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June 6, 2022

RE: Appeal Statement of Administrative Approval of AR DP-00813 and AF FP-00814 Response Letter

To the City of Colorado Springs:

On behalf of Kum & Go, we are submitting this letter to respond to the two "Appeal to City Planning Commission" letters submitted to the City to appeal the Development Plan and Final Plat approvals of the Kum & Go Gas and C-store located at the southeast corner of South 8th Street and West Brookside Street. The two appeal letters were sent to Kum & Go 5/31/22 and 6/1/22.

Kum & Go has spent the past several months working closely with the City and the community to identify areas of concern with this project. This process included two neighborhood meetings, presentations, direct contact with neighborhood groups and other community members outside of those meetings, written comment responses, offers to attend phone calls to answer additional questions, and multiple calls and emails with various jurisdictional agencies. Significant modifications were made to the project because of the feedback received.

The comments received in the two appeal letters have been previously addressed within those multiple formats throughout the duration of the project. They are reiterated within this letter and supplemental information is attached. Kum & Go is providing improvements, above and beyond code requirements in some cases, that enhance this site and provide much needed improvements to the existing conditions.

Most of the changes made are a result of communication and feedback received from the Ivywild Neighborhood Group. This property does not fall within the Ivywild Master Development Plan, nor is it directly adjacent to it. As such, while this group doesn't have jurisdiction over this development, Kum & Go felt they should still accommodate their concerns and have made many changes to accommodate them regardless of the fact that this property does not lie within the Development Plan.

The following identifies a few of the major modifications to the project that were made as a result of community feedback.

The first is re-routing the existing drainage patterns to direct runoff from the site and the public roadway to the west side of the site, away from the residential parcels to the east, the owners of which have significant concerns with existing flooding and the ramifications that may occur with the proposed development. Re-routing the runoff eliminates the ongoing concern by the community of flooding the residential neighborhood where there is currently no clear path for the runoff. To accommodate this modification, a long variance process was required. Re-routing this existing drainage was not a requirement of the development, as code allows runoff to flow in its historic pattern, nor was Kum & Go required to enlarge their detention basin to provide water quality and detention for the public City ROW. They listened to the community, however, and felt it was vital for them to incur the additional costs and time associated with fixing this existing issue. That variance has been approved and is attached to this letter for more detail.

A second major improvement relates to existing traffic safety concerns. The project improves the traffic congestion created in the existing condition where cars back directly into the public ROW, presenting a safety issue. That condition is no longer allowed within the city and will be eliminated as part of this project. In addition, to accommodate the traffic concerns addressed at the second neighborhood meeting, the access points have been revised to prohibit semi traffic going east onto Brookside. The modifications include signage that restricts semi-trucks taking a right out of the site onto Brookside at either access point and signage preventing semi-truck traffic entering the eastern access road from the south. These restrictions will be shared within Kum & Go and with all

vendors that serve Kum & Go. Turn simulations for both fueling and delivery vehicles have been provided to the City demonstrating these movements. A traffic impact study, prepared based on local and national standards, demonstrates that the traffic increase is minimal and there will be no negative impacts as a result of this development. This concern was further addressed and explained by the City Traffic Engineer, who supported these findings, at the second neighborhood meeting. This report has been approved by the City of Colorado Springs.

A third modification that was provided after the second neighborhood meeting was the removal of the non-use variance setback to Brookside that was previously requested. Due to community feedback, the site plan has been modified and the project now conforms to all setback requirements.

As a result of this process and the subsequent modifications, planning staff has determined that the Kum & Go project meets the applicable review criteria and the City's PlanCOS Comprehensive Plan intention, vision and policies of the Plan.

The following further identifies specific criteria the City reviews in the application process and how this development complies:

A. To promote the health, safety, convenience, and general welfare of the citizens of the City.

- The proposed development will promote convenience and general welfare of the citizens by improving safety of the neighborhood by eliminating the existing hiding spots that experience frequent criminal activities. Due to the existing unutilized and dark locations on the existing parcel and the non-24-hour operations, the existing property experiences continued issues with camping, graffiti, dumpster fires and break-ins over the past seven years. Kum & Go being staffed 24/7 and eliminating the unutilized portions of the site will provide a different environment and a deterrent for criminal activities. In terms of convenience, besides offering the fueling component which market research indicates is a benefit at this location, it also provides the community with a large variety of healthy and fresh grab-and-go items.

B. To set forth appropriate standards for subdivision design which will:

1. Encourage the development of sound, economical, stable neighborhoods and create a healthy living environment for the residents of the City, in conformance with the goals and policies of the Comprehensive Plan.
- Safer site circulation will be provided by increasing the size and ability to access the parking stalls interior to the lot without interfering with the public right-of-way, as it does in the existing condition. Public improvement easements are being placed over newly proposed sidewalks on the north and west side of the site, also bringing it up to current day standards and allow safer pedestrian maneuverability. Additionally, the proposed project includes access to all utilities necessary for development. The project is in conformance with the goals and policies of the comprehensive plan to keep an established neighborhood and promote existing land uses.
2. Provide for lots of adequate size, configuration, and appropriate design for the purpose for which they are to be used and to accommodate the physical features of the site.
- The proposed development includes re-platting five lots into a one lot consistent with current day standards. The combination of the lots will promote development by creating lots of adequate sizes to allow design to comply with city standards for the allowed uses within this zone district. The single 1.04-acre proposed lot is an adequate size for this development.
3. Promote design flexibility.
- The replat promotes flexibility for future development by increasing the size of one developable lot, rather than five smaller lots which would not allow for future development.

4. Provide for streets of adequate capacity and with which appropriate improvements will handle anticipated traffic flow.

- A traffic impact study has been prepared to clarify no negative impacts will result from the increase of customer traffic at the development. In addition, appropriate signage and striping will be provided per city standards to ensure safe crossings at all access points. The project improves the traffic congestion created in the existing condition where cars back directly into the public ROW. That's no longer allowed within the city and will be removed as part of this project. The city traffic division reviewed the traffic study and confirmed access points were acceptable. In addition, to accommodate the traffic concerns addressed at the second neighborhood meeting, the access points have been revised to prohibit semi traffic going east onto Brookside. The modifications include signage that restricts semi-trucks taking a right out of the site onto Brookside at either access point and signage preventing semi-truck traffic entering the eastern access road from the south.

5. Preserve the significant natural features and environmental quality of the City.

- There are no natural features or environmental qualities associated with the existing site and therefore they will not be impacted by this replat or project. Significant additional landscaping will be provided which will enhance the property.

C. To set forth appropriate standards for utilities and services which will:

1. Provide an efficient, adequate, and economical supply of utilities and services to land proposed for development, in order to assure that governmental costs are minimized to the greatest extent possible.

- There are sufficient public utilities surrounding the proposed project area and no public utility extensions nor any governmental costs are required.

2. Ensure at the time of subdivision that adequate storm drainage, sewage disposal and other utilities, services and improvements needed as a consequence of subdivision of land are provided.

- Storm drainage, sewage disposal, and all other utilities will be provided by the proposed development.

3. Provide for the undergrounding of all public utilities lines up to thirty thousand (30,000) volts except as otherwise provided in section 7.7.805 of this article.

- There is no anticipated need to underground public utilities, but if it becomes required they will be undergrounded as part of this project.

D. To assure the provision of adequate and safe circulation which will:

1. Minimize traffic hazards through means of appropriate street design and provide for safe and convenient vehicular and pedestrian traffic circulation.

- Pedestrian traffic circulation will be provided within new public improvement easements and sidewalks and internally throughout the site. The site has been designed to separate pedestrian vehicles from the delivery vehicles by creating a drive aisle around the building so that they will be parked away from the rest of the site and there won't be any conflicts. In addition, Kum & Go has proposed a right-in only on Brookside and will not allow any semi-trucks driving east on Brookside per concern from the neighbors.

2. Provide for adequate vehicular access to abutting properties and the subdivider's remaining holdings.

- There are no abutting properties within the replat/project that would require cross-access. The commercial building to the south, Key Bank, has agreed to vacating any current cross-access that exists and is unnecessary for the functioning of either property. Both properties will now have access directly

into their individual parcels, consistent with current standards. Attorneys have confirmed there is no existing access easement that serves the property to the east, nor is one being proposed.

3. Assure that street rights-of-way are provided for in accord with the major thoroughfare plan and the City Engineer design manual.

- A small additional right-of-way dedication to the City of Colorado Springs is required to keep the existing curb and gutter within 8th Street in public right-of-way. This is occurring as part of this replat.
4. Provide for safe and convenient pedestrian access throughout the community.
- New public improvement easements with attached sidewalks will be provided on 8th Street and Brookside Street per City standards.

E. To assure adequate public facilities are provided which will:

1. Enhance the coordination of subdivision development with the provision of public facilities such as parks, recreation areas, schools, and other types of community facilities.
- The proposed project will enhance the community by providing a convenient location to stop for fuel, healthy food, and other items the convenience store offers. Market studies have indicated this area would benefit from these services. While it's not a park, recreation area, school, or other community facility, it will provide services for those utilizing all of those within the neighborhood. The size nor location of this project are conducive to any of those uses.
2. Ensure that public facilities are provided in accord with the City's Comprehensive Plan.
- No public facilities are required as part of the project.
3. Provide for adequate law enforcement and fire protection facilities.
- Fire truck circulation is provided as part of the project. Kum & Go has been working with local law enforcement to implement extra measures such as "no loitering" signs, security cameras and locks on exterior items given the criminal activity in the area. Kum & Go will continue to work with local law enforcement after the building opens.

F. To ensure the appropriate development of the community through the implementation of the goals and policies of the Comprehensive Plan. (Ord. 96-44; Ord. 01-42)

- The replat will provide a single parcel and maintain the same land use as previously adopted by the City and neighborhood groups. No rezone or special use permits are required. This project is a use by right.

1. The details of the use, site design, building location, orientation and exterior building materials are compatible and harmonious with the surrounding neighborhood, buildings and uses, including not-yet-developed uses identified in approved development plans.

- The proposed Gas Station/Convenience Food Sales is an allowed use by right in the C-5 zone district. The proposed project abides by all design and dimension standards. The building will be setback 20' from Brookside. This project had originally requested a non-use variance to reduce the setback along Brookside. Kum & Go heard the concerns of the communities at the second neighborhood meeting and modified their site plan accordingly by working with their vendors to provide a smaller delivery truck removing the need for this variance. The building exterior materials are compatible and harmonious with the rest of the 8th Street corridor.

2. The development plan substantially complies with any City- adopted plans that are applicable to the site, such as master plans, neighborhood plans, corridor plans, facilities plan, urban renewal plans, or design manuals.

- The site is not part of any master plans. The site has been designed per the Colorado Springs design manual and complies with City Code.

3. The project meets dimensional standards, such as but not limited to, building setbacks, building height, and building area set forth in this chapter, or any applicable FBZ or PUD requirement.

- The project meets all standards, including building setbacks, building height, and building area. Due to community input, the site has been redesigned to accommodate the 20' setback from Brookside and a non-use variance is no longer requested.

4. The project grading, drainage, flood protection, stormwater quality and stormwater mitigation comply with the City's Drainage Criteria Manual and the drainage report prepared for the project on file with the City Engineering Department.

- Grading, drainage, flood protection, stormwater quality and stormwater mitigation all comply with the City's Drainage Criteria Manual as a part of this development. A proposed drainage report has been submitted as part of this application. A drainage variance is required as part of this project to improve the existing condition and re-route the public road runoff that flows through residential properties. While City Code does not require Kum & Go to fix this existing issue, Kum & Go has committed to modifying the drainage and incurring the extra expense associated with that to improve this condition. A variance request has been submitted to SWENT and has been discussed in depth. The variance request has been approved by all governing jurisdictions. Refer to that letter for more information.

5. The project provides off-street parking as required by this chapter, or a combination of off-street or on-street parking as permitted by this chapter.

- Off-street parking proposed by this development meets the requirements of Colorado Springs ordinances, at 1 space per 200 sf of GFA.

6. All parking stalls, drive aisles, loading/unloading areas, and waste removal areas meet the location and dimension standards set forth by this chapter.

- Parking stalls on-site all conform to requirements of Colorado Springs, either 9'x18' or 9'x19'.

7. The project provides landscaped areas, landscape buffers, and landscape materials as set forth in this chapter and the Landscape Design Manual.

- Administrative relief will be requested for the landscape buffer on the eastern property line reducing the required 15' buffer to 11'. All landscape buffers and landscape materials meet codes set forth in the Landscape Design Manual, with the exception of the landscape buffer on the east side. An administrative relief was requested to accommodate the concerns relayed from the community feedback relating to traffic congestion, noise and light pollution, and the drainage issue. It was imperative to the neighbors that the canopy was screened by the building, the drainage was re-routed towards the public road, and that traffic congestion was minimized between delivery and pedestrian vehicles. Kum & Go did accommodate that request, which pushes the ring road further to the east and requires a reduction of 4' to the landscape buffer. While this administrative relief would not be required should the aforementioned items not be met, it is a ramification of creating a site plan that accommodates the communities' concerns. Additional trees have been provided elsewhere on site to accommodate the buffer width decreasing, also per City code. The administrative relief request has been approved by City Staff.

8. The project preserves, protects, integrates, or mitigates impacts to any identified sensitive or hazardous natural features associated with the site.

- There are no existing sensitive or hazardous natural features associated with this site. Kum & Go has safety as its top priority and adheres to strict state and federal guidelines. Their dual-walled fiberglass underground storage tank system and fueling bays provide 24-hour monitoring as well as leak detection, an overfill alarm, vapor recovery equipment, emergency shut-off links, and automatic shut-off dispensing nozzles to limit any gas spillage. Furthermore, the proposed ADS storm sewer system will be wrapped with an isolator row PLUS for water quality treatment of any storm runoff. As a final precaution, all inlets on site will include PC Inlet filter bags for any runoff.

9. The building location and site design provide for safe, convenient, and ADA-accessible pedestrian, vehicular, bicycle, and applicable transit facilities and circulation.

- ADA access is provided throughout the site and to the public right-of-way and complies with all applicable standards.

10. The number, location, dimension, and design of driveways to the site substantially comply with the City's Traffic Criteria Manual. To the extent practicable, the project shares driveways and connects to drive aisles of adjoining developments.

- All access points abide by the City's Traffic Criteria Manual. No shared driveways are proposed as a part of this development.

11. The project connects to or extends adequate public utilities to the site. As required by Colorado Springs Utilities, the project will extend the utilities to connect to surrounding properties.

- All utilities required for the project will be connected to existing public utilities within the public right-of-way. All adjacent properties are established and there is no need to connect utilities to those.

12. If necessary to address increased impacts on existing roadways and intersections, the project includes roadway and intersection improvements to provide for safe and efficient movement of multi-modal traffic, pedestrians, and emergency vehicles in accordance with the City's Traffic Criteria Manual, public safety needs for ingress and egress, and a City accepted traffic impact study, if required, prepared for the project.

- A traffic impact study has been prepared to clarify that no negative impacts will result from increase of customer traffic, if any, at the development. In addition, appropriate signage and striping will be provided per City standard to ensure safe crossings at any entrances. The project also improves the traffic congestion created in the existing condition where cars back directly into the public ROW. That's no longer allowed within the City and will be removed as part of this project. The City traffic division reviewed the traffic study and confirmed access points were acceptable. Per the 2nd DP comment letter, Zaker Alazzeah with the Traffic Engineering department, the City agrees with the Traffic Impact Analysis. In addition, the access points have been revised to prohibit semi traffic going east onto Brookside. The modifications include signage that restricts semi-trucks taking a right out of the site onto Brookside at either access point and signage preventing semi-truck traffic entering the eastern access road from the south.

13. Significant off-site impacts reasonably anticipated as a result of the project are mitigated or offset to the extent proportional and practicable. Impacts may include, but are not limited to light, odor, and noise.

- The offsite drainage impacts to the surrounding properties are improved by the construction of this project. Runoff from the proposed site and from Brookside will no longer drain through residential properties to the southeast. It will instead be re-routed to an underground detention facility and will ultimately discharge into 8th Street (refer to the drainage variance request that was submitted for additional information). The variance request has been approved by all governing jurisdictions. There will

be no fuel smells on site as Kum & Go operates a completely closed system of transporting and delivering fuel. When the fuel trucks drop their fuel into the underground tanks, the vapor from the underground tanks is captured directly into the emptying fuel trucks and pressure is equalized by drawing in external air through vents. The fuel trucks take the vapor back to the fueling centers where they are disposed of properly. When there are small, localized spills (i.e. when a customer dribbles a couple of drops onto the concrete when they pull the dispenser out of their car) it evaporates quickly and doesn't leave a strong lingering smell.

Below is a detailed review and response to the "Appeal Statement of Administrative Approval of AR DP-00813 and AF FP-00814" submitted by Les Gruen of Urban Strategies, Inc dated 5/27/22. Excerpts from the appeal letter are shown in italics and responses have been provided in red.

The Appellant believes that staff's administrative approval of the proposed Kum & Go gas station and convenience store final plat and development plan application (development proposal) was incorrect because this decision was:

- *against the express language of the zoning ordinance, specifically 7.7.303.B.1 and 7.5.502.E.1, 2, 7, 13*
 - **RESPONSE:** Section 7.7.303.B.1 relates to the Final Plat abiding by all requirements of the subdivision code and other applicable City policies, standards, and ordinances. The Final Plat is not requesting any variances from the code nor is a rezone being requested, therefore, this project does conform to Section 7.7.303.B.1. They City's Land Use Review Division has approved the subdivision plat meeting all criteria.
 - Section 7.7.502.E.1 relates to the proposed development remaining harmonious with the surrounding neighborhood, buildings, and uses, including not-yet-developed used identified in approved development plans. The proposed Gas Station/Convenience Food Sales is an allowed use by right in the C-5 zone district. The City has confirmed that the proposed project abides by all applicable codes and standards. Furthermore, due to community feedback, the site plan has been modified and the project now confirms to all setback requirements. Kum & Go has removed their request for a non-use variance setback reduction to Brookside that was previously requested. Kum & Go uses top of the line materials and has worked with the City throughout the project to provide architectural elements that deviate from their prototypical stores to ensure the building is compatible and harmonious with the adjacent community.
 - **RESPONSE:** Section 7.5.502.E.2 relates to the proposed development substantially complying with any City adopted plans that are applicable to the site, such as master plans, neighborhood plans, corridor plans, facilities plans, urban renewal plans, or design manuals. Planning staff has determined that the Kum & Go project meets the applicable review criteria and the City's PlanCOS Comprehensive Plan intention, vision and policies of the Plan. Per the City: *"the PlanCOS Comprehensive Plan Vision Map shows that the development proposal fits into the overall community framework because the project location is within an Established Traditional Neighborhood and the goal of this neighborhood typology is to recognize, support, and enhance the existing character of the neighborhoods, while supporting their ongoing investment and improved adaption. Currently, there is no curb, gutter or sidewalk along the project frontage on W. Brookside Street. The development proposal will enhance and improve the area by installing new curb, gutter and sidewalk, which will also meet ADA accessible standards. The development proposal meets the Traditional Neighborhood recommendation to enhance walkability features because of the new off-site street improvements.*

In addition, the PlanCOS Comprehensive Plan Neighborhood Framework shows the project site is within the Established Traditional Neighborhood and per Policy VN-3.C, (Promote neighborhood-level shopping and service options that increase local access and walkability) the development proposal supports this policy because the removal of the five (5) existing parking spaces including one (1) ADA parking space along S. 8th Street is included in the development plan set. The development plan set also indicates a new drive access along S. 8th Street and one on W. Brookside Street with both meeting City Engineering standards. Planning staff finds that the development proposal is consistent with the goals and objectives of the PlanCOS Comprehensive Plan.

Furthermore, based on City agency review of the development proposal the applicable review criteria has been met. Several factors, such as Traffic Engineering's acceptance of the Traffic Impact Analysis findings and recommendations, CSPD's review and acceptance, CSFD having no exceptions, City Engineering's acceptance of the geologic hazard waiver and off-site street improvements, and City SWENT's support of approval of the development plan deems this administrative request and permitted use in the C-5 zone district approved."

Additionally, while this project does not fall within the Ivywild Master Development Plan, nor is it directly adjacent to it, Kum & Go still made modifications to the site plan to be more consistent with the intent of that document.

- Section 7.5.502.E.7 relates to the project providing landscape areas, landscape buffers, and landscape materials as set forth in the Landscape Design Manual. All landscape buffers and landscape materials meet codes set forth in the Landscape Design Manual, with the exception of the landscape buffer on the east side. An administrative relief was requested for the landscape buffer on the eastern property line reducing the required 15' buffer to 11' to accommodate the communities other larger concerns relating to traffic congestion, noise and light pollution, and the drainage issue. It was imperative to the neighbors that the canopy was screened by the building, the drainage was re-routed towards the public road, and that traffic congestion was minimized between delivery and pedestrian vehicles. Kum & Go did accommodate that request, which pushes the ring road further to the east and requires a reduction of 4' to the landscape buffer. While this administrative relief would not be required should the aforementioned items not be implemented, it is a ramification of creating a site plan that accommodates the communities' concerns. Additional trees have been provided elsewhere on site to accommodate the buffer width decreasing, also per city code. The administrative relief request has been approved by City Staff.
- Section 7.5.502.E.13 relates to the projects off-site impacts relating to light, odor, and noise produced by the site. The offsite drainage impacts to the surrounding properties are improved by the construction of this project. Runoff from the proposed site and a public road (Brookside) will no longer drain through residential properties to the southeast. It will instead be re-routed to an underground detention facility and will ultimately discharge into 8th Street. The variance request to allow this reroute has been approved and is attached for more detail. In terms of odor, there will be no fuel smells as Kum & Go operates a completely closed system. When the fuel trucks deliver fuel, the vapor from the underground tanks is captured directly into the emptying fuel trucks and pressure is equalized by drawing in external air through vents. The fuel trucks take the vapor back to the fueling centers where they are disposed of properly. When there are small, localized spills (i.e. when a customer dribbles a couple of drops onto the concrete when they pull the dispenser out of their car) it evaporates quickly and doesn't leave a strong lingering smell. As it relates to light pollution, proposed

lighting has been designed per City code. Light candles do not extend 10' outside of the property boundary with a value over 1.0. All lighting on site has been modified from the Kum & Go prototypical lighting as a response to feedback at a neighborhood meeting and will be downcast to avoid impacting the surrounding properties. Additionally, the site has been designed so the building blocks the canopy lighting from the residential district.

- Project is *Unreasonable and erroneous*

- **RESPONSE:** Unreasonable is defined as “not guided by or based on good sense”. The proposed project abides by all applicable jurisdictional code requirements and is not requesting a rezone or any variances. The Gas Station/Convenience Food Sales is an allowed use by right in the C-5 zone district and the City has confirmed that the project meets the applicable review criteria and the City’s PlanCOS Comprehensive Plan intention, vision and policies of the Plan (see above).

Kum & Go has spent the past several months working closely with the City and the community to identify areas of concern with this development and as a result has made significant modifications to the project. This process included two neighborhood meetings, direct contact with neighborhood groups and other community members outside of those meetings, written communication, and offers to be on phone calls to answer additional questions they may have. It also included continued meetings and correspondence with a neighborhood group whose Master Development Plan does not incorporate this property. Kum & Go is providing improvements, above and beyond code requirements in some cases, that enhance this site and provide much-needed improvements to the existing conditions. This not only is a reasonable project, this demonstrates that Kum & Go has gone above and beyond to accommodate requests that are not based on facts or any code, or other governing document, requirements.

- *Contrary to the justification provided by the Applicant and determination of the planning staff, this application does not meet the statutory approval criteria for a development plan which requires meeting the intent of the zoning code, consistency with the zoning code and compatibility with the land uses surrounding the site. This application further fails to meet various final plat review criteria requirements including:*

- *Promoting the health, safety, convenience and general welfare of the citizens of the city*

- **RESPONSE:** The proposed development will promote convenience and general welfare of the citizens by improving safety of the neighborhood through the elimination of current hiding spots that experience frequent criminal activities. Due to the unutilized and dark locations on the existing parcel and the limited times of operation, the existing property experiences continued issues with camping, graffiti, dumpster fires and break-ins over the past seven years. Kum & Go being staffed 24/7 and eliminating the unutilized portions of the site will provide a different environment and a deterrent for criminal activities. In terms of convenience, besides offering the fueling component which market research indicates is a benefit at this location, it also provides the community with a large variety of healthy and fresh grab-and-go items.

- *Encouraging the development of sound, economical, stable neighborhoods and create a healthy living environment for the residents of the city in conformance with the goals and policies of the Comprehensive Plan*

- **RESPONSE:** Safer site circulation will be provided by increasing the size of, and ability to access, the parking stalls interior to the lot without interfering with the public right-of-way, as it does in the existing condition. Public improvement easements are being placed over newly proposed sidewalks on the north and west sides of the site, also bringing it up to current day standards and allowing safer pedestrian maneuverability. Additionally, the proposed project

includes access to all utilities necessary for development. The project is in conformance with the goals and policies of the comprehensive plan to keep an established neighborhood and promote existing land uses.

- *Provide for adequate law enforcement and fire protection facilities*
 - **RESPONSE:** Fire truck circulation is provided a part of this development. Fire trucks and life safety equipment can safely circulate the site to reach any part of the building or canopy without issue due to the access drive locations. Based on feedback from neighborhood meetings, Kum & Go has been working with local law enforcement to implement extra measures such as “no loitering” signs, security cameras, and locks on exterior items given the criminal activity in the area. Kum & Go will continue to work with local law enforcement after the building opens.
- *Ensure the appropriate development of the community through the implementation and goals and policies of the Comprehensive Plan*
 - **RESPONSE:** The goals and policies of the Comprehensive Plan for an established/traditional neighborhood is the following:
 - *“Traditional Neighborhoods, regardless of a formal historic status or relative historic values, are older and developed or at least laid out prior to the mid-1950s. These neighborhoods have a high value in preserving and enhancing walkability features including their gridded street patterns, wide sidewalks, and sometimes limited building setbacks from the street. Some of these areas were developed before zoning was established, or they were annexed following initial development. These established neighborhoods may or may not have adopted publicly initiated master plans but should eventually have them subject to resources and priority.”*

The proposed site will not only preserve walkability features, but it will improve upon them with the addition of sidewalk on the north side of the site and enhancing the existing sidewalk on the west. The site will also preserve the bike lane through the east portion of 8th Street with the use of bike lane striping to keep cyclists safe from turning vehicles. The building will be set back 20’ from Brookside, providing plenty of pedestrian walkability and providing significant sight triangles onto Brookside.

Applicant's Justification

The Applicant justifies its request by suggesting its facility:

- *"sets itself apart from its competition"*
 - *food*
 - *jobs*
 - *gas*
 - *taxes*
- *market research identifying demand for more gas pumps*
- *would make the subject site safer*
- *"keep an established neighborhood and promote existing land uses"*
- *improve traffic congestion, upgrade utilities and pedestrian circulation*

Appellant's Response to Applicant's Justification

For most people gas stations are not a destination, but a commodity. Notwithstanding the applicant's claims, there is little to differentiate its product from other similar businesses.

- **RESPONSE:** Correct, a gas station is typically not a destination and traffic impacts will be minimal because end users are already traveling along the adjacent roads, not coming to the gas station from far away. Brand loyalty is an ideology held by consumers and it is Kum & Go's goal to bring repeat customers passing through the 8th Street corridor on a daily/weekly basis.

Kum & Go sets itself apart from its competition in a many ways. There are a large variety of grab-and-go items for folks in a hurry, but you can also get your food made to order. Everything is made fresh in-store daily and includes plenty of healthy options. Their Marketplace Kitchen serves subs, wraps, salads, paninis, pizza, breakfast pizza, breakfast burritos, breakfast sandwiches, donuts, cheeseburgers, beef burritos, chicken sandwiches, etc. They also have grocery items such as bananas, apples, and oranges, milk, eggs, cheese, etc. They are currently updating their food offerings and expect to have more healthy options such as rice bowls, food for kids (peanut butter sandwiches, grilled cheese), and many more cook-to-order items. Other things that differentiate them from other C-stores are online ordering of food/drinks (they can car side deliver, or people can pick up in-store) and the ability to activate their pump without getting out of their vehicle.

The 10-15 jobs created by each Kum & Go are also different than those of the rest of the industry. These are full-time jobs with regular, set schedules and full benefits. There are part-time jobs available for those that want them, but the ability for employees to be able to plan on a regular paycheck each week and a schedule they can depend on for them and their families has been a huge differentiator for Kum & Go. 70% of associates in stores work full-time roles.

They were also one of the first retailers to begin offering E85 in the 1990s. The company started adding E15 to its product offering in 2015, and currently offers it at about 40% of stores. Today, Kum & Go builds all new stores with both E85 and E15 at the pump. In 2019, Kum & Go sold more than 72 million gallons of ethanol. E15 and E85 are used to describe a range of gas products containing higher blends of ethanol, a renewable biofuel. Kum & Go is also partnering with Tesla, ChargePoint, and others to bring electric vehicle charging stations to store locations that fill a network need for the providers. They put in the infrastructure for future EV charging at every new store they build to accommodate future growth. As such, they also have more convenience to their fueling operations, where people can pull up pay using their app and skip swiping cards, punching in pins or area codes, punching in rewards information, and more importantly staying out of the bad weather as much as possible. They understand the evolution of convenience stores and are constantly making modifications and upgrades to ensure they are providing the community an outstanding product.

They provide internet and power for anyone who needs to do some work via computer or phone. Locals at their 400+ stores enjoy walking up/driving up to the store and ordering their food and sitting down to eat. Many locations have become the go-to spot for seniors to spend their mornings at stores to chat and enjoy their favorite morning beverage.

Their company mission to 'Making Days Better' is demonstrated through their commitment to giving back. 10% of their profits are donated back to our communities. They are proud to do this each year, reaching thousands of individuals and families throughout the country. In 2017 Kum & Go announced its Food Rescue Pilot program in Colorado Springs. They have partnered with Share Food Bank and have made food donations through them to Christian House of Prayer, Crossfire Ministries, Colorado Springs Food Rescue, Salvation Army – Fountain Valley, and My Neighbors Cupboard to name a few. They take pride in providing food to residents in need and to date have provided over 2 million meals to the communities we are in.

Any market research identifying the need for more gas pumps in this area is not a justification for project approval under the zoning code.

- **RESPONSE:** It is not justification for project approval, nor is it part of code requirements to provide market research studies. Kum & Go's success of their stores is the utmost importance, however, and they complete a very detailed market analysis to ensure that the store and its employees are successful. Market research has been provided to the community in many different formats throughout this process and is compiled below:

Kum & Go currently has 25 stores in the C. Springs Market. With the community growing at a high rate, they expect to build at least a couple of stores a year for the foreseeable future. They recently opened a store near Voyager and InterQuest (near the In and Out Burger). They also opened a store at Boulder and Union near the UC Health Memorial Hospital. They are currently in the developmental stages of three sites (including this one) within the market

Data shows there is a lack of good, modern, clean convenience stores at the southwest corner of the C. Springs area. The current competition in that area is a 7-11 gas station that is a 2,000 SF store with two pumps. The next nearest competitor is the Shell gas station located just about a mile to the north. It has six pumps and is approximately 4,000 SF.

Those items that differentiate them from their competitors in the area, as identified in detail within the previous section, are a needed addition to this corridor. Kum & Go offers more options when it comes to fuel and food. Their pumps have six different options for fuel (E85, E-Blend, Unleaded, Super, Premium, and Diesel), which no other competitors in the area offer (except possibly the new Maverick).

Market research and data collection demonstrate that 8th Street is a main north/south commuter for residents to get to Hwy 24 and eventually I-25. It carries approximately 15,000 VPD, which far exceeds the traffic required to sustain a successful gas station. They expect to pull most of their traffic from 8th Street

Taking all the above into account Kum & Go believes this corner is a great corner for a new C-store.

The Applicant's contention that the subject site has "experienced frequent criminal activities" cannot be substantiated. "Heatmaps" showing criminal activity are not site specific and consist primarily of traffic citations at one of the city's speed traps.

Therefore the notion that the applicant's facility will make the property safer also cannot be substantiated. In fact, common sense would suggest the neighborhood would be exposed to more frequent criminal activities if this appeal is unsuccessful.

- Kum & Go has provided a response to this comment on several occasions throughout the project: written responses (data compilation and relay of information from the CSPD), verbal (within several neighborhood meetings), and communication by email. The appellant is not the landowner of this parcel, nor are they on the property daily dealing with the crime and working with the CSPD on a consistent basis. Below is an excerpt from one of the landowners which more than substantiates the frequent criminal activity that they have experienced throughout the years, as well as provides justification for why it would be safer with the new development:

"We are located at the bottom of a steep hill on 8th st and the top of a steep hill of Brookside. Because of this topography – overall we never saw a great deal of pedestrians whether vagrants or not on either street during the day. Brookside is a very steep street to walk up – I see very fit people who have to push their fancy bikes up that hill. With a Maverick now at the bottom of the hill there is no reason for someone to waste time and energy to walk up Brookside to loiter at Kum & Go.

There are 2 bus stops adjacent to us that also do not seem to be used much.

Almost all of the incidents occurred when we were closed at night or over Sundays and Mondays when we were closed completely.

Our lower lot area was the area of most incidents. Our lower back lot is a real problem area – it's an amazing blind spot where someone can hide from both 8th st and Brookside street views. We found needles, heroin balloons, condoms, campfires, trash and poop many times over the years.

In that lower lot we have 2 storage units and kept our regular trash dumpster and often times a large roll off dumpster.

Most occurrences of crime and incidents began in 2018. In the summer of that year we had 3 break ins of our back storage units.

- *The first one just one unit was broken into and some items stolen.*
- *Then a few days later they came back and at 1 AM and a neighbor saw the trucks headlights and called the police and the police arrested 3 people (at gunpoint) that also had a stolen truck and meth and these people went to trial eventually and to jail.*
- *The a few months later 2 other guys on bikes broke into a unit which was basically empty.*
- *Then sporadically there have been some break in attempts where our locks and doors were tampered with.*

We had so many dumpster issues – we made a lot of trash processing online returns loads and often had to keep a big roll off dumpster in the lower lot since early 2020.

This created quite the magnet for issues – in the winters of 2020 and 2021 we would have people camping between the dumpster and the juniper bushes and leaving trash and poop. But they were almost always gone when we got there in the mornings.

Also – our trash was a bit more interesting than regular trash so we arrived many mornings to find people climbing in and pulling things out and leaving big messes. When that happened Eric would just tell them to leave or clean up their mess. Often these people came in cars or trucks and they were not vagrants per se.

A developmentally challenged adult resident of one of the nearby apartment complexes would often loiter in our lot and smoke cigarettes and in June of 2018 he tossed in a burning cigarette and set our dumpster on fire and we had to call the fire department to put it out and it cost us \$400 to get a new dumpster. We spoke to him and told him he could not smoke on our lot anymore but did not do anything else since we felt bad for him.

This back lot area also was hit with graffiti many times – but it was worse since 2019 and the worst in 2021 – we had to call the graffiti cleanup guy 4 times last summer, and also had the back of our building and truck tagged many times. We did not call the police every time when this occurred but if we had any good video of what happened then we would so they could see the video.

In 2021 we moved our regular dumpsters to our upper lot as a deterrent and added 2 security lights to illuminate the lower lot.

Our upper lot / parking lot was well lit and we did not have any real issues up there aside from the police who have a speed trap on top of the hill north on 8th st and would pull

people over in our lot all the time! Some people were arrested right there in our lot after being pulled over. It always bothered me that they police would do that right there – not good optics for my business. However – the heavy police patrol of 8th street is a good deterrent for crime and loitering.

Once in a while we would arrive in the morning and find someone trying to charge their phones in an exterior outlet up from (that did not work) and they would leave after we arrived.

Very seldom did any vagrant enter our store to use the bathroom or anything, maybe once a year.

Long story short – it was the hidey-hole of our large lower back lot that was the prime location of all our issues. Kum & Go's lot layout will be leveling that entire area so will eliminate the hiding area. Also, since K&G will be open for more days and hours and not have an interesting dumpster like us, the issues of graffiti and dumpster diving and camping should be eliminated as well."

Michelle Wolf – Owned the Consignment gallery from 2015-2022."

It is hard to understand how this proposal "keeps an established neighborhood and promotes existing land uses". While the proposed use is consistent with existing zoning, the intensity of use is what makes this application inconsistent with zoning requirements.

- **RESPONSE:** The zoning code specifically indicates a C-5 as an "Intermediate business" zone. Where the district accommodates general commercial uses that are of moderate intensity. The emphasis of the zone is placed on individual sites which in some cases will be located near established residential zoning. As this letter states above, a gas station is not a destination, but a commodity, which would institute a "moderate intensity". Examples of a high intensity use would be Automotive Sales, Automotive Wash, Repair Shops, or Social Service Centers, per the permitted uses within Colorado Springs.

The subject site has historically been a commercial use occupied during normal business hours with limited customer traffic. The proposed use would be 24 hours per day/365 day per year with continuous customer traffic.

- **RESPONSE:** Consumer traffic will taper significantly down during non-peak times, similar to the previous businesses that operated at the subject site. As trips generated to the site are typically drive-by trips, it is unlikely off-peak hours will increase traffic. AM peak hours are from 7:30am to 8:30am and PM peak hours are from 4pm to 5pm. As detailed above, this use is not a destination and the people using this facility will already be on the adjacent roads heading to other destinations.

As will be discussed in greater detail below, undertaking required infrastructure improvements should not be considered justification for approval.

- **RESPONSE:** Kum & Go will not only be constructing "required" infrastructure improvements, but will also be making considerable improvements that are NOT required and incurring the costs associated with those improvements. They are further detailed previously in this letter, but include rerouting the drainage, improving the unsafe existing traffic patterns, and improving pedestrian ADA access and maneuverability both within the site and to surrounding parcels. All of these are critical items for a safe neighborhood.

Staff's Justification

Staff in an email to Urban Strategies dated May 19, 2022 (attached) justifies its administrative approval as follows:

"Planning staff has determined that the Kum & Go gas station Development Plan project meets the applicable review criteria and the City's PlanCOS Comprehensive Plan intention, vision, and policies of the Plan. The PlanCOS Comprehensive Plan Vision Map shows that the development proposal fits into the overall community framework because the project location is within an Established Traditional Neighborhood and the goal of this neighborhood typology is to recognize, support, and enhance the existing character of the neighborhoods, while supporting their ongoing investment and improved adaption. Currently, there is no curb, gutter or sidewalk along the project frontage on W. Brookside Street. The development proposal will enhance and improve the area by installing new curb, gutter and sidewalk, which will also meet ADA accessible standards. The development proposal meets the Traditional Neighborhood recommendation to enhance walkability features because of the new off-site street improvements.

In addition, the PlanCOS Comprehensive Plan Neighborhood Framework shows the project site is within the Established Traditional Neighborhood and per Policy VN-3.C (Promote neighborhood-level shopping and service options that increase local access and walkability) the development proposal supports this policy because the removal of the five (5) existing parking spaces including one (1) ADA parking space along S 8th Street is included in the development plan set. The development plan set also indicates a new drive access along S 8th Street and one on W. Brookside Street with both meeting City Engineering standards.

Planning staff finds that the development proposal is consistent with the goals and objectives of the PlanCOS Comprehensive Plan. "

Appellant's Response to Staff Justification

The proposal for a large, modern gas station and convenience store does nothing to "recognize, support or enhance the existing character" of the historic Ivywild neighborhood, which is categorized as an Established Traditional Neighborhood in the city's Comprehensive Plan. The only similar facility in the entire Ivywild neighborhood is the Maverik gas station and convenience store that is located at the opposite corner of the neighborhood (1.0 miles away) adjacent to interstate on-ramps and off-ramps.

- **RESPONSE:** City staff has addressed these questions several times and their responses should be reviewed to provide more information than is written herein. In terms of Kum & Go's response, Kum & Go has spent the past several months working closely with the City and the community to identify areas of concern and is providing improvements, above and beyond code requirements in some cases, that enhance this site and provide much needed improvements to the existing conditions, some of which are not safe. As it relates specifically to the Ivywild neighborhood, most of the changes made throughout this process are a result of communication and feedback received from the Ivywild Neighborhood Group. This property does not fall within the Ivywild Master Development Plan, nor is it directly adjacent to it. As such, while they would appear to have no jurisdiction over this particular parcel, Kum & Go felt they should still accommodate their concerns and have done so as able. The concern that they simply don't want this use-by-right establishment to be located on this parcel, when it meets all City requirements, is not a reasonable request and should not be accommodated.

Furthermore, this project is indeed consistent with the 8th Street corridor where there are several other commercial developments including restaurants, strip malls, banks, and other gas stations. A traditional neighborhood is set out to “enhance the existing character of the neighborhoods, while supporting their ongoing investment and improved adaption”. The proposed project does just that.

According to city of Colorado Springs traffic data, the average daily traffic count at the intersection of 8th and Brookside Streets is 5,224, compared to 10,379 at the intersection of Tejon Street and Motor City Drive.

- We do not know where the numbers provided above were collected, but they are not consistent with the actual traffic data compiled as part of this project. It might be old data that was not taken during the duration of this project. Actual data reveals 8th Street carries 13,640 VPD and Brookside carries 4,920 VPD, far exceeding the total of 5,224 VPD listed in the comment. Therefore, this intersection has substantial daily traffic. These counts justify the gas station use, and, along with the existing commercial base and neighborhood density, this store will perform well.

Comparing a Maverick adjacent to I-25 is not an adequate comparison because I-25 carries 88,000 VPD. Maverick can be seen from the highway and has CDOT Blue Logo Gas signs that direct drivers off the interstate to their location, which completely differentiates it from this location.

Could staff provide examples of how this proposal "recognizes, supports and enhances the existing character of Ivywild"? The Appellant is unable to do so.

*Staff seems to be suggesting that an applicant undertaking utility, drainage, curb & gutter, sidewalk and other public safety improvements **that are required** under the city's subdivision regulations automatically complies with all comprehensive plan and zoning code requirements.*

For the record, curb, gutter and sidewalk already exist along the east side of 8th Street where there is currently pedestrian access. There is minimal pedestrian traffic along the south side of Brookside Street and it is unlikely to increase dramatically on account of a new sidewalk or the presence of a Kum & Go. There is curb and gutter, but not sidewalk in front of my client's property at 619-623 West Brookside Street. The practical effect of installing a sidewalk on the north side of the subject property is that it is unlikely to promote pedestrian traffic because there is not a sidewalk it connects with.

- **RESPONSE:** City staff has previously addressed these questions and their responses should be reviewed to provide more information than is written herein. In terms of Kum & Go’s response, the existing curb and gutter along 8th Street will remain in place. The curb and gutter along Brookside are a necessary improvement for the safety of residents to the south and east of the property. In the existing condition there is no curb and gutter, and stormwater freely flows southeast towards these residences. The proposed improvements provide a modified gutter and storm infrastructure to redirect the runoff. The curb and gutter are required upon development of this parcel, but the additional storm infrastructure and re-routing the runoff from this site and the public road, that is a much larger element, is *not* required as explained in detail above. The proposed sidewalk will provide direct access from the Brookside/Avenue A bus stop (being rebuilt as a part of this development) to the crosswalk at the intersection of 8th Street and Brookside St. This will end the need for residents to illegally cross Brookside to reach the NE corner of the intersection to continue east.

If approved, the increase in the intensity of use of this site –even with curb, gutter & sidewalk improvements installed –is likely to exacerbate, not ameliorate, congestion and conflicts at the intersection of 8th and Brookside Streets over what currently exists due to cars and trucks entering and exiting the site.

- **RESPONSE:** Per the approved traffic report, the many written comment responses, the verbal explanation at each neighborhood meeting by both Kum & Go's consultant and the City Traffic Engineer, this comment has been demonstrated to be incorrect based on actual data. The LOS for both Brookside Street and 8th Street will remain LOS B. There will be no major adverse impacts as a result of this development. There is not data that has been presented to suggest otherwise.

The Appellant strongly disagrees that this development proposal is consistent with the goals and objectives of the PlanCOS Comprehensive Plan and cannot envision how a development proposal could be more inconsistent with PlanCOS.

What was not included in the above referenced PlanCOS Policy to "promote neighborhood-level shopping and service options, while supporting their ongoing investment" [VN3.C], as noted by Staff in its approval was that service options specifically referenced "healthy food markets, coffee houses, restaurants". A gas station and convenience store is not neighborhood level shopping and is not likely to achieve the goal of increasing local walkability.

- **RESPONSE:** This has been discussed in detail above. Kum & Go does indeed offer a variety of food and grocery options that are not offered at the locations immediately surrounding the site. Adding these options and development of the site in general very much "promote neighborhood-level shopping and service options, while supporting their ongoing investment".

Further, any new pumps added at this location are likely to siphon business from surrounding businesses. Therefore, if approved, a new, out-of-town business could potentially harm older local businesses.

- **RESPONSE:** There is no data to suggest this. The market research identifies this location as a parcel that would benefit from additional C-store and gas services.

This development proposal is inconsistent with the following PlanCOS Goals and Policies and therefore does not meet approval criteria required by the zoning code:

- *Policy UP-1A: Emphasize placemaking throughout the city with design and programming that supports a distinctive identity and experience*
- *Goal UP-2: Embrace thoughtful, targeted, and forward-thinking changes in land use, infill....*
- *Policy UP-4.A: Actively plan and encourage a development pattern consisting of unique centers located along new and redeveloped corridors.*
- *Policy UP-4.B: Within unique centers, incorporate density and mixed uses along with higher standards of design, attention to the public realm*

- *Policy UP-4.C: Ensure that the City Zoning Code supports the intent of unique places.*
- *Policy UP-5A: Actively evaluate plans for existing, new and redeveloping urban places and corridors from the perspective of fiscal and environmental sustainability.*
- *Policy VN-3-A: Preserve and enhance the physical elements that define a neighborhood's character.*
- *Policy VN-3-C: Promote neighborhood-level shopping and service options to include a variety of healthy food markets, coffee houses, restaurants and other supportive businesses that increase local access and walkability*
- *Policy VN-3.E: Encourage and support the integration of mixed-use development in neighborhoods.*
- **RESPONSE: The City responses should be reviewed as they relate to these items as well, but in terms of Kum & Go's response, the project area does not fall within a "Unique Place (UP)" and many of the references above are not applicable. We still meet the intent of each of those specific items, however, and believe this has been adequately addressed in the comment responses provided in the earlier sections of this letter.**

Minimal Benefit Versus Massive Adverse Impact

Administrative approval of the Kum & Go final plat and development plan provides minimal benefit yet creates significant adverse impact.

The approval of this development proposal benefits:

- *Two property owners selling to Kum & Go*
- *Any brokers representing the sellers*
- *The Kum & Go company and investor that is financing this location*
- *Key Bank -to the extent they are getting paid to vacate its easement*
- *Anyone that believes there are insufficient gas and convenience stores in the proximate area and desires a Kum & Go or similar store at that location*

The approval of this development proposal creates the following significant adverse impacts:

- *Compromises the health, safety, convenience, and general welfare of those living in the Brookside Garden Apartments and surrounding neighborhood*
 - *Substantial change in intensity of use of the site*
 - **RESPONSE: There is no "substantial change in the intensity of use of the site". Convenience Stores and Consignment Shops fall under the same intensity per Colorado Springs Zoning Code. Gas stations are viewed as a "commodity" and therefore significant increase of traffic or intensity will not occur based on the data presented in the Traffic Report.**
 - *Hours of operation*
 - **24-hour use is an allowed right per the zoning code.**
 - *Traffic*

- Refer to the proposed approved traffic report. The traffic in the year 2023 has been calculated to maintain a LOS B for both the AM and PM peak hours. LOS B is described as operations with control delay between 10 and 20 s/veh and a volume-to-capacity ratio no greater than 1.0. This level is typically assigned when the volume-to-capacity ratio is low and either progression is highly favorable, or the cycle length is short. The City of Colorado Springs does not require additional traffic improvements below LOS C.
 - *Noise*
 - The proposed development will be held to the same standards as all other businesses along the 8th Street corridor and the City of Colorado Springs. Independent testing conducted by Kum & Go has demonstrated that no noise can be heard coming from the site above ambient noise levels.
 - *Light*
 - Proposed lighting has been designed per City code. Light candles do not extend 10' outside of the property boundary with a value over 1.0. All lighting on site has been modified from the Kum & Go prototypical lighting as a response to feedback at a neighborhood meeting and will be downcast to avoid impacting the surrounding properties. This is not required by code. Additionally, the site has been designed so that the building blocks the canopy lighting from the residential district.
 - *Potential for environmental pollution that didn't exist previously*
 - There are no existing sensitive or hazardous natural features associated with this site. Kum & Go has safety as its top priority and adheres to strict state and federal guidelines. Their dual-walled fiberglass underground storage tank system and fueling bays provide 24-hour monitoring as well as leak detection, an overflow alarm, vapor recovery equipment, emergency shut-off links, and automatic shut-off dispensing nozzles to limit any gas spillage. Furthermore, the proposed ADS storm sewer system will be wrapped with an isolator row PLUS for water quality treatment of any storm runoff. As a final precaution, all inlets on site will include PC Inlet filter bags for any runoff. Some of these items exceed code requirements and were provided based on community feedback.
 - *Potential for drainage issues if 100-year flood events are exceeded*
 - Per Colorado Springs standards, the 100-year rainfall event is the highest event to which we are required to design. It's not economically feasible, nor reasonable, to require a design larger than the 100-year flood event and that is not consistent with industry standards to do so. The drainage system includes a dual pump system to ensure multiple pumps will be able to discharge stormwater in the event of a failure of a single pump. In the current event, a 100-year rainfall event would drain directly to the east and south of the site. Because the runoff has been directed away from the site as part of the project, the water flowing to that location will still be less than in the existing condition and the proposed design will improve the existing condition in a large flood event.
- *Compromises the real estate values of the Brookside Garden Apartments and surrounding*

residential properties.

- There is no data to demonstrate that a new Kum & Go decreases property values. A new store has a positive impact on the community. The current vacant lot with construction stockpiling, dumpster fires, graffiti and camping are more likely to decrease the value of neighboring properties.
- *Contributes to potential fire danger to vacant Center for Creative Leadership property across 8th Street from subject property and surrounding area*
 - The current property experiences onsite camping and dumpster fires that create a large concern for fire danger. Those will be eliminated with the construction of this project and, therefore, the fire danger will be improved significantly by this project. Any gas spills on site will be maintained on site and dealt with appropriately per local guidelines.
- *Pattern of undesirable behaviors associated with similar facilities (i.e., recent murder at Fountain Kum & Go. Overdoses in bathrooms.)*
 - There is no data to suggest this. Kum & Go has been working with local law enforcement to implement extra measures such as “no loitering” signs, security cameras and locks on exterior items given the criminal activity in the area. Kum & Go will continue to work with local law enforcement after the building opens. As demonstrated in the landowners detailed response above, a 24-hour store that eliminates dark hiding areas will improve the safety of the site.

In summary, the benefits that accrue from this project are extremely limited in the number of individuals benefited and the scope of benefit, while those that are adversely affected are numerous within and beyond the immediate vicinity and Ivywild neighborhood.

- **RESPONSE:** The benefits are too numerous to reiterate but have been provided in detail above. The three largest benefits entail fixing the existing drainage/flooding concern, removing the dangerous traffic patterns, and complying with ADA accessibility and pedestrian maneuverability requirements to allow folks to safely traverse the property and reach the crosswalk, rather than illegally crossing as occurs today. Furthermore, based on the traffic study, the generated trips to this location will benefit approximately 3,318 vehicles that enter into the property on a daily basis which is significant. The proposed project will benefit bicyclists passing the site with pavement markings to alert drivers they are entering/exiting a bike lane.

Note that any new employment or taxes generated by this proposed facility is likely to come from other businesses. There will be no net gain to the community in jobs or sales tax.

- **RESPONSE:** This statement by the appellant is false. This particular project is an \$8+M investment. Kum & Go anticipates higher real estate taxes/personal property taxes. There will be fuel and sales tax on \$6-10 million dollars in sales. They will be hiring 10-15 employees most of whom will be full-time employees with the same benefits as corporate level. Their stores offer seating for customers who want to relax and eat breakfast, lunch or dinner. They provide internet and power for anyone who need to do some work via computer or phone. Locals at their 400+ stores enjoy walking up/driving up to the store and ordering their food and sitting down to eat. Many locations have become the go-to spot for seniors to spend their mornings at stores to chat and enjoy their favorite morning beverage.

Their company mission to ‘Making Days Better’ is demonstrated through their commitment to giving back. 10% of their profits are donated back to our communities. They are proud to do this each year, reaching thousands of individuals and families throughout the country. In 2017 Kum & Go announced its Food Rescue Pilot program in Colorado Springs. They have partnered with Share

Food Bank and have made food donations through them to Christian House of Prayer, Crossfire Ministries, Colorado Springs Food Rescue, Salvation Army – Fountain Valley, and My Neighbors Cupboard to name a few. They take pride in providing food to residents in need and to date have provided over 2 million meals to the communities we are in.

Conclusion

If the zoning code and especially PlanCOS are to be meaningful and useful there needs to be some discrimination and proportion in the review of development plan applications. Keeping Colorado Springs a great city will require more than approving every project that is a use by right within a particular zone, that submits a plan with the north arrow in the correct location with all the t's crossed and i's dotted, and a willingness to install required public safety and infrastructure improvements.

There's nothing fundamentally bad about Kum & Go gas station and convenience stores. The problem, in this case, is the incompatibility of this proposal with the surrounding area. This incompatibility is why the Appellant argues the Planning Commission should overturn the administrative approval of the Kum & Go final plat and development plan.

Section 7.7.303.B.1 of the city code requires that any "proposed subdivision meet all requirements of the Subdivision Code and any other applicable City policies, standards and ordinances". This development proposal fails to meet the express letter and the express intent of numerous PlanCOS policies as discussed previously.

- **RESPONSE:** Section 7.7.303.B.1 relates to the Plat approval, which has no variances associated with it, therefore this comment is not applicable.

Section 7.5.502.E.1 of the city code requires that, "the use, site design, building location, orientation and exterior building materials are compatible with the surrounding neighborhood, buildings and uses". Evidence and testimony from the Appellants has shown this development proposal is not compatible with the surrounding environment.

- **RESPONSE:** The 8th Street corridor is an established commercial area, the majority of uses along the corridor are commercial, matching the proposed use. The developments on the northern side of Brookside Street are also commercial developments.

Therefore, this development proposal fails to meet the express letter and the express intent of the zoning ordinance.

Section 7.5.502.E.2 of the city code requires that the, "development plan substantially complies with any City-adopted plans....". The Appellant has tried to show that this development proposal is not in alignment with PlanCOS at the minimum. Therefore, this development proposal fails to meet the express letter and the express intent of the zoning ordinance.

- **RESPONSE:** Refer to responses above on the specific policies and goals and how the site will meet them.

Section 7.5.502.E.7 of the city code requires that, "the project provides landscaped areas, landscape buffers and landscape materials as set forth in this chapter and the Landscape Design Manual". The Applicant has sought and staff has granted a variance to a critical landscape buffer along the eastern edge of the subject property adjacent to my client's property. This property is among the most affected by the proposed development and no variance should have

been granted to eliminate any crucial screening of a high intensity commercial use from a long-time residential neighbor. If this project is approved, a high retaining wall along the east property line raises the elevation of the driveway even with the bedroom windows of the apartments located at 623 West Brookside. (In fact, an additional landscaping buffer should be required if this development proposal moves forward since most trees do not have low bushy branches to prevent airborne pollutants traveling 20 feet to the tenant's windows.) Therefore, this development proposal fails to meet the express letter and the express intent of the zoning ordinance.

- Administrative relief was requested for the landscape buffer on the eastern property line reducing the required 15' buffer to 11'. All landscape buffers and landscape materials meet codes set forth in the Landscape Design Manual, with the exception of the landscape buffer on the east side. An administrative relief was requested to accommodate the communities' other larger concerns relating to traffic congestion, noise and light pollution, and drainage. It was imperative to the neighbors that the canopy was screened by the building, the drainage was re-routed towards the public road, and that traffic congestion was minimized between delivery and pedestrian vehicles. Kum & Go did accommodate that request, which pushes the ring road further to the east and requires a reduction of 4' to the landscape buffer. While this administrative relief would not be required should the aforementioned items not be met, it is a ramification of creating a site plan that accommodates the communities' concerns. Additional trees have been provided elsewhere on site to accommodate the buffer width decreasing, also per City code. The administrative relief request has been approved by City Staff.

There is a significant grade change on site that requires a wall to be built. If windows are level with the top of proposed retaining wall, the Diabolo Ninebark shrubs on the wall (4-8 feet in height) will provide screening.

Section 7.5.502.E.13 of the city code requires that, "significant off-site impact reasonably anticipated as a result of the project are mitigated or offset..." Based on a known history of undesired behaviors associated with uses of the type proposed and the potential for increased criminal activity and the potential for enhanced fire danger, there has not been sufficient mitigation or offset as required by code. Therefore, this development proposal fails to meet the express letter and the express intent of the zoning ordinance.

- Kum & Go has been working with local law enforcement to implement extra measures such as "no loitering" signs, security cameras and locks on exterior items given the criminal activity in the area. Kum & Go will continue to work with local law enforcement after the building opens. Proper mitigation for fire safety has been proposed, as well as two fire hydrants be located on the north side of Brookside (60' from property line) and east side of 8th Street (110' from property line). This is all detailed more specifically above.

Below is a detailed review and response to the "Appeal Statement of Administrative Approval of AR DP-00813 and AF FP-00814" submitted by Eric and Anna Nicol and Jon T.O. Severson and Melinda K. Edwards dated 5/31/. Excerpts from the appeal letter are shown in italics and responses have been provided in red. Because many are the same comments located in the first appeal letter, we reference those responses in several locations rather than repeating.

We are submitting an appeal according to City Code 7.5.906.A.4 showing that the Kum and Go planned for the Southeast corner of 8th Street and W. Brookside Street is unreasonable and erroneous. The proposed plan does not improve the neighborhood and the people living in it for these reasons.

- *Increased traffic on Brookside*
 - *Brookside is already a dangerous/busy street with no sidewalks. Kum and Go would increase traffic, including large delivery trucks, which would make turning out of our street on Avenue A more difficult than it already is.*
 - **RESPONSE:** There will be a proposed curb and gutter with an attached sidewalk along the southern edge of Brookside to promote pedestrian safety while walking past the site. Per the approved DP 21-00813 set and the detailed explanations above, due to the community feedback no semi-trucks will be permitted to make a right turn out of the site to go east onto Brookside. This will be regulated by Kum & Go, as they do successfully on many other sites where semi-truck circulation is restricted.
 - *The neighborhood is full of young families and increased traffic will only be dangerous as it increases risk of accidents to pedestrians and vehicles.*
 - **RESPONSE:** The proposed sidewalk will allow a safe route from the east portion of the site to reach the crosswalk on 8th Street and Brookside Street. A traffic impact study has been prepared and demonstrates there will not be a large increase of traffic. This is further answered above. In addition, appropriate signage and striping will be provided per city standards to ensure safe crossings at all access points.
 - *According to the development plan point #8 "Semi-trucks shall not travel east onto Brookside from the proposed site." This is great to help traffic, but it will not be enforceable by Kum and Go. We would like to see a better plan to enforce this traffic issue.*
 - **RESPONSE** Signage is provided, and all truck delivery drivers will be trained. This is part of Kum & Go's normal operations and is implemented successfully on many other sites nationwide where semi-truck traffic is restricted.
- *Light and noise pollution.*
 - *There are at least 14 homes and an apartment complex whose windows look directly onto the proposed site. A 24-hour large gas station creates an immense amount of light and noise and will be a detriment to the privacy and quality of life of the neighbors. The main windows of our home, including bedrooms, overlook this property which would make it disruptive to sleep, quiet and privacy resulting in a reduced quality of life and increase to potential health risks. 24-hour noise due to customer traffic adds to the burden and disrupts sleep and privacy. Eric is a small business owner and employs 30 people within Loyal Coffee. His business and employees could suffer as a result of constant light, noise and lack of privacy affecting his rest.*
 - **RESPONSE:** Proposed lighting has been designed per City code. Light candles do not extend 10' outside of the property boundary with a value over 1.0. All lighting on site has been modified from the Kum & Go prototypical lighting as a response to feedback at a neighborhood meeting and will be downcast to avoid impacting the surrounding properties. Additionally, the site has been designed so the building blocks the canopy lighting from the residential district. There will not be a significant noise impact from the property. The property will be held to the same noise standards as all other properties within Colorado Springs. The areas of the site adjacent to residential properties will have limited to no exposure to consumers, the back drive is utilized for deliveries and there are no public entrances on the east side of the building. There also is a 7' retaining wall on the eastern side with landscaping providing privacy for the neighbors.
- *Increased crime.*
 - *24 hour gas stations draw a transient population and people late into the night and early morning. There are young families within close proximity of this location which will be a*

detriment to their life, privacy and safety. Additionally, crime will result in increased noise pollution and loss of privacy

- **RESPONSE:** Refer to the detailed answer above from the landowner who demonstrates the existing major crime and security issues that will be improved as part of this project. In addition, in March and April of this year, Kum & Go received information from Officer Wesley Wilkerson, Crime Prevention Officer, that gave them an idea of the number of “Calls for Service” that were received for existing Kum & Go stores and existing C-stores within the City of Colorado Springs and near the site. This information was gathered for years 2010-2021. For discussion purposes, the information below represents years 2020 and 2021 and demonstrates that all Kum & Go stores, as well as *other* existing C-stores, experienced an uptick in Calls for Service from 2020 to 2021.

Existing Kum & Go stores located along I-25 showed higher call volumes. This is typical with most C-store operations when adjacent to an interstate. For example, the new Maverick at the corner of Tejon and Motor Way (opened in Sept of 2021) had 59 Calls for Service in just over 3 months. They have already hired a security guard to be on site most of the day.

The Kum & Go store at 1021 S. Nevada Avenue has experienced the most Calls for Service in area because of two major factors: one, it is near I-25; and two, the Springs Rescue Mission C. Springs Shelter is located to west of the store about 850’ away. We have seen a lot of homeless activity at the store and have called for help with disturbances and trespassing issues.

Other Kum & Go stores in C. Springs are not showing the number of Calls for Service as ones adjacent to interstates.

Along 8th street the number of Calls for Service at 7-11, Shell and Sinclair are at least a ¼ of what they are along Nevada and Tejon.

Kum & Go feels that 8th street will not have the same level of crime as those comparable stores near I-25 and with 24-hour operation, security cameras, and safety lighting of dark spaces these will act as deterrents for loitering and criminal activity. They also will continue to work closely with the Colorado Springs Police Department.

- *The Ivywild neighborhood is a historic neighborhood and has a great draw for people to visit. Kum and Go takes away from the charm and excitement of our neighborhood and increases risk to health and safety due to increased traffic with lack of sidewalks and appropriate turn lanes; crime and increased transient problems; and air, light and noise pollution. As one of many families that reside in this neighborhood, we believe it should be protected.*
 - **RESPONSE:** While this property is not located in, nor directly adjacent to, the Ivywild neighborhood Master Plan area, Kum & Go has recognized the importance of working with that neighborhood group to make modifications to the project to address concerns. All of the items within this comment from the appellant has been answered in depth previously within this comment response letter.
- *Jon has his home and retail space for rent and potential renters have expressed concern about Kum & Go traffic and crime. A Kum and Go lowers value of rental significantly and is tough to gain renters due to the proposed Kum and Go, due to reasons above stated.*
 - **RESPONSE:** This has been discussed in depth above. Please refer to the detailed response

from the landowner detailing the existing crime that will be eliminated and the anticipation of improved safety with this development.

There is no data to demonstrate that a new Kum & Go decreases property values. A new store has a positive impact on the community. The current vacant lot with construction stockpiling, dumpster fires, graffiti and camping are more likely to decrease the value of neighboring properties.

- *Gas Station lowers property values significantly within a 1000 foot radius, and this Kum and Go is proposed to go right in a neighborhood.*
 - **RESPONSE:** See response above.

This concludes the comment/response portion of the appeal letters.

Kum & Go and its design team have performed thorough research throughout this project, have held two neighborhood meetings, and have coordinated closely with the City, Colorado Springs Utilities, and other jurisdictions throughout the duration of this project. Selling a property to an end user for a use allowed within the zone district is a right afforded to every landowner. Landowners get to make decisions to buy or sell based on what is the best for their them and it's their decision, despite how unpopular that decision may be. Similarly, surrounding landowners have the same right to purchase the said property at market value if they want to see a different use, preserve a view, create a park (pending zoning), whatever they may want. In this case, Kum & Go has purchased the property from the landowner. The number of modifications made to the application to accommodate the communities' concerns for a use-by-right is not typical, but Kum & Go has completed that effort with the utmost respect and professionalism throughout.

Please do not hesitate to reach out with questions or comments to mary.kasal@ees.us.com.

Respectfully Submitted,

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