

**CITY PLANNING COMMISSION AGENDA**

**STAFF: TOM WASINGER**

**FILE NO(S):**  
**CPC AP 18-00065**

**PROJECT: APPEAL OF NOTICE AND ORDER TO ABATE ZONING VIOLATION**  
**2814 BLUEBELL HILL DR**  
**COLORADO SPRINGS CO, 80920-3537**

**APPLICANT/OWNER: GERALD R. & JACQUELINE V. HAAG**



**PROJECT SUMMARY:**

1. Project Description: This is a request to appeal the Notice and Order to abate the zoning code violation issued to the owner of 2814 Bluebell Hill Drive on May 16, 2018, for violation of an illegal use of a residentially zoned property – commercial storage of wood cuttings, wood cutting equipment, forklift, and trailers for the commercial business currently known as “AA Forestry LLC.”

City Code Section §7.3.103: PERMITTED, CONDITIONAL AND ACCESSORY USES list the permitted and conditional uses allowed. A commercial use and commercial storage of equipment is not a permitted use within a residentially zoned property.

The property is zoned R-Estate with a Condition of Record (CR) and is located near the northeast intersection of Union Boulevard and Woodmen Road, one lot east of Union Boulevard within the Columbine Estates Subdivision, Lot 23 Block 8.

2. Applicant's Project Statement: **(FIGURE 1)**
3. Community Development Department's Recommendation: Staff recommends the City Planning Commission uphold the Notice and Order and deny the appeal.

#### **BACKGROUND:**

1. Site Address: 2814 Bluebell Hill Drive
2. Existing Zoning/Land Use: R - Estate (Single-Family Residential) (1.74 acres.)
3. Surrounding Zoning/Land Use:  
North: R - Estate (Single-Family Residential)  
South: PUD (Apartment Complex)  
East: R - Estate (Single-Family Residential)  
West: R - Estate (Single-Family Residential)
4. Comprehensive Plan/Designated 2020 Land Use: Single-Family Residential
5. Annexation: The property was annexed in 1994, Falcon Estates, Columbine Estates, & Yorkshire Estates (FYC)
6. Master Plan/Designated Master Plan Land Use: CPC MP 94-14, Falcon Estates, Columbine Estates, & Yorkshire Estates (FYC) – R-Estate, Residential-Home Office, & Office
7. Subdivision: LOT 23 BLK 8 COLUMBINE ESTATES, EX THAT PT CONV BY REC # 216090732
8. Zoning Enforcement Action: Non-compliance with City Code Section §7.3.103: PERMITTED, CONDITIONAL AND ACCESSORY USES. All residentially zoned properties subject to a residential use as described under City Code Section §7.3.102 PURPOSE AND SPECIFIC REQUIREMENTS OF THE RESIDENTIAL ZONE DISTRICTS. Uses of a commercial nature are not permitted within residentially zoned properties without proper review and approval to ensure that such use is compatible with surrounding residential uses and is permitted as outlined in §7.3.103. Commercial storage of equipment and stockpile of material is prohibited.
9. Physical Characteristics: The property is located near the northeast intersection of Union Boulevard and Woodmen Road, one lot east of Union Boulevard within the Columbine Estates Subdivision. The property is 1.74 acres in size, zoned residential, consisting of a single lot with one principal structure (one-story, ranch style residence) constructed in 1972 and one detached garage located northeast of the residence. The property is located within an established residential neighborhood, has vegetation consisting mostly of prairie-type grass and several mature evergreen and deciduous trees visible from Woodmen Road and Bluebell Hill Drive. Access to the property recently changed and the direct access from Woodmen Road was removed. The City constructed a new access road, Bluebell Hill Drive, to provide access to the property. Bluebell Hill Drive access is available from Union Boulevard and Shriker Road.

#### **STAKEHOLDER PROCESS AND INVOLVEMENT:**

No stakeholder process is required with the issuance of a Notice and Order to Abate. The site will be posted and postcards mailed to notify property owners located within 1000 feet of the subject property regarding the City Planning Commission hearing, posted for 10 days prior per current Code requirements.

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

1. Timeline of the Notice and Order Issuance:  
The initial complaint filed against the property alleges that the owner is using the property for "outside storage of personal property/land use issue." On April 4, 2018, a site inspection was conducted pursuant to this complaint in order to determine if the property violated the city zoning code and the city sanitation code. Upon arrival, Code Enforcement Supervisor, Tom Wasinger, observed and photographed many items not typically stored on a residentially zoned property. The items were stored outside along the northeast side of the property adjacent to Bluebell Hill Drive. The site inspection and photos chronicled a large amount of firewood stored on the property and equipment consisting of a forklift and a trailer with "Landscaping - Trees 719-266-4067" written on the side of trailer. A wood chipper, another flatbed trailer, large log splitter, two-wheel cart, small dump-type trailer, and other equipment were also observed on the site. **(FIGURES 2 and 3)**

On April 5, 2018, staff conducted a web search of the property and found two listings for AA Forestry LLC, a tree cutting service. The results of this electronic investigation gave the impression that the property owner or tenant is using the residential property to operate the commercial business (beyond the scope of a Home Occupation Permit) and using the property to store equipment and material associated with the commercial business. **(FIGURES 4 and 5)**

On May 9, 2018, staff drafted a notice and order to abate **(FIGURE 6)** that focused on the operation of a home occupation as all evidence lead to this conclusion. Prior to making contact with the occupant of 2814 Bluebell Hill Drive, an additional follow-up inspection of the property was conducted. Little to no change with the outdoor storage of commercial type equipment was observed.

Staff made contact with the property owner, Jacquelyn Haag, at the residence. Mrs. Haag explained to staff that she does not operate the business. She further explained that the person using the property to store equipment and material for the tree service business is long-time family friend, Raul Acosta, who does not live on the property. Mrs. Haag allows Mr. Acosta use of the property in exchange of him taking care of her trees. Staff explained to Mrs. Haag that this constitutes an illegal use of the property because the property is zoned residential and designating an area to store equipment and to stock woodcutting for a business is a commercial operation, not permitted in a residential zone.

Staff served Mrs. Haag with a municipal notice and order and discussed the deadline of May 31, 2018 to remove the violation. Mrs. Haag was advised that because staff was not aware that she was allowing someone, not residing on the property, to store equipment, tools, and material on the property, most likely a revised notice and order would need to be drafted served.

Mrs. Haag said that she would talk with Mr. Acosta and felt the deadline was reasonable. She was advised that if there was substantial progress in removing the illegal use the City would work with her if an extension was required. Even though Mrs. Haag is not operating the business, staff left a copy of a Home Occupation Permit (HOC) and Development Application Bulletin (DAB) that has additional information explaining the HOC requirements with her for her own benefit and so she could pass this information on to Mr. Acosta.

On May 16, 2018, staff drafted an updated notice and order to abate **(FIGURE 7)**. Staff conducted another site inspection and took additional photos **(FIGURES 8 and 9)**. Little to no change was observed with regard to the outdoor storage of equipment and wood storage for the commercial business; other than staff observed a tarp placed around the wood and trailer. Staff also observed what appeared to be temporary screening material around the forklift.

Staff made contact with the property owner, Jacquelyn Haag at the property and served her with an updated municipal notice and order to address the illegal use of the residentially zoned property for storing commercial equipment associated with the tree service business. Staff explained to Mrs. Haag that as discussed on May 9, 2018, a revise notice would be issued as the May 9, 2018 municipal notice is not as relevant to the violation at the property. Staff explained to Mrs. Haag that the May 9, 2018 municipal notice is not applicable as it was drafted under the premise that the owner and operator of the business lived on premises. Staff explained to Mrs. Haag that this May 16, 2018 notice is revised to address the illegal use of the residentially zoned property. Mrs. Haag once again acknowledged that she does not operate the business but is allowing a family friend, Raul Acosta, to use the property to store his equipment, vehicles, and wood for his tree cutting business.

Mrs. Haag also acknowledged, once again, that she understands this is a violation and not a proper use of the property. Staff discussed the appeal process and due process. Mrs. Haag was advised that she has due process and she has every right to file the appeal. Staff did ask her why she would want to appeal something that she fully acknowledges is not a permitted use. She said that she feels it will give her an opportunity to bring in more facts, stating "there is stuff that you do not know about" and she feels that she can compel the City Planning Commission to vacate the notice.

Staff, again, advised Mrs. Haag that she has every right to appeal the notice and order but the goal is to protect the residential properties and staff would work with her on timelines if she shows progress of removing the illegal use from the property. When staff stated to Mrs. Haag that she seems very agreeable that she should not have a business on her property she stated to staff that “no, I should not have a business on the property at all” but she still feels it necessary that she appeal the notice and order.

2. Background:

Per City Code Section §7.3.102 PURPOSE AND SPECIFIC REQUIREMENTS OF THE RESIDENTIAL ZONE DISTRICTS: *Lots zoned R - Estate Single-Family Residential: This zone district accommodates large lots primarily for low density, detached single-family residential use.*

The property is zoned R-Estate Single-Family and is intended for residential use types. Per City Code Section §7.3.103: PERMITTED, CONDITIONAL AND ACCESSORY USES, commercial outdoor storage of material and equipment is not a permitted or conditional use within the R-Estate zone.

Excerpt from City Code **(Figure 10)**

*“The following table shows the land uses allowed in the residential zone districts. Principal permitted uses are shown as P, conditional uses are shown as C and accessory uses are shown as A. All uses allowed in a specific PUD or FBZ (see note 5 to the table in this section) zone district and related development standards shall be determined at the time of zone district establishment or change. The uses allowed in these districts are subject to the standards in this part (residential districts), the applicable parking, landscaping, sign, and other general site development standards listed in [article 4 of this chapter](#) and the applicable administrative and procedural regulations listed in [article 5 of this chapter](#).”*

Staff finds that the Notice and Order to Abate meets the criteria as set forth in City Code.

3. Conformance with the City Comprehensive Plan:

Not applicable to a notice and order

4. Conformance with the Area’s Master Plan:

Falcon Estates, Columbine Estates, & Yorkshire Estates (FYC) – R-Estate, Residential-Home Office, & Office. The Conditions of Record, Note 12-G, of Master Plan CPC MP 94-14, prohibits outdoor storage and limits business activity to a home office. **(Figure 11 & 12)**

**STAFF RECOMMENDATION:**

**CPC AP 18-00065 - APPEAL OF NOTICE AND ORDER TO ABATE SIGN CODE VIOLATION**

Deny the appeal and uphold the Notice and Order to Abate the land use code violation issued at 2814 Bluebell Hill Drive on May 16, 2018, based on the finding that the appeal does not meet the criteria for granting an appeal as outlined in City Code Section 7.5.906.A.1. and 7.5.1007.