

CITY OF COLORADO SPRINGS

INTEROFFICE MEMORANDUM

DATE: February 26, 2018

TO: Peter Wysocki, Director of Planning

FROM: Sarah Johnson, City Clerk

SUBJECT: Notice of Appeal

ITEM NO. 6.B.: CPC CM1 17-00141

An appeal has been filed by Tony & Lori Nieves, Harold Hopkins, Jr. and residents of Diana, Edith Ln. and Bates and Marion Dr. regarding the Planning Commission action of February 15, 2018.

I am scheduling the public hearing on this appeal for the City Council meeting of March 27, 2018. Please provide me a vicinity map.

CC: Rachel Teixeira

Tony & Lori Nieves
1318 Edith Ln
Colorado Springs CO 80909

Richard Gaito
Selective Site Consultants
4155 E Jewell
Denver CO 80222



THE PLANNING & DEVELOPMENT DEPARTMENT APPEAL TO CITY COUNCIL

Complete this form if you are appealing **City Planning Commission's, Downtown Review Board's or the Historic Preservation Board's** decision to City Council.

APPELLANT CONTACT INFORMATION:

Appellants Name: Tony & Lori Nieves, Harold Hopkins Jr Telephone: 719-469-5321
AND RESIDENTS of Diana, Edith, Bates, Marion 80909
Address: 1318 EDITH LN City Colorado Springs
State: CO Zip Code: 80909 E-mail: TNPAP0@Comcast.net

PROJECT INFORMATION:

Project Name: CPC CMI 17-00141
Site Address: 1225 North Circle Dr
Type of Application being appealed: Planning Commission Decision
Include all file numbers associated with application: CPC CMI 17-00141
Project Planner's Name: Rachel Teixeira
Hearing Date: FEB. 15, 2018 Item Number on Agenda: 6-B

CITY CLERK'S OFFICE
2018 FEB 26 A. 8:50

YOUR APPEAL SUBMITTAL SHOULD INCLUDE:

1. Completed Application
2. \$176 check payable to the City of Colorado Springs
3. Appeal Statement
 - See page 2 for appeal statement requirements. Your appeal statement should include the criteria listed under "Option 1" or "Option 2".

Submit all 3 items above to the **City Clerk's office (30 S Nevada, Suite 101, Colorado Springs, CO 80903)**. Appeals are accepted for 10 days after a decision has been made. Submittals must be received no later than 5pm on the due date of the appeal. Incomplete submittals, submittals received after 5pm or outside of the 10 day window will not be accepted.

If you would like additional assistance with this application or would like to speak with the neighborhood development outreach specialist, contact Katie Sunderlin at sunderka@springsgov.com (719) 385-5773.

APPELLANT AUTHORIZATION:

The signature(s) below certifies that I (we) is(are) the authorized appellant and that the information provided on this form is in all respects true and accurate to the best of my (our) knowledge and belief. I(we) familiarized myself(ourselves) with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit(s) or other type of permit(s) may be revoked without notice if there is a breach of representations or conditions of approval.

Lori Nieves [Signature] February 26, 2018
Signature of Appellant Date

To: City of Colorado Springs Mayor & City Council

CITY CLERK'S OFFICE

Date: February 23, 2018

2018 FEB 26 A 8:50

Subject: Appeal of CPC CM1 17-00141

This Appeal Statement, as required on the accompanying application, is regarding the review of the CMRS application for the 55 ft. freestanding stealth telecommunications facility at 1225 N Circle Dr. approved by City Planning Commission on February 15, 2018. Accordingly, this statement explains how these applicable and referenced sections of City Code were not adequately met.

The Conditional Use Review Criteria referenced as attachment 7 in the CPC Staff Report for this item state the following:

CONDITIONAL USE REVIEW CRITERIA:

7.5.704: AUTHORIZATION AND FINDINGS:

*The Planning Commission may approve and/or modify a conditional use application in whole or in part, with or without conditions, **only if all three (3)** of the following findings are made:*

- **Surrounding Neighborhood: That the value and qualities of the neighborhood surrounding the conditional use are not substantially injured.**

Not met: While it is true property values are determined by a number of factors, and it's difficult to arrive at specific causes for fluctuation; steps can be taken to help prevent diminution in property values and neighborhood quality by providing adequate use-to-use compatibility measures. This is especially true when residential zone districts abut commercial districts as is the case with this request. The tower is proposed just 51 ft. from San Miguel Street, the dividing line between the C-5 (commercial) zone, where the facility is proposed, and the R-6000 (single-family) neighborhood.

Firstly, due to the close proximity to adjacent single-family homes; it is imperative that City Code Section 7.4.608.B.3 be regarded: *facilities should be architecturally compatible with the adjacent buildings and land uses and integrated through design, materials, color, and location to blend in with the existing characteristics of the site to the maximum extent possible. The height, bulk and scale of a stealth CMRS facility should be compatible with the adjacent buildings and land uses.*

Accordingly, staff and the applicant could have proposed a greater distance beyond 51 ft. from San Miguel St. to bolster said compatibility goals, locating it deeper into the commercial zone. However, the staff report and the applicant's project statement justify this first criterion by only referencing how the facility is a mono-pine and therefore blends in with existing trees, and how the community is helped by better cellular coverage. Mainly, shorter deciduous trees are in the area; therefore the presence of a facility disguised as a taller evergreen tree does not blend into the existing characteristics of the site to the maximum extent possible. Also, the AT&T applicant states the benefit to the community is better cellular coverage; but this would only be true for AT&T customers, and not the community at-large.

Photo-sims were provided within the site plan demonstrate how the mono-pine "blends" in, particularly when looking south from the northerly residential properties; however, the photo-sim does not reflect that one of the closest live trees to the west of the proposed facility is to be removed to accommodate this cell tower, with no indication of a replacement with another live tree.

Secondly, per City Code Section 7.4.606.B.2: ***The front yard setback for freestanding CMRS facilities from property lines adjacent to public or private streets shall be a distance equal to the height of the freestanding facility.***

According to the staff report, the tower is proposed to be 51 ft. from the property line shared with San Miguel St. At 55 ft. tall, this would seem to be in violation with this code section. The facility either needs to be setback 55 ft. from the property line adjacent to this street; or, it should be lowered to 51 ft. to ensure that this height-to-setback requirement of the City Code is met. This is especially critical because Section 6409a of the 2012 Middle-Class Tax Relief Act, obligates the City to approve a height increase of the facility by 20 ft. plus one additional array, should an eligible facilities request be submitted, so long as stealth concealment is maintained.

Thirdly, it should be the burden upon the applicant and staff to provide anecdotal evidence regarding how the presence of wireless facilities in close proximity to residential neighborhoods in other areas hasn't negatively impacted values and neighborhood quality. The first criterion is not addressed in this manner. Neighborhood quality could be better ensured by adhering to the City's own code section 7.4.606.B.2 by providing a minimum setback that matches the facility's height, not removing a live tree to install a fake one, and not using a singular tall evergreen as a disguise among shorter plentiful deciduous trees.

- **Intent of Zoning Code: That the conditional use is consistent with the intent and purpose of this Zoning Code to promote public health, safety and general welfare.**

Not Met: The applicant's project statement indicates that general welfare is promoted through better (AT&T) cell phone coverage. This would be more accurate if the intent was to co-locate other carriers on this facility. Since a mono-pine is conical-shaped, multiple carriers could not likely be placed on an AT&T priority pole, and maintain a stealth appearance. The result is more cell towers for different carriers.

Additionally, there were a number of letters in opposition sent to staff, large attendance at the January 8, 2018 neighborhood meeting, and citizens present to express discontent with the proposal at the Planning Commission hearing. It should not be the applicant or people outside of the neighborhood to determine if general welfare is promoted, but rather the very property owners in the neighborhood.

- **Comprehensive Plan: That the conditional use is consistent with the Comprehensive Plan of the City.**

Not Met: The staff report references that this area is located within the "Community Activity Center" designation of the Comprehensive Plan. Enhanced communication is important when most everyone relies on cellular technology. The two comprehensive plan objectives, policies and strategies cited in the staff report, however, do *not* seem be upheld.

Objective CCA 1, Policy, CCA101 and Strategy CCA 101b address *maintaining a positive relationship between built environment and natural settings, and protecting significant views*. It can be contended that this objective, policy, and strategy would be more adequately addressed, if a living tree weren't being removed to accommodate this facility. Also, it would seem appropriate to cluster other like tree species in the area by planting additional live evergreens surrounding the mono-pine facility to further masque the view and uphold the intent of it being a "stealth" facility.

Comprehensive Plan Objective CCA 6, Policy CCA 601, and Strategy CCA 601a speak to

maintaining character, compatibility and minimizing visual impact. A better location to ensure these are met would be somewhere more internal to the commercial zone district instead of on the edge of the more sensitive single-family zone district. For example, placement of the facility southeast of the Ace Hardware site would seem to do a better job at clustering the mass of the height with the built environment as opposed to placing it closer to resident's front yards. Unfortunately, neither the staff report nor the applicant's project statement explains why alternative site selections were not chosen.

Lori Ann News 2018/02/26

Thudde W. G. February 26, 2018

2/26/18