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January 31, 2022

Colorado Springs Land Use Review Office
30 S Nevada Ave., Suite 105
Colorado Springs, CO 80903

**RE: Appeal of Approval Letter for Creekwalk North Development Plan and
Plat File Numbers: AR DP 21-00551 and AR FP 21-00552**

Dear Land Use Review Office:

Weiner & Cording represent Protect Colorado Springs, a group of neighbors, residents, and workers, who have concerns about the proposed Creekwalk North development (the "Project").

We are herewith appealing the Project's Approved Development Plan, Plat, and Drainage Report, File Numbers: AR DP 21-00551 and AR FP 21-00552 which were approved on January 20, 2022 (collectively referred to as the "Development Plan"). Attached herewith is the executed "Planning & Development Department Appeal" to City Planning Commission form, provided by Urban Planning Manager Ryan Tefertiller. We understand from Mr. Tefertiller that we will be able to submit our \$176 appeal fee by contacting the Planner-In-Charge. We will be reaching out to him shortly.

APPEAL STATEMENT

I. Ordinance Provisions in Dispute

Colorado Springs City Code, § 7.5.502(B) (development plans); § 7.5.503 (minor amendment to development plan); Article 7, parts 2 and 3 (final subdivision plat), and ordinances approving various aspects of this project including Ordinance No. 21-89 vacating portions of a public right-of-way known as

Metzler Avenue and Creekwalk Court (file no. CPC V 21-0011321-516); Ordinance No. 21-90 amending the zoning map of the City of Colorado Springs (file no. CPC ZC 21-00112); Minor Amendment to the Ivywild Master Plan to add multiple properties between E. Ramona Ave. and E. St. Elmo Ave. to the area recognized as part of the Creekwalk Commercial project (CPC MP 93-176-A5MN21); Creekwalk North Concept Plan Amendment to expand the scope of the previously approved Creekwalk Commercial Concept Plan (file no. CPC CP 18-00097-A2MJ21).

In the next section, we reference various ordinances, statutes and the Drainage Criteria Manual which are in dispute.

II. The Administrative Decision is Incorrect, Unreasonable and Contrary to Law

1. The Inclusion of an Underground Detention Facility is Contrary to Law.

This appeal challenges the January 20, 2022 approval of the Development Plan which incorporates a “private underground detention basin” under the proposed parking lot identified as “Tract A.” (Creekwalk Filing 1 – Development Plan, Sheet 8 of 13).

As detailed by Kimley Horn and Associates, the Applicant’s consultant:

The proposed Project will route stormwater for the entire 2.833-acre development to a proposed private underground StormTech chamber for full spectrum detention. This underground detention is located beneath the proposed parking lot.

Flows from the site will be captured by roof drains and inlets located throughout the site and directed to the underground detention structures ... Flows are then conveyed west with a proposed 30” RCP storm sewer and then outfalls into Cheyenne Creek via the proposed outlet structure.

Eric Gunderson, P.E., Kimley Horn, Variance Request ltr. for Creekwalk North, 8/16/21 at 2.

A. The StormTech Chamber Violated the DCM.

The Drainage Criteria Manual (DCM) notes that “the use of underground, vault type BMPs¹ is generally prohibited; however they may be allowed on a case by case basis ...”. DCM, Vol. 2, Ch. 4, § 4 (emphasis added). The DCM further notes that “underground BMPs are only allowed in select locations [such as] this downtown area provided they keep captured organic material dry to mitigate leaching of nutrients from leaves and grass clippings, and have an approved monitoring, inspection, and maintenance program.” *Id* (emphasis added).

However, a “Policy Clarification” entitled “Criteria for Underground BMPs,” dated April 12, 2017, has apparently modified somewhat the above provision of the DCM. Those criteria state that “Variances cannot be granted” unless in conformance with the “Four Step Process.”

Specifically, the Policy Clarification requires that a variance can only be granted if:

“1. The design engineer can effectively defend the need for non-traditional BMPs.

AND

2. The underground BMP is designed to provide full release of the WQCV in no less than 12 hours, if utilizing a filtration based process.

The underground BMP is designed to provide full release of the WQCV in no less than 40 hours (72 hours for full-spectrum detention), if utilizing a sedimentation based process.

AND

3. For filtration based facilities, the underground BMP has the demonstrated ability to produce effluent with a median concentration of 30 mg/L TSS or less (this may consist of proprietary BMP facility I structure information).

AND

¹ BMP stands for best management practices. All redevelopment that disturbs more than 1 acre “must assess the existing and planned water quality treatment for the drainage basis in which the development lies.” DCM, Vol. 2, Ch. 4, § 1.0. The record does not reflect that this was done.

4. Adequate and sound engineering analysis showing that downstream conveyance systems are adequately sized to handle the receiving flows has been provided.

AND

5. Adequate and sound engineering analysis has been provided showing that the policies regarding requirements for detention, as described in Chapter 3, Section 6.0 of the DCM are fulfilled.”

Policy Clarification at 2.

These five (5) criteria that must be established before an underground detention facility (BMP) may be approved, and there is no evidence in the record that this has been accomplished. Indeed, the “Final Drainage Report for Creekwalk Filing 1,” prepared by Eric Gunderson, dated 12/16/2021, does not address the April 12, 2017 criteria. It addresses the *old criteria*, which prohibits underground BMPs except in the Downtown area which does not include Creekwalk North. The Final Drainage Report is inadequate, unreasonable and based on outdated criteria.

The Applicant is seeking a shortcut to avoid having to place a detention pond on its property, the traditional means of detaining stormwater in Colorado, or to purchase additional land for such a pond (“Parking lot storage was also considered; however, this solution would cover almost the entire parking lot area to meet the 100-year volume demand and the required maintenance would create a great burden on the client ...”). Variance Request ltr. at 2. However, the Applicant has admitted that “[t]he proposed parking ratios exceed the designated commercial center ratio of 1 stall per 300 square feet and over sized parking stalls are proposed.” Creekwalk Filing No. 1 – Development Plan Project Statement, Aug. 17, 2021 (the “Project Statement”) at 3. Such reliance on an overly large parking lot not only excludes the use of the standard above ground water detention, but conflicts with the Applicants’ promise that “parking stalls and drive aisles have been designed as efficiently as possible to minimize asphalt area....”. *Id.*

As noted above, the DCM requires an underground BMP to “keep captured organic material dry to mitigate leaching of nutrients from leaves and grass clippings, and have an approved monitoring, inspection, and maintenance program.” *Id.* There is no indication that the underground StormTech chamber

will keep organic material dry, or that there is a monitoring, inspection and maintenance program in place to assure this will happen. Rather, the Applicant notes that “Maintenance of the full spectrum underground detention system can be done by accessing each storage chamber via private manholes. These manholes allow for vacuum trucks to remove accumulated dirt and debris which is collected over time.” The use of a vacuum truck placing a hose down a series of manholes is a far cry from a BMP that keeps “captured organic material dry” or substitutes for a reasonable “monitoring, inspection and maintenance” program. The proposed “private underground StormTech chamber” does not appear to allow access for reasonable monitoring and maintenance of the captured organic material, and the documents submitted by the Applicant do not address this. This arrangement would be unreasonably susceptible to breakdown.

B. The StormTech Chamber Violates Colorado Statutes and Unreasonably Burdens Other Members of the BID or the Public.

The Applicant proposes to avoid personal responsibility for maintenance of the proposed “private underground StormTech chamber” and to make it the responsibility of the Creekwalk Business Improvement District (BID). While this may provide a benefit to the developer or the Sprouts Market, by having the BID maintain the private improvement, the BID (and ultimately the taxpayer) bears the financial cost. This unreasonable arrangement allows the financial burden of the StormTech chamber to shift to the BID members or the public, with commensurate financial benefits that may accrue to the developer and/or the Sprouts Market.

C.R.S. Title 31, Chapter 25, Part 12 only allows BIDs for *public improvements*. The Applicant acknowledges that this is a “private underground StormTech chamber ... located beneath the proposed parking lot.”

A BID’s authority is addressed in C.R.S. § 31-25-1212(1)(f)(II)), and allow "maintenance of improvements, by contract, if it is determined to be the most cost-efficient." In other words, if a BID is going to maintain any kind of improvement, the BID (or the City) bears the burden of showing that the BID's maintenance of the improvement is "the most cost-efficient" way to do so. Since the alternative here is to have the developer (or Sprouts Market) maintain the

StormTech underground detention facility, it would clearly not be more cost effective for the BID to assume the cost.

2. The Development Plan and Plat Will Result in Unreasonable Amounts of Water Pollution.

There is no specific analysis about the impact to Cheyenne Creek (the “Creek”) of the discharge of particulate matter as a result of the addition of significant amounts of the *auto-centered* impervious surfaces.

The addition of parking and internal circulation roads as impervious surfaces so close to the Creek means that significant toxic particulate matter will be discharged. This includes the typical benzene emissions, but also coolant, which is highly toxic, and transmission and brake fluid. Even if these are not discharged in significant quantities, on top of these particulates are those associated with road salt, which is distributed somewhat liberally between November and March. Road salt is a major form of particulate pollution that, given the proximity to the Creek, will be discharged into the water regularly.

Since the development nearly sits on top of the Creek, the lack of detailed analysis of the water pollutant discharges is unreasonable. Indeed, the Final Drainage Report from the Applicant, dated 12/16/2021, does not address pollutants whatsoever.

Finally, in “determining rainfall and runoff for the proposed drainage system,” the Drainage Report uses the hydrologic criteria of a “100-year design storm event[,]” even though the Applicant acknowledges that “the Site [is] partially within the ... 500-year floodplain.” Final Drainage Report at 7. This is contrary to law.

3. The Development Plan and Plat Will Result in Unreasonable Auto Traffic.

The Development Plan will result in traffic to the area that will decrease levels of service in the area beyond acceptable limits, violating Section 7.5.408 of the municipal code.

III. Benefits and Adverse Impacts Created by the Decision

Protect Colorado Springs believes that the Development Plan approval will result in adverse impacts to water quality of Cheyenne Creek and an increased risk of flooding due to the unlawful use of the underground StorageTech facility. It will unduly burden other members of the Creekwalk BID and the public, which will be forced to maintain and subsidize a “private” StorageTech facility. The project will also result in increased traffic to the area which will decrease levels of service in the area beyond acceptable limits. It will have a negative impact on emergency response times, public safety, air/water quality and existing businesses and jobs. This project has a disproportionate negative impact on the public as compared to the applicant.

Thank you for the opportunity to submit this appeal.

Very truly yours,

WEINER & CORDING

*Original Signature on file at
Law Offices of Weiner & Cording*

By: /s/ Randall M. Weiner
Randall M. Weiner

On behalf of Protect Colorado Springs