

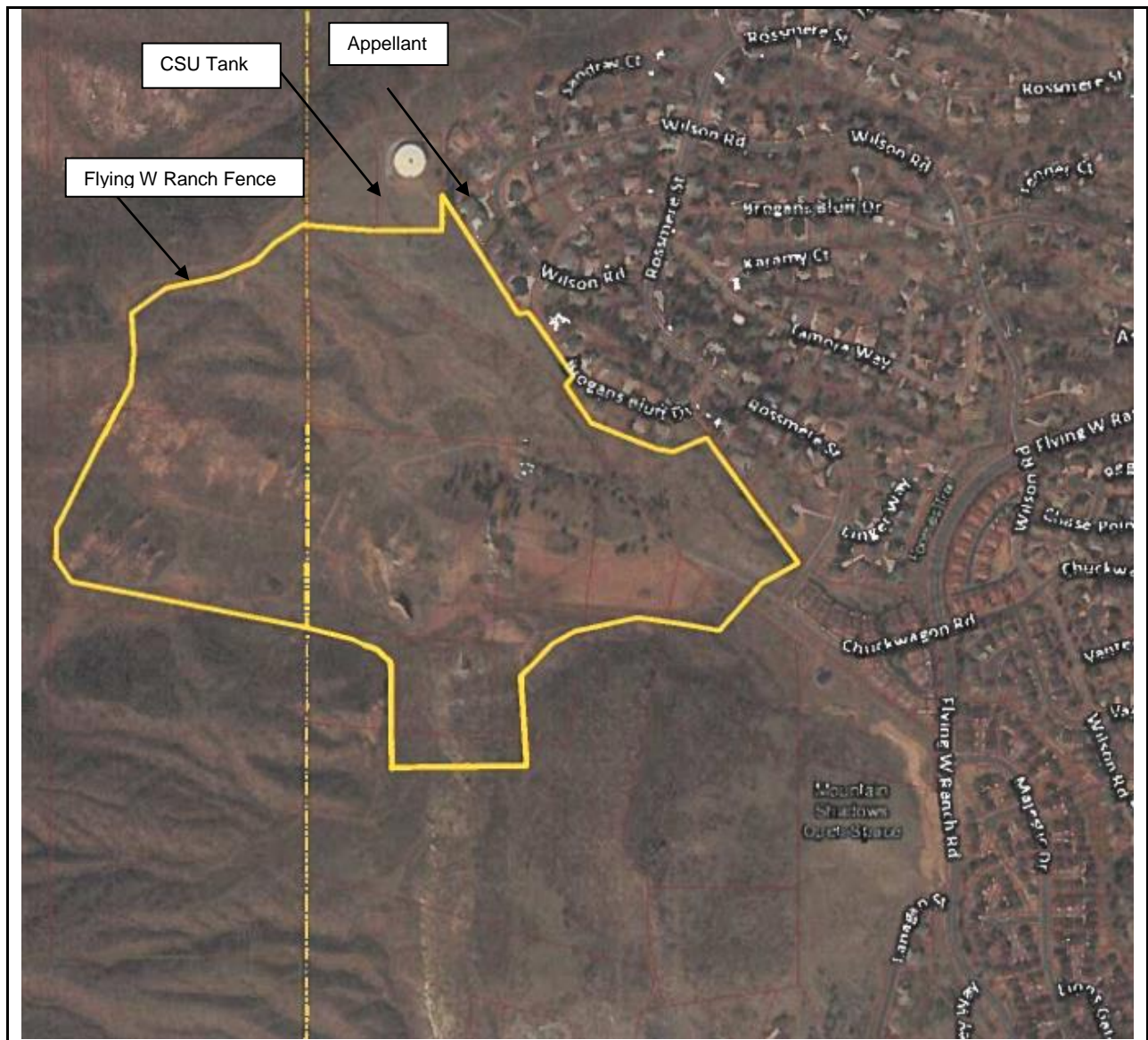
CITY PLANNING COMMISSION AGENDA  
June 20, 2019

STAFF: MEGGAN HERINGTON

FILE NO(S):  
CPC AP 19-00069 – QUASI-JUDICIAL

**PROJECT:** FLYING W RANCH WILDLIFE FENCE

**OWNER:** FLYING W RANCH



### **PROJECT SUMMARY:**

1. Project Description: This is an appeal of the administrative site plan approval for the building permit to allow construction of a 10-foot tall wildlife fence on portions of the Flying W Ranch (Ranch) at a 10-foot setback most adjacent to Brogans Bluff Drive, Rossmere Street and Chuckwagon Road. The property is zoned A (Agricultural) and is located off of Chuckwagon Road.
2. Applicant's Project Statement: Because this is an appeal of a site plan approved with a building permit there is no project statement. The building permit documents are attached as **FIGURE 1**.
3. Appellant's Appeal Statements: **FIGURE 2**
4. Planning and Development Team's Recommendation: City Planning recommends denial of the appeal, upholding the administrative site plan approval.

### **BACKGROUND:**

1. Site Address: The Flying W Ranch is addressed as 3330 Chuckwagon Road. Because the fence is considered a "structure" by Pikes Peak Regional Building Department, it was assigned the address of 2830 Brogans Bluff Drive.
2. Existing Zoning/Land Use: The Ranch is zoned A (Agricultural) with Hillside Overlay.
3. Surrounding Zoning/Land Use:  
North: A (Agricultural) and PF (Public Facility)/Ranch continues to the north and is adjacent to a Colorado Springs Utilities site  
South: A (Agricultural)/Ranch property  
East: PUD (Planned Unit Development)/Single-Family Residential – Mountain Shadows  
West: A (Agricultural)/Ranch property and National Forest Service
4. Annexation: Flying W Addition #1, 1971
5. Master Plan/Designated Master Plan Land Use: A small portion of the property around the CSU tank site is within the Mountain Shadows Master Plan. The designated future land use is medium density residential. A majority of the traditional chuckwagon area is not in the master plan.
6. Subdivision: None
7. Zoning Enforcement Action: none
8. Physical Characteristics: This is the historic Flying W Ranch property. In total, the Ranch is over 1400 acres with approximately 137 of those acres intended to be fenced. The site has some rolling hills, natural topography, and rock outcroppings. Unfortunately, the property was significantly impacted by the Waldo Canyon Fire and very little natural vegetation exists; mostly re-growth since the fire.

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

There is no formal stakeholder input on the approval of a site plan because the site plan is submitted as part of the building permit through Pikes Peak Regional Building and then routed to the City Development Review Enterprise for review and approval. The site plan is intended to allow the city to determine zoning setbacks and other criteria that pertain to construction of individual structures.

In April, the City was contacted by the appellant related to construction of the fence at a location in close proximity to the property line between the Ranch and the appellant's property. Upon further research, staff discovered that the Ranch had not applied for a building permit; which is required for any fence or wall over 7 feet in height. Along with the requirement for a building permit, the City Zoning Code requires that all fences and walls over 6 feet in height be setback from the property line to the accessory structure required setback which is dictated by the zone district.

Prior to the City Planning Commission Hearing, the Flying W Ranch was required to post the site and send postcards to 385 neighbors within a 1000-foot buffer distance. Two emails in opposition to the fence were received and are attached as **FIGURE 3**.

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

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

In 1971 the owners of the Ranch petitioned the City to annex their property (and other large neighboring properties) into the municipal boundaries of the City of Colorado Springs. That total annexation, Flying W Addition #1, encompassed 2389 acres. With that, an annexation agreement was signed that recognized the historic character and uses of the Ranch property to remain as agriculture and ranching uses. The agreement designated an area for the "Flying W Village" to be allowed to continue with its commercial nature in the A (Agricultural) zone district. Also, specific to the construction of ranch fencing, the annexation agreement states: *"It is agreed and understood that the A (Agricultural) zone to be established on all lands and premises described in Exhibit A allows for the continuation of the livestock operation now being conducted as part the of the Flying W Ranch activities."* Exhibit A to that annexation agreement is the property held for the agricultural and ranching activities. Other property annexed with this annexation (approximately 800 acres) is now part of the Mountain Shadows development.

Fast forward to June of 2012 - the property was devastated by the Waldo Canyon Fire. All of the structures, vegetation, and other improvements were damaged beyond repair. Over the past several years the Ranch has worked with City staff to rebuild.

b. Planning and Zoning Context

As described in the Stakeholder Process section of this report, a complaint was filed against the Ranch in April for construction of a fence without a building permit. After notice of the complaint, the owners immediately started work to secure the needed documentation for construction of the fence, including the site plan and building permit. An exhibit illustrating the fence design is attached as **pages 7-9 of FIGURE 1**. It has been explained that the 10-foot fence is required to aid in the revegetation efforts occurring on the Ranch. With the depletion of vegetation from the fire, the Ranch is replanting trees and revegetating to assist with property stabilization. This has proven difficult with the amount of wildlife in the area. The fence is designed to provide mitigation of wildlife and allow for better revegetation efforts. The fence will also serve as a safety measure for the overall agricultural and ranching operations.

Prior to submittal of the permit, The Ranch manager consulted with staff on the appropriate fencing setbacks. The first consideration of staff was determining the setbacks for this large, agricultural property. City Code Section 7.4.102.A stipulates that fences or walls over 6 feet in height are considered accessory structures and must meet accessory structure setbacks. City Code Section 7.3.105.A establishes accessory structure setbacks for the A zone district as 10 feet. This Section also states that accessory structures are not permitted in the front yard setback and accessory structures that meet the required setbacks are subject to the same height standards as other accessory structures.

Given that the Ranch is hundreds of acres and the fenced area is approximately 160 acres; what is the "front" of this large, agricultural ranch? City Code is suburban in nature and not equipped to give good direction on setbacks for a ranch fence on a working agricultural property. The setbacks, as illustrated in the definition of setbacks, are geared towards the suburban residential lot. After much review, staff applied a 10-foot setback as illustrated in the building permit documentation (**FIGURE 1**) finding that the "front" of the Ranch is **not** along Brogans Bluff Drive. Also, because the previously approved development plan for the redevelopment of the "Village Area" designated a 10-foot setback along the eastern boundary, it is reasonable to assume that the 10-foot setback is extended along that eastern side of the property outside of the "village area".

c. Appeal Statements

The appeal statement is attached as **FIGURE 2**. This statement highlights several areas that the appellant feels do not meet Code requirements. Those are outlined as follows:

- 1) Utility Easement Encroachment – The appellant states that the fence encroaching in the utility easement conflicts with Section 7.3.105.1.c.

*Staff findings:* There is a Colorado Springs Utilities (CSU) access easement that leads from the terminus of Sceptor Way to a CSU tank site to the north and adjacent to the Ranch. This is the main access to the utility site. CSU does not consider a fence as an “accessory structure”; fences are permitted in easements depending on the intended use of the easement. CSU also signed-off on approval of the building permit with a note that states access is not to be obstructed. The permit reviewer from CSU conducted a site inspection and is comfortable with the location of the fence with respect to the access. Staff will have a final sign-off on the building permit as construction is completed and can verify installation of a gate.

- 2) Assignment of Front, Side, and Rear Setbacks – The appellant states that the setbacks should not be based on just one “lot” because the fence transverses multiple parcels and quotes the definition for “lot”. The appellant’s opinion is that the “front” setback is that area adjacent to Brogans Bluff Drive.

*Staff findings:* Staff considered the area along Brogans Bluff Drive, Wilson Road and Rossmere Drive as a non-front setback and an accessory structure must maintain 10 feet from any non-front property line. The Brogans Bluff address for the fence was given by Pikes Peak Regional Building Department after staff initially reviewed the site plan and gave direction on the setbacks. Moreover, the Flying W Ranch is thousands of acres with multiple access points. While staff agrees in a more typical suburban residential setting that a single-family residence typically fronts where it gains access or is addressed, this property is atypical and not residential in nature. In this case, the fence being addressed off of Brogans Bluff Drive does not then make this the “front” of the Ranch.

- 3) Hillside Overlay – The appellant states that the hillside design manual guidelines are not met for the fence and that the grading and erosion control plan was erroneously waived.

*Staff findings:* The Hillside Overlay includes language that the manager may waive certain hillside review criteria. In the construction of the fence, the manager waived several of the hillside criteria based on the following:

The fence does not negatively impact any hillside characteristics that may be present and supports the historic use of the ranch for agricultural purposes.

The 1971 annexation agreement states that the City, at that time, recognized the existing uses on the Ranch. Fencing also existed prior to the fire. Because of the circumstances in which the fence was destroyed it is reasonable to continue to recognize the historic improvements that support the Ranch.

The City Stormwater Manager verified with State regulators that a grading and erosion control plan is not required for the construction of the fence because it is not part of a “common plan of development”. The State recognizes the agricultural nature of the property and the need for the fence as requested. With this concurrence from the State, the City is able to waive the grading and erosion control plan for the fence only. **(FIGURE 4)**

- 4) Height of more than 8 feet – The appellant quotes a Development Assistance Bulletin (DAB) as stating that no fence can be over 8 feet in height.

*Staff findings:* An accessory structure that is located to meet the required setbacks is permitted to be of a height greater than 8 feet. Through the approval of the site plan it was determined that the fence does meet the required setback for an accessory structure (10-foot) and thus is permitted to be 10-foot tall.

Staff will work to evaluate this DAB in order to provide clarity in the future.

- 5) Incomplete Site Plan – The appellant asserts that the site plan is incomplete; that it lacks enough detail for CSU and Fire to evaluate access, does not show a gate, lacks a grading and erosion control plan component and does not show transitions to other properties.

*Staff findings:* The site plan allowed staff to make an informed decision on the fence installation and the impacts to the adjacent owners. Staff did not require a traditional site plan for this non-traditional request. Instead, the owner submitted a surveyed drawing of the property line adjacent to Mountain Shadows with the 10-foot setback accurately scaled and depicted. An aerial photo was also provided to supplement the package with general internal locations not abutting single-family residential.

- 6) Existing Fence Repair/Replacement – The appellant states that for years the cattle were contained by a much smaller fence with a greater setback and that fence should be repaired as it provides almost 100 feet of separation from the residential properties.

*Staff findings:* Staff is of the opinion that the request, as approved per the site plan, meets City Code. If the Planning Commission is concerned about the overall aesthetics of the fence, there appears to be sufficient space within the 10-foot setback to plant a few evergreen trees for screening.

## 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:

- (1) It was against the express language of this zoning ordinance, or
- (2) It was against the express intent of this zoning ordinance, or
- (3) It is unreasonable, or
- (4) It is erroneous, or
- (5) It is clearly contrary to law.

The approval of the site plan was not against the express intent of the zoning ordinance. The ordinance is meant as a guide to development and sets compatibility standards. Staff focused the review on compatibility and made a decision on the setbacks based on the property as a whole ownership and functioning ranch.

It is not unreasonable to allow an agricultural operation to construct a fence. The fence materials and design are depicted as part of **FIGURE 1**. Based on the overall property, it is also not unreasonable to assume a 10-foot non-front accessory structure setback.

The site plan approval was not erroneous. The plan illustrates the needed elements for staff to make an informed decision. Not only did planning staff use the document to evaluate the request, City Fire and Colorado Springs Utilities both approved the plans with notes that a gate and Knox-box would be provided at the terminus of Scepter Way.

Staff finds that the required appeal criteria are not met.

## 3. Conformance with the City Comprehensive Plan:

Staff has evaluated the proposed fence 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 site plan approval that determines a setback for a fence/accessory structure.

However, the support for the ranch itself and the need for the fence 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 fence is needed to stabilize the property and allow the owner to continue work to restore this important piece of our landscape.

4. Conformance with the Area's Master Plan:

Only a small portion of the fence is located within the Mountain Shadows Master Plan. The property on which the fence is located is designated as future medium density residential. There are no references in the master plan related to fencing.

**STAFF RECOMMENDATIONS:**

**AR R 19-00118 – APPEAL OF AN ADMINISTRATIVE SITE PLAN APPROVAL**

Deny the appeal, thereby upholding the administrative approval of the site plan for construction of a 10-foot fence with a 10-foot setback addressed as 2830 Brogans Bluff Drive, based upon the finding that the site plan complies with the development standards for accessory structures in City Code Section 7.3.105.A.1, as well as the finding that the appeal criteria in Section 7.5.906.A.4 are not met.