

City of Colorado Springs

Due to COVID-19 Health Concerns, this meeting will be held remotely.



Meeting Minutes - Draft

Thursday, January 21, 2021

8:30 AM

Remote Meeting - Phone 720-617-3426

Conference ID: 815 137 01#

Planning Commission

1. Call to Order

Rollcall

Rollcall

- Present:** 9 - Commissioner Raughton, Commissioner McMurray, Vice Chair Hente, Chair Graham, Commissioner Slattery, Commissioner Rickett, Commissioner Almy, Commissioner Eubanks and Alternate Griggs
- Absent:** 1 - Commissioner Wilson

2. Approval of the Minutes

- 2.A. [CPC 20-682](#) Minutes for the October 15, 2020 City Planning Commission meeting.

Presenter:
 Reggie Graham, Chair of the City Planning Commission

Motion by Vice Chair Hente, seconded by Commissioner Rickett, that this Minutes be approved Approve the minutes for the October 15, 2020 City Planning Commission. The motion passed by a vote of 8:0:1:0

- Aye:** 8 - Commissioner Raughton, Commissioner McMurray, Vice Chair Hente, Chair Graham, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks
- Absent:** 1 - Commissioner Wilson

3. Communications

Peter Wysocki - Director of Planning and Community Development

4. CONSENT CALENDAR

These items will be acted upon as a whole, unless a specific item is called for discussion by a Commissioner/Board Member or a citizen wishing to address the Commission or Board. (Any items called up for separate consideration shall be acted upon following the Consent Vote.)

El Paso County Citizens Center Sign

- 4.A. [CPC UV 20-00154](#) A Use Variance Development Plan for the El Paso County Citizens Center requesting to allow a 32 square foot double-sided electronic message center sign located at 1645 West Garden of the Gods Road.

(Quasi-Judicial)

Presenter:

Daniel Sexton, Principal Planner, Planning & Community Development

This Planning Case was approved on the Consent Calendar.

Greenbriar/Powerwood

- 4.B. [CPC MP 01-00147-A6 MJ20](#) A resolution of the City Council of the City of Colorado Springs, Colorado approving a major master plan amendment to the Greenbriar/Powerwood Master Plan changing 9.23 acres of land from Regional Commercial to Multi-Family Residential southeast of the Woodmen Road and Tutt Boulevard intersection.

(Legislative)

Related File: CPC CP 01-00148-A12MJ20

Presenter:

Katie Carleo, Senior Planner, Planning & Community Development
Peter Wysocki, Planning & Community Development Director

This Resolution was recommended for approval to the City Council on the Consent Calendar.

- 4.C. [CPC CP 01-00148-A1 2MJ20](#) A major amendment of the Greenbriar/Powerwood Concept Plan changing 9.23 acres of land from Regional Commercial to Multi-Family Residential as an allowable use located southeast of the Woodmen Road and Tutt Boulevard intersection.

(Quasi-Judicial)

Related File: CPC MP 01-00147-A6MJ20

Presenter:

Katie Carleo, Senior Planner, Planning & Community Development
Peter Wysocki, Planning & Community Development Director

This Planning Case was referred on the Consent Calendar to the City Council.

The Farm

- 4.D. [CPC ZC 20-00155](#) Ordinance No. 21-27 amending the zoning map of the City of Colorado Springs relating to 36.14 acres located on multiple parcels throughout The Farm development from PUD (Planned Unit Development) and A (Agricultural) to PK (Park).

(Quasi-Judicial)

Presenter:

Katie Carleo, Senior Planner, Planning & Community Development
Peter Wysocki, Planning & Community Development Director

This Ordinance was referred on the Consent Calendar

Tuscan Foothills Village

- 4.E. [CPC MP 06-00065-A2 MJ20](#) A resolution of the City Council of the City of Colorado Springs, Colorado approving a major master plan amendment for the Mountain Shadows Master Plan changing 2.4 acres from Research & Development (R&D) to Residential with a density of 3.5-7.99 dwelling units per acre located northwest of Silverstone Terrace and Mule Deer Drive.

(Legislative)
Related Files: CPC PUZ 20-00071, CPC PUD 06-00067-A5MN20

Presenter:
Katelynn Wintz, Senior Planner, Planning & Community Development
Peter Wysocki, Director, Planning & Community Development

This Resolution was recommended for approval on the Consent Calendar

- 4.F. [CPC PUZ 20-00071](#) Ordinance No. 21-30 amending the zoning map of the City of Colorado Springs relating to 5.07 acres located at Silverstone Terrace and Villa Lorenzo Drive from PIP1/PUD/HS (Planned Industrial Park, Planned Unit Development with Hillside Overlay) to PUD/HS (Planned Unit Development: Residential (Single-Family Attached and Townhouse), 3.5-7.99 dwelling units per acre and Maximum Building Height 35-feet with Hillside Overlay).

(Quasi-Judicial)
Related Files: CPC MP 06-00065-A2MJ20, CPC PUD 06-00067-A5MN20

Presenter:
Katelynn Wintz, Senior Planner, Planning & Community Development
Peter Wysocki, Director, Planning & Community Development

This Ordinance was referred on the Consent Calendar

- 4.G. [CPC PUD 06-00067-A5 MN20](#) A PUD Development Plan for the Tuscan Foothills Village Filing 4 project to allow residential development with ancillary public and private improvements located northwest of Silverstone Terrace and Mule Deer Drive.

(Quasi-Judicial)
Related Files: CPC MP 06-00065-A2MJ20, CPC PUZ 20-00071

Presenter:

Katelynn Wintz, Senior Planner, Planning & Community Development
Peter Wysocki, Director, Planning & Community Development

This Planning Case was referred on the Consent Calendar to the City Council.

Saint Francis Guest House

- 4.H. [CPC CP
01-00148-A1
1MJ20](#) A major amendment to an existing concept plan application changing the location of buildings designated on the Greenbriar/Powerwood Concept Plan per City Code Section 7.5.503.C.2.c.

(Quasi-Judicial)

Presenter:

Matthew Alcuran, Planner II, Planning and Community Development

This Planning Case was approved on the Consent Calendar.

- 4.I. [CPC CU
20-00145](#) A conditional use development plan for a family support residence consisting of a 2-story building for 41 residential suites, located at the southwest corner of Sisters Grove and Tutt Boulevard.

(Quasi-Judicial)

Presenter:

Matthew Alcuran, Planner II, Planning and Community Development

This Planning Case was approved on the Consent Calendar.

Approval of the Consent Agenda

Approval of the Consent Agenda

Motion by Commissioner Raughton, seconded by Commissioner Rickett, that all matters on the Consent Calendar be passed, adopted, and approved by unanimous consent of the members present. The motion passed by a vote of

Aye: 8 - Commissioner Raughton, Commissioner McMurray, Vice Chair Hente, Chair Graham, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

Absent: 1 - Commissioner Wilson

ITEMS CALLED OFF CONSENT

5. UNFINISHED BUSINESS

Carport Appeal 1325 Challenger

- 6.E. [CPC AP 20-00178](#) Postpone an appeal of a Notice and Order to Abate for violation of a carport within the 25-foot front yard setback on a residentially zoned (PUD) property located at 1325 Challenger Drive.

(Quasi-Judicial)

Presenter:

Kurt Arnoldussen, Senior Code Enforcement Officer, Planning and Community Development

Motion by Commissioner Raughton, seconded by Vice Chair Hente, to postpone the appeal for the Notice and Order to Abate violation issued against 1325 Challenger Avenue to the February 18, 2021 Planning Commission hearing in the event City Council chooses to set in place a moratorium on carport notice and orders. The motion passed by a vote of 8:0:1:0

Aye: 8 - Commissioner Raughton, Commissioner McMurray, Vice Chair Hente, Chair Graham, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

Absent: 1 - Commissioner Wilson

6. NEW BUSINESS CALENDAR

2424 Garden of the Gods

Chair Reggie Graham recused himself from the meeting due to his relationship with the Navigators, which is the property on the southern side of the project.

Vice Chair Scott Hente announced that he lives in the Mountain Shadows neighborhood and around two miles from the project site. After discussing this with the city attorney's office and based on the attorney's advice, Vice Chair Hente said he would not be recusing himself. Vice Chair Hente felt he lived far enough away that whatever happens at the project site would not affect him.

- 6.A. [CPC MP 06-00065-A1 MJ20](#) A Major Master Plan Amendment to the Mountain Shadows Master Plan, changing 125 acres from Office Industrial Park (OIP) to Open Space, Office, Public Institution, Residential and Community & Neighborhood Commercial, located at 2424 Garden of the Gods Road.

(Legislative)

Presenter:

Katelynn Wintz, Senior Planner, Planning & Community Development

Staff presentation:

Katelynn Wintz, City Planning, presented a PowerPoint with the scope and intent of this project.

Applicant Presentation:

Andrea Barlow, N.E.S, representing the applicant and the owner of 2424 Garden of the Gods, presented a PowerPoint with the scope and intent of this project.

Mike Rocha, SM Rocha, LLC, (Traffic and Transportation Engineers) presented the traffic impact study for this development application.

Questions:

Commissioner Rickett asked what the height restriction was for the current PIP1 zoning. Ms. Wintz verified the current owner could build a 45-foot office building on that site without any issue as currently zoned.

Commissioner Rickett said based on the traffic study, if the owners instead built office buildings, it would actually increase the traffic three-fold beyond where the housing plan would be. Ms. Wintz said that was correct.

Commissioner Rickett said he was firm believer of investigating property before buying and to check the masterplans of that division and the surrounding zoning criteria of the different areas. Commissioner Rickett said as the public comments, he would like to know if anybody actually looked at the zoning of the property and understood that there could be 45-foot office building built on the site without changing the current zoning.

Commissioner Raughton said for the matter of the equilibrium between the commercial development and the residential proposed development, is the fixed facility for the Verizon/MCI building proposed to be expanded in order to increase the use, or is it working within the existing building envelope, as it is underutilized right now.

Ms. Barlow said there were no plans to expand the building. It's 40% occupied now, and the rezoning just introduces some additional uses that could create more flexibility and the ability to have a wider range of uses in that building, and also focuses more on the type of uses that are already there, which is more of an office lean than industrial leaning.

Commissioner Raughton said as the use of the existing building expands, it will require additional parking over what is being utilized today. With some of the parking area being consumed by residential development, how will the equilibrium be managed?

Ms. Barlow explained the existing building has 1000 more parking spaces than required by code, so there is a significant overbuild of the parking for the existing building.

Commissioner Raughton asked if the recalculations of the parking demand were considered in the conversion to commercial uses. Ms. Barlow said it would still fall within the uses; however, purely commercial uses are unlikely to be within the existing building. It would more likely be some of the Civic institutional type uses such as a technical college where the parking standards are pretty similar to the office.

Ms. Barlow added that the allowance of commercial on the front part of the site could be something like a hotel or possibly restaurants where the parking would be contained within that area.

Commissioner Raughton asked for clarification if the 55 acres of proposed open space was used in terms of the density calculation? Ms. Barlow answered that it was not because it is intended to be open space. The calculation of 17.99 units per acre is across that entire 26 acres of the two parcels together that they are proposing for new development. That density relates specifically to that 26-acre site.

Commissioner McMurray asked if any thought was given about the potential need for pedestrianizing some of the intersection access points off Flying W Road and 30th Street so that the folks who might ultimately choose to live here have the ability to access the foothills trail or Chipeta Elementary School, since arterial road can be a major barrier?

Ms. Barlow stated that would be improvements to the existing infrastructure, which is under the city's control. Ms. Barlow said it was their plan to provide pedestrian connectivity from the site to 30th Street and adding curbs, gutters and sidewalks, which are required by all developments. There will also be the ability to connect through the development to get to Flying W Ranch Road, which already has sidewalks in place.

Commissioner Hente asked if they had modeled the traffic situation in the event there is a massive evacuation of the neighborhood. Ms. Rocha said their traffic study did not take into account the variations associated with mass evacuations. Previously, there have been city staff and fire staff who have addressed that concern at prior neighborhood meetings.

Commissioner Hente asked staff to clarify for the public what the process was for this development if it moves on. Assistant Director Meggan Herington answered that any future developments would also go through the planning entitlement process, however, that will not include Planning Commission or City Council, as development plans are approved administratively. The only way it would be heard at City Planning Commission again is if the development plan were appealed.

Fire Marshall Brett Lacey addressed the mass evacuation scenario by saying the fire department, office of emergency management, as well as the community learned a lot of lessons through the Waldo Canyon fire.

- One of the things learned was calling for early evacuations.
- Fire Marshall Lacey said in regard to an increase in population into residences that are there, in addition to the business, he did not believe there would be an issue with regards to the capacity of roadways.
- Fire Marshall Lacey cautioned that when the required evacuation for Waldo Canyon happened there were a number of people leaving work downtown to drive all the way back to their residences to pick up things and then leave. So, behavior and performance on residents was not the

way that they wanted or intended either.

- Continue to convey the message that **evacuate** means everybody has to leave immediately.
- Garden of the Gods Road can be used as contraflow, which is a minimum of six lanes heading east toward I-25, so there are roadway networks where contraflow can be established.
- The police department has learned a lot about evacuation control and the contraflows.

Fire Marshall Lacey stated that having people pay attention, the city making early notifications, people leaving as soon as they are uneasy, and honoring orders will improve evacuations and added that, professionally, he did not believe there is a substantial issue. There is enough capacity to get people out of areas, assuming that the evacuations are in a more systematic method, which have been coordinated and talked about with the police department after learning from the Waldo Canyon fire.

Supporters:

None

Opponents:

Bill Wysong, Harmon Zuckerman presented a PowerPoint for the Mountain Shadows Community Association concerns:

- Lack of specificity in the applicant's materials and in staff's recommendation and how this creates uncertainty as to what is being recommended to City Council
- Recommendation of approval stops short of creating enforceable specifics

Big Horn Sheep

- Residents want to protect the scenic areas for future generations
- Big Horn Sheep habitat is in danger if a multi-family high rise apartment has no park land
- Detrimental to the health, safety and stability of this herd

Hillside Overlay

- Preserving the ridge lines, bluffs, view corridors, foothills and mountain backdrop are very important
- Building a 45-foot building on top of the 23-foot berm gets close to 70 -feet, which will reduce the view of the ridge line
- Roof line based on maximum permitted heights should not extend above the line of sight between the ridge line in any public right of way
- Before this application is approved, it warrants further details be presented
- With no parks and adding multi-family housing, people from the apartment complex will go into open space, which is fairly fragile and/or trespass into the Navigator's and Flying W Ranch properties
- Should have a vulnerability analysis under the COS Hazard Mitigation plan Traffic Study
- Traffic study did not account for non-residential additional square feet
- No accounting of future buildouts of neighborhood - (Red Leg,

Arrowswest Apartments)

- No bike lanes on 30th Street
- No Bicycle Safety report was provided by the city or the developer
- Addition of high-density residential housing will exacerbate the number of deaths, crashes and near crashes in this area
- Not all property owners within the master plan were notified of the proposed project
- Petition signed against the rezoning with about 3400 signatures
- Planning staff failed to take into account the full community input, as well as some disparaging remarks towards the community with the emails exchanged by city employees, which were discovered as part of a Cora request

Dorothy Macnak, resident of Mountain Shadows

- Big Horn sheep habitat and the corridor that connects the primary habitat is a concern
- Developer has not acknowledged the corridor and the Colorado Parks and Wildlife (CPW) has not followed the governor's mandate regarding identification for conserving wildlife corridors

Derek Strickler, Operations Director at Navigator's Glen Erie conference center

- Would like to be good neighbors but have two issues they would like addressed
 - Phase 1 of 30th Street improvements from Garden of the Gods to Fontmore are underway
 - If development is approved, the city should ensure the remaining phases of the 30th Street corridor are done and executed quickly
 - Currently, there are several trespassers on the Navigator's property and they feel that will increase with the development and would like the developers to build a 6-foot fence adjacent to the Navigator property

David Pierce, property abuts 2424 Garden of the Gods

- Concerned about existing noise from the existing buildings with air handling and new buildings will just increase this
- Air pollution with increased number of vehicles
- Crime from the apartment complex

Carrie Olivier-Waite, community advocate

- A 45-foot high multi-family housing will impact the view corridor
- Biggest concern is that the goals of the city for infill should not and cannot supersede the impact to the property owners in and around the actual master planned area in question
- If this major amendment is approved without a detailed development plan and consideration of the potential negative impacts to the existing property holders rights, it is really useless to the goals of protecting and assuring citizens that we can rely upon the master plan when purchasing

- Requested the Planning Commission require the developer to provide a detailed full development plan with any master plan amendment

W.W. Reed

- Asked for the developer to state how many parking spaces they are proposing for the apartments, as the developer said they are using current parking to build these apartments?
- Are they going to allow parking in the current building's parking spaces?
- Current public transit ends at 6:30 p.m. and seldom operates on the weekends, so how do they propose the residents will use public transit if they work after 6:30 p.m.?

Tina Brooks, resident

- Noted the five-acre grass fire on 30th Street on January 20, and fire fighters were able to put that out, but the Waldo Canyon fire resulted in two deaths and 346 homes destroyed
- In the hazard mitigation plan, there is a quote from FEMA that defines hazard mitigation as "any sustained action taken to reduce or eliminate long term risks to human life and property from a hazard event." Ms. Brooks wanted to know why the Office of Emergency Management was not included in the 2424 buck slip process for their review and comments
- Why was the public safety impact from the Waldo Canyon fire evacuation gridlock not considered in this plan?

Sharon (inaudible)

- Said all of the apartment buildings from low-end to high-end rentals have For Lease signs, so why is everybody saying there are no apartments available?
- Is it necessary to have more apartments put here when there are some right across the street?

Susan Post, resident

- Called several apartment complexes in the area who told her they have an abundance of apartments available and that they have never been at capacity
- Asked for the commissioners to imagine sitting in a car trying to evacuate in this area and no one can overstate the terror and fear of those who live in the area

Colonel Terry McBride, US Army retired

- Opposed to this project in its entirety
- Bought a home in this area to get away from the sea of houses that are currently going up on the east side of I-25
- Disagreed with the traffic study that was presented
 - It is a traffic nightmare
 - People speeding backups on 30th Street from Garden of the Gods entrance where police are dispatched to help with traffic
- Public schools were not represented in the analysis

- City as well as the company could care less about the residents that live in the area
- Company will make millions, as well as the city in revenue and taxes

Doug Bars, resident

- Lives fairly close to the proposed development and was not notified of it. Lives just outside the line for notification
- Traffic going south on 30th Street to and past Garden of the Gods park on the weekends and summertime is horrendous
- If project is approved, there will probably be more accidents
- The developer and the traffic plan have not adequately addressed that
- What will the impression of tourists be coming down Garden of the Gods Road?

Sean (inaudible)

- This property needs to be responsible development
- City has a unique opportunity here to instead of building apartments, to build something of a tourism type nature to enhance the tourism in the area

Dorian Lee, resident

- CORA request: Found comments from staff condescending and patronizing regarding the Mountain Shadows community
- Collaboration that goes on between planning committee and the developers went almost colluding and conspiring
- Asked the developers why they were building high income apartments when they could be building single-family homes, which is what Mountain Shadows is made up of
- Renting by nature is transient people and they don't have a buy in to the community

Vice Chair Hente commented that Ms. Lee used the terms Planning Commission and Planning Department and Committee interchangeably, and he clarified that the nine members of the Planning Commission under rules are prohibited from discussing this with the general public or even among themselves prior to today's hearing.

Gayle Frost, resident

- Concerned about how close the apartment buildings will be to 30th Street
- View will be horrible if the apartments are built on the berm
- Specificity of the plans are too vague
- Impact on Chipeta Elementary was glossed over

Ms. Vancaster, resident

- Bought her property over 20 years ago with knowledge of the master plan and the property with the Verizon building was not residential. That was one of the reasons why they agreed to buy where they did because there was not going to be development for residents in that area

- The apartment buildings will be built up against the berm and will block views from residence, which will affect property value
- Concerned about noise pollution and light pollution and would like a study completed
- Concerned about impact to wildlife
- Quality of life of all the residents that are around this area
- Police spoke at earlier public meetings about their concern of the burden of crime that will be brought in with a transient residential area and they cannot support any more of the crime that may occur with that

Katelyn Henderson, resident

- Concerned about not having a definitive plan
- Understood the rules and code about the concept plan, but this has to do with the wellbeing of the Mountain Shadows residents
- City needs to take regard to the homeowners in this community

Joan Linebach

- Experienced the evacuation for the Waldo Canyon fire
- Was stuck in a traffic jam
- Concerned about the density of what is being proposed

Joyce Semidas, resident

- Everybody glossed over the schools and the infrastructure
- Talked about traffic but what about the roads themselves?
- What about the already overcrowded schools here?
- Will there be a school bus?
- What has District 11 said about adding those homes to this area
- Has read the master plan

Debbie Anderson, resident

- Opposes the zoning change completely
- Bought their house in lieu of their understanding of the master plan
- With the city placing residents on watering only 3 days a week because of a water shortage, how would placing more apartment complexes anywhere help alleviate that

John McClain, resident

- Has been a resident when MCI was at full capacity and the parking lots were totally full, and occasionally the overflow parking was used, so cannot understand how you can add 450 units and bring the building to capacity and still have enough parking places
- Big Horn sheep will be displaced from their habitat with high density housing
- Putting up a 6-foot fence, like the Navigator's asked for, will not keep people out
- Bicycle safety is a concern, and this corridor is not even on the high priority list according to the city's bicycle senior planner
- Artemis apartments have a \$500 incentive to sign a lease, which implies

we have an overabundance of high-density housing already

Eddie Hertz, past president of Mountain Shadows Community Association

- Hillside Overlay was created to protect and preserve our natural and historic resources; PlanCOS's vision is we will build a great city that matches our scenery
- Garden of the Gods is the crown jewel of local majestic landscapes
- This site sits at the primary intersection leading to the park and we want to maintain a good first impression to tourist
- Original developer at this site understood and respected the beauty of this location
- Current developer has shown they have little interest in preserving and protecting the surrounding natural resources including the views

Gary Anderson, resident

- Garden of the Gods is the crown jewel of Colorado Springs
- Encouraged the planners of the city to have more of a long view and not fill in every square inch around the area of Garden of the Gods with development
- See the owners/developers of 2424 Garden of the Gods as poor neighbors. They are represented by lawyers and they have a lot of money to throw into this
 - They already generate a lot of noise that is at or exceeds the city requirements
 - They refuse to mitigate sound levels that we can hear inside our house
 - There is a lack of trust
- Hundreds of neighbors are opposed to this
- Hopes the city will oppose this project too

Jeff Norton, resident

- Wanted to follow up on the homeowner's association's presentation on the prohibition in the zoning application for additional residences, multi-family or otherwise in the existing area A development
- What is the profit motive ultimately behind this application?
- Concern is if the developer is allowed to get rezoning across the entire 125 acres, including the 44 acres of Area A, he could raise that building for the 44 acres and put another 1000 units in there
- Does not want buildings blocking views and causing additional concerns that have been raised by the community

Sarah Noman, resident

- Traffic backups are already an issue at 2424 Garden of the Gods
- Part of a group of people who have made complaints about the noise and light pollution and how that hasn't been addressed
- Concerned with additional noise and light pollution
- Issues with Flying W being a racetrack, even with the speed limit being decreased

- Additional traffic, additional speeding and more people driving to the school and not following the traffic rules is a safety issue with kids walking to school

Chris Mitchell, resident

- Developer's presentation was a misdirection because of the lack of detail
- Planning Commission has within their power to assert the developer a requirement that more detail be given for this community
- Believed this plan was a decommissioning of the site with existing structures being removed

Naomi St. John, resident

- Against the whole development because it will change the nature of the neighborhood
- Have enjoyed the unobstructed views and the wildlife since living in the area for 20 years
- Wanted to pass on the house to her children but the development threatens the beauty of the neighborhood and the value of this area

Daniel St. John, resident

- If you build higher than the Verizon building, it would clearly cutoff the view of Garden of the Gods
- Doesn't understand the point of putting an apartment building at the site, there are other apartments with vacancies
- Only person who benefits is the developer
- Over 200 callers and no one spoke up in favor of it
- Please think about the people and not just the business
- There are not even jobs around here where it needs substantial housing
- Put apartments buildings on the east side of Colorado Springs where there is plenty of land

Kathleen Back, resident

- Said the one person who was brave enough to speak in favor of this project does not even live in Mountain Shadows, so this does not apply to her

Linda Hertz, resident

- Concerned about road infrastructure and opposed the development

Jeff Gray, resident

- When Waldo Canyon fire happened, half were evacuated one week, and then the other half the next week. What would happen if everyone got evacuated at the same time?
- Does not like the way their concerns have been trivialized on these issues
- Why didn't owner research our neighborhood before buying the property with the hope of changing existing zoning laws to know the feeling of the local community?

Georgia Furnari, resident

- Opposed to this new development
- It is a matter of traffic for access and egress
- Community is facing traffic issues and noise and light pollution every day, even in the Pine Cliff community
- Issue of renters versus homeowners who want to keep the property values up

Jeff Reyer, resident

- Lives outside the notification zone and was very unhappy that he was notified of the amendment being proposed
- Against the rezoning and the master plan amendment
- Worked at MCI when the building was full, and the parking lot was full then
- Not enough detail to even be considered to amending the master plan

Summer Lovejoy, lives by Chipeta Elementary

- Chose the neighborhood because of the school
- What if there was an evacuation or crisis during a school day?
- Many students are Choice students whose families live outside Mountain Shadows
- Those parents would have to drive from other areas to pick up their children in the event of an evacuation
- Asked for a representative from Chipeta Elementary to speak

Lester Lamb, resident

- Concerned about the intersection at 30th street and the gridlock this development will cause
- Wants to know if the developer or the traffic department has thought of that

Maribeth Netherton, resident

- Strongly oppose the rezoning of 2424 Garden of the Gods
- It will have negative impacts to the community
- Increased population will cause increased traffic congestion
- If 450 multi-family high density units are approved and there is another fire, there will be no escaping for a lot of people

Larry Lhotta, resident

(There was a problem with the audio and Mr. Lhotta's comments were inaudible)

Polly Dunn, resident

- Against this development
- Would like a developer who loves the city to develop at this site
- Please listen to the residents

Julian Owens

- June 2017 Traffic Study document was used and only showed 2-million visitors to Garden of the Gods, when they should have used 2019's numbers of 6-million
- The new Red Leg Brewery will bring more traffic
- Then with a PUD, the developers can bypass City Council and just go through the Planning Department

Aaron Henderson, resident

- By building this development, you are negating all the hard work of the families who saved to live her
- Well known that apartments bring down home values

Margaret Garcia, resident

- Increased potential of wildfires with the increased population

Questions of Staff:

Commissioner Rickett asked if it were true that with the Hillside Overlay views are considered? Ms. Wintz said she was not aware of any specific city code that would regulate view sheds or loss of view sheds as part of the development applications, but this project is still at the concept stage, so development criteria are typically not a part of the review process.

Rebuttal:

Ms. Katelynn Wintz addressed the following:

- District 11 was involved in the review process for this project and they indicated they had no capacity issues in any of their schools in this area
- Notifications were sent out through a listserv that had several thousand people, as well as CONO and HOAs

Ms. Andrea Barlow addressed the following:

- Specificity - they would be willing to provide more specificity if needed, but feel they have provided everything needed
- Ms. Barlow went back over the plans
- There are no plans to demolish the existing buildings and Area A does not allow for residential
- Code does not protect views for individual properties
- Building setback - they are retaining the PIP1 setback of 50-feet, so all buildings will have that setback
- Building height - Keeping it the same as the existing zoning, so nothing is being done that can't be done with the existing zoning
- Impact on Garden of the Gods - Garden of the Gods Road provides the entrance to that crown jewel and that route is through very mixed commercial development and mixed industrial
- There is no view of Garden of the Gods park from this site
- Wildfire - the Fire Marshal addressed that issue
- The hazard impact study is city wide and not intended to be project specific

- As for the Navigators property and the site, code requires a buffer between commercial and residential and that includes a fence
- Flying W Ranch - Met with Leanne Wolf and there were no concerns
- Question about why the applicant wasn't providing a park because the residents would trespass on the adjacent properties. The applicant is not required to provide a park because the Parks Department considers there to be adequate neighborhood parks in the area, but the applicant will be paying park land fee and providing open space for this project
- Traffic - explained why they used the 2017 study
- Noise from the existing building - This was tested by code and it is from the HVAC system, and they now have an agreement to shut down the HVAC at certain times
- Light pollution - applicant is required to complete a photometric assessment with the development plan
- Crime - there is no evidence that there will be more crime
- Need - there is no requirement to prove if there is a need for the apartments
- Parking - applicant will be required to provide parking with the multi-family development per code
- Transit - not expecting the residents in this development to be solely dependent on public transit but they will have the opportunity to use public transit
- Wildlife - relying on CPW expertise and there is no evidence that building on a parking lot will displace wildlife

Questions

Commissioner Raughton asked why elevations were not provided. Ms. Barlow explained they didn't have those because that is usually at the development plan stage. Commissioner Raughton said it could not be higher than 45-feet, and Ms. Barlow agreed that the building height would not be higher than the 45-feet, which is the same restriction that is required in the current zoning.

Commissioner Rickett asked if 20 years down the road in Area A, someone wants to drop the MCI building and change that to residential if we go to a PUD zone? Ms. Barlow said that would require an amendment to the PUD and an amendment to the master plan, so this whole process would have to repeat. Ms. Barlow reiterated the PUD concept plan specifically shows in Area A that it is not residential. Ms. Wintz confirmed that was correct and said in the event there was any proposal to do residential development in that area, the applicant would have to go through the exact same process that is being conducted now, which would require appearing before the Planning Commission.

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Commissioner Raughton said as he understood the testimony, the fence is a given and will be constructed under the screening rules, the notice process was corrected and extended to a larger number of residents in the neighborhood, and there is not going to be redundancy in the mixed use commercial and residential, as this is specified in the plans. With all those conditions met, Commissioner Raughton said he would be supporting this application.

Commissioner Rickett said he was a firm believer if people had actually looked at the development plans and looked at the neighborhood makeup, that he would support that. Commissioner Rickett said that seemed to be the case for several of those today that were heard from on public comment.

Commissioner Rickett said he liked the development and thought it was a plus, but he would be voting against it from his background of supporting not changing the zoning if residents have an issue with that.

Commissioner Slattery agreed that residents did look at the master plan and it was zoned commercial, but given that the development is at 40% capacity with so much vacant office along the Garden of the Gods corridor, we needed to look at what other uses could be brought. Commissioner Slattery said using that south end of the site for housing and attainable housing that the city does need, we need to have a balance of infill and growth and this proposal does that.

Commissioner Slattery added that staff addressed that School District 11 is not overcrowded. Chipeta Elementary is at 90% capacity, but the district as a whole is underutilized. The 400 units will not cause a problem for the district and probably it will be good to bring students back in. Commissioner Slattery agreed with the comment that the whole master plan area needs to be informed of master plan amendments and encouraged Mr. Wysocki and his team to take a look at that. Commissioner Slattery said residents made comments about supporting the whole community and her being in favor of this project is in fact supporting the community as a whole.

Commissioner Slattery addressed the comments about people who live in apartments are crime ridden and that only single-family homes should be in the Mountain Shadows majestic neighborhood. There is really no evidence to support that, especially with the level of nice buildings being proposed. People need to address their own biases because that was a very inappropriate comment. Commissioner Slattery said she believed this was an appropriate use and she would be supporting the motions.

Commissioner McMurray said he researched the data on Chipeta Elementary and agreed with Commissioner Slattery that this development would not overcrowd the school and would be able to service the students. Currently, a significant portion of the school population is choice in, so based on that information, this development will not produce a school crowding issue.

Commissioner McMurray added he had very few concerns about this project. In terms of the fundamentals, everything makes sense relative to the trends of the community, the goals and objectives set out in our city's policies, and so from a high level standpoint, he was on board with the substance of what was presented. However, as the city goes through the process of developing these infill projects, there needs to be a recognition that the devil is in the details, that there needs to be a little bit higher level of scrutiny on what the particulars are for these projects so we can understand whether impacts can be addressed.

Motion by Commissioner McMurray, seconded by Commissioner Raughton, to postpone to the March 18, 2021 City Planning Commission meeting to allow time to review a more detailed concept to include building placement, massing, and connections, as well as a formal evacuation review.

The motion passed by a vote of 7:1:0:1

Aye: 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

No: 1 - Vice Chair Hente

Recused: 1 - Chair Graham

- 6.B. [CPC PUZ 20-00176](#) A PUD Zone Change for the 2424 West Garden of the Gods project, changing 125 acres of land from PIP1/HS (Planned Industrial Park, Hillside Overlay), A/HS (Agriculture, Hillside Overlay) and PUD/HS (Planned Unit Development, Hillside Overlay) to PUD/HS (Planned Unit Development, Hillside Overlay); Maximum Density 15-16.99 dwelling units per acre; 420 maximum dwelling units; Maximum Commercial Building Square Footage of 950,000 square feet; Maximum Building Height of 45 feet; located at 2424 Garden of the Gods Road.

(Quasi-Judicial)

Presenter:

Katelynn Wintz, Senior Planner, Planning & Community Development

Continued Minutes from Item 6.A. (CPC MP 06-00065-A1MJ20)

Commissioner McMurray said it gets down to some of these finer points that are not captured in the concept plan, such as the building heights and setbacks. A 50-foot setback is a pretty significant setback, but when you have it on a grade with a berm of 25-feet from 30th Street, that potentially becomes an issue if you have buildings right up to the line. In reviewing the specific criteria for a zone change, a master plan, and a concept plan for greenfield projects out of Banning Lewis Ranch where there is no one around, these things can be answered straightforwardly. In light of the fact that this is a design and execution dependent infill project, it feels like we have incomplete information from a process standpoint on the criteria for a zone change numbers one and two, the masterplan criteria A.1., A.4. and E.1., as well as the concept plan criteria 1., 3., and 4. Based on those facts, Commissioner McMurray said he was not prepared to give a yes vote and that he would need more information. Commissioner McMurray added that historically, concept plans have a very low level of detail, and then the next step would be the development plan, which is very high level in detail, but there are instances when concept plans can be refined and provide just enough detail to be able to make these kinds of informed decisions without going to the time, cost and expense needed for a development plan. With that, Commissioner McMurray said he would be voting a reluctant no on this project.

Commissioner Almy thanked the Mountain Shadows Community Association for giving a good, high level of detail in their objections to this project. Commissioner Almy said he believed the whole process was hindered by the

fact that the two sides, the developer and the community, were not necessarily coming into this as a business item, but rather got emotional about it, and as a result, communication was lost to some extent. Commissioner Almy agreed with Commissioner McMurray that the plan was too vague with the developer saying there would be some commercial here and apartments over there, but we really are not sure how much, but it'll be one or the other, but it is not quite determined yet. That shows this process is a little bit backwards. It seemed to Commissioner Almy that the developer would have a very clear plan of what they wanted to do before asking for a zone change. It's clear that the industrial park area zoning is not proving financially viable, in that we have a very nice building there, but it's largely unoccupied. The fact the developer can't articulate what the design is causes confusion and mistrust at the community level.

Commissioner Almy shared he is a resident on that side of the town and goes by that area frequently in his travels. He said he tries to picture what apartment dwellings there would look like and what it would do to the whole nature of the place. As the developer indicated it's not the Garden of the Gods, but it is more about the geography, the landscaping the scenery going up the Front Range as we do in that area that is rugged and just as compelling.

Commissioner Almy said the industrial use of the place was done with great consideration to the surrounding land and views and other more aesthetic parts of the design and it largely blends in. Putting up what we have now in these stark apartment buildings, it becomes a very clear item that it is in the way. Other building further south on 30th Street are very much built into the landscape of the area and you hardly notice they are there. Whereas this one looks like it is going to be very built up looking and very residential. So the fact is this is just a zoning change, we're really not changing the height standards, etc, etc. but as soon as you open it up, and say we're changing the zoning, you really give an opportunity for a fresh look on zoning that was conducted years ago, where standards and requirements have changed quite a bit. This, in fact, gives us a chance for the community to get involved and actually have an impact on what's going on there. So as a result of this, and also the fact that it seems that the emergency planning, although considered by people verbally, was really not a formal check off list item, Commissioner Almy said he would not be supporting this initiative.

Commissioner Rickett agreed with the comments made by Commissioners Almy and McMurray, but said he was not necessarily against this project. He agreed that it was not enough information. If the developer wants to take this further, the neighborhood needs to understand there could be 45-foot office buildings on those two parcels. Providing additional information and working with the neighborhood would be the right approach with additional information. Commissioner Rickett said he would be voting no on this development.

Commissioner Raughton said he agreed with the other commissioners comments regarding the level of detail provided and that is why he was urging the developer to put up a balloon to show the height of the building, so that at least it could dissuade some of the concerns about this area on the site. Commissioner Raughton reminded the other commissioners that these are the

city's processes and rules, and it is not the developer's fault that we are not requiring this detail at this level. These are our ordinances that have established this process. Commissioner Raughton said he believed we were at error as a city saying this is the process that has been established. Commissioner Raughton said he would hate to have the landowner held responsible for something the city put in place.

Commissioner McMurray said he realized the applicant has done everything required of them, but they have been in the community for years and they understand this process better than anyone, but he didn't necessarily feel like the commission putting a rubber stamp on this was the right approach.

Commissioner Raughton said that was a dilemma for him as well and believed the additional detail could solve some of the concerns.

Commissioner Hente said a couple of months ago, the commissioner reviewed a project that was across from Fort Carson and that he voted against it because he thought there was inadequate planning and inadequate ability to evacuate during a wildfire. During that discussion, he said he had personal experience on what it is like to evacuate during a wildfire in the Mountain Shadows neighborhood. Commissioner Hente said he did not think he had a conflict here because the actual evacuation route that he used was not through this corridor, and if he had to evacuate again, he would go the same route as before. Even if the cars were piled up down there, it would not affect him because he won't go that way, but a lot of his neighbors would. Commissioner Hente said he wanted to be consistent with his previous vote in thinking that planning and the preparation and the ability to evacuate during a wildfire was bad for that project, and he thinks it is bad for this project too. Commissioner Hente said he would vote against this because it is inadequate in case of a wildfire.

Commissioner Hente said he has great respect for fire marshal Brett Lacy. He had a conversation with him on the night of the fire standing on the corner of 30th and Garden of the Gods where they talked about a lot of the aspects of this. One of those aspects talked about was evacuation, and Commissioner Hente does not feel that there's been any significant improvement to that. Commissioner Hente stressed that he still understood the impact to Mountain Shadows and understood what happened during the wildfire evacuation, and because of that, he cannot support this project.

City Attorney Ben Bolinger reminded the commissioners that if they believe they have incomplete information, they can either ask some more questions of the planner and the applicant or postpone the hearing and let the planner and applicant know what information you would like them to bring back.

Commissioner Rickett said for him, it would need to back to another public presentation after that additional information was provided before sit comes back to the Planning Commission. That would allow the public to understand if they were worried about views or about the look of the residential area, they would have that option because it is currently not zoned for residential.

Commissioner Raughton said he would feel comfortable supporting a deferment for a month.

Commissioner Almy was in agreement to the deferment with the following information to be addressed:

- Have the emergency planning check off on this
- Have the developer provide more detail, to actually assess all these impacts that have been given by the community

Commissioner McMurray

- Requested a massing plan in terms of building envelopes and heights
- A sense of where things will go and how they are going to fit in with the landscape of the neighborhood

Commissioner Ricket added:

- Address the concerns of when the different traffic studies were completed in the four different phases of the traffic study
- Evacuation process

Mr. Wysocki informed the commission the applicant would consent to a postponement with clear direction on what level of detail you would like to see, as long as that level of detail will not be as detailed as a development plan or a set of construction drawings, as well as manage expectations from the neighborhood.

Commissioner Hente said he was not in favor of postponement because he does not see his objections changing, but he wanted to be fair to all with the option to defer this hearing.

Ms. Barlow said it sounded like the request was to put more meat into the concept plan and looking at massing and bulk, although they don't want to be committed to that because it is a concept plan. One neighbor asked for a rendering perspective from Flying W Ranch that we could look at as well. As far as the traffic study, there has been three revisions of the traffic study with traffic engineering multiple times, and she was unsure if there was anything else, they could do. Traffic engineering has already asked them to make various changes and it has been changed three times in response to the neighbors' requests. Everything has been addressed that has been asked of them.

Ms. Barlow said they are willing to give more information and more clarity in terms of specific wording on the concept plan to clarify where the residential and non-residential areas are.

As far as going back through the public process, Ms. Barlow shared they asked city staff to facilitate a meeting between them and the community association at the first neighborhood meeting in October, and staff got no response to that other than they only wanted to meet with Mr. Wysocki. So, a meeting was attempted with the neighbors to discuss what those expectations and those parameters were, and there was no response. Ms. Barlow said she was not

optimistic that they would be able to address all the neighbors' comments because they fundamentally oppose this.

Ms. Barlow said they were happy to give more information to help the planning commissioners with their decision on this to understand they are not approving something that could tur into something else.

Mr. Wysong said their biggest issues were the fact there were a lot of inconsistencies. A lot of what Ms. Barlow talked about clarifying might help. Mr. Wysong said they did not meet with the developers because they did not have enough information, as well as getting late notification. What the association had asked in the December meeting was to do a balloon study to truly understand what this project is before any major expense was made and committed. The response was that is only required at the development plan stage, so they did not pursue going further in communication. Mr. Wysong said the concerns identified are the traffic, the evacuation, as Mr. Hente referred to, and the crime. Mr. Wysong said it is not the people that are living in the apartments, it's the fact that there will be opportunity for crime to be committed.

Mr. Wysong said they would want 30 days to prepare to look at and evaluate what the developer comes up with. Commissioner Hente said at that point would they be willing to meet with the developer, and Mr. Wysong agreed they would.

Commissioner McMurray added one of the elements he would like to see is conceptually, what is being done to address pedestrian connections to the surrounding networks. Just something simple and lightly descriptive is plenty.

Motion by Commissioner McMurray, seconded by Commissioner Raughton, to postpone to the March 18, 2021 City Planning Commission meeting to review a more detailed concept to include building placement, massing, and connections, as well as a formal evacuation review.

The motion passed by a vote of 7:1:0:1

Aye: 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

No: 1 - Vice Chair Hente

Recused: 1 - Chair Graham

- 6.C. [CPC PUP 20-00177](#) A PUD Concept Plan for the 2424 West Garden of the Gods project illustrating the development framework for 125 acres of land with a mixture of commercial, residential and open space uses, located at 2424 Garden of the Gods Road.

(Quasi-Judicial)

Presenter:

Katelynn Wintz, Senior Planner, Planning & Community Development

See Item 6.A. (CPC MP 06-00065-A1MJ20)

Motion by Commissioner McMurray, seconded by Commissioner Raughton, to postpone to the March 18, 2021 City Planning Commission meeting to review a more detailed concept to include building placement, massing, and connections, as well as a formal evacuation review. The motion passed by a vote of 7:1:0:1

Aye: 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

No: 1 - Vice Chair Hente

Recused: 1 - Chair Graham

Rollcall

Present: 8 - Commissioner Wilson, Vice Chair Hente, Chair Graham, Commissioner Slattery, Commissioner Rickett, Commissioner Almy, Commissioner Eubanks and Griggs

Excused: 2 - Commissioner Raughton and Commissioner McMurray

21 Marland Road Appeal

6.D. [AR NV 20-00678](#) An appeal of the City Planning Commission’s decision to uphold the appeal of the administrative approval of a nonuse variance allowing a fence/retaining wall combination at a height of 7 feet 6 inches within the side-yard setback addressed as 21 Marland Road.

(Quasi-Judicial)

Related Files:

Presenter:

Meggan Herington, Assistant Director, Planning and Community Development

Peter Wysocki, Director, Planning and Community Development

There were technical issues with the audio/video of this meeting and due to that, some of the words might be missing from the minutes.

Staff presentation:

Alex Osborne, City Planning, presented a PowerPoint with the scope and intent of this project.

Appellant Presentation:

George and Amy Tracy, 17 Marland Road, presented a PowerPoint outlining the reasons they are appealing the nonuse variance.

1. We feel the variance decision clearly goes against PlanCOS for Old

Broadmoor: **to recognize, support, and enhance existing character.**

2. Allowing a fence/wall that's not in compliance with City Code 7.4.102.A.2 **is harmful to our property and to the Count Pourtales neighborhood.**

City Zoning:

3. Fences/walls over 6' are considered accessory structures and must meet accessory structure setback and height requirements. In R-Estate, the setback is **10 feet from the side property line.** Moving 3 feet back, fence becomes a 6' fence.

Structural Engineer:

4. Three feet of soil between a wall and a fence prevents overturning forces to the back of the wall. Utilizing the resistance from the soil between wall and fence post footings reduces this force.

Contrary to City Code 7.5.802.B.2

By the City allowing the fence to remain where it is *at the height it is*, the poorly constructed wall will eventually be in our yard.

- Deterioration of wall will create an unstable driveway for 21 Marland
- Deterioration of wall will add to the existing drainage issue
- Applicants can't maintain because the wall is inches from property line
- Applicants don't have to look at it deteriorating - we do!

Harms the Pourtales Neighborhood

- Allows a nonconforming fence that is atypical to a historical neighborhood of high-end homes
- Makes it difficult for Count Pourtales Association (HOA) to enforce covenants-- "21 Marland got away with it"
- City will use this administrative approval in the future to grant 3' variances and allow fences taller than 6'- just as City did in this decision

7.5.802.B.1 Exceptional Conditions

City: "Due to the **topography** of this lot the homeowner was required to construct a retaining wall in order to stabilize the driveway apron needed for proper access and adequate use of the existing attached garage."

According to 7.5.802 (C.1): The unique physical conditions of the property may be the size or location of existing structures on the property if **such structures are not self-imposed conditions.**

According to 7.5.802 (A.1): The physical conditions shall not be conditions general to surrounding properties.

Under Reasonable Use 7.5.802 (B.1 and B.2)

Staff Analysis:

- Applicants need retaining wall to stabilize driveway
- Cannot access garages without new cement apron and retaining wall
- Fence must stay 3 feet within retaining wall for applicants to access garages

What does any of this have to do with height?

Code 7.3.105A Code Enforcement: ***Lower the height to meet 6' height requirement***

We and our neighbors hope the City will support the appeal of the variance and enforce the height restriction:

If applicants do not want to move back three feet, other options:

- Remove the fence
- Lower to six feet (same as south side of applicants' yard)
- Remove the retaining wall and place next to driveway--and restore the previous natural topography

Applicant Presentation:

David Surofchek, 21 Marland Road, presented a PowerPoint outlining the need for the nonuse variance.

- To allow for a retaining wall to support expanded driveway. This expanded driveway allows for utilization to the garage more effectively
- To allow for a retaining wall to mitigate water flowing from the north downward sloping driveway to the neighbors to the north
- To allow for reasonable use of the entire property as surveyed
- To allow for a 6 foot fence near the retaining wall providing necessary privacy to allow us to live in our home with the privacy anyone would expect in their own home. This privacy has been violated in several ways by our neighbors to the north of us

Important Points of Consideration:

- HOA approved the fence and retaining wall
- Fence/Retaining Wall existed for 2 years before the code enforcement complaint was filed
- Water drainage before retaining wall ran onto neighbor's property
- Numerous homes within the neighborhood have similar retaining walls and fences

Due to extraordinary and exceptional conditions caused by the proximity of the houses, the slope of land and the necessity of the retaining wall to support our driveway, the location of our neighbors as well as the windows in our house, and the need for privacy especially due to the actions to prevent this privacy by our neighbors at 17 Marland, the retaining wall and fence above it as it stands today are necessary for the reasonable enjoyment of our property.

Questions:

Commissioner Rickett asked Mr. Osborne if the fence was out of code, and Mr. Osborne confirmed it was.

As a point of clarification, Ms. Meggan Herington, Assistant Director of Planning

and Community Development, informed the commissioners that the code section is a fairly newer section of code from around 2015 or 2016 that was vetted through the City Planning Commission and City Council. Commissioner Rickett thanked her for the clarification and giving the perspective of the timing.

Commissioner Rickett commented that this fence went up in 2018 and said that we don't not know when the other comparable fences in the neighborhood went up and asked if that was correct. Ms. Herington said that was correct, we would not know, but the other piece of why we would not know is that a retaining wall less than four feet does not require a building permit. So, there is nothing directing anyone to come in and speak with planning or the Regional Building Department. There are no records for those or for fences 6-feet or less.

Commissioner Almy said since there is no formal requirement to review for a retaining wall less than 4-feet, does that imply the engineering required is not nearly as stringent, or the risk is not nearly as bad for a short retaining wall like this? Ms. Herington said she was not sure from a Land Use Review perspective that she could answer that. The Regional Building has determined that a permit was not required, therefore, no engineering is required for the wall.

Commissioner Hente said that would be correct, if there was no permit required, then there would be no need for engineering.

Supporters:

None

Opponents:

None

Questions of Staff:

N/A

Rebuttal:

Appellant Rebuttal:

Mr. Tracey requested that the commissioners stick to the code and rely on the facts, and that is all he was asking for.

Applicant Rebuttal:

Mr. Surofchek did not have any comments.

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Commissioner Rickett said this might be something between neighbors and for that he was sorry. Commissioner Rickett said he was looking at this from a code standpoint, and variances can be granted to codes all day long. He said

he has gotten them in construction and it is something that is used from time to time. Commissioner Rickett said in this case, he was going to stick with the code. The fence could be trimmed to keep the site line to make it continue to look nice (inaudible), and reiterated he would be sticking with the code.

Motion by Commissioner Rickett, seconded by Commissioner Slattery, to uphold the appeal and deny the administrative approval of the nonuse variance to City Code Section 7.4.102.A.2, based on the finding that the nonuse variance does not meet the criteria for granting a nonuse variance in City Code Section 7.5.802.B and that the appellant has substantiated that the appeal satisfies the review criteria outlined in City Code Section 7.5.906.A.4. The motion passed by a vote of 4:3:2:0

Aye: 4 - Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

No: 3 - Commissioner Wilson, Vice Chair Hente and Chair Graham

Absent: 2 - Commissioner Raughton and Commissioner McMurray

7. PRESENTATIONS/UPDATES

8. Adjourn