

**CITY PLANNING COMMISSION AGENDA
MARCH 17, 2021**

STAFF: RYAN TEFERTILLER

FILE NO(S):

A. - AR DP 21-00551(AP) – QUASI-JUDICIAL

B. - AR FP 21-00552(AP) – QUASI-JUDICIAL

PROJECT: CREEKWALK FILING 1

OWNER: CREEKWALK NORTH LLC

DEVELOPER: CREEKWALK NORTH LLC

CONSULTANT: KIMLEY-HORN

APPELLANT: PROTECT COLORADO SPRINGS



PROJECT SUMMARY:

1. Project Description: This project is an appeal of two administratively approved applications within the Creekwalk Commercial project at the southern end of the South Nevada Urban Renewal Area. Planning Staff administratively approved a development plan and subdivision plat on January 20, 2022; those approvals allow construction of a 23,175 square foot grocery store and a 122-stall

parking lot, on a 2.7-acre site located at the southwest corner of S. Nevada Ave. and E. Ramona Ave. An appeal was filed on January 31, 2022 (the last day of the appeal window) by "Protect Colorado Springs" which is represented by Mr. Randall M. Weiner of the Law Offices of Weiner and Cording.

2. Appellant's Appeal Statement: (**FIGURE 1**)
3. Applicant's Response to Appeal Statement: (**FIGURE 2**)
4. Planning and Development Team's Recommendation: Staff recommends denial of the appeal, upholding Staff's administrative approvals for the development plan (**FIGURE 3**) and subdivision plat (**FIGURE 4**).

BACKGROUND:

1. Site Address: 1720 S. Nevada Ave.
2. Existing Zoning/Land Use: C5 (**FIGURE 5**)
3. Surrounding Zoning/Land Use: the area is largely commercial with multi-family residential uses along the west edge of the site
North: C5 / Commercial uses
South: C5 / Commercial and Office uses
East: C5 / Commercial and Lodging uses
West: C5 & R5 / Vacant Commercial and Multi-family Residential uses
4. PlanCOS Vision: Mature/Redevelopment Activity Center
5. Annexation: The Reannexation of the Southwest Annexation Area (1980)
6. Master Plan/Designated Master Plan Land Use: Ivywild Master Plan (1993) / The site falls within the Community Activity Center designation. This site also falls within the South Nevada Urban Renewal Area (2015)
7. Subdivisions: The site was platted as the entirety of the Creekwalk Filing 1 subdivision plat approved in January of 2022 and subject to this appeal; the plat has not yet been recorded as the appeal was filed before final signatures and recordation were completed. The site was made up of a number of subdivisions prior to the current plat.
8. Zoning Enforcement Action: no active enforcement; numerous historic enforcement cases have been concluded in the area.
9. Physical Characteristics: The site is a mix of developed commercial properties, redevelopment that is currently underway, and vacant properties. Cheyenne Creek runs just west of the site.

STAKEHOLDER PROCESS AND INVOLVEMENT:

The appellant, Mr. Randall Weiner on behalf of Protect Colorado Springs, spoke at the October 2021 City Council hearing for the master plan amendment, zone change, right-of-way vacation, and concept plan for the Creekwalk Commercial. Despite the concerns that Mr. Weiner raised at that time, City Council approved all four applications. Shortly thereafter, Mr. Weiner contacted Planning Staff and requested to be notified with the associated development plan and subdivision plat were approved. Staff notified Mr. Weiner via email on January 20, 2022 that the applications had been approved. Mr. Weiner submitted his appeal application on Monday, January 31, 2022 which was the last day of the appeal window.

Prior to the Planning Commission hearing for the appeal the site was posted and postcards mailed to 128 property owners within a 1,000-foot buffer of the site.

Staff sent the plans and supporting documents to all standard internal and external review agencies for comments as part of the administrative review process. A number of review agencies had technical comments upon first review; all issues were resolved after multiple rounds of review allowing staff to approve both applications. Commenting agencies included City Engineering, Colorado Springs Utilities, Water Resource Engineering, the City Surveyor, and others.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Review Criteria / Design & Development Issues:
 - a. Request for Postponement

City Code Section 7.5.906.A.1. requires that an appeal of an administrative decision be placed on the agenda of a regularly scheduled Planning Commission meeting occurring a minimum of twenty (20) days and a maximum of forty-eight (48) days thereafter. The appeal application for the two subject applications was filed on January 31, 2022, the last day of the eligible appeal window. As the February Planning Commission was scheduled for February 17, 2022 (only 18 days after the appeal was filed), the hearing must be scheduled for the March 17, 2022 agenda (46 days after the appeal was filed).

Upon conveying the required scheduling provisions to the appellant, Mr. Weiner submitted a formal request to postpone the appeal hearing due to a conflicting, previously scheduled, trial (**FIGURE 6**). This request was immediately relayed to the applicant and developer, who in turn provided a formal response requesting that the Commission deny the request for the postponement (**FIGURE 7**) and hold the appeal hearing as scheduled on March 17, 2022. The Creekwalk Business Improvement District has also provided a formal request to deny the appellant's desired postponement and hold the appeal hearing as scheduled on March 17, 2022 (**FIGURE 8**).

Planning Staff have coordinated with the City Attorney's Office regarding the appeal and the request for postponement. City Code Section 7.5.906.A.1 states that the appeal must be placed on a Planning Commission agenda which meets minimum and maximum hearing windows. However, Section A does not include any language specific to postponement requests nor requirements for actually holding the hearing. As such, just as the Planning Commission could act to delay the hearing on other properly scheduled action items, the Commission could vote to grant the appellant's request to postpone the appeal hearing to a subsequent meeting date. Conversely, the Commission could deny the appellant's request for postponement and hold the hearing on March 17, 2022 as scheduled.

The Commission should know that their decision on the appeal itself is appealable to City Council if the City Clerk receives a request to appeal the Commission's decision within 10 days of the Commission's action. This appeal must be placed on the next available City Council agenda occurring no less than 20 days after receipt. Section 7.5.906.B.3. allows either party in the matter (applicant or appellant) to request one postponement of the initial Council hearing for good cause. Given these factors, it is possible that a decision by the Planning Commission on March 17, 2022 could be appealed to City Council and the Council hearing could be held as late as May 10, 2022.

b. Background and History

The project area totals roughly 2.7 acres of land on the west side of S. Nevada Ave. south of E. Ramona Ave. The site falls within the South Nevada Urban Renewal Area which was established in 2015 with the goal to "reduce, eliminate and prevent the spread of blight and to stimulate and catalyze growth and investment within the area boundaries" (Section 3.0 – Plan Purpose; 2015 South Nevada Urban Renewal Plan). Projects which benefit from tax increment financing (TIF) within the district are intended to catalyze yet more development in the area.

While progress within the South Nevada Urban Renewal Area was initially slow, much has been accomplished in the last few years. A Natural Grocers, Chick-fil-A, and multiple other commercial uses have been successfully established north of the subject property. Residential and hospitality projects are currently under construction to the northwest of the site. And most importantly, the first phase of the Creekwalk Commercial project immediately south of the subject property is largely complete and includes roughly 55,000 square feet of commercial use. Referred to as Creekwalk South, and spanning from Cheyenne Rd. to St. Elmo, the southern portion of the project will provide a major stimulus to the South Nevada corridor. In addition to numerous destination commercial users, the project removed a number of blighted buildings and completed significant creek and trail improvements along the site's western edge.

c. Administrative Approvals

Planning Staff received the submittal documents for the Creekwalk Filing 1 development plan and subdivision plat in August of 2021. Both applications were publicly noticed, reviewed by numerous internal and external review agencies, and reviewed by Planning Staff for conformance with City standards, guidelines, and criteria all following standard City procedures. After multiple rounds of resubmittals through the fall and winter of 2021, Staff approved both applications on January 20, 2022 (**FIGURES 3 AND 4**).

Both applications were found to be consistent with City standards for the C5 zone district, parking requirements, landscaping standards, grading standards, and all applicable review criteria. The City's Stormwater staff reviewed and approved the development plan, plat, and drainage report (**FIGURE 9**) for compliance with the drainage criteria manual and other relevant requirements. The City's Traffic Engineers reviewed and accepted the proposed access points and associated public improvements. Colorado Springs Utilities has accepted the project's public facilities to adequately serve the building with water, wastewater, gas, and electric services. The project was found by Planning Staff to conform with previously approved master plans and concept plans for the area and to comply with the South Nevada Urban Renewal Plan and public space design guidelines. The project's subdivision plat was reviewed by all agencies, including the City's surveyor, and was found to meet all standards and requirements of the subdivision code; the plat is currently being held by City Staff for recordation.

d. Appeal

As stated above, the appellant first raised concerns about development in the South Nevada area during the October 2021 City Council hearing for the project's initial applications. While a request was submitted to Planning Staff in November 2021 to be notified if/when the development plan and plat were approved, no additional input was provided nor concerns raised about either application. An explanation of the appellant's concerns was not received until the formal appeal application was received on January 31, 2022.

The formal appeal statement (**FIGURE 1**) cites a number of concerns about the approved applications. However, the dominant concern within the statement is the project's stormwater system design. Specifically, the appellant argues that the use of an underground detention facility is prohibited by the Drainage Criteria Manual (DCM). Furthermore, the appellant contends that use of a StormTech Chamber (the propriety type of underground detention facility) violates State Statutes and burdens the public. These actions together are believed to negatively affect water quality in the area. The appellant also adds one sentence within their appeal statement claiming that the project will increase traffic in the area and decrease levels of service beyond acceptable limits; no data or detail is provided for this claim.

City Code Section 7.5.906.A.4 includes the criteria to be used to evaluate an appeal of an administrative decision. The appellant must identify the ordinance provisions which are in dispute, must show how the administrative decision was incorrect (e.g. against zoning provisions, unreasonable, erroneous, contrary to law), and must identify the benefits and impacts of the decision and show that the burdens on the appellant outweigh the benefits accrued by the community. While the appellant has included language within their appeal statement that specifically speaks to the required criteria, Staff finds that the primary critique (inappropriate drainage design) is based on an inaccurate understanding of the City's stormwater standards and procedures.

2. Conformance with the City Comprehensive Plan:

The Creekwalk Commercial Center as well as the approved grocery store are closely aligned with PlanCOS, the City's Comprehensive Plan. The project is found within an Urban Renewal Area which was created in order to cure blight and incentivize infill development. The project's positive impact on the S. Nevada Ave. corridor is difficult to overstate; under-utilized, blighted, and vacant properties are being replaced with local and regional serving businesses, many of which were not previously available in this service area.

The project as a whole takes advantage of Cheyenne Creek to the west as a project amenity, buffering adjacent uses, and creating an opportunity for micro-mobility options along the newly developed creek trail system. While adequate off-street parking is included in the plan, development efforts throughout the corridor will also offer opportunities for customers and employees to walk, bike or scooter along the creek and rebuilt sidewalks to ease congestion on adjacent roadways.

The project closely aligns with nearly every chapter of PlanCOS including: Vibrant Neighborhoods, Unique Places, Thriving Economy, Strong Connections, and Majestic Landscapes. All include numerous goals and strategies that support this project.

3. Conformance with the Area's Master Plan:

The subject property is located within the Ivywild Master Plan which was originally adopted in 1993. An amendment to the Ivywild Master Plan was approved by City Council in October 2021; that amendment specifically added the subject property to the Community Activity Center designation along the S. Nevada Corridor and encompassing the entirety of the Creekwalk Commercial site.

STAFF RECOMMENDATIONS:

Item No: A AR DP 21-00551(AP) – APPEAL OF DEVELOPMENT PLAN APPROVAL

Deny the appeal, upholding Staff's administrative approval of the Creekwalk Filing 1 Development Plan, based upon the finding that the application complies with the review criteria in City Code Section 7.5.502.E, and that the appeal criteria found in City Code Section 7.5.906.A.4. are not met.

Item No: B AR FP 21-00552(AP) – APPEAL OF FINAL PLAT APPROVAL

Deny the appeal, upholding Staff's administrative approval of the Creekwalk Filing 1 Subdivision Plat, based upon the finding that the application complies with all standards and procedures within Article 7 (Subdivision Regulations), of Chapter 7 of City Code, and that the appeal criteria found in City Code Section 7.5.906.A.4. are not met.