



City of Colorado Springs

City Hall
107 N. Nevada Avenue
Colorado Springs, CO
80903

Meeting Minutes - Final-revised City Council

*City Council meetings are broadcast live on Channel 18,
beginning at 1:00 p.m.*

Tuesday, April 8, 2014

1:00 PM

Council Chambers

1. Call to Order

City Clerk Sarah Johnson called the roll. All Councilmembers were present.

Present: 9 - President Pro Tem Merv Bennett, Councilmember Helen Collins, Councilmember Jill Gaebler, President Keith King, Councilmember Don Knight, Councilmember Jan Martin, Councilmember Joel Miller, Councilmember Andy Pico, and Councilmember Val Snider

2. Invocation and Pledge of Allegiance

The meeting was opened with an invocation by Reverend Ben Broadbent. Council President King led in the Pledge of Allegiance.

3. Changes to Agenda/Postponements

Council Administrator Gonzalez stated there had been a request to move item 12.A - Ancient Olympia Resolution to immediately follow item 6. - Approval of Consent Calendar.

Consensus of Council approved the request.

13.C. [14-0036](#) Appeal of Planning Commission Approval of a Medical Marijuana Smoking Facility at 332 East Colorado Avenue - Studio A64. (Planning & Development - Peter Wysocki)

Council recommended, and in agreement by all parties subject of the appeal, that Agenda Item 13.C, be postponed to the April 22, 2014, City Council meeting.

Motion by President Pro Tem Bennett, seconded by Councilmember Snider, that the Planning Case be postponed to the April 22, 2014, City Council meeting.

Yes: 8 - Bennett, Collins, Gaebler, King, Martin, Miller, Pico, and Snider

No: 1 - Knight

4. Councilmember Comments

Councilmember Miller expressed concerns related to the City for Champions' Resolution that is due to the State within eight days and referenced the formation of an Advisory Board without passage of an Ordinance.

5. Consent Calendar

5A. Second Presentation:

- 5A.A.** [14-0084](#) CPC ZC 13-00122: (Quasi-Judicial Matter) Ordinance No. 14-19 amending the zoning map of the City of Colorado Springs relating to 5.0 acres located north of the Dublin Boulevard and Sandy Ford Lane intersection, from A/AO (Agricultural with Airport Overlay) to PUD/AO (Planned Unit Development: Detached Single-Family Residential, density 5.66 dwelling units per acre, maximum building height of 30 feet with Airport Overlay).

The Ordinance was finally passed on Consent for second reading.

- 5A.B.** [14-0085](#) Ordinance No. 14-21 amending Section 108 (Utilities Contracts) of Article 1 (General Provisions) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended, pertaining to contracting authority.

The Ordinance was finally passed on Consent for second reading.

5B. First Presentation:

- 5B.B.** [14-0052](#) Appointments to Boards and Commissions

The Appointments were approved on Consent.

- 5B.D.** [14-0017](#) Resolution No. 32-14 was presented: "A Resolution approving and authorizing an Intergovernmental Agreement between the City of Colorado Springs and the Colorado Department of Public Safety Division of Homeland Security and Emergency Management for the NRCS Flood Exigent Grant Project NRCS-EWP 14NRC14CS."

This Resolution was adopted on Consent.

- 5B.E.** [14-0053](#) A Resolution granting permission to close Consensual Transaction for the acquisition of property for Southern Deliver System Project Improvements.

The Resolution was adopted on Consent.

Approval of the Consent Agenda

Motion by Councilmember Collins, seconded by Councilmember Miller, that all matters on the Consent Calendar, with the exception of items 5BA and 5BC, be passed, adopted, and approved by unanimous consent of the members present.

Yes: 9 - Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, and Snider

- 12.A.** [14-0087](#) A Resolution approving the City of Ancient Olympia, Greece as a Sister City of the City of Colorado Springs, Colorado, USA.
(Councilmember - Jill Gaebler)

Councilmember Gaebler described the importance of the Resolution establishing the Sister City relationship with Ancient Olympia, Greece. Mayor Bach expressed appreciation for the opportunity to build the relationship and introduced those individuals present who have been instrumental in working "behind the scenes" to establish the

partnership. Julie Smith, Public Communications Specialist, introduced two representatives from Olympia, Greece, who described the three pillars upon which the relationship will be promoted: academics, olympism, and tourism. Ceremoniously, Mayor Bach and Aristideis Panagiotopoulos, Vice Mayor for Efthimios Kotzas, Mayor of Ancient Olympia, signed the agreement establishing the Sister City relationship.

Motion by Councilmember Gaebler, seconded by Councilmember Pico, that the Resolution be adopted.

Yes: 9 - Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, and Snider

6. Recognitions

- 6.A.** [14-0013](#) A resolution of appreciation designating April 6th through 12th, 2014 as National Volunteer Week. (Parks, Recreation & Cultural Affairs - Karen Palus)

Motion by Councilmember Gaebler, seconded by Councilmember Martin, that the Resolution be adopted.

Yes: 9 - Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, and Snider

7. Citizen Discussion

Deborah Stouf-Meininge spoke on concerns of health issues with City for Champions. Patricia Yeager spoke to help the City with its ADA compliance programs.

James Schneider spoke on a request for a revote on the strong mayor form of city government.

Carl Strow spoke on the need for Mayor Bach to resign and on CSPD tracking him. Victoria Stone and Genie Fisher spoke on downtown parking fines in the downtown area.

Councilmember Miller requested that a meeting be coordinated with City staff to review their concerns.

Douglas Bruce spoke on Councilmember Gaebler's Twitter account comments.

Kanda Calef spoke for an elected City Attorney.

Christine Faith, Loren and Sarah spoke in favor of the proposed goat ordinance.

Adriane Nau spoke on property rights and eminent domain.

8. Mayor's Business

Michael Sullivan, Human Resource Director, presented the three appointees to the Colorado Springs Urban Renewal Board and requested Council's confirmation.

Councilmember Collins spoke against the need for the CSURA.

Councilmember Martin spoke in support of those who volunteer their time and expertise for the well-being of the City.

Douglas Bruce spoke against the process.

Bill Murray spoke against the CSURA.

David Neville, Chair of CSURA, spoke in support of the organization.

- 8.A.** [14-0083](#) Confirmation of Valerie Hunter to the Colorado Springs Urban Renewal Authority (CSURA) Board. (Human Resources - Michael Sullivan)

Motion by President Pro Tem Bennett, seconded by Councilmember Pico, that the Appointment be confirmed.

Yes: 7 - Bennett, Gaebler, King, Knight, Martin, Pico, and Snider

No: 2 - Collins, and Miller

- 8.B.** [14-0135](#) Confirmation of Nolan Schriener to the Colorado Springs Urban Renewal Authority (CSURA) Board Member. (Human Resources - Michael Sullivan)

Motion by President Pro Tem Bennett, seconded by Councilmember Snider, that the Appointment be confirmed.

Yes: 6 - Bennett, Gaebler, King, Martin, Pico, and Snider

No: 3 - Collins, Knight, and Miller

- 8.C.** [14-0136](#) Confirmation of Peter Scoville to the Colorado Springs Urban Renewal Authority (CSURA) Board. (Human Resources - Michael Sullivan)

Motion by Councilmember Snider, seconded by President Pro Tem Bennett, that the Appointment be confirmed.

Yes: 7 - Bennett, Gaebler, King, Knight, Martin, Pico, and Snider

No: 2 - Collins, and Miller

9. Items Called Off Consent Calendar

- 5B.A.** [14-0090](#) Approval of minutes of the previous meeting and dispensing with reading of minutes

Councilmember Miller requested an addition to the minutes to reflect his statement on a particular agenda item more fully and provided his verbatim statement to the City Clerk to be included in the record.

The Minutes were approved as amended to include the verbatim statement provided by Councilmember Miller.

Yes: 9 - Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, and Snider

- 5B.C.** [14-0015](#) A resolution acknowledging a land donation of a 1.65-acre parcel near Cowpoke Road from David D. Jenkins to the City of Colorado Springs. (Public Works - David Lethbridge)

Ross Clinger spoke and requested this item be deferred to April 22nd meeting. Councilmember Knight stated his interest in hearing from others who may have concerns about this issue and asked that Council Administrator Gonzalez coordinate communications on Council's behalf.

Motion by President Pro Tem Bennett, seconded by Councilmember Snider, that the item be postponed to the Council meeting on April 22, 2014.

Yes: 9 - Bennett, Collins, Gaebler, King, Knight, Martin, Miller, Pico, and Snider

10. Utilities Business

- 10.A.** [14-0077](#) Ordinance No. 14-23 amending Sections 1303 (Definitions); 1306 (Stage I Shortage); 1307 (Stage II Shortage); 1310 (Duration of Water

Use Restrictions); 1311 (Alternative Water Management Plans); and 1313 (Special Contract Service) of Part 13 (Water Shortage) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended, pertaining to water shortage. (Utilities - Jerry Forte) [6-3 vote]

Gary Bostrom, Utilities' Chief Water Services Officer, provided a presentation and explained the background and revisions of the Water Shortage Ordinance. He stated, due to the current snow pack, he did not foresee the need to implement Stage II in the near future. Councilmember Miller expressed concern about long term draught. Douglas Bruce spoke against the Ordinance.

Motion by President Pro Tem Bennett, seconded by Councilmember Gaebler, that the Ordinance be approved on first reading.

Yes: 6 - Bennett, Gaebler, King, Martin, Pico, and Snider

No: 3 - Collins, Knight, and Miller

10.B. [14-0088](#) A resolution approving changes to the Water Rate Schedules Tariffs to modify the Water Shortage Tariff. (Utilities - Jerry Forte)

Chris Bidlack, City Attorney - Utilities Division - requested Council's final decision on the Water Shortage Tariff that was prepared based on direction given by Council at yesterday's Work Session.

Douglas Bruce and Cynthia Schivalia spoke against the ordinance.

Councilmembers Knight and Miller expressed concern that the tariff appears to penalize those who practice conservation and will not support the ordinance.

Councilmember Pico stated he supported the ordinance.

Motion by Councilmember Gaebler, seconded by Councilmember Martin, that the Resolution be adopted.

Yes: 5 - Bennett, Gaebler, Martin, Pico, and Snider

No: 4 - Collins, King, Knight, and Miller

10.C. [14-0132](#) A resolution approving the 4th amendment to the Employment Agreement for appointment of (Colorado Springs Utilities) Chief Executive Officer. (Councilmember - Jan Martin)

Councilmember Martin read a statement that overviewed the rationale in support of the employment agreement amendment. Councilmember Pico described the annual adjustments as a fair compromise. Councilmember Collins spoke against the wage increase. Councilmember Snider stated he would not approve since it did not include the cost of living increase. Sherry Brenzell spoke about the going rate of salaries. Melissa Kellione, Utilities' General Manager of Human Resources, explained their Sherman Anti-Trust Act compliance when considering the data behind the wage adjustment. Kanda Calef and Cynthia Schivalia spoke against the wage increase.

Motion by Councilmember Pico, seconded by Councilmember Gaebler, that the Resolution be adopted with an amendment in Section 2.1 of the Agreement, removing the statement, "Further adjustments to the Appointee's Base Salary, beginning January 1, 2015, will be processed as an annual market adjustment equivalent to the percentage increase included in the annual budget as funding for staff base pay."

Yes: 5 - Bennett, Gaebler, Knight, Martin, and Pico

No: 4 - Collins, King, Miller, and Snider

11. Unfinished Business

- 11.A.** [14-0082](#) Ordinance No. 14-20 confirming the Mayor's appointment of the City Attorney and setting the salary of the City Attorney. [second presentation]

Tracy Lessig, City Attorney - Employment Division Chief, spoke on the merits of Wynetta Massey to serve as the City Attorney/Chief Legal Officer.

Councilmember Collins spoke against the salary yet stated she believed Ms. Massey would do a good job.

Councilmember Miller stated he respected Ms. Massey, but read a statement regarding issues he has experienced and with the City Attorneys' Office serving the interest of two separate entities, often in conflict.

President King and Councilmember Snider also acknowledged the character and merits of Ms. Massey's qualifications to fill the role.

Motion by Councilmember Gaebler, seconded by President Pro Tem Bennett, that Ordinance establishing Ms. Massey's appointment as City Attorney/Chief Legal Officer be finally passed.

Yes: 7 - Bennett, Gaebler, King, Knight, Martin, Pico, and Snider

No: 2 - Collins, and Miller

- 11.B.** [14-0086](#) Ordinance No. 14-22 creating a new Section 450 (Sales or Use Tax in a Commercial Aeronautical Zone) of Part 4 (Exempt Transactions, Commodities, and Persons; Deductions) of Article 7 (Sales and Use Tax) of Chapter 2 (Business Licensing, Liquor Regulation and Taxation) of the Code of the City of Colorado Springs 2001, as amended, pertaining to a Sales or Use Tax exemption within a commercial aeronautical zone. [second presentation]

Sponsors: King

Neil Ralston, Airport Planning & Development Manager, provided an overview of the ordinance.

Councilmember Miller asked regarding the proposed boundaries. He further explained the reasoning for his opposition to the ordinance.

Bob Cope, Senior Business Climate Specialist, provided a perspective on how the economy may benefit from the enhanced employment opportunities supported by an increase in aviation manufacturing.

Motion by President Pro Tem Bennett, seconded by Councilmember Gaebler, that the Ordinance be finally passed.

Yes: 7 - Bennett, Gaebler, King, Knight, Martin, Pico, and Snider

No: 2 - Collins, and Miller

12. New Business

- 12.B.** [14-0059](#) A resolution approving the renewal of the \$1,000,000 loan agreement and promissory note between the Great Outdoors Colorado Trust Fund (GOCO) and the City of Colorado Springs. (Parks, Recreation & Cultural Affairs - Karen Palus)

Karen Palus, Parks, Recreation, and Cultural Services Director, provided an overview of the loan agreement and promissory note between the Great Outdoors Colorado Trust Fund (GOCO) and the City.

Councilmember Miller asked how Certificates of Participation turn into grants. Ms. Palus responded that COP's provide an opportunity to pay over time and that the funds come from Conservation funds and TOPS. She clarified that right now the funds are considered a loan until 2018, at which time the grant will be in place.

Councilmember Knight asked about the loan payments and balance. Ms. Palus responded that the appropriation is done annually to comply with the conservation easement and that the balance is approximately \$5.6 million with an annual payment of \$1.1.

Motion by Councilmember Gaebler, seconded by President Pro Tem Bennett, that the Resolution be adopted.

Yes: 7 - Bennett, Gaebler, King, Knight, Martin, Pico, and Snider

No: 2 - Collins, and Miller

- 12.C.** [14-0069](#) CPC MP 04-00280-A1MJ13 - Master Plan Amendment Design Guidelines for the North Nevada Urban Renewal Area (Planning & Development - Peter Wysocki)

Peter Wycoki, Planning and Development Director, provided explanation on the background for the Master Plan Amendment.

Councilmember Miller expressed concern relative to having design guidelines for one part of town and not another and would like to see consistency throughout the City.

Jim Rees, Executive Director for CSURA, confirmed that guidelines are in place in other areas of town.

Motion by President Pro Tem Bennett, seconded by Councilmember Martin, that the Resolution be adopted.

Yes: 7 - Bennett, Gaebler, King, Knight, Martin, Pico, and Snider

No: 2 - Collins, and Miller

Motion by President Pro Tem Bennett, seconded by Councilmember Snider, that the Master Plan Amendment be approved.

Yes: 7 - Bennett, Gaebler, King, Knight, Martin, Pico, and Snider

No: 2 - Collins, and Miller

- 12.D.** [14-0078](#) Ordinance No. 14-24 amending Ordinance No. 13-77 (2014 Appropriation Ordinance) for a Supplemental Appropriation to the General Fund in the amount of \$2,000,000 for the purpose of roadway repairs. (Chief of Staff - Steve Cox) [7-2 vote]

Chief of Staff Steve Cox described the supplemental appropriation request that falls beyond any 2013 PPRTA rollover and 2014 dollars.

Councilmember Knight described his motion to approve but with a minor amendment to the first sentence in Section 1 to include "Public Works Department's" before the word expenditure.

City Attorney Massey provided that the language Councilmember Knight proposed is consistent with the 2014 Appropriation Ordinance, but does not address the concern that Councilmember Miller expressed. She acknowledged the approval of the ordinance gets the appropriation done and the projects addressed.

Councilmember Miller asked Kathleen Krager, Transportation Planning Manager, questions relative to PPRTA and a \$1.0 million CDOT match for Fillmore and other financial information relative to projects.

Councilmember Miller restated his concerns about the designated 5 vs. 12 appropriating departments and transfers between departments without having to come to Council for approval.

President King asked CFO Kara Skinner about PPRTA funds and whether they were ever a part of the General Fund. Ms. Skinner responded they are completely separate and are not in the City's financial system.

Motion by Councilmember Knight, seconded by President Pro Tem Bennett, that the Ordinance be approved on first reading with one change to add "Public Works Department" in Section 2, Line 2.

Yes: 7 - Bennett, Gaebler, King, Knight, Martin, Pico, and Snider

No: 2 - Collins, and Miller

12.E. [14-0032](#)

An Ordinance Adding New Sections to the Code of the City of Colorado Springs Pertaining to Exercise of and Restrictions Upon the Use of the Power of Eminent Domain to Acquire Property - Councilmember Miller

Sponsors: Miller

Councilmember Miller provided a presentation on eminent domain. He described the time and effort he put forth to bring the item forward for Council's consideration. He expressed concerns relative to the unfairness and misuse of eminent domain to claim the rights to citizens' properties for development purposes.

Councilmember Collins applauded Councilmember Miller's efforts and described that she, too, has concerns having researched eminent domain and its effects on citizens. Councilmembers Bennett, Gaebler, Martin, and Snider acknowledged Councilmember Miller's dedicated efforts but expressed they would like more time to research further to understand better the need for additional regulatory restrictions that have already been defined in City Code.

Vikki Haas Walton, Debra Hapstrite, Garrett Coon, Sherry Brenzell, Bill Murray, Anita Miller, Maria Miller, Jill Davis, Kanda Calef, Tim Seifert, and Marcia Fields spoke in support of the need for the ordinance to restrict the use of eminent domain.

Jim Siebert, Public Policy Advisor for HBA, David Neville, Chair of the Urban Renewal Board, and David Stemple spoke to support postponement of the ordinance for further study, careful review and consideration of the restrictions and regulations that currently exist to limit eminent domain.

Several Councilmembers requested the establishment of a public process on this item prior to the May 13th Council meeting. Councilmember Knight asked the City Attorneys' Office to create a firewall in their office on the for and the against on this item to ensure both sides receive adequate Counsel. Councilmember Miller described his experience working with the City Attorneys on his eminent domain issue and his need to seek outside Counsel.

A copy of Councilmember Miller's PowerPoint presentation is available in the legislative record.

Motion by Councilmember Martin, seconded by Councilmember Snider, that the Ordinance be postponed to the May 13, 2014 Council Meeting.

Yes: 5 - Bennett, Gaebler, King, Martin, and Snider

No: 4 - Collins, Knight, Miller, and Pico

13. Public Hearing

Prior to commencement of the Public Hearing, President Pro Tem Bennett was excused.

Legislative Counsel Andrews asked to confirm the decision of Council as to whether to take the two appeal items, 13.A and 13.B, Whistling Pines West Gun Club Appeal #1 & Appeal #2, together. President King asked if the appellants had any objection. The appellants verbally agreed to allow the items to be heard together, while each appeal will have a separate vote.

Mr. Andrews requested Council disclose any conflicts of interest and to disclose any ex parte communications to which they have been a party that would affect their ability to vote fairly on this matter. Council President King stated he, as well as the rest of Council, have received e-mails on the matter but have not responded. Mr. Andrews then described the order by which the hearing would proceed.

Peter Wysocki, Planning and Development Director, briefed Council with an overview of the project, the Planning Commission's decision, and the substance of the two separate appeals. He emphasized that these are two separate appeals with two separate appellants; thus, their recommendation is for two separate motions be made for each appeal. He clarified that if Council chooses to grant either one of the two appeals, then the Planning Commission's approval would then be revoked.

To address the noise concerns, Mr. Wysocki explained that noise regulations are not in the zoning ordinance that these are regulated through Title IX regarding Public Nuisances. He stated that the developer has agreed to meet, or exceed these required standards. The applicant is required to demonstrate that the noises do not exceed the defined restrictions.

Mr. Wysocki described that relevant to Mr. Flanders/GeoTech appeal is for a violation of the Hillside Ordinance. He stated Mr. Flanders will explain his position that the property was illegally disturbed around 20 years ago, that there was unauthorized grading of the property which illegally compromised his property directly to the north of the proposed Whistling Pines West Gun Club. Mr. Flanders wants the property to be brought into conformance with the Hillside record and is seeking retroactive reinforcement.

Councilmember Knight, referencing a prior Council review of a zone change request, asked to understand use variances and stated he would like to see consistency in all zone change requests.

President King called to hear Angus & Gail Morrison's appeal first.

Mr. & Mrs. Morrison, John Wei, Dick Bursell, and Patty Carbone, spoke on behalf of the Pinecliff appeal. Their concerns focused on repercussions from the anticipated noise that may be generated by the high caliber weapons discharged at the facility causing diminished property values, loss of the presence of wildlife and serene Pinecliff neighborhood setting, and the overall impact to their health, welfare and safety.

Councilmember Miller asked about atmospheric attenuation vs. distance, about the

noise ordinance and to what boundary it was measured. Councilmember Snider asked why these issues were not considered by the Planning Commission. Councilmember Knight asked for clarification to understand the reference to 50 decibels vs. 60 decibels.

Morrison's Appeal Summarized: Flawed development notification process, inconsistent with conditional use criteria, omission of current geologic hazard study, manipulation of sound study weapon database, need for hillside overlay review, non-compliance of sound study with COS noise ordinance, development risk imposed on homeowners, and the concern that Colorado Revised Statute 25-12-109 removes right to complain.

President King called to hear G.W. Flanders' appeal second.

Mr. Flanders provided a presentation. In his description he requested that the Council's judgment be based on the ordinances as they are written and further review the noise assessment and identified what he perceived as statements that were irrelevant in the assessment.

Flanders' Appeal Summarized: That the City staff and the Planning Commission disregarded the Hillside Overlay development standards by not requiring the applicant to file all reports and plans specified by the Hillside Overlay zone; therefore, rendering the conditional use application incomplete for proper review and action; that the zoning violation exists on the property (by virtue of unauthorized land disturbance), which pursuant to City Code, no new development can be approved until a zoning violation is abated; and, the previous unauthorized land disturbance creating an excessively steep slope which significantly impact adjoining property owned by Mr. Flanders.

APPLICANT'S PRESENTATION:

Attorney William Louis represented the Applicant, Bob and Joyce Holmes, owners of the Whistling Pines Gun Club. He first spoke to rebut the concerns expressed in the Appellants testimony. He stated, in anticipation of a lawsuit being filed, he was presenting a blanket objection to the hearsay contained in their testimony.

Attorney Louis described a stipulation made by the Applicant that had not been included in the Planning Commission's minutes; therefore, he was offering it tonight. He stated the Applicants have agreed to stipulate there will not be any .50 caliber firearms discharged on the premises; and, also no .460 Weatherby Magnums discharged on the premises, offering to make this a condition of approval. Councilmember Pico asked what the largest size firearms would be allowed. Mr. Louis responded .300 Winchester Magnum.

Attorney Louis encouraged Council to not overturn the Planning Commission's decision unless they are implying that they acted arbitrarily and capriciously in their decision. He stated his client has met the required criteria.

Attorney Louis acknowledged the only issue in controversy is whether or not there is going to be noise heard in the neighborhood and whether that noise is going to substantially injure the resident's use and enjoyment of their property. He indicated the Applicants are going to provide state of the art noise mitigation techniques, yet they won't be able to meet "no" impact, but are going to strive for it. He described that his client voluntarily stipulated at the 100' feet down measurement from the Morrison's property line, the noise level will not exceed 45 decibels.

Additional noise mitigation stipulations offered by Attorney Louis on behalf of the Applicants included a 4" concrete lift on the roof over the rifle range to comply with the 45 decibel condition. He confirmed the Applicant will allow fully automatic firearms on the property. Councilmember Miller asked if these would be inside the range. Mr. Louis

responded affirmatively.

Councilmembers Knight and Miller asked questions relative to the enforcement of any violations of the noise levels, who and how would those be regulated. Legislative Counsel Andrews referred to the City Code and State Statutes relevant to noise restrictions.

Jeff Kwolkoski, President of Wave Engineering, summarized his evaluation of the impact of noise from the proposed Whistling Pines Gun Club West. His evaluation was included in Council's packet. He suggested adding 4" concrete roof to ensure the 45 decibel limitation is met at the property line.

Attorney Louis assured that Whistling Pines takes seriously the Condition with which it voluntarily agreed; 4" concrete roof over the rifle range to comply with condition 45 decibels at the Morrison property line with 36 decibels at the top of the cliff and stated they will not hear gunshots on their desk or inside their house with the windows open.

Attorney Louis addressed the Flanders appeal and described the history of the property's land use approvals and the exemption granted from Hillside Overlay requirements.

Councilmember Miller asked Mr. Wysocki relative to an adjacent commercially zoned property with another zoning for residential 80 feet just away from the proposed gun club. Mr. Wysocki clarified that immediately east, south, and west the zones are PIP 2, the GeoTech core property also PIP-2; then behind that 80 feet directly north of developers property is zoned residential. Councilmember Miller asked if they measured sound to that area. He also asked about the consideration of a simultaneous number of shots and whether that was reviewed in Mr. Kolkowski's sound assessment. Mr. Kolkowski responded that he utilized two simultaneous firings. Councilmember Miller asked if that was realistic since the facility will have 17 lands of possible simultaneous use.

APPELLANTS' PUBLIC TESTIMONY:

Linda Mulready, Jennifer Russell, Dan Oltrogge, Marcia Oltrogge, Dr. David Finkleman, Rick Branson and Scott Russell, spoke to support the appeal. Mr. Hutchison, President of the Pinecliff HOA, spoke to support the Morrison's appeal. Councilmember Miller referred to Mr. Hutchison's letter included in the packet indicating that if the noise was sufficiently mitigated, they would not oppose the development. Mr. Hutchison responded that statement no longer stands; he supports the Morrison's appeal of the project.

APPLICANT SUPPORTERS:

No applicant supporters provided testimony.

APPLICANTS REBUTTAL:

Attorney Louis summarized his argument that the appeal was based on a fear of the unknown and stated his client has done the best they can to comply with the terms of City's code. Mr. Kolkowski responded to the Appellant's noise mitigation issues.

APPELLANTS CLOSING STATEMENTS:

Mr. Morrison, Mr. Bursell, Mr. Oltrogge, and Mr. Flanders described their main problem is the uncertainty and apprehension that they have no control of, and that recourse is severely limited if, after the fact, there is a problem.

FINAL QUESTIONS FOR CITY STAFF FROM COUNCIL:

Mr. Wysocki answered Councilmember Knight's earlier questions regarding the prior

approval of the Under Water Connection zone change and the Majestic Mountain Indoor Recreation Club which was subject to a Conditional Use Permit. He also spoke to the public notification requirements stating it can be achieved through a posting, and that city staff have discretion of notifying those within 150 ft, 500 ft, or 1,000 ft near which the project is proposed. He stated they generally notify HOA's, in the spirit of intent, to really get the word out.

Councilmembers Gaebler and Miller identified examples of uses of light industrial designation of PIP-2, stating that the types that can be administratively approved include a call center, financial services, medical offices, lab for clinics, automotive repair garage, mini warehouses, etc.

Councilmember Knight asked Mr. Wysocki relative to the definitions for the stipulated noise limitations.

Councilmember Miller asked about Mr. Flanders' concerns on the hillside overlay zoning issue, the criteria for conditional use, adverse impacts on other property, and whether regularly scheduled inspections of approved conditions would be appropriate and administratively feasible. Mr. Wysocki responded that Council could add additional conditions for periodic reviews if they specify the timing.

Councilmember Martin stated two things concern her on the Flanders' appeal including the hillside overlay, why so easy to waive, are there some deficiencies that aren't meeting the hillside ordinance requirements? Mr. Wysocki stated a land suitability analysis would determine what is the best method of development on slopes, whether drainage is being addressed and if the property were in its natural state, it would be another discussion.

Councilmember Martin then asked if there were any remedy if the applicant were to exceed the sound limitations and described a need to find a way to have some accountability. Mr. Wysocki stated Planning does have the ability to revoke a conditional use permit with repeated violations.

Councilmember Miller stated he would like to allow regularly scheduled reviews of the reviewed conditional uses, the acknowledged there is probably not much recourse in consideration of the State Statutes.

Councilmember Collins stated you would have extra work for the City if you impose sound limitations describing her residence is 12 miles from Ft. Carson and her exposure at that distance to the sound of ammunitions being fired.

13.A. [14-0037](#)

Appeal of the Planning Commission Approval of the Whistling Pines West Gun Club-1. (Planning & Development - Peter Wysocki)

Councilmember Knight described that he supported a motion to deny the appeal and wanted to note in the record that he finds that the City made an error in planning referring to the zoning allocation with the noise levels at 60 decibels; he also referred to the potential of substantial impact to the residents for which they no recourse based on the Colorado Revised Statutes.

Motion by Councilmember Snider, seconded by Councilmember Martin, to approve the appeal by Angus and Gail Morrison, denying Planning Commission's approval of a conditional use permit of CPC CU 13-00077.

Yes: 2 - Knight, and Snider

No: 6 - Collins, Gaebler, King, Martin, Miller, and Pico

Absent: 1 - Bennett

Attorney Louis proposed a delay of the decision on the appeal to allow him to review the remedies available in the event his client were to exceed the noise standards.

Councilmembers Martin and Gaebler were in favor of the delay so that all parties could evaluate the options available and come back with a clearer understanding of the issues, the potential impacts, and possible remedies available to the Appellants should the Applicant exceed the noise restrictions.

Motion by Councilmember Martin, seconded by Councilmember Gaebler, that the item to be postponed to a date certain on the appeal by Angus and Gail Morrison of Planning Commission's approval of a Conditional Use Permit of CPC CU 13-00077.

Yes: 3 - Gaebler, King, and Knight

No: 5 - Collins, Martin, Miller, Pico, and Snider

Absent: 1 - Bennett

Motion by Councilmember Martin, seconded by Councilmember Pico, to deny the appeal by Angus and Gail Morrison of the Planning Commission's approval of a Conditional Use Permit of CPC CU 13-00077 but to include in the Conditional Use the five stipulations as defined by Council: 1) The roof shall incorporate a 4-inch concrete lift; 2) Discharge of .50 caliber guns and .460 Weatherby Magnum guns within the facility is prohibited; 3) The facility shall close no later than 8:00 p.m.; 4) Discharge of guns larger than a .300 Winchester Magnum within the facility is prohibited; 5) The project shall meet the Commercial noise requirement under the City's noise ordinance (City Code Chapter 9, Article 8, Part 1).

Yes: 7 - Collins, Gaebler, King, Martin, Miller, Pico, and Snider

No: 1 - Knight

Absent: 1 - Bennett

13.B. [14-0134](#) Appeal of the Planning Commission Approval of the Whistling Pines West Gun Club-2

Motion by Councilmember Gaebler, seconded by Councilmember Martin, to deny the appeal by G.W. Flanders of the Planning Commission's approval of a Conditional Use Permit of CPC CU 13-00077 but to include in the Conditional Use the five stipulations as defined by Council: 1) The roof shall incorporate a 4-inch concrete lift; 2) Discharge of .50 caliber guns and .460 Weatherby Magnum guns within the facility is prohibited; 3) The facility shall close no later than 8:00 p.m.; 4) Discharge of guns larger than a .300 Winchester Magnum within the facility is prohibited; 5) The project shall meet the Commercial noise requirement under the City's noise ordinance (City Code Chapter 9, Article 8, Part 1).

Yes: 5 - Gaebler, King, Martin, Pico, and Snider

No: 3 - Collins, Knight, and Miller

Absent: 1 - Bennett

14. Added Item Agenda

No Added Item was requested.

15. Executive Session

No Executive Session was requested.

16. Adjourn

There being no further business to come before City Council, Council adjourned.

Sarah B. Johnson, City Clerk