

October 9, 2023

William Gray
City Planner
Planning and Community Development Land Use Review Division
30 South Nevada, Suite 701
Colorado Springs, Colorado 80901-1575

RE: Proposed Major Modification of the Wilson Tank Replacement project (Record number DEPN-23-0157).

Dear Mr. Gray,

This letter is an addition to the concerns raised in our letter of August 06, 2023, regarding our opposition to DEPN-23-0157. We respectfully request Planning **reject** the requested Major Modification for the Wilson Tank Replacement project (DEPN-23-0157). The requested modification conflicts with all four criteria of UDC 7.5.516.D.1 “Criteria for approval ... Major Modifications ...”.

Specifically (excerpt from the UDC with embedded comments):

- a. *Complies with the provisions of this UDC and all applicable City regulations; here, the Planning Commission should find that the application FAILS – the maximum height in the zoning district is 45 feet.* Per UDC 7.2.501.B and 7.2.501.C, maximum height for this PF lot owned by Colorado Springs Utilities was set during the development review that was approved on June 21, 2022. It was not set as a condition of approval. It was set as the maximum height per code and was clearly noted by CSU and their agent Kimley Horn on their plan drawings. The unapproved height change from 40 feet to 60 feet violates the code set at DP approval per the UDC. Therefore, Planning must **reject** this Major Modification.
- 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; here, the Planning Commission should find that the application FAILS – the maximum height is set as Code (UDC 7.2.501.B and 7.2.501.C), not a condition.* Colorado Springs Utilities and its engineering agent Kimley Horn violated the conditions of approval of the original DP by not disclosing the height change to City Planning until they were forced to do so in June 2023 (although knowing the actual height in November 2022 and after the tank was substantially constructed). Also, the building permit was obtained using erroneous and possibly fraudulent information. Planning must **reject** the Major Modification based on this violation of conditions.
- c. *Does not create more adverse impacts on surrounding properties than the development approval or permit proposed to be modified; here, the Planning Commission should find that the application likely FAILS – though this is a subjective criterion.* Although subjective, the individuals that are in the best position to assess any adverse impacts are the Mountain Shadows residents and the Flying W Ranch (specifically, those now living under a water tank’s ominous

presence that exceeds the height restriction – 20 feet beyond what was approved in the DP). This major modification, as submitted “create[s] more adverse impact” and has a substantially detrimental impact on:

- Adjacent properties; including the residential neighborhood and the adjacent hospitality/tourist attraction (Flying W Ranch),
- General welfare of all residents of Colorado Springs since it can be seen from most locations – just like the quarry scars and Waldo Canyon Burn area, and
- General desirability for overall quality, diversity, and safety of neighborhoods by discouraging pride and (re)investment (UDC 7.1.103.I).

Planning must **reject** the Major Modification based on creating more adverse impacts.

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 locate. **Here, the Planning Commission should find that the application FAILS – the proposed structure violates the provisions and height limit (45 feet) in the Hillside Overlay.** Planning must **reject** the Major Modification*

In summary, failure of any one of these four criteria is sufficient to reject the requested Major Modification – as demonstrated, all four are violated. The use of a major modification application to bypass the UDC and conditional approval is contrary to both the spirit and letter of the UDC. It is necessary the requested Major Modification be **rejected**.

Respectively,

Lawrence E. Starr
James Berdon
6315 Wilson RD, Colorado Springs, CO 80919

Cc: Harmon Zuckerman, Esq.
Mr. Bill Wysong