



## Legislation Text

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**File #:** 14-0037, **Version:** 1

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Appeal of the Planning Commission Approval of the Whistling Pines West Gun Club-1. (Planning & Development - Peter Wysocki)

**Summary:** This item is a public hearing of two separate appeal requests of a Planning Commission action taken on January 16, 2014 to approve a conditional use to allow Indoor Sports and Recreation in the form of an indoor firing range in a PIP-2 HS (Planned Industrial Park with Hillside Overlay) zoned property at 4750 Peace Palace Point.

There have been two separate appeals filed.

The first appeal request, submitted by G.W. Flanders, cites a perceived disregard of the City's Hillside Ordinance as grounds for appeal. The second appeal, submitted by Angus and Gail Morrison, alleges the findings of the Planning Commission "did not conform to City [Code] Section 7.5.704 and were erroneous, unreasonable, contrary to law and not supported by the available evidence." In order to keep the evidence, discussion and Council's deliberation clear and on-point, two separate motions are recommended by staff.

**Previous Council Action:** None

**Background:** The Indoor Sports and Recreation land use type is classified as Conditional within the PIP-2 (Planned Industrial Park) zone district. In order for a conditional use to be approved, three criteria enumerated in City Code Section 7.5.704 must be satisfied. Specifically the criteria are that, "(1) the value and qualities of the neighborhood surrounding the conditional use are not substantially injured; (2) that the conditional use is consistent with the intent and purpose of [the] Zoning Code; and (3) that the conditional use is consistent with the Comprehensive Plan of the City." Since the proposal also involves construction of a new building, the development plan review criteria found in City Code Section 7.5.502.E must be satisfied and because the site lies within the Hillside Overlay Zone District, the Hillside Development Plan review criteria in Section 7.3.504.D.3 must also be followed.

As early as the pre-application stage, potential impacts such as noise and safety were identified as potential concerns to be mitigated. Staff required the applicant to commission a sound study to ensure the noise attenuation features that had been incorporated into the building design were sufficient to muffle the firing range noise. The study shows that the features will adequately mitigate the noise issues so that the building will meet City Noise Ordinance requirements and the owner has agreed to a condition of approval that will require noise levels to exceed City Noise Ordinance

requirements prior to receiving a Certificate of Occupancy for the building.

With respect to safety, the shooting range will feature interior steel plate baffle systems that deflect bullets into the bullet trap and a bullet trap at the end of the range to trap projectiles. Range safety protocols and rules are discussed in the applicant's project statement, which is part of the Planning Commission Staff Report.

Staff found the potential impacts to be mitigated appropriately and therefore found the proposal to meet the first criterion of approval for a conditional use. Additional analysis for subsequent conditional use criteria, as well as an analysis of the development plan and hillside development plan criteria appears in the attached Planning Commission Staff Report and discussion of these analyses appear in the Planning Commission Minutes, also attached.

**Financial Implications:** None

**Board/Commission Recommendation:** At its regular meeting on January 16, 2014, the City Planning Commission voted 6-1 (Commissioner Walkowski opposed and Commissioners Ham and Phillips absent) to approve the conditional use request based on the finding that the proposal meets the conditional use review criteria found in City Code Section 7.5.704, the development plan review criteria in Section 7.5.502.E, and the hillside development plan review criteria in Section 7.3.504.D.3, subject to the following conditions:

**Conditions of Approval:**

Prior to the issuance of the Certificate of Occupancy, noise levels measured in accordance with City Code Section 9.8.103 shall be demonstrated not to exceed 45 dB(A) at the south property lines of the residential platted lots in the Pinecliff subdivision; and

City Staff will review and approve a testing regime for measuring the 45 dB(A) analysis.

Commissioners Donley, Henninger, Sparks, Gonzalez, Shonkwiler and Markewich found the use to be an appropriate example of infill development and each noted that he or she felt the potential impacts had been mitigated. Commissioner Walkowski did not support the motion due to the possible injury to existing homeowners on the ridge (due to sound and reduced quality of the neighborhood).

**Stakeholder process:** The public process included formal mailings and site postings on three separate occasions, one meeting with the board of the Pinecliff Homeowners Association, one public neighborhood meeting, several one-on-one conversations with concerned neighbors either in person, over the phone or via email, and several informal mass email notifications.

The pre-application meeting occurred in late January of 2013 and was followed by an informal

meeting attended by the applicant, property owner, members of the Pinecliff Homeowners Association and City Staff in March of 2013. The Homeowners Association agreed to keep its members informed, but stated it would most likely remain neutral throughout the process.

At the internal review stage, the site was posted for 10 days and postcards were sent to 13 property owners within 500 ft. of the subject property in accordance with standard procedure. The President of the Homeowners Association was also notified, although after the postcards had been sent, via email. As a result of the initial notification, staff received written responses from five (5) neighbors within the comment period listing concerns including noise, traffic, property values, and safety, and requesting additional information.

As a result of these enquiries, staff required the applicant to hold a neighborhood meeting. The neighborhood meeting was held on Tuesday, December 3, 2013 and the site was again posted for 10 days prior to the meeting. Postcards were sent to the original 13 property owners and to four (4) additional neighbors who had provided mailing addresses. Emailed notifications were sent to the Homeowners Association President and to those neighbors who had expressed interest in the project via email; those receiving notification were encouraged to inform others who may be interested in the project about the upcoming meeting.

Approximately 40 people attended the meeting at which time the applicant presented a brief overview of the project as well as findings of a sound study and revised plans. Meeting attendees were originally asked to email any outstanding concerns to City staff by December 13, 2013, but the deadline was extended to December 23, 2013 to allow resubmitted plans, received December 12, 2013, to be reviewed. Staff received responses from 39 properties within the area, 36 of those in objection. Those in objection cited noise, traffic, diminished property values, safety, health hazards, and the proximity to a residential neighborhood as outstanding concerns.

The project was also reviewed by standard buckslip agencies; all comments have been satisfied by the resubmitted documents.

### Flanders Appeal

Mr. Flanders' justification for the appeal can be summarized to three basic points:

(1) That city staff and the Planning Commission disregarded the Hillside Overlay development standards by not requiring the applicant to file all reports and plans specified by the Hillside Overlay zone; therefore, rendering the conditional use application incomplete for proper review and action;

(2) That a zoning violation exists on the property (by virtue of unauthorized land disturbance), which pursuant to City Code, no new development can be approved until a zoning violation is abated; and

(3) The previous unauthorized land disturbance creating excessively steep slope which significantly impact adjoining property owned by Mr. Flanders.

City staff reviewed the proposed project in context of the Hillside Overlay zone, and it was determined that given the existing “disturbed and altered” condition of the site, the site does not exhibit any hillside characteristics and that additional land suitability analysis was not warranted. Furthermore, staff also believes that slope stabilization, erosion control and proper site grading can be adequately reviewed via a standard grading plan that is required with the development plan and construction drawing approvals. It should also be noted that the disturbance of the site had occurred several years ago under a different ownership. Staff understands that Mr. Flanders acquired his property with the current pre-existing conditions and the proposed project will not contribute to or cause any of the conditions alleged to be detrimental to his property.

#### Morrison Appeal

Mr. and Mrs. Morrison’s appeal is based on the more common premise that the project does not meet the required criteria for approval - primarily that the project is not a compatible land use with the single-family residential neighborhood to the north, the project is inconsistent with the City’s Comprehensive Plan and that the noise resulting from the project will result in substantial negative impacts. As alleged in Mr. Flanders’ appeal, Mr. and Mrs. Morrison also contend that the Hillside Overlay was not properly enforced.

Staff believes that the Planning Commission staff report addresses the issues raised by Mr. and Mrs. Morrison.

#### Alternative

Deny the appeal, thereby upholding the action of the City Planning Commission;

Approve the appeal, thereby reversing the action of the City Planning Commission;

Modify the decision of the City Planning Commission; or

Refer the matter back to Planning Commission for further consideration.

**Recommendation:** Staff recommends that the City Council deny both appeals; therefore, upholding

the Planning Commission's approval of the condition use permit for the indoor shooting range.

Move to deny the appeal by Angus and Gail Morrison of Planning Commission's approval of a conditional use permit.

**Proposed Motion: CPC CU 13-00077 - Conditional Use**

Move to deny the appeal by Angus and Gail Morrison of Planning Commission's approval of a conditional use permit.