



## Legislation Text

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**File #:** CPC AP 19-00069, **Version:** 3

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An appeal of the City Planning Commission's decision to uphold administrative approval of a site plan for a building permit for the construction of a 10-foot tall fence on portions of the Flying W Ranch.

(QUASI-JUDICIAL)

Related Files: CPC AP 19-00069

**Presenter:**

Peter Wysocki, Director of Planning and Community Development  
Meggan Herington, Assistant Planning Director

**Summary:**

Applicant: Flying W Ranch

Appellant: James Berdon

Owner: Flying W Ranch

Location: West of the Mountain Shadows Community. The Flying W Ranch is addressed as 3330 Chuckwagon Road.

Mr. Berdon is appealing the City Planning Commission's denial of his appeal of administrative approval of a site plan submitted as part of the building permit for construction of a 10-foot tall fence with a 10-foot non-front setback mostly adjacent to Brogans Bluff Drive, Rossmere Street and Chuckwagon Road. The appeal letter is attached to this Council memo as Exhibit 1. The Planning Commission denial of the appeal upheld staff's approval of the site plan.

At the time the appeal was filed, a formal request was made by the appellant to postpone this item to the August 13, 2019 City Council hearing. Per City Code section 7.5.906.B.3, Postponement Of Items On Appeal To The City Council:

As a matter of course, any person may postpone the first scheduled Council hearing or consideration of an appeal from a decision of the Planning Commission, an FBZ Review Board or Historic Preservation Board, made in accord with this subsection, to the next following regular Council meeting. Request for any additional postponement shall be only for good cause shown to and found by the City Council. If new or additional evidence is set forth as the grounds for a request for a postponement, the appeal may be referred to the Planning Commission, an FBZ Review Board or Historic Preservation Board for further hearing and recommendations.

With that request the hearing is now being heard at the August 13, 2019 City Council meeting.

**Previous Council Action:**

There are no previous applications related to the construction of the fence. However, there is an active Development Plan for the post-Waldo Canyon Fire reconstruction of the Flying W Ranch Chuckwagon facilities.

**Background:**

A complaint was filed against the Ranch in April 2019 for construction of a fence without a building permit. After notice of the complaint, the Ranch immediately started work to secure the needed documentation for construction of the fence, including the site plan and building permit. The 10-foot fence is sought to aid in the revegetation efforts occurring on the Ranch. With the depletion of vegetation from the Waldo Canyon Fire, the Ranch is replanting trees and revegetating to assist with property stabilization. This has proven difficult with the amount of wildlife in the area. The fence is designed to block wildlife from entering the revegetated area improve revegetation success. The fence will also serve as a safety measure for the overall agricultural and ranching operations.

Prior to submittal of the permit, The Ranch manager consulted with staff on the appropriate fencing setbacks. The first consideration of staff was determining the setbacks for this large, agricultural property. City Code Section 7.4.102.A states that fences or walls over 6 feet in height are considered accessory structures and must meet accessory structure setbacks. City Code Section 7.3.105.A establishes accessory structure setbacks for the A zone district as 10 feet. This Section also states that accessory structures are not permitted in the front yard setback and accessory structures that meet the required setbacks are subject to the same height standards as other accessory structures.

The appeal of the City Planning Commission decision to uphold the administrative approval of the site plan was appealed to City Council on July 1, 2019. The appeal letter is attached to the Council memo as Exhibit 1. This letter states that the appeal to Council was filed because of the list of concerns/issues on Page 2 of the original appeal letter which is attached as Figure 2 of the City Planning Commission Staff report. The appeal letter filed on July 1st also specifically references conflicting decisions from staff related to the establishment of setbacks, incorrect waiver of the Hillside Overlay requirements, and failure to meet the minimum requirements for posting and notification per City Code Sections 7.5.902.C.2 and 7.5.902.C.3.a.2.

When the original complaint for construction of the fence without a building permit was filed with the City, staff applied the strict application of the City Code that references “lot frontage”. The Ranch property itself is made up of a number of separate “parcel numbers”, with several different LLC’s as owners per the El Paso County Assessor’s website. With each separate “parcel” being considered a lot fronting a public road, the 25-foot front setback would be applied along the easterly boundary of the fence area.

However, given that the Ranch is one, large ownership with a main access off of Chuckwagon Road, what is the “front” of this large, agricultural ranch? City Code is suburban in nature and not equipped to give good direction on setbacks for a ranch fence on a working agricultural property. The setbacks, as illustrated in the definition of setbacks, are geared towards the suburban residential lot. After much review, staff applied a 10-foot setback as illustrated in the building permit documentation finding that the “front” of the Ranch is not along Brogans Bluff Drive. Also, because the previously approved development plan for the redevelopment of the “Village Area” designated a 10-foot setback along the eastern boundary, it is reasonable to assume that the 10-foot setback is extended along that eastern side of the property outside of the “village area”.

The appellant states that the hillside design manual guidelines are not met for the fence and that the grading and erosion control plan was erroneously waived. However, the Hillside Overlay includes language that the manager may waive certain hillside review criteria. In the construction of the fence, the manager waived several of the hillside criteria based on the following:

The fence does not negatively impact any hillside characteristics that may be present and supports the historic use of the ranch for agricultural purposes.

The 1971 annexation agreement states that the City, at that time, recognized the existing uses on the Ranch. Fencing also existed prior to the fire. Because of the circumstances in which the fence was destroyed it is reasonable to continue to recognize the historic improvements that support the Ranch.

The City Stormwater Manager verified with State regulators that a grading and erosion control plan is not required for the construction of the fence because it is not part of a “common plan of development”. The State recognizes the agricultural nature of the property and the need for the fence as requested. With this concurrence from the State, the City is able to waive the grading and erosion control plan for the fence only.

The attached City Planning Commission report details the reasoning for the original appeal of the administrative site plan approval and additional detail on the staff determination of each is listed in the City Planning Commission report under the sub-heading of Analysis of Review Criteria.

The appellant also states in the July 1st appeal letter that the site was not properly posted and noticed for the City Planning Commission Hearing. The City Planning Commission, however, disagreed with the appellant. The site was posted with two posters; one at the main gate at 3330 Chuckwagon Road and another at the secondary gate off of Scepter Way. In addition, 385 postcards were sent to property owners within 1000 feet of the fence. The buffer map originally created did not depict all of the properties that are included on the mailing list. Staff cross referenced the actually mailing list and the properties that received distribution are illustrated. This map is attached as Exhibit 2. Staff also received numerous calls and emails from neighbors as well as neighboring HOA's. The opinion of staff is that the property was properly noticed and that the surrounding neighbors did receive appropriate notification as evidenced by the overwhelming neighborhood inquiries.

**Financial Implications:**

N/A

**Board/Commission Recommendation:**

At the Planning Commission meeting held on June 20, 2019, the item was discussed under the new business calendar. The appellant first made a request for postponement based on insufficient public notification. A short discussion of the notification process was held and the Planning Commission made the determination that the posting and notification process was not faulty and that a large majority of the Mountain Shadows Community was aware of the request.

The Planning Commission then held the full public hearing on the appeal. There were a number of neighbors in attendance that voiced opposition to the fence. The Planning Commission discussed the concerns raised by the appellant and the discussion is captured in the minutes from the hearing. Ultimately, the Planning Commission voted unanimously to deny the appeal and uphold the administrative approval of the site plan. (Commissioner Hente recused himself).

Please reference the minutes from the hearing for a detailed record.

**Stakeholder Process:**

There is no formal stakeholder input on the approval of a site plan because the site plan is submitted as part of the building permit through Pikes Peak Regional Building and then routed to the City Development Review Enterprise for review and approval. The site plan is intended to allow the City to determine zoning setbacks and other criteria that pertain to construction of individual structures.

In April, the City was contacted by the appellant related to construction of the fence at a location in close proximity to the property line between the Ranch and the appellant's property. Upon further research, staff discovered that the Ranch had not applied for a building permit; which is required for any fence or wall over 7 feet in height. Along with the requirement for a building permit, the City Zoning Code requires that all fences and walls over 6 feet in height be setback from the property line to the accessory structure required setback which is dictated by the zone district.

Prior to the City Planning Commission Hearing, the Flying W Ranch was required to post the site and send postcards to 385 neighbors within a 1000-foot buffer distance. Two posters were also posted at the site; one on the main gate to the Ranch and the other on the secondary gate closest to Brogans Bluff Drive off of Specter Way.

**Alternatives:**

1. Uphold the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;
3. Grant the appeal and reverse the action of the City Planning Commission - granting of the appeal will essentially deny the project as proposed; or
4. Refer the matter back to the City Planning Commission for further consideration Uphold the action of the City Planning Commission.

**Proposed Motion:**

CPC AP 19-00069- Appeal

Deny the appeal and uphold the administrative approval of the site plan for the installation of a 10-foot tall fence on portions of the Flying W Ranch, based upon the findings that the appeal does not meet the appeal criteria in City Code Section 7.5.906.A.4 and that the site plan meets the requirements in City Code Sections 7.3.105.A and 7.4.102.A.

N/A