

August 6, 2023

William Gray  
City Planner  
Planning and Community Development Land Use Review Division  
30 South Nevada, Suite 701  
Colorado Springs, Colorado 80901-1575

RE: DEPN-23-0157

Dear Mr. Gray,

We are writing to provide feedback on the proposed Major Modification of the Wilson Tank Replacement project (Record number DEPN-23-0157).

Correspondences and other documents on record for AR DP 21-00526 refer to minimizing the height of the replacement tank to be similar to the existing tank. The geological report lists the height of the existing tank as 32.5 feet (measured). An elevation (see Figure 1) from the approved plan has the replacement tank's height as 36-foot walls with a 4-foot dome for a total of 40 feet. Additionally, the approved engineering drawings has a maximum height "per code" of 45 feet (see Figure 2). The proposed modification (DEPN-23-0157) lists the height as approximately 60 feet. Currently, the tank is under construction and the height of 60 feet is now the as-built height. Depending on one's starting point, the as-built tank is between 48% and 82% higher than plan specifications and expectations. The fact the as-built tank is almost twice the height of the existing tank represents CSU's gross disregard for 1) the surrounding neighborhood and 2) Planning's procedures/processes. We consider constructing the as-built tank at its current height is unconscionable and cannot excuse the misinformation promulgated by CSU and their subcontractors.

For a Major Modification, UDC §7.5.516.C.1.f restricts any height increases and refers to UDC §7.5.524.B.2.a which limits the authority of the Manager/Staff to authorize a modification up to fifteen (15) percent. Furthermore, the four criteria for approval in UDC §7.5.516.D.1.a-d have NOT been satisfied:

- a. Height change violates UDC and City regulations,
- b. Inconsistent with original approval,
- c. Creates more adverse impacts on surrounding properties, and
- d. Inconsistent with Colorado Springs Comprehensive Plan and ignores the intent of the zone district.

After a careful review of the Major Modification Project Description and submitted attachments (total of 3), we propose the application/modification be rejected for the following reasons:

1. The information submitted for the major modification is a subset of what is required and is totally inadequate per code requirements. Colorado Springs UDC §7.5.516.B.2 states: *A Major Modification to the permit or approval may only be approved by the decision-making body that approved the original permit or approval, using the same procedure used for the original permit or approval.* The original approval required a comprehensive submittal and review of all engineering reports, drawings, and documents. The proposed modification is a major change and assumptions made in previously approved documents are not being (re)considered by the full Staff.

One concern is the Geologic Hazard Study and Geotechnical Engineering Report from the original Development Plan are based on the assumption of a 32.5 feet high tank, similar to the existing one. Any conclusions based on this misinformation is suspect. Page 16 of the Geotechnical Engineering Report states: *Our analysis and opinions are based upon our understanding of the project, the geotechnical conditions in the area and the data obtained from our site exploration.*

The as-built tank is almost twice the height Colorado Springs Utilities (CSU) and Kimley Horn (KH) told the geological companies it was planned to be. Whether this is of consequence should be left to the experts; however, it is not being resubmitted as CSU is not following the required procedures. Other critical oversites like this one may exist since CSU indicated to all parties up through the final decision, that the tank replacement height was to be similar to the existing one.

Another (incidental) concern is the amendment's proposed landscaping plan includes Juniper evergreens. CSFD's Firewise program strongly discourages the use of Junipers. Yet, no one at CSFD has had the opportunity to review the amendment to approve/deny it.

These are only two examples, and we are concerned others may be in conflict in previously reviewed/approved plans.

**Requested Action:** Require CSU to follow UDC procedure 7.5.516.B.2 and resubmit the entire plan for the required review.

2. The project description and reason for the major modification is misleading. It is written in a way that suggests CSU's request is simply to administratively reconcile the as-built tank height with the previous approved construction documents and drawings. The description states: *The approved development plan sheet 12 of 12 indicates estimated tank heights to be finalized during structural design.* While the note does exist (see Figure 1), it is absurd to take the word "estimate", (which means "not exact") to justify this egregious and negatively impactful height change. Also, the note directly contradicts what is stated on many other pages of the approved plan, which state the tank height to be 40 feet with a maximum per PF/HS zoning code set during the original review of 45 feet maximum. (Note: both the retired Chapter 7 [active during the original review] and the

current UDC §7.2.501.C states: *Dimensional Standards: Development standards such as lot size, setbacks, and maximum height are determined at the time of Development Plan review. This was clearly done as it was so noted on page 1 of 12 of the final approved plan [see Figure 2].)*

**Requested Action:** Require CSU to adhere to the 45 feet maximum height as defined at the time of the Development Plan review.

3. CSU has not followed and continues to not follow the required code procedures. The original approval given in the Final Record of Decision (AR DP 21-00526) dated June 21, 2022, states the following:

*The approval is subject to the following 6 conditions:*

1. ***Development must conform completely to the approved development plan.***
2. *All site grading must substantially comply with the grading illustrated on the preliminary grading plan.*
3. ***The building architecture must substantially comply with the elevation drawings.***
4. *Utility main and service locations on this plan are illustrative only and are not approved with this development plan.*
5. *All landscaping must comply with the details of the approved Final Landscape and Irrigation Plans in this application. No further Landscape or Irrigation Plan applications are necessary unless significant changes to the approved plans occur prior to Certificate of Occupancy.*
6. *A sign permit through Development Review Enterprise is required for all signage, prior to installation.*

CSU/sub-contractor(s) failed to meet conditions 1 and 3.

Later in the letter the following statement appears:

***If any changes to the approved site or building design become necessary prior to, or during construction, an amended development plan will need to be submitted for City Planning review and approval.***

The required action, to submit for City Planning review, was not taken in November 2022 when the plans containing the structural detail were completed nor when later submitted to Pikes Peak Regional Building Department for a permit. The major height change was known at that time. As recently as mid-June 2023 (a mere 6 weeks ago), a CSU public relations representative and a KH representatives continued to say the height of the tank would be similar to the existing one. This mindset changed after the tank walls and roof outline became apparent when the scaffolding was erected and, most

obviously, when the first wall panel was raised into place. A call to code enforcement was required to trigger full acknowledgement.

**Requested Actions:** Revoke approval and require CSU to follow UDC procedures outlined in §7.5.516.B.2 and resubmit the entire plan for the required review.

4. UDC §7.5.402.B states that *a neighborhood meeting may be required for development plans*. It refers to table 7.5.1-A which shows that a neighborhood meeting prior to submission is a Manager's decision but is an important process step of the approval flow (see Figure 3). However, a major project with the significant impact as this one begs to make it a requirement to hold a meeting; perhaps the current predicament could have been avoided. CSU has not had any neighborhood meeting focused on the Wilson Tank Replacement. The first application was made under the retired Chapter 7 (and during the COVID pandemic) and any neighborhood meeting appears to have been optional. The proposed Modification, covered under the current UDC, should require a meeting (see Figure 3). Although CSU conducted a meeting on 7/26/23, the agenda focused on landscaping and colors options for the tank. Another meeting is planned for 8/10/23 to continue this discussion. There have been no meetings with the neighborhood to discuss the amendment although the amendment was submitted on 7/18/23.

**Requested Action:** Revoke approval of AR DP 21-00526 and require CSU to follow UDC procedure 7.5.516.B.2 and resubmit the entire plan for the required review.

5. The Wilson tank is being built in a zone covered by the Hillside Area Overlay (HS). This is written on the zoning map as well as several places in the approved plans/documents. The height limits for a PF-zoned lot, while not constrained to the same height as residential lots, is determined during the Development Approval (45 feet maximum per code, see Figure 1). The tank is now visible from most points of the city, violating the very letter and intent of the HS (7.2.610.H.3) and general tenets of PlanCOS.

**Requested Action:** Deny the Modification and adhere to the maximum height as determined during Development Plan review or rezone the parcel to remove the HS requirements.

6. The major modification submittal does not include a revised Development Plan, Conditional Use and Use Variance Submittal Checklist. Per 7.5.516.B.2 All major modifications are required to go through the same review process as the original. This is mentioned because items 1 and 13 of the Development Plan Review Criteria are now in conflict to the answers given on the original application. This egregious uncommunicated

height change has resulted in significant offsite impact to the immediate neighbors and the Mountain Shadows neighborhood. Being in the Waldo canyon burn scar is a significant issue as the vegetation is fragile or non-existent. The major change of height makes it now all but impossible to screen it from adjacent properties as was part of the original plan. The tank now rises above the highest adjacent homes; significantly impacting the entire Mountain Shadows community.

**Requested Actions:** Deny the Modification and adhere to the maximum height as determined during Development Plan review.

Many other instances exist beyond this Major Modification application and lack of conformance to the original approved development plan conditions. CSU and its sub-contractors have repeatedly provided misinformation to the public and have failed to follow approved plans and processes (e.g., equipment and supplies storage, parking, hours of operation, dust and flying object mitigation, noise, and vibration – to name a few beyond usual and customary practices of construction).

Failure to follow the procedures and processes outlined in the UDC and the approved plans has resulted in significant injury and damage to, not only adjacent properties, but to the entire Mountain Shadows neighborhood and Colorado Springs. Therefore, we ask you deny the request for modification and submit the plans to the Planning Commission.

Respectively,

Lawrence E. Starr  
James Berdon  
6315 Wilson RD, Colorado Springs, CO 80919

Cc: Harmon Zuckerman, Esq.  
Mr. Bill Wysong

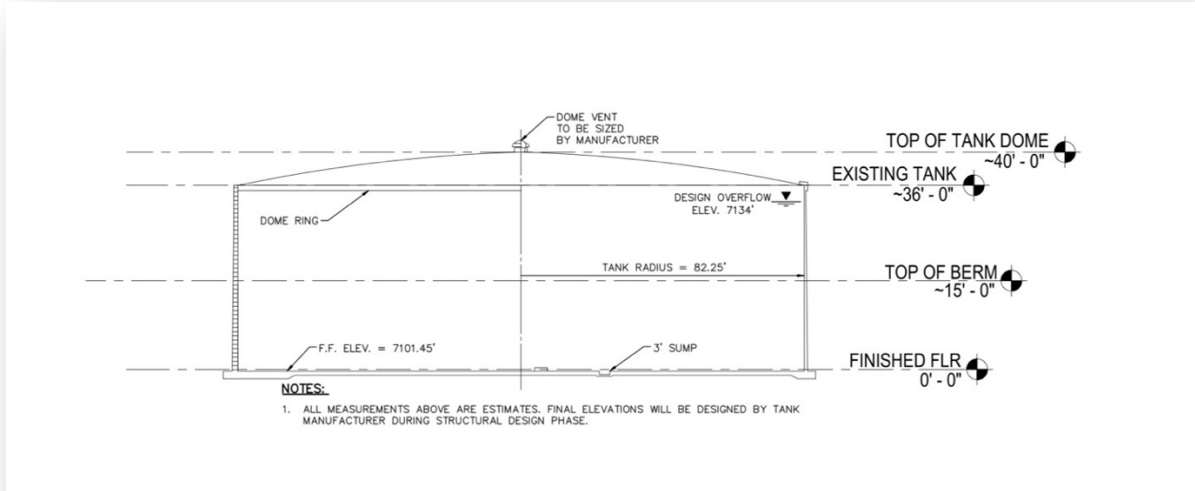



Figure 1 – Elevation of Tank Height (Page 12, AR DP 21-00526)

**BUILDING DATA**  
 EXISTING TOTAL GROSS BUILDING AREA: 21,253 S.F.  
 BUILDING HEIGHT:  
 BUILDING: 35'-45'  
 MAXIMUM BY CODE: 45.0'  
 PROPOSED LOT COVERAGE: 25% ±

**APPROXIMATE SCHEDULE OF DEVELOPMENT**  
 TANK CONSTRUCTION WILL TAKE PLACE IN 2023



**COLORADO SPRINGS**  
 Land Use Review  
 06/21/2022  
 10:31:15 AM  
 William.Gray

SHEET TITLE	COVER AND TITLE SHEET
SHEET NUMBER	1 OF 12

Figure 2 – Maximum Building Height Per Code

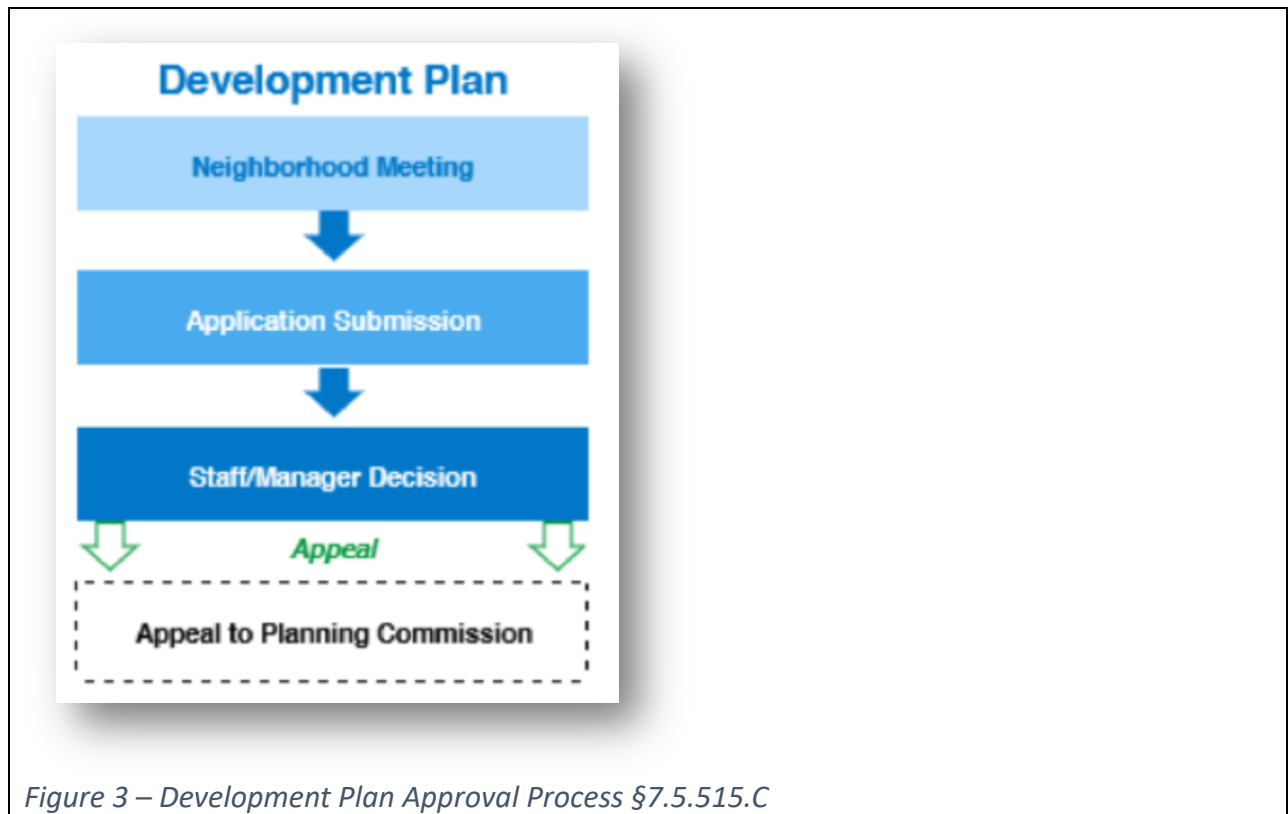


Figure 3 – Development Plan Approval Process §7.5.515.C