

**CITY OF COLORADO SPRINGS PLANNING COMMISSION
RECORD-OF-DECISION**

WEDNESDAY, JUNE 24, 2015

**CITY HALL COUNCIL CHAMBERS
107 NORTH NEVADA AVENUE
COLORADO SPRINGS, COLORADO 80903**

CHAIRMAN PHILLIPS CALLED THE MEETING TO ORDER AT 8:37 A.M.

PRESENT:

Donley
Henninger
Markewich
Gibson
Phillips
Shonkwiler
Walkowski

ABSENT:

McDonald
Smith

ALSO IN ATTENDANCE:

Mr. Peter Wysocki, Planning and *Development* Director
Mr. Marc Smith, City Senior Corporate Attorney

COMMUNICATIONS

Peter Wysocki, Planning & Development Director stated that the applicant requested postponement of Items 4A and 4B to the July 16, 2015 Planning Commission meeting. Motion by Commissioner Markewich to postpone Item 4A and 4B to July 16, 2015 meeting seconded by Commissioner Shonkwiler, Motion passed 7-1 (Commissioner McDonald and Commissioner Smith excused).

RECORD OF DECISION

Chairman Phillips requested a motion to approve the May 21, 2015 Records of Decision. Commissioner Markewich requested to postpone the approval for time to read and review. Moved by Commissioner Markewich, seconded by Commissioner Walkowski, to postpone the May 21st, 2015 Records of Decision to July 16, 2015 meeting. Motion passed 7-0 (Commissioner McDonald and Commissioner Smith excused)

**CITY OF COLORADO SPRINGS PLANNING COMMISSION
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CONSENT CALENDAR

ITEM NO.	PROJECT DESCRIPTION
<p>ITEM.: A.1 CPC UV 15-00029 (Quasi-Judicial)</p> <p>ITEM.: A.2 CPC NV 15-00043 (Quasi-Judicial)</p> <p>PARCEL NO.: 6308300006</p> <p>PLANNER: Steve Tuck</p>	<p>A request by Colton Johnson on behalf of the John and Patricia Withers Trust for consideration of the following development applications:</p> <ol style="list-style-type: none"> 1. A use variance to allow a kennel (dog daycare facility with outdoor exercise areas and no overnight care) in the PIP-2 (Planned Industrial Park) zone. 2. A nonuse variance to Section 7.4.203.A of the City Code to allow 0 parking spaces on site where the requirement is 1 parking space for the office. <p>The project name is Under the Sun Doggie Daycare and the property consists of 2.06 acres and is located at 790 Dublin Boulevard.</p>
<p>ITEM.: B.1 CPC PUZ 14-00124 (Quasi-Judicial)</p> <p>ITEM.: B.2 CPC PUD 06-00108-A7MJ14 (Quasi-Judicial)</p> <p>PARCEL NO.: 5307000073, 5307000097, 5307000006</p> <p>PLANNER: Meggan Herington</p>	<p>Request by William Guman & Associates Ltd, on behalf of Wolf Ridge Development Co LLP, for approval of the following development applications:</p> <ol style="list-style-type: none"> 1. A zone change from A/AO (Agriculture with Airport Overlay) to PUD/AO (Planned Unit Development; Single-Family Residential, 3.85 Dwelling Units per Acre, 35 foot maximum building height with Airport Overlay), 2. The Dublin North Phase 8 Development Plan that illustrates an addition of 105 single-family detached residential lots to the Dublin North development along with public roads, easements, landscape and open space areas. <p>The site consists of 27.305 acres and is located south of Wolf Ridge Road and east of Templeton Gap Road.</p>

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NEW BUSINESS CALENDAR

ITEM NO.	PROJECT DESCRIPTION
<p>ITEM NO.: 4.A-4.B CPC PUZ 15-00031 (Quasi-Judicial)</p> <p>CPC PUP 15-00032 (Quasi-Judicial)</p> <p>PARCEL NO.: 6425204002</p> <p>PLANNER: Lonna Thelen</p> <p>Postponed by applicant to July 16, 2015 Planning Commission meeting</p>	<p>A request by Aeroplaza Fountain LLC for approval of the following development applications:</p> <ol style="list-style-type: none"> 1. A zone change from PBC/cr/AO (Planned Business Center with a condition of record and airport overlay) to PUD/AO (Planned Unit Development with an airport overlay). 2. A concept plan for an 80 unit, small lot single family development (Village at Aeroplaza). The property is proposed to be zoned PUD (Planned Unit Development). <p>The property is located northeast of Fountain Boulevard and Aeroplaza Drive and consists of 14.02 acres.</p>
<p>ITEM NO.: 5 AR NV 14-00691-AP (Quasi-Judicial)</p> <p>PARCEL NO.: 7412103048</p> <p>PLANNER: Rachel Teixeira</p>	<p>An appeal by Pam Hamamoto, property owner of 1217 E. High Point Lane, regarding the administrative approval for a nonuse variance request for a ten (10) foot front yard setback where twenty-five (25) feet is required. This nonuse variance request approved the construction for a single family residence located at 1225 E. High Point Lane. The property is zoned R-1 9000/HS (Single Family Residential with Hillside Overlay), consists of 0.26 acres and is situated northeast of Mesa Avenue and Uintah Street.</p>
<p>ITEM NO.: 6</p> <p>STAFF: Marc Smith (Legislative)</p>	<p>Approval of Amendments to the Procedures of the City Planning Commission</p>

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CONSENT CALENDAR

DATE: June 24, 2015
ITEM: A.1-A.2
STAFF: Steve Tuck
FILE NO.: CPC UV 15-00029
CPC NV 15-00043
PROJECT: Under the Sun Doggie Day Care

DECISION OF THE PLANNING COMMISSION

Moved by Commissioner Henninger, seconded by Commissioner Shonkwiler, to approve **Item No. A.1, File No. CPC UV 15-00029**, the use variance to allow a Kennel (Dog DayCare Facility with outdoor exercise areas and no overnight care) located at 790 Dublin Boulevard in the PIP-1 zone, based upon the finding that the use variance complies with the three review criteria for granting a Use Variance as set forth in City Code Section 7.5.803.B, subject to the technical and informational modifications as shown below and as listed on page 8 of the CPC agenda. Motion passed 7-0 (Commissioner McDonald and Commissioner Smith excused).

Technical and Informational Modifications to the Use Variance Development Plan:

1. Note a nonuse variance is requested with File No. CPC NV 15-00043 to City Code Section 7.4.203.A to allow portions of the parking spaces to be located within the public right-of-way of Vincent Drive.
2. Note no overnight boarding will occur.
3. Revise “nno” to “non” for the designation of Vincent Drive as a non-arterial street.
4. Note that a Revocable Permit shall be approved for the parking in the right-of-way within 60 days of the approval of the applications.
5. Identify and note the width and material of the sidewalks both on the site and in the adjacent right-of-way.
6. As indicated by the City Landscape Architect in **FIGURE 4** revise the landscape plan.

Moved by Commissioner Henninger, seconded by Commissioner Shonkwiler, to approve **Item No. A.2, File No. CPC NV 15-00043**, the non-use variance to Section 7.4.203.A to allow 0 parking spaces on site where the requirement is for one parking space for the office based upon the finding that the non-use variance complies with the three review criteria in City Code Section 7.5.802.B.

Motion passed 7-0 (Commissioner McDonald and Commissioner Smith excused).

June 24, 2015

Date of Decision

Planning Commission Chair

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CONSENT CALENDAR

DATE: June 24, 2015
ITEM: B.1-B.2
STAFF: Meggan Herington
FILE NO.: CPC PUZ 14-00124
CPC PUD 06-00108-A7MJ14
PROJECT: Dublin North

DECISION OF THE PLANNING COMMISSION

Moved by Commissioner Henninger, seconded by Commissioner Shonkwiler to approve **Item No. B.1, File No. CPC PUZ 14-00124**, the zone change for Dublin North to change from A/AO (Agricultural with Airport Overlay) to PUD/AO (Planned Unit Development with Airport Overlay; Single-Family Residential, 3.85 dwelling units per acre, 35' maximum building height) south of Wolf Ridge Road and east of Templeton Gap Road, based upon the finding that the zone change complies with the review criteria for granting a Zone Change as set forth in City Code Section 7.5.603.B. and the PUD establishment criteria as set forth in City Code Section 7.3.603. Motion passed 7-0 (Commissioner McDonald and Commissioner Smith excused).

Moved by Commissioner Henninger, seconded by Commissioner Shonkwiler, to approve **Item No. B.2, File No. CPC PUD 06-00108-A78MJ14**, the development plan for Dublin North Phase 8 for the addition of 105 single family detached residential lots along with public roads, easements, landscape and open space areas based upon the finding that the development plan complies with the PUD development plan review criteria as set forth in City Code Section 7.3.306 subject to the following conditions of approval and technical modifications shown below and as listed on page 20 and 21 of the CPC agenda.

Conditions of Approval:

1. Templeton Gap Road shall be constructed per the future construction drawings to include the updated turn lanes to Templeton Gap, Wolf Ridge and Stone Mesa as outlined in Technical Modifications.
2. The developer is responsible for the construction of Templeton Gap Road adjacent to the project property from its current terminus of full improvements. The construction includes a full asphalt mat for all required lanes for the full width of Templeton Gap Road and sidewalk, curb, gutter on the eastern side of Templeton Gap Road adjacent to the project and turn lanes as specified in Technical Modification #2 (below).
3. The property is required to be included in the Woodmen Road Metro District prior to approval of any final plats within this development plan.

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Technical Modifications:

1. Revise the Tract Table on Sheet 1 to state that the maintenance of drainage facilities within all tracts will be done by the Dublin North Metropolitan District No. 3. The only exception is that Tract B will have public storm sewer that will be maintained by the City, however the surface maintenance of the detention pond will be done by the Dublin North Metropolitan District No. 3.
2. Add the following turn lanes at the intersection of Templeton Gap road and Wolf Ridge Road/Stone Mesa Point:
 - 1- A northbound right turn lane, with 150 feet and appropriate taper length.
 - 2- A northbound left turn lane, with 150 feet and appropriate taper length.
 - 3- A southbound right turn lane, with 100 feet and appropriate taper length.
 - 4- A westbound right turn lane, with 200 feet and appropriate taper length.
3. Add a note to Page 1 that Stone Mesa Point is accepted by the City as a public street.
4. Please revise Note 2 on Sheet 1 to indicate that the full mat width of asphalt will be constructed with Phase 1 and only the curb and gutter and sidewalk on the west side of T-Gap will be constructed by the adjacent property owners when they develop.
5. Please remove Note 3 as this is covered in Note 2.
6. Please add the following note to Sheet 1, "If traffic volumes warrant a signal at the intersection of Templeton Gap Road and Wolf Ridge Road, traffic movements will be restricted."
7. Add the avigation easement statement to the development plan.
8. Add cut sheets of the play elements called out in the park area.
9. Enumerations comments shall be addressed prior to final approval.

Motion passed 7-0 (Commissioner McDonald and Commissioner Smith excused).

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NEW BUSINESS CALENDAR

DATE: June 24, 2015
ITEM: 5
STAFF: Rachel Teixeira
FILE NO.: AR NV 14-00691-AP
PROJECT: 1225 E. High Point Lane

STAFF PRESENTATION

Ms. Rachel Teixeira presented PowerPoint slides and additional information regarding the neighborhood setbacks. (Exhibit A and F).

APPLICANT PRESENTATION

Ms. Pam Hamamoto, 1217 E. High Point Lane, appellant, presented a PowerPoint presentation along with hard copy pictures and information (Exhibit B, C, D and E). Ms. Hamamoto stated that there are several issues against permitting the non-use variance to include grade changes were up to 44% at the site, children in the neighborhood play in the street and the Subdivision Plat requires a minimum 20' front yard. There are geologic issues in the neighborhood both vertical and horizontal with most homes built before the current Hillside ordinance. Her question was whether there really was a grade or hillside problem that would necessitate a variance and isn't this setting precedence in the neighborhood? The Neighborhood Architectural Control Committee wants the residence set back at least 17' from the property line. The neighborhood is well established and if a new home receives a lesser front yard setback other homes would be able to modify their homes to meet the same reduced setback. The neighborhood does not believe that making the applicant build according to the development standard creates a hardship.

Mr. Robert Moyers, 1202 W. High Point Lane, appellant, spoke regarding more procedural issues. He has tried to speak with applicant regarding the proposed residence as there are square footage and elevation issues that must be addressed. The Architectural Control Committee doesn't really know what is going to be built because the plans were submitted to the City and not the Committee. They should have submitted to the Committee first and then went to the City. Everything is just speculative until approved by the Architectural Control Committee so the public hearing before Planning Commission should be tabled and no decision made. If the home will be built with a 10' front yard setback, it will be too close to the road and block visibility so both pedestrians and vehicles will not be seen. A vehicle cannot be parked in the driveway without blocking the street thereby creating an adverse impact. If the Planning Commission allows the variance upon pure speculation sets the Architectural Committee up for a full adjunctive action with the Court.

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Commissioner Shonkwiler inquired whether Mr. Moyers understand that the Planning Commission does not enforce covenants. Mr. Moyers stated yes, but he isn't sure the applicant understands. Commissioner Shonkwiler stated that the Planning Commission does not get into private issues within a neighborhood. Mr. Moyers stated that there is severe and substantial adverse impact with the proposed residence as there are too many side issues that must be addressed first. The staff recommendation is arbitrary and if the decision cannot be tabled then the staff decision needs to be reversed.

Commissioner Walkowski asked what was the adverse impact to the proposed residence. Mr. Moyers stated that the proposed home would block the view of the street and impede pedestrian and vehicular traffic. Commissioner Walkowski asked if other residents park in the street. Mr. Moyers said yes, but their vehicles do not stick out into the street from a driveway. Commissioner Walkowski stated that there is land between the street and property line available for parking. Mr. Moyers stated that the street width varies and is incredibly narrow in places. If the house were to be built this close to the right-of-way, it would disrupt the visual flow of the neighborhood.

Mr. Ron Salvaggione, applicant, made a short presentation on why he is looking to build a home on High Point Lane. When he purchased the lane, he made sure that a residence could be built on it. The previous owner wanted to build a two-story residence but could not get it approved through the Architectural Control Committee. There is no Homeowners Association in the neighborhood however he has talked with Ms. Hamamoto in the past. The lot is not a perfect square and on an angle to the street. The zone requires the home to be 25' back from the property line; the thought was that the property line was the street pavement which was not correct. Mr. Salvaggione was asked to move the house closer to the street due to the Hillside potential of the house sliding and erosion washouts. He cannot obtain funding to build the residence if the home is built on caissons. The neighborhood is very eclectic with other homes almost on the property lines with most in violation of the current development standards. The proposed home would still be 25' from the street just not the property line. He stated that he had talked with his neighbors about the proposed residence and everything seemed fine. However problems started to occur when the measurements from the street and property line were different. The hillside and grade changes are of a real concern. Mr. Salvaggione stated he did do his due diligence with the neighborhood and Architectural Control Committee, he just has not provided them with all of the plan documents.

Commissioner Gibson asked why he originally asked for an 18' front yard and then changed it to 12' and now 10'. How is the front yard changing to require since differences? Mr. Salvaggione stated that he has been learning that where the measurement has occurred in the front yard is not always the same. The closest portion of the residence to the property line is at 10' distance.

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Commissioner Markewich asked why the area between the house and road is different. The applicant stated that things have changed since the houses in the neighborhood were built. He would like to have the residence farther back but cannot due to the slope of the land. Mr. Salvaggione stated that he is trying to meet the current code as best he can and be back as far as possible within the Hillside Overlay.

Commissioner Markewich asked about the plans for the proposed residence being submitted to the Architectural Control Committee. Mr. Salvaggione stated that he has submitted the plans to one member of the Committee just not the entire committee. The appellant has not seen the proposed plans. He thought as long as one member of the committee had the plans that this was sufficient but there does not seem to be communication between the committee members. Commissioner Markewich stated that the applicant needed to bring the proposed plans to the entire committee. The Planning Commission can only look at the development standard setback issue. If there are problems later with the covenants and the Architectural Control Committee, it would not be an issue with the Planning Commission.

CITIZENS IN FAVOR OF APPEAL

None

CITIZENS IN OPPOSITION OF APPEAL

None

QUESTIONS OF STAFF

Commissioner Shonkwiler asked if High Point Lane is a public right-of-way. Ms. Teixeira stated yes. Commissioner Shonkwiler then asked if anyone has the right to use the right-of-way. Ms. Teixeira stated yes. He then asked if there were legal ramifications if the roadway is blocked. Ms. Teixeira stated that there would be no problem as long as the vehicles are legally parked on the right-of-way.

Commissioner Henninger asked if with the measurements shown on the lot if a circular driveway would be built at the residence. Ms. Teixeira stated yes. Kathleen Krager, City Traffic Engineer also stated that if the two access points meet the circular access standard and it is consistent with the neighborhood, yes a circular driveway is possible and the neighborhood has several. Commissioner Henninger asked if the driveway could be built on private property and City right-of-way. Ms. Krager stated yes as the edge of the property not always the right-of-way line.

Commissioner Gibson asked about the setbacks of 10' and 7' that are shown and were they similar to the rear yard setbacks? Ms. Teixeira stated that no, the rear yard setback was not researched, just front yard setbacks and most were similar.

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Commissioner Markewich stated that the appellant had made the assertion that there were errors in staff report regarding the percentages. Ms. Teixeira stated that the calculations were based off the submitted site plan. Commissioner Shonkwiler stated that there is a difference between the degree and percentage of grade or slope with a hillside. The descriptions should read as a percentage of slope not the degree of slope.

Commissioner Donley asked for the Planner to talk through the Hillside rules and the areas that need to be preserved. Ms. Teixeira stated that a 25% slope is too steep in accord with the Hillside guidelines. If this were a newly platted neighborhood, the City would look at no-build areas and vegetation protection areas.

Commissioner Donley stated that there is a maximum disturbance area noted on the site plan. He asked what the right-of-way vs. pavement would look like if the subdivision and street were built today. Ms. Krager stated that the streets would definitely look different as there would be curb and gutter. Typically this type of street would be a minimum of 60' width of right-of-way with an asphalt mat of 36' to 40' plus curb and gutter. There are no sidewalks or curb and gutter on these streets. Ms. Krager stated that pedestrians do walk in the street and the street width varies however could still have parked cars along the street and be difficult to travel through. She stated that there has been no difficulty to this point but that could change if complaints are filed with the City.

Commissioner Donley asked if a 60' right-of-way and a 36' pavement mat then 12' next to the pavement. Ms. Krager stated that with smaller rights-of-way there is normally an easement as there are no examples of street pavement all the way to the edge of the right-of-way line.

Commissioner Shonkwiler asked the Planner if private covenants are measured from the right-of-way edge. Are the City ordinances measured from anything other than the property line? Ms. Teixeira stated no. Commissioner Shonkwiler then asked if setbacks are always measured from the property line not the street pavement. Ms. Teixeira state that that was correct.

APPELANT REBUTTAL

Ms. Hamamoto made a few statements and answer some questions based on the information that had been provided. There are some children in the neighborhood at this time and they do play in the street. The Architectural Control Committee did not have any meetings without the third member being involved. Depending on how the house would be built, if the proposed residence would daylight at existing grade it would not be on caissons. If the residence were built at grade, there would be no hardship to meet a 17' front yard setback.

Mr. Salvaggione was given the opportunity to speak by Chairman Phillips. He stated that the building industry does not agree with Ms. Hamamoto and he just wanted to build his house at the site.

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DECISION OF THE PLANNING COMMISSION

Commissioner Markewich stated that the decision comes down to whether the proposed setback of the resident is the same as the rest of the neighborhood. Staff provided a list of homes on High Point Lane and Terrace Road with 26% of the homes meeting the 25' setback and 48% at less than a 20' front yard setback. When you have so many properties already closer to the property line what is being requested is very consistent. The Planning Commission needs to focus on protecting the hillside and moving the house towards the street is not a burden to protect the back of the property. He stated that he agrees with staff and will deny the appeal.

Commissioner Henninger stated that a new house should be able to be built in an older neighborhood however the challenge is to make it fit. The requirements that are being implemented have occurred since the neighborhood was built and that has to be considered as there are two remaining lots in the area. There is no impact to parking as there is flexibility on how to access the road. The neighborhood needs to work together. He will support the City position.

Commissioner Gibson stated after reviewing the setbacks and looking at the property, she agrees with the applicant. Being further back from the hillside is more of an issue that being closer towards the street right-of-way.

Commissioner Walkowski stated that he believes the criteria have been met for a non-use variance. He wanted to see if appellant met the criteria that this was an error of zoning and the answer was no. Commissioner Walkowski stated that the request is reasonable and any errors are not substantial. With regards to adverse impact, the pedestrians and parking on the street is not an issue and covenants cannot be considered in this decision. There is no precedent being set with the decision as the appellant did not meet the criteria for an appeal to be granted. He will be supporting the City's position.

Commissioner Shonkwiler indicated that he agreed with Commissioner Walkowski. He stated that the further the house from the hillside is critical as there have been a lot of homes floating downstream lately. There is a precedent for homes to be closer to the property line especially with the adjacent neighbor. Will vote to deny the appeal.

Commissioner Donley referred to page 173 in the Planning Commission agenda as there are three items that must be met. The home could be pushed farther into the rear yard but will support staff and deny the appeal. There should be no fill downhill and not lose vegetation. Once the variance is received, the applicant must draw up plans.

**CITY OF COLORADO SPRINGS PLANNING COMMISSION
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Moved by Commissioner Walkowski and seconded by Commissioner Shonkwiler to deny Item 5, **AR NV 14-00691-AP**, an appeal of a non-use variance for 1225 E. High Point Lane based upon the finding that the appeal does not meet the appeal criteria outlined in City Code Section 7.5.906.

Motion carried 7-0 (Commissioner McDonald and Commissioner Smith excused).

June 24, 2015

Date of Decision

Planning Commission Chair

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COMMUNICATIONS

Planning Commission Chair Phillips asked the City Attorney when the annual meeting is for Planning Commission. Is the annual meeting the same as the Informal Planning Commission meeting? Marc Smith, City Attorney's office stated yes; the June Informal Planning Commission meeting is the annual meeting with elections completed at the formal regular Commission meeting in June.

Peter Wysocki, Planning Director stated that there had been communication with the City Council President about an upcoming joint meeting with City Council and the Planning Commission. Mayor Suthers and the Chief of Staff Greene will be available in August to attend the joint meeting. The meeting will be scheduled at the City Administration Building in Room #102 with a round table format. Coordination will occur within the next few weeks.

Commissioner Donley asked if the Planning Commission is to formulate an agenda on what to discuss at the joint meeting.

Mr. Wysocki stated that more discussion will occur at the next Informal Planning Commission meeting with an agenda to be published for the joint meeting and a list of what will be discussed.

Adjourned 10:20 am