



## Legislation Details (With Text)

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**Type:** Planning Case    **Status:** Passed

**File created:** 4/26/2021    **In control:** City Council

**On agenda:** 7/25/2023    **Final action:** 7/25/2023

**Title:** An appeal of the City Planning Commission approval for the Kettle Creek development plan consisting of 61.71 acres located north of the intersection Thunder Mountain Road and Old Ranch Road.

(Quasi-Judicial)

Related Cases: AR FP 20-00539

Presenter:  
Katelynn Wintz, Planning Supervisor, Planning Department  
Peter Wysocki, Director, Planning Department

**Sponsors:**

**Indexes:** Appeals

**Code sections:**

**Attachments:** 1. North Fork Neighborhood Appeal, 2. Sarah Knowley & Noah Haney Appeal, 3. Development Plan Revised 05.17.23, 4. Staff Report, 5. Staff Report 03.08.pdf, 6. Staff Report 05.20.pdf, 7. Project Statement, 8. Postponement Request 03.07.23, 9. Development Plan 02.15.23, 10. Appeal Statement 06.01.21, 11. Appeal Statement 04.12.21, 12. Approved Development Plan, 13. Approved Final Plat, 14. Briargate Master Plan, 15. Public Comments 03.07.23-04.17.23, 16. Public Comments 02.25.23-03.07.23, 17. Petition Signatures, 18. Public Comments 05.18.21, 19. Public Comments 05.07.21, 20. Surrounding Area & Context Map, 21. City Council Minutes 07.13.21, 22. City Council Minutes 06.09.20, 23. City Planning Commission Minutes 04.30.20, 24. CDOT Decision on Powers Boulevard Access, 25. Kettle Creek North & North Fork Potential Evacuation Routes, 26. Kettle Creek North & North Fork Potential Evacuation Routes 03.08.23, 27. Traffic Report Update, 28. Traffic & Evacuation Evaluation 06.08.23, 29. 7.3.606 PUD Development Plan, 30. 7.5.502.E Development Plan Review, 31. CPC Meeting Minutes\_06.14.23, 32. Staff Presentation 07.13.pdf, 33. Staff Presentation 07.25.pdf

Date	Ver.	Action By	Action	Result
7/25/2023	4	City Council	denied	Fail
7/25/2023	4	City Council	approved	Pass
6/14/2023	4	Planning Commission	referred	Pass
4/12/2023	4	Planning Commission	postponed to a date certain	Pass
3/8/2023	3	Planning Commission	postponed to a date certain	Pass
7/13/2021	2	City Council	denied	Fail
7/13/2021	2	City Council	approved	
7/13/2021	2	City Council	referred	Pass
6/22/2021	2	City Council	postpone to a date certain	Pass
5/20/2021	1	Planning Commission	denied	Fail
5/20/2021	1	Planning Commission	approved	Pass

An appeal of the City Planning Commission approval for the Kettle Creek development plan consisting of 61.71 acres located north of the intersection Thunder Mountain Road and Old Ranch Road.

(Quasi-Judicial)

Related Cases: AR FP 20-00539

**Presenter:**

Katelynn Wintz, Planning Supervisor, Planning Department  
Peter Wysocki, Director, Planning Department

**Summary:**

Owner: Jovennchi, LLC  
Developer: Vintage Communities  
Representative: NES Inc - Chris Leiber

**Background:**

Staff administratively approved the Kettle Creek North development plan and final plat on April 6, 2021, and an appeal was filed on April 12, 2021. The development plan approved 247 single-family detached lots with associated improvements on 61.71 acres divided into four phases. The final plat approved 74 of those single-family lots (phase one) on 21.33 acres of the total 61.71-acre project site. The City Planning Commission heard the appeal of the development plan and final plat on May 20, 2021, in which the City Planning Commission overturned staff's approval in favor of the appellant. The Kettle Creek North development team appealed the City Planning Commission decision to the City Council who heard the item on July 13, 2021. The City Council voted to refer the item back to the City Planning Commission for further consideration with a set of seven considerations as described further in this report. This referral was heard by City Planning Commission for reconsideration on June 14, 2023, and approved with conditions. An appeal of Planning Commissions decision is presented to City Council for consideration.

The project site is located south and east of the Powers Boulevard and Highway 83 intersection and shares a boundary with the Kettle Creek waterway to the north and the existing North Fork neighborhood to the south.

The subject property was annexed into the City of Colorado Springs in 1982 as part of the 6,700 acre Briargate Addition No. 5 annexation and was added to the Briargate Master Plan simultaneously. This master plan was updated in 2003, and new land use designations were established. This property was assigned the R-LM (Residential, Low-Medium) with a density range of 3.5 to 7.99 du/ac. Similarly, the North Fork neighborhood was established and assigned the same R-LM designation. On the original Briargate Master Plan, an elementary school and a junior high school were illustrated in the North Fork neighborhood area, and in 2003, the junior high school was re-designated as a high school. While the subject site has been master planned since annexation in 1982, it was assigned the A (Agriculture) zone as a holding zone until the parcel was proposed for development.

In 2014, a zone change, development plan, and minor master plan amendment were submitted for the North Fork subdivision. The zone change proposed to rezone from the A (Agriculture) (a standard

holding zone district) to PUD (Planned Unit Development: Detached Single-family Residential, 3.6 du/ac, 36-foot maximum building height), and the development plan proposed 141 single-family residential lots. The simultaneous minor master plan amendment proposed relocation of the elementary school site to its current location on the northeast side of Thunder Mountain Avenue and reclassified Thunder Mountain Avenue from a Minor Arterial to a Collector Roadway north of Pine Creek High School which was approved by the City Traffic Engineering division allowing the reduction in road classification. In 2015, the remainder of the North Fork subdivision was submitted for review and was approved with an additional 602 single-family detached residential lots.

In 2019, the Kettle Creek North subdivision submitted applications to rezone from its holding zone to PUD (Planned Unit Development: 35-foot maximum height, single-family detached units, maximum density of 4.0 dwelling units per acre). Following initial public notice, staff fielded many comments from residents of the North Fork neighborhood and property owners within El Paso County to the north and east of the subject property. Staff held two neighborhood meetings: the first was held on September 4, 2019, and the second on November 6, 2019. Both neighborhood meetings were attended by two primary groups: those who live in the North Fork neighborhood, and those who live in El Paso County to the north and east. Those who live in El Paso County were concerned about the urban to rural transition, ensuring a harmonious residential product is constructed, and that there was no access to Howells Road (directly to the east of the subject site). Those who live in the North Fork neighborhood had concerns with the additional traffic on Thunder Mountain Avenue. Both groups shared concerns with the additional traffic feeding onto Old Ranch Road and the preservation of natural features on the subject site.

The City Planning Commission heard the Kettle Creek North zone change and concept plan on April 30, 2020. Generally discussed were existing traffic issues, emergency access and evacuation, access to Howells Road, and the traffic report's findings for the addition of the proposed homes. The City Planning Commission voted 7 to approve, 1 absent, 1 "no" vote to recommend approval of the zone change and concept plan to the City Council. The City Council then heard the request on May 26, 2020. The same primary topics were discussed-existing traffic congestion, emergency access and evacuation, other potential access points, and the traffic report's findings. Ultimately, the City Council voted 5 to approve the zone change (4 voted to deny) and then voted 8 to approve the concept plan (1 voted to deny).

As a matter of course, following the approval of the zone change and concept plan, a development plan and final plat were submitted for staff's review. Development plans and final plat applications are reviewed and decided on administratively and do not require a public hearing for a decision unless appealed. Upon finding the applications were compliant with all the applicable codes and regulations, staff approved the development plan and final plat on April 6, 2021. Residents of the North Fork neighborhood filed an appeal of staff's decision to approve the development plan and final plat.

The appeal of staff's decision was heard by the City Planning Commission on May 20, 2021, where staff, the neighborhood appellant, and the consultant gave a presentation. The North Fork residents, the appellant for this hearing, emphasized the importance of an additional access point for emergency evacuation and the high volume of morning peak-hour traffic between commuters needing to leave the neighborhood and the conflicting high school traffic. The Kettle Creek North development team's presentation emphasized the proposal's consistency with the approved zone district, concept plan, and the Briargate Master Plan also mentioning there are no code provisions requiring a certain number of access points currently. The Planning Commission voted to uphold the appeal, overturning staff's decision, generally based on poor emergency evacuation route options.

On June 1, 2021, the Kettle Creek North development team filed an appeal of City Planning Commission's decision to City Council.

The appeal of City Planning Commission's decision was heard by the City Council on July 13, 2021. At this meeting staff gave a general overview of the applications and the City Planning Commission meeting, followed by a presentation by the Kettle Creek North development team (the appellant in this hearing), and then a presentation by the North Fork neighborhood residents. Generally, the same items were discussed-traffic on Thunder Mountain Avenue and conflicting traffic during the morning peak-hour, and emergency evacuation route options. A motion was made to refer the item back to City Planning Commission with seven considerations that were discussed during the hearing:

1. An additional egress route which travels west of north, not south.
2. The standards for the Wildland Urban Interface, as set forth in the Fire Prevention section of Chapter 8 of the City Code, will be required and applied to all new construction in the Kettle Creek North subdivision.
3. There will be a 50-foot-wide fuels management area, as described in City Code section 8.4.105-K102, along the northern boundary of the development and that Kettle Creek North's HOA documents require the HOA to maintain the fuels management area according to the requirements of that code section.
4. No Certificates of Occupancy will be issued for any home in the Kettle Creek North subdivision until the traffic light on Thunder Mountain Avenue is installed and operational.
5. No Certificates of Occupancy will be issued until the intersection of Union Boulevard and Milam Road is operational and open for public use.
6. No Certificates of Occupancy will be issued for any home in the Kettle Creek North subdivision until a fire station is constructed and staffed along the Highway 83 corridor.
7. An emergency exit or access point to Howells Road will be constructed and maintained by the Kettle Creek North HOA and must be sufficient for use by emergency vehicles and approved by the Fire Department.

The subject development plan illustrates 247 single-family detached residential lots on 61.71 acres equating to four dwelling units per acre. The development plan outlines a minimum lot size of 5,500 square feet, primary structure setbacks, maximum lot coverage, and accessory structure setbacks. The development plan is split into four phases beginning on the west side of the subject site. The appealed final plat illustrates 74 lots which make up phase one of the development.

Several points of access into the Kettle Creek North subdivision are proposed and align with the street configuration of the North Fork subdivision. An emergency access point for the entire North Fork and Kettle Creek North neighborhoods is also proposed and will connect to Howells Road. These access points feed onto Thunder Mountain Avenue which then leads to Old Ranch Road. The entire 61.71-acre site will drain stormwater to the far west side of the site into an existing public full-spectrum detention pond which will then release that water at historic rates into the existing stormwater infrastructure along Powers Boulevard. The design of the existing pond accounted for this developed area in its calculations. A Final Drainage Report was submitted with the development plan

and final plat applications and was approved by the Stormwater Enterprise.

A geologic hazard report was submitted with the zone change and concept plan and was forwarded to Colorado Geologic Survey (CGS) for review at that time. CGS recommended a geotechnical setback from those significant slopes. The geotechnical setback line encroaches into one lot in phase four of the development plan and will trigger a site-specific geologic hazard report to be reviewed in conjunction with a building permit for that lot. In addition to the geotechnical setback, there is a Preble's Meadow Jumping Mouse (PMJM) critical habitat line just to the north of the proposed single-family lots. Both the PMJM critical habitat line and geotechnical setback helped frame the developable area along the northern boundary of the subject site. No other encroachments of the PMJM critical habitat line or geotechnical setbacks into the future single-family lots exist.

The Parks, Recreation and Cultural Services Department, utilizing Trails, Open Space, and Parks (TOPS) funds, aims to purchase the land located north of the proposed development area but the appeal of the subject proposal has caused some uncertainty in whether that purchase will be possible. The TOPS tax was established by a vote of the people in 1997 to encourage, foster and promote public-private partnerships in the preservation of open space lands, trails, and parks. In 2003, voters renewed TOPS until 2025. The approximately 150-acre acquisition of Kettle Creek assures that natural features formed by the creek will be preserved in perpetuity and could serve as a future trail corridor.

There are two points of access into the North Fork and Kettle Creek North areas-the intersections of Thunder Mountain Avenue and Old Ranch Road, and the intersection of Forest Creek Drive and Old Ranch Road. Largely, the areas of concern are the intersections of Thunder Mountain Avenue and Old Ranch Road, and Thunder Mountain Avenue and the driveways into Pine Creek High School. Thunder Mountain Avenue is the primary point of access for the existing and proposed residential homes, Pine Creek High School, and Encompass Heights Elementary School.

City Traffic Engineering reviewed a traffic report concurrently with the concept plan and zone change which accounted for the existing North Fork subdivision, the proposed Kettle Creek North subdivision, the high school, and elementary school's generated traffic. That same traffic report was referenced during the most recent appeal hearings, and stated, all individual turning movements and approaches at the signalized intersection of Old Ranch Road/Thunder Mountain Avenue are projected to operate at LOS D or better during both peak hours through the 2040 horizon year, with Kettle Creek North buildout. It was also noted that most of the congestion occurs in the morning peak hour when commuters intersect with incoming high school traffic. The report measured an "alternate scenario," if the high school and elementary school timing could be staggered off the morning peak hour, which resulted in a significantly improved LOS for the intersection during the morning peak hour.

City Traffic Engineering approached Academy School District 20 about adjusting the start time of Pine Creek High School to alleviate some of the pressures on the Thunder Mountain Avenue and Old Ranch Road intersection. Discussions about Pine Creek High School's start time have not been successful, but the school district has committed to altering Encompass Heights Elementary School's start time off the morning peak hour. City Planning staff required this be noted on the elementary school's development plan stating that if there ever were a change to the school's start time, a revised traffic analysis would be required. However, it is very important to note that the City does not have purview over the operations of public schools. Public schools are governed by the Board of Regents and technically are not required to follow City development codes and regulations. While

City Traffic Engineering can request changes or suggest improvements, there are no requirements for a public school to follow those requests or suggestions.

Residents have also expressed that due to high volume of school traffic entering the high school campus from Thunder Mountain Avenue during the morning, they experience a significant level of delay in attempting to exit the neighborhood. Currently, northbound high school traffic does not stop when turning left into the campus causing a delay for southbound commuters who must yield and wait for an opening to continue south. City Traffic Engineering conducted a traffic operational analysis of the intersection which shows that in the morning, southbound vehicles on Thunder Mountain Avenue experience delays that exceed a level of service (LOS) F condition. This condition is like congestion levels seen around high schools across the city. However, this condition only exists in the morning and the intersection operates effectively for the rest of the day. City Traffic Engineering listed several possible measures to mitigate this condition-one of which was installing a traffic signal at the Thunder Mountain Avenue intersection with the Pine Creek High School access point. As of the writing of this report, this intersection has been signalized.

The traffic study that was referenced during the zone change and concept plan stage was updated prior to this City Planning Commission referral hearing. At the time of its creation, the intersection of Union Boulevard and Milam Road was still under construction and not yet open to the public; the report did not address the Thunder Mountain Avenue and Pine Creek High School access point intersection; and did not contemplate the proposed tertiary access point to Howells Road (described further below). The update as summarized below includes these new conditions and finds:

The updated traffic report dated June 9, 2022, with revisions on February 22, 2023, evaluated the previous three traffic studies prepared for the subject development. An analysis of the findings and conclusions of those reports were used as the baseline to the updated analysis. The analysis includes the existing traffic and road conditions of the adjacent streets serving the site, a trip generation analysis of the proposed development, directional distribution of the site-generated vehicle trips, existing and future traffic volumes, and finally a level of service (LOS) analysis. The report notes that all studied intersections will operate at an LOS D or better through the short-term and long-term peak hours. Traffic Engineering has reviewed and accepted the revised report.

When the subject area was annexed and added to the Briargate Master Plan in 1982, the master plan illustrated Thunder Mountain Avenue continuing west and connecting to Powers Boulevard between the North Fork and Kettle Creek subdivisions. However, in 1997, the Colorado Department of Transportation (CDOT) conducted an Environmental Assessment (EA) of Powers Boulevard. This EA changed the classification of Powers Boulevard to a signal-controlled expressway that identified specific locations for intersections. The intersection of Thunder Mountain Avenue with Powers Boulevard was removed from the list of permitted intersections, and the Briargate Master Plan was updated to illustrate Thunder Mountain Avenue ending in its current location.

Additional access points into the Kettle Creek North development, other than Thunder Mountain Avenue, were explored during the project's several review stages. City staff explored the potential for extending Forest Creek Drive, to Powers Boulevard, north across Kettle Creek to Highway 83, and to Howells Road as either a public ingress/egress route or an emergency access only route.

- Forest Creek Drive: The potential extension of Forest Creek Drive north would have had to cross the elementary school site to reach the Kettle Creek North subdivision. Academy School District 20 was not willing to give permission for Forest Creek Drive's potential

extension through their property for either a public access route or emergency only access.

- Powers Boulevard: Staff reached out to the Colorado Department of Transportation (CDOT) and inquired whether CDOT would be open to reinstating the allowance for a connection of Thunder Mountain Avenue with Powers Boulevard either as a full access point or as an emergency-only access. City Traffic Engineering, City Planning, and the Fire Department held a meeting with representatives of the CDOT on June 4, 2020. CDOT denied the request for a potential full access point or emergency access due to regulations which are applicable to the roadway's classification set by the 1997 Environmental Assessment.
- To the north: This potential access would require the construction of a bridge over Kettle Creek which is a designated PMJM critical habitat. The bridge construction would be at the cost of the Kettle Creek North development, who considers the construction to be cost prohibitive for the proposal.
- Howells Road: Staff then explored the option to connect to Howells Road. At the time of the zone change, concept plan, and appeal hearings, there was a condition on the Briargate Master Plan prohibiting a vehicular connection to Howells Road. This condition was added to the master plan in 2014 due to the opposition from residents of El Paso County to the development of the North Fork neighborhood. The Briargate Master Plan reached the necessary thresholds to be considered "implemented" as outlined in City Code section 7.5.402.B. An implemented master plan ceases having regulatory power. The City Code outlines a process for changing the legislative status of privately-initiated land use master plans from "operative" to "implemented" that includes an annual audit as part of an annual report produced by the City Planning & Community Development Department. This annual audit had not occurred since 2008 but was picked back up in 2022 as part of the 2021 PlanCOS Annual Report. Changing the legislative status of the Briargate Master Plan from "operative" to "implemented" as part of that report opened Howells Road as a potential tertiary access point.

An emergency access road connecting to Howells Road is proposed. This condition will assure a third ingress/egress to the development which will serve as an access for residents and emergency personnel alike. This access road shall remain gated. The gated access will be automated, allowing vehicles to be evacuated and exit onto Howells Road. Ingress from Howells Road shall be limited to emergency response vehicles. The Kettle Creek North development team has agreed to construct the emergency access to Howells Road from the Kettle Creek North subdivision. The access shall be designed to a county condition roadway (dirt road surface) and must be maintained to the Colorado Springs Fire Department loading requirements. The metropolitan district shall be responsible for maintenance of the access drive, all signage, and the gate.

City staff consulted with El Paso County's Public Works Department on the proposed access point to Howells Road. El Paso County requested that City of Colorado Spring take ownership of the right-of-way and that the right-of-way be annexed into the City's jurisdiction. Currently, half of Howells Road right-of-way is in the City's jurisdiction. As of the writing of this report, El Paso County has committed to quit-claim the full right-of-way over to the City. On April 4, 2023, the Board of County Commissioners (BOCC) held a hearing related to the transfer of ownership of Howells Road; however, in a 3-2 vote, the BOCC denied the resolution to grant the quitclaim deed and will maintain ownership of Howells Road. During the hearing, the El Paso County Public Works Department

confirmed that any entity may request access to County roads and when those access requests comply with the access guidelines then access may be granted to a County road.

Howells Road does not presently fully connect to Shoup Road to the north due to a gap in the roadway where it meets Kettle Creek. El Paso County has identified constructing a bridge to connect the northern and southern portions of Howells Road as part of their transportation plan. At this time, with the ownership of Howells Road maintained by El Paso County, any roadway improvements would be the responsibility of that entity. City staff cannot require improvements to roadways not owned or maintained by the City.

While still serviceable, the proposed Kettle Creek North subdivision is currently out of the buffer for the Fire Department's desired emergency response time. This was discussed in detail by the City Planning Commission and City Council during the appeal hearings for the development plan and final plat applications. During the July 13, 2021, City Council meeting, it was mentioned that a new fire station is currently in the works for the Highway 83 corridor that would bring the proposed development into the buffer for desired response times. As of the writing of this report, the new fire station location has been identified and the property is set to close before the end of February 2023. The anticipated timeline for construction and opening the fully operational fire station is anticipated to be some time in Quarter 1 of 2025 per the Fire Department.

The applicant has expressed concerns about the Council requested condition to restrict the approval of any Certificate of Occupancy in the development until such time that the Fire Station 24 is fully operational. Rather, they suggest two new notes on the development plan and plat. The first is a note acknowledging that residents may experience response time delays until the fire station is operational. The second is a modification to the Certificate of Occupancy hold beginning at Phase 2 of the development. This note would permit development and occupancy of the 74 homes identified in Phase 1 of the subject development and would restrict all other occupancy until the Fire station is operational.

The wildland urban interface, or WUI, is the area where structures and other human developments meet or intermingle with wildland vegetation. The WUI is largely located on the westside of Colorado Springs but also extends into central Colorado Springs near Pulpit Rock and Palmer Park. City Code requirements have been adopted that require wildfire mitigation measures for new construction within the WUI. This includes requirements for a hardened structure that helps reduce the likelihood of ignition when exposed to fire, and management of landscaping and natural vegetation surrounding homes. The WUI does not extend to northeast Colorado Springs where Kettle Creek North is proposed. However, because wildfire was a significant concern by the City Planning Commission as voiced at the May 20, 2021, hearing, the Kettle Creek North development team opted to apply the WUI code requirements to the new construction. This new component to the proposal was introduced during the City Council hearing on July 13, 2021. This is solidified as two of the seven considerations outlined by the City Council and before the City Planning Commission currently.

Emergency evacuation was discussed in detail at the City Planning Commission and City Council hearings for the zone change and concept plan. At those hearings, the Colorado Springs Fire Department stated that while the ingress/egress route to Old Ranch Road was undesirable, it was still a workable condition. The Colorado Springs Fire Department requested in a review letter applicable to the zone change and concept plan that a tertiary access point into the subdivision be established. When routed the development plan and final plat applications for review, Colorado Spring Fire Department did not return any comments for revision, and staff moved forward with the



two existing access points of Thunder Mountain Avenue and Forest Creek Drive.

However, during the appeal hearings, emergency evacuation routes was the primary topic of concern. Taking direction from the City Planning Commissioners and the City Councilors during their discussions on the subject applications, staff continued to push for a tertiary access point. Upon implementing the Briargate Master Plan, staff was able to negotiate a third access point on Howells Road as described in the previous section. An updated potential evacuation route map has been produced with accounts for the tertiary access and the connection of Union Boulevard and Milam Road.

In February 2022, City Council adopted changes to City Code Chapter 8, *Public Safety*, to clarify the policies and procedures for emergency response agencies (i.e. Fire Department, Police Department and Office of Emergency Management). Under these changes, more specifically, City Council established City Code Section 8.7.206 *Emergency Evacuation Plan*, which assigns responsibility, in conjunction with operations input from the Police Department and Fire Department, the review, development, and adoption of the AHEPs. City Planning staff acknowledges that through the solicitation of public comments for this project, this issue continues to be a concern of the surrounding neighborhoods.

The City Planning Commission is considering the review criteria applicable to appeals of administrative decisions. At their July 13, 2021, meeting, the City Council referred the appeal of City Planning Commission's decision to deny the Kettle Creek North development plan and final plat, asking the City Planning Commission to reconsider their decision with the seven additional considerations established by the City Council and with the agreement of the Kettle Creek North development team. Those considerations are:

1. An egress west or north, not south.  
Not met, as described on Page 7. CDOT controls access to the west and will prohibit any connections to Powers Boulevard. Connections north are infeasible due to construction and long term maintenance costs.
2. The standards for the Wildland Urban Interface, as set forth in the Fire Prevention section of Chapter 8 of the City Code, will be required and applied to all new construction in the Kettle Creek North subdivision.  
Met. This is added as a note to the development plan and provided as a condition of approval.
3. There will be a 50-foot wide fuels management area, as described in City Code section 8.4.105-K102, along the northern boundary of the development and that Kettle Creek North's metropolitan district documents require the metropolitan district to maintain the fuels management area according to the requirements of that code section.  
Met. This is added as a note to the development plan and provided as a condition of approval.
4. No Certificates of Occupancy will be issued for any home in the Kettle Creek North subdivision until the traffic light on Thunder Mountain Avenue is installed and operational.  
Met. This light was installed by the City in 2022 and is currently operational.

5. No Certificates of Occupancy will be issued until the intersection of Union Boulevard and Milam Road is operational and open for public use.  
Met. This intersection is operational and open for public use.
  
6. No Certificates of Occupancy be issued for any home in the Kettle Creek North subdivision until a fire station is constructed and staffed along the Highway 83 corridor.  
Modified. The applicant is requesting as a condition of approval a modification to the proposed consideration to prohibit Certificates of Occupancy in Kettle Creek North Filing No. 2 until the fire station is constructed and operational. The Fire Department supports this modification.
  
7. An emergency exit or access point to Howells Road will be constructed and maintained by the Kettle Creek North metropolitan district and must be sufficient for use by emergency vehicles and approved by the Fire Department.  
Met. An automated-gate controlled access road to Howells Road is proposed, meeting the Fire Department loading requirements in a dirt road surface condition to be owned and maintained by the metropolitan district is provided as a condition of approval.

Since July 2021, though, the Union Boulevard and Milam Road intersection has opened. The intersection of Thunder Mountain Avenue and north Pine Creek High School access is also signalized. Staff is recommending removal of the conditions as noted in the proposed motion below.

The appeal criteria can be found in code section 7.5.906 and establish that the hearing body consider whether the decision was against the express language of this zoning ordinance, against the express intent of this zoning ordinance, or the decision was unreasonable, erroneous, or clearly contrary to law. It is staff's judgement that approval of a development plan and final plat, which follow the approved zone district, is not against the language or intent of the zoning ordinance, is not unreasonable, erroneous, or contrary to law. Staff is also of the opinion that the subject applications are in conformance with the review criteria applicable to development plans and final plats and approved those applications accordingly.

The City's Comprehensive Plan, PlanCOS, identifies the area subject to the applications as a "newer developing neighborhood" on the Vision Map and fits within the Emerging Neighborhoods typology of the Vibrant Neighborhoods chapter. In the Vibrant Neighborhoods chapter of PlanCOS a policy (VN-3.A) supports developments, which enhance and preserve a neighborhood's character. The Kettle Creek North development will preserve the significant natural features found on the parcel by selling the land to TOPS. Many of the goals and policies within the Majestic Landscapes chapter also supports the preservation of landscapes and natural features. In the Strong Connections chapter, another policy (SC-1.H) states, "Improve neighborhood livability by providing connections between neighborhoods..." Kettle Creek North will integrate the street layout of the North Fork subdivision to create a seamless transition between the two developments.

The subject parcel is located within the Briargate Master Plan area. This master plan was initially established in 1980, and the subject parcel was added in 1982. The Briargate Master Plan was updated in 2003 and new land use designations were established. For the subject parcel, R-LM with a density range of 3.5 to 7.99 du/ac was outlined. The appealed development plan illustrates 247 single-family detached lots across 61.71 acres for a gross density of 4.00 dwelling units per acre. In 2022, the Briargate Master Plan changed legislative status from "operative" to "implemented".

Implemented master plans as decided by the City Council are considered “complete”. As a policy, once a master plan is considered implemented no additional amendments or modifications are required for any plans submitted after the implementation date of the subject master plan. This course of action is supported by the the language in the zoning section of the City Code, which allows approval of zoning actions that may be inconsistent with an implemented master plan, to guide the master plan entitlement process. However, the master plan may still be used as a point of reference.

**Previous Council Action:**

City Council approved a rezoning and concept plan for a Planned Unit Development (residential, 3.5-7.99 dwelling units per acre) in 2020. Council also heard an appeal of the City Planning Commission decision in July 2021 where Council voted to refer the item back to Planning Commission with a set of seven considerations.

**Financial Implications:**

N/A

**City Council Appointed Board/Commission/Committee Recommendation:**

In May 2021, Planning Commission voted in a 4-2-3 (Commissioners McMurray and Graham opposed, Commissioners Slattery, Rickett and Eubanks absent) decision to uphold an appeal thus overturning staff’s administrative approval of the Kettle Creek development plan application. At that time the discussion with the Planning Commission centered on unresolved concerns related to emergency access and public safety.

On June 14, 2023, City Planning Commission heard the remanded item again at City Council’s request. The Planning Commission reviewed the modified development plan application consistent with the City Code review criteria in addition to the seven considerations requested by City Council. During the Planning Commission discussion Chair Hente and Commissioner Foos expressed concerns that the existing access point to the proposed development at Thunder Mountain and Old Ranch pose potential safety concerns and testimony from the Traffic Engineer and Deputy Fire Marshal did not abate those concerns and the risks outweigh the benefit of additional housing in this area. Commissioner Slattery acknowledged that while she understands the concerns of the community, with the infrastructure changes that have occurred since 2021 and the gated-emergency access solution to Howells Road is a betterment to the overall development and supports the interests of the County residents to the east while providing safe egress in emergency situations for existing and future residents. Additionally, she mentioned that the understanding that Thunder Mountain, Old Ranch and other roadways in and around the development have the capacity to manage the proposed units given that at the time the roads were planned they were appropriately sized to support the proposed development at Kettle Creek per the master plan that she is comfortable supporting the application as proposed. In a 4-2 vote (Commissioners Foos and Hente opposed, Commissioners Almy, Raughton, Briggs absent) City Planning Commission voted to approve the Kettle Creek development plan application subject to four conditions of approval. The conditions are as follows:

1. The standards for the Wildland Urban Interface, as set forth in the Fire Prevention section of Chapter 8 of the City Code, will be required and applied to all new construction in the Kettle Creek North subdivision.
2. There will be a 50-foot wide fuels management area, as described in City Code section 8.4.105-K102, along the northern boundary of the development and that Kettle Creek North’s metropolitan district documents require the metropolitan district to maintain the fuels

management area according to the requirements of that code section.

3. No Certificates of Occupancy be issued in the Kettle Creek North Filing No. 2 subdivision until a fire station is constructed and staffed along the Highway 83 corridor.
4. An access point to Howells Road will be constructed and maintained by the metropolitan district and must be sufficient for use by emergency vehicles and approved by the Fire Department.

### **Stakeholder Process:**

The public notification process for the development plan and final plat submittal consisted of placing a poster on the project on site and sending postcards to 198 property owners within 1,000 feet of the subject site. Public comments were received during the initial review of the applications and throughout the review process. Primarily, comments were received from individuals representing the North Fork Homeowners Association. Those comments are largely regarding traffic congestion on Thunder Mountain Avenue at Pine Creek High School, traffic congestion at the intersection of Thunder Mountain Avenue and Old Ranch Road, question the data and conclusions made in the approved traffic report, and emergency evacuation routes and potential traffic congestion during an evacuation. The City Traffic Engineering division held a meeting with the North Fork Homeowners Association Safety Committee on April 20, 2021, to discuss the existing traffic congestion on Thunder Mountain Avenue and the results of the traffic report which is described further in the "Traffic" section of this report. The site was posted, and postcards mailed to the 198 property owners within 1,000 feet of the subject site prior to the May 20, 2021, City Planning Commission hearing, the July 13, 2021, City Council meeting, and prior to the March 8, 2023, referral back to the City Planning Commission. The item was postponed to the April 12, 2023, meeting. At that meeting, the applicant requested an additional 60-day postponement to the June 14, 2023, meeting. Although the item was postponed to a date certain, which typically does not require additional notification, Planning staff required additional notification, with postcards and poster, prior to the June 14, 2023, hearing to inform surrounding residents of the hearing date. An appeal of the City Planning Commission's June 2023 approval of the development plan was received. Prior to the City Council hearing additional postcards were mailed and the site was posted as required. All public comments received following the submittal of the applications through the current hearing are included as one attachment.

Staff input is outlined above. The applications were sent to the standard internal and external agencies for review including Colorado Springs Utilities, City Traffic Engineering, City Engineering, City Landscape, City Fire Department and Police/E-911, City Stormwater Enterprise, the United States Air Force Academy, Academy School District 20, and Parks, Recreation, and Cultural Services. Minor revisionary comments were received and addressed. At this time, all comments from review agencies have been addressed.

- City Traffic Engineering found the submitted development plan and final plat to be in conformance with the approved traffic report which was reviewed and approved in conjunction with the 2020 zone change and concept plan. However, following the length of time between hearings and with the new circumstances, this traffic analysis was updated to include the anticipated traffic signal on Thunder Mountain Avenue at the Pine Creek High School access point, and the opening of the Union Boulevard and Milam Road intersection. This is discussed in more detail further in this report.
- Academy School District 20 requested fees in lieu of land dedication per the previous Parkland Dedication Ordinance (PLDO) which was applicable at the time of application.

- The City Fire Department, following the review of the development plan and final plat, did not have any revisionary comments and found it to be in conformance with the 2020 zone change and concept plan.

**Alternatives:**

1. Deny the appeal and approve the development plan
2. Grant the appeal and deny the development plan
3. Deny the appeal and approve the development plan with additional conditions
4. Remand the development plan back to the City Planning Commission

**Proposed Motion:**

Deny the appeal and uphold Planning Commission's decision to approve the Kettle Creek development plan, based upon the findings that the application complies with the review criteria set forth in City Code Section 7.3.606 and 7.5.502(E) and that the appeal criteria of UDC Section 7.5.415 (A)(2)(a)(2) are not met.

N/A