



Legislation Details (With Text)

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On agenda: 1/12/2021 **Final action:** 1/12/2021

Title: An appeal of the Peaks Recovery Concept Plan for a licensed drug and alcohol addiction treatment residential facility and future phased development of the property located east of Voyager Parkway along Old Ranch Road consisting of 9.76 acres.

(Quasi-Judicial)

Related Files: CPC A 19-00134R, CPC A 19-00134, CPC ZC 20-00032, CPC CP 20-00033

Presenter:
Katie Carleo, Principal Planner, Planning and Community Development
Peter Wysocki, Planning and Community Development Director

Sponsors:

Indexes: Annexation

Code sections:

Attachments: 1. PEAKS RECOVERY CONCEPT PLAN, 2. APPELLANT APPEAL STATEMENT, 3. 7.5.501.E Concept Plans

Date	Ver.	Action By	Action	Result
1/12/2021	2	City Council	approved	Pass
8/20/2020	1	Planning Commission	recommended for approval	Pass

An appeal of the Peaks Recovery Concept Plan for a licensed drug and alcohol addiction treatment residential facility and future phased development of the property located east of Voyager Parkway along Old Ranch Road consisting of 9.76 acres.

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Peter Wysocki, Planning and Community Development Director

Summary:

Owner/ Developer: Peaks Recovery Center LLC
Applicant: NES Inc. - Tamara Baxter
Location: 1785 and 1865 Old Ranch Road

This project includes concurrent applications for annexation, establishment of zoning, and concept plan for 11.36 acres located southeast of the intersection of Old Ranch Road and Voyager Parkway, along Old Ranch Road. The concept plan illustrates the proposed land use configuration, access and circulation, intended infrastructure and overall intent for establishment of a Human Service Facility. The proposed zoning will establish an OC/CR/SS (Office Complex with Conditions of Record and Streamside Overlay) zone district consisting of 9.76 acres.

This also includes an appeal of the City Planning Commission's decision to approve the Peaks Recovery Concept Plan. This is not an appeal to any other associated application.

Background:

The proposed annexation is located in what the City refers to as a 'near enclave'. The location is within the Springcrest neighborhood which as a majority is within El Paso County. However, the area is bound on three sides by City property and to the west bound by property owned by the United States Air Force Academy (USAFA). With this the City views this area much like an enclave and per the Annexation Plan would look to remove enclaves to further close the gap to services.

Furthermore, this property is located along the northern boundary of the near enclave along Old Ranch Road which the City sees as a transitional area to the further southern portions of residential. Several other areas along Old Ranch Road are within the City and support this transitional land pattern.

This property (both sites) has been approved through El Paso County and the State of Colorado for the currently in use Human Service Establishment (up to eight individuals per site). The property owners are seeking annexation at this time to come into the City of Colorado Springs for future expansion and development of the site. In addition, the proposed zoning will allow the establishment of a Human Service Facility which will allow nine or more individuals per site (maximum allowed will be based on facility size and on-site parking requirements). The Federal Fair Housing Act prohibits discrimination in housing on the basis of several protected categories, including disability. In most situations, disability is defined to include mental illness and addiction to drugs or alcohol. Local land use and zoning laws cannot be applied in a manner that has the effect of discriminating against members of a protected class. In some cases, reasonable accommodations (i.e. exceptions to zoning laws) may be required in order to permit a disabled person to enjoy a certain type of housing.

The Peak Center Addition No. 1 Annexation (**PEAK CENTER ANNEXATION PLAT**) will annex 11.36 acres of property into the municipal limits of the City of Colorado Springs. The property is intended for a Human Service Facility to be developed within the City and utilizing city infrastructure. This annexation also includes the portion of Old Ranch Road from this property westward to existing City limits bringing in this remaining portion of Old Ranch road. Initial comments from El Paso County did include conversation of annexing further portions of Old Ranch Road and Voyager Parkway; however, Voyager Parkway land is owned by USAFA and will remain in the County.

Landowners seeking voluntary annexation must petition the municipality to request annexation into the City. The Annexation Petition for this property was heard and accepted by City Council on December 10, 2019. The City's authority to annex land is established by Colorado Revised Statutes (C.R.S. 31-12-101) which sets requirements and procedures which municipalities must follow. A property is eligible for annexation if the contiguity requirement is met; not less than one-sixth the perimeter of the proposed area for annexation is contiguous with the existing boundary of the annexing municipality. The annexation agreement is attached (**PEAK CENTER ANNEXATION**

AGREEMENT). Dedication and improvements with this annexation are fully outlined in the agreement, and discussed as an overview further in this report. The standard Police and Fire service fees will be collected at the time of annexation for the development acres. The site is within the Donald Westcott Fire Protection district and it is the owner's responsibility for any exclusion from this district.

As the City has expanded enclaves, or similarly near enclaves - remnants of land that are surrounding by the City, have remained within the jurisdiction of Unincorporated El Paso County. Several enclaves remain from the City's very active period of annexation in the 1980's. All three sides of this near enclave are areas of the City annexed throughout 1982. In addition the property at the corner of Old Ranch Road and Voyager Parkway is a growing church, Academy Christian Church that was annexed in 2004. The church is zoned A (Agricultural) as a church is a use by right; but this begins to set the stage as discussed further below the appropriate land use pattern of neighborhood commercial similar to the intended use along Old Ranch Road. City Policy supports the elimination of enclaves and thus closing the gap to services being provided. Surrounding areas have been annexed and now include the connection to major infrastructure and services. As supported by the City Comprehensive Plan, PlanCOS, as well as the City Annexation Plan the City is working through the annexation process to annex active enclaves and close the city boundary gap. **(ENCLAVE ANALYSIS)**

The overall intent of annexation is to benefit the City and occur in a manner that ensures a logical extension of the City's boundary. Chapter 8 of PlanCOS provides broad policy direction for annexation; annexations will occur in accordance with State law; support of economic development objectives of the City and will be a fiscal benefit; development will be consistent with long range plans; and avoid creating enclaves while proactively work at incorporating existing enclaves into the City. Staff has evaluated the proposed annexation and determined its eligibility in accordance with State law to be acceptable. The new growth opportunity will be a benefit to the City as discussed with economic findings and logical establishment for residential growth. PlanCOS anticipates changes that would focus on the kinds of strategic, logical, targeted and fiscally effective annexations such as this one. The City Annexation Plan was last updated in 2006 and is an advisory document. Staff recommends this annexation as consistent with the intent of the 2006 Plan as we work to closes the gap to infrastructure and services being provided by the City.

A master plan is required with annexation; however, per City Code section 7.5.403(B)(1) this requirement may be waived if the land area under review is a small parcel and is part of an enclave with a well-established surrounding development pattern and intended for a single primary land use. Staff believes the proposed development shows appropriate compatibility when evaluated with the established surrounding land use pattern. The supporting concept plan captures a similar level of detail as would a master plan and clearly identifies the intended land use configuration.

It is required by City Code that any annexed property be accompanied by a zoning designation. The subject property is proposed to establish the OC (Office Complex) zone district which allows by right the use of Human Service Establishments including the Human Service Facility. The property will also be zoned with the Streamside Overlay due to the impact of Kettle Creek along the southern portion of the property. With this request the owner has also included a list of prohibited uses to include: dormitory, fraternity, sorority, multi-family swelling, automotive rentals, food sales, funeral services, hotel/motel, mini warehouses, restaurants, general retail, cemetery, education institutions, hospitals, medical marijuana and mining operations.

As a transition from more intense commercial to residential the establishment of the OC zone district is an appropriate land use category to be established within this transition towards residential. Old Ranch Road is classified as a Minor Arterial which provides for the establishment of neighborhood commercial such as the uses of the OC zone district. With the existing light industrial within the PIP-1 (Planned Industrial Park) zone district along the north side of Old Ranch Road the proposed zone district is an appropriate commercial zone as a transition to residential. This is represented in other areas of the City and Staff supports this establishment along Old Ranch Road as the character of the neighborhood becomes more residential within the Springcrest neighborhood. Furthermore, the establishment of a Human Service Facility is intended to fit within the fabric of a neighborhood as to give support to attendants within a neighborhood environment as they transition into more independence. This use is considered a protected class within the State of Colorado and allowed to establish facilities within residential neighborhoods.

The OC zone district will allow for the establishment of a Human Services Facility within the City. This use fits appropriately into the land use patterns established in the surrounding area and is supported by nearby community and regional commercial land uses. **(VICINITY AND SURROUNDING USES)** The site is within less than a mile of larger lot single-family residential, higher density single-family residential; as well as mixed commercial, civic and light industrial uses. Voyager Parkway is a major corridor which supports many regional uses within the area. A grocery and general store is located just over two miles from the site as well as a home improvement store and other retail. Overall the site is supported with essential businesses and amenities within two-miles that supports the proposed use and the transition to residential.

The concept plan **(PEAKS RECOVERY CONCEPT PLAN)** illustrates the intention of future development pattern, access, and design standards for the associated land use. The concept plan document is not required to show specific landscaping, screening and buffering, lighting or other site design aspects. That type of detail is specific to a development plan. Any future request for building permits within the proposed development area will require the submission of a development plan, which will be reviewed administratively per City Code Section 7.3.606. As stated above the intended use already exists in El Paso County as a use by right. The proposed concept plan shows intended expansion of office facilities along Old Ranch Road. The following sections give more detail of the scope of proposed development.

The proposed Human Service Facility under the OC zone district will allow for each lot to facilitate housing 'a Colorado State licensed establishment composed of nine (9) or more persons, not including domestic, supervisory or medical staff, providing twenty four (24) hour lodging, care and treatment on either a permanent or temporary basis. Human service facilities may provide for persons who are physically or developmentally disabled, mentally ill, elderly, youth or individuals in assisted living, short term convalescence, rehabilitative or long term care' per City Code Section 7.3.302. In addition, as illustrated on the concept plan, there is intended buffering from the surrounding properties to include setbacks and fencing in addition to the natural buffer established with the creek to the south side of the property towards the existing county residential.

Within the appeal timeframe the City has received an appeal of the Peaks Recovery Concept Plan. The concept plan is considered a Quasi-judicial item and an appealable decision of the City Planning Commission. The annexation and proposed zone change are considered legislative items and are not appealed. The appellant has submitted an appeal statement that is attached **(APPELLANT APPEAL STATEMENT)**.

Throughout the review of this application, the neighbors, including the appellant, have raised concerns. The associated applications were heard before City Planning Commission and several citizens phoned in to voice opposition of the project during the public hearing; a detailed record of their concerns is captured in the August 20, 2020 City Planning Commission Minutes. General concerns as heard during the public hearing and captured in the appellant statement surround these topics:

- *Plans and operations were already underway prior to the public being informed. Meeting records were not open to the public.*

While the property is located in El Paso County the facility is allowed to be operational as a drug and alcohol use, with permit, as allowed in unincorporated El Paso County. The owner purchased the property and has been operating as permitted in unincorporated El Paso County. Their wish to annex is to establish the property within the City for future development. As part of the public notice City Planning staff followed standard public notice process which includes sending notice to all property owners within a 1000-foot buffer of the property. In addition, a neighborhood meeting was held.

All meeting records have followed City Code; no executive session was held on this topic as alluded to in the appellant statement. No public meeting was held where any adoption or proposed policy was established or voted on prior to City Planning Commission. All meeting minutes for any public hearing, which as of the date of this memo includes City Planning Commission, have been completed and recorded as approved. As stated in the appellant statement the minutes were not completed on 8/30/2020 (City Planning Commission hearing date 8/20/2020). Planning staff records all hearings and prepares minutes; these drafts are not available within the ten days as stated in the appellant statement. They are prepared and further voted for approval by the Planning Commission and available as a public record.

- *Establishment of the Concept Plan will be detrimental to public interest, health, safety and convenience of the neighborhood; a long standing rural neighborhood that is being threatened by this development. The establishment of the commercial zoning and use per the concept plan are an abrupt transition from commercial to rural residential.*

As depicted on the concept plan future development will happen along Old Ranch Road while leaving the existing homes towards the south side of the property and most adjacent to the neighborhood. As we look at Old Ranch Road and a more macro view of development in this area Old Ranch Road is intended, as a minor arterial, to be a roadway with light commercial uses. We can see this supported by the existing establishment of uses around the intersection of Voyager Parkway and Old Ranch Road as well as those uses on the northern side of Old Ranch Road. The proposed OC (Office Complex) uses establish an appropriate zone district and applicable uses for a transition from residential to commercial as seen in several other areas throughout the City. In addition the existing natural features of Kettle Creek running the full length of the southern boarder create an appropriate buffer to the neighborhood.

- *Increase to traffic and noise along Old Ranch Road.*

As discussed Old Ranch Road is intended to be a Minor Arterial as established in the City roadway network. With this we will see planned improvements and widening of Old Ranch Road to accommodate traffic from all surrounding developments including City and County

surrounding developments already established. Curb, gutter and sidewalks will be provided along Old Ranch Road with improvements. A traffic study again was not required from the Traffic Engineering Division as they have stated the traffic generation from the project will be minimal in comparison with the capacity of Old Ranch Road and traffic generated from the overall area. With occupancy laminations for the facility as well as the low impact of office generated traffic to the future developed office buildings Traffic Engineering supports the use will no overburden the roadway at full buildout.

- *The proposed is not consistent with the goals and policies of PlanCOS*

The current Comprehensive Plan, PlanCOS, identifies policies related to the annexation of property into the City of Colorado Springs as well as the establishment of zoning and planning for the land use pattern to be created. Several themes support the proposed development with positive connections supporting this facility that will foster economic and community growth. The proposed development allows for logical placement of this use within the identified Vibrant Neighborhood Framework as an Established Suburban Neighborhood. However it is also just across the street from the Newer Developing Neighborhood. The combination of these typologies lends itself to see such an establishment along Old Ranch Road and as a transition to the more mature suburban neighborhood. In addition within the Strong Connections Framework of PlanCOS Voyager Parkway is identified as a Major Roadway with connection to transportation hubs including the major connection of Old Ranch Road at Voyager Parkway.

Please also note information as stated from the City Attorney's Office related to the Fair Housing Act when considering these applications. The Fair Housing Act is a federal law that prevents discrimination in provisions of housing. Discrimination includes people with disabilities which includes people who may be addicted to drugs or alcohol. It is important when reviewing the establishment of zoning or concept plan that there is no discrimination against people with disabilities and this includes considering public comment which may be discriminatory based on fear, prejudice or stereotype of people with disabilities.

Previous Council Action:

On December 10, 2019, City Council accepted the original petition for annexation. On November 24, 2020 City Council approved a resolution finding the Peak Center Addition No. 1 Annexation petition to be in substantial compliance with C.R.S. section 31-12-107, setting a public hearing date of January 12, 2021 to consider the annexation, and directing the City Clerk to provide notice of the hearing in accordance with C.R.S. section 31-12-108.

Financial Implications:

A Fiscal Impact Analysis (FIA) is required for all annexation requests and is completed by the City Budget Office. The FIA was completed on March 30, 2020. The fiscal review criteria of the City Code states city costs related to infrastructure and service levels shall be determined for a ten-year time horizon for the appropriate municipal funds. This is a standard FIA modeling by the City Budget Office and does not reflect any potential supplemental funding mechanisms the Developer may gain towards the overall development of the project.

The FIA methodology estimates the City expenditures attributed to the Peak Center annexation for the period 2021-2030. The FIA states most departments indicated there were no identifiable costs of providing services to this development. Some agencies as reported in the FIA identified marginal increases in operation costs annually. The prepared FIA states the result of the Fiscal Impact

Analysis is a positive cumulative cashflow for the City during the 10-year timeframe. Per the report prepared 'the annexation is not projected to produce any sales tax collections; however, property tax collections are enough to defray the costs of providing services to this development.' The Summary of Expenditures and Revenues is attached, along with the Expenditure and Revenue Notes to provide the methodology for calculating the expenditures and revenues. **(PEAK CENTER FISCAL IMPACT ANALYSIS)**

City Council Appointed Board/Commission/Committee Recommendation:

This item was heard before City Planning Commission on August 20, 2020 as part of the New Business Agenda. All associated applications were approved with a vote of 8:0:1:0 (with Commissioner McMurry absent). Please see the City Planning Commission final minutes for full details of discussion.

Stakeholder Process:

The public process included posting the site and sending postcards to 36 property owners within a 1000-foot buffer. An additional mailing was sent out to these residents for notice of a virtual neighborhood meeting held on June 30, 2020 in which 28 people were online in attendance. Similar mailing was sent prior to City Planning Commission and will be sent prior to the City Council public hearing. As part of the City's standard notification there was correspondence of the applications sent to Council of Neighbors and Organizations (CONO) which is also distributed to all surrounding neighborhood organizations.

Throughout the public participation process, several letters of opposition have been received from surrounding citizens; both before the neighborhood meeting and as follow-up from the meeting. In addition comments were received prior to the City Planning Commission hearing. **(PUBLIC COMMENTS)** Comments received both in email and heard at the neighborhood meeting focused on: concerns for traffic volume along Old Ranch Road and what future expansion of Old Ranch Road will look like; the amount of parking on-site and the increase in density of this population as influence to a rural residential neighborhood. The owner/applicant responded to these concerns in a response letter to the neighbors. **(PUBLIC COMMENT RESPONSE)**

Staff input is outlined in the following section of this report. Staff sent plans to the standard internal and external review agencies for comments. All comments received from the review agencies are addressed. Commenting agencies included Colorado Springs Utilities, City Engineering, City Traffic, City Fire, Academy School District 20, Police and E-911.

- **Southeastern Colorado Water Conservancy District (SECWCD):** This property has completed its required inclusion application into the Southeastern Colorado Water Conservancy District through the Bureau of Reclamation. The Inclusion process was completed with the Bureau of Reclamation with a final Letter of Assent being issued on July 8, 2020.
- **Traffic Division:** The City Traffic Division did not require a traffic impact report be completed for this project. The projected operation of the new use is not seen to be above what surrounding roadways will support. Old Ranch Road as a Minor Arterial will be at a satisfactory level of service assuming traffic control measures and roadway designs. The Owner will be responsible, per the annexation agreement, to dedicate an additional twelve-feet of right-of-way along Old Ranch Road for future improvements. In addition the development shall include curb, gutter and sidewalk per City standards; at this time the owner is responsible for contributing to an escrow the amount of these improvements which will be installed at a later date with the entirety of improvements to Old Ranch Road.

The City Traffic Division is currently beginning a City wide transportation plan which will evaluate this area and future improvements needed to meet regional needs. Future improvements will be determined with this analysis. In addition there was some discussion with El Paso County for the request to include further parts of Old Ranch Road and Montezuma Road into this annexation. At this time the City Traffic Division's response is the City is willing to annex the section of Old Ranch road adjacent to 1755 Montezuma Road, which has been included in this annexation, but the remaining roads will need to meet City standards before annexing. The City Traffic Engineering Division supports the projected use and road configuration in support of this establishment and future development.

- **Streamside Overlay:** This property is being proposed with a streamside overlay as part of the zoning district. As part of this review a Land Suitability Analysis was completed as part of the concept plan. **(PEAKS RECOVERY CONCEPT PLAN)** This included a slope analysis, soil analysis, and overall understanding of vegetation. The streamside outer and inner buffer were established along with areas of no build. Prior to any development, including grading or any other improvements, a development plan must be approved so final streamside review can occur. The property is within the critical habitat for the Preble's Meadow Jumping Mouse and will require the review and approval of US Fish and Wildlife prior to any construction.
- **United States Air Force Academy (USAFA):** Agreements between the City of Colorado Springs and the surrounding military installations establish a two-mile buffer for land use application review. Staff has determined that this application is within the two-mile buffer for USAFA notification; a comment letter from USAFA was received. This site is directly underneath an active aircraft traffic pattern with heavily flown arrival and departure routes. A notice note as requested from USAFA has been added to the application documents. In addition at any future time of a subdivision plat for the properties within the City a private aviation easement shall be established.
- **El Paso County Planning:** Comments were received from El Paso County Development Services Division which generally involved questions regarding Old Ranch Road for future conveyance to the City. The City Traffic Division continues to work with El Paso County for this roadway and future time of any acceptance. No comments of concern remain with the County.
- **Colorado Geological Survey:** As part of annexation a Geological Hazard review may be required (City Code 7.4.502) but is triggered by the establishment of a master plan. This property as part of annexation is being waived from a master plan requirement as detailed above, however; staff has still asked for a geological analysis due to slope conditions along southern property boundary. The geological report was reviewed by Colorado Geological Survey (CGS). Future development on the site (development plan, platting, or any building) will require site specific further investigations. In addition, if any building or development were proposed south of the existing residential structure, a new geologic hazard report will be required. These notes are captured on the concept plan.
- **Parkland Dedication and Open Space:** The associated development does not trigger PLDO per the City Parks and Recreation Department.
- **Academy School District 20:** Academy School District 20 has reviewed the associated applications. They are not requesting any land dedication with the size of this annexation and will be collecting the standard fee for any residential established within the annexed area.

Alternatives:

1. Uphold the action of the City Planning Commission;

2. Modify the decision of the City Planning Commission;
3. Reverse the action of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration

Proposed Motion:

APPEAL

Deny the appeal based upon the finding that the appeal does not meet the review criteria set forth in City Code Section 7.5.906.A.4

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Approve the Peaks Recovery Concept Plan, based upon the findings the proposal meets the review criteria for concept plans as set forth in City Code Section 7.5.501(E)

N/A