



February 18, 2022

Creekwalk North LLC ("Creekwalk North") submits this letter as to the appeal of its Development Plan and Plat Numbers: AR DP 21-00551 and AR FP 21-00552 by Protect Colorado Springs.

On January 20, 2022, the City of Colorado Springs' ("City") Urban Planning Division administratively approved Development Plan and Plat Numbers: AR DP 21-00551 and AR FP 21-00552 associated with the construction of a new grocery store on the SW corner of S. Nevada Ave. and E. Ramona Ave.

On January 31, 2022, Project Colorado Springs, which alleges it is a "group of neighbors, residents, and workers," filed an Appeal of Approval Letter for Creekwalk North Development Plan and Plat Numbers: AR DP 21-00551 and AR FP 21-00552 ("Appeal"). The Appeal was filed by their counsel, Weiner & Cording, 3100 Arapahoe Ave, Suite 202, Boulder, CO 80303 ("Counsel").

The Appeal is currently scheduled to be on the agenda for the March 17, 2022 Planning Commission meeting pursuant to Section 7.5.906.A.1 of City Code. On February 9, 2022, Counsel requested an extension of time ("Continuation Request") until the next month (April 2022) for the following reason:

As I communicated immediately upon being informed of the date, we have a Federal bench trial from March 14-17 in front of Judge Martinez of the U.S. District Court. I am attaching the Minute Order from Judge Martinez' chambers. This is our first trial since Covid, and our entire staff will be involved. (Because it is a bench trial, the odds that this will be held even if there is another Covid outbreak are much higher than with jury trials.)

You can see from the minute order that the trial was scheduled on September 21, 2021. This case was filed on April 29, 2019. It is the continuation of cases going back over five years. It is anticipated to involved at least ten witnesses, and hundreds of exhibits.

While it is conceivable that the trial would end right on schedule at 5pm on March 17, in my experience the last day of a trial is not one to tamper with, that final arguments and the Court's consideration can easily span into the evening hours and that Judge Martinez has the option to continue the trial to Friday (generally a motions' day), which is not uncommon.

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As outlined below, Creekwalk North respectfully requests that the Continuation Request be denied and the Appeal continue to be on the agenda for the March 17, 2022 Planning Commission meeting.

Section 7.5.906.A.1 of City Code states:

Any person aggrieved by an appealable administrative decision made by the Manager may file a formal appeal application with the Department within ten (10) days from the date of the final decision. The Department shall place the appeal on the agenda of the next regularly scheduled meeting of the Planning Commission or an FBZ Review Board occurring a minimum of twenty (20) days and a maximum of forty eight (48) days thereafter. After a public hearing, the Planning Commission or an FBZ Review Board shall have the power to affirm, reverse, or modify these decisions.

The undersigned has been unable to find any provision permitting an extension of the time for review by the Planning Commission. To the extent there is no such provision, Creekwalk North respectfully requests the Appeal be placed on the agenda for the March 17, 2022 Planning Commission meeting for this reason alone.

Even if an extension of time may be considered, the Continuation Request still should be denied for several reasons. First, Protect Colorado Springs and Counsel bear responsibility for the timing of the Appeal at the March 17, 2022 Planning Commission meeting. If Counsel knew they could not attend the March 17, 2022 Planning Commission meeting as alleged in the Continuation Request, Protect Colorado Springs and Counsel should have filed their Appeal to ensure it would be heard at the February 17, 2022 Planning Commission meeting. For instance, if the Appeal had been filed on or before January 28, 2022, the Appeal would have been heard at the February 17, 2022 Planning Commission meeting, and there would be no alleged scheduling issue. The fact that Protect Colorado Springs waited until January 31, 2022 to file the Appeal should not be to the detriment of Creekwalk North or the Creekwalk Marketplace Business Improvement District (and its taxpayers).

Second, when Protect Colorado Springs waited until January 31, 2022 to file its Appeal, it and its Counsel knew or should have known the Appeal would be heard at the March 17, 2022 Planning Commission meeting. If Counsel allegedly could not attend the March 17, 2022 Planning Commission meeting, Protect Colorado Springs should have

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made arraignments for other counsel to attend (to the extent it wants or needs counsel to attend).

The fact that Protect Colorado Springs made no such arraignments again should not be to the detriment of Creekwalk North or the Creekwalk Marketplace Business Improvement District (and its taxpayers).

Third, Protect Colorado Springs may still have its Appeal heard at the March 17, 2022 Planning Commission meeting and participate in that meeting. There is nothing to prevent the alleged "group of neighbors, residents, and workers" from attending the March 17, 2022 Planning Commission meeting to support the Appeal. This especially is the case as Counsel already filed a detailed 7-page Appeal that outlines the legal arguments of Protect Colorado Springs.

Fourth, Creekwalk North's Development Plan is an important component of the South Nevada Avenue Urban Renewal Plan, which is vital to the City of Colorado Springs and residents and businesses around South Nevada. Any delay of Creekwalk North's Development Plan also delays the South Nevada Avenue Urban Renewal Plan.

Fifth, Creekwalk North and the Creekwalk Marketplace Business Improvement District have committed significant resources to the Development Plan, including the reclamation of Cheyenne Creek and to improving detention capacity and quality within its developments. Additional delay past the March 17, 2022 Planning Commission meeting only increases the costs incurred by Creekwalk North and the Creekwalk Marketplace Business Improvement District.

For all the above reasons, Creekwalk North respectfully requests that the Continuation Request be denied and the Appeal be placed on the agenda for the March 17, 2022 Planning Commission meeting.

Sincerely,

DocuSigned by:  
*Danny Mientka*  
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Danny Mientka  
Manager

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