



January 22, 2014

Colorado Springs City Clerk  
City Administration Building  
30 N. Nevada  
Colorado Springs, CO 80903

RE: **Appeal To The Colorado Springs City Council Of The Planning Commission's Decision, Rendered January 16, 2014, Approving Development Application No. CPC CU 13-00077.**

Dear Council President King and Honorable Council Members:

1. General Statement of the Nature of the Controversy

This appeal arises from a decision by the Planning Commission to disregard the Hillside Overlay Ordinance No. 83-229 of September 13, 1983, as amended from time to time, in approving the Development Application of the Whistling Pines Gun Club West LLC to locate an indoor shooting range in a Planned Industrial Park with Hillside Overlay.

Hillside Ordinance 7.3.504.B1 Applicability states in relevant part:

“For multifamily, residential and non-residential development proposals, the above referenced requirements and review criteria **shall** be addressed, recognizing that these requirements will apply on a site-wide rather than a lot by lot basis. All other requirements and criteria set forth in this section **shall** be applied to all development proposals.”

Hillside Ordinance 7.3.504.B2 Approvals Required states in relevant part:

“No building or structure may be erected, reconstructed or structurally altered on land which is designated on the zoning maps of the City as being in a hillside area overlay, **nor shall** such land be subdivided, graded, or otherwise disturbed for development, subdivision or any other purpose unless such construction, subdivision, disturbance or development is undertaken in accord with the requirements set forth in this section of this Code.”

CITY CLERK'S OFFICE

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Hillside Ordinance 7.3.504.B3 Exemption states in relevant part:

“The nature of the exemption request determines the process the property owner must follow.

a. If a property owner is requesting an exemption of all the requirements of the hillside overlay, it will be necessary to rezone the property.”

The Applicant’s property is clearly in the Hillside Overlay and as such, is subject to all of the requirements of the Hillside Ordinance. The requirements of this Ordinance are mandatory and are not precatory.

## 2. Description of Issues Raised On Appeal

1) The Development Application of the Whistling Pines Gun Club West, LLC (hereafter, “Gun Club”) seeks to exempt itself from the requirements of the Hillside Overlay Zone ordinance (hereafter, the “Hillside Ordinance”), by simply ignoring the requirements of the Hillside Ordinance. Its Application does not contain a re-zoning request, per the requirements of 7.3.504.B3, and therefore, the Application may not be approved by the Planning Commission or the City Council.

2) The Hillside Ordinance at 7.3.504.C2 Land Suitability Analysis requires that:

“a land suitability analysis shall be required in conjunction with the City’s review of a Hillside Development Plan.”

No such plan was submitted as part of the Gun Club’s Development Plan. This analysis is very important in accomplishing the stated “purpose” of the Hillside Ordinance in preserving the “*unique characteristics and natural heritage of the City*” and the “*objective*” of the Ordinance to “*conserve the unique natural features and aesthetic qualities of the hillside areas*”. Without this analysis, the Planning Commission was unable to properly assess the merits of the Application and therefore erred in approving the Application.

3) The Hillside Ordinance at 7.3.504.E Wildfire Risk Mitigation contains, among other things, the requirement for disclosure statements on the hillside site plan/lot grading plans. In view of the Waldo Canyon and Black Forest fires, these wildfire mitigation omissions are inexcusable. Did the Planning Commission not learn anything from these two disasters? Are we destined to repeat history and experience another Waldo Canyon conflagration, this time on the beautiful Pope’s Bluff neighborhood and the Garden of the Gods

Business Park? The Gun Club Conditional Use Application could have been, and should have been denied on this important public safety basis alone.

4) The Hillside Ordinance at 7.3.504.H Review of Hillside Site Plans/Lot Grading Plans requires that:

“No construction activity, including grading or removal of vegetation, shall occur on lots or parcels subject to the Hillside Overlay Zone until a Hillside Site Plan/Lot Grading Plan has been approved by the Community Development Department.”

This ordinance provision has been violated on two levels: First, they have not submitted a Hillside Site Plan with their Application; and second, Applicant recently started grading and removal of vegetation before the approval of any grading plan. This illegal grading must be remediated before any Conditional Use Permit can be considered. The Planning Commission is bound by the City’s own ordinances, and as such, was without authority to approve the Application without a Hillside Site Plan.

5) The Hillside Ordinance at 7.3.504.I Illegal Land Disturbance, Grading and Vegetation Removal provides in relevant part:

*“1. Compliance Required: all grading and vegetation removal, erosion and stormwater quality control, restoration and maintenance within the hillside area overlay **shall** be accomplished in accord with the City approved grading, erosion and stormwater quality control and reclamation plans and/or hillside site plan/lot grading plan and the provisions of this section.*

*2. Noncompliance With Approved Grading, Erosion And Stormwater Quality Control, And Reclamation Plans: Any overlot, street, drainage, utility grading or other land disturbance performed which is not in compliance with the approved hillside grading, erosion and stormwater quality control, and reclamation plans and the provisions of this section **shall** be deemed to be a violation of part 15 of the Subdivision Code of this chapter. Any violation shall be enforced in accord with the procedures set forth in part 15 of the Subdivision Code of this chapter. If the City Engineer determines that there is either imminent or existing erosion damage, drainage damage, dust pollution of other hazardous conditions for which immediate action*

*is necessary, the City Engineer may cause corrective procedures to be undertaken at the full expense of the property owner and may take other enforcement actions deemed necessary as outlined in section 7.7.1509 of this chapter.*

*3. Noncompliance With Approved Hillside Site Plan/Lot Grading Plan: No grading or removal of vegetation shall occur on properties subject to the hillside overlay zone other than that authorized on the City approved hillside site plan/lot grading plan. Any grading or vegetation removal occurring on an individual lot or tract which does not comply with the City approved hillside site plan shall be deemed to be a violation of this Code. The Manager is authorized to pursue enforcement actions including, but not limited to, the issuance of a notice and order for illegal grading or vegetation removed in violation of the approved hillside site plan/lot grading plan.”*

Ms. Lydia Maring, PE, of City Engineering, has provided us with a copy of the Concept Plan for Garden Of The Gods Business Park, Filing # 10, which document is stamped “**APPROVED, Development Services Division, Dec 22, 1994, by Development Services Manager.**” This document shows the topography of the subject property in 1-foot intervals as it existed on “September 26, 1994”, before the unauthorized grading occurred. (See **Exhibit 3** submitted with our letter of opposition to the Planning Commission, dated January 15, 2014).

The Colorado Springs Utilities Department provided us with the topographic map, illustrating in 2-foot intervals the topography of the subject property after the unauthorized grading. (See **Exhibit 4**, submitted with our letter of opposition to the Planning Commission, dated January 15, 2014). In comparing these two maps, it is easy to see that the northern one-fourth (¼) of the Gun Club property and the southern half (½) of the GeoTech property were excavated by up to 12 feet deep, and the southern half of the Gun Club property was raised about 5 feet. The cuts and fills seem to balance perfectly.

The result of this unauthorized grading was to create 35% to 47% slopes on two sides of the GeoTech property, and (not unremarkably) a flat level building site of about 2% grade or less on the Gun Club property. The effect on the GeoTech property produced slopes too steep to support vegetation, causing serious erosion and drainage problems and resulting ecological damage. It also made access to the GeoTech property up a 47% slope impossible. Additionally, this unauthorized excavating has left a horrible scar



on the hillside landscape just below one of this City's distinguishing natural features: the Pope's Bluff cliff and rock outcropping. (See **Exhibits 2 and 5** submitted with our letter of opposition to the Planning Commission, dated January 15, 2014). The Hillside Ordinance was designed to prevent this very damaging geologic and ecological disturbance. It has failed for now, but that can be remedied in part by the City Council's reversal of the Conditional Use Application approval.

Planning and development cannot begin until after this property has been fully restored to its original and lawful condition. Only then can the development process go forward. To do otherwise rewards unlawful disrespect of our ordinances and promotes environmental damage to our fragile hillsides.

The Development Plan is the document that establishes the project design parameters. In the Hillside Area Overlay Zone, the hillside development criteria, as set forth in the ordinance, must be incorporated into the Development Plan. The Gun Club has failed to do this and its Application must be denied.

The Gun Club proposes, with their latest December 5, 2013 "Preliminary Grading Plan" (see **Exhibit 6**, submitted with our letter of opposition to the Planning Commission, dated January 15, 2014), to cut into the hillside again, this time to excavate over 11,000 cubic yards of dirt and rock to be hauled off the site and disposed of. That is over 1,000 tandem-axle truckloads of dirt and rock. This radical plan will create even more 35% slopes and more scars in the Hillside Area Overlay. When does the rape of this hillside property end?

It is clear that this building does not fit the site, so they are modifying the property in a radical and intolerable manner to fit the building. This is backwards. Buildings must be designed in the Hillside Area Overlay Zone to fit the earth.

For the reasons set forth above, GeoTech appeals to the Colorado Springs City Council to reverse the decision of the City Planning Commission's approval of Gun Club's Conditional Use Application, and to deny such Application.

Sincerely,



G. W. Flanders, President

*Request Council Meeting of February 25, 2014*



Appeal Exhibit

January 15, 2014

Colorado Springs City Planning Commission  
Mr. Edward Gonzalez  
30 South Nevada Avenue, MC 155  
Colorado Springs, CO 80903

**RE: Objection to Whistling Pines Gun Club's Conditional Use Application**

Dear Chairman Gonzalez:

The Conditional Use Application of Whistling Pines Gun Club West, LLC (hereafter, the "Gun Club") may not be approved by the Planning Commission, as this Application and the subject property, among other reasons, does not comply with the Hillside Area Overlay Zone ordinance (hereafter, the "Hillside Ordinance"). (Exhibit 1).

Further, the subject property as it exists today, is in gross Noncompliance With Approved Grading under Hillside Ordinance 7.3.504.1.1-3, which requires that: "Any violation **shall** be enforced in accord with Part 15 of the Subdivision Code; the City Engineer may cause corrective procedures to be taken at the full expense of the property owner; and The Manager [Planning Director] is authorized to pursue enforcement actions." Enforcement of this Ordinance is mandatory, not precatory.

Consequently, the Planning Commission is without authority to approve this Application. The only action the Commission can take is to formally deny this Application and remand it back to the Planning and Development Department with instructions to commence an enforcement action under the applicable ordinances, given the imminent and existing damage that has occurred as a result of noncompliance.

The Hillside Ordinance, #83-229, was adopted by the City Council on September 13, 1983. The purpose of the ordinance was to preserve the "unique characteristics and natural heritage of the City." The objective is "to conserve the unique natural features and aesthetic qualities of the hillside areas." (Hillside Ordinance 7.3.504.A.2.-3.) The properties that we are talking about this morning are the quintessential example of this important **purpose** and **objective** being totally violated.

Hillside Ordinance 7.3.504.B.2, Approvals Required, states in relevant part:

*"No such land shall be subdivided, graded or otherwise disturbed for development, subdivision, or any other purpose unless such construction, subdivision, disturbance, or development is undertaken in accord with the requirements set forth in this section and this Code."*

The files and records of the City Engineer and the City Utility Department demonstrate that very substantial illegal grading and ecological disturbance of wildlife habitat and hillside vegetation have occurred on the subject property and heretofore unbeknown on an adjoining property, all without an approved Grading Plan or approval of the adjoining property owner. The unlawful excavation of approximately 15,000 cubic yards of dirt and rock has destroyed the natural features and aesthetic qualities of this previously beautiful hillside area, and has caused serious soil erosion, drainage problems, and water quality degradation. (See **Exhibit 2**).

Hillside Ordinance 7.3.504.B.3.a requires that if a property owner wishes to be exempt from the “*Hillside Area Overlay it will be necessary to **rezone** the property.*” The Gun Club’s Conditional Use Application violates the Hillside Ordinance in every one of its nine (9) requirements (Sections A through I), and the property owner has made no rezoning request for exemption therefrom. Therefore their application is nonconforming and incomplete and may not be approved.

Hillside Ordinance 7.3.504.C requires that the applicant submit a Land Suitability Analysis. This analysis must, among many other things, “assess the impact of proposed development both on and off the site.” The Gun Club has not submitted such analysis and its Application is in violation of the Hillside Ordinance by not having done so.

Hillside Ordinance 7.3.504.D references the requirement for a Hillside Development Package, and should be required of Applicant, as their proposed development is so drastically different from any previously proposed, and/or now expired, development plan. This 4-page Ordinance contains 59 paragraphs of requirements that have been ignored. The Gun Club has not submitted a Hillside Development Package.

Hillside Ordinance 7.3.504.E Wildfire Mitigation contains 14 paragraphs of very important requirements, including among other things, the requirement for disclosure statements on the Hillside Site Plan/Lot Grading Plans. In view of the Waldo Canyon and Black Forest fires, these wildfire mitigation omissions are inexcusable. The Gun Club Conditional Use Application should be denied on this basis alone.

Hillside Ordinance 7.3.504.I Illegal Land Disturbances, Grading and Vegetation Removal provides:

*“1. Compliance Required: all grading and vegetation removal, erosion and stormwater quality control, restoration and maintenance within the hillside area overlay shall be accomplished in accord with the City approved grading, erosion and stormwater quality control and reclamation plans and/or hillside site plan/lot grading plan and the provisions of this section.*”



2. Noncompliance With Approved Grading, Erosion And Stormwater Quality Control, And Reclamation Plans: Any overlot, street, drainage, utility grading or other land disturbance performed which is not in compliance with the approved hillside grading, erosion and stormwater quality control, and reclamation plans and the provisions of this section **shall** be deemed to be a violation of part 15 of the Subdivision Code of this chapter. Any violation shall be enforced in accord with the procedures set forth in part 15 of the Subdivision Code of this chapter. If the City Engineer determines that there is either imminent or existing erosion damage, drainage damage, dust pollution of other hazardous conditions for which immediate action is necessary, the City Engineer may cause corrective procedures to be undertaken at the full expense of the property owner and may take other enforcement actions deemed necessary as outlined in section 7.7.1509 of this chapter.

3. Noncompliance With Approved Hillside Site Plan/Lot Grading Plan: No grading or removal of vegetation shall occur on properties subject to the hillside overlay zone other than that authorized on the City approved hillside site plan/lot grading plan. Any grading or vegetation removal occurring on an individual lot or tract which does not comply with the City approved hillside site plan shall be deemed to be a violation of this Code. The Manager is authorized to pursue enforcement actions including, but not limited to, the issuance of a notice and order for illegal grading or vegetation removed in violation of the approved hillside site plan/lot grading plan.”

Ms. Lydia Maring, PE, of City Engineering, has provided us with a copy of the Concept Plan for Garden Of The Gods Business Park, Filing # 10, which document is stamped “**APPROVED, Development Services Division, Dec 22, 1994, by Development Services Manager.**” This document shows the topography of the subject property in 1-foot intervals as it existed on “September 26, 1994”, before the unauthorized grading occurred. (See **Exhibit 3**).

The Colorado Springs Utilities Department provided us with the topographic map, illustrating in 2-foot intervals the topography of the subject property after the unauthorized grading. (See **Exhibit 4**). In comparing these two maps, it is easy to see



that the northern one-fourth ( $\frac{1}{4}$ ) of the Gun Club property and the southern half ( $\frac{1}{2}$ ) of the GeoTech property were excavated by up to 12 feet deep, and the southern half of the Gun Club property was raised about 5 feet. The cuts and fills seem to balance perfectly.

The result of this unauthorized grading was to create 35% to 47% slopes on two sides of the GeoTech property, and (not unremarkably) a flat level building site of about 2% grade or less on the Gun Club property. The effect on the GeoTech property produced slopes too steep to support vegetation, causing serious erosion and drainage problems and resulting ecological damage. It also made access to the GeoTech property up a 47% slope impossible. Additionally, this unauthorized excavating has left a horrible scar on the hillside landscape just below one of this City's distinguishing natural features: the Pope's Bluff cliff and rock outcropping. (See Exhibits 2 and 5). The Hillside Ordinance was designed to prevent this very damaging geologic and ecological disturbance. It has failed for now, but that can be remedied in part by this Commission's denial of this Conditional Use Application.

These facts that have just recently come to light are not intended to fault the Planning Department in any way, as there is a great deal of history behind this property that the Planning Department did not have access to. In fact, Planner Erin McCauley has done a very commendable and professional job in processing this Application, in keeping the neighbors informed, and in representing the City and its citizens' interest, while at the same time encouraging growth and development. Way to go, Erin!

GeoTech did not previously inform the Planning Department of this property history and these circumstances, as we only recently completed our investigation and came into possession of these facts and were then able to arrive at these conclusions. Additionally, we were trying to work out a remediation plan with the Gun Club that would not require the City to get involved. That failed due to the intransigence of Mr. Holmes. For four (4) months, after having filed his Conditional Use Application, on August 5, 2013, he refused to meet with us or to return our calls, despite the fact that our property directly adjoins the Gun Club property on 3 sides: north, east and west. He finally, albeit reluctantly, agreed to meet with us on December 5, 2013. We discussed various options and came to some preliminary understandings, agreeing to talk again in 1 week. But again, Mr. Holmes and his contractors refused to return our calls. Additionally, my letter of December 24, 2013, to Mr. Holmes' legal counsel remains unresponded to. We have exhausted all efforts to remediate this unfortunate situation; it is now up to the City to enforce its ordinances and to accomplish the much needed remediation.

✓ Planning and development cannot begin until after this property has been fully restored to its original and lawful condition. Only then can the development process go forward. To do otherwise rewards unlawful disrespect of our ordinances and promotes environmental damage to our fragile hillsides.

The Development Plan is the document that establishes the project design parameters. In the Hillside Area Overlay Zone, the hillside development criteria, as set forth in the ordinance, must be incorporated into the Development Plan. The Gun Club has failed to do this and its Application must be denied.

The Gun Club proposes, with their latest December 5, 2013 "Preliminary Grading Plan" (a would-be Development Plan) (see **Exhibit 6**), to cut into the hillside again, this time to excavate over 11,000 cubic yards of dirt and rock to be hauled off the site and disposed of. That is over 1,000 tandem-axle truckloads of dirt and rock. This radical plan will create even more 35% slopes and more scars in the Hillside Area Overlay. When does the rape of this hillside property end?

There is no "Development Plan" *per se*. The Gun Club submitted a Site Plan and a Preliminary Grading Plan. We are all left with the task of combining those two in our mind in order to begin to understand what the development plan might be, and what the property owner might be up to.

Further, the Gun Club's Preliminary Grading Plan now demonstrates that the building site is being excavated so deeply into the hillside that the building and its parking lot, at an elevation 6,328 feet, will be 10 feet below the hundred-year flood plain of 6,338 feet. This just invites disaster. Additionally, this grading within the floodplain is a violation of the Colorado Floodplain Damage Prevention Ordinance, (Title 29, Article 20, of the Colorado Revised Statutes) and such violation must not be sanctioned by this Commission's approval of their Application and Preliminary Grading Plan.

The proposed steep and deep-cut grading in the floodplain occurs just feet away from the major Douglas Creek, deep-profile, drainage structure. An engineering question remains as to what degree the integrity of this important drainage structure will be compromised by the proposed steep and deep-cut grading next to this structure. Will the hydrostatic pressure on the side of the channel during flood stage blow out the side-wall and flood both the Gun Club building and the entire Garden of the Gods Business Park?

It is clear that this building does not fit the site, so they are modifying the property in a radical and intolerable manner to fit the building. This is backwards. Buildings must be designed in the Hillside Area Overlay Zone to fit the earth.

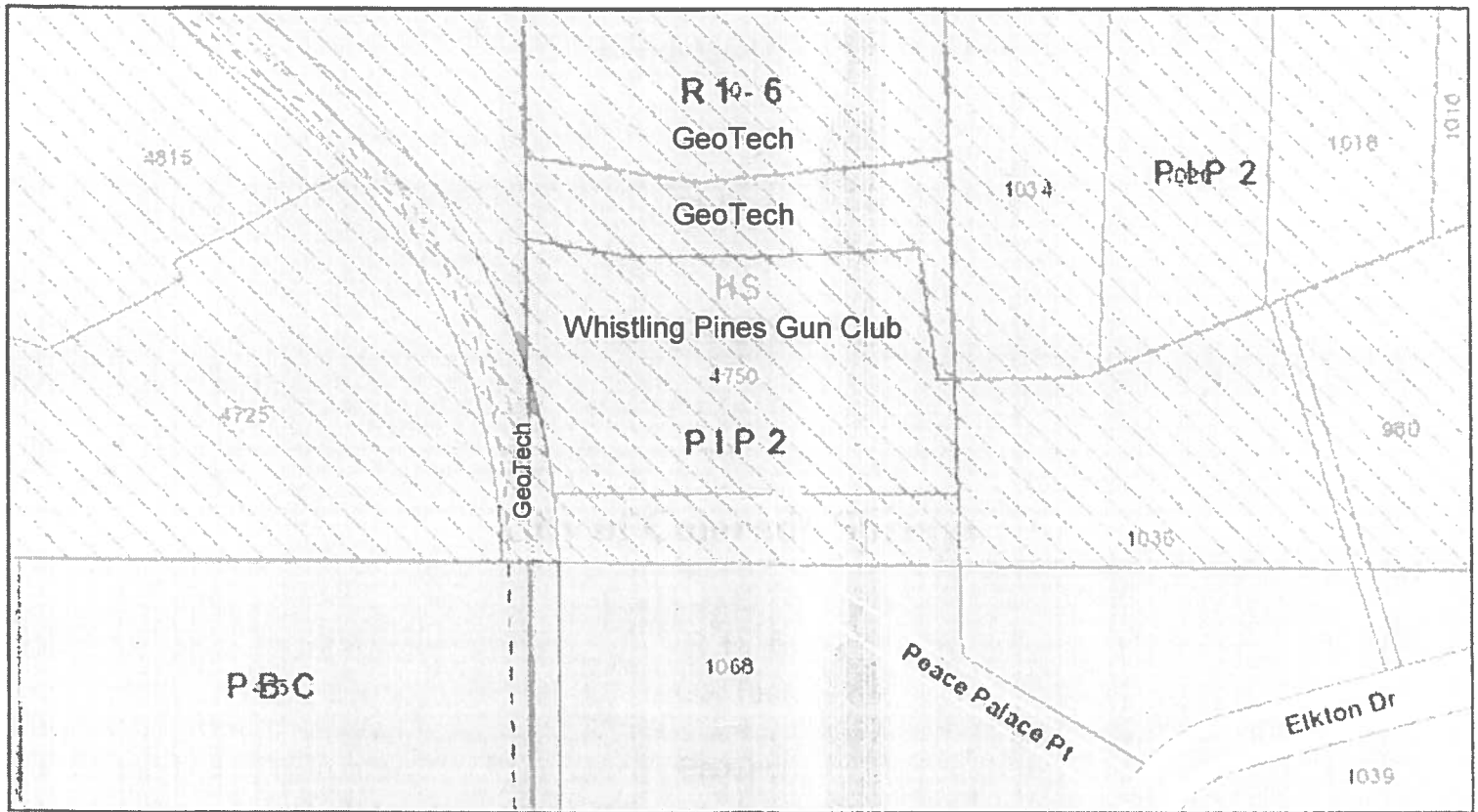
This Application and its proposed development are ill conceived, and are as wrong as two left shoes. We join with our 60 residential and commercial neighbors in requesting that the Application be denied.

Sincerely,



G. W. Flanders, President

# City of Colorado Springs



<b>TSN</b>	7324307013	<b>Mail Zip</b>	80915
<b>Parcel Address</b>	4750 PEACE PALACE PT	<b>Zoning Code</b>	PIP2 HS CU UV
<b>Owner Name</b>	WHISTLING PINES GUN CLUB WEST LLC	<b>Area (SQ FT)</b>	2.50
<b>Mailing Address</b>	1412 WOOSLEY HTS	<b>RBD Permits</b>	Permits
<b>Mail City</b>	COLORADO SPRINGS	<b>Tax Information</b>	Property Details
<b>Mail State</b>	CO	<b>LUR History</b>	View History

## EXHIBIT 1

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**Map Scale**  
1 inch = 217 feet

12/11/2013





EXHIBIT 2



CONCEPT PLAN FOR  
**GARDEN OF THE GODS BUSINESS PARK FILING NO. 10**  
 AREA = 104.187 ACRES, MORE OR LESS.

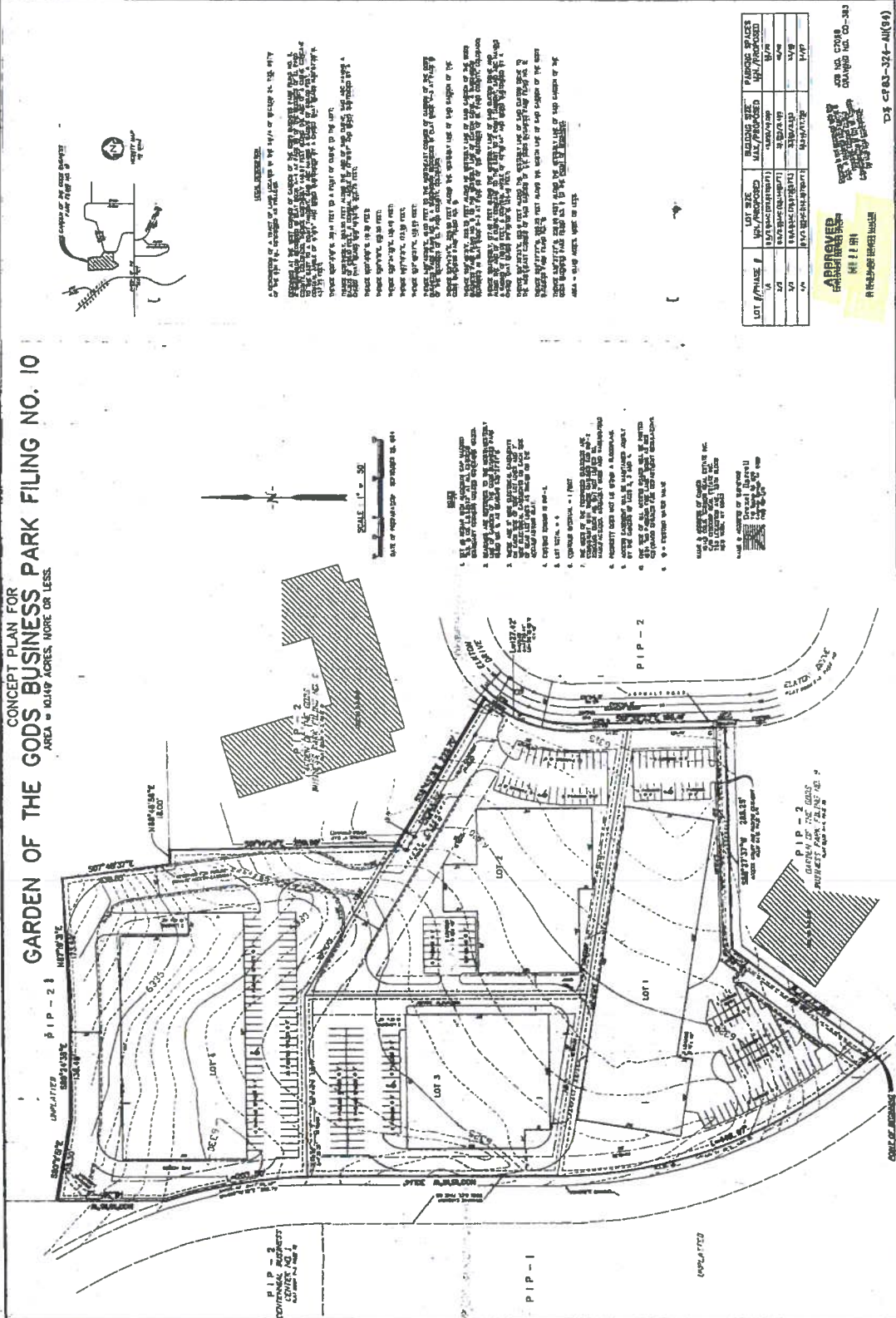


EXHIBIT 3

**APPROVED**  
 [Signature]  
 [Title]  
 [Date]

FILE NO. 104  
 COUNTY OF COCOA  
 COMM. NO. 100-383

D-3 C-283-324-A(91)





