



## Legislation Text

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**File #:** PUDC-22-0003, **Version:** 3

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An appeal of the Planning Commission decision to recommend approval of a PUD concept plan for the 2424 Garden of the Gods project illustrating an envisioned mixed-use development with commercial, civic, office, open space, and residential uses.

(Quasi-Judicial)

Related Files: PUDZ-22-0005

**Presenter:**

Daniel Sexton, Planning Supervisor, Planning & Community Development  
Peter Wysocki, Director, Planning & Community Development

**Summary:**

Owner/Developer: 2424 GOTG, LLC

Representative: NES, Inc.

Location: Northwest of the West Garden of the Gods Road and North 30<sup>th</sup> Street intersection

The City Planning Commission, at a regularly scheduled public hearing on February 8, 2023, vote to recommend approval to City Council to PUD zone change and PUD concept plan applications for the 2424 Garden of the Gods project. The project site consists of 125.34 acres of land located northwest of the West Garden of the Gods Road and North 30<sup>th</sup> Street intersection. The project (hereinafter referred to as “2424 Garden of the Gods”) is zoned PIP-1/A/PUD/HS (Planned Industrial Park, Agriculture and Planned Unit Development with Hillside Overlay). The PUD zone change request proposes to change the project area from PIP-1/A/PUD/HS (Planned Industrial Park, Agricultural, and Planned Unit Development with Hillside Overlay) to PUD/HS (Planned Unit Development: Civic, Commercial, Office, Open Space and Residential uses; Maximum Building Height 45-feet; 9-14.5 du/ac residential and 950,000 maximum non-residential square footage; with Hillside Overlay). The concurrent PUD concept plan illustrates the envisioned mixed-use development with commercial, civic, office, open space, and residential uses.

On Friday, February 17, 2023, the Appellant, Mr. Bill Wysong, President of the Mountain Shadows Community Associations, filed an appeal of the Planning Commission’s decision to recommend approval of the above referenced project applications within the 10-day appeal window.

**Background:**

In 2020, the Applicant submitted concurrent applications for a major master plan amendment, PUD zone change and PUD concept plan for the Garden of the Gods project. In accordance with City Code, City Planning staff facilitated an extensive internal review and solicitation of public comments on the project prior to public hearings before the City Planning Commission and City Council. At the City Council hearing on May 2021, a vote of City Council approved all three applications. In June

2021, City Council held a second reading on the zone change but postponed a decision until an independent traffic study could be completed for the City. In August 2021, City Council voted to deny the previous PUD zone change and, thereby, nullified, the previous approval of the PUD concept plan application. The City Council's approval of the major master plan amend in May 2021 stands as a final decision for that application.

Pursuant to Colorado Rule of Civil Procedure (C.R.C.P.) 106(a)(4), subsequent to the "final decision" of a body or officer on quasi-judicial matters, may request a review of the lower governing body's decision by a state court under this rule. The decision of the governing body remains "final" during the pendency of the Rule 106(a)(4) review and any appeals unless stayed pursuant to C.R.C.P. 106(a)(4)(V) ("The proceedings before or decision of the body or officer may be stayed, pursuant to Rule 65 of the Colorado Rules of Civil Procedure.").

September 2021, which was within the 28-day filing window, the Applicant filed an appeal in District Court of City Council's decision under C.R.C.P. 106(a)(4). City Planning staff notes, that at time of the appeal, no "stay" was sought by the Applicant, so the May and August 2021 decisions of City Council were considered "final" under the law City Council's denial decision. In May 2022, the District Court rendered a decision that denied the Applicant's appeal. Subsequently, in July 2022, the Applicant filed an appeal of the District Court's decision with the Colorado Court of Appeals. Staff notes that this judicial review is still on-going.

Per City Code Section 7.5.907 Limitations on Further Application, projects that have been previously denied have the ability to resubmit after a determination of change or following a period of 12 months from the date of the final disapproval. Under this City Code provision, the Applicant submitted this project package.

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.

| PUD Permitted Uses By Area                   |        |        |        |        |
|--|--------|--------|--------|--------|
|  | Area A | Area B | Area C | Area D |
| <b>Office use types:</b>                     |        |        |        |        |
| Call center                                  | x      | x      |        |        |
| Financial services                           | x      | x      |        |        |
| General offices                              | x      | x      |        |        |
| Medical offices, labs and/or clinics         | x      | x      |        |        |
| Mixed office/residential use                 |        | x      |        |        |
| <b>Civic use types:</b>                      |        |        |        |        |
| Club (membership, social, and recreational)  | x      | x      |        |        |
| Cultural services                            | x      | x      |        |        |
| Daycare services                             | x      | x      |        |        |
| Public/private school, college or university | x      | x      |        |        |
| Hospital                                     | x      | x      |        |        |
| Religious institution                        | x      | x      |        |        |
| Semipublic community recreation              | x      | x      |        |        |
| Neighborhood/Community Parkland              | x      | x      | x      |        |
| Open Space                                   |        |        | x      | x      |
| <b>Residential use types:</b>                |        |        |        |        |
| Multi-family dwelling, apartments            |        |        | x      |        |
| Multi-family dwelling, townhomes             |        | x      |        |        |
| Retirement home                              |        | x      | x      |        |
| Single-family detached or attached dwelling  |        | x      | x      |        |
| <b>Commercial use types:</b>                 |        |        |        |        |
| Business office support services             | x      | x      |        |        |
| Communication services                       | x      | x      |        |        |
| Data Center                                  | x      | x      |        |        |
| Funeral services                             | x      | x      |        |        |
| Hotel/motel                                  | x      | x      |        |        |
| Mixed commercial-residential                 |        | x      |        |        |
| Miniwarehouses                               | x      | x      |        |        |
| Personal consumer services                   | x      | x      |        |        |
| Pharmacy                                     | x      | x      |        |        |
| Indoor Entertainment                         | x      | x      |        |        |
| Indoor Sports and Recreation                 | x      | x      |        |        |
| Restaurant (No Drive-in)                     | x      | x      |        |        |
| Retail (Neighborhood Serving/Specialty Food) | x      | x      |        |        |

The request will rezone the 125.34-acre project site PIP1/A/PUD/HS (Planned Industrial Park, Agriculture, Planned Unit Development with Hillside Overlay) to PUD/HS (Planned Unit Development: Civic, Commercial, Office, Open Space and Residential uses; Maximum Building Height 45-feet; 9-14.5 du/ac residential and 950,000 maximum non-residential square footage; with Hillside Overlay). The requested zone, which consolidates the land use and development standards for the entire property under one zone district, establishes a mixed-use development with redevelopment of commercial, civic, office, open space, and residential uses. The chart below illustrates the permitted uses by subarea of the proposed PUD zone district.

Per City Code Section 7.3.602 *Requirements*, each established PUD zone district is required to establish the intensity of development by setting the maximum gross residential density and maximum square footage for nonresidential land uses and the maximum building heights. The Applicant’s proposed residential density and maximum nonresidential square footage and maximum building height will define and guide the development of each subarea within the project (see table below).

| Project Area | Max. Building Height                     | Density   |
|--------------|--|-----------|
| Area A       | 45ft or Three stories, whichever is less | 750,000sf |
| Area B       | 45ft or Three stories, whichever is less | 200,000sf |
| Area C       | (2) stories                              | 111,111sf |

Pursuant to City Code Section 7.3.601 *Planned Unit Development Districts Purpose*, this section of City Code reinforces that PUD zone districts are intended to support "...flexibility, innovation of design and a variety of development types that will improve the quality of physical development over that normally achieved through the application of the City's standard..." zone districts.

City Planning staff finds the application to be consistent with this purpose for a PUD zone establishment request, as set forth in City Code Section 7.3.601 and City Code Section 7.5.601.

The proposed PUD Concept Plan consists of a conceptual design for 125.34 acres of property to be redeveloped with a mixed-use development consisting of commercial, civic, office, open space, and residential uses and the proposed points of access for the site. As illustrated above, the plan includes a use table on the cover sheet which identifies the permitted land uses for potential future development in subareas of the project site. City Planning staff notes that the residential use types prohibited with subarea A and residential uses within subarea B will be limited to single-family (attached and detached), townhomes (multi-family), and retirement homes. The Applicant's previous project submittal had proposed apartments (multi-family) within subarea B. Based on the residential density and use type limitations applied to subareas B and C, the Applicant has limited the developable residential units within the project to 320 units, which is 100 units less than the previous project submittal. Additionally, subarea D (55-acre area) will be limited to an open space use. To further restrict the use of this area, the Applicant has begun conversations with the City's Parks, Recreation and Cultural Services Department about acquiring subarea D as open space under the T.O.P.S. program.

As a furtherance of the development and use standards outlined under the PUD zone change application, the Applicant has set additional dimensional standards on the plan. These dimensional standards are in instances consistent with the zoning currently applied to the project properties and in other cases more restrictive. A couple examples of more restrictive standards include: a two-story building height limitation applied to the 150-foot setback paralleling the boundaries of subarea B and C adjacent to North 30<sup>th</sup> Street and Flying W Ranch Road, and the 100-foot building setback along the northly boundaries of subareas A and D. The property will continue to be covered by the Hillside Overlay, which limits development on significant slopes to the west of the project site, protects sensitive areas, and, per the approve Preliminary Geologic Hazard report, all future development with the project site will be subject to site-specific geologic hazard analysis. As noted on the plan, the proposed maximum 950,000 square foot limit on nonresidential uses will be divided between subareas A (750,000sf) and B (200,000sf).

Per the PUD concept plan review criteria, set forth in City Code Section 7.3.605 *Review Criteria for PUD Concept Plans*, the project as shown is in substantial compliance with the stated criteria and mitigates many of the concerns raised by the public. Specifically, the proposed development, with its use type and intensity limitations, will ensure that the redevelopment potential of the property is compatible and in harmony with the surrounding land use patterns. Per City Code Section 7.3.603

(A), a PUD zone change/establishment application must be “...*accompanied by a PUD concept plan or PUD development plan covering the entire zone district is required to accompany an application to establish a zone district...*”. The requirement to submit a development plan is noted in City Code Section 7.5.502.B Development Plan Required, which states:

*“A development plan shall be required prior to the issuance of a building permit or the commencement of a new use for the following instances unless specifically exempted...”*.

In this instance, the Applicant has satisfied the applicable City Code requirements for the submittal of the PUD concept plan and its accompanying PUD zone change request. City Planning staff finds the application consistent with the purpose for a PUD concept plan request, set forth in City Code Section 7.3.601 and City Code Section 7.5.501.

The City’s Traffic Engineering Division of Public Works (herein referenced as “Traffic”) has reviewed the proposed PUD concept plan and accompanying Traffic Impact Study (TIS) and Traffic Generation Comparison and Letter, prepared by SM Rocha, LLC. Traffic has accepted these traffic analysis and determined that there is adequate capacity to accommodate the proposed site uses and resulting trip generation. The TIS specifically models full build-out of the site including 100% occupancy of the existing office building and approximately 320 residential units, indicating that levels of service at peak hours will not substantially change at full build-out. The existing signalization & unsignalized intersections are not proposed to change because of these applications or future development plans. The TIS indicates that existing traffic counts at the southbound left turning movement at the stop-controlled intersection of Flying W Ranch Road and 30<sup>th</sup> Street operates with noticeable delays, though that is not uncommon of unsignalized movements to or from an arterial roadway during peak hours. The analysis ultimately concludes that the proposed development is expected to create no negative impact the traffic operations to the existing and surrounding roadway system. Interested residents noted that traffic impacts to the existing roadway infrastructure is among their primary concerns related to the proposed development.

The City has also committed to monitoring the intersection of North 30<sup>th</sup> Street and Flying W Ranch Road to determine if road usage warrants a future signal at this intersection. There are road improvements under construction along North 30<sup>th</sup> Street, which Traffic anticipates will improve roadway safety and operation for vehicles and non-motorist traffic traveling along the North 30<sup>th</sup> Street corridor. Considering the project prepared TIS and generation comparison, and the traffic study commissioned by the City in 2021, Traffic has accepted the analysis and recommendations set forth in the report. City Planning staff and Traffic will continue to review future development plan applications to determine if additional traffic mitigation is necessary.

Based on the approved Preliminary Geologic Hazard report submitted with the Applicant’s previous project package, which was reviewed by the City’s Engineering Development Review Division (EDRD) and Land Use Review (LUR) Division of the Planning & Community Development Department, with consultation from the Colorado Geological Survey (CGS), no additional geologic hazard analysis was required for this project. The Applicant has submitted an adjusted Land Suitability Analysis (LSA) with the PUD concept plan for the project. The LSA provides some detail of certain hazards and development constraints. Portions of the plan contain existing development or previous disturbance, which account for roughly 14 of the 26-acre site for future development. There are notes on the PUD Concept Plan requiring a site and construction specific geologic hazard report to be submitted with all future development plans within the project area in compliance with the City’s

Hillside Overlay criteria. The note also includes language stating if any future development plans do not meet the criteria that portions of the site may not be developable. CGS notes there are several mapped geologic conditions associated with geologic hazards on-site; these hazards, and any other hazards affecting this site, must be mapped and addressed in the future geologic hazard reports. The geotechnical write-up provided by the Applicant supports and also recommend this approach. Based on the above analysis, City Planning staff finds that the geologic hazards requirements set forth in City Code has been met for these applications.

The project applications have been evaluated for conformance with the City's current comprehensive plan (herein referred to as "PlanCOS"), adopted in January 2019. According to the PlanCOS Vision Map, the project site is identified Established Suburban Neighborhood and is the western end of the Mature/Redeveloping Activity Center of the Garden of the Gods Road. The project site is also in close proximity to Garden of the Gods, which the PlanCOS Vision Map notes as a Majestic Landscape. PlanCOS is a high-level visionary planning document with a focus on community-wide themes, larger neighborhoods, corridors, nodes, "typologies", places and big ideas.

This project site is located at an "intersection" or overlap of several of these key elements. As noted, the Garden of the Gods Road corridor is identified as a "Mature/Redeveloping Activity Center" on the Vision Map and on the Unique Places and Thriving Economy Framework Maps. The site also "intersects" with Established Suburban Neighborhoods including the Mountain Shadows Neighborhood. Finally, PlanCOS's Majestic Landscapes theme is of particular importance for this project given its proximity with Garden of the Gods Park, the mountain backdrop and the established surrounding land use pattern.

With respect to Mature/Redeveloping Corridors PlanCOS embodies a vision, value and need for adaptive and appropriate land use change. The Thriving Economy chapter of PlanCOS articulates a vision for reasonable adaptation of land use with corridors. The PlanCOS Areas of Change Map (page 11 of the Plan), captures this sense and direction. The Garden of the Gods Road corridor is a mature arterial corridor that was originally developed as a technology and manufacturing node for the City. Up and down this corridor, there has been an ongoing evolution of land uses both for undeveloped and underdeveloped sites within existing buildings. A sense for the uniqueness of this corridor is reflected by the fact that no other area of the City has a more diverse cluster of Thriving Economy typologies as depicted on the Thriving Economy Framework Map (page 72 of PlanCOS)

A "Big Idea" from Thriving Economy Chapter 4, entitled "Embrace Sustainability", has Goal TE-4 that states:

*"Focus on productively developing and redeveloping areas already in, nearby, or surrounded by the city in order to preserve open spaces, maximize investments in existing infrastructure, limit future maintenance costs, and reduce the impacts of disinvestment in blighted areas."*

The Unique Places chapter also captures this vision for appropriate and reasoned land use adaptation through its "Embrace Creative Infill, Adaptation and Land Use Change" big idea.

*"We value the preservation of our built environment, especially our historic buildings and areas. But, for our city to be even more competitive, we also need areas to infill and adapt in response to a myriad of trends including demographics, technology, and the market. As a community we should embrace the prospect of managed, thoughtful, and forward-thinking changes in land use by reinvesting in key areas"*

Juxtaposed with PlanCOS acknowledgement of the need for land use planning adaptation are its Vibrant Neighborhoods values embodied in Chapter 2. PlanCOS Chapter 2, Vibrant Neighborhoods, identifies in Goal VN-2 to:

*“Strive for a diversity of housing types, styles, and price points distributed throughout our city through a combination of supportive development standards, community partnerships and appropriate zoning and density that is adaptable to market demands and housing needs.”*

City Planning staff recommends that when compared with the currently permitted business and light industrial uses, the redevelopment of the site to contain a potential mix of commercial, civic, office, open space, and residential uses will not result in substantively greater impacts to the surrounding neighborhood. The accommodation for residential units within this project or in other parts of the City is a direct response to the market needs for housing in the City and greater Pikes Peak region. Furthermore, the proposed PUD zone district with its customized use and development standards benefits this goal by allowing for flexibility of develop. A policy for this goal further reinforces that development should *“Prioritize development within the existing City boundaries and built environment (not in the periphery).”*

The Majestic Landscapes theme, Chapter 7 of PlanCOS, is also an important consideration. The project is in close proximity to Garden of the Gods Park; therefore, some specific considerations related to the impact of development to the surrounding landscapes is needed in relation to the goals & policies of this chapter. Although this project will result in more development and less open space, City Planning staff notes that PlanCOS has several supporting “Big Ideas” in the Majestic Landscapes chapter including: Providing Parks for People, Value Our Scenery and Environment, and Invest in Resilient and Adaptable Landscapes. In particular, Goal ML-4 in Chapter 7 states the following:

*“Provide stewardship for our majestic natural landscapes through improved preservation, resource conservation, air quality, and protection of our viewsheds”*

For this particular site and its proposed redevelopment, staff finds that a reasonable balance has been achieved between allowances for adaptive/tactical infill redevelopment of this property, while also setting the stage for the protection of significant natural areas on the site that contribute to the City’s Majestic Landscapes.

Overall, City Planning Staff finds that the project is in conformance and supportive of PlanCOS and its vision, while prioritizing adaptive and responsive land use changes.

The project site is part of the Mountain Shadows master planned area, which is identified for civic, commercial, office, open space and residential uses. City Planning staff finds that the current project applications are complimentary and supportive of the envisioned land use pattern for the area and is in general conformance with the Mountain Shadows Master Plan. Through staff’s review of the PUD concept plan and consideration of the review criteria for establishing a PUD concept plan, as set forth in City Code Section 7.3.605, and the review criteria for establishing a concept plan, as set forth in City Code Section 7.5.501(E), the overall area impacts of the project were analyzed.

The project supports the City’s Strategic plan goals of building community and collaborative relationships and provides a platform for the on-going investment and redevelopment of the Garden

of the Gods corridor, which is a mature commercial and manufacturing strip. The project also supports strengthen neighborhoods and communities through strategic infill redevelopment of underutilized parcels with a mix of uses. The prospect of developing additional residential units in this part of the City furthers the goal of attainable housing as the new units will provide additional housing options, and will encourage investment within the area through the creation of additional rooftops. Overall, this project strengthens the Colorado Springs economy through the orderly redevelopment of the corridor and surrounding neighborhoods.

**Previous Council Action:**

City Council previously took action on this property in 2021 when a similar land use proposal. At the City Council hearing on May 2021, a vote of City Council approved all three applications. In June 2021, City Council held a second reading on the zone change but postponed a decision until an independent traffic study could be completed for the City. In August 2021, City Council voted to deny the previous PUD zone change and, thereby, nullified, the previous approval of the PUD concept plan application. The City Council's approval of the major master plan amend in May 2021 stands as a final decision for that application.

**Financial Implications:**

N/A

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

At the City Planning Commission meeting held on February 8, 2023, the project applications were heard under the New Business Calendar portion of the hearing. Extensive presentations on the project were provided by the Applicant and City staff. Members of the public also contributed to the project conversation with presentations and comments during the hearing, raising concerns about wildlife impacts, evacuation planning, traffic, impacts of property values and views, and other topics. The Planning Commission had an extensive deliberated of the project, which included many questions to the Applicant and City staff regarding parkland dedication, fire evacuation mitigation efforts and planning, land use compatibility and transition, legal process and precedent, and other topics. Please see the attached meeting minutes for additional information regarding the discussion. The Planning Commission, ultimately, voted 6-3 (Commissioners Hente, Rickett, and Almy voting "no") to approve the project applications.

**Stakeholder Process:**

The public notification process consisted of providing notice to the surrounding property owners within 1,000 feet of the site, which included mailing postcards to 254 property owners on two occasions: combined notice for the initial review and a neighborhood meeting, and prior to the City Planning Commission hearing. The site was also posted during the two occasions noted above. The neighborhood meeting, coordinated by City Planning staff was held on December 6, 2022, was well attended with 200+ interested residents respectively.

City Planning staff received written comments in support and opposition to the project. Concerns raised by interested residents cited land use compatibility, traffic, school capacity, emergency evacuations, and adequacy of public parks/open space in the area. The Applicant provided a response to public comments, which was made available to interested community members. In advance of the Planning Commission hearing, additional public comments were received and provided to Commissioner's in hard copies prior to the project deliberations.

Staff input is outlined in the following sections of this report. Staff sent copies of the plan set and supporting documentation to the standard internal and external review agencies for comments. Commenting agencies included Colorado Springs Utilities, City Engineering, City Traffic, City SWENT, City Fire, City Police, and District 11. All comments received from the review agencies have been addressed.

**Alternatives:**

City Council may choose to deny, amend, or uphold the appeal or refer the item back to staff or City Planning Commission.

**Proposed Motion:**

Deny the appeal based on the findings that the appeal criteria found in City Code Section 7.5.906(B) are not met and approve the PUD concept plan for the 2424 Garden of the Gods project, based upon the findings the proposal meets the review criteria for concept plans as set forth in City Code Section 7.5.501(E) and criteria for PUD concept plans set forth in City Code Section 7.3.605.

OR

Uphold the appeal based upon the findings that the appeal criteria found in City Code Section 7.5.906(B) are met and that the application does not comply with the review criteria for concept plans as set forth in City Code Section 7.5.501(E) and criteria for PUD concept plans set forth in City Code Section 7.3.605.

An ordinance amending the zoning map of the City of Colorado Springs relating to 125.34 acres located northwest of the West Garden of the Gods Road and North 30<sup>th</sup> Street intersection from PIP-1/A/PUD/HS (Planned Industrial Park, Agricultural, and Planned Unit Development with Hillside Overlay) to PUD/HS (Planned Unit Development: Civic, Commercial, Office, Open Space and Residential uses; Maximum Building Height 45-feet; 9-14.5 du/ac residential and 950,000 maximum non-residential square footage; with Hillside Overlay).