

Formal Appeal Letter

DEPN-23-0109

Fox Bridge Development Minor Amendment

7/3/2023

City of Colorado Springs

Planning and Development

Land Use Review Division: Planning and Community Development Department,
Development Review Enterprise Division

30 S. Nevada, Suite 701

Colorado Springs, CO

80901-1575

Hello,

As an authorized appellant I am formally appealing the decision to approve the Fox Bridge Minor Amendment, DEPN-23-0109, on this date, 7/3/2023, after receiving an emailed notice from the city on 6/30/2023 that the amendment has been initially approved. This request was submitted within the 10 days specified on the City of Colorado Springs website.

The section(s) of the Chapter 7 – Zoning and Subdivision Ordinance, Article 1, Comprehensive Plan Procedures that serves as grounds for this appeal are as follows:

- 7.1.103 Purposes: The purposes of preparing the Comprehensive Plan are as follows:
 - (A) To initiate comprehensive studies of factors relevant to land development
 - *All articles in Chapter 7 – Zoning and Subdivision Ordinance cross-reference City Ordinance 91-30 (noise), therefore this article requires the city to include this factor when making development decisions.*
 - *Noise studies were not included in the proposed amendment to the project, specifically, the effect of the new retaining wall on traffic noise levels on the Windjammer neighborhood and/or other neighborhoods within 1,000 ft. of the proposed change*

- ***The City did not initiate comprehensive studies of factors relevant to land development because specific factors including noise were not included***
 - (E) To determine the probable environmental, economic and social consequences of the desired land development and the proposed programs.
 - ***The social effects of noise on nearby residents, such as stress, as a result of changing the location and increasing the length and overall size of the new retaining wall was not determined through relevant methods, such as an assessment of noise levels produced by deflection of traffic noise directed at the Windjammer neighborhood, such noise levels having been mitigated prior to the development by a sloped surface covered by live turf grass.***
- 7.1.111: Use of Comprehensive Plan: The City Council, all City boards and commissions, the various City groups, departments, divisions, enterprises and officials shall be responsible for knowing the contents of the Comprehensive Plan and shall consider the relevant policies set forth in the Comprehensive Plan prior to making decisions. Nothing set forth in the Comprehensive Plan shall prohibit the City Council, City boards or commissions, various City groups, departments, divisions, enterprises and officials, after considering the plan, from deviating from the policies set forth in the Comprehensive Plan where circumstances warrant in making decisions affecting specific property. (Ord. 91-30; Ord. 01-42)
 - ***The city and/or the developer of the above project did not consider the relevant policies set forth in the Comprehensive Plan as outlined above, and did not conduct noise level studies prior to approval of the proposed amendment, nor did the city require the developer to conduct such studies.***

Included in this appeal statement are grounds for the appeal under the Unified Development Ordinance (UDC), effective June 5, 2023 (below). The UDC Article 7.1.103 clearly states that the purpose of this UDC is to implement the Colorado Springs Comprehensive Plan. Grounds for this appeal are clearly outlined above, therefore, the UDC does not change this appellant's argument that the proposed minor changes to the development plan in question should be rejected, or changed to mitigate resulting increased noise levels affecting the Windjammer neighborhood.

- 7.1.103: PURPOSE: The purpose of this UDC is to:
 - C. Implement the Colorado Springs Comprehensive Plan

The Colorado City Ordinance 91-30, Noise Related Provisions also serves as grounds for this appeal as follows:

- Additional grounds for this appeal are based on the city ordinance 91-30 as outlined below, as the authorized appellant filing the appeal contends that ***the city did not assess noise levels resulting from the proposed changes to the retaining wall(s) in the amendment to the development plan to ensure this would remain in compliance with the city noise ordinance:***
 - 9.8.104: PERMISSIBLE NOISE LEVELS: A noise measured or registered as provided in section 9.8.103 of this part from any source other than as provided in section 9.8.109 of this part at a level which is equal to or in excess of the dB(A) established for the time period and zones listed in this section, is declared to be excessive and unusually loud and is unlawful.
 - Zone 7:00 A.M. To Next 7:00 P.M. 7:00 P.M. To Next 7:00 A.M.
Residential 55 dB(A) 50 dB(A) Commercial 60 dB(A) 55 dB(A) Light industrial 70 dB(A) 65 dB(A) Industrial 80 dB(A) 75 dB(A) For purposes of this section only, these zones shall be defined as follows: A. Residential: An area of single or multi-family dwellings where businesses may or may not be conducted in the dwellings. The zone includes areas where multiple-unit dwellings, high-rise apartment districts, and redevelopment districts are located. A residential zone may include areas containing accommodations for transients such as motels and hotels and residential areas with limited office development, but it may not include retail shopping facilities. Residential zone includes educational facilities, hospitals, nursing homes and similar institutions.
 - 9.8.105: PERMISSIBLE INCREASES: Between the hours of seven o'clock (7:00) A.M. and seven o'clock (7:00) P.M., the noise levels permitted in section 9.8.104 of this part may be increased by ten (10) dB(A) for a period of not to exceed fifteen (15) minutes in any one hour period. (Ord. 96-41; Ord. 01-42)

I am requesting that the city and/or developer conduct a noise level assessment, along with a science-based evaluation of projected noise levels if the proposed additional

retaining wall is constructed, and create a plan for noise mitigation, prior to final approval of the minor amendment. Our neighborhood is adjacent to this development, and our home is directly across the street from it on the Union Boulevard side. We (meaning the Windjammer neighborhood) have noticed a very significant increase in traffic noise due to sound echoing off the new retaining wall and the new structures. I believe an additional retaining wall would exacerbate this effect. I have measured an average noise level of 69 decibels for more than 15 minutes every hour from 7am – 7pm more than 100 feet away from the existing retaining wall(s) in question.

Sincerely,

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