

January 26, 2015

Mr. Keith King
City Council, President
District 3
Colorado Springs, CO

Dear Mr. King:

As a current resident of the Dublin Terrace Town Homes, I request that you approve the Amended Development Plan allotting variance to the existing finished and unfinished units "Too Talls", as they stand. There have been many development meetings to address this and the time is "now" to act!

The history of this ongoing concern has shown no progress in a positive way since April, 2012,. Solutions (multiple) submitted to the planning department were summarily denied based on "subjective" testimony in the surrounding community. The development thusly has languished with property and homeowner victims in both communities left to shoulder the strain. Our HOA community has suffered exponentially greater as units have been undervalued, and as a result of lowered property values many are now rentals. To show proof the homeowners to our southwest have not been adversely affected, a copy of "sold" information is enclosed - "A". Other homes in the adjoining community have not been downgraded or affected adversely!

As Homeowners of these town homes, we need to see our community as planned; finished! By authorizing the "Amended Development Plan" submitted by the Receivership, we can look forward to a builder ready to complete the community, our HOA will be able to extend out to the original planned units - bringing in much needed reserves! Without this, the HOA will endure difficult times maintaining grounds, having already multiple times increased the HOA dues to maintain the undeveloped lots and the "Too Talls". The buildings "Too Talls", have been vandalized - as well as our surround fencing - all a result of our community being the subject of unfair assessment and disrespect from the adjacent communities. See Attachments - photo, & B.

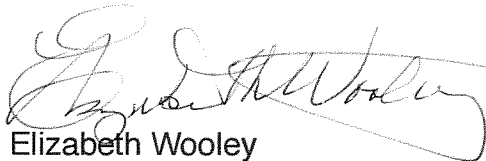
In conclusion, the "Too Talls" as they stand continue to deteriorate, attracting vandalism, and nesting animals. Lack of maintaining these buildings may create greater hazards, i.e. fire, personal injuries - negatively impacting everyone nearby. Approving the Amended Development Plan will result in interest by local builders - thereby completion of the town home area and of course a tax base increase for the City of Colorado Springs! A win, win for all!

I have also enclosed information from the El Paso District Court for your perusal; clearly it outlines responsibilities and concerns the City Council must take into consideration as their final decision affects many!

Please consider all factors as you weigh the affects of your decision. No longer can a negative vote result in what's best for all of us directly affected by the outcome.

Make us a viable, proud Colorado Springs community!

Sincerely,



Elizabeth Wooley
5612 Saint Patrick View
Colorado Springs, CO
Dublin Terrace HOA

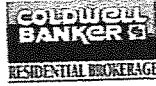
Enclosures:

- A: Sale of Home card: 6625 Where About Court
- ~: Photo Card: Fence Vandalism
- B: Photo's of "Too Talls" & conditions
- C. El Paso District Court = CRCP Rule 106(a)(4)- Case# 2013CV1973
- D. El Paso District Court = Instructions to Receiver - Case# 12CV3256

SOLD AT 100% OF LIST PRICE!

5 Bedroom, 4 bath, 2 attached garage, 2,591 Total Sq. Ft.

Jennifer Montoya
(719) 232-3397
(719) 550-2328
jennifer.montoya@coloradohomes.com



Colorado Springs
2075 Research Parkway Ste B
Colorado Springs, CO 80920
719-200-9198

PRSR FIRST CLASS
U.S. POSTAGE PAID
ZIP CODE 76161
PERMIT NO. 4145

If you or someone you know would like to discuss the services I provide my sellers, give me a call!

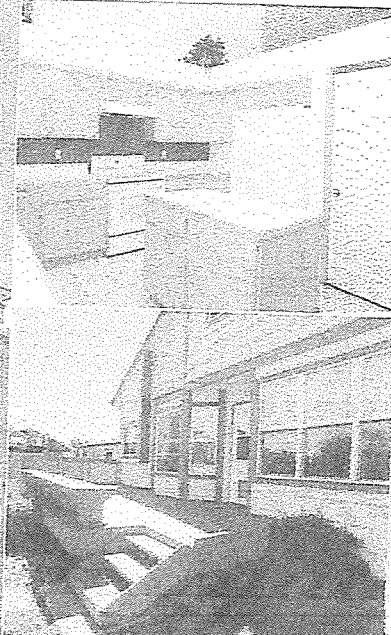
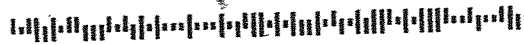


T5 P1 *****AUTO**MIXED AADC 750
1568 312632316

OR RESIDENT

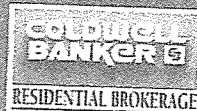
Saint Patrick Vw
Colorado Springs CO 80923-8201

A.

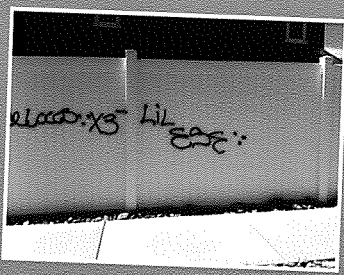
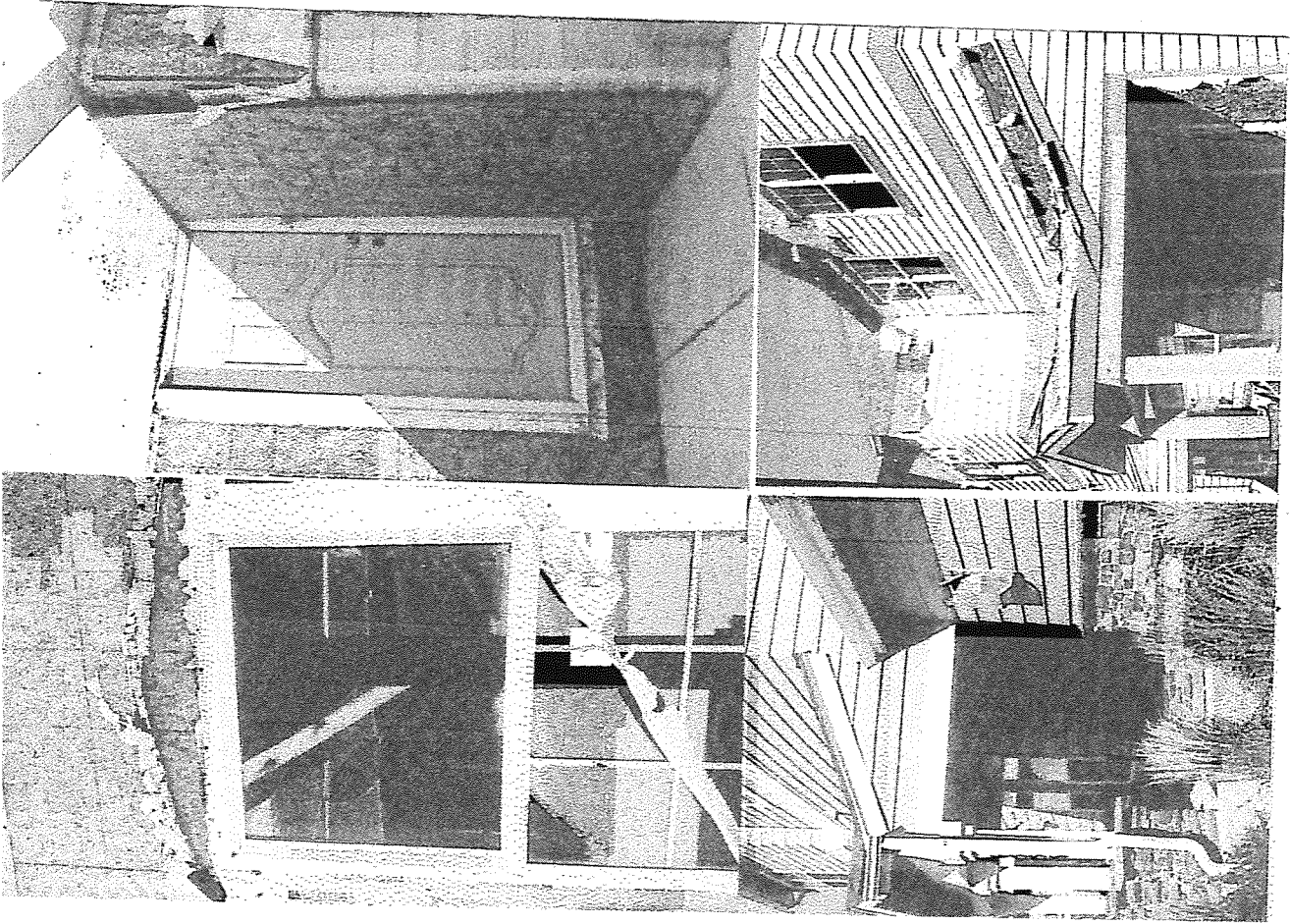


JUST SOLD!

6625 WHEREABOUT COURT
SUNDOWN NORTH



B



C

**DISTRICT COURT,
EL PASO COUNTY, COLORADO**
270 S. Tejon, Colorado Springs, CO 80903

DATE FILED: March 27, 2014 3:56 PM
CASE NUMBER: 2013CV1973

Plaintiff(s): MLP RECEIVERSHIP L.L.C., as Receiver; PROBUILD COMPANY LLC; and PNC BANK, N.A.

v.

Defendant(s): THE CITY OF COLORADO SPRINGS, a Colorado home rule city and municipal corporation; and CITY COUNCIL OF THE CITY OF COLORADO SPRINGS in their official capacity.

COURT USE ONLY

Case Number: 2013CV1973

Div. 19

C.R.C.P. RULE 106(a)(4) REVIEW

This case comes before the Court on the Plaintiffs' First Claim for Relief in their *First Amended Complaint and Request for Judicial Review Under C.R.C.P. 106(a)(4) and for Other Relief*. The First Claim for Relief requests review of a Colorado Springs City Council decision pursuant to C.R.C.P. Rule 106(a)(4).

The issue was briefed. The Court received *Plaintiffs' Opening Brief Pursuant to C.R.C.P. Rule 106(a)(4) and Request for Oral Argument*. The Defendants filed *City Defendants' Answer Brief Pursuant to C.R.C.P. 106(a)(4)(I)*; and the Plaintiffs filed a reply brief.

Oral argument was heard on February 25, 2014 at 3:00 p.m. in this Division. Present were: Gregory O'Boyle for Plaintiff MLP Receivership, L.L.C.; Stephen Dexter for Plaintiff PNC Bank; Jean Arnold for Plaintiff ProBuild Company, L.L.C.; and Michael Gendill, Senior Attorney, Office of the City Attorney for the Defendants.

RELEVANT FACTS

The Dublin Terrace Townhomes Development Plan (hereinafter "the Development Plan") was approved by the City of Colorado Springs in 2006. Pursuant to the *Development Plan, Heritage Homes Inc., d/b/a Today's Homes (hereinafter "Today's Homes")* could build 142 townhomes in the development with strict limitations on the

height, grading, and roof setbacks. It was approved as a Planned Unit Development (hereinafter "PUD") located near Dublin Boulevard and Powers Boulevard in north Colorado Springs.

The Development Plan dictated Today's Homes could only construct a specific design of townhome building along the south boundary of the development. The Dublin Terrace Townhome Development abuts the yards of single-family homes along much of the south border. Therefore the Development Plan required a particular building style with a lower grade, limited height, and a tiered roofline. This would reduce the visual impact for the owners of those single-family homes.

The Pikes Peak Regional Building Department (hereinafter "PPRBD"), a joint city and county department, issued building permits. Some of the building permits issued were for the construction of three buildings, containing a total of ten townhomes, along the southern border of the development (hereinafter "the tall townhomes"). The issued building permits were for the incorrect design of townhome building. They approved the erection of the three buildings with a higher grade, height, and roofline than dictated by the Development Plan.

Pursuant to those building permits, funding was supplied and building began in 2011 and 2012 throughout the development. Of relevance to this case, construction began on the three townhome buildings along the southern edge of the development – the tall townhomes. There were periodic inspections and approvals by the PPRBD pursuant to the building permits during the construction. Two of the tall townhome buildings were nearly complete when the construction was halted by the City of Colorado Springs in February 2012. One of the buildings was even pending a certificate of occupancy. Building was stopped because the tall townhomes were not in compliance with the Development Plan.

To resolve the issue, Today's Homes started negotiations with the City of Colorado Springs City Planning Department Staff (hereinafter "City Planning Staff") and the City of Colorado Springs City Planning Commission (hereinafter "Planning Commission"). There was discussion of modifying the tall townhomes, moving them to other locations, or tearing them down. Unfortunately, shortly after the negotiations began Today's Homes ceased all

their activities and closed all operations in the United States. Today's Homes, its parent company, and other affiliates are now under legal credit protection in Canada. The development went into receivership with the Plaintiff MLP Receivership, L.L.C. as the court appointed receiver.

56 townhomes in Dublin Terrace Townhomes were completed and sold to homeowners. Some empty lots in the development are owned by private investors, and other lots in the receivership were sold. The tall townhomes sit empty and remain in the receivership.

In an attempt to resolve the issues around the tall townhomes, MLP Receivership submitted an Amended Development Plan for approval by the City in November 2012. The Amended Development Plan would allow the tall townhomes to remain with some mitigation. The City Planning Staff did not approve the Amended Development Plan. That decision was appealed to the Planning Commission; and the Planning Commission also rejected the Amended Development Plan. MLP Receivership then appealed the decision of the Planning Commission for de novo review by the Colorado Springs City Council (hereinafter "City Council").

A hearing was held by City Council on the issue on March 26, 2013. At that meeting, the Amended Development Plan was backed by the Plaintiff PNC Bank which funded the building of the tall townhomes. It was strongly supported by Plaintiff ProBuild Company. ProBuild represented the interests of the trade contractors who constructed the tall townhomes. There are about 400,000 different unpaid mechanics' liens on the tall townhomes placed by the framers, suppliers, plumbers, electricians, HVAC specialists, concrete finishers, drywallers, carpenters, window installers, and many more tradesmen who built the townhomes. The Amended Development Plan was also supported by the owners of the completed and sold townhomes in the development. Rick O'Connor of the City Planning Staff spoke against the amendment. Several owners of the adjoining single-family homes argued adamantly for the denial of the amendment.

The first speaker on this issue at the City Council meeting was Rick O'Connor from City Planning Staff. Mr. O'Connor acted as an advisor to the Council, and recommended rejection of the Amended Development Plan. He explained the overall proposal, history,

and his recommendations through a PowerPoint presentation. MLP 18-54. He described some of the procedure which brought the Amended Development Plan before the City Council, and he laid out the standards under which the Amended Development Plan should be considered. Mr. O'Connor told the councilmembers several times to use the criteria for review of a development plan and a PUD development plan in their decision. MLP 165, Trans. pg 11:17-25; MLP 172, Trans. pg 18-19:11-25, 1-2. The portions of the Colorado Springs City Code (hereinafter "City Code") he referred to, §7.3.606 and §7.5.502(E), were distributed to the councilmembers. MLP 55-57. Mr. O'Connor told the City Council not to consider any economic concerns, only land use criteria. MLP 165, Trans. pg 11:17-25; MLP 184, Trans. pg 30: 21-25. He also specifically informed the City Council not to consider the issues of estoppel or property rights in their decision. MLP 161, Trans. pg 7:19-24.

Throughout the meeting, the City Council members were advised by Legislative Counsel from the Office of the City Attorney, Wynetta Massey. Ms. Massey's advice was the same as Mr. O'Connor's. Ms. Massey repeatedly instructed the councilmembers to only consider or base their decision on the criteria in City Code §7.3.606 and §7.5.502(E), the criteria for adoption of a development plan or PUD development plan. MLP 212, Trans. pg 58:5-14; MLP 213, Trans. pg 59:15-25; MLP 215, Trans. pg 61:1-3; MLP 285, Trans. pg 131:7-21; MLP 286, Trans. pg 132:1-7. She told the councilmembers several times to not consider financial issues or other concerns. MLP 212, Trans. pg 58:12-14; MLP 229, Trans. pg 75:5-6, 9-10; MLP 285, Trans. pg 131:17-21.

Andrew Checkley, a representative from MLP Receivership, petitioned for the adoption of the Amended Development Plan. He spoke at the City Council meeting. Mr. Checkley tried to discuss economic ways of resolving the issues with the tall townhomes. He was shut down by Legislative Counsel stating this was not relevant. MLP 212, Trans. pg 58:1-14. He tried to discuss the potential of settling financially with the aggrieved homeowners twice, and was again stopped by the advice of Legislative Counsel. MLP 60, Trans. pg 60:12-16; MLP 217, Trans. pg 63:11-20. Ms. Massey also cautioned councilmembers to not debate things outside the development plan criteria. MLP 190, Trans. pg 36:12-14; MLP 213, Trans. pg 59:15-19; MLP 229, Trans. pg 75:5-6; MLP 275,

Trans. pg 121:4-16.

Counsel for ProBuild Company, Jean Arnold, spoke on behalf of the construction trades people during the public comment portion of the meeting. Ms. Arnold discussed the economic impact of the decision on her clients and the other tradesmen. She directed the councilmembers to City Code §7.5.906, and asked for consideration of those factors. Her citation of that section came up again later in the meeting. City Council President Scott Hente asked if City Council could consider the criteria laid out in City Code §7.5.906. MLP 283, Trans. pg 129:9-11. Ms. Massey advised the use of those factors was inappropriate. MLP 284, Trans. pg 130:15-18.

Some of the deliberations at the meeting were about financial issues and resolution of the townhome problems, even though the City Council was strongly advised against considering those issues. In the end though, members of City Council based their decisions on the criteria in City Code §7.3.606 and §7.5.502(E) as advised by Legislative Council. The decision of the Planning Commission was upheld, and the Amended Development Plan was rejected.

POSITIONS OF THE PARTIES

Plaintiffs request review of the City Council's decision to uphold the Planning Commission's rejection of the proposed Amended Development Plan. They request this Court review the decision pursuant to C.R.C.P. Rule 106(a)(4).

When City Council considered the Amended Development Plan, the Plaintiffs contend they should have also considered the factors in City Code §7.5.906. The Plaintiffs argue the City Council abused their discretion by not applying the factors in City Code §7.5.906. In other words, the City Council should have considered economic ramifications to all parties involved, potential vested property rights, and many other issues.

The City Defendants contend the Amended Development Plan was only subject to review by the City Council under the standards in City Code §7.3.606 and §7.5.502(E). They submit competent evidence is in the record to support the City Council's decision under an abuse of discretion standard.

APPLICABLE LAW

The City Code requires approval of a formal development plan when constructing a subdivision or PUD. This is to assess the impact of the development on all aspects of its community. Approval of a development plan follows a formal procedure. City Code §7.5.901 et al.

To explain that procedure very generally, the development plan is first assessed by City Planning Staff. City Planning Staff either approve or reject the plan. City Code §7.5.905(A). Any appeal of the City Planning Staff's decision goes to the Planning Commission. The Planning Commission has a hearing, takes recommendations from City Planning Staff, and decides whether or not to uphold the decision of City Planning Staff. City Code §7.5.905(B). Appeal of the Planning Commission's decision is taken to the City Council. City Code §7.5.905(C).

Specific criteria are laid out by the City Code for the review of a development plan. These standards assess the compatibility and impact of the development on the area surrounding it. City Code §7.5.502(E). Required standards for development plans within a PUD are outlined in City Code §7-3-606. These criteria are specific to the needs and concerns of a PUD, but also address compatibility and impact.

The appeal of City Planning Staff decisions are taken to the Planning Commission pursuant to City Code §7.5.906(2)(d)(2) and (3). The person requesting review of the finding must substantiate the following in the written notice of appeal to the Planning Commission:

- 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. City Code §7.5.906(3).

Appeal of Planning Commission decisions are taken to the City Council. They are made under City Code §7.5.906(B). The City Council may review specific issues raised on appeal or review the decision de novo. City Code §7.5.906(B)(4).

Lastly, the Plaintiffs request this Court review the findings of the City Council pursuant to C.R.C.P. Rule 106(a)(4). That Rule allows this Court to review whether a lower governmental body "exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion." C.R.C.P. Rule 106(a)(4). This remedy is only available if "there is no plain, speedy, and adequate remedy otherwise provided by law." *Id.*

Analysis under C.R.C.P. Rule 106(a)(4) is very deferential to the decision making agency. The standard of review is abuse of discretion, which means there only needs to be *competent evidence* in the record to support the findings of the decision makers. Byrd v. Stavelly, 113 P.3d 1273 (Colo.App. 2005); Carney v. Civil Service Commission, 30 P.3d 861 (Colo.App. 2001); B.O.C.C. of Routt County v. O'Dell, 920 P.2d 48 (Colo. 1996). As long as the decision wasn't an arbitrary and capricious exercise of authority, it will be upheld. McCann v. Lettig, 928 P.2d 816 (Colo.App. 1996).

C.R.C.P. Rule 106(a)(4) also necessitates a procedural review of the decision, not just a substantive evaluation of the record. If an agency does not follow the required procedures, properly apply the law, or at least provide due process, it could be an abuse of discretion. Gallegos v. Garcia, 155 P.3d 405 (Colo.App. 2006); Eason v. B.O.C.C. of Boulder, 70 P.3d 600, 610 (Colo.App. 2003); Tepley v. Public Employees Retirement Ass'n, 955 P.2d 573, 578 (Colo.App. 1997); Carpenter v. Civil Service Commission, 813 P.2d 773, 777 (Colo.App. 1990).

ANALYSIS

The decision of City Council is appropriately reviewed under C.R.C.P. Rule 106(a)(4). The Council was sitting as an appellate body to the Planning Commission, which is an inherently judicial function. Their decision regarding the Amended Development Plan was discretionary, notice was given to the community, and there was a City Council hearing on the issue. The City Council's decision being reviewed here was a quasi-judicial decision. City & County of Denver v. Eggert, 647 P.2d 216 (Colo.

1982); Hoffman v. City of Ft. Collins, 30 Colo. App. 123, 489 P.2d 355 (1971).

The Plaintiffs do not have a plain, speedy, and adequate remedy otherwise provided by law. The appeals available to the Plaintiffs at the city level have been exhausted. This is the only remedy which gives a direct review of the City Council's decision. There may be other remedies in the future – the other claims for relief – but that does not disallow Rule 106(a)(4) review.

Sufficiency of evidence is not an issue in this abuse of discretion analysis. There certainly was adequate competent evidence to support the City Council's decision based on the factors considered. It is obvious the Amended Development Plan did not meet the criteria of City Code §7.3.606 and §7.5.502(E). The real issue here is procedural.

City Code §7.5.906(A)(1) discusses the appeal of administrative decisions "made by the Manager" – what are called decisions of the "City Planning Staff" in this Order. The decisions of the Manager/City Planning Staff are specifically called administrative decisions in the City Code, and the appeals are taken to the Planning Commission. City Code §7.5.906(A)(1). In fact, the City Code unambiguously defines an amended development plan as an administrative decision of the Manager/City Planning Staff which is appealable to the Planning Commission. City Code §7.5.906(A)(2)(d)(2).

City Code §7.5.906(A)(3) states "Criteria For Review Of An Appeal Of An Administrative Decision: In the written notice, the appellant must substantiate the following: ..." The Code then outlines the factors stated earlier. In plain words, the appealing party has the burden of showing those circumstances in their appeal. The City Code does not follow up by stating those criteria must be considered by the reviewing agency, but it is clear they are to be considered. It would be nonsensical to require an appealing party to make a showing without the reviewing group deciding if it had been proven.

Therefore, the Planning Commission should have considered the criteria in City Code §7.5.906(A)(3) in making their decision. Whether or not that occurred is unclear. Either way, the Planning Commission upheld the administrative decision of the City Planning Staff to deny the Amended Development Plan.

There was much confusion at the City Council meeting regarding what was really being decided. It was restated several ways throughout the meeting. Stated plainly, the

City Council was reviewing the Planning Commission's decision to uphold the decision of the City Planning Staff. Sitting as an appellate body to the Planning Commission, the City Council needed to assess the same criteria used by the Planning Commission – or what should have been used by the Planning Commission.

City Council should have considered the factors outlined in City Code §7.5.906(A)(3) in their decision. They did not. Legislative Counsel and City Planning Staff explicitly advised the councilmembers to not contemplate any criteria outside City Code §7.3.606 and §7.5.502(E). When advocates began to address financial concerns, property concerns, impact on the neighborhood, or anything which could fall under City Code §7.5.906(A)(3), they were limited or stopped from speaking on those issues. There was some discussion of economics or neighborhood interests at the meeting, but it was stifled due to the advisement of Legislative Counsel and City Planning Staff. Those issues simply were not fully addressed.

There was no discussion about whether the Planning Commission considered the factors in City Code §7.5.906(A)(3). This also should have been part of the City Council's review of their decision.

One of the factors in City Code §7.5.906(A)(3) is whether the decision was clearly contrary to law. This was not discussed. Building permits were issued for the tall townhomes by the PPRBD, and those were followed up with many inspections and approvals by the PPRBD. Tradesmen, developers, bank investors, and others relied upon those building permits and built the tall townhomes almost to completion.

The building permits issued for the tall townhomes and the actions taken in reliance on them created *some form* of vested property rights. Eason; Villa at Greeley, Inc. v. Hopper, 917 P.2d 350 (Colo.App. 1996); P-W Investments, Inc. v. Westminster, 655 P.2d 1365 (Colo. 1982); Crawford v. McLaughlin, 172 Colo. 366, 473 P.2d 725 (1970); Cline v. City of Boulder, 168 Colo. 112, 450 P.2d 335 (1969); Denver v. Stackhouse, 135 Colo. 289, 310 P.2d 296 (Colo. 1957); Jordan-Arapahoe v. B.O.C.C. of Arapahoe, 633 F.3d 1022 (10th Cir. 2011). This Court cannot determine the extent and dimension of the property right at this point. That analysis is best made in conjunction with the due process, estoppel, or taking claims made by the Plaintiff. Additionally, the actual permits are not

part of the City Council record for this Court to review. The Court finds a property interest existed to emphasize a legal consideration the City Council did not address pursuant to City Code §7.5.906(A)(3). The City Council should have scrutinized the building permits, looked at the actions of the PPRBD, and contemplated the effects of their decision on vested property rights.

The City Council did not apply the appropriate standards in upholding the Planning Commission's denial of the Amended Development Plan. The decision should have addressed the criteria in City Code §7.5.906(A)(3). The City Council abused their discretion.

WHEREFORE, the Court finds relief under C.R.C.P. Rule 106(a)(4) is appropriate. The City Council abused its discretion. The City Council's March 26, 2013 decision upholding the Planning Commission's denial of the Dublin Terrace Townhomes Amended Development Plan is vacated. The issue is remanded to the Colorado Springs City Council for rehearing consistent with this Order.

Plaintiffs are to submit notice to this Court within 14 days on how they wish to proceed on the outstanding claims for relief.

Dated: March 27, 2014

BY THE COURT:



Robin Chittum
District Court Judge

| | |
|--|--|
| District Court, El Paso County, Colorado Court Address: P.O. Box 2980 Colorado Springs, CO 80901 | DATE FILED: January 6, 2015 4:26 PM CASE NUMBER: 2012CV3256 |
| <hr/> PNC BANK NA, Plaintiff, v. HERITAGE HOMES, INC., Defendants. | <hr/> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 12CV3256 Division: 19 Courtroom: W550 |
| INSTRUCTIONS TO RECEIVER | |

This case comes before the Court on the *Receiver's Request for Instructions*. The Colorado Springs Office of the City Attorney filed a Response in the companion case 13CV1973; and the Receiver replied. After reviewing the record in both cases, the pleadings and the applicable law, the Court finds and rules as following:

In the *Receiver's Request for Instructions*, MLP Receivership L.L.C. (hereinafter "the Receiver") seeks guidance from this Court about how to resubmit the disputed issues to the Colorado Springs City Council (hereinafter "City Council"). Specifically, the Receiver requests direction about the "Guidelines" proposed by the City Attorney for the City Council's decision. The "Guidelines" are submitted as exhibits to the Receiver's Motion. The Receiver is under the supervision of the Court; and the authority to request instruction is specifically contained in the order of appointment. *Order for Ex Parte Appointment of Receiver*, ¶16. Therefore, this is an appropriate request by the Receiver.

The *City Defendants' Response to Receiver's Request for Instructions* was filed in 13CV1973. The Court will consider the pleading. The City Attorney is not a party to the receivership (12CV3256), but it is proper for them to air their views on these issues. This Order will be issued in both cases for the benefit of all concerned parties, as it does impact the Rule 106 case. The City Attorney's Response in many ways, however, requests this Court make an advisory opinion on how to present questions to the City Council. Advisory opinions are not appropriate. *Board of County Commissioners of County of Archuleta v. County Road Users Association*, 11 P.3d 432, 439-440 (Colo. 2000). This Order instructs the Receiver and clarifies a previous Order. In the process it should also address the concerns of the City Attorney.

The Receiver submitted copies of three "Guideline" forms and a "Decision" form which have been proposed by the City Attorney. These forms are intended to structure the City Council's review of the Colorado Springs City Planning Commission (hereinafter "Planning Commission") decision to uphold the determination of the City Planning Staff. The forms are in a format similar to a verdict form or interrogatories used in jury trials. They outline the law, pose foundational questions, and channel those decisions into a verdict.

The Receiver is instructed to oppose the use of these forms. They are not a correct statement of the Colorado Springs City Code (hereinafter "the City Code") requirements for the City Council's decision, nor are they an accurate reflection of the Court's ruling on the Rule 106(a)(4) issue. See *C.R.C.P. Rule 106(a)(4) Review*, 13CV1973, issued March 27, 2014 (hereinafter "the Rule 106 Order").

Guideline One (1) Determining Whether MLP Receivership, L.L.C. Has Proved the Planning Commissions' Decision Was "Clearly Contrary to Law"

The first interrogatory form, *Guideline One (1) Determining Whether MLP Receivership, L.L.C. Has Proved the Planning Commissions' Decision Was "Clearly Contrary to Law"*, raises some concerns to this Court. This form states "MLP is claiming a **common law** vested property interest" (emphasis in original), and later requires the City Council to make a determination if there is a property interest. The City Council should not make this determination.

This Court has already found there was "*some form* of vested property rights." (emphasis in original) Rule 106 Order, page 9. This finding was based on the City's actions of issuing building permits, repeatedly inspecting the construction, and continuing to approve the on-going construction of the tall townhomes. This Court made this determination; but did not find the extent of the interests as that was not part of a Rule 106 review. This Court wanted the City Council to know there were property interests which needed to be discussed in their decision. The planning choices made by the City carry with them a serious potential of a taking of property rights, which may be contrary to law.

Additionally, those property interests created in the tall townhomes are not just held by Today's Homes as described in the interrogatory form. The property interests created in the townhomes are held by the Receivership, the many craftsmen with mechanic's liens on the townhomes, RBC Centura Bank, and potentially others. The decisions regarding the tall townhomes also affect numerous other property rights – the single family homes adjacent to the townhomes whose space is impacted, owners of other Dublin Terrace townhomes who invested in an approved complex, property owners in the neighborhood who will be affected by the buildings sitting empty, and countless others. In fact, the property rights of Today's Homes should not be the focus of the City Council's discussions. Today's Homes is not a part of this anymore. They created

the problem and left. The solution to the problem will affect many, many other's rights. Those are the rights the City Council must consider.

The City Council should not determine if property rights were present. This Court has already made that finding. The City Council must determine if the Planning Commission's decision disallowing the Amended Development Plan affected those property rights to the extent that it was "clearly contrary to law." This inquiry does not only involve rights of Today's Homes, but should focus on discussion of anyone's rights affected by the outcome. The Receiver should strenuously contest the first interrogatory form.

Guideline Two (2) Determining Whether Today's Homes Forfeited Its Statutory Vested Property Rights Related to the Townhomes Built Along the Southern Boundary of the Project

The next form, *Guideline Two (2) Determining Whether Today's Homes Forfeited Its Statutory Vested Property Rights Related to the Townhomes Built Along the Southern Boundary of the Project* does not get to the heart of the important issues for the City Council. As I have stated before, the property rights of Today's Homes are not very important when determining if the Planning Commission's decision was "clearly contrary to law." The City Council must assess the impact on anyone's rights affected by the outcome. Insomuch as the interrogatory form has the City Council discussing property rights, it's appropriate. However it is misleading to the City Council that the only rights they should consider are those of Today's Homes. Therefore, the Receiver is advised to oppose the second interrogatory form.

Guideline Three (3) Determining Whether MLP's Proposed Amendment to the Development Plan Complies With Each and Every Criteria Set Forth in the City Development Plan Review Criteria Codes

Guideline Three (3) Determining Whether MLP's Proposed Amendment to the Development Plan Complies With Each and Every Criteria Set Forth in the City Development Plan Review Criteria Codes is misleading and incorporates a misstatement of the City Code and land use planning law. It is the view of the City Attorney that a Development Plan must fully meet every criteria for review expressed in the City Code to be approved – specifically City Code §7.5.502 and §7.3.606. This is not what the City Code says.

City Code §7.3.606 says "A PUD development plan for land within a PUD zone shall be approved if it ***substantially conforms*** to the approved PUD concept plan and the PUD development plan review criteria listed below" (emphasis added). This is very different than a requirement each criteria be specifically met. City Code §7.5.502(E) dictates a development plan be reviewed by using the development plan criteria. City Code §7.5.502(E) does *not* state each criteria must be met. It states "No development plan shall be approved unless the plan complies

with all the requirements of the zone district in which it is located, is consistent with the intent and purpose of the Zoning Code and is compatible with the land uses surrounding the site.” City Code §7.5.502(E). In other words a development plan must comply with its Zoning District, which is a completely different issue. To this Court’s understanding, there are no allegations the Dublin Terrace Townhomes are in district zoned for a different use – for example, a commercial zone or an agricultural zone. The City Code language does not state that all the consideration criteria for a development plan must specifically be met.

The City Code doesn’t state that because it would be contrary to the basic principles of land use planning law. There is no perfect development plan. The creation of a development plan (and really much of land use planning) is a balancing of subjective criteria. It is impossible for every development plan to do all things. Creating a development plan involves setting priorities, giving and taking, and balancing different subjective standards. Planners work with developers to meet needs which are a priority and minimize the impact on the surrounding area. This is why the City Code gives City Planning Staff, the Planning Commission, and the City Council wide discretion to negotiate development plans of all types.

The City Code does not require all criteria in §7.5.502(E) or §7.3.606 be specifically met. Therefore, the interrogatory to determine if the “Amendment to Development Plan Complies with Each and Every Criteria...” is improper. It is an irrelevant and misleading question for the City Council to answer. The Receiver is instructed to oppose it.

City Council’s Decision Regarding Approval of MLP Receivership, L.L.C.’s Proposed Amendment to the 2009 Approved Development Plan Regarding the Dublin Terrace Townhome Project

The Court has no serious concerns about the proposed *City Council’s Decision Regarding Approval of MLP Receivership, L.L.C.’s Proposed Amendment to the 2009 Approved Development Plan Regarding the Dublin Terrace Townhome Project*. This interrogatory simply puts a councilmember’s final decision in writing. The submission of that interrogatory is not inappropriate. However, it gives little guidance to the councilmembers in their decision. The Receiver is to negotiate the submission of that interrogatory at their discretion.

Clarification of the Rule 106 Order

Lastly, there is some contention regarding which factors under City Code §7.5.906(A)(4) should be considered by the City Council. This Court found *all* the factors should be considered; however a typographical error in the Rule 106 Order may have caused confusion. The Court cited the factors as being under §7.5.906(A)(3) instead of §7.5.906(A)(4) in the Rule 106 Order. For

purposes of clarification of the Order, the City Council must consider *all* the factors under City Code §7.5.906(A)(4).

In the letter requesting appeal to the City Council, the Receiver argues the issue of vested property rights. *Appeal of Planning Commission Denial of Amendment*, MLP 12-15. This implicates all of the factors under City Code §7.5.906(A)(4). Indeed the Court only discussed one of the factors in the Rule 106 Order - whether the decision was clearly contrary to law. This was only an example of one of the things City Council should have discussed, not a limitation of what factors were to be considered. The City Council should discuss and consider *all* the relevant factors under City Code §7.5.906(A)(4). The Receiver argues vested property rights were taken, which implies they believe the decision was unreasonable, erroneous, clearly contrary to law (as affecting those property rights). There is significant argument from the Receiver during the appeal that the City Council should consider the benefits and adverse impacts created by the decision. All of these are issues.

To be specific, the City Council must: (1) Identify the explicit ordinance provisions which are at issue; (2) Discuss whether the administrative decision was incorrect because it was: against the language or intent of the zoning ordinance, unreasonable, erroneous, and/or clearly contrary to law; and (3) Identify the benefits and adverse impacts created by the decision, determine the distribution of the benefits and impacts between the community and the receivership, and decide if the burdens placed on the receivership outweigh the benefits gained by the community. City Code §7.5.906(A)(4).

It is also important to recognize the City Council is sitting as an appellate court over the decisions of the Planning Commission and the City Planning Staff. In order to thoroughly review if the Planning Commission's decision was unreasonable, erroneous, etc., the City Council must discuss *everything* the Planning Commission was required to consider, determine if the Planning Commission looked at everything they should have looked at, and decide if the Planning Commission's decision was proper.

Also, not to intentionally add complexity, the Planning Commission was sitting as an appellate court over the City Planning Staff's decision. Therefore, the City Council must consider *everything* the City Planning Staff was required to consider, determine if the City Planning Staff looked at everything they should have looked at, and decide if the City Planning Staff's decision was proper for the Planning Commission to uphold. Since both the City Planning Staff and the Planning Commission should have balanced the criteria in City Code §7.5.502 and §7.3.606, those criteria should be considered by the City Council.

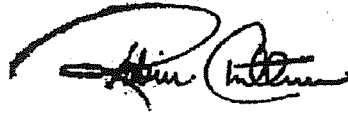
The City Council's review of the Planning Commission's decision is no simple task. They must consider the criteria under City Code §7.5.502 and §7.3.606. They also must discuss all the criteria under City Code §7.5.906(A)(4).

City Code §7.5.906(A)(4)(b)(3) dictates the City Council determine if the Planning Commission's decision was unreasonable. Reasonableness is a very broad inquiry. Limiting what the City Council may consider in determining reasonableness in any significant way would not be proper.

WHEREFORE, the Receiver is instructed to contest the interrogatories proposed by the City Attorney to assist the City Council in their review of the Planning Commission's decision. The interrogatories are misleading, misstate the law, and overall do not raise all of the considerations the City Council must discuss.

Dated: January 6, 2015

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robin Chittum", written over a horizontal line.

Robin Chittum
District Court Judge

Dublin Terrace Townhome Owners Association, Inc.

Date:

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete “too tall” are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the “too tall” buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

-Homeowners are unable to sell their homes due to the “too tall.” This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the “too tall.”

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely,

Thomas Fendon

Address: *20409 Vanguard Ter Port Charlotte, FL. 33954*

Phone: *(941) 889-7672*

Email: *tomestfendoni@yahoo.com*

(over)

Due to health concerns, I needed to relocate
to a warmer climate.

Since my townhome @ 5643 Celtic Gross Grove
Colorado Springs, Co. 80923

had lost value due in large part to the
builders having filed for bankruptcy
due in part to the Too Tall's, I now
request that this Request for Approval be
passed by the City Council.

Sincerely,

Thomas Furdor

Dublin Terrace Townhome Owners Association, Inc.

Date: 12/21/14

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete “too tall” are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the “too tall” buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

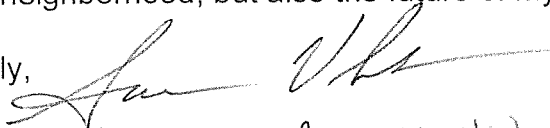
-Homeowners are unable to sell their homes due to the “too tall.” This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the “too tall.”

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely,



Address: 5657 SAINT PATRICK UW

Phone:

Email: VLAHAUAS@MSN.COM

Dublin Terrace Townhome Owners Association, Inc.

Date:

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete “too tall” are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the “too tall” buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.


-Homeowners are unable to sell their homes due to the “too tall.” This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the “too tall.”

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely,


Address: 5648 Saint Patrick View, Colo. Spgs, CO 80923
Phone:
Email: bradb-13@hotmail.com

Dublin Terrace Townhome Owners Association, Inc.

Date:

Copies to Council
Date: 12/22/14

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete "too tall" are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the "too tall" buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

-Homeowners are unable to sell their homes due to the "too tall." This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved. I am one of those who has a renter in mine because I could not sell.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the "too tall."

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely, *Shelly Sparks*

Address: 317 Kalkaska Ct Fort Collins, CO 80524/5631 Laticross Gr.C.S.CO
Phone: 719-291-685
Email: *SSparks722@gmail.com*

Copies to Council
Date: _____

Dublin Terrace Townhome Owners Association, Inc.

Date: 12/19/14

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete "too tall" are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes. *SEVERAL DOZEN*

-The lack of maintenance to the "too tall" buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

-Homeowners are unable to sell their homes due to the "too tall." This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved. *THIS IS AFFECTING PROPERTY VALUES THROUGHOUT THE AREA.*

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the "too tall."

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely,

LAWRENCE CAFFREY
Address: *5615 CELTIC CROSS GROVE*
Phone: *910-916-3156*
Email: *LANCE.CAFFREY@NSK.CUBIC.COM*

Dublin Terrace Townhome Owners Association, Inc.

Date: Dec. 16th 2014

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete “too tall” are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the “too tall” buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

-Homeowners are unable to sell their homes due to the “too tall.” This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the “too tall.”

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely,

Steven M. Kidd
Address: *5620 Saint Patrick View COS 80923*
Phone: *719-238-1245*
Email: *SteveKidd1@yahoo.com*

Dublin Terrace Townhome Owners Association, Inc.

Date: Dec. 16, 2014

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete "too tall" are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the "too tall" buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

-Homeowners are unable to sell their homes due to the "too tall." This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the "too tall."

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely,



Address:

Phone: 719-592-1481

Email: Jennifer.Northrup@gmail.com

Dublin Terrace Townhome Owners Association, Inc.

Date:

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete “too tall” are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the “too tall” buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

-Homeowners are unable to sell their homes due to the “too tall.” This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the “too tall.”

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely, *Charles A Chavez*

Address: *5621 St. Patrick UW*
Phone: *Colo. Springs, CO 80923*
Email: *719-322-5140*

Copies to Council
Date: _____

Dublin Terrace Townhome Owners Association, Inc.

Date:

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete “too tall” are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the “too tall” buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

-Homeowners are unable to sell their homes due to the “too tall.” This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the “too tall.”

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely,

Shannon A Warner (Dooley)

Address:

Phone:

Email:

5640 St. Patrick Dr.

719-649-6544

Shannon Warner@live.com

Dublin Terrace Townhome Owners Association, Inc.

Date: 12/29/2014

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete “too tall” are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the “too tall” buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

-Homeowners are unable to sell their homes due to the “too tall.” This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the “too tall.”

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely,

Wendy A. Fuller

Address:

5625 Saint Patrick View

Phone:

719-651-0186

Email:

wfuller44@yahoo.com

Dublin Terrace Townhome Owners Association, Inc.

Date: 12/30/2014

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete “too tall” are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the “too tall” buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

-Homeowners are unable to sell their homes due to the “too tall.” This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the “too tall.”

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely, *Karinne Gibbons*

Address: *5616 Saint Patrick View C/S CO 80923*

Phone: *(719) 229-1389*

Email: *Karinne681@yahoo.com*

Dear Council Members,

I just wanted to add a personal note. I have served in the military for 38 years & finally after retiring, I have put everything into my home in Dublin Terrace. I am also a widow and feel very safe living close to my neighbors. I purchased my home in October 2010 and this community was thriving until there was a definite misunderstanding between the builder and the city which was at no fault to those of us that live here. Then all construction stopped!! We have been left with three vacant buildings that negatively impact out community. Our fences have been vandalized and my once promising retirement home has gone downhill fast. PLEASE APPROVE THE AMENDED DEVELOPMENT PLAN so that someone can complete this community the way it was suppose to be years ago. Thank you for your time,

**Wendy A Fuller
5625 Saint Patrick View
(719) 651-0186**

5605 ST. PATRICK VISO

Dublin Terrace Townhome Owners Association, Inc.

Date: DEC 28, 2014

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

Owner

As a ~~resident~~ of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete "too tall" are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the "too tall" buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

-Homeowners are unable to sell their homes due to the "too tall." This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the "too tall."

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely,



Address: 16270 ALPESIAN TERRACE, ELBERT, CO. 80106

Phone: 719-495-0266

Email: HANNAH.ELSTAD665@CENTURYLINK.NET

Dear Council Members,

Dec 28, 2014

My wife and I are the owners of 5605, 5609, and 5628 St. Patrick View, in Dublin Terrace. We Purchased these units in 2010 and felt really good about Dublin Terrace. They had good designs And a good plan for completing the complex. They had excellent builders and provided a quality Product at a fair price.

The individual or individuals to the south of Dublin Terrace have made it their mission to destroy Property values, put people out of business and work and creating an eyesore by not allowing Completion of the buildings. I am really saddened by the fact that there are people like that in our Community. With the approval of the Amended Development Plan the buildings can be finished and Sold. Landscaping will improve the entire area to the south of the "too tall".

I do hope that you will review and approve the Amended Development Plan. This problem will not Be resolved unless the plan is approved. The existing buildings are not going away and need to be Completed to improve the area and increase the tax base for the city. If they are left as is they will Deteriorate and look worse than they do now.

Thank you for your consideration in this matter, we are looking for positive results.



Anthony W. Hammerstad

Dublin Terrace Townhome Owners Association, Inc.

Date: Dec. 10, 2014

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete “too tall” are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the “too tall” buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

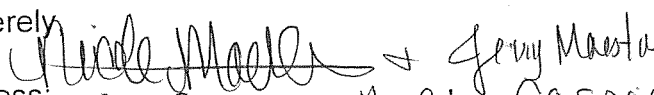
-Homeowners are unable to sell their homes due to the “too tall.” This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the “too tall.”

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely,

 + Jerry Maestas
Address: 6503 Pennywhistle Pt CO Springs, CO 80923
Phone: 719-321-5108
Email: nickymaestas@yahoo.com

December 18, 2014

City Council Office
City Hall
P.O. 1575, MC 1549
Colorado Springs, CO 80901-1575

Re: Dublin Terrace Townhomes Development Plan – Request for Approval, Council
Meeting scheduled for 1/13/15

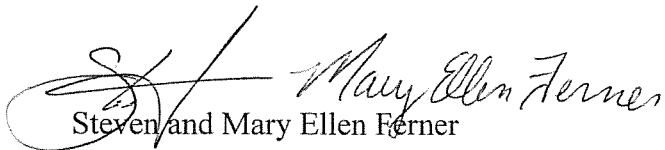
Dear Council Members,

I am a home owner in the Dublin Terrace Townhome development. I am writing to plead to you to Approve the Amended Development Plan.

Since the Council last voted against the variance for the “Too Tall” townhomes, everyone involved in this matter has suffered loss. The developer went bankrupt, the “Too Tall” have begun to fall apart, have become eyesores, and they have been vandalized. More importantly, the owners (who had nothing to do with this matter) of townhomes in Dublin Terrace have seen their property values fall and the adjacent community home owners now have buildings that are falling apart and becoming uglier by the day in their back window. Everyone has lost since City Council voted against amending the development plan for these 3 townhouse buildings, and no one has identified an acceptable way forward to rectify this issue. So the Too Tall continue to rot, property values continue to fall, and there is no corrective resolution on the horizon.

We must stop the losses and suffering by all involved and find a viable way forward. The approach and actions taken by City Council in the past have not worked! I believe this has gone on far too long and it’s time to take a new approach to this issue by Approving the Amended Development Plan for Dublin Terrace. I plead to you to help the many people involved in this matter. Please, help us move forward and overcome the difficulties we face. **Please**, it’s time, take action to **approve the amended development plan**, thereby making Dublin Terrace attractive to an investor who will be financially motivated to finish the community development, clean up the eyesores, prevent further loss, and turn the Dublin Terrace community into a family friendly environment, free of vandalism to empty buildings, that it was meant to be.

Respectfully,


Steven and Mary Ellen Ferner
6523 Pennywhistle Pt.
Colorado Springs, CO 80923
Email: ferner98@msn.com

From: "Andrews, David" <dandrews@springsgov.com>
Date: September 9, 2014, 1:01:36 PM MDT
To: "Collins, Helen" <hcollins@springsgov.com>
Subject: Re: Dublin Terrace Townhomes Development Plan - Meeting Date/Time?

They should not respond and should keep the emails so they can be put in the record.

Sent from my iPad

On Sep 9, 2014, at 12:39 PM, "Collins, Helen" <hcollins@springsgov.com> wrote:

David:

FYI...Helen

From: Pat [<mailto:phuddles@comcast.net>]
Sent: Tuesday, September 09, 2014 11:32 AM
To: Council Members
Subject: Fwd: Dublin Terrace Townhomes Development Plan - Meeting Date/Time?

2nd Request: Please see below. Thank you!

From: phuddles@comcast.net
To: allCouncil@springsgov.com
Sent: Wednesday, September 3, 2014 10:49:25 AM
Subject: Re: Dublin Terrace Townhomes Development Plan

I am a homeowner in Dublin Terrace and have a vested interest in the disposition of the "too tall" on the southside of our community. I understand that the District Court remanded the issue back to the City Council in their 3/27/14 decision (Case # 2013CV1973).

Please let me know when this issue will be reconsidered by the City Council. If already addressed, what was the outcome? And are the minutes available? Or is there another hearing scheduled with the City Council?

Thank you,

Pat Huddleston

09-03-14

Sent from Windows Mail

Guidotti, Wendilyn

From: Steven Ferner <ferner98@msn.com>
Sent: Monday, January 05, 2015 4:53 PM
To: Council Members
Subject: Dublin Terrace Townhomes Development Plan Amendment -- Request for Approval
Attachments: Dublin Terrace Sales.xlsx

Dear Esteemed Council Members,

My wife and I are home owners in the Dublin Terrace Townhome development. I am writing to plead to you to Approve the Amended Development Plan.

Three townhouse buildings in the Dublin Terrace Townhouse community were built (per City Planning Documents) 4.8' and 6.9' taller than what the original development plan specified -- buildings that were already going to be about 30 feet tall. Since the Council last voted against the variance for the "Too tall" townhomes, everyone involved in this matter has suffered loss. The developer has gone out of business and the "Too Tall" have begun to fall apart and have become eyesores. More importantly though, the owners (who had nothing to do with this matter) of townhomes in Dublin Terrace have seen their property values fall, their planned community development sits stagnate, and the adjacent community home owners now have buildings that are falling apart and becoming uglier by the day in their back window. Everyone has lost since City Council voted against amending the development plan for these 3 townhouse buildings, and no one has identified an acceptable way forward to rectify this issue or attract a new developer that sees a potential for a profitable investment.

During the last review of the request to amend the Dublin Terrace Townhomes Development Plan, in the CPC agenda, 21 Feb 2013, page 259 - 260, Mr.

O'Connor reports, among other things, that "The existing townhome residents have indicated that their property values have been adversely affected." And he goes on to say "These statements are not supported by the data". I'm not sure what data Mr. O'Conner is referring to, but I would like to submit a few pieces of data showing how property values and sales have suffered due to this continuing issue:

First, it should be noted that Colorado Springs home values, during 2012 and 2013, increased a total of 14.7% (ref: <http://www.forbes.com/places/co/colorado-springs/>). Looking at data from the El Paso County Tax Assessor's office (<http://land.elpasoco.com>), all but previously owned Dublin Terrace townhouses sales, since 2011, has lost money/value, up to 23% of the original purchase price. Taking a sampling of the 2014 Market Value (as listed on the El Paso CO website) versus the original sale price, houses have also lost up to 10% value, in a time where the average home price in Colorado Springs was increasing 14.7%. Conversely, the home owners who face the "Too Tall" have seen their home values increase. One home owner who backs right up to the "Too Tall" recently sold their home for a \$59,335 profit over their original purchase price, and \$15,000 over the El Paso County listed 2014 Market value.

We must stop the losses and suffering by all involved, especially the 58 current home owners in Dublin Terrace, and find a viable way forward. It is obvious that the approach and actions taken or recommended by the City Planners and City Council in the past have not worked. I believe this has gone on far too long and it's time to take a new approach to this issue by accepting the 3 buildings that are a few feet too tall and Approving the Amended Development Plan for Dublin Terrace. I plead to you to help the many people involved in this matter. Please, help us move forward and overcome the difficulties we face. Please, it's time, take action to approve the amended development plan, thereby making Dublin Terrace attractive to an investor who will be financially motivated to finish the community development, clean up the eyesores, prevent further loss, and turn the Dublin Terrace community into a family friendly environment that it was

meant to be. A win win solution for both the many residents of the community and, as additional revenue is realized by the completion of the development, the city of Colorado Springs.

Respectfully,

Steven and Mary Ellen Ferner
6523 Pennywhistle Pt.
Colorado Springs, CO 80923
Email: ferner98@msn.com

Previously Owned House Sales Since 2011

| Address | Original Sale | Original Sale | Latest Sale | Date of Sale | Net Loss(-)/Gain(+) | % loss/gain |
|-----------------------|---------------|---------------|-------------|--------------|---------------------|-------------|
| | Price | Date | Price | | | |
| 6523 Pennywhistle Pt | \$176,000 | 11/12/2008 | \$142,500 | 1/16/14 | (\$34,000) | -19% |
| 6531 Pennywhistle Pt | \$162,687 | 10/1/2008 | \$125,000 | 4/11/11 | (\$37,687) | -23% |
| 5677 Saint Patrick Vw | \$186,980 | 12/23/2009 | \$185,000 | 10/6/14 | (\$1,980) | -1% |
| 5639 Celtic Cross Grv | \$158,279 | 8/16/2011 | \$166,500 | 7/25/14 | \$8,221 | 5% |
| | | | | | (\$65,446) | |
| | | | | Average | | |
| | | | | Gain/Loss | (\$16,361) | |

Original Sale Price versus El Paso County Listed 2014 Market Value

| Address | Original Sale | Original Sale | 2014 Market | Net Loss(-)/Gain(+) | % loss/gain |
|-----------------------|---------------|---------------|--------------|---------------------|-------------|
| | Date | Price | Value | | |
| 6507 Pennywhistle Pt | 10/6/2009 | \$190,000.00 | \$173,420.00 | (\$16,580) | -9% |
| 5639 Celtic Cross Grv | 4/5/2011 | \$188,529.00 | \$173,419.00 | (\$15,110) | -8% |
| 5677 Saint Patrick Vw | 2/2/2012 | \$205,789.00 | \$185,107.00 | (\$20,682) | -10% |

Guidotti, Wendilyn

From: Pat <phuddles@comcast.net>
Sent: Tuesday, September 09, 2014 12:58 PM
To: Knight, Don
Cc: Council Members; Gonzalez, Eileen
Subject: Re: Dublin Terrace Townhomes Development Plan - Meeting Date/Time?

Thank you, and please let me know when the new dates is scheduled. Pat

From: "Don Knight" <dknight@springsgov.com>
To: "Pat" <phuddles@comcast.net>, "Council Members" <allcouncil@springsgov.com>
Cc: "Eileen Gonzalez" <EGonzalez@springsgov.com>
Sent: Tuesday, September 9, 2014 12:51:51 PM
Subject: RE: Dublin Terrace Townhomes Development Plan - Meeting Date/Time?

Pat,

We have not met yet and Ms Gonzales is working the new dates.

Don Knight
Colorado Springs City Council, District 1
107 N Nevada Ave, Ste 300
Colorado Springs, CO 80901
719-385-5487

From: Pat [mailto:phuddles@comcast.net]
Sent: Tuesday, September 09, 2014 11:32 AM
To: Council Members
Subject: Fwd: Dublin Terrace Townhomes Development Plan - Meeting Date/Time?

2nd Request: Please see below. Thank you!

From: phuddles@comcast.net
To: allCouncil@springsgov.com
Sent: Wednesday, September 3, 2014 10:49:25 AM
Subject: Re: Dublin Terrace Townhomes Development Plan

I am a homeowner in Dublin Terrace and have a vested interest in the disposition of the "too tall" on the southside of our community. I understand that the District Court remanded the issue back to the City Council in their 3/27/14 decision (Case # 2013CV1973).

Please let me know when this issue will be reconsidered by the City Council. If already addressed, what was the outcome? And are the minutes available? Or is there another hearing scheduled with the City Council?

Thank you,

Pat Huddleston

09-03-14

Sent from Windows Mail

Guidotti, Wendilyn

From: Liz Holden <lizzer05@outlook.com>
Sent: Monday, December 15, 2014 7:35 AM
To: Council Members
Subject: Re: DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN – Request for Approval, Council Meeting 1/13/2015

Dear Council Members:

As a resident of Dublin Terrace Townhomes, I am requesting you to approve the Amended Development Plan for the following reasons:

-Currently, the completed but unoccupied, and the incomplete “too tall” are deteriorating before our eyes. This has attracted several pigeons and other animals, as well as the occasional vagrant activity generating additional expenses to association members in the occupied homes.

-The lack of maintenance to the “too tall” buildings and grounds creates several hazards, including a greater risk of fire, that negatively impact surrounding homes and businesses.

-Homeowners are unable to sell their homes due to the “too tall.” This has resulted in several homes being occupied by an inordinate number of tenants, or to be sold at a financial loss. I believe this trend will continue unless the Amended Development Plan is approved.

-Our association dues have increased multiple times in order to offset the lack of income from the undeveloped lots and the “too tall.”

-Once the Amended Development Plan is approved, residential builders will be interested in completing the Dublin Terrace Townhomes area. This will increase the tax base for the City of Colorado Springs as well as benefit surrounding businesses.

As you can see, your decision will greatly impact not only the quality of life in my neighborhood, but also the future of my community.

Sincerely,

Elizabeth Holden

Address: 5653 Shamrock Hts, Co Spgs, 80923
Phone: 719-651-7703
Email: lizzer05@gmail.com

Guidotti, Wendilyn

From: Gonzalez, Eileen
Sent: Thursday, September 11, 2014 12:40 PM
To: Andrews, David
Cc: Wysocki, Peter; Gendill, Michael; Smith, Marc
Subject: RE: Town Home Matter
Attachments: Re: Dublin Terrace Townhomes Development Plan - Meeting Date/Time?

After some discussion, I understand that December 9 is the date Council will hear this item. Can you confirm and let me know if I can let Mr. Huddleston (email attached) know the resolution? Thanks.

Eileen Lynch Gonzalez, City Council Administrator
City of Colorado Springs
Phone (719) 385-5452
Cell (719) 310-2383
www.springsgov.com

From: Andrews, David
Sent: Wednesday, September 03, 2014 6:16 PM
To: Gonzalez, Eileen
Cc: Wysocki, Peter; Gendill, Michael; Smith, Marc
Subject: Town Home Matter

Eileen:

We have had a request to put this matter on the City Council's agenda for November 10, 2014. I have cc'ed people who should object to this timing.

David A. Andrews
719-385-5525
dandrews@springsgov.com

City of Colorado Springs
30 S. Nevada Ave., Suite 501
PO Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575

CONFIDENTIALITY NOTICE:

This electronic mail message and any accompanying documents contain information belonging to the sender which may be confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it was sent as indicated above. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this electronic mail message is strictly prohibited. If you have received this message in error, please delete it immediately, and advise me that you have received it.

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT