



City of Colorado Springs

Meeting Minutes - Draft Planning Commission

Plaza of the Rockies
South Tower, 5th Floor
Blue River Board Room
121 S Tejon St, Colorado
Springs, CO 80901

Thursday, March 17, 2022

8:30 AM

Hybrid Meeting - Open to Public
Call 720-617-3426 Conf ID: 785 230 166 #
Blue River Board Room

Creekwalk North Appeal

7.A. [AR DP
21-00551](#)

An appeal of the Planning Commission's action to deny an appeal regarding the Creekwalk Filing 1 Development Plan which illustrates the construction of a new 23,175 square foot grocery store on a 2.7-acre site located on the southwestern corner of S. Nevada Ave. and E. Ramona Ave.

(Quasi-Judicial)

Related File: AR FP 21-00552

Presenter:

Ryan Tefertiller, Planning Manager, Planning and Community Development Department
Peter Wysocki, Planning and Community Development Director, Planning and Community Development Department

Mr. Ryan Tefertiller, Urban Planning Manager, relayed to the Planning Commissioners that the applicant conveyed that they would like to raise the issue of the appellant's standing on this project.

City Attorney, Lisa O'Boyle explained to the commission that while standing is an appropriate threshold consideration, the City Code does have a very liberal standing requirement, and that is any person aggrieved by the appealable administrative decision. The commission is free to consider the issue of standing; however, the commission is also free to determine that standing is met without hearing it.

Mr. Tefertiller added that when the appeal was first filed, staff did review code regarding the issue of standing and felt that given the liberal language in the code, that standing was likely met.

Chair Hente said he would take city attorney Lisa O'Boyle's interpretation in that it is liberal and asked if any of the other commissioners had an objection to that. There was no objection and the hearing proceeded.

Staff presentation:

Ryan Tefertiller, City Planning, presented a PowerPoint with the scope and

intent of this project.

Appellant:

Randall Weiner, representing Protect Colorado Springs, presented a PowerPoint with concerns regarding this project.

- Opposed to the private underground detention facility
 - Normally these kinds of detention facilities are meant to be surfaced detention facilities
 - Colorado Springs has a long history of reluctance to approve these underground detention facilities
 - They are hard to maintain and hard to make sure that they are not causing a problem in terms of water quantity or water quality pollution
 - Colorado Springs has historically outlawed these
- Water pollution potential created by the storm water chamber that is proposed beneath the expanded parking lot for this facility
- The underground detention facilities have been heavily regulated by the city historically and that regulation is through the Drainage Criteria Manual (DCM)
- Most developers would put a surface detention pond on their facility rather than try to put an underground chamber
- DCM states, "Publicly maintained underground control measures may only be installed on behalf of public projects," but the applicant plans to make its routine and annual maintenance the responsibility of the Creekwalk Business Improvement District, a public entity.
 - This violates the operating plan of the Business Improvement District that also makes the public responsible for the applicant's private decision to avoid having above ground detention or purchasing or leasing additional land for this purpose
 - The applicant has provided insufficient paperwork
 - The DCM prohibits underground detention except through a variance process, which requires detailed studies, plans, and calculations to determine if underground detention is appropriate
 - DCM requires volume reduction and only allows underground storage at select locations
- Concerned about the StormTech Chamber
 - Requirements
 - StormTech chamber keep captured organic material, dry and mitigate leaching of nutrients from leaves and grass clippings, have an approved monitoring inspection and maintenance program
 - The way this underground Stormtech chamber will be maintained is that every so often, a truck will come and stick a hose down a manhole cover and suck out any leaves that may have been accumulated over time. Mr. Weiner said they do not believe that meets the requirement to have dry materials and to have an improved monitoring inspection and maintenance program

- It is practically impossible to maintain and inspect an underground chamber like this that is going to be under concrete
- There is a new policy that allows these facilities somewhat reluctantly in other places, but it can only be done if a 5-step process has been completed.
 - Includes the BMP is designed to provide full releases in less than 12 hours
 - Certain requirements involving TSS
 - None appear to have been done
- Other concerns:
 - Cause more water pollution
 - Cause a problem as far as detaining water and flood which could have a problem for flood control in the future
 - The business improvement districts should not be allowed for private purpose
 - Problem that business districts have been utilized for development to the detriment of minority members of those business improvement districts
 - Why did not Sprouts or the developer at their own cost figure out a way to deal with detention?

Applicant Presentation:

Jim Houk, Kimley-Horn

Eric Gunderson, Kimley-Horn

Danny Mientka, The Equity Group/owner

Mr. Houk presented a PowerPoint with the intent and scope of the project, as well as response to the appellant's concerns.

- Zone Change
 - Zone change introduced a very small change in the overall existing area land use
 - The project opens the door for the first ever stormwater management tools to the neighborhood
 - Only 0.308 acres of land use change with this application
 - The treatment of site plans and technical aspects of stormwater and traffic are all consistent with what has already been done
 - This is a very small change in zoning that will influence the overall plan moving forward
- Business Improvement District (BID) is taking on ownership of the property, the installation, the maintenance, and long term care of this facility
 - Also addressing some of the ills of this corridor with street improvements, signalization, and stream and creek improvements
- Stormwater aspects (Eric Gunderson, Engineer who provided the variance request and final drainage reports as part of the project)
 - City staff justified the application of the stormwater variance
 - The variance request was reviewed and approved by the City

- of Pueblo
- The proposed StormTech underground detention system complies with many of the national standards, including those standards of the Mile High Food District and also with the city of Colorado Springs drainage criteria manual
- Technology has been around for 20 plus years and is one of the more widely accepted underground detention systems used in Colorado
- This is part of a two-phase project
 - The same exact system was designed, reviewed and approved as part of Creekwalk South and is currently in operation
 - Mr. Gunderson showed slides of the existing StormTech system to the south and explained how they worked and is best used for underneath parking lots
- Maintenance of these systems is very easy
 - There are inspection ports in each of the chambers so that the level of sediment collected can be evaluated
 - When the chambers need to be cleaned out, they are cleaned out with a jet vac truck which can suck out the leaves or other materials that get caught in the chambers
 - A high pressure jet vac will flush out any remaining debris or at least flush it out towards the inspection ports that can then be sucked out of there and removed from the system
 - Manufacturers recommend inspecting the system on a six month basis for the first two years, and then the owner/operator can evaluate their inspection schedule moving forward
 - An inspection and maintenance plan is required by SWENT to be included with the project, which goes on file and is on record with the City of Colorado Springs
 - This underground detention system that is being proposed for the Sprouts site only and not for a larger development area, which was misstated earlier by the appellant
 - This is not the first ADS StormTech system to be proposed or approved within the city. These are installed in multiple sites across the city
 - The site today does not have any water quality treatment or any flood control, so this is an improvement in both of those areas
- Development Criteria (Jim Houk)
 - Improving the neighborhood
 - Creek and Habitat improvements
 - Streetscape upgrades

- Pedestrian safety improvements
 - Driveway closures and improved compacity of Nevada
 - Champion for signalization and lane improvements along Cheyenne Rd and Nevada Ave
- Danny Mientka
 - The appellant's challenges were first submitted on the eve of City Council's review of the Creekwalk North Commercial concept plan
 - Senior staff thoroughly addressed the complaint before City Council unanimously approved the plan
 - Despite this, the appellant monitored the administrative approval process of the development plan and the final plat and then strategically appealed at the last moment, which pushed this matter to the March Planning Commission, maximizing the delay of these approvals
 - Despite eight offers to meet with the appellant's Boulder based law firm and their clients, not one meeting or call to discuss our design, their grievances, or concerns were accepted
 - This appeal required financial support and does not ring of local community members that object to our revitalization of Cheyenne Creek
 - There have been zero complaints about the Sprouts development, only excitement that real change is happening in this urban renewal plan
 - Sprouts Corporate chose the South Nevada Avenue corridor over another competing city based upon assurances that the store could be opened by Thanksgiving 2022
 - The appeal has frustrated our commitment and has frustrated the City's Rapid Response program that was implemented in support of bringing important developments to market timely like Sprouts in an Urban Renewal plan
 - This has caused a full stop on the building plan review, execution and recordation of the final plat, and the approved development plan has been suspended
 - The review of the appellant's complaint should be respected so that our development process in El Paso County is predictable and fairly administered
 - Protect Colorado Springs does not appear to be organized with the Colorado Secretary of State, nor can we find any presence on the internet of this aggrieved organization
 - The appellant must have standing
 - Given the lack of transparency and strategic actions to frustrate development within the community, it is reasonable to understand who is behind the curtain
 - Mr. Mientka requests the Planning Commission establish the individuals and their addresses before this appeal hearing so that we can be confident that the policies relating to appeals is respected and not abused

Questions:

Commissioner Wilson asked why this specific underground system chosen versus above ground option? Mr. Mientka said these systems are really today's best practices. They are the best utilization of real property. South Nevada is extraordinarily expensive to redevelop so in order to make economic sense of these developments, undergrounding the detention allows us to utilize the property in two ways. The detention and treatment is provided, and parking on top of it is also supported. It helps with the economics and it also provides the ability to see more development as we better utilize that real property.

Mr. Houk added the key to that as the developable area results in the benefits that the Business Improvement District and the Urban Renewal Authority has over approving the corridor and the area as a whole. It's through the TIF. It's not a statewide or citywide tax that is funding these improvements, it's a localized tax system.

Commissioner Slattery said she was not opposed to an underground system and understood they were used in Colorado Springs previously. They are pretty expensive overall and they are for urban development. Commissioner Slattery asked in regards to the maintenance and upkeep of the system, how was that being paid for, as the BIDs are a quasi-governmental entity. How does that law relate? Another question was is this detention system size for the entire north development or will we see other needs for stormwater control as the rest of that northern portion is built out?

Mr. Mientka said the Creekwalk Marketplace Business Improvement District owns the parking lot area. They will install the detention and the district will maintain that facility. The cost of maintaining that will be borne by the retailer Sprouts. It is only sized for the Sprouts development. The operating agreement for the BID does allow stormwater management and stormwater facilities. It is an allowable operation of that district.

Commissioner Rickett commented that he has built one of these underground systems in Pueblo and found that they actually produce better water quality through the underground detention and release than what he has seen with surface detention. Commissioner Rickett's asked how long does the district stay in existence and if the district eventually went away, does that responsibility of maintenance go back to the city. Mr. Mientka explained that the district has an endless life effectively, it will continue on. As it grows throughout the south Nevada corridor, the tenants can become board members, property owners can become board members, and it will continue with its maintenance responsibilities and its debt service responsibilities.

Ms. Erin Powers, compliance program manager with Stormwater Enterprise, explained the issue of public versus private in our criteria. For the purposes of stormwater criteria, staff considers anything that is maintained by the City or by an enterprise of this city as being public, and anything that is not maintained by the city is private. That is how we delineate between those two. So, under stormwater criteria, this is a private system. Ms. Powers also clarified that for every permanent control measure, like this one, the city requires a maintenance

agreement to be recorded with the property, so if the property is ever sold, the requirement for maintaining it and annual reporting stays with the property.

Commissioner McMurray asked for someone to elaborate on the drainage criteria for the variance in the DCM. Mr. Gunderson said he did not have the criteria in front of him but stated it includes high level project information, calculations about the proposed detention system, and alternatives evaluated as part of that. He added the city reviewed the variance letter per code, as well as the City of Pueblo. Ms. Powers said this is a sedimentation based facility, not a filtration based facility, and so the requirement for that is that the minimum water quality volume drain time is 40 hours. This particular facility is designed to drain in 42 hours, so it is exceeding the minimum. N the city's criteria, meeting the drain time is considered to meet the requirements for adequate pollutant removal.

Commissioner Rickett asked Ms. Powers to address the appellant's comment on the 5-step process. Ms. Powers said the city has a policy clarification posted online for the approval of the underground facilities, and it states that a variance allowing for the use of an underground BMP may only be granted if the design engineer can effectively defend the need for nontraditional BMP's, and so the variance committee considered that to be met. The underground facility is designed to provide full release of the water quality volume in no less than 12 hours if using filtration based process. The underground BMP is designed to provide full release of the water quality volume in no less than 40 hours if utilizing a sedimentation based process, which is the standard that this particular facility meets. Also, as a requirement for filtration based facilities, that does not apply to this facility, adequate and sound engineering analysis showing that the downstream conveyance systems are adequately sized to handle the receiving flows has been provided. Staff determined that was provided in the drainage report. The last one is that adequate and sound engineering analysis has been provided showing that the policies regarding requirements for detention as described in Chapter 3, Section 6 of the DCM are fulfilled and that was also part of the variance approval process.

Peter Wysocki, Director of Planning & Community Development, asked Ms. Powers to brief the Planning Commission on the variance process itself, like who approves the variance and when the application is provided. Ms. Powers said a when a variance is filed, it is reviewed by the city's Stormwater Variance Committee, unless it is routine. Once the Stormwater Variance Committee approves the variance, the city's intergovernmental agreement with Pueblo County requires the city to give Pueblo County the opportunity to review and comment on variances. The variance committee approved it, and then the variance was sent to Pueblo County, and the county indicated they had no comments on this variance.

Supporters:

N/A

Opponents:

N/A

Questions of Staff:**Rebuttal:****Mr. Weiner:**

- Public funding of a private stormwater facility is unlawful:
 - All routine and annual maintenance will be the responsibility of the Creekwalk Business Improvement District. Mr. Weiner said he was confused because the BID attorney confirmed that under city law, this is considered to be private. How can a private improvement legally be paid for by a public entity?
 - Publicly maintained control measures may only be installed on behalf of public projects or programs so that seems to be an illegality there
- Treatment:
 - One method of treating is allowing for sedimentation when sediment falls out of water down to the bottom, but the reality is if it falls out to the bottom, it goes somewhere, and where it goes is into those tubes. It's not going to be possible to inspect those tubes in case there's a tear except perhaps in those small places where there's an ability to see how much settlement has been created. Overall, it's a hard system to detect a problem if it occurs.
 - The developer said that this is the cheaper way to do things in that the land would be used for future development instead of a detention pond. Certainly from a developer's point of view, it's a wise approach to put this kind of detention facility underground but cost should not be guiding your determinations. Is it wise in the long term to have such detention facilities?
 - Mr. Weiner said he still has not seen the figures for the variance letter outlining the 4-step program, even though staff said it was completed

Applicant:**Eric Gunderson, Kimley-Horn**

- Clarifications:
 - The chambers are not small and are actually quite large. They range on sites from 2 to 4 feet in diameter. Their inspection ports (or cleanouts) that allow visual inspection of the chambers by use of a common video snake. You can definitely see inside the chambers to determine the level of maintenance that will be required in the long term.
 - The chambers do collect the sediment at the base of these chambers. There is nonwoven geotextile fabric, which the sediment will land and collect, and that's part of the maintenance by getting a Vac truck in there and pulling that sediment out so it does not get into the public storm system
- 4-Step Process
 - The four step process is addressed in the final drainage report, which was approved

Danny Mientka, The Equity Group

- It is a little confusing when the criteria describe anything not constructed or maintained by the City or a related enterprise as being private. In this case, it is a public parking lot that a government agency, Creekwalk Metro District, will own. So, it is public. It is legally able to be paid for by the district.
- The concern is that this will be appealed to City Council
 - The cost and damage involved due to the appeal
 - The level of monitoring on this project
 - The amount of staff time that has been invested in this project
 - The response at City Council who thoroughly vetted this issue in September of 2021
 - For it to be appealed to the Planning Commission, is it not reasonable to ask the aggrieved party to identify themselves?
 - Are they local? Do they have standing? What is their address?
 - It is critical for this Planning Commission to have that information from the appellant, so that City Council is clear this was discussed and made aware to City Council if this is appealed again

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Commissioner Almy said we've heard a lot about the merits of the project, and he did not want to undersell those at all. He believed this whole development is beneficial to the city and to the populace. The real question regarding the appeal is all technical and engineering specs. As such, he believed all the comments the appellant had as been addressed well by the program manager and by city staff. Commissioner Almy said he would be voting to deny the appeal.

Commissioner Almy asked if the commission wanted to get the appellants contact information and who Mr. Weiner was representing to put that on the record. Chair Hente asked for Lisa O'Boyle, city attorney to address that.

Ms. O'Boyle said the requirement for standing is merely an aggrieved party. There is no requirement to provide any information on who is being represented, and so that probably would not be appropriate in this setting. It is pretty broad as to who can be an aggrieved party.

Motion by Commissioner Eubanks, seconded by Commissioner Almy, to denial of the appeal, upholding Staff's administrative approval of the Creekwalk Filing 1 Development Plan, based upon the finding that the application complies with the review criteria in City Code Section 7.5.502.E, and that the appeal criteria found in City Code Section 7.5.906.A.4. are not met.

The motion passed by a vote of 7:0:2:0

Aye: 7 - Vice Chair McMurray, Commissioner Wilson, Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

Absent: 2 - Commissioner Raughton and Commissioner Graham

- 7.B.** [AR FP 21-00552](#) An appeal of the Planning Commission's action to deny an appeal regarding the Creekwalk Filing 1 subdivision plat which created one lot and one tract on a 2.7-acre site located on the southwestern corner of S. Nevada Ave. and E. Ramona Ave.

(Quasi-Judicial)

Related File: AR DP 21-00551

Presenter:

Ryan Tefertiller, Planning Manager, Planning and Community Development Department

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

Motion by Commissioner Eubanks, seconded by Commissioner Almy, to deny the appeal, upholding Staff's administrative approval of the Creekwalk Filing 1 Subdivision Plat, based upon the finding that the application complies 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 not met.

The motion passed by a vote of 7:0:2:0

Aye: 7 - Vice Chair McMurray, Commissioner Wilson, Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

Absent: 2 - Commissioner Raughton and Commissioner Graham