



CITY OF COLORADO SPRINGS

OFFICE OF THE CITY CLERK
30 S. NEVADA AVE., SUITE 101
COLORADO SPRINGS, CO 80903
719-385-5901

RECEIPT

DATE: 10/23/2023

Receipt #: 107626

License Type: _PER_SUB_TYPE

Payment Type: Credit Card in-house

Reference #: 988376

LICENSE NO: 10FDD-00000-#0001

Post Date: 10/23/2023

Receipt Total: \$176.00

PAYEE:

CSU

For the Licensed Premises at:



Comments: COLORADO SPRINGS UTILITIES
121 S TEJON ST
STE 500
COLORADO SPRINGS, CO 809803

DEPN-23-0157 AR DP 21-00526

DPADGETT@CSU.ORG

PAYMENT DETAILS:

Description

Quantity

Amount

Planning Appeal Fee

1

\$176.00



COLORADO SPRINGS PLANNING

Land Use Review

Appeal of a City Planning Commission Decision to City Council

Appeal of a City Planning Commission Decision to City Council

Complete this form if you are appealing a **City Planning Commission, Historic Preservation Board or Downtown Review Board Decision** to City Council.

Appellant Contact Information

Colorado Springs Utilities

719-668-8679

Name of Appellant

Phone Number

121 South Tejon Street STE 500, Colorado Springs, CO 80903

Address (Include City, State, ZIP)

dpadgett@csu.org

Email

Project Information

Wilson Tank Replacement Water Tank

Project Name

6560 Alabaster Way, Colorado Springs, CO 80919

TSN:7315210006

Site Address (TSN if not yet addressed)

Development Plan Major Modification

Type of Application Being Appealed

DEPN-23-0157 AR DP 21-00526

All File Numbers Associated with the Application

William Gray

10/11/2023

7.C.

Project Planner's Name

Hearing Date

Item Number on Agenda

Appellant Authorization

The signature(s) below certifies that I (we) is(are) the authorized appellant and that the information provided on this form is in all respects true and accurate to the best of my (our) knowledge and belief. I(we) familiarized myself(ourselves) with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit(s) or other type of permit(s) may be revoked without notice if there is a breach of representations or conditions of approval.

Signature of Appellant

10/23/2023

Date



COLORADO SPRINGS PLANNING

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Appeal Submittal Should Include:

All Items Are Required

- Completed Appeal Form (this document).
- Evidence of "Affected Party" Status – check the box below and provide justification for the chosen box.
- Notice of Appeal Statement (see requirements on page 3 of this document).
- \$176 fee payable to the City of Colorado Springs.

Submit all 4 items above to into the City Clerk's Office at 30 South Nevada, Colorado Springs, Colorado. Appeals are accepted for 10 days after a decision has been made. Submittals must be received no later than 5pm MST on the due date of the appeal. Incomplete submittals and / or submittals received after 5pm or outside of the 10-day window will not be accepted. If the due date for the submittal falls on a weekend or federal holiday, the deadline is extended to the following business day no later than 5 pm MST.

If you need additional assistance with this application, please call the Land Use Review front desk at (719) 385-5905.

Affected Party Status

Please indicate, per UDC Subsection 7.5.415.A(1)(a) (Right to Appeal), which of the definitions of "Affected Party" that applies to the Appellant.

- (1) The applicant for the decision being appealed; **Colorado Springs Utilities is the property owner and was the applicant in DEPN-23-0157.**
- (2) The owner or tenant of a lot or parcel of land located within one thousand (1,000) feet of the subject lot; or
- (3) Any owner or tenant of a lot or parcel of land located within three (3) miles of the subject property who has preserved standing by:
 - (a) Testifying at the public hearing on the application;
 - (b) Submitting written comments prior to the public hearing on the application; or
 - (c) In the case of applications approved by the Manager or an administrative official, submitting written comments to the Manager or administrative official during the comment period before the Manager or administrative official's action.



COLORADO SPRINGS PLANNING

Land Use Review

Appeal of a City Planning Commission Decision to City Council

Notice of Appeal

UDC 7.5.415.A.2 (Notice of Appeal):

- (1) The specific provision(s) of this UDC that is the basis of the appeal;
- (2) Which of the following criteria for reversal or modification of the decision is applicable to the appeal:
 - (a) The decision is contrary to the express language of this UDC;
 - (b) The decision is erroneous; or
 - (c) The decision is clearly contrary to law; and
- (3) Describe how the criteria for the relevant application have or have not been met.

This shall serve as the Notice of Appeal required under City Code section 7.5.415(A)(2) and 7.5.705. This is an appeal of an October 11, 2023, City Planning Commission decision to not approve an application for a Development Plan Major Modification (Case # DEPN-23-0157) submitted by Colorado Springs Utilities ("Utilities") for the property located at 6560 Alabaster Way, Colorado Springs CO 80919 (TSN 7315210006) (the "Site"). Utilities is the property owner of the Site and the appellant.

This appeal is based on Uniform Development Code ("UDC") sections 7.5.516(D) and 7.5.408.B. As described below, the decision not to approve the Major Modification is contrary to the express language of the UDC, clearly erroneous, and contrary to the law.

Summary:

Utilities filed an application for a major modification to an approved development plan, when it became aware that the tank it was constructing was out of compliance with its approved development plan. Utilities relied on a third party for its land use approval so was not aware of this issue until alerted to it by a neighbor. Although the City Planning Department has the authority to approve a major modification to an approved development plan, it referred this application to the City Planning Commission because of the controversy surrounding the project. Planning Commission held a hearing on the application on October 11, 2023. At the hearing, the Commission was required to apply the same criteria to the application that the Planning Department would have been required to apply to the application. The Planning Commission chose to not approve the application based on reasons that are not included in the review criteria. Of the six commissioners who voted against the application, only one tied his comments to the review criteria. As such, the decision of the Planning Commission is contrary to the express language of the UDC, clearly erroneous, and contrary to the law. Had Planning Commission applied the review criteria, it would have approved the Major Modification to the Development Plan.

Facts:

On June 21, 2022, City Planning administratively approved a Development Plan ("DP") application (AR DP 21-000526) for the Site. The DP provided for the construction of a 5-million-gallon, ground, water storage tank ("Wilson Tank" or the "Tank") on the Site. Although a maximum height of 45 feet was included on the DP submission, the DP included a note that "[a]ll measurements above are estimates. Final elevations will be designed by tank manufacturer during structural design phase". Note 1 on page 12 of the DP. The actual height of the proposed tank was unknowable at the time the DP was submitted, because Utilities had not yet contracted with its prime construction contractor or with a tank manufacturer.

Utilities contracted with a prime construction contractor on August 15, 2022, who entered into a subcontract with the tank manufacturer. The tank manufacturer developed the tank structural design based on the project AWWA D110, Type III performance specifications. The structural design included a domed top with a height of approximately 55 feet, and a vent on top of the dome which was an additional 5 feet, so that the height of the entire structure would be approximately 60 feet.

Utilities, through its consultant Kimley Horn, submitted an application for a building permit to Pikes Peak Regional Building on February 20, 2023. The building permit application included the DP and the Tank construction drawings, which showed a tank height, including the 5-foot vent, at approximately 60 feet. The building permit application was reviewed by City Planning, Development Review

Enterprise, and approved on May 5, 2023. After receiving the approved building permit, Utilities, through its construction contractor, commenced construction on the Tank in reliance on the building permit at the Site. Work on the Tank's structural foundation began the first week of May 2023, and work on the Tank continued through August 30, 2023.

On or about June 13, 2023, Utilities was alerted by a neighbor of the Site that it may be out of compliance with its land use approvals. Utilities conducted an internal investigation to determine whether this was, in fact, true. During this investigation, Utilities determined that its building permit was not in compliance with its DP. On June 29, 2023, City Code Enforcement came to the Site. On June 30, 2023, Utilities met with Code Enforcement onsite and discussed the building permit and the DP. Code Enforcement left the Site satisfied as Utilities had an approved building permit for what was being constructed. No work stoppage was issued at that time. At approximately the same time, Utilities contacted its land use consultant on this matter and was informed that the City had erroneously issued the building permit and that the recommended corrective action was to amend the DP. Utilities, intending to correct the mistake, worked with City Planning and its land use consultant to prepare and file an amendment to the DP, the Major Modification to the DP which is the subject of this appeal. The Major Modification to the DP was filed with City Planning on July 18, 2023 to increase the permitted Tank height to 60 feet and to increase the landscaping and change the paint color of the Tank to improve the screening of the Tank and reduce the visual impact of the increased height on surrounding properties. This was controversial because the normal process is to amend the development plan once the property owner receives construction drawings that do not conform to the approved development plan. However, City Planning has dealt with this before and the recommended course of action in this case is the same course of action that City Planning has recommended to other property owners whose construction did not match their approved development plan.

The Planning Department referred the application to Planning Commission with a recommendation of approval. On October 11, 2023, the Planning Commission held a hearing on the application for a Major Modification to the DP. At the end of the hearing, Planning Commission entertained a motion to approve the Major Modification to the DP. That motion failed with two commissioners voting in favor of the motion and six commissioners voting against the motion.

Of the six commissioners who voted against the motion only one of those commissioners spoke of the review criteria that they are required to apply to the Major Modification application that they were considering. The other five commissioners who voted against approving the Major Modification did not mention the review criteria or tie their comments to the review criteria in any way. The majority of their comments were focused on the fact that Utilities applied for the Major Modification after construction of the tank. The timing of the application is not one of the factors that the Commission can consider when rendering its decision. Several of the commissioners indicated that if the Major Modification application had been submitted prior to construction or if Utilities started over that the application would likely be approved. One commissioner made the statement that Utilities should be held to a higher standard than other applicants. The UDC does not provide for Utilities, or any other public entity, to be held to a higher standard on land use applications than other property owners.

Application of the Review Criteria to the Proposed Major Modification Application:

"When an administrative decision is referred to the Planning Commission, FBZ Review Board, or

Historic Preservation Board, the Commission or Board shall hold a public hearing and make a decision pursuant to Section 7.5.407 (Meetings and Decisions) based on the same criteria that would have applied if the Manager had made the decision.” UDC section 7.5.408.B.

The criteria to be applied when considering whether to grant a major modification to an approved development plan are in section 7.5.516.D.1:

- A Major Modification may be approved if the applicable decision-making body determines that the request:
- a. Complies with the provisions of this UDC and all applicable City regulations;
 - b. Is consistent with any conditions in the approval or permit proposed to be modified, unless the decision-making body that imposed that condition modifies that condition;
 - c. Does not create more adverse impacts on surrounding properties than the development approval or permit proposed to be modified; and
 - d. Is consistent with the Colorado Springs Comprehensive Plan, other plans adopted by City Council, and the intent of the zone district in which the property is located.

The changes to the DP being requested by the Major Modification are limited to the height of the Tank and the changes to the landscaping and color of the Tank used to screen the Tank.

a. The proposed Major Modification complies with the UDC and all applicable City regulations. The Site is zoned PF (Public Facilities) with HS-O (Hillside Overlay) and WUI-O (Wildland Urban Interface Overlay). The proposed use is permitted in this zone district. The design standards for this zone district are set in the development plan. There are no height restrictions in this zone district. The only height restriction applicable to this Site is include in the previously approved DP. If Utilities had proposed a maximum tank height of 60 feet in its original DP application, that height would have likely been approved if the development plan included sufficient screening mechanisms.

Utilities has proposed increased landscaping and changes to paint color to address neighbors’ concerns about screening the tank. Utilities has reviewed the changes to the Major Modification application proposed by City Planning, and Utilities accepts those changes and will incorporate those changes if the Major Modification is approved.

b. The proposed Major Modification is consistent with the approved DP, except as modified by the Major Modification. The UDC does not include height restrictions on property that is zoned PF. For property that is zoned PF, the maximum building height is determined in the development plan for that property. The proposed Major Modification increases the maximum building height to 60 feet and it increases the landscaping and changes the paint color to mitigate the impacts of an increased tank height.

c. The proposed Major Modification does not create more adverse impacts on surrounding properties than the approved DP. “More adverse impact on the surrounding properties” is not defined in the UDC. Under UDC section 7.1.105, City Council has the authority to interpret the UDC as it relates to land use decisions and can determine whether the proposed Major Modification results in more adverse impacts on the surrounding properties. A reasonable interpretation of more of an adverse

impacts would be to look at whether the modification would result in increased vehicle or pedestrian traffic, restrictions on access, increased density, and similar impacts. City Code, including the UDC, does not protect viewshed corridors.

Considering the impact of the change in height of the Tank on viewsheds, the largest impact on viewsheds comes from the enormous size of the Tank. The bulk of the Tank is in the width and the height of the walls, which are unchanged from the originally approved DP. Although the maximum height on the Tank is higher than the height that was originally approved, the impact of this increase is mitigated by the fact that the roof is domed. The slope of the dome reduces the visual impact of the roof when viewed from adjacent properties. The visual impact of the domed roof versus a flat roof at the height of 45 feet was demonstrated at the Planning Commission hearing and will be demonstrated at a hearing on this appeal. Additionally, the proposed Major Modification includes greater landscaping and a change in paint color to further mitigate the impact of the increased height.

d. The proposed Major Modification is consistent with the Colorado Springs Comprehensive Plan, other plans adopted by City Council, and the intent of the zone district in which the property is located. The project is consistent with the City Comprehensive Plan, PlanCOS. Chapter 5 of PlanCOS includes Policy SC-4.A, which is to “efficiently use the existing utility system capacity.” The third strategy (Strategy SC-4.A-3) is to “coordinate with CSU in their plans for terminal water storage, conservation, distribution, and recreation.” This Wilson Tank project is a critical part of the Colorado Springs Utilities water distribution system. It serves a quarter of the City with potable water. The location of the Tank is imperative in that it is already connected to the system. Moving the Tank to different location is not feasible without a substantial investment to replace existing pipes and a pump station. In addition, the location is important for at least two other reasons. The altitude provides water pressure necessary for delivery of the water through the system. It also puts water in and near areas that are more susceptible to wildfire. The water in the Tank can be used for fire suppression, which is of critical importance to neighborhoods that interface with wildlands.

Additionally, the Site is identified as being in an “Established Suburban Neighborhood”. The goal of Established Suburban Neighborhoods is to recognize, support, and enhance the existing character of these neighborhoods, while supporting their ongoing investment and improved adaptation. New development and/or redevelopment should incorporate elements of existing neighborhoods. The color choice and the increased landscaping are intended to incorporate elements of the existing neighborhood into the project. Additionally, the new Tank is intended to replace an existing tank. The Tank supports ongoing investment and improved adaptation in adjacent and nearby neighborhoods by replacing an existing water tank that is at the end of useful life to meet domestic water demands, fire suppression and water pressure within the City. Replacing and maintaining the City’s infrastructure is important to maintain, protect, enhance, or revitalize the neighborhoods that comprise the City.

The project also complies with the approved master plan for the area, the Mountain Shadows Master Plan. In the approved master plan, the site is identified as “government facility”. The proposed Tank is a government facility.

As stated above, the Site is zoned PF (Public Facilities) with HS-O (Hillside Overlay) and WUI-O (Wildland Urban Interface Overlay).

The purpose of the PF zone district UDC section 7.2.501(A) is:

The PF zone district is provided for land that is, for example, used or being reserved for a governmental, utility, or telecommunication purpose by the City of Colorado Springs, El Paso County, the State of Colorado, the Federal government, a public utility, a telecommunications provider, or a private provider of a traditional government function. Generally, the existing or proposed use is a unique governmental or utility service or a governmental function. Uses allowed in the PF zone district generally include governmental functions or utility services provided by the City of Colorado Springs, El Paso County, the State of Colorado, the Federal government, or a public utility and to private facilities that perform traditional government functions such as jails and halfway houses.

The purpose of the Hillside Overlay (HS-O) under UDC section 7.2.610(A) is:

The purpose of the HS-O district is to ensure that hillside areas retain their unique character, to safeguard the natural heritage of the City, and to protect the public health, welfare, and safety. ... The HS-O district may be used with any zone district in the City to meet the following objectives:

1. To conserve the unique natural features and aesthetic qualities of the hillside areas;
2. To provide safe and convenient access to hillside areas;
3. To minimize water runoff and soil erosion problems incurred in adjustment of the terrain to meet development needs;
4. To ensure that new development is compatible with the natural systems, the terrain, and the geologic character of hillside areas;
5. To encourage innovative design solutions that meet the purpose of the HS-O district; and
6. To preserve wildlife habitat and wetland areas that provide wildlife migration corridors.

Utilities submitted the required Geologic Hazard Study ("GHS"), which is required because the property is in the HS-O (Hillside Overlay). The GHS review was for a 5 million gallon water storage tank and was reviewed by Engineering Development Review ("EDR") and Colorado Geologic Survey ("CGS"). Both EDR and CGS found the findings of the GHS to be valid.

The purpose of the Wildland Urban Interface Overlay (WUI-O) under UDC section 7.2.604(A) is:

The purpose of the WUI-O district is to significantly reduce damage to public health, safety, and property in the Wildland-Urban Interface through improved coordination between this UDC and adopted fire protection regulations.

Providing a tank of 5 million gallons of water that can be used for fire suppression to a Site that is in the WUI-O district is consistent with reducing damage to public health, safety, and property.