there. I feel people have a right to live safely in their homes

Sally Pieta, lives three blocks from site

- Does not lock her door, does not lock her truck, and keeps windows open at night

- There are so many bears in the neighborhood that they have named them
- There are deer that are in our neighborhood and visitors stop to take pictures
- Please do not build here

Leigh Westin, Vice President of the Skyway Association

- Regularly communicates with more than 300 residents and every person who has written to her is vehemently opposed to this 24/7 crime target for a myriad of reasons
- Kum & Go has not heard the residents. No matter how many changes they make, the project does not fit into, nor preserve, the historic neighborhoods of Ivywild and Skyway
- 7.5.502.A (1) and (2) says the decision was against the express language of the zoning ordinance and the project is unreasonable. It says it is necessary to require a development plan in order to review 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 and wildlife safety. This project comes nowhere near that
- No site design solutions at this location would alleviate the numerous potential problems associated with this project
- Asked the Planning Commission to empathize and reject this project in this historic preservation neighborhood

Sandra Matthews, (most was inaudible over the phone)

- Does not fit in the neighborhood
- No one will go to Kum & Go to eat

Karen Harvey, lives on West Brookside

- Opposed to the project as it does not fit in with the neighborhood
- This is a quiet area
- This will affect ability to walk places
- Urges to not approve
- Would be happy with apartment or a restaurant

Joyce Hicks, resident of Ivywild

- Walks the neighborhood frequently
- Traffic is a concern
- Concerned about the daycare on Brookside
- People are speeding on Brookside
- The corner could use some help, but this project does not fit the community

Denise Carlson, Father is a tenant of Brookside Gardens

- Started a petition through Change.org to oppose the building of Kum & Go
- Concerned about father's safety, quality of life, and health

- Father is a senior living on a fixed income and there are very few affordable apartments in Colorado Springs

Paula Miller, lives on Cheyenne Blvd

- Shared what the consequences would be when businesses like this are put into the wrong communities
 - 2016 a hallway house for sex offenders located at 24 Cheyenne Blvd
 - A man who was there broke into her house and assaulted her
- With the number of calls that gas stations have, it will affect people

Mary Sue Wildman, resident on the west side of 8th Street

- Frequently goes down Brookside and 8th Street
- Traffic study does not reflect the reality of the day
- This is not a good choice of a business for the corner
- Safety is important
- Neighborhoods should be enhanced by new developments

Tom Howarth, lives a block from the site

- Opposed to this project
- Adding another gas station does not seem to be useful
- Concerned about increased traffic on Brookside

Rebuttal:

Christa Houchens, Civil Engineer for the project

- Pedestrian Access and sidewalk along Brookside
 - The addition of the sidewalk does connect to a bus stop on the northeast corner of the site
 - The bus stop will be improved as part of that to help with safety along that street for pedestrians where there is currently not a sidewalk
- Truck Deliveries
 - 8th Street is a right-in/right-out only access
- Site Orientation
 - The reason the site is laid o

Motion by Commissioner Rickett, seconded by Commissioner Slattery, to Uphold the appeal and deny the underlying administrative approval of the Kum & Go and C-Store Development Plan, based upon the finding that the application does not comply with the review criteria in City Code Section 7.5.502.E, and that the applicant has substantiated the appeal criteria found in City Code Section 7.5.906.A.4. The motion passed by a vote of 4:1:3:0

Aye: 4 - Chair Hente, Commissioner Slattery, Commissioner Almy and Commissioner Rickett

No: 1 - Commissioner Wilson

7.H. [AR FP 21-00814](#)

An appeal of the Planning Commission's decision to deny a Final Plat (AR FP 21-00814) for a K & G Subdivision combining 5 parcels into one single parcel on a 1.04-acre site located at the southeast

corner of south 8th street and West Brookside Street.

(Quasi-Judicial)

Related File: AR DP 21-00813

Presenter:

Matthew Alcuran, Planner II, Planning and Community Development
Department

Peter Wysocki, Planning and Community Development Director,
Planning and Community Development Department

Continued from 7.G. (AR DP 21-00813)

Rebuttal:

Christa Houchens, Civil Engineer for the project

- Pedestrian Access and sidewalk along Brookside
 - The addition of the sidewalk does connect to a bus stop on the northeast corner of the site
 - The bus stop will be improved as part of that to help with safety along that street for pedestrians where there is currently not a sidewalk
- Truck Deliveries
 - 8th Street is a right-in/right-out only access
- Site Orientation
 - The reason the site is laid out this way it is to block the fuel and components away from the residences
 - The building is over 45 feet away from that neighboring property to the east
 - The building is screening fuel deliveries and fuel pumping for vehicles away from any of the residences

Robert Fiebig, Real Estate Manager for Kum & Go

- Truck Deliveries
 - Mr. Fiebig explained that for deliveries, Kum & Go owns the company that delivers the fuel, and they can control when and where the delivery trucks go
 - Per the development plan, deliveries will be entering from 8th Street and exiting out either on 8th Street or exiting around the back of the store and then exiting left onto Brookside towards 8th Street and not heading east on Brookside
- Noise Buffer
 - There will be a retaining wall with landscaping on the top for those residents right behind the building
 - The store will be 45 feet off the real property line
 - Landscaping will be on the lower side of that wall that will screen some of the areas as well
 - The view will actually improve from where it is sitting today
- General Statement
 - New Kum & Go store has a positive impact on the community

- Local store associates and subcontractors to build the store
- This is a current vacant lot with abandoned construction, which will most likely decrease the value of neighboring properties
- Former landowner indicated there was criminal activity on the site before including break ins, dumpster fires, overnight camping, graffiti, and most happened after the business hours
- Kum & Go will be 24 hours and staffed continuously which would improve the safety of this parcel
- The development will eliminate the existing dark hiding spots that are also conducive to crime
- Extras features such as security cameras, locks on exterior items and no loitering signs
- Continually work with local law enforcement after the building opens

Questions of Staff:**DISCUSSION AND DECISION OF PLANNING COMMISSION:**

Commissioner Rickett asked besides fuel sales, what else does C5 zoning allow? Mr. Alcuran listed some of the allowed uses in the C5 zone including dormitory house, call centers, hotel, automotive service repair, light industrial, private parking structure, transit center, commercial greenhouse, etcetera.

Commissioner Rickett said he asked the question because the commission is there to uphold code, and part of that is the criteria that has to be met in that code. There are a couple of those criteria that he was unsure were met in this application. The appellants have done a very good job of using the code to provide that information of why they felt this did not meet the criteria.

Commissioner Rickett said he would be in support of the appeals and deny the development plan and subdivision plat.

Commissioner Almy thanked the citizens of the area for their good input, as it actually just might sway his opinion. Commissioner Almy asked if Ivywild was a historic district. Mr. Alcuran confirmed that it was not in a historic district, nor is the project in the Ivywild Improvement Master Plan, and that is why it was not considered in this process.

Commissioner Almy asked for Ms. Nedrow what the rationale was for saying the Ivywild neighborhood is a historic district. Ms. Nedrow said the map provided by Mr. Gruen was a newer map than the one that was being referred to by Mr. Alcuran, and it is inclusive of that particular property and area. It is true that the Ivywild Master Plan does not include that area, but they are in our neighborhood. Ms. Nedrow also confirmed that they are not actually classified as a historic district. Commissioner Almy asked the questions to understand the standing Ivywild Improvement Society had in this situation. It was clarified that this area is not within the Ivywild Master Plan.

Commissioner Almy said the development plan criteria that has been alluded to and talked to is that the project has to be compatible and harmonious with the surrounding neighborhood. He said his takeaway from this is not harmonious

because a good chunk of the neighborhood came and said how it was not. Commissioner Almy said he was not saying this was irretrievable,, but Kum & Go needs to do a better job of interfacing with the neighborhood to prove that this in fact will be compatible with the neighborhood and not just a good site. Commissioner Almy said from a neighborhood perspective, he was not sure why we are not out looking for more buyers for that plot that are consistent with what the neighborhood goals are. Commissioner Almy said he would be in favor of the appeal.

Commissioner Slattery said public process can be arduous and overall, she agreed with Commissioner Rickett in looking at the criteria, land use rights of business owners to develop on sites. Understanding the City was acting in good faith to approve this application to meet code and criteria with the zoning, she is sympathetic to the neighbors' concerns based on the intensity of use from a daytime retail to a 24/7 gas station. It is a lot to ask of the neighboring community, who are not in favor of this project. Commissioner Slattery said she would be upholding the appeal.

Commissioner Wilson said she was torn on this one, and normally she would have said this was compatible with the neighborhood because it is in the commercial area, and it is the appropriate location for something like this. The neighborhood has made some good points, and she thought Kum & Go could make some changes in terms of traffic flow, noise, light, and maybe creating more of a buffer space between themselves and the neighborhood. However, Commissioner Wilson said she was not sure that is enough to say no. Kum & Go has tried to make those changes and tried to improve the area, and she will be voting to deny the appeal. She said she was very empathetic to the neighborhood and understood where they were coming from, but in terms of the code, the Planning Department was right in approving this project.

Chair Hente said he heard a lot of compelling arguments and agreed with the other commissioners. In the review criteria, he believed this is against the express intent of the zoning ordinance. In other words, this is not harmonious with the neighborhood and was swayed by the arguments heard. We just do not follow the letter of the law, we look at this with what we think is right, what we think is harmonious, we think it does not follow the criteria, and we learn that we can make decisions based on what we feel is the best thing for the City as well as for the neighborhood. Chair Hente said he would be in support of upholding the appeals.

Commissioner Rickett said he does feel the commission is following the guidelines and it is not an opinion. He said he does not believe this project meets the review criteria in City Code Section 7.5.502.E, and that the City did not substantiate that it met the code for 7.5.906.A.4.

Commissioner Rickett proposed a motion to uphold the appeal and deny the development plan.

Peter Wysocki, Director of Planning and Community Development, said as a point of clarification in case this goes to City Council, the commission is saying that this is really an issue of compatibility of land uses of a gas station

convenience store in close proximity to single family residential uses. Commissioner Rickett said that was one of the criterions, but there are several. He did not feel that it met 7.5.502.E (1)(7) and (13).

Appeal instructions were read.

Motion by Commissioner Rickett, seconded by Commissioner Slattery, to Uphold the appeal, denying Staff's administrative approval of the K & G Subdivision Plat, based upon the finding that the application does not comply with all standards and procedures within Article 7 (Subdivision Regulations), of Chapter 7 of City Code, and that the appeal criteria found in City Code Section 7.5.906.A.4. are met. The motion passed by a vote of 4:1:3:0

Aye: 4 - Chair Hente, Commissioner Slattery, Commissioner Almy and Commissioner Rickett

No: 1 - Commissioner Wilson