



## Legislation Text

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**File #:** APPL-23-0007, **Version:** 1

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An appeal of the Planning Commission decision to deny the CSU Wilson Tank Height Increase Development Plan Major Modification.

(Quasi-Judicial)

**Presenter:**

William Gray, Senior Planner, Planning + Neighborhood Services  
Peter Wysocki, Director, Planning + Neighborhood Services

Owner: City of Colorado Springs

Appellant: Colorado Springs Utilities (“CSU”)

Representative: David Padgett, General Manager, CSU - Projects and Programs

Location: 6560 Alabaster Way

The Appellant filed a Notice of Appeal pursuant to Section 7.5.415 (Appeals) of the Planning Commission decision to deny the CSU Wilson Tank Height Increase Development Plan Major Modification (“Wilson Tank Height Increase”). The basis for the appeal is that the decision of Planning Commission is contrary to the express language of the UDC, erroneous and contrary to the law. More specifically, the Appellant asserts that the Planning Commission did not apply the major modification review criteria as required with their decision that resulted in the denial of the application and has included with their appeal a written description as to how the review criteria that is relevant to this application has been met (see “Notice of Appeal” attachment).

**Background:**

The Appellant applied for a development plan major modification on July 17, 2023, that proposed increasing the established maximum height of a water storage tank from 45-feet to 60-feet to address a discrepancy between the approved building permit and approved development plan. The original development plan for the 5-million-gallon (MG) water tank was approved on July 21, 2022 (AR DP 21 -00526) and the building permit for the project was issued on May 8, 2023. See the attached Wilson Tank Major Modification City Planning Commission Staff Report for a complete description of the project history, project details and Staff’s analysis of the proposed development plan major modification application.

**Review Criteria:**

The application being considered is an appeal of Planning Commission’s decision on the Wilson Tank Height Increase. In determining the decision on this appeal both review criteria for an appeal and development plan major modification are to be considered.

An application for an appeal may be affirmed, reversed or modified if it is determined that one (1) or more of the applicable review criteria have been met. The review criteria for this decision are set forth in City Code Section (UDC) 7.5.415.A.2, as follows (refer to the underlined criteria in subsection (2)):

## 2. Notice of Appeal

### a. The notice of appeal shall state:

- (1) The specific provision(s) of this UDC that is the basis of the appeal; and
- (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; or
  - (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.

An application for a major modification of an approved development plan may be approved if it is determined that the applicable review criteria have been met as they relate to the area of the development plan proposed to be modified. The review criteria for deciding on a Major Modification, as set forth in City Code Section 7.5.516.D.1, are as follows (refer to the underlined criteria in subsection 1a through 1d below):

### 1. Major Modification

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; and
- 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; and
- 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.

In Staff's review of the proposed application that was presented to Planning Commission it was determined that the application met the review criteria with the addition of six (6) conditions. The conditions were included as part of determining that the review criteria were met. The conditions added are as follows:

1. The size range of 25' - 35' listed for the larger Ponderosa Pine or Colorado Blue Spruce trees in the Plant Schedule under the Botanical/Common Name column that is contained on the Landscape Plan is revised to 25' HGT. MIN. to match the Size/Cal. column.
2. The designer of record for the Landscape Plan must be present at the nursery at the time the larger, 25 feet minimum height Ponderosa Pine or Colorado Blue Spruce trees are selected to

document that the trees meet the minimum required height as specified by the Landscape Plan. This is to be documented by a photographic verification and written affidavit showing that each selected tree meets the minimum height before being planted.

3. A height survey verification for the water storage tank is required to be provided from a licensed professional surveyor in the State of Colorado prior to any zoning final inspection.
4. Financial Assurance shall be put in place for the Landscape Plan and Irrigation Plan improvements prior to any zoning final inspection.
5. The water tank color is revised to Juniper Green.
6. The landscape plan is revised to include six (6) additional 25 feet minimum height Ponderosa Pine or Colorado Blue Spring in the southwest corner of the site (see illustration on Page 11, City Planning Commission Staff Report).

**Previous Council Action:**

City Council previously acted on this property as follows:

1. 1960 when the City of Colorado Springs acquired the property.
2. 1971 when the City of Colorado Springs annexed Flying W Addition No. 1 by Ordinance No. 4201.
3. 1978 with the approval of the Mountain Shadows Master Plan.
4. 1993 when rezoned from A/HS (Agricultural with Hillside Overlay) to PF/HS (Public Facilities with Hillside Overlay).

**Financial Implications:**

N/A

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

At the City Planning Commission meeting held on October 11, 2023, the development plan major modification application was considered under new business. Testimony, discussion, and deliberation was extensive for the application. The main issues associated with the project included the way the height discrepancy came to be, miscommunication and/or misleading information about the ultimate height of the water tank, the degree of impact because of the increased height, and the options for mitigating the added impacts from changing the tank dome, adding landscaping, and changing tank color. A City Planning Commission motion to approve the application failed on a 2:6:1:0 vote, resulting in the denial of the project (Commissioners Hensler and Slattery voted aye, Commissioners Almy, Briggs, Foos, Hente, and McMurray voted no, and Commissioner Rickett was absent). With this decision most of the Planning Commissioner's determined that the proposed application created more adverse impacts than the approved original development plan and that it was not consistent with PlanCOS Majestic Landscape Framework (See enclosed "Planning Commission Minutes" attachment for a more detailed review of the project discussion).

1. Affirm the decision of the Planning Commission and deny the appeal; or
2. Reverse the decision of the Planning Commission and approve the appeal; or
3. Modify the decision of the Planning Commission and approve the appeal; or
4. Remand the matter back to the Planning Commission for further consideration.

Should the City Council wish to affirm the Planning Commission decision to deny the development plan major modification application, the following motion is suggested:

Deny the appeal and uphold the Planning Commission decision on the Wilson Tank Height Increase, based upon the findings that review criteria for deciding on a major modification as set forth in City Code Section 7.5.516.D.1 are not met as decided by the Planning Commission.

Should the City Council wish to reverse the Planning Commission decision to deny the development plan major modification application, the following motion is suggested.

Approve the appeal and reverse the Planning Commission decision on the Wilson Tank Height Increase, based upon the finding that the review criteria for deciding on a major modification as set forth in City Code Section 7.5.516.D.1 are met with the following conditions:

1. The size range of 25' - 35' listed for the larger Ponderosa Pine or Colorado Blue Spruce trees in the Plant Schedule under the Botanical/Common Name column that is contained on the Landscape Plan is revised to 25' HGT. MIN. to match the Size/Cal. column.
2. The designer of record for the Landscape Plan must be present at the nursery at the time the larger, 25 feet minimum height Ponderosa Pine or Colorado Blue Spruce trees are selected to document that the trees meet the minimum required height as specified by the Landscape Plan. This is to be documented by a photographic verification and written affidavit showing that each selected tree meets the minimum height before being planted.
3. A height survey verification for the water storage tank is required to be provided from a licensed professional surveyor in the State of Colorado prior to any zoning final inspection.
4. Financial Assurance shall be put in place for the Landscape Plan and Irrigation Plan improvements prior to any zoning final inspection.
5. The water tank color is revised to Juniper Green.
6. The landscape plan is revised to include six (6) additional 25 feet minimum height Ponderosa Pine or Colorado Blue Spring in the southwest corner of the site (see illustration on Page 11, City Planning Commission Staff Report).

Should the City Council wish to modify the Planning Commission decision for the development plan major modification application, the following motion is suggested.

Approve the appeal and modify the Planning Commission decision on the Wilson Tank Height Increase, based upon the finding that the review criteria for deciding on a major modification as set forth in City Code Section 7.5.516.D.1 are met with amendment or revisions to the recommended conditions (refer to recommended conditions in the motion above), the addition of conditions or the deletion of conditions.

Should the City Council wish to remand the matter back to the City Planning Commission for further consideration, the following motion is suggested.

Remand the matter back to the City Planning Commission for further consideration of the development plan major modification.