

KETTLE CREEK NORTH, COLORADO SPRINGS

APPEAL STATEMENT

JUNE 1, 2021

CITY CLERK'S OFFICE
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APPEAL REQUEST

N.E.S. Inc., on behalf of Vintage Communities, submits this appeal against the decision of the City Planning Commission at its hearing on May 20, 2021 to uphold the appeal and deny the Administrative approval of a Development Plan (AR DP 20-00538) and Final Plat (AR FP 20-00539) for the proposed Kettle Creek North development.

PROJECT BACKGROUND

Kettle Creek North is located within the northern portion of the Briargate Master Plan. It is bounded on the south by the North Fork subdivision, currently under development. The north boundary is the Kettle Creek Open Space currently under review for acquisition by the city TOPS program. The western boundary is Powers Boulevard and a detention pond that is being jointly constructed by the North Fork development and the appellant.

VICINITY MAP

N.T.S.



The proposed project consists of 247 single family residential lots. Site access will be from Thunder Mountain Avenue. Intersection locations on Thunder Mountain have been established by the North Fork development and will be utilized by this project, including nine access points from the proposed Kettle Creek North development onto Thunder Mountain Avenue. Ingress and egress from the Kettle Creek North and North Fork developments to Old Ranch Road is via Thunder Mountain Avenue and Forest Creek Drive. No other public access is available into the Kettle Creek North or North Fork neighborhoods due to topographic, environmental, and access policy restrictions (Powers Boulevard and Howells Road) constraints.

The Kettle Creek Development Plan was administratively approved by City Planning on April 6, 2021. That decision was appealed to City Planning Commission and at a hearing on May 20, 2021, City Planning Commission upheld the appeal, thereby denying approval of the Development Plan and Final Plat.

This appeal relates specifically to Planning Commission's denial of the Development Plan (AR DP 20-00538) and Final Plat (AR FP 20-00539) due to concerns related to traffic and emergency access. In their 4 to 2 decision, the majority of Planning Commissioners cited Section 7.5.906.A.4c as the basis for denial of the Development Plan: *Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.*

APPEAL STATEMENT

This appeal asks City Council to reverse City Planning Commission's decision and approve the Development Plan and Final Plat. In order to appeal a decision that was originally approved administratively, the Appellant must address the following requirements of Section 7.5.906.A.4 of City Code:

- a. *Identify the explicit ordinance provisions which are in dispute.*
 - b. *Show that the administrative decision is incorrect because of one or more of the following:*
 - (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.*
 - c. *Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.*
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For clarification, the Appellant considers that the original administrative decision to approve the Kettle Creek North Development Plan and Final Plat by staff was correct and that Planning Commission's decision to overturn the administrative decisions was incorrect. It is on that basis that the above considerations are addressed.

In upholding the appeal and denying the Development Plan, the Planning Commissioners expressed concerns related to traffic and emergency access. Accordingly, this appeal will address each of the Development Plan criteria in Section 7.5.502 of the Code with emphasis on criteria specific to traffic and public safety. In doing so we will demonstrate that the Planning Commission's decision was unreasonable given the relevant facts of the case and inconsistent with land use standards and plans established through the Briargate Master Plan and the recently approved Zoning and Concept Plan for the Kettle Creek North property. We will also demonstrate the Planning Commission did not accurately weigh the benefits and adverse impacts nor did they apply standards or criteria related to traffic or emergency access to reasonably overturn Planning Staff's Administrative Approval of the Development Plan.

Section 7.5.502.E of City Code identifies thirteen criteria that must be met in order for a Development Plan to be approved. Four of these criteria, 7.5.502.E.2, 7.5.502.E.8, 7.5.502.E.12, and 7.5.502.E.13 pertain to the traffic and access related concerns expressed by the Planning Commission.

Section 7.5.502.E.2 states: 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 plans, urban renewal plans, or design manuals.

Appellant Response: The Kettle Creek North Development Plan and Final Plat fully comply with the approved Briargate Master Plan, the recently approved Kettle Creek North Zoning (CPC PUZ 19-00090) and the recently approved Kettle Creek North Concept Plan (CPC PUD 19-00091). The Development Plan includes significantly fewer homes than allowed under the Master Plan with allow densities of 3.5 to 7.99 dwelling units per acre. The Development Plan results in a density of 4 dwelling units per acre is within the density provisions allowed under the approved zoning and concept plan and of 4 dwelling units per acre. The access and transportation corridors identified on the Development Plan are consistent with the previously approved traffic study prepared by LSC, including vehicular access via Thunder Mountain Avenue to Old Ranch Road. Therefore, the Development Plan and Final Plat substantially comply with City-adopted plans that are applicable to the site.

Section 7.5.502.E.8 states: The project preserves, protects, integrates or mitigates impacts to any identified sensitive or hazardous natural features associated with the site.

Appellant Response: The Development Plan and Final Plat are consistent with the approved Concept Plan including preservation of open space in a manner that aligns with the City's Parks Trails and Open Space Plan and protects sensitive Preble's Jumping Mouse Habitat. A land suitability analysis was conducted to determine sensitive and hazardous natural features. The development site is not within the Hillside Overlay or the Wildland Fire Urban Interface overlay areas. The Kettle Creek North site is rated as "moderate" burn risk by the Colorado State Forest Service. Based upon these key indicators, the development site is not at "extreme" risk of wildfire as suggested in some public comments, but rather at the same level of risk as the

existing North Fork development and much of the proposed future development on the entire east side of Colorado Springs. Based upon these findings, the previous administrative approval of the development plan, and statements made by City Fire during previous hearings, it is reasonable to determine the risks are not “extreme” and emergency situations can be reasonably managed by emergency service providers in a manner similar to the existing North Fork Neighborhood other developments within Colorado Springs.

Section 7.5.502.E.12 states: 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.

Appellant Response: A Traffic Study was prepared by LSC as part of the Zoning and Concept Plan approval in April of 2020. This study included existing and projected future traffic volumes through 2040. The Traffic Study was carefully reviewed and accepted by the City through the development review process. The traffic study concluded the primary traffic issues on Thunder Mountain are associated with a short-term site traffic volumes generated by Pine Creek High School during weekday mornings and weekday evenings during peak hours. These peak traffic volumes result in delays at the following locations: The main entrance to the High School on Thunder Mountain, the intersection of Thunder Mountain and Old Ranch Road, and the traffic circle at Old Ranch Road and Cordera Crest Avenue. It is worth noting that outside of the short-term peak volumes, the Traffic Study determined all streets and intersections perform at an acceptable level of service. By simply managing and delaying the start time for the High School by 45 minutes, the LSC Traffic Study determined all intersections would perform at an acceptable level of service during peak hours. It is the applicant’s understanding that the City approached School District 20 regarding changing school hours to alleviate peak traffic congestion, but the District refused to adjust the schedule.

Ingress and egress access to the site, along with emergency access were thoroughly discussed by Planning Commission and City Council in April of 2020 as part of the Zoning and Concept Plan approval. The depth of the traffic and emergency access review and subsequent careful consideration given these issues during the approval process is evident in the documented dialogue between City Staff during the review process and the previous deliberations of Planning Commission and City Council during the approval of the Zoning and Concept Plan. City experts in Traffic Planning and the Fire Department supported the administrative approval of the Development Plan and have testified as such at Planning Commission. The currently proposed Development Plan is the logical next step in the development process, is consistent with the provisions of the previously approved Zoning and Concept Plan, and reasonably addresses traffic and public safety.

Section 7.5.502.E.13 states: 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. (Ord. 94-107; Ord. 95-125; Ord. 01-42; Ord. 02-64; Ord. 03-74; Ord. 03-157; Ord. 09-50; Ord. 09-78; Ord. 12-72; Ord. 18-2).

Appellant Response: The applicant is prepared to reasonably address, mitigate, or offset impacts related to traffic and emergency access to the extent proportional and practical. Subsequent to the approval of the Zoning and Concept Plan for Kettle Creek North, City Traffic identified several alternatives for managing the existing peak hour volumes generated by Pine Creek High School. These wide-ranging alternatives included both traffic management strategies, such as changing the start time of the high school and physical improvements such as installing a traffic signal at the primary entrance to the school to improve egress from the neighborhood. The City conducted an analysis of these alternatives and determined the addition of a traffic signal at the entrance to the Pine Creek High School would be the most effective way to manage peak hour traffic concerns. In an effort to be part of the solution, the applicant for Kettle Creek North has offered to pay for the traffic signal thereby offsetting the traffic impact in a manner that is proportional and practicable.

The applicant has pursued and offered to implement reasonable alternatives to provide a secondary emergency access for the benefit of both the Kettle Creek development and the existing North Fork neighborhood; however, these alternatives cannot be achieved without the cooperation of the City, School District 20, CDOT and El Paso County. These alternatives include: emergency access directly onto Powers Boulevard, emergency access onto Howells Road, emergency access along the east side of elementary school site to connect to Forest Creek Drive, emergency access and bridge across Kettle Creek to the north. With the exception of bridge crossing over Kettle Creek which is not economically feasible and is environmentally constrained, the other alternatives are reasonable, but not feasible, without support from other controlling agencies to work cooperatively to secure a secondary emergency access for the Kettle Creek and North Fork neighborhood.

Conclusion

A denial of the Development Plan and Final Plat would place an undue burden on the Appellant, as it would severely restrict the reasonable use of his property. The proposed Development Plan and Final Plat meet all the development standards and review criteria established in City Code, including the criteria expressly focused on traffic and public safety. City Traffic has proposed a solution to the primary neighborhood traffic issue associated with Thunder Mountain Avenue and the entrance to Pine Creek High School that includes installing a traffic signal. The applicant has offered to pay for the offsite traffic signal improvements at the entrance to the high school. The original neighborhood appellant has stated grave public safety concerns, however, these concerns have not been substantiated nor quantified. The City has reviewed and accepted the Kettle Creek North Traffic Study. City Traffic and the Fire Department have extensively reviewed the emergency access via Thunder Mountain Avenue and determined the access to be acceptable. City Planning has recommended approval of the Development Plan and the Final Plat. The appellant has pursued and offered to implement reasonable alternatives to provide a secondary emergency access to the property, but cannot achieve these alternatives without the cooperation of others.

Denial of the Kettle Creek North Development Plan and Final Plat will be inconsistent with Plan COS, the Briargate Master Plan, and the recently approved Zoning and PUD Concept Plan for the Kettle Creek North property. Approval of this Development Plan and Final Plat would address the primary traffic and access issue at the entrance to Pine Creek High School and provide much needed quality housing that is consistent with existing land-use plans resulting in a net benefit to the overall community.
