

## APPEAL STATEMENT

We are appealing on the basis of 7.4.505 Scope of Study for a required geological hazard study.

7.4.505 A. 4. Analyze potential impacts the proposed project will have on surrounding properties or public facilities related to existing geologic hazards; and

5. Provide recommendations to be incorporated into the proposed project which will mitigate significant potential impacts to surrounding properties or public facilities.

B. The conclusions and recommendations of the study shall be based upon:

1. Site Specific Subsurface Investigations

2. Site Reconnaissance: Site reconnaissance to identify the geologic features of the site and surrounding property.

The administrative decision is incorrect because the required geological hazard study that was submitted for review, failed to conduct the required site reconnaissance per 7.4.505 B.2 as cited above. As a result, all of the information submitted about the potential impacts on the surrounding properties and the recommendations to be incorporated to mitigate those potential impacts are in error or totally lacking and misrepresent the actual conditions on the surrounding property that will be adversely impacted by the proposed project.

In their submitted, revised geologic hazard study, dated December 14, 2020, the firm hired to conduct the study, RMG, states under 1.0 Study Review, 1.1 Scope and Objective "The scope of this study is to include a physical reconnaissance of the site..."

RMG did not conduct this required physical site reconnaissance. We have expressed our concerns, since July 2020, that construction equipment and construction activity vibrations will negatively impact the rock outcropping. The construction site is within 10 feet of the base of this fin. Although the City requires a "site reconnaissance" and RMG states they will conduct "a physical reconnaissance of the site," no one has actually investigated and evaluated this fin up close and personal. That would have meant coming onto the property at 204 Red Rock to actually walk the perimeter of the 35' fin, take photos from all angles, take notes on the overall condition of the rock and the hillside at its base.

Because RMG did NOT do the required site reconnaissance, their report totally misrepresents the condition of the sandstone fin and the surrounding area at its base. They make several assertions that are just outright false. They state under 6.1 Rockfall that "the mapped sandstone outcrop/formation... is located 15 feet west of the existing detached garage..." NO! The northwest corner of the detached garage is 4 feet from the exposed base of the outcrop.

Their report includes a description of the outcrop/formation that says "Neither free-standing boulders nor freshly calved sandstone wedges were observed on or around the sandstone "fin". Based on the lack of free standing boulders, absence of any indications of recent rockfall...and the orientation of the majority of the fractures, it is our opinion that the sandstone "fin" is not considered an imminent rockfall hazard." They then say photos of the "fin" are in Appendix C. The photos of the "fin" were taken at a distance and do NOT show the "fin" from all angles/directions. We are not sure if that is due to negligence or was deliberate.

If RMG had come onto our property to actually conduct a site reconnaissance, their photos would have shown--a large free standing boulder field on the west side of the "fin", fractures that are criss-crossing each other diagonally, (not "perpendicular to the dip") which they say is the general direction for such fractures, these deep fractures are causing the "fin" to separate into distinct pieces, a segment at the top south end of the "fin" which has calved and is precariously perched, an area in the middle of the "fin" which is in a pre-calving state (and is located right above our laundry room) and you would see rocks that have fallen. We pick up small to medium-size rocks all the time (especially after a weather event). The "fin" is in a weakening, deteriorating, unstable state and ground vibrations are NOT going to strengthen it. Those vibrations will travel to the rock, be absorbed by it and loosen, shift, and dislodge portions of the "fin". Will that result in imminent rockfall? Hopefully not, but it will exacerbate and accelerate those natural forces that are currently breaking down this "fin".

Because RMG did not conduct the required "site reconnaissance" they also did not propose adequate mitigation measures to address the potential harm to the outcrop/formation and the hillside at its base. Initially, in their first report, dated September 15, 2020, they just mentioned the 35' fin as being located on the northwest corner of the lot. Their only proposed mitigation measures were NO blasting, designating the "fin" a Preservation Area and putting a 10 foot perimeter around that area. Construction cannot encroach upon this area. NO mention of any mitigation for the types of construction equipment, no mention of any type mitigation if rock segments showed movement, and no mitigation to monitor the level of vibrations at the base of the "fin". We brought this up and in their revised report, RMG suggested that a rubber-tired skid steer should be used because it creates lower vibrations. The report mentions the possibility that specialized heavy equipment may be necessary to break up rock. We asked what the vibrational levels are for that equipment and have heard nothing.

Their refusal (for whatever reason) to conduct the required site reconnaissance has resulted in a faulty, misleading and negligent report. We contacted the geologist, Kelli Zigler, in an email (she says if you have questions to contact her) and asked her why she has refused to come onto our property so this outcrop/formation could be evaluated closely and in a professional manner. It just seems that a "physical reconnaissance of the site" (their words) would entail actually coming onto the property and viewing the outcrop/formation up close. This would have allowed her to actually see and assess accurately the true condition of the outcrop/formation and the potential harmful effects of an active construction site within 10 feet of its base.

We also think the administrative decision is incorrect because relying on the inaccurate, incomplete RMG study, which dismisses the potential harmful impacts to the "fin" potentially violates the law.

1.ii. 5. Because it is on our property, the "fin" is our property.

It is against the law City Statute 9.6.101 Damage to Property which states "It is unlawful for any person intentionally, knowingly or recklessly to injure, deface, destroy or sever in any manner any real or personal property or improvements thereto of any other person in this City".

In their December 2020 report, RMG states "While this does not guarantee that a portion of the sandstone "fin" won't detach during the proposed construction...it is our opinion that the risk of rockfall directly resulting from the vibrations caused by the proposed construction activities...is suitably low that rockfall hazard is not anticipated to preclude the proposed construction."

Since RMG failed to follow the City's own criteria to conduct a "site reconnaissance" they are making predictions that lack any merit. They are setting the builder up in a potential legal conflict because if our property, the rock, is damaged in any way, the builder will be legally responsible.

No person has the legal right to a replat. We, however, do have legal rights to protect our property and our personal well being.

What procedures does the City follow when they allow permits that are predicated on a Geological Hazard Study that is deeply flawed and inaccurate due to the omission and misrepresentation (accidental or deliberate) of relevant facts or data? What happens if said study is proved negligent and irreparable damage occurs?

1.iii. The benefits of the proposed project are: the construction of a single-family residence priced in the \$600,000 range. This is the dollar amount in their submitted papers. This is not the affordable housing the City keeps saying is so necessary for its residents.

The potential adverse impacts are numerous. Our home at 204 Red Rock Ave, sits at the base of the 35' fin. Our back room is 11 inches from the base of the "fin" and our

patio touches the "fin". We expect that the location of our home and garage make this a pretty unique situation. The "fin" towers over our home. We enter our home from the back, we entertain on the patio and we sit out there regularly. We are "under the shadow" of that rock on a daily basis.

The proposed construction will create an active construction site. In their study, RMG states under 6.1 Rockfall

"Rockfall hazards are generally initiated by some climatic or biological event that causes a change in the forces acting on a rock. Such climatic events include: heavy rain storms, freeze-thaw processes...active construction environment and free falling rocks".

The Colorado Geological Survey, on their website, under Hazards-Rockfall state this. "The most common difficulty with "inactive" rockfall areas is unexpected reactivation due to human activities or exceptional natural conditions. Questionable rockfall areas should be monitored if there is a possibility that reactivation of a rockfall may take place and present a hazard to man".

Both of these groups, RMG and CGS, clearly state that human activities can cause rockfall. No one can accurately say how all the vibrations caused over several months of construction activity in such close proximity to the "fin" will adversely impact the "fin". But those vibrations (a form of energy) will travel through the ground and bedrock and be absorbed by this rock. Those vibrations will NOT strengthen the rock--they will quite probably make smaller rocks loosen, shift, and eventually dislodge. The rock, OUR PROPERTY, will be negatively impacted. We don't even know the condition of the interior of the rock. We don't know how deep the fractures are. All of that is invisible to us.

The potential for some part of the rock to come down is real--some say low risk--but a risk none the less. If rocks come down, they could damage our garage, our car in our garage, our house or even people who are on our property. Our homeowners insurance will NOT cover this damage. So, we are being asked to assume ALL the potential risks for this project with absolutely NO benefits.

Quite frankly, we feel threatened by this project--financially and physically. It seems to us that if the City is making critical decisions that have real-life consequences for its residents, it would demand all relevant studies upon which decisions are based meet or exceed the City's stated criteria for the required study.

Community impact. The neighborhood of Grandview, has been extremely supportive of this appeal. The red sandstone "fin" is the namesake for our street Red Rock Ave. Some of our neighbors were born in this area in the late 1940's. Others moved here in the 1950's. That "fin" is a landmark and everyone appreciates its uniqueness and beauty. We have another, smaller fin on our property and some of the neighbors have

viewed this as our neighborhood's own "Garden of the Gods." We sit at the southeast corner of the Garden and, if the "fin" were about 120 yards further north, it would be protected. Our neighborhood wants this rock protected and preserved as a treasured geological feature. We are all very protective of the fragile environment we are so blessed to live in.

The only person who is benefiting from this project is the builder. He will build a house, sell it, make a profit, and then leave. Damage will have been done to the rock (ask any qualified geologist). Will the rock come tumbling down--we sure hope not. But in this immediate area, those "fins" are breaking apart. About 5 years ago, 150 yards to the north, huge car-sized boulders broke from a fin and came tumbling down. All of us who hike that area were astonished. How did that happen? What caused it? In the early 1980's, Duane heard a crash in the middle of the night. He found out the next morning that another fin which was located about 20 yards behind our fin had come crashing down. What caused it--no one knows. These sandstone rocks are not rock-solid and our "fin" is deteriorating right before our eyes. We need to do everything we can to protect it.

The #1 attraction in Colorado Springs is the Garden of the Gods. It is famous for its red sandstone fins or spires. We were surprised to find out that the City does not have a statute protecting all of them from damage. These are the signature geological features for which the City is famous. It is one of the main reasons tourists come here (tax revenue). Mother Nature is not creating them anymore--they are irreplaceable. Allowing a construction site to be created within 10 feet of one of them seems a crime. Why would we want to allow even any level of risk of damage to one of these iconic rocks?

Reconsidering this administrative decision and denying the permit can actually be a win-win-win.

Win #1 Mr. Robertson owns a beautiful, unique, lot in the desirable West Side that he can still sell, as is, as one lot. It would have a 3-car garage (major selling point). Currently a family is renting the 205 Yale property and they told us they were renting with the option to buy. He would still make a handsome profit.

Win #2 The City has stepped up to preserve and protect one of its landmark red sandstone fins and shown that its Hillside Development Guidelines has teeth. It would be setting a standard, that developers will be expected to follow those guidelines, when building in the ecologically, environmentally, and geologically fragile Westside area.

Win #3 Decisions made by the City have real-life consequences for its residents. We are not check marks on a checklist. Denying the permit will protect us and our property from possible dire financial and physical harm. We have legal rights that protect our property--the rock, our house, garage, car and our physical beings from potential injury or damage. We will have had our legal rights acknowledged and upheld.

In closing, we are asking that the City reject this permit because it is assigning risk to us so a third party can make money. The Geological Hazard Study is deeply flawed and no conclusion of the City should be based on this negligence and misrepresentation. At a minimum, no decision should be made unless a valid study is submitted that considers all aspects of the rock formation and its condition, the proximity of the rock to our home and patio and the potential danger and irreparable harm that could result as a result of the construction activities. Would the City want to authorize a change that could cause irreparable harm to its residents without all the facts being before it?