

**City of Colorado Springs Planning Commission Meeting Minutes**  
**THURSDAY, MAY 18 2017**

**PRESENT:**

Phillips, Henninger, Markewich, Shonkwiler, Walkowski, Smith, Graham, McDonald

**ABSENT:**

Gibson

**ALSO IN ATTENDANCE:**

Mr. Peter Wysocki, Planning Director  
Mr. Marc Smith, City Senior Corporate Attorney

**NEW BUSINESS CALENDAR**

**Item No.: 6.A.: AR PFP 16-00629**

**Project Name: Archer Park**

**Planner: Lonna Thelen**

**Staff presentation:**

Ms. Thelen gave a Power Point presentation:

- I. Described where site is located
  - A. How site is accessed
  - B. Zoning of the area
  - C. Requirement of lot size of 20,000 square feet
  - D. Function of the current property
- II. Type of Application
- III. Neighborhood Meetings
  - A. June 22, 2016 – Pre-Application Meeting
  - B. October 8, 2016 – Internal Review Neighborhood Meeting
- IV. Preliminary Site Plan
  - A. Location of El Encanto Road in relationship to the site
  - B. Access into the site along a 20-Ft. access road
  - C. Location of proposed homes
  - D. Location of detention pond
  - E. Location of grass paver parking area
- V. Who uses the access road
- VI. Neighborhood concerns or differences
  - A. Density
  - B. Private Access and Parking
  - C. Fire access and safety
  - D. Utility easements
  - E. Detention and Water Quality
  - F. Traffic
  - G. Geologic Hazard

Mr. Peter Wysocki stated preliminary and final plats are usually not seen by the commission. Given neighborhood interest in the project the applicant asked the item be presented to Planning Commission. If approved administratively any party that felt aggrieved could have appealed to

Planning Commission so you may have heard it anyway but this expedites the process for everyone.

**Applicant Presentation:**

Kristin Heggem with Altitude Land Consultant; Altitude Consultants provided survey work, civil engineering work, landscape architecture, and planning consultant for the applicant. Ms. Heggem gave a Power Point presentation.

- I. First rendering of project shown at a Neighborhood Meeting
- II. Discussed the Newport Company whose 46 homes in the Broadmoor area.
- III. Photos of the site from different views
- IV. Property is open pasture land next to residential homes
- V. Type of streets
  - A. Curb and gutter
  - B. Rolled curb
- VI. Time line of the project
- VII. Site Requirements
  - A. Zoning
  - B. Parcel size
  - C. Minimum lot size
  - D. Maximum allowable number of lots
    - 1. 10 individual lots
    - 2. Developing 7
  - E. Less lots done to accommodate concerns of the neighbors
  - F. Open Space
  - G. 44% of Perimeter Property line buffered from surrounding lots
  - H. Public Process
  - I. Storm Water Detention Pond
    - 1. Required by the city
      - i. Captures water and drains within 72 hours
    - 2. Pond is a stormwater BMP and will reduce historic rates
    - 3. Inlets and outlets protected by grates for safety
    - 4. Pond is landscaped as an amenity
    - 5. Environmentally friendly
    - 6. Graphic designs of what detention pond will look like
- VIII. Roadway Width
  - A. 20-Ft. proposed meets City's Code and requirements
  - B. Consistent with characteristics of area
  - C. Matches or exceeds other Broadmoor area roads
  - D. Approved by City Fire
  - E. Photos of similar roads in the area that are same width or less
- IX. Grass Pave Parking
  - A. Size - 9-ft wide, 330-ft long
  - B. Parking spaces provided
    - 1. Above and beyond City requirements
  - C. Permeable surface
    - 1. Reduces runoff
    - 2. Increases stormwater infiltration

D. Constructing due to concerns express by neighbors of possible parking El Encanto and Mayfield

X. Swales

A. Sensitive approach to stormwater runoff

B. No curb and gutter

C. Allows water to flow into detention pod

1. Flow requirements

i. Provides 41.46 cubic feet (CF) of stormwater capacity vs 38.80 (CF) as required

D. Swales used throughout Broadmoor area

E. Preserves rustic character of the neighborhood

XI. Density

A. Referenced lot size in the area

B. Lot size similar and exceeds minimum requirements

XII. Homes cost

A. One Million plus

XII. Site Design harmoniously with surrounding neighborhood

**Questions:**

Commissioner Markewich asked about the Wildland Urban Interface and the hardening to be done to the structures, please clarify. Steve Smith with Colorado Springs Fire Department stated what is being referred to is the mitigation process adopted in 2009 International Fire Code. Hardening deals with non-combustible eaves and overhangs, sealing the bottom of footers at the bottom of the homes. Also required mitigation measures in terms of landscaping around the home, type of fire-wise friendly fuels. Commissioner Markewich confirmed composite decking opposed to wood decking would be an example of hardening.

Commissioner Markewich asked about the north of the parking area. What is the divider between the homes on the north and that area? Ms. Heggem stated there's an existing wood fence which will remain and they are not proposing any new fencing on the property

Commissioner Markewich stated neighbors mentioned gated access and he wanted it confirmed it wasn't part of the proposal. Ms. Heggem stated in first proposal they had it but removed it after the first neighborhood meeting.

Commissioner Markewich asked if the access from Mayfield to the property down to 12 El Encanto would be paved. Ms. Heggem stated yes. Commissioner Markewich asked if it would be paved the entire way to 12 El Encanto. Ms. Heggem explained how access would be but only to a certain point. The owner of 12 El Encanto would have to connect the portion where it stops and pave it to his property to the east.

**Supporters:** None

**Opponents:**

Les Gruen stated he was coordinating for several people who wanted to speak. Mr. Gruen discussed his connection to the neighborhood and how was asked to represent the neighbors in opposition to this application. He provided exhibit packets outlining their concerns. Mr. Gruen stated at Informal Planning Commission Ms. Thelen stated all issues remain unresolved. Mr. Gruen reiterated these types of applications are normally reviewed administratively and this application has

had four staff reviews. Mr. Gruen stated their presentation will prove the application doesn't meet minimum review criteria. Mr. Gruen stated drainage is the greatest deficiency of the proposal. Roland Obering a professional engineer will discuss the applicant's drainage report; Ron Steeler an environmental lawyer will explain how the drainage review doesn't appear to be consistent with commitments the city has made in connection with the EPA lawsuit against the City.

Chief Noel Perrin with the Broadmoor Fire Protection District stated he's familiar with the project and wanted to clarify his involvement. The Broadmoor Fire Protection District does not review plans or approve them. The Broadmoor Fire Protection District neither supports nor opposes the project. It's true that he looked at the plans with city staff and stated it met minimum fire safety requirements. Could they do more, yes, but they could not do less. Planning Commission determines if minimum safety standards are what the project deserves.

Betty Wolfe said the pasture behind her house is large and when it rains there's a river between her house and the pasture. When the pasture is paved the runoff will become worse. The same developer built her house and she has drainage problems. The developer is relying on a 30-year old drainage report that didn't address the problems in the first place. She's speaking on behalf of the HOA who advised the City and the applicant they objected to any discharge of stormwater from the detention pond onto Mayfield Lane which the plans currently show. This extra drainage will require additional maintenance their HOA will have to pay for. The project will damage neighbor.

Rick Holt stated he lives next to Ms. Wolfe and has similar flooding issues. He stated the drainage needs to be reviewed carefully. The applicant wants to put a parking strip on the north side of the development behind their back yards causing noise and headlights shinning into their houses. This type of parking isn't found anywhere in the neighborhood. The applicant needs to go back and redesign something that fits into their neighborhood.

Bill Kosar explained how the lot flows. It has a large swale running diagonally across it. And all the land and streets slope down to the east. Street crowning directs most of the stormwater to the street gutters. The project will add a large amount of impervious surface resulting in more stormwater runoff. When the detention pond is full any additional stormwater will exceed the drainage capacity. After reviewing the plans he doesn't believe the detention pond will control stormwater effectively.

Diana Matsinger said her issues are drainage. She said the rules aren't being followed with this project. The drainage system isn't designed to handle the water throughout the site. The city's drainage criteria requires a maintenance agreement to be submitted with a final drainage report and none have been submitted. The timing of agreement is essential because the HOA is supposed to handle it. There won't be a fully functioning HOA for many years. Who's responsible to maintain that system in the meantime? Without a maintenance agreement there's no guarantee this will be safe or environmentally friendly. Possibly fencing for the pond for safety reasons wasn't consider because the developer said one wasn't required.

Jen Sullivan stated they moved to this area for the wide streets and lots. She and her daughter ride their bikes and her biggest concern is for her. A 20-foot isn't wide enough to accommodate traffic and biking and walking. There are no sidewalks. She's a real estate agent and stated in El Paso County a home priced at this amount took on average 400 days to sell. Her other concern is the fire access. They are a closed system. There needs to be more planning and a traffic study be done.

Mike Roslin stated lives at 7 El Encanto and most of the neighborhood is governed by covenants with one and two-story homes, wide streets, and sidewalks with curb and gutter. The proposed subdivision is opposite of that. The applicant indicated the homes could be 3-stories or larger. The proposed road for ingress is 780-ft. long, 20-ft. wide with one way in and out. In the event of a fire this size of street doesn't allow for safe evacuation. Parking will be an issue. Fire and police can ticket a car, but it wouldn't be towed. Overflow of parking will be onto El Encanto Drive and then onto Mayfield Lane which is a private road. The solution is fewer lots, a wider road, and better drainage.

Dr. Jim Albert stated they live at 9 El Encanto and purchased 12 El Encanto for his aging parents. Right now 12 El Encanto is rented. Both properties will bear the brunt of this development. Dr. Albert stated a rural lane that served one home will now have an additional home plus additional traffic from the proposed homes along with a maintenance road from the new detention pond. Pedestrians will need to compete with this traffic along a 20-ft wide road with no sidewalks. The small width of the road with bidirectional traffic along with people walking in the street violates safety. If the project is approved he couldn't recommend his aging parent live at 12 El Encanto. Car lights will shine directly into 9 El Encanto's windows. The development will have devastating real estate impacts for these two properties and the entire neighborhood will be ruined forever. His properties are 5-7 feet lower than the proposal and a poorly designed drainage system will affect them adversely. The developer will disturb their easement to 12 El Encanto for placement of utilities. The applicant does not have the legal permission to proceed with that action. He asks they deny the application.

Roland Obering with Obering and Worth Associates stated their firm has been retained by the residents regarding the stormwater management being proposed. Neighbors have expressed concerns about historic drainage. The site upstream and the subject site drains from southwest to northeast with the slope resulting historic flooding at intersections and adjacent properties. Their greatest concern is the lack of consideration of the historic offsite flows routed through the proposed subdivision and the impact to the proposed stormwater management facility. Mr. Obering gave details regarding the amount of flow on the site and the offsite amounts and resulting problems because of this. The applicant's capacity exceeds the required capacity but does not take into consideration the offsite flow. Mr. Obering said the pond is too small. It needs to be bigger to accommodate the flow from both onsite and offsite flows..

Commissioner Walkowski said the drainage report states the detention pond is adequate and you're saying it's not correct, or is incorrect according to the way you measure. Mr. Obering stated yes. The deficiency is the 13-acre offsite runoff that runs through the proposed subdivision. Commissioner Walkowski asked if the prior drainage report included the offsite flows. Mr. Obering said the first two didn't it but the current one does but doesn't consider the routing of the offsite flow. Commissioner Walkowski asked could that be, how could it not route it through that if they're including that? Mr. Obering said all he could say was it wasn't being considered as part of the sizing of the pond. Commissioner Walkowski stated Mr. Obering believed it was an inadequate drainage report. Mr. Obering said yes

Commissioner Shonkwiler asked if Mr. Obering was saying the design of the drainage plan would remove the water from the area and reroute it to the east into the detention pond. Mr. Obering confirmed it was. Commissioner Shonkwiler said that meant Mr. Obering testified that the existing problem would go away. Mr. Obering said he wouldn't say it goes away. He would rather say the

potential was reduced based on contingency that the swale redirecting the flow away from the neighbors was adequately sized. Commissioner Shonkwiler stated the way he understood drainage was that you're required to let the water flow through your property to the next. Mr. Obering said yes, in its historic form. Commissioner Shonkwiler said historic drainage through this property goes into the back yards of the properties to the west of the drainage pond and the new design would mitigate that to a certain extent if done correct. Mr. Obering said yes

Commissioner Smith confirmed Mr. Obering was stating the detention pond was not large enough. Mr. Obering said yes. Mr. Obering said the stormwater management has three parts: 1.) The swale 2.) The headwall and culvert to divert a 16-inch swale into a 3-ft diameter culvert is a significant challenge. 3.) The detention facility itself. All three are undersized in relativity to the combination of onsite and offsite flows.

Commissioner Smith confirmed the swale is on the south side of the street and asked Mr. Obering if he was saying there is a culvert under the street before it gets to the pond. Mr. Obering said yes the proposed 36-inch culvert. Commissioner Smith confirmed Mr. Obering didn't think it's big enough. Mr. Obering said the calculations provided show that it had a capacity for 36 CFS but the flow at the swale is 55 CFS. Only 39 CFS will get into the detention pond and the rest will go elsewhere. Commissioner Smith asked Mr. Obering what he would do to fix it. Mr. Obering said there are two solutions. One route it through the subdivision and accommodate approximately 2 ½ times the amount of flow generated by the subdivision and two intercept it at the south property line and carry it to the east to a suitable outfall. There is a piping area at Sierra Vista that could be used.

Commissioner Smith asked if the current proposed site for the pond could be larger at the area. Mr. Obering said no they would need two to three additional lots.

Commissioner McDonald said their exhibit shows the additional offsite basin flows and it was his testimony that the owner of Archer Park is responsible for the flows of those additional 13-acres and make sure that all that flow is handled properly. Mr. Obering said yes. Commissioner McDonald said despite only owning a small portion of that. Mr. Obering said he is responsible for historic flows entering his property and safely conveying through the property to a proper outflow point.

Commissioner McDonald said Mr. Obering's calculations differ from the company that completed this report and thus we have two differing opinions. Mr. Obering said yes. Commissioner McDonald asked if the other calculations take into account all of the 13-acres of drainage. Mr. Obering said the swale attempts to but doesn't meet the threshold. The pond definitely doesn't take into account any offsite drainage. Commissioner McDonald said the person who did the drainage report doesn't feel the property owner is responsible for all the offsite drainage, would Mr. Obering agree. Mr. Obering said he had no opinion. But as a professional engineer you have to accommodate both onsite and offsite drainage.

Commissioner Shonkwiler said while driving around the neighborhood it appeared the first pipe system was in Sierra Vista and everything south of that street was built without any accommodation to stormwater at all. Mr. Obering said he wouldn't agree with that. The exception would be the 1987 report which concluded the system and street had adequate capacity to accommodate historic offsite plus the developed the Mayfield lots. Commissioner Shonkwiler said there's been testimony that flooding happens now and there is no stormwater piped system until you get to Sierra Vista.

Mr. Obering said that was correct. Commissioner Shonkwiler said someone didn't do what they should've and now it's coming in after the fact. Mr. Obering said that was correct as well.

John Steeler an environmental lawyer representing Dr. Albert and his wife said the crux of the issue is simply that water flows downhill which is the key of this argument. What you are hearing are the downhill neighbors will be impacted particularly the Alberts. He's looked at city code and the drainage criteria but focused on the lawsuit against the city on the stormwater issue. The key issue is the state of Colorado and federal government has alleged the city hasn't followed the rules. The drainage criteria in Chapter 4 and Colorado law are clear, it says you have to take and convey water through your site and off your site without adversely affecting others in a manner that is beyond their historic flows. Right now the ground is a pervious surface that takes on a lot of water. Yes mitigations could help and yet it won't because the facilities are undersized. When it's undersized it backs up and overflows. The downstream owners aren't responsible to figure this out it's the city and the current applicant's responsibility to deal with that these issues and get it to a location that is safe and not negatively impacting anyone. If the city approves this will be another example of the city's inability to comply with its own rules.

Commissioner McDonald commented on Figure 3 of the opposition's packet and asked if the figure shows where the water will end up when the subdivision is developed. Mr. Steeler said yes. Commissioner McDonald asked if they had a figure of what happens with the flow now because is it worse now and will it get better once the detention pond is installed. Mr. Steeler said they believe it will be worse. Because 5-acres that is now permeable a portion will become impermeable.

Commissioner McDonald said yes but they would have all the drainage pieces that will go into place to accommodate those 5-acres. Mr. Steeler said they were all under sized because it's not accommodating the rules. Commissioner McDonald said she understood but wanted to know if the drainage is taking care of the 5-acres and is it worse now or then. Mr. Steeler said they believe it will be worse. It will either direct flow or back up and then flow. He's more concerned about what the rules and they're clear and that flow must be convey across the property. The rules require it be moved through and off the property. Commissioner McDonald said she understood and wished they had some type of comparison but they don't.

Commissioner Shonkwiler stated there are historic flows on the site now causing drainage problems and areas built north and east didn't care to do what you just discussed as being required by law. Mr. Steeler said he wasn't aware of the previous approvals. Commissioner Shonkwiler said without anything being build there are flows causing flooding problems now. Mr. Steeler said that was correct. The piped system Mr. Obering testified to, there are 30-40 homes between this property and the piped system. So I'm making some assumptions that what was built without proper drainage. So practically what do you do next – who take cares of this for what was done 30 years ago.

Mr. Steeler said every downstream owner under Colorado law and city code is required to take the quantity and quality of the historic drainage and move it to the next property downhill. It's a chained responsibility to take this on. What they don't have to do is take on more a worse quality which is the fundamental legal issue facing us here. We believe this will increase the historic flow. Houses will be still flooded. The problem the city faces is how do you deal with hundreds of years of development and make it right. The immediate neighbors shouldn't take on more than they are obligated to take and they believe that is what will happen with this system.

Commissioner Markewich stated if downstream owners are required to take the historic flows then the only responsibility the applicant has is to the additional flows that are generated by his project and taken care of on his site. He's not responsible for restricting historic flows from the 13-acres. His responsibility is to pass through the historic flows from the 13-acres to whoever is downstream. His primary responsibility is to ensure his property isn't making the situation worse, is that accurate? Mr. Steeler said it's somewhat accurate. He's required to convey those 13-acres through or around his property then hit the system. But it doesn't get it all the way through the system because it's undersized and it will not get it through his property. Commissioner Markewich said there's no system now and a system, to him, would be a curb or creek or sewer that passes it through to the downstream neighbors and they pass it to their downstream neighbors. As long as he's not making it worse by increasing the flow down to the neighbors, doesn't it fit in their review requirement? Mr. Steeler said there is a system. It's 5-acres of permeable ground the soaks much of this up. What's not soaked up goes to Ms. Wolf's property then out into the street. The problem is we're developing property and your review criteria requires you deal with the newly developed property as well as getting this through to the street and then to the detention pond. Commissioner Markewich said in your opinion if 100% of the flow can be routed and discharged off property it meets the requirement. Mr. Steeler said yes

Bruce Wright discussed easements. 1.) A 15-ft public utilities easement with a deed dated 1877 reserving an easement for the Colorado Springs Company for an irrigation canal. Only the Colorado Springs Company can use it for an irrigation canal. 3.) Existing 15-ft public utility and non-exclusive easement recorded in 1968 granted to Broadmoor Sanitation Company for the purpose of a sewer line for 12 El Encanto. It's not a public easement. 4.) There is a 20-ft private access easement allowing access to 12 El Encanto for ingress and egress. It's uninterrupted access for the repair and maintenance of utilities. If there is no access for any extended length of time it would be a violation. Lastly the easement prohibits any dedication to the general public for public services whatsoever. The applicant was required to dedicate a 45-ft utility easement along the east side and 20-feet of it is over the existing access easement that prohibits any public use. It would have to move 20-ft to the west putting it under the detention pond. His final item has the detention pond is proposed to empty onto Mayfield. Mayfield is a private road and you can't dump the drainage onto private property without permission of the property owner and if done it's trespassing. It's impossible for the drainage plan they have to work.

Commissioner Markewich said one the easement is to the Broadmoor Sanitation District. Does it still exist? Mr. Wright said he did know. Commissioner Markewich said if it doesn't exist and CSU is the service provider it would be up to the current entity to say if the sewer line can be used since they own that easement. Mr. Wright said that would be the logical assumption but he doesn't know how it was legally done. Commissioner Markewich said his point is if CSU reviewed the plan, they're aware of easements and past easements, the size of the pipe and what it can hold and CSU said this is an adequate solution for the site to discharge their waste, then he'd go with CSU saying this is all okay. Mr. Wright said he wouldn't assume CSU looks into capacity issues. But if a new sewer line had to be put in it would violate the 2016 exclusive access easement. Commissioner Markewich said the easement the Broadmoor Sanitation District holds or the one to 12 El Encanto. Mr. Wright said the easement 12 El Encanto holds. Commissioner Markewich said if a new line had to go in and you were able to divert traffic to allow access would that work. Mr. Wright said you'd have to get the owners of 12 El Encanto's permission because they own the easement. The developer hasn't approached the owner to see how they could work this out.



Mr. Gruen said he included in their packet the subdivision review criteria and highlighted the ones applicable to this application. Testimony heard today shows that application doesn't meet the criteria and why the proposal should be denied. Staff's recommendation to approve this with 20 technical and informational modifications would strip neighbors of further input on the unresolved issues to be addressed. There are development plan requirements for this zone should the plat be approved. The plan should be denied outright rather than approved with conditions however if the commission concurs with staff's recommendation we'd request any approval be conditioned on Planning Commission rehearing the preliminary and final plat but also conduct a full development plan review once all conditions have been satisfied.

Dr. Karen Dana said she's heard concern about safety and legal issues. She's heard there are too many houses being proposed without it being thoroughly researched. This area slopes, the lot is irregular and there are too many things in question to approve. There isn't enough room for natural environments. We want to make sure it's looked at from all perspectives.

Fred Jones lives at the corner of Sierra Vista and El Encanto. His is drainage relating to sewage drainage. He's lived at his home about two years and in that time sewage has back up a couple of times. When cleaned out he was told his system is clean it's coming from the street. The sewer line T's into Sierra Vista and he's the first house off the T. With seven new homes running into that sewer line he's going to be impacted. He knows the City thinks the capacity of the system is adequate but he doesn't agree with them. So this needs to be considered too.

#### **Questions of Staff:**

Commissioner Graham asked if the most recent drainage plan account for the 13-acres upstream and how to mitigate that water. Erin Powers with Stormwater and engineer reviewing the project stated the report discusses these offsite flows but the system is not designed to handle the offsite flows but the flows will still be conveyed through the site. Regarding the detention design for the offsite flows the purpose for full spectrum detention is to mimic historic flow rates. Historic flows are usually green fields. The offsite flow is in this condition so the detention that would be required is only for the developed area to mimic the historic rate.

Commissioner Graham said if the offsite flow from the 13-acres isn't accounted for how is that water moving through. Ms. Powers said historically the water would sheet flow across the field into back yards or the street. With the development it would be captured mostly in that swale and routed to the east towards the pond. Once it reaches the culvert there's a low spot and if it ponds up it would sheet flow over the road into the pond and into the street rather than people's houses.

Commissioner Graham said testimony has been given that the pond is undersized and culvert undersized so did you account for that. Ms. Powers said the testimony that the drainage pond is undersized is based on requiring detention for the entire offsite area. Developments per the criteria are not required to mitigate the entire offsite area they are only to treat what is being developed and the flows they are increasing. Regarding the culvert it's not required to convey the entire offsite area as long as the drainage from the offsite is still conveyed through the site. It doesn't need to be conveyed through the culvert to be conveyed through the site.

Commissioner Markewich asked if there was just one swale. Mr. Powers said there is one swale for the entire length of the project and all the flows are directed into that one swale. Commissioner Markewich asked based on Ms. Powers experience with diverting flows would she recommend additional diversion possibly along the south side of the property in another place to make sure

historic flows can get through and onsite flows are being properly mitigated per our code. Ms. Powers said her job is to only the review to the criteria. The current design meets the criteria with the technical modification.

Commissioner Walkowski discussed the offsite flow. Right now the field and mitigates some of the flow. But now put a development on top of this doesn't it change the historic flow. Doesn't it cause additional historic flow that doesn't go into the ground and has to flow through? Ms. Powers said he was correct the pasture area mitigates some of the historic flows now and in the developed stage it will continue to be mitigated by the grass. The difference is on the developed site that is the change required to be mitigated. Commissioner Walkowski said with the flows that go into the street now, will that change with this new development. Will it be greater than what it is today? Ms. Powers said from the drainage report the drainage flow accounted for the 98 CFS going onto the street and this site under peak low rates for the 100 year would increase the 98 CFS by 1.25 and that is within the error bars.

Commissioner Markewich asked for CSU to address easements for the site. Bethany Burgess with the City Attorney's office and Jan Crosby can address concerns about the easements. Commissioner Markewich asked if the easement to the Broadmoor Sanitation District has transferred to CSU and what is CSU's position for the use of that easement. Ms. Burgess said the easement was acquired by the City with the annexation of the area into the city. The 1968 easement would become a CSU sewer easement and it's limited to only sewer. While it's a non-exclusive easement in the sense that other easements may overlap the easement but it was only for sewer. The existing sewer main does have the capacity to accommodate the sewer flows from the proposed development.

Commissioner Markewich stated from a legal standpoint you have no concern about this. Ms. Burgess said they don't. She said Mr. Wright referenced a 2016 easement there will need to be an additional 30-ft easement. Commissioner Markewich stated it would extend past the current easement further onto their property to allow CSU to put addition infrastructure under the pond. Jan Crosby with CSU said it wouldn't go under the pond it would be adjacent to it.

Commissioner Markewich said from their perspective regarding capacity will the gas and electric be further west and not disturb the 20-ft easement for access to 12 El Encanto. Ms. Crosby said there were two of points; on the eastern edge of 10 El Encanto there are two 5-ft property line easements that were created when the area was replatted that are unrestricted and are senior to the 2016 easement and those are public utility easements. The 1968 easement to the Broadmoor District for the sanitary sewer is an 8-inch main which is sufficient capacity for the new development. Then applicant is granting a 45-ft easement that will overlap the existing easements but there will be 20-ft access of the 2016 easement to the west that will be sufficient for any gas, water and the electric. The gas and electric could also go into the two 5-ft side easements. Commissioner Markewich asked if there will be any obstruction to 12 El Encanto during this process. Ms. Crosby said they'd have to tap into the existing sewer main and there could be some interference but it's an access easement. It doesn't say 24-7 or at all times. They would try and be as unobtrusive as possible.

Commissioner Smith stated the 45-ft easement that is being proposed, does it go the entire way from Mayfield to the southern property line of the applicant's property? Its goes 45-ft beyond the proposed driveway and then in the site it goes down to 25-ft. Commissioner Smith asked where the 20-ft easement for 9 and 12 El Encanto. CSU answers. Commissioner Smith asked where the property line as located. CSU answers. Commissioner Smith confirmed where gas and electric

could be placed. CSU answered. Commissioner Smith said the opposition said you can't use that easement. Ms. Burgess explained that the replat of this area in 1972 is senior in this area over the 2016 access easement so from a legal standpoint she'd argue the can and is doing this they be as unobtrusive and possible.

Commissioner Smith asked about the access to Lot 1. Ms. Thelen said she doesn't think it's been determined.

Commissioner Shonkwiler asked Ms. Thelen when dealing with a subdivision and there's vacant land and we have to provide reasonable access to the subdivided area and with is application there is quite a bit of vacant land around it. What happens if someone that wants to develop those properties? Ms. Thelen said some are not developed but there's also some steep slopes and some sites may not be developable. The property to the south has access to get to Marland Rd and if developed they could probably use that access. The remaining have access and are not landlocked.

Commissioner Markewich offered a clarification regarding what was said at informal, according to Mr. Gruen, and that he believes that it was misstated. What he asked Ms. Thelen was, were the major concerns of the neighbors addressed. Ms. Thelen didn't say every single issue is unresolved she said there are significant issues unresolved.

Commissioner Markewich asked about the swales and where they're located. Ms. Thelen said they run on the south side of the main entrance. Commissioner Markewich asked what would happen to the flows from the north side is there any mitigation so the neighbors to the north are protected. He would like to see if there is a way to direct it into the existing swale or add an additional one here? Ms. Thelen deferred to either the applicant or city engineering to answer the question.

Commissioner McDonald ask Ms. Thelen to clarify testimony from the neighbors stated no decision was made on who maintains drainage in the pond and the grading plan says the full spectrum pond to maintain and privately owned by the Newport Company. Is that your understanding of the maintenance of the pond? Ms. Thelen said there will be an HOA that will do it but until it's formed it's the owner's responsibility.

Commissioner Walkowski asked if there was a maintenance agreement in place. Ms. Thelen said she didn't think there was one in place but prior to final signing of the plat there will be.

**Rebuttal:**

John Olsen stated why the application was before Planning Commission. We came because the process has been extended and delayed. We wanted to get it approved and get it to the Commission rather than having it appealed you. It will probably be appeal to City Council and on to the next step too. There are only seven lots with a landscape buffer to the north that isn't necessary because it's all zone R (Estate) but we did it as something to be considered to neighbors. He felt some of the comments are over characterized. It seems straightforward to be a straightforward project. Eric Burtscuff is the Civil Engineer out of their Denver office discussed some of the issues regarding drainage impacting the northerly lots. The road is pitched to the south. So there is drainage in the swale to the south any if it overtopped it would flow on the road to the east. Did we take into consideration the 13-acres? They did.

Commissioner Smith said Mr. Obering disagreed that you included those 13-acres. Therefore he'd like an explanation of how with your engineering data that it's been accounted for and how the pond

is the correct size. Mr. Burtscaff said Mr. Obering's statement's was in regard the capacity of the swale and the culvert attached to it which he would argue they've taken that into account and the city has approved our drainage report and we do have adequate capacity. We are not designing the detention facility for the additional capacity. The way drainage is approached is we are obligated to bypass flows offsite you're not mandated to treat that onsite. That's an undue burden on the developer. We are taking it into consideration. We are taking the flow out of the owners' back yards and moving to the east and then and then outflowing that to the existing areas of drainage that is for the overall subdivision.

Commissioner Smith reconfirmed the swale on the south side along with the pitch of the road to the south would be conveyed to where in turns and goes into the detention pond and the additional flows those would automatically overflow the detention pond. Mr. Burtscaff said yes in the worst case scenario. Mr. Burtscaff said in most typical storms this is a vast improvement. If there is a heavy downpour there is an emergency overflow on the site too which is on the northeast end of the facility. Commissioner Smith said those overflows will go on Mayfield. Mr. Burtscaff said yes or on to El Encanto. Their release rates for these flows are less than historic. We are allowed to release from pond 4.7CFS which is a reduction of one-third and the manual doesn't say you design for more than 100 year events. We are proposing to release in the direction of Mayfield at the intersection of El Encanto and Mayfield. There is a restrictor plate designed to limit what goes in. Commissioner Smith says their attorney says they can't do this. Mr. Burtscaff said he's not an attorney but he'd disagree. As long as long you're not pointing a concentrated flow or negatively impacting adjacent properties or downstream properties you are allowed to release flows.

Mr. Olsen and Mr. Burtscaff discuss the direction the drainage happens on the site and with their design the flow should decrease. Mr. Burtscaff said they've met or exceeded all the requirements from city engineering and city planning that's been asked of them.

Commissioner Shonkwiler asked why they hadn't the access line to the south and have the drainage to the southwest then put a house where the pond would be and have back yard to back yard avoiding much the problems. Mr. Olsen said he asked the developer the same questions and it came down to views and he wanted to provide some type of buffer with a landscaped area in between and again this is beyond what the code requires. Commissioner Shonkwiler back yard to back yard is like a natural buffer. Mr. Olsen said it's probably more of a topographical question Mr. Burtscaff said that was correct and explained the detention facility is located at the low end of the site. It's already the area the water naturally wants to flow to.

## **DISCUSSION AND DECISION OF PLANNING COMMISSION**

Commissioner Markewich said he appreciated hearing both sides speak. From a drainage standpoint for the neighbors directly to the north it seems it will greatly improve your situation. This development will buffer the flows and you'll have a detention pond where there wasn't one before. Logically it looks as if it will improve your situation. There was a comment to bring back the next phase for the commission's approval rather than being approved administratively. He's not willing to put a condition in the motion for that. But you can always appeal an administrative decision and when this goes to council they may look at it differently than the Planning Commission would. The commission looks specifically at the code and comprehensive plan. For example the fire code – did it meet the standards and the answer was yes they met the minimum standards. The implication was to go beyond that but that's not what we review we review to the standard. Therefore all the items they've heard do meet our review requirements. He will support moving the project forward.

Commissioner Walkowski said city staff and designers worked this through to meet the minimum standards. He agrees those minimum requirements were met but minimum doesn't mean reasonable in his mind. This is a minimum development meaning you did the absolute minimum you had to do to fit what needed to be done. There are issues with storm drainage he's not reconciled with. He feels the street design with a parking lot is not within the character of the neighborhood. The whole development with the data says it fits and it fits the criteria Commissioner Markewich mentioned but he doesn't think it meets some of the comprehensive plan material that the development has to fit in with the neighborhood, so because of that he will not support the application.

Commissioner McDonald said the biggest question was the 13-acre flow through onto this property and if she thinks it's been determined that the requirements is it flows through not that they detain that flow and she believes they've met that requirement. She believes the drainage requirements have been met that the city imposed and the utilities have been met all the questions have been met. The lots sizes are in harmony with what is in the general area. She will be voting in favor of the project.

Commissioner Smith said the issue of the street being out of character and too small and there is no curb and gutter and sidewalks to say it's not in character of neighborhood is incorrect. The fire department has agreed that it works. Mayfield Drive is much different than this street. The biggest issues are the drainage and the easements. He's satisfied with the response on drainage and thinks it will be helpful and hopes that it's true. On the easements and going over Mayfield where there are no houses no one will ever be able to develop that property. Regarding the easements he'll have to take the city attorney at their word and what is needed to be accessed can be. So he'll be in support of the project.

Commissioner Phillips thanked the citizens for coming and representing their community. He wished all communities were as interested and as passionate as this group.

Motion by Commissioner Smith and seconded by Commissioner Markewich regarding AR PFP 16-00629 he made the following motion to approve the preliminary and final plat for Archer Park based upon the finding that the preliminary and final plat complies with the review criteria in City Code Section 7.7.204 and 7.7.303 subject to compliance with the technical and informational plan modifications 1-7 and 1-13 on pages 90 and 91 of the Planning Commission packet.

Aye: Phillips, Henninger, Markewich, Shonkwiler, Walkowski, Smith, Graham, McDonald

No: Walkowski

Absent: Gibson

Vote: 7-1-1 – motion passes

Appeal information read.