

CITY PLANNING COMMISSION AGENDA
October 15, 2020

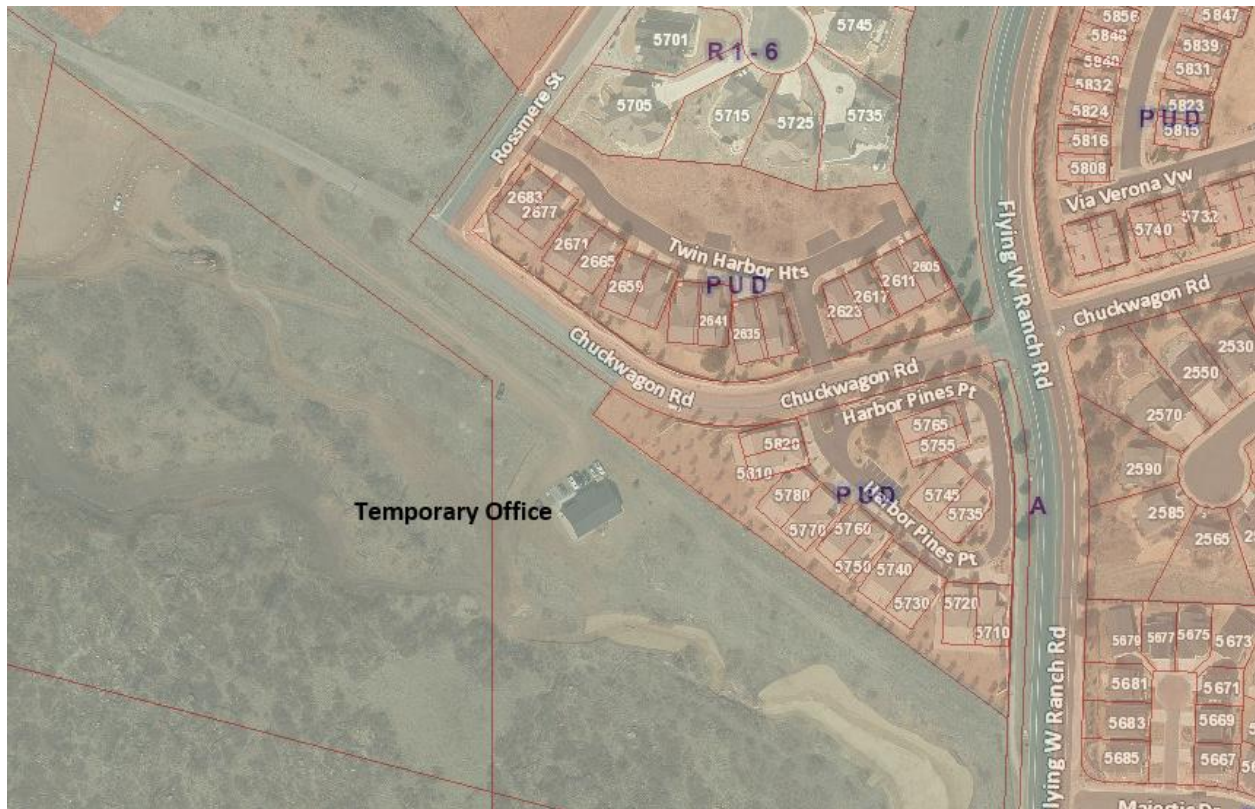
STAFF: PETER WYSOCKI

FILE NO:
CPC AP 20-00061 – QUASI-JUDICIAL

PROJECT: FLYING W RANCH OFFICE TEMPORARY USE PERMIT EXTENSION

OWNER: FLYING W RANCH

APPELLANT: HARBOR PINES HOA



PROJECT SUMMARY:

1. Project Description: This is an appeal of the administrative approval of a 2-year extension for a temporary use permit for the Flying W Ranch on-site management, construction and restoration office. The property is zoned A (Agricultural) and is addressed as 2870 Chuckwagon Road. The temporary office structure is located through the private gate to the Flying W Ranch (3330 Chuckwagon Road) near the intersection of Chuckwagon Road and Rossmere Street.
2. Applicant's Project Statement: Because this is an appeal of a temporary use permit extension, there is no project statement. The temporary use extension application is attached to this report along with the approved permit extension.
3. Appellant's Appeal Statements: **See Appeal Application_Harbor Pines HOA exhibit**
4. Planning and Development Team's Recommendation: City Planning recommends denial of the appeal, upholding the administrative extension of the temporary use permit.

BACKGROUND:

1. Site Address: The Flying W Ranch is addressed as 3330 Chuckwagon Road and the office structure as 2870 Chuckwagon Road.
2. Existing Zoning/Land Use: The Ranch is zoned A (Agricultural) with Hillside Overlay.
3. Surrounding Zoning/Land Use:
 - North: PUD (Residential)/The Harbor Pines neighborhood is directly abutting to the north of the office building
 - South: A (Agricultural)/Ranch property
 - East: PUD (Planned Unit Development)/Single-Family Residential – Mountain Shadows
 - West: A (Agricultural)/Ranch property
4. Annexation: Flying W Addition #1, 1971
5. Master Plan/Designated Master Plan Land Use: The office is located on a portion of the Flying W Ranch that is part of the Mountain Shadows Master Plan with a land use category of residential.
6. Subdivision: None
7. Zoning Enforcement Action: none
8. Physical Characteristics: In total, the Ranch is over 1400 acres. The site has some rolling hills, natural topography, and rock outcroppings. Unfortunately, the Waldo Canyon Fire significantly affected the property and very little natural vegetation exists - mostly re-growth since the fire. In June of 2020, the Flying W Ranch reopened for the chuckwagon suppers.

STAKEHOLDER PROCESS AND INVOLVEMENT:

City Code Section 7.5.1403, Temporary Use Permit Review Criteria, states that any temporary use permit or extension request for a temporary real estate sales office and/or a business office for a builder shall be noticed to the neighbors. With that requirement, staff sent standard public notice to 148 surrounding properties. The site of the office was also posted with the standard notice poster for 10 days prior to consideration of approval of the permit extension request.

This appeal was originally scheduled to be heard by the City Planning Commission in April of 2020. However, about the same time, COVID-19 prohibited in-person public hearings and City Council adopted an emergency resolution allowing deferment of quasi-judicial items if the applicant did not consent to virtual public hearings. That emergency resolution was recently modified (and re-adopted by City Council) to eliminate the applicants' consent to virtual public hearings.

Because of the delay between the originally scheduled hearing and the October City Planning Commission meeting, staff sent an updated notice to property owners within 500 feet of the addressed parcel for the temporary office. That included generating an entirely new mailing list to ensure that any new residents to the area were captured. The site will also be posted 10 days prior to the October 2020 City Planning Commission hearing.

Staff received a number of letters in opposition and one in support of the extension request that was originally posted and noticed in April of 2020. All correspondence received is attached (**See Neighborhood Comments exhibit**). Any new correspondence received based on the updated notice and posting will be forwarded to City Planning Commission.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Review Criteria / Design & Development Issues:
 - a. Background

The Waldo Canyon Fire destroyed the Flying W Ranch in 2012. The Ranch owner actively engaged with the City of Colorado Springs in 2016 for submittal of a development plan to rebuild the Ranch. With that request, the owner needed an office for construction and restoration activities because all structures on the property were destroyed. City Code Section 7.5.14, Temporary Uses, outlines criteria for the City to approve a temporary use permit for many different types of uses, including real estate and construction offices in modular buildings.

The rebuild not only involves construction of buildings, but also the mitigation and restoration of destroyed property. This involves fieldwork, planning and project review with a large team of owners, staff and contractors. Because of this, it was an important first step for the Ranch to establish a small on-site office. Under City Code Section 7.5.1403, staff considered this type of office to be most similar to and functioning as a business office for a builder within a modular building.

In February of 2017, staff issued the temporary use permit after having noticed neighbors and having held a neighborhood meeting with several adjacent owners and the Harbor Pines HOA. That 2-year temporary use permit expired in February of 2019. A neighbor notified staff of the permit expiration and City staff contacted the Ranch. In accordance with City Code Section 7.5.1403.I.4.a.1, the Ranch submitted an extension request for an additional 2 years, to expire February of 2021, 4 years after the original approval. The approval of the initial temporary use permit was not appealed.

This extension application was appealed by the Harbor Pines HOA on March 23, 2020 and originally scheduled to be heard by the City Planning Commission in April of 2020. However, COVID-19 prohibited in-person public hearings and City Council adopted an emergency resolution directing deferment of quasi-judicial items. That emergency resolution was recently modified and re-adopted to allow virtual quasi-judicial matters to be heard.

Since this hearing was originally scheduled, the Flying W Ranch Chuckwagon has reopened to the public (June 2020). Some site work and restoration continues at the Ranch. There is nothing in Code that would prohibit the temporary use from continuing until the originally approved expiration date of February 28, 2021.

It should be noted that if this appeal is denied, the temporary use permit will expire and the modular office and associated improvements will need to be removed. In order for Flying W to retain the use of the modular building and/or business, Flying W would need to apply for and receive approval of a development plan and a conditional use.

b. Planning and Zoning Context

The office has existed at the current location since original approval in February of 2017. It is a single-story, 2924 square foot modular home resembling a log cabin. Building elevations and an interior floor plan are attached to this report. While the building is part of a much larger ownership, the "site" for the office is less than 1 acre and includes the structure, small parking area, fencing, and a few newer trees. The nearest corner of the building is approximately 65 feet from the neighboring property boundary; which is a tract of land owned by the Harbor Pines HOA. The structure is approximately 164 feet from the nearest adjacent residence in the Harbor Pines neighborhood. **(See photo of office exhibit)**

With the approval of the original temporary use request and the extension, staff finds that the temporary use permit is in conformance with the Temporary Use Permit Review Criteria in City Code Section 7.5.1403.

c. Appeal Statements

The appeal statement is attached as **Appeal Application_Harbor Pines HOA**. This statement highlights several areas that the appellant feels do not meet Code requirements. Those are as follows:

- That this is a permanent structure on land not zoned for such a structure,
- That a for profit business, Markit! Forestry operates out of the structure that should not be permitted under the temporary use permit,
- Increased traffic and noise within the neighborhood based on the different users in the structure,

- Required parking is full almost every day causing cars and trucks to be parked in non-designated areas.

Staff had a number of conversations with surrounding property owner, and the appellant, prior to the approval of the 2-year extension. In order to mitigate the perceived impacts, a number of notes/conditions were added to the approved extension plan. These can be read, in their entirety, on the **Temp Use Extension_approval attachment**. The notes include:

- The permit expires February 28, 2021,
- Core staff hours are 7am-5pm with only management utilizing the office after core hours,
- No heavy equipment or truck storage within the temporary parking area,
- Limit to one large all-staff meeting per quarter.

2. Appeal of an Administrative Decision

According to City Code Section 7.5.906.A.4.b, a successful appeal must be found to meet the following criteria. Those are listed below with staff finding on each:

(1) It was against the express language of this zoning ordinance

Staff finds that the request for an extension of the temporary use for a construction/ranch office is not against the express language of the zoning ordinance. City Code Section 7.5.14 allows staff to permit certain temporary uses that may otherwise not be allowed. This Section does not limit temporary uses to certain zone districts and specifically states that contractor offices, temporary offices and bank facilities in mobile homes, temporary real estate offices in mobile homes and model homes and business offices for a builder are permitted temporary use types. The temporary use extension was granted with an updated plan specifying timeframes of approval and conditions aimed to mitigate any negative impacts. Additionally, any use of the office after the expiration of the temporary use will require re-evaluation by planning staff and submittal of an application for a long-term use solution.

(2) It was against the express intent of this zoning ordinance

Staff finds that the request for the extension is not against the express intent of the zoning ordinance. The purpose statement of City Code Section 7.4.1401 states: "The temporary use permit is a mechanism by which the City may allow a use to locate within the City on a short term basis and by which it may allow seasonal or transient uses not otherwise allowed. This section is intended to permit certain inherently temporary uses such as community festivals, fresh produce stands and temporary promotions by permanent businesses." The temporary office meets that intent of City Code and is specifically listed as an allowed temporary use in Section 7.5.1403. The office is utilized by Ranch management and related administrative staff. From 2012 until recently in June of 2020 it was the only structure operating on the Ranch and was integral for reconstruction and restoration.

(3) It is unreasonable

Staff finds that it is not unreasonable to allow an on-site construction and management office while larger, permanent structures are being built. It is also not unreasonable for a working ranch to have an office for the management and staff of the ranch. The structure is setback from neighboring residential properties, resembles a log cabin that is in character with the use of the property and is buffered from the neighboring properties by the use of landscaping and the setback on the Ranch property as well as a tract of land used that is a landscape tract owned by the Harbor Pines HOA.

(4) It is erroneous

Staff finds that the approval of the 2-year extension is not erroneous because City Code Section 7.5.1403.I.4.a.1 allows a 2-year temporary use permit with an optional 2-year extension. This temporary use permit will expire in February 2021, 4 years after the original approval.

(5) It is clearly contrary to law

Staff finds that the approved temporary use permit and the associated plan meets all of the criteria in City Code Section 7.5.1403 for establishment of a temporary use. The approved plan/permit lists conditions for continuation of the permit. With adherence to the conditions found on the plan, the approval will continue to be in conformance with City Code.

3. Conformance with the City Comprehensive Plan:

Staff has evaluated the proposed temporary use extension for conformance with the City's current comprehensive plan (herein referred to as "PlanCOS"). However, it is difficult to relate this appeal application to the comprehensive plan as this appeal is focused on a temporary use approval and not a long-term land use change.

However, the support for the Ranch itself is supported through many chapters of PlanCOS:

Common elements of unique places states that it is important to foster a uniquely identifiable character and destinations that reinforce a sense of identity and incorporation of historic buildings and features into our legacy and character. The Flying W Ranch and its operations have a history dating back to the 1950's.

Thriving Economy encourages the support of business and attractions that make this community economically strong and a place people want to visit and live. The Ranch has long been a historical and important part of the economy.

Renowned Culture encourages support of cultural and tourist attractions, of which the Ranch is an important one. The Ranch is also specifically shown on the renowned culture framework map as an important part of the culture and history of the area.

The office is needed for Ranch management and staff that maintains the Ranch as well as to manage current construction. The office serves as a ranch office for construction and property mitigation and management.

4. Conformance with the Area's Master Plan:

The piece of property where the office building sits is within the Mountain Shadows Master Plan. It is important to note that the entire Ranch is not in this master plan, just the portion of the property closest to Chuckwagon Road and Flying W Ranch Road. The master plan designation for the area is future residential. This proposal is not in conformance with the Mountain Shadows Master Plan, but it is not out of conformance with the plan.

Since the entire property is a working ranch, the temporary construction office is related to that use. The master plan conformance question would be relevant with any future re-development of the Ranch.

STAFF RECOMMENDATIONS:

CPC AP 20-00061 – APPEAL OF A TEMPORARY USE PERMIT EXTENSION

Deny the appeal, thereby upholding the administrative approval of the temporary use permit extension for the Flying W Ranch office, based upon the finding that the temporary use permit extension complies with the temporary use permit review criteria in City Code Section 7.5.1403 as well as the finding that the appeal criteria in Section 7.5.906.A.4 are not met.