CITY OF COLORADO SPRINGS

CITY PLANNING COMMISSION AGENDA

THURSDAY, May 21, 2015
8:30 A.M.

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

CITY PLANNING COMMISSION
MEETING PROCEDURES

MEETING ORDER:
The City Planning Commission will hold its regular meeting on **Thursday, May 21, 2015 at 8:30 a.m.,** in the City Hall Council Chambers at 107 North Nevada Avenue, Colorado Springs, Colorado.

The Consent Calendar will be acted upon as a whole unless a specific item is called up for discussion by a Planning Commissioner, a City staff member, or a citizen wishing to address the Planning Commission.

When an item is presented to the Planning Commission the following order shall be used:

- City staff presents the item with a recommendation;
- The applicant or the representative of the applicant makes a presentation;
- Supporters of the request are heard;
- Opponents of the item will be heard;
- The applicant has the right of rebuttal;
- Questions from the Commission may be directed at any time to the applicant, staff or public to clarify evidence presented in the hearing.

VIEW LIVE MEETINGS:
To inquire of current items being discussed during the meeting, please contact the Planning & Development Team at 719-385-5905, tune into local cable channel 18 or live video stream at www.springsgov.com.

CITY PLANNING COMMISSION
COMPREHENSIVE PLAN AND REVIEW CRITERIA

COMPREHENSIVE PLAN:
The City Planning Commission uses the Comprehensive Plan as a guide in all land use matters. The Plan is available for review in the Land Use Review Office, located at 30 S. Nevada Avenue, Suite 105. The following lists the elements of the Comprehensive Plan:

- Introduction and Background
- Land Use
- Neighborhood
- Transportation
- Natural Environment
- Community Character and Appearance
- 2020 Land Use Map
- Implementation

The Comprehensive Plan contains a land use map known as the 2020 Land Use Map. This map represents a framework for future city growth through the year 2020, and is intended to be used with the Comprehensive Plan's goals, policies, objectives and strategies. It illustrates a desired pattern of growth in conformance with Comprehensive Plan policies, and should be used as a guide in city land use decisions. The Comprehensive Plan, including the Land Use Map, may be amended from time to time as an update to city policies.

APPLICATION REVIEW CRITERIA:
Each application that comes before the Planning Commission is reviewed using the applicable criteria located in the *Appendix* of the Planning Commission Agenda.

CITY PLANNING COMMISSION
APPEAL INSTRUCTIONS

In accordance with Chapter 7, Article 5, Part 906 (B) (1) of the City Code, "Any person may appeal to the City Council any action of the Planning Commission or an FBZ Review Board or Historic Preservation Board in relation to this Zoning Code, where the action was adverse to the person by filing with the City Clerk a written notice of appeal. The notice of appeal shall be filed with the City Clerk no later than ten (10) days after the action from which appeal is taken, and shall briefly state the grounds upon which the appeal is based."

Accordingly, any appeal relating to this Planning Commission meeting must be submitted to the City Clerk (located at 30 S. Nevada Avenue, Colorado Springs, CO 80903) by:

Monday, June 1, 2015

A **$176** application fee and a justification letter specifying your specific grounds of appeal shall be required. The appeal letter should address specific City Code requirements that were not adequately addressed by the Planning Commission. City Council may elect to limit discussion at the appeal hearing to the matters set forth in your appeal letter.

CITY PLANNING COMMISSION MEETING AGENDA
THURSDAY, May 21, 2015

1. Approval of the Record of Decision (minutes) for the April 16, 2015 City Planning Commission Meeting
2. Communications
3. Consent Calendar (Items A.1 - B.2) .....Page 6
4. New Business Calendar (Items 4 – 6.B) .....Page 35
   Appendix – Review Criteria.....Page 202

CONSENT CALENDAR

ITEM NO.	PROJECT DESCRIPTION	PAGE NO.
ITEM.: A.1 CPC ZC 15-00006 (Quasi-Judicial) **ITEM.: A.2** CPC CP 15-00007 (Quasi-Judicial) **PARCEL NO.:** 5331200045 **PLANNER:** Steve Tuck	A request by N.E.S. Inc. on behalf of Tom Tauche Inc. for approval of the following development applications: 1. A zone change from A/AO (Agricultural with Airport Overlay) to R-5/AO (Multi-family Residential with Airport Overlay). 2. A concept plan which shows the reconfiguration of the Springs Ranch Golf Course so that the 18-hole golf course is maintained and a separate parcel consisting of 13.8 acres for further development is created. The property is located adjacent to the east side of Tutt Boulevard immediately south of the Springs Ranch Golf Course clubhouse and consists of 13.8 acres.	6
ITEM.: B.1 CPC UV 15-00020 (Quasi-Judicial) **ITEM.: B.2** CPC R 15-00019 (Quasi-Judicial) **PARCEL NOS.:** 7324301034 **PLANNER:** Rachel Teixeira	A request by YOW Architects on behalf of Columbus Real Estate for approval of the following development applications: 1. A use variance that would allow for a specialty auto and service use with indoor sales and showroom to be located within an existing building. 2. Administrative relief to allow 52 parking spaces - where 60 spaces are the requirement. The property is within a PIP-2 (Planned Industrial Park) zone, consists of 2.34 acres and is located at 6275 and 6285 Corporate Drive.	30

NEW BUSINESS CALENDAR

ITEM NO.	PROJECT DESCRIPTION	PAGE NO.
ITEM NO.: 4 AR NV 15-00075 (Quasi-Judicial) **PARCEL NO.:** 7413410027 **PLANNER:** Lonna Thelen	An appeal regarding the administrative approval for a nonuse variance to allow 17 parking spaces where 34 are required on 555-559 S 8th Street. The subject property is zoned C-6 (General Business), consists of 0.50 acres and is located at 555-559 S 8th Street.	35
ITEM NO.: 5.A CPC A 14-00133 (Legislative) **ITEM NO.: 5.B** CPC ZC 14-00134 (Legislative) **ITEM NO.: 5.C** CPC CP 14-00135 (Quasi-Judicial) **PARCEL NO.:** 5307002016 **PLANNER:** Meggan Herington	A request by Millennium Venture Group, LLC for approval of the following development applications: A. Annexation of the 6.3-acre Tutt Corners Addition into the City of Colorado Springs, B. Establish the C-6/AO (General Business with Airport overlay) zone district, C. The Tutt Corners Addition Concept Plan that illustrates five commercial pad sites. The property is located at the northeast corner of the Dublin Boulevard and Templeton Gap Road and consists of 4.8 acres.	74
ITEM NO.: 6.A – 6.B CPC MP 04-00012-A1MJ15 (Legislative) **PLANNER:** Peter Wysocki	A request by the Colorado Springs Urban Renewal Authority on behalf of Gold Cycle Investments, LLC for determination of consistency with the City's Comprehensive Plan of: A. An amendment to the Gold Hill Mesa Urban Renewal Plan to exclude the commercially-designated properties from the existing Gold Hill Mesa Urban Renewal Area. B. Gold Hill Mesa Commercial Urban Renewal Plan Area for the commercially-designated properties. The entire Gold Hill Mesa consists of approximately 200 acres, and is generally located South of Highway 24 and East of 21st Street.	111

CONSENT CALENDAR

CITY PLANNING COMMISSION AGENDA

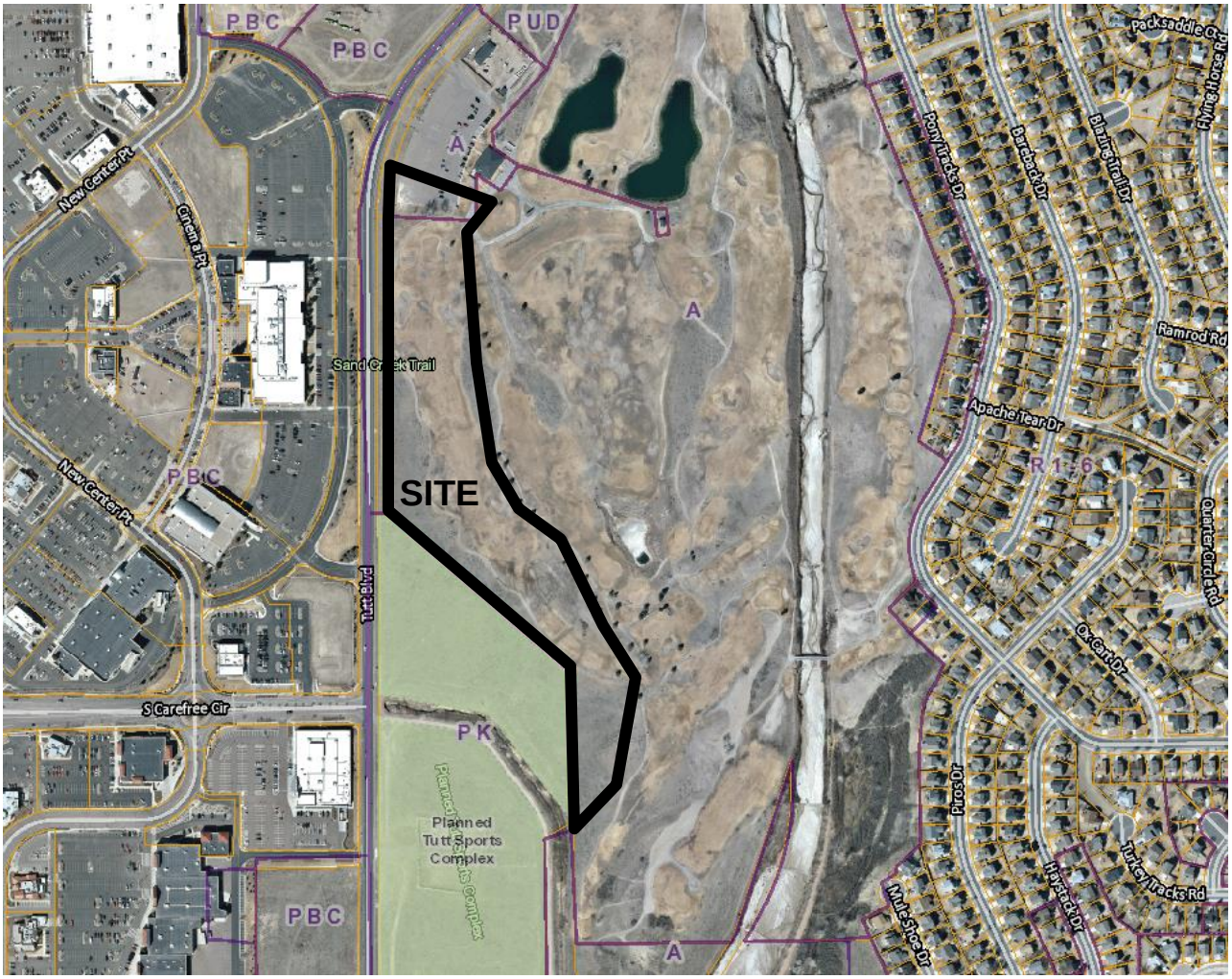
ITEM NO.: A.1- A.2
STAFF: STEVE TUCK

FILE NOS:
CPC ZC 15-00006 – QUASI-JUDICIAL
CPC CP 15-00007 – QUASI-JUDICIAL

PROJECT: SPRINGS RANCH GOLF COURSE R-5 SITE

APPLICANT: N.E.S. INC.

OWNER: TOM TAUCHE INC.



PROJECT SUMMARY:

1. Project Description: The applications propose rezoning 13.8 acres of the 195-acre Springs Ranch Golf Course from A/AO (Agricultural with Airport Overlay) to R-5 (Multi-family with Airport Overlay). A concept plan **(FIGURE 1)** shows the location of and the development constraints (e.g. building and landscape setbacks, vehicular access, building height restrictions, trail construction obligation, etc.) for the parcel. The concept plan does not show specific uses but uses permitted by the R-5 zone are anticipated. Vehicular access is from Tutt Boulevard, a minor arterial.
2. Applicant's Project Statement: **FIGURE 2**
3. Planning and Development Team's Recommendation: Approve the zone change from A/AO to R-5/AO and approve the concept plan subject to an informational revision.

BACKGROUND:

1. Site Address: None
2. Existing Zoning/Land Use: A/AO/Springs Ranch Golf Course
3. Surrounding Zoning/Land Use: North: A/AO/Springs Ranch Golf Course (clubhouse)
   South: PK/AO/undeveloped City park (future Tutt Sports Complex)
   East: A/AO/Springs Ranch Golf Course
   West: PBC/AO/commercial (First & Main - Cinemark Theatre)
4. Comprehensive Plan/Designated 2020 Land Use: Golf Course or Cemetery
5. Annexation: 1984, Springs Ranch Addition
6. Master Plan/Designated Master Plan Land Use: Colorado Springs Ranch (implemented) /Golf Course
7. Subdivision: Not platted
8. Zoning Enforcement Action: None
9. Physical Characteristics: The site is developed with a portion of the golf course and is vegetated primarily with grasses. The most northerly portion of the site is a parking lot for the clubhouse and golf course.

STAKEHOLDER PROCESS AND INVOLVEMENT:

Public notice was provided to 81 property owners, including single-family homeowners located adjacent to the east side of the golf course, with the closest over 850 feet away. The notice was mailed on two occasions: 1) after the submittal of the applications and for the neighborhood meeting on March 5, 2015 and 2) prior to the Planning Commission meeting on May 21, 2015. Approximately 24 people attended the neighborhood meeting and issues discussed included the status of the golf course, view corridors, master plan designation, building heights, and potential uses. **FIGURE 3** is the City's initial review letter and includes correspondence (one email) received after the neighborhood meeting. **FIGURE 4** is correspondence received after the City review letter was distributed. These three letters indicate support for the applications.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Review Criteria/Design & Development Issues:

   Springs Ranch Golf Course – The Springs Ranch Golf Course is an 18-hole golf course on approximately 195 acres located both north and south of North Carefree Circle and east of Tutt Boulevard. The golf course assists in satisfying City park requirements for the Colorado Springs Ranch Master Plan. At the April 9, 2015 Parks Board meeting the Parks Board, with the support of Parks staff, approved the removal of the 14.8 acres from the golf course obligation in exchange for additional land to be provided to the City to facilitate the construction of the Sand Creek Trail. Park fees to be paid as a result of residential development on the site will be used to assist in constructing the Trail.

   In 2011 two parcels, which were a part of the golf course and located north of the club house on the east side of Tutt Boulevard, were rezoned to PUD to allow three apartment buildings and a

convenience food store with gas (Circle K at the southeast corner of Tutt Boulevard and North Carefree Circle). The current applications have similarities to these projects.

R-5 Zone – The requested R-5 zone accommodates a wide range of residential uses, from single-family homes to multi-family projects which may include patio homes, townhomes and apartments. Congregate housing such as assisted living and religious institutions are also permitted uses in the R-5 zone.

The site is an appropriate location for higher density and intensity uses. Tutt Boulevard is a minor arterial and provides sufficient access along the west side of the property. The First & Main commercial center is located to the west, across from Tutt Boulevard. A City community park site is adjacent to the south, and the golf course will continue to exist along the parcel's east side and will separate the site from the homes across the course to the east. The aforementioned Sand Creek Trail is to be constructed along Tutt Boulevard and a transit stop exists on the east side of Tutt adjacent to the parcel. The applications represent an efficient use of the City's existing infrastructure (streets, utilities) and developable land without incurring negative impacts.

Concept Plan – The area within the concept plan is used today for a golf course hole and fringe area. The concept plan notes the 18-hole golf course will be maintained with the realignment of the course. Only 13.8 acres is proposed to be removed from the 195-acre course.

A reduced building height from 45 feet (R-5 maximum) to 30 feet is shown on the south portion of the site. This is the portion of the site nearest the single-family homes, but still over 850 feet away and across the course. The intent of the reduced building height is to enhance compatibility with the single-family area.

The north one acre of the site is developed with a portion of the parking lot serving the golf course and club house. Even with the removal of 65 of the 238 parking spaces the remaining parking area will exceed the City requirement of 102 (173 spaces will remain).

A revised concept plan was submitted in response to the City review letter in **FIGURE 3**. The revised plan is acceptable with a revision recommended to the note regarding the Sand Creek Trail. The plan satisfies the City review criteria for a concept plan.

2. Conformance with the City Comprehensive Plan:
The 2020 Land Use Plan within the Comprehensive Plan designates the site as Golf Course or Cemetery. While this project proposes using a portion of the designated golf course for residential uses, the 18-hole the golf course will be retained. The intent of the Plan is maintained while also implementing Policy LU 301 which states: "Promote development that is characterized by a mix of mutually supportive and integrated residential and non-residential land uses and a network of interconnected streets with good pedestrian and bicycle access and connection to transit." These applications provide the opportunity to accomplish this policy.

3. Conformance with the Area's Master Plan:
The property is within the Colorado Springs Ranch Master Plan **(FIGURE 5)** and is designated as a golf course. This Master Plan is considered implemented (85% or more developed); therefore a master plan amendment is not required for these applications. The Plan continues to serve as a guide in the review of land use changes. The intent of the Master Plan is maintained as the 18-hole golf course will remain intact.

STAFF RECOMMENDATION:
Item No.: A.1 CPC-ZC 15-00006 – Zone Change
Approve the zone change from A/AO (Agricultural with Airport Overlay) to R-5/AO (Multi-family with Airport Overlay) for the Springs Ranch Golf Course R-5 Site, based on the finding the request complies with the review criteria in City Code Section 7.5.603.B (Establishment or Change of Zone District Boundaries).

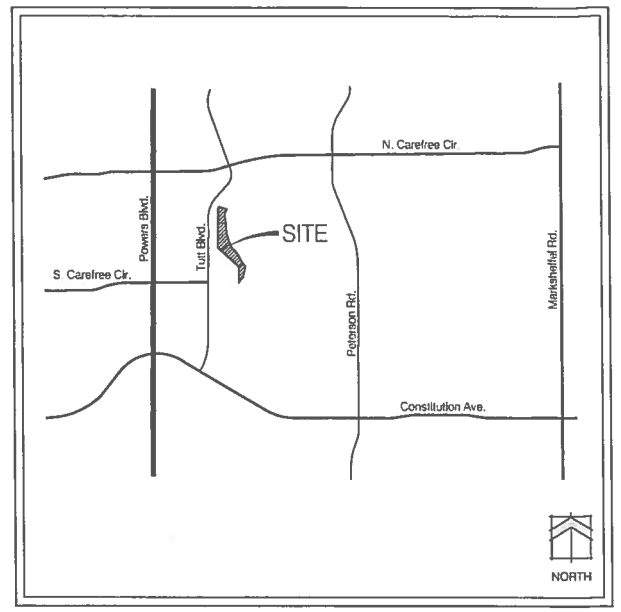
Item No.: A.2 CPC-CP 15-00007 – Concept Plan

Approve the concept plan for the Springs Ranch Golf Course R-5 Site, based on the finding the plan complies with the review criteria in City Code Section 7.5.501.E (Concept Plan Review Criteria) subject to compliance with the following technical and/or informational modification to the concept plan:

Technical and/or Informational Modification to the Concept Plan

Revise note 11 on sheet 1 to: "Park fees will be paid in lieu of park land dedication for this site. Fees will be applied to the construction of the Sand Creek Trail between Constitution Avenue and North Carefree Circle."

VICINITY MAP



SITE DATA

Tax ID Number:	5331200045
Acreage:	13.8 acres
Master Plan:	Springs Ranch Master Plan CPC MPA 05-00027
Existing Land Use:	Golf Course
Proposed Land Use:	Permitted R-5 Uses
Existing Zoning:	A/AO (Agriculture / Airport Overlay)
Proposed Zoning:	R-5/AO (Multi-Family Residential / Airport Overlay)
Minimum Setbacks:	Front 20' Side 5' Rear 25'
Maximum Lot Coverage:	40%
Maximum Building Height:	45' & 30'
Owner:	Tom Tauche Inc. 3525 Tutt Boulevard Colorado Springs, CO 80922
Applicant:	N.E.S. Inc. 619 N. Cascade Avenue Colorado Springs, CO 80903

LEGAL DESCRIPTION

A tract of land being a portion of Lot 1, Springs Ranch Golf Club in the City of Colorado Springs as recorded at Reception No. 97031873 of the records of El Paso County, Colorado and a portion of the tract of land described at Reception No. 98010369 of the records of said El Paso County and located in the Northwest quarter (NW1/4) of Section 31, Township 13 South, Range 65 West of the 6th P.M., El Paso County, Colorado being more particularly described as follows:

BEGINNING at the intersection of the common line between said Lot 1 and Tract A of said Springs Ranch Golf Club and the Southerly line of the thirty (30.00) foot sanitary sewer easement as shown on said Springs Ranch Golf Club, recorded at Reception No. 96148129 of the records of said El Paso County; thence S73°42'33"E on said Southerly line, a distance of 300.94 feet; thence S30°13'10"W a distance of 172.44 feet; thence S09°01'43"E a distance of 255.84 feet; thence S04°24'57"E a distance of 264.72 feet; thence S13°39'02"E a distance of 234.64 feet; thence S25°33'52"E a distance of 204.51 feet; thence S42°11'45"E a distance of 231.78 feet; thence S28°13'01"E a distance of 297.00 feet; thence S38°13'47"E a distance of 139.11 feet; thence S12°43'29"W a distance of 323.84 feet; thence S41°56'54"W a distance of 227.63 feet to the East line of Lot 1, Tutt Sport Complex as recorded at Reception No. 205058864 of the records of said El Paso County, the following two (2) courses are on the East and Northeasterly line of said Lot 1; thence: 1) N00°04'11"W a distance of 472.52 feet; 2) N48°00'39"W a distance of 808.30 feet to an angle point in said Lot 1; thence N00°50'17"E parallel with and forty (40.00) feet Easterly of Tutt Boulevard as dedicated to the public in Tutt Boulevard Subdivision Filing No. 2 as recorded at Reception No. 200122761 of the records of said El Paso County as measured perpendicular thereto, also being the East boundary line of the tract of land recorded at Reception No. 97129652 of the records of said El Paso County, a distance of 1010.00 feet to a point of curve; thence continuing parallel with and forty Easterly as measured perpendicular thereto and said East boundary line, on a curve to the right having a central angle of 13°05'14", a radius of 740.00 feet for an arc distance of 169.03 feet, whose chord bears N07°22'54"E to the POINT OF BEGINNING and containing 13.843 acres of land, more or less.

NOTES

1. This Concept Plan is not to be used for preliminary platting purposes.
2. Floodplain Statement: This site is within Zone X of the F.E.M.A. Flood Insurance Rate Map, Community Panel Number 08041C0539F, effective March 17, 1997.
3. A 10 foot wide concrete trail shall be constructed along Tutt Boulevard and the frontage of Lot 1 Springs Ranch Golf Club. Trail shall be shown with future development plans.
4. The golf fairway impacted by this Concept Plan area will be relocated within the remaining golf course to ensure that an 18-hole facility is retained.
5. A replat of Lot 1 of Springs Ranch Golf Club shall be required with the development plan submittal that includes the section of the golf clubhouse parking lot that lies within the Concept Plan boundary. In the meantime, Lot 1 of Springs Ranch Golf Club shall have split zoning (Zones A and R-5).
6. A transit stop will be constructed on Tutt Boulevard, the location and details of which shall be determined at the development plan stage.
7. NOTICE: The Park zoned property to the south is owned by the City of Colorado Springs and is proposed to be developed as a Sports Complex.
8. An avigation easement shall be recorded prior to recording a final plat. An avigation easement was recorded at reception number 097016874 for the portion of the site within Lot 1, Springs Ranch Golf Club.
9. A street name shall be approved with the development plan for the interior street.
10. The 7' Public Utility and Drainage Easement along the southern boundary of Lot 1 Springs Ranch Golf Club shall be vacated when the lot is replatted.
11. Park fees will be required on this site. Fees collected will be applied to the construction of the Sand Creek Trail along Tutt Boulevard.

SHEET INDEX

Cover Sheet	1
Concept Plan	2
Utility & Public Facility Plan	3

Land Planning
Landscape Architecture
Urban Design
NES
N.E.S. Inc.
619 N. Cascade Avenue, Suite 200
Colorado Springs, CO 80903
Tel. 719.471.0073
Fax 719.471.0267
www.nescolorado.com
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RECEIVED
MAR 31 2015
COLORADO SPRINGS
CITY PLANNING

Springs Ranch Golf Course R-5 Site

Concept Plan

DATE: January 30, 2015
PROJECT MGR: A. Barton
PREPARED BY: B. Carlson

DATE BY DESCRIPTION

Cover Sheet

1

1 OF 3

CPC CP 15-00007

P:\Springs Ranch Golf Course\Springs Ranch Golf Course Land Swap\Drawings\Planning\Concept\SR Park Exchange 3-30-15.dwg (CP-1 Cover) 3/31/2015 11:32:45 AM bcarlson

FIGURE 1

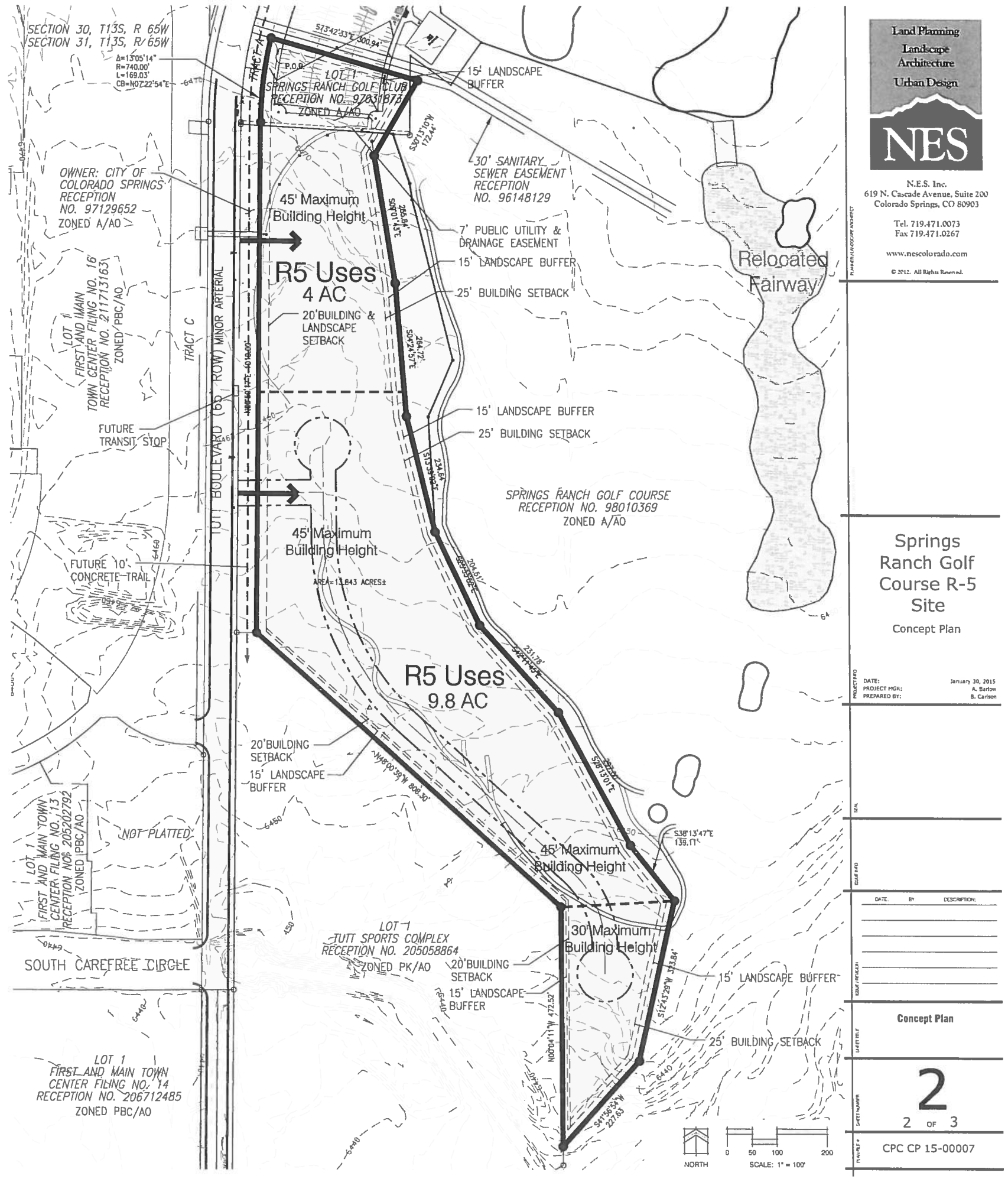
Adjacent Clubhouse Parking to North

PARKING PROVISION

Existing Parking:	238 spaces (3 handicapped)
Parking to be Removed:	65 spaces
Remaining Parking:	173 (3 handicapped)

CITY PARKING REQUIREMENT

4 spaces per golf hole	= 72 spaces
1 space per 100 sf of restaurant/ bar area (restaurant=3,000sf)	= 30 spaces
TOTAL	102 spaces required



Land Planning
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NES

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Springs Ranch Golf Course R-5 Site

Concept Plan

DATE: January 30, 2015
PROJECT MGR: A. Barton
PREPARED BY: B. Carlson

DATE	BY	DESCRIPTION

Concept Plan

2

2 OF 3

CPC CP 15-00007

FIGURE 1

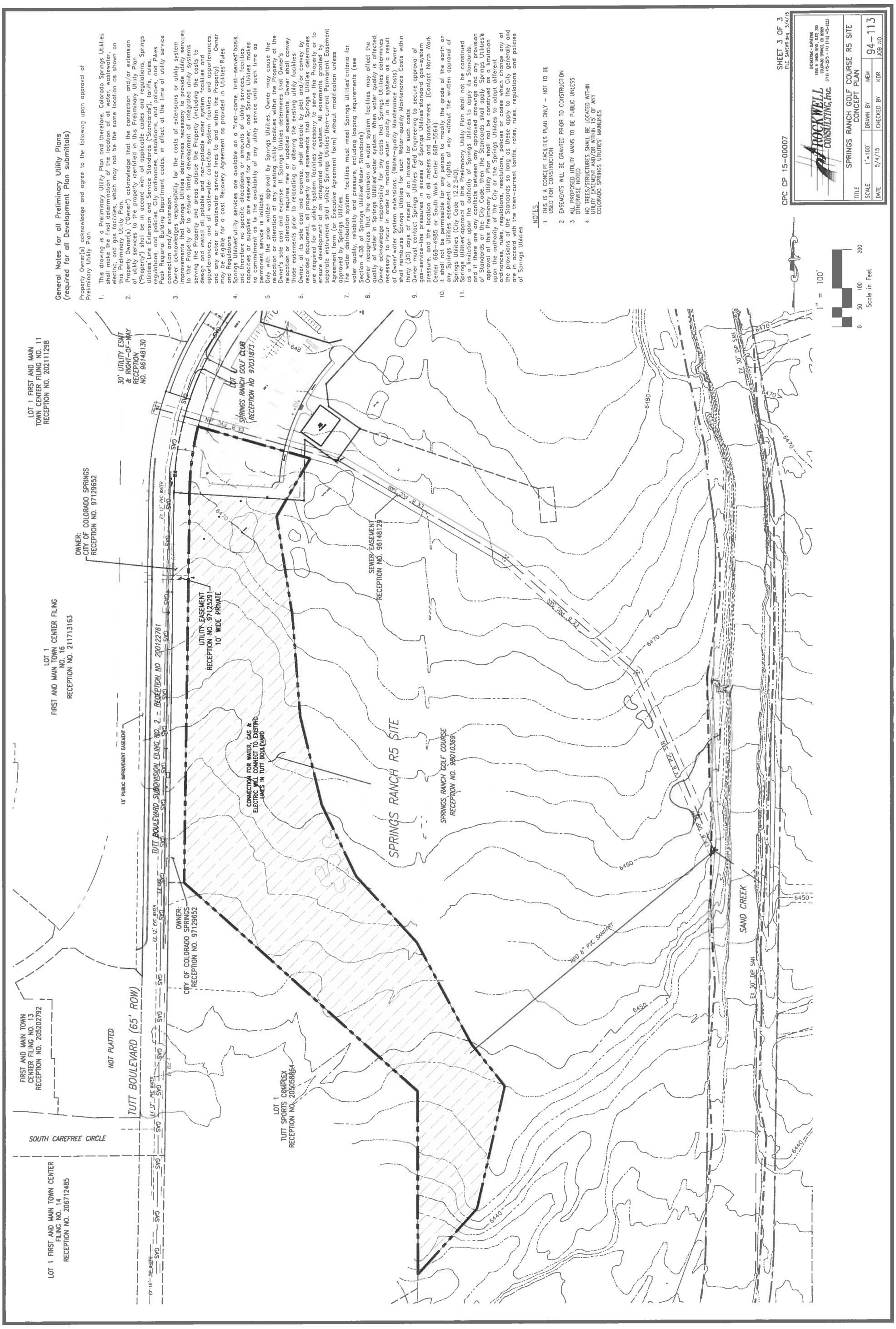

General Notes for all Preliminary Utility Plans
(required for all Development Plan submittals)
Property Owner(s) acknowledge and agree to the following upon approval of Preliminary Utility Plan
1. This drawing is a Preliminary Utility Plan and therefore, Colorado Springs Utilities shall make the final determination of the location of all water, wastewater, electric, and gas facilities, which may not be the same location as shown on this Preliminary Utility Plan.
2. Property Owner(s) ("Owner") acknowledge that the connection and/or extension of utility services to the property identified in this Preliminary Utility Plan ("Property") shall be in accord with all applicable codes and regulations, Springs Utilities' Line Extension and Service Standards ("Standards"), tariffs, rules, regulations and policies City ordinances, resolutions, and policies, and Pikes Peak Regional Building Department codes, in effect at the time of utility service connection and/or extension.
3. Owner acknowledges responsibility for the costs of extensions or utility system improvements that Springs Utilities determines necessary to provide utility services to the Property or to ensure timely development of integrated utility systems serving the Property and areas outside the Property (including the costs to design and install all potable and non-potable water system facilities and appurtenances, and all wastewater collection system facilities and appurtenances, and any water or wastewater service lines to and within the Property). Owner may be eligible for a cost Recovery Agreement as provided in Utilities' Rules and Regulations.
4. Springs Utilities' utility services are available on a "first-come, first-served" basis, and therefore no specific allocations or amounts of utility services, facilities capacities or supplies are reserved for the Owner, and Springs Utilities makes no commitment as to the availability of any utility service until such time as permanent service is initiated.
5. Only with the prior written approval by Springs Utilities, Owner may cause the relocation or alteration of any existing utility facilities within the Property at the Owner's sole cost and expense. If Springs Utilities determines that Owner's relocation or alteration requires new or updated easements, Owner shall convey those easements prior to relocating or altering the existing utility facilities.
6. Owner, at its sole cost and expense, shall dedicate by plat and/or convey by recorded document, all property and easements that Springs Utilities determines are required for all utility system facilities necessary to serve the Property or to ensure development of an integrated utility system. All easements granted by separate instrument shall utilize Springs Utilities' then-current Permanent Easement Agreement form (or Executive Agreement form) without modification unless approved by Springs Utilities.
7. The water distribution system facilities must meet Springs Utilities' criteria for water quality, reliability and pressure, including looping requirements (see Section 4.08 of Springs Utilities' Water Standards).
8. Owner recognizes that the extension of water system facilities may affect the quality of water in Springs Utilities' water system. When water quality is affected, Owner acknowledge responsibility for any costs that Springs Utilities determines necessary to incur in order to maintain water quality in its system as a result of Owner' water system extensions. (Water-quality Maintenance Costs). Owner shall reimburse Springs Utilities for such Water-quality Maintenance Costs within thirty (30) days of receipt of an invoice for such costs.
9. Owner must contact Springs Utilities Field Engineering to secure approval of gas-service-line pressures in excess of Springs Utilities' standard gas-system pressure, and the location of all meters and transformers (Contact North Work Center 668-4985 or South Work Center 668-5564)
10. It shall not be permissible for any person to modify the grade of the earth on any Springs Utilities easement or rights of way without the written approval of Springs Utilities (City Code 12.2.540).
11. Springs Utilities' approval of this Preliminary Utility Plan shall not be construed as a limitation upon the authority of Springs Utilities to apply its Standards, and if there are any conflicts between any approved drawings and any provision of Standards or the City Code, then the Standards shall apply. Springs Utilities's approval of this Preliminary Utility Plan shall not be construed as a limitation upon the authority of the City or the Springs Utilities to adopt different ordinances, rules, regulations, resolutions, policies or codes which change any of the provisions of the Standards so long as these apply to the City generally and are in accord with the then-current tariffs, rates, rules, regulations and policies of Springs Utilities.
NOTES
1 THIS IS A CONCEPT FACILITIES PLAN ONLY - NOT TO BE USED FOR CONSTRUCTION
2 EASEMENTS WILL BE GRANTED PRIOR TO CONSTRUCTION
3 ALL PROPOSED UTILITY MAINS TO BE PUBLIC UNLESS OTHERWISE NOTED
4 NO TREES/STRUCTURES SHALL BE LOCATED WITHIN UTILITY EASEMENT AND/OR WITHIN 15' OF ANY COLORADO SPRINGS UTILITIES' MAINLINES
CPC CP 15-00007
SHEET 3 OF 3
FILE SANSVR dwg 5/4/15
ROCKWELL CONSULTING, Inc.
ENGINEERING · SURVEYING
1955 N UNION BLVD, SUITE 200
COLORADO SPRINGS, CO 80909
(719) 473-2575 · FAX (719) 473-2123
TITLE SPRINGS RANCH GOLF COURSE R5 SITE CONCEPT PLAN
SCALE 1"=100'
DRAWN BY MEM
DATE 5/4/15
CHECKED BY KDR
JOB NO. 94-113
1" = 100'
0 50 100 200
Scale in Feet
LOT 1 FIRST AND MAIN TOWN CENTER FILING NO. 11 RECEPTION NO. 202111298
30' UTILITY ESMT & RIGHT-OF-WAY RECEPTION NO. 96148130
LOT SPRINGS RANCH GOLF CLUB (RECEPTION NO 97031873)
OWNER: CITY OF COLORADO SPRINGS RECEPTION NO. 97129652
LOT 1 FIRST AND MAIN TOWN CENTER FILING NO. 16 RECEPTION NO. 211713163
UTILITY EASEMENT RECEPTION NO. 97125291 10' WIDE PRIVATE
SEWER EASEMENT RECEPTION NO. 96148129
TUTT BOULEVARD SUBDIVISION FILING NO. 2 - RECEPTION NO 200122761
15' PUBLIC IMPROVEMENT EASEMENT
CONNECTION FOR WATER, GAS & ELECTRIC WILL CONNECT TO EXISTING LINES IN TUTT BOULEVARD
SPRINGS RANCH R5 SITE
SPRINGS RANCH GOLF COURSE RECEPTION NO. 98010369
OWNER: CITY OF COLORADO SPRINGS RECEPTION NO. 97129652
FIRST AND MAIN TOWN CENTER FILING NO. 13 RECEPTION NO. 205202792
NOT PLATTED
TUTT BOULEVARD (65' ROW)
SOUTH CAREFREE CIRCLE
LOT 1 FIRST AND MAIN TOWN CENTER FILING NO. 14 RECEPTION NO. 206712485
LOT 1 TUTT SPORTS COMPLEX RECEPTION NO. 205058864
PRO 8" PVC SANITARY
SAND CREEK
EX. 30" DIP SAN
6470
6480
6460
6450
6440

FIGURE 1

SPRINGS RANCH GOLF COURSE R-5 SITE

PROJECT JUSTIFICATION

FEBRUARY 2, 2015

LOCATION

The R-5 site is situated along the western boundary of the Springs Ranch Golf Course adjacent to Tutt Boulevard. It takes in the southern part of the existing Clubhouse property and extends southward toward the City park property. The site comprises approximately 13.8 acres of agriculturally zoned land and currently forms part of the golf course. To the east is the rest of the golf course property, with single family residential further east. To the west of Tutt Boulevard is the First & Main Commercial Center.

FIGURE 2

REQUEST

Springs Ranch Golf Course requests approval of the following applications:

1. A Rezone from A (Agriculture) R-5 (Multi-Family Residential).
2. A Concept Plan for R-5 uses on 13.8 acres.

Concurrently with these requests, the owner is negotiating a land swap with the City Parks Department to off-set the loss of the 13.8 acre site from the golf course as part of a revised Parks Credit Agreement for the Golf Course. This will provide the parks department an expanded park area to the south, improved connections for the Sand Creek Trail across North Carefree Circle, and the extension of the trail system along Tutt Boulevard with future Development Plans.

PROJECT JUSTIFICATION

ZONE CHANGE

It is proposed to rezone the property from A (Agriculture) to R-5 (Multi-Family Residential). The permitted R-5 land uses range from single-family residential to multi-family residential, retirement homes, human service establishment, educational establishment, and religious institutions. The most likely uses for this site are some form of residential use and/or residential care facility.

Zone Change Criteria (Section 7.5.603):

1. The action will not be detrimental to the public interest, health, safety, convenience or general welfare.

The proposed R-5 uses will be harmonious with the surrounding land uses and neighborhood. They will provide an appropriate transition and buffer between the lower density residential to the east and the substantial First & Main commercial center to the west. The anticipated R-5 uses will not be detrimental to the public interest, health, safety, convenience or general welfare.

2. The proposal is consistent with the goals and policies of the Comprehensive Plan.

The site is identified as part of the golf course on the 2020 Land Use Map. The reason for the release of this 13.8 acre parcel from the golf course for development is to support the continued viability of the golf course operation, which is ultimately consistent with the objectives of the Comprehensive Plan designation.

The proposed rezone of the property to R-5 is consistent with the following Comprehensive Plan objectives:

Objective LU 4: Encourage Infill and Redevelopment
Encourage infill and redevelopment projects that are in character and context with existing, surrounding

FIGURE 2

development. Infill and redevelopment projects in existing neighborhoods make good use of the City's infrastructure. If properly designed, these projects can serve an important role in achieving quality, mixed-use neighborhoods. In some instances, sensitively designed, high quality infill and redevelopment projects can help stabilize and revitalize existing older neighborhoods.

Strategy LU 502e: Locate Higher Density Housing as a Transition and Buffer to Residential Areas
Locate higher density housing in relation to activity centers and gradually decrease the density of that housing as a transition and buffer to the surrounding residential areas.

Policy LU 601: Assure Provision of Housing Choices
Distribute housing throughout the City so as to provide households with a choice of densities, types, styles and costs within a neighborhood or residential area.

3. Where a master plan exists, the proposal is consistent with such plan or an approved amendment to such plan. Master plans that have been classified as implemented do not have to be amended in order to be considered consistent with a zone change request.

The site is part of the implemented Springs Ranch Master Plan. The property is designated as part of the golf course. The reason for the release of this 13.8 acre parcel from the golf course for development is to support the continued viability of the golf course operation, which is ultimately consistent with the objectives of the Master Plan designation.

CONCEPT PLAN

The Concept Plan is for R-5 uses on a 13.8 acre parcel. As noted above, the most likely R-5 uses for this site are some form of residential use and/or residential care facility.

The northern section of the Concept Plan incorporates a portion of Lot 1 of Springs Ranch Golf Club. This area includes the parking lot for the Clubhouse. Currently 238 spaces are available to serve the Clubhouse. The Concept Plan will remove approximately 65 spaces, leaving 173 spaces for the Clubhouse use. The City's parking standards require 4 spaces per golf-hole and 1 space per 100 square feet of bar/restaurant. The Clubhouse has a total area of 5,000 square feet; 2,000 square feet for the pro shop and 3,000 square feet for the grill. The minimum parking requirement for the Clubhouse is, therefore, 102 spaces, which will be more than adequately accommodated in the reduced parking lot.

Development of this site will involve the loss of one golf fairway. This will be relocated on the remaining golf course, as shown on the plan, to ensure that a functioning 18-hole golf course will remain.

A 20-foot building and landscape setback is provided adjacent to Tutt Boulevard as required by City code. The City owns a 50-foot strip between the property boundary and Tutt Boulevard which is intended for the extension of the Sand Creek Trail. Future developers of the property will be required to

FIGURE 2

construct a 10-foot concrete trail adjacent to the property boundary. This is reflected as a note on the Concept Plan.

A 15-foot landscape buffer is proposed along the northern boundary to the club house, along the southern boundary to the City's Park zoned property, and to the east adjacent to the golf course. The Concept Plan allows for some flexibility with the buffer on the eastern boundary, subject to the type of R-5 use proposed, and the location and massing of the buildings.

A future location for a transit stop is identified adjacent to the site on Tutt Boulevard. The precise location and design of the transit stop will be determined at development plan stage.

The Traffic Report prepared by LSC Transportation Consultants Inc. indicates that the two access points proposed on Tutt Boulevard are in locations that are appropriate distances from existing intersections and that the proposed R-5 uses would not warrant any new auxiliary lanes or other off site road improvements.

The Drainage Report prepared by Rockwell Consulting indicates that the site will drain to the southeast into Sand Creek Pond #1. The overall tributary area of Sand Creek Pond #1 is so large that the anticipated detention and water quality volumes from the development will have minimal impact on the pond.

Concept Plan Review Criteria (Section 7.5.501)

1. Will the proposed development have a detrimental effect upon the general health, welfare and safety or convenience of persons residing or working in the neighborhood of the proposed development?

The proposed R-5 uses will be harmonious with the surrounding land uses and neighborhood and will provide an appropriate transition and buffer between the commercial development to the west of Tutt Boulevard and lower density residential to the east of the golf course.

2. Will the proposed density, types of land uses and range of square footages permit adequate light and air both on and off the site?

At this Concept Plan level insufficient information is known about the likely density and square footage of the development. The types of land uses likely to be developed on this site can be designed in such a manner that they permit adequate light and air on and off site.

3. Are the permitted uses, bulk requirements and required landscaping appropriate to the type of development, the neighborhood and the community?

The proposed R-5 uses will have a maximum height limit of 45-feet and the bulk of any future buildings can be mitigated through siting, building design, and placement of landscaping within the proposed landscape buffers. The bulk of the buildings will be considerably less than the large commercial

FIGURE 2

buildings in the First & Main retail center to the east of Tutt Boulevard. The existing residential areas to the east are separated from the proposed development by the remainder of the golf course and this distance of approximately 1200 – 1500 feet will minimize the visual impression of the buildings.

4. Are the proposed ingress/egress points, traffic circulation, parking areas, loading and service areas and pedestrian areas designed to promote safety, convenience and ease of traffic flow and pedestrian movement both on and off the site?

At this Concept Plan level insufficient information is known about the internal circulation and parking. The points of access have been identified with regard to the appropriate distances from existing intersections on Tutt Boulevard. The Traffic Report accompanying this application addresses the location of the access points and the need for auxiliary turn lanes. The proposed extension to Sand Creek Trial and proposed transit stop on the western boundary of the site will enhance pedestrian and public transit accessibility to the site and the wider area.

5. Will the proposed development overburden the capacities of existing streets, utilities, parks, schools and other public facilities?

The existing streets and public facilities have adequate capacity to support the proposed development.

6. Does the proposed development promote the stabilization and preservation of the existing properties in adjacent areas and surrounding residential neighborhoods?

The reason for the release of this 13.8 acre parcel from the golf course for development is to support the continued viability of the golf course operation. This will ensure that the existing property and surrounding neighborhood is preserved.

7. Does the concept plan show how any potentially detrimental use to use relationships (e.g., commercial use adjacent to single-family homes) will be mitigated? Does the development provide a gradual transition between uses of differing intensities?

The proposed R-5 uses provide an appropriate transition between the commercial uses to the west and the lower density residential to the east. Landscape buffers are proposed to screen the development from the park and golf course uses to the south and east where necessary.

8. Is the proposed concept plan in conformance with all requirements of this Zoning Code, the Subdivision Code and with all applicable elements of the Comprehensive Plan?

Yes – as noted above.

P:\Springs Ranch Golf Course\Springs Ranch Golf Course Land Swap\Admin\Submittals\Project Justification_Springs Ranch.docx

FIGURE 2

PLANNING & DEVELOPMENT DEPARTMENT

CITY OF COLORADO SPRINGS

March 12, 2015

Ms. Andrea Barlow
N.E.S. Inc.
619 North Cascade Avenue, Suite 200
Colorado Springs, CO 80903

RE: Zone Change and Concept Plan for Springs Ranch Golf Course R-5 Site – File Nos. CPC ZC 15-00006 and CPC CP 15-00007

Dear Andrea:

The City has completed the review of the above applications. Prior to scheduling the requests for a Planning Commission meeting the following 2 items shall be completed:

1. Submit to Land Use Review 6 copies of the concept plan (folded to no larger than 9" x 14", with the lower right corner exposed) with the following revisions:

a. Note the City file number of CPC CP 15-00007in the lower right corner of each sheet.
b. Revise the existing zoning to A/AO and the proposed zoning to R-5/AO.
c. As required by Parks and Recreation (comment 2) revise note 3 to indicate the 10' wide concrete trail shall be constructed not only along the frontage of the R-5 site but also along the frontage of Lot 1, Springs Ranch Golf Club. Note the trail shall be shown on the development plans.
d. Delete note 7 as a Geologic Hazard Report or Exemption is not required.
e. Delete note 8 as the design of the buffer will be determined with the development plan.
f. As required by Police – Street Name Administrator note an interior street name shall be approved with the development plan for the interior street.
g. As required by Colorado Springs Airport note an avigation easement shall be recorded prior to recording a final plat. Note that an avigation easement was recorded at reception number 097016874 for the portion of the site within Lot 1, Springs Ranch Golf Club.
h. On sheet 2 indicate a maximum building height of 30' in the southerly portion of the site located closest to the single-family residences to the east. See the enclosed drawing which illustrates the 30' maximum height area. On sheet 1 revise the maximum building height note to include 45' and 30' as shown on sheet 2.
i. On sheet 2 show a rear building setback of 25' along the easterly property lines adjacent to the golf course.
j. On sheet 2 show a 15' landscape buffer along the common property lines with the City park site.
k. Note the zoning of the City park site as PK/AO instead of P4.
l. Add to the surrounding zoning designations the AO (Airport Overlay) suffix.
m. Show a 7' wide public utility easement and public drainage easement as established along the south property line of Lot 1, Springs Ranch Golf Club. Indicate if the easement is to be vacated.

2. Submit to Land Use Review 1 copy of the revised concept plan reduced to 11" x 17".

Listed below are comments received from the various City departments or other review agencies regarding the application. **If the comments listed below are not referenced in the items above, then**

LAND USE REVIEW DIVISION
30 S. Nevada Ave., Suite 105 • Tel: 719-385-5905 • Fax: 719-385-5167
Mailing Address: P.O. Box 1575, Mail Code 155 • Colorado Springs, CO 80901-1575

FIGURE 3

the comments are for information purposes and are not required to be addressed prior to scheduling the applications for a Planning Commission agenda.

Engineering Development Review –
Zone Change: No comments
Concept Plan:
Please note that a Geologic Hazard Report or Exemption is not required unless there is a geologic hazard identified on the site. Note 7 should be revised as appropriate.
For more information contact Lydia Maring at 385-5546.

Traffic Engineering –
Zone Change: No comments
Concept Plan:
The Traffic Impact Analysis (TIA) has analyzed this project based only for apartment buildings traffic generation. If other type dwelling was to be proposed on future development plans, then a modified Traffic Impact Analysis will be required.
For more information contact Zaker Alazzeh at 385-5468.

Mountain Metropolitan Transit –
This concept plan applications is acceptable to Transit. The requested future bus stop has been included in the notes and on the concept plan.
For more information contact Christoph Zurcher at 385-6524.

Colorado Springs Utilities –
Action Items:
1. None, approval is recommended.

Information Items:
1. The applicant or their engineer should contact Contract Administration for an estimate of any system development charges, fees, Recovery Agreement Charges or other costs that may apply to this development (668-8111).
2. When new water meters are proposed to serve the project or additional demand added to existing water meters, a Commercial Water Meter Sizing form will be required to be submitted to CSU prior to Service Contract issuance and building permit approval.
3. CSU requires an Application for Gas and Electric Line Extension to be submitted along with a Load Data form or an Application for Gas Service Line Approval and/or Application for Elevated Pressure Approval prior to electric and natural gas system design for service to the project. Refer to the CSU Line Extension and Service Standards or contact Field Engineering at 719-668-4985.
4. CSU may require an extension contract and payment of contributions-in-aid of construction (or a Revenue Guarantee Contract) for the extension of electric facilities needed to serve the development. With regard to natural gas extensions, CSU may require an extension contract and an advance payment for the estimated cost to construct the necessary gas extensions.
5. Improvements, structures and trees must not be located directly over or within 6 feet of any underground gas or electric distribution facilities and shall not violate any provision of the National Electric Safety Code (NESC) or any applicable natural gas regulations or Colorado Springs Utilities' policies.
6. Improvements, structures and trees shall not be located under any overhead utility facility, shall not violate NESC clearances, and shall not impair access or the ability to maintain utility facilities.
7. Landscaping shall be designed to provide the required clearances for utility facilities, to allow continuous access for utility equipment, and to minimize conflicts with such facilities.

FIGURE 3

8. Colorado Springs Utilities requires wastewater and water construction drawings when new wastewater and water facilities are proposed. Plans can be submitted electronically to Utilities Development Services via www.csu.org.
9. The water distribution system facilities must meet the Colorado Springs Utilities' criteria for fire flow, water quality, service interruption and pressure. To meet service interruption criteria, no more than fifty (50) homes on a dead end water main line are permitted. The static pressure of the water distribution system shall be a minimum of 60 psi. CSU will determine the need for a Water Quality Plan based on information presented in the Development Plan. CSU may require a new or updated Water Quality Plan where construction phasing or the water system design differs from the approved Development Plan.

For more information contact Ann Werner at awerner@csu.org or 668-8262.

Parks & Recreation –

1. Park fees will be required on this site. Fees collected will be applied to the construction of the Sand Creek Trail along Tutt Boulevard.
2. Please include in Note #3 the construction of the 10 f00t-trail along the frontage of the existing golf course club house.

For more information contact Connie Perry at 385-5375.

Fire Prevention –
No 'disapproved' comments.
Attention comments:
No exceptions: CSFD does not have any exceptions with the concept plan as submitted.
For more information contact Steve Smith at 385-7362.

Police – No objections or suggestions.
For more information contact Robert Harris at 444-3168.

Police - Street Name Administrator -
An interior street name is required.
For more information contact Wendy Hamilton at hamiltwe@ci.colospgs.co.us

Regional Building Department - Enumerations –
An address will be assigned for the location of the Transit stop.
The address 3525 Tutt Boulevard should be placed on the mylar in the location of the Club House.
Contact Wendy Hamilton for approval on road names for the multi family. An e-mail from Wendy or someone in that department directly to Enumerations is required.
Enumerations will review the mylar prior to plat for address placement, road naming, title block (legal description) and floodplain.
$10.00 per lot and tract fee will be due at the time of the review of the Mylar. The Golf Course plat will not require an addressing fee.
More comments to follow at the development stage of the multi-family project.
For more information contact Amy Vanderbeek at 327-2930.

Regional Building Department – Floodplain Administration –
There is 100-year. Floodplain on this parcel but the area under consideration is well outside the floodplain. RBD Construction Review/Floodplain Administration has no objection to this submittal.
For more information contact Michael Augenstein at 719-799-2869.

Colorado Spring Airport –

At its monthly meeting held on 2/25/15, the Airport Advisory Commission (AAC) concurred with the Airport staff's "no objection" recommendations and supplemental comments for the subject land use review items.

Please note the following comments:

1. An Avigation Easement or proof of previous filing (book/page or reception number) is requested.
2. If any proposed vertical development and/or use of temporary construction equipment at this site will exceed the height of existing structures, further coordination with the Airport is needed to determine if the applicant will be required to submit an airspace evaluation case to the Federal Aviation Administration (FAA).
3. More information about the airspace evaluation submittal process is available on the FAA's Obstruction Evaluation/Airport Airspace Analysis website (https://oeaaa.faa.gov/oeaaa/external/portal.jsp).

For more information contact Kris Andrews at 550-1915.

Enclosed is correspondence received during the review of the applications.

Failure to submit the requested items within 180 days from the date of this letter will result in the application being formally withdrawn from consideration. Once withdrawn, any subsequent resubmittal will require the filing of a new application and payment of application fees.

If you have questions please call me at 385-5366.

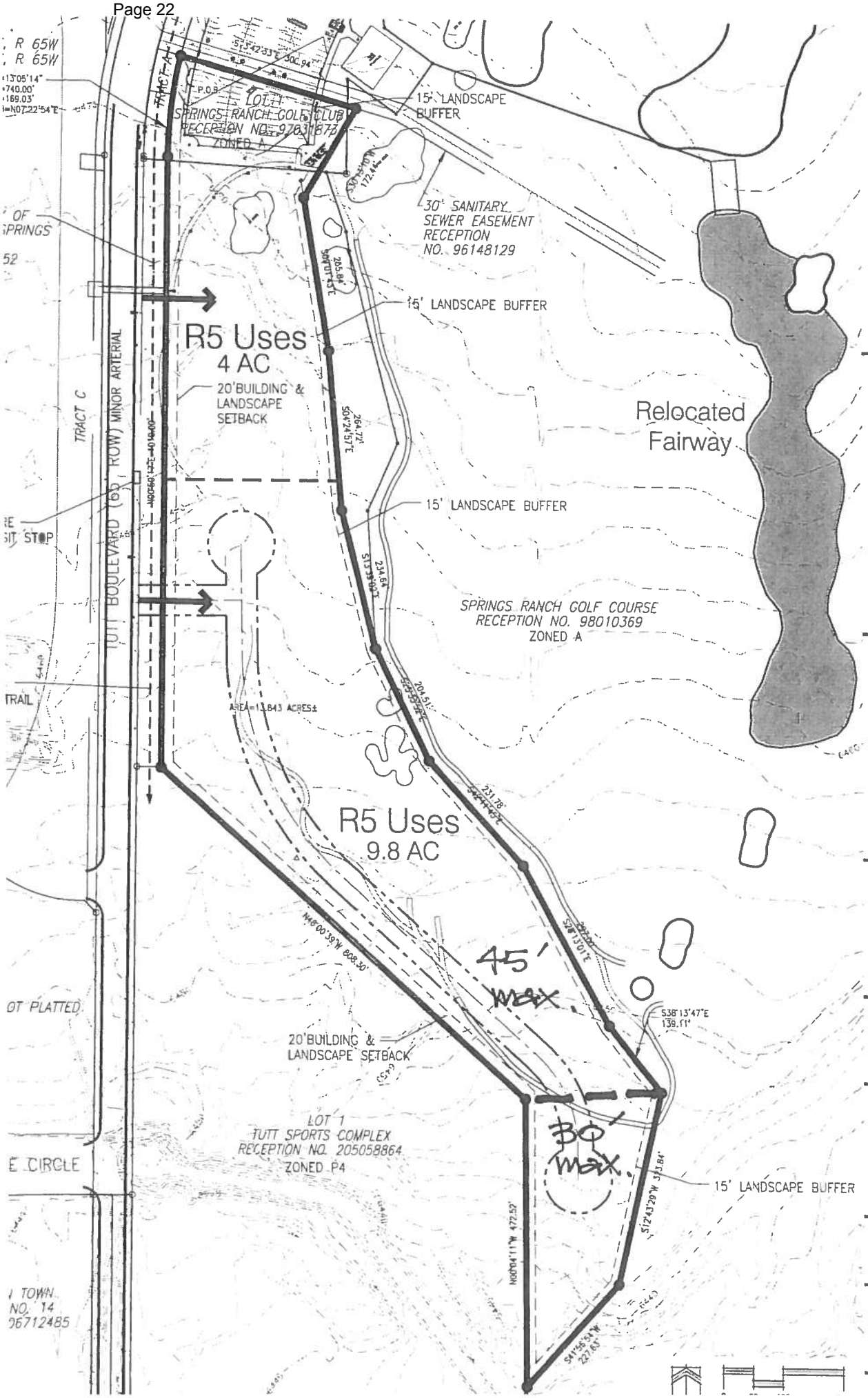
Sincerely,

Steve Tuck
Principal Planner

C: File Nos. CPC ZC 15-00006 and CPC CP 15-00007
Steven T., stevent@stevent.com

Enclosures

FIGURE 3



Land Planning
Landscape Architecture
Urban Design

NES

N.E.S. Inc.
619 N. Cascade Avenue, Suite 200
Colorado Springs, CO 80903

Tel. 719.471.0073
Fax 719.471.0267

www.nescolorado.com

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Springs Ranch Golf Course R-5 Site

Concept Plan

DATE: January 30, 2015
PROJECT MGR: A. Barlow
PREPARED BY: B. Carlson

Maximum building heights

Concept Plan

2

2 OF 3

FIGURE 3

Tuck, Steve

From: Steven T. <stevent@stevent.com>
Sent: Sunday, March 08, 2015 5:10 PM
To: Tuck, Steve
Subject: Comments on Plans File No. CPC ZC 15-00006 and CPC CP 15-00007 (Please view in HTML or Rich Text)
Attachments: SRMP.jpg

8 March 2015

To: Steve Tuck
stuck@springsgov.com

Good Day Steve,

I thank you for providing helpful information during the 5 March 2015 Public Meeting at the Springs Ranch Golf Clubhouse. Per the provisions on the Planning & Development Land Use Review mailer, I would like to submit some comments on the concept plans pertaining to a proposed zone change & reconfiguration of the Springs Ranch Golf Course, specifically [CPC ZC 15-00006] and [CPC CP 15-00007]. Having viewed the associated documents posted at http://www.springsgov.com, I offer the following perspective for consideration:

The posted documentation identifies Zone Change Criteria (Section 7.5.603).

The first Criteria states, *"1. The action will not be detrimental to the public interest, health, safety, convenience, and general welfare."* I'm concerned that a re-zoning & reconfiguration as proposed could be detrimental to the public interest and general welfare of many Springs Ranch residents, as a result of increased congestion and visual decay, given the potential (and likelihood) of multi-story, multi-family residential buildings replacing the otherwise pleasant, peaceful, and pastoral nature presently provided by the agriculture-like space currently occupied by Golf Course fairways.

The second Criteria states, "*2. The proposal [shall be] consistent with the goals and policies of the comprehensive plan.*" And, adjacent to this stated Criteria is proposal rationale stating that, "*.....The reason for the release of this 13.8 acre parcel from the golf course for development is to support the continued viability of the golf course operation.....*" During the 5 March 2015 Public Meeting, the Springs Ranch Golf Course owner spoke publicly, and my understanding is that this Golf Course is experiencing some financial problems, prompting concerns about upcoming notes on debt. Apparently, the Golf Course may not be collecting enough income to offset the costs of operating the Golf Course.

The proposed [zoning & reconfiguration] appears to be an attempt to sell off yet another part of the Golf Course to collect some cash to address a short-term fiscal exigency, but from my view doesn't appear to address the root cause of the Golf Course's balance sheet problems -- if the business model of the Golf Course remains unchanged (and continues to lose money), I don't see how the proposed rezoning/reconfiguration by itself could "*.....support the continued viability of the golf course operation.....*" in the long run. After all, if we don't fix what's broken, temporary workarounds would seem to only delay, and perhaps even *enable*, the inevitable.

Moreover, by rezoning/reconfiguring, the Golf Course design would become geometrically compressed (and in my opinion aesthetically inferior as a result), possibly degrading the advertising appeal of the Golf Course, and thus further risking "*.....the continued viability of the golf course operation.....*". And, once 3-story apartments (or whatever) are built, this potentially regrettable decision would be irreversible.

The third Criteria states, "*When a master plan exists, the proposal [shall be] consistent with such a plan.*" Attached is a scan of the "Springs Ranch Master Plan" distributed around the time I and numerous other

FIGURE 3

residents purchased our homes new in the mid-to-late 1990s. The Plan clearly shows the pledged, detailed layout of the Golf Course. Since that time however, this Plan has apparently been slowly eroding away, with the construction of a gas station, and a sizeable 3-story-high multi-family residential complex, on what used to be part of the Golf Course property off Tutt (as presented in the Master Plan). And, the currently proposed rezoning/reconfiguration would seem to be the most substantial sell-off of this Master Plan yet. When will our conscience finally intervene to stop these dominos?

Like many others, I chose to devote a considerable allocation of my hard-earned pay to afford the [lot premium] included in my new home purchase, largely because of this exact attached Plan. But, as we fast forward 18 years -- were we to proceed with the proposed rezoning/reconfiguration, I personally would feel the same as if I were to experience "bait and switch" or a "breach of contract".

During the 5 March 2015 Public Meeting, an audience member asked the Golf Course owner if he would be open to considering help, in the form of an outside investor and/or a business partner. Notably, and without hesitation, the owner indicated his disinterest in the idea, and appeared to express his personal desire to maintain control of the operation of the business.

I understand the Golf Course owner's attachment to, and passion for, his job/business, and I certainly can sympathize with the rough times he may be experiencing. However, and not to sound indelicate, but business people sometimes have to set aside their emotions and maintain objectivity for what is in the best interest of "*.....continued viability.....*" With no offense intended, this issue shouldn't be all about the personal preferences of one individual in a position of power; the issue should consider the "*public interest*" and "*general welfare*" of the Springs Ranch *community*.

I purchased my home new in the mid-to-late 1990s. My current residence may very well be the last home I ever buy. I take good care of my house/property, I love the neighborhood, and I cherish the view. I didn't purchase my home in whimsical fashion, and I certainly didn't make this lifetime investment with the understanding that the neighborhood Plan, the view, and the associated past handshakes/agreements could slowly-but-steadily deteriorate as a result of discussions about $$$.

I offer the above-stated perspective for your consideration. While my position is not necessarily an exact substitute for those of others in the community, remember that many people are very busy and don't have the time to voice their concerns to the extent of which I've offered to articulate -- consider that a silent populous may also share these concerns.

I would please request a reply acknowledging receipt -- thanks in advance.

Very respectfully,

Steven T.
Resident, Springs Ranch

FIGURE 3

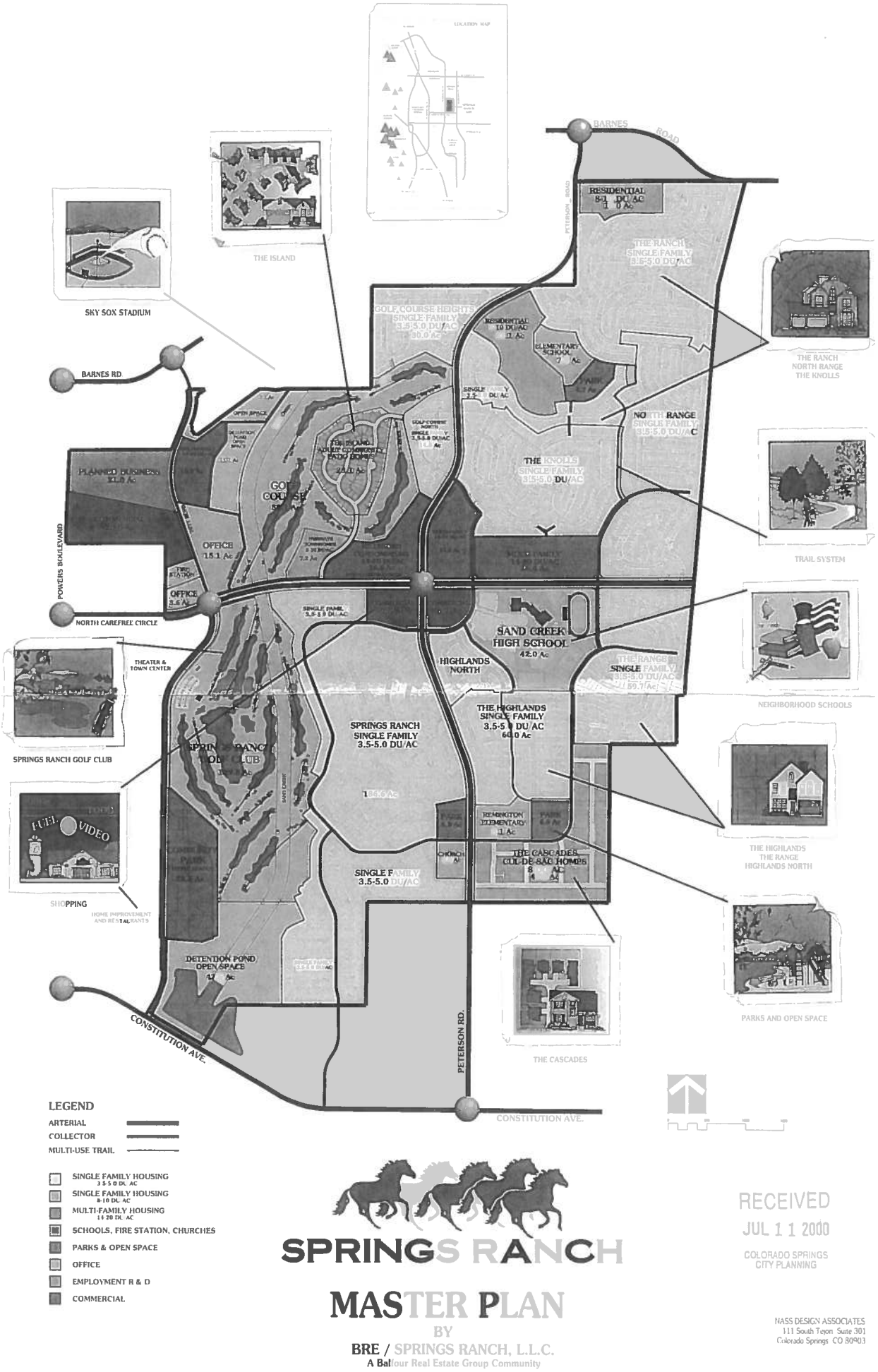
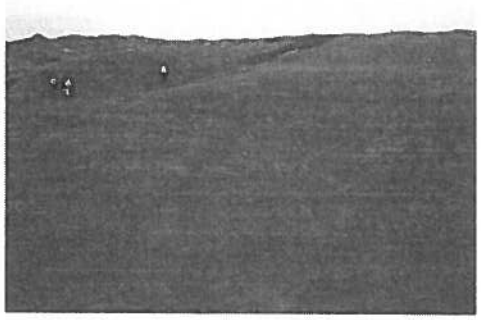

LOCATION MAP
BARNES ROAD
PETERSON ROAD
RESIDENTIAL
8-1 DU/AC
1.0 Ac
THE RANCH
SINGLE FAMILY
3.5-5.0 DU/AC
THE ISLAND
SKY SOX STADIUM
GOLF COURSE HEIGHTS
SINGLE FAMILY
3.5-5.0 DU/AC
30.0 Ac
RESIDENTIAL
10 DU/AC
ELEMENTARY SCHOOL
7 Ac
THE RANCH
NORTH RANGE
THE KNOLLS
BARNES RD
NORTH RANGE
SINGLE FAMILY
3.5-5.0 DU/AC
THE KNOLLS
SINGLE FAMILY
3.5-5.0 DU/AC
PLANNED BUSINESS
GOLF COURSE
OFFICE
15.1 Ac
OFFICE
3.6 Ac
POWERS BOULEVARD
NORTH CAREFREE CIRCLE
TRAIL SYSTEM
SAND CREEK
HIGH SCHOOL
42.0 Ac
HIGHLANDS
NORTH
THE RANGE
SINGLE FAMILY
3.5-5.0 DU/AC
59.1 Ac
THEATER &
TOWN CENTER
NEIGHBORHOOD SCHOOLS
SPRINGS RANCH
SINGLE FAMILY
3.5-5.0 DU/AC
THE HIGHLANDS
SINGLE FAMILY
3.5-5.0 DU/AC
60.0 Ac
SPRINGS RANCH GOLF CLUB
FUEL
VIDEO
REMINGTON
ELEMENTARY
1 Ac
THE CASCADES
CUL-DE-SAC HOMES
THE HIGHLANDS
THE RANGE
HIGHLANDS NORTH
SINGLE FAMILY
3.5-5.0 DU/AC
SHOPPING
HOME IMPROVEMENT
AND RESTAURANTS
DETENTION POND
OPEN SPACE
17 Ac
PARKS AND OPEN SPACE
CONSTITUTION AVE.
PETERSON RD.
THE CASCADES
CONSTITUTION AVE.
LEGEND
ARTERIAL
COLLECTOR
MULTI-USE TRAIL
SINGLE FAMILY HOUSING
3.5-5.0 DU/AC
SINGLE FAMILY HOUSING
8-10 DU/AC
MULTI-FAMILY HOUSING
14-20 DU/AC
SCHOOLS, FIRE STATION, CHURCHES
PARKS & OPEN SPACE
OFFICE
EMPLOYMENT R & D
COMMERCIAL
SPRINGS RANCH
MASTER PLAN
BY
BRE / SPRINGS RANCH, L.L.C.
A Balfour Real Estate Group Community
RECEIVED
JUL 1 1 2000
COLORADO SPRINGS
CITY PLANNING
NASS DESIGN ASSOCIATES
111 South Tejon Suite 301
Colorado Springs CO 80903

FIGURE 3



To: Mr. Steve Tuck, City Planner, Colorado Springs
Email: stuck@springsgov.com
Re. Springs Ranch Golf Club
Reference CPC ZC 15-00006 zone change and CPC CP 15-00007 – Concept Plan

Dear Mr. Tuck:

To give you some perspective, I have been playing the majority of my golf at Springs Ranch Golf Club since about 2 years after it opened. With what is happening now with golf courses, we need to be able to keep those that we have. Here in the Colorado Springs area, we have lost Appletree Golf Course, Gleneagle Golf Course almost lost Kings Deer Country Club and there are rumors of closing the former Woodmoor Country Club. These are all public courses, not private.

A recent report on local news stated that Patty Jewett had 500 golfers play on a Saturday. It's evident that golfers in our area need more access to public courses than less.

Springs Ranch Golf Club gets a serious amount of play throughout the year, when it is playable because it is a well-planned links course that appeals to all levels of ability. It is in the best interest of the community to do what it takes to support the necessary changes to the golf course to insure that it remains part of the fabric of and option for both Colorado Springs golf and for those beyond who often travel from Denver when their only option is to come south.

I am in agreement with the zone change and the concept plan and trust that you view the use of the land to be a benefit to the community.

Bill Robinson
Colorado Springs
(719) 596-3709

FIGURE 4

Tuck, Steve

From: Barbara and Jim Fonner <barbfon@hotmail.com>
Sent: Thursday, April 02, 2015 3:32 PM
To: Tuck, Steve
Cc: Ed Kujalowicz
Subject: Springs Ranch Golf Club Rezoning

Attn: Mr. Steve Tuck, Colorado Springs City Planner

Dear Mr. Tuck,

The purpose of this message is to let you know that we fully support the rezoning plan that affects our local golf course. Specifically, we mean the following items:

Golf Course: Springs Ranch, Hole #9, bordering Tutt Blvd. in Colorado Springs

Rezoning reference: CPC ZC 15-00006 Zone change and 15-00007 Concept plan

We understand that this zone change to the "residential classification" would be beneficial, and necessary, for the Springs Ranch Golf Course to continue as a viable business concern. Furthermore, we understand that the ownership already has in place a planned workaround to satisfactorily replace the existing hole #9 by means of a modified hole layout redesign. We positively support both of these actions.

We have golfed individually, as a couple, and in the senior leagues of this golf course since moving here in 2002. What strikes us is how the management makes the environmentally-sound effort to keep native grassy areas and the riparian sections of Sandy Creek intact. Their stewardship of the land, and efforts to preserve the links-type nature of the golf course assures that golfers have a unique opportunity to enjoy an "old-world" experience similar to courses in Scotland, the birthplace of golf. Add to this the fact that management strives to keep the course open for play as "year-round" as possible, and you readily see what a treasured asset it is. As very active seniors, we certainly take advantage of playing there often throughout the year. We have noticed that the open nature of its topography seems to foster snow-free fairways, quickly, after storms end.

In summary, we urge you to do what is within your power and authority to see that the referenced rezoning plan is ratified. We're sure that you would have the hearty thank-you of the many golfers who we've played with at Springs Ranch, for the past 13 years.

Barbara & James Fonner
7117 Grand Prairie Drive
Colorado Springs, CO 80923
(719) 532-0195 home phone

FIGURE 4

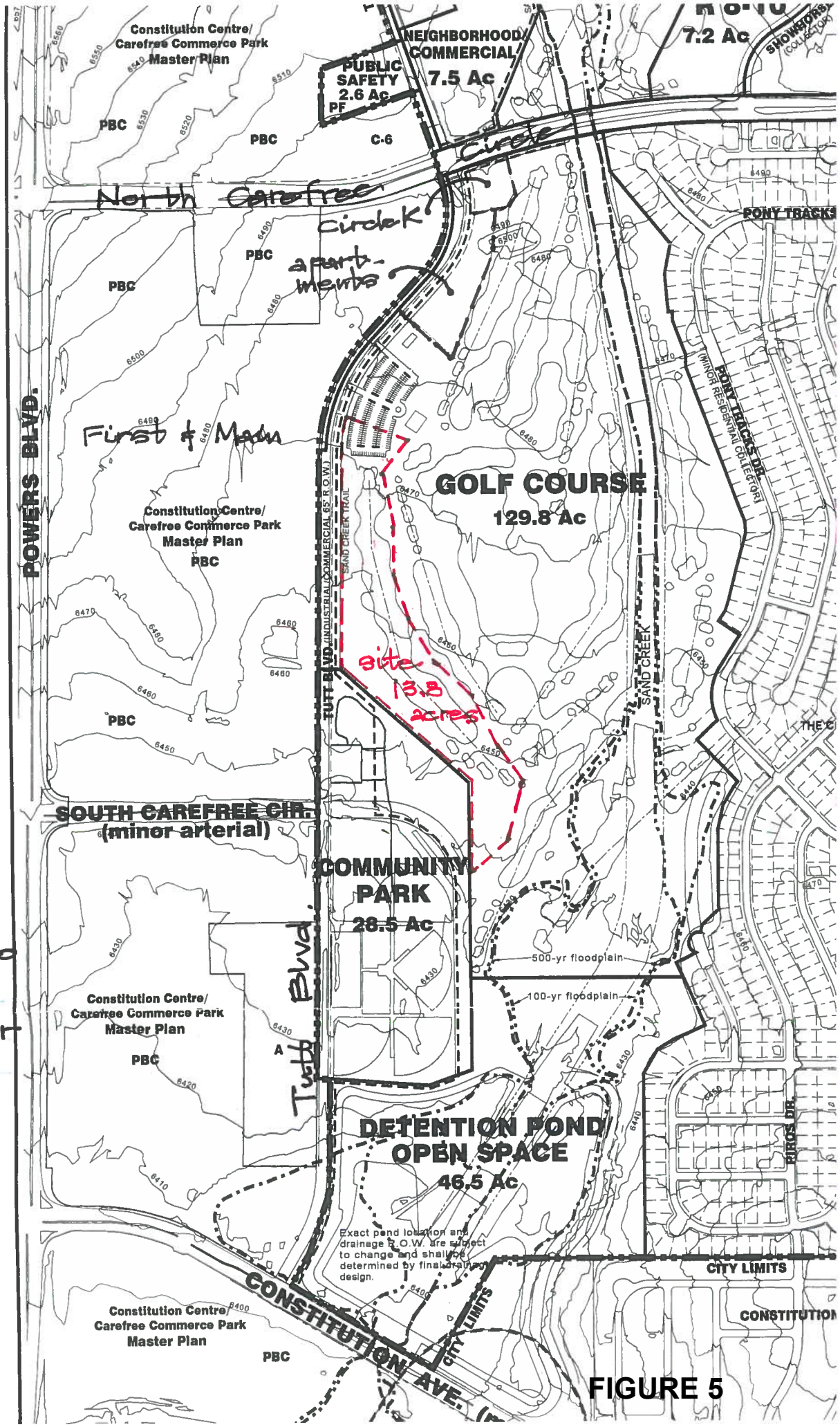
Tuck, Steve

From: RICHARD A NAUGHTON <ddnau@msn.com>
Sent: Sunday, April 05, 2015 9:29 AM
To: Tuck, Steve
Cc: RICHARD A NAUGHTON
Subject: FW: SPRINGS RANCH GOLF COURSE

From: ddnau@msn.com
To: stuck@springgov.com
CC: ddnau@msn.com
Subject: SPRINGS RANCH GOLF COURSE
Date: Thu, 2 Apr 2015 15:35:23 -0600

I live very close to Springs Ranch Golf Course, I have no objections to changes proposed for the golf course. That is the sale of the property located east of Tutt Blvd. between North Carefree and South Carefree. So guess what I'm saying is that I AM IN FAVOR OF THE ZONE CHANGES PROPOSED. THANKS Richard A. Naughton 4040 Golf Club Dr. Colorado Springs, Co 80922

FIGURE 4



from: Colorado Springs Ranch Master Plan

north

FIGURE 5

CONSENT CALENDAR

CITY PLANNING COMMISSION AGENDA

ITEM NO.: B.1 – B.2:

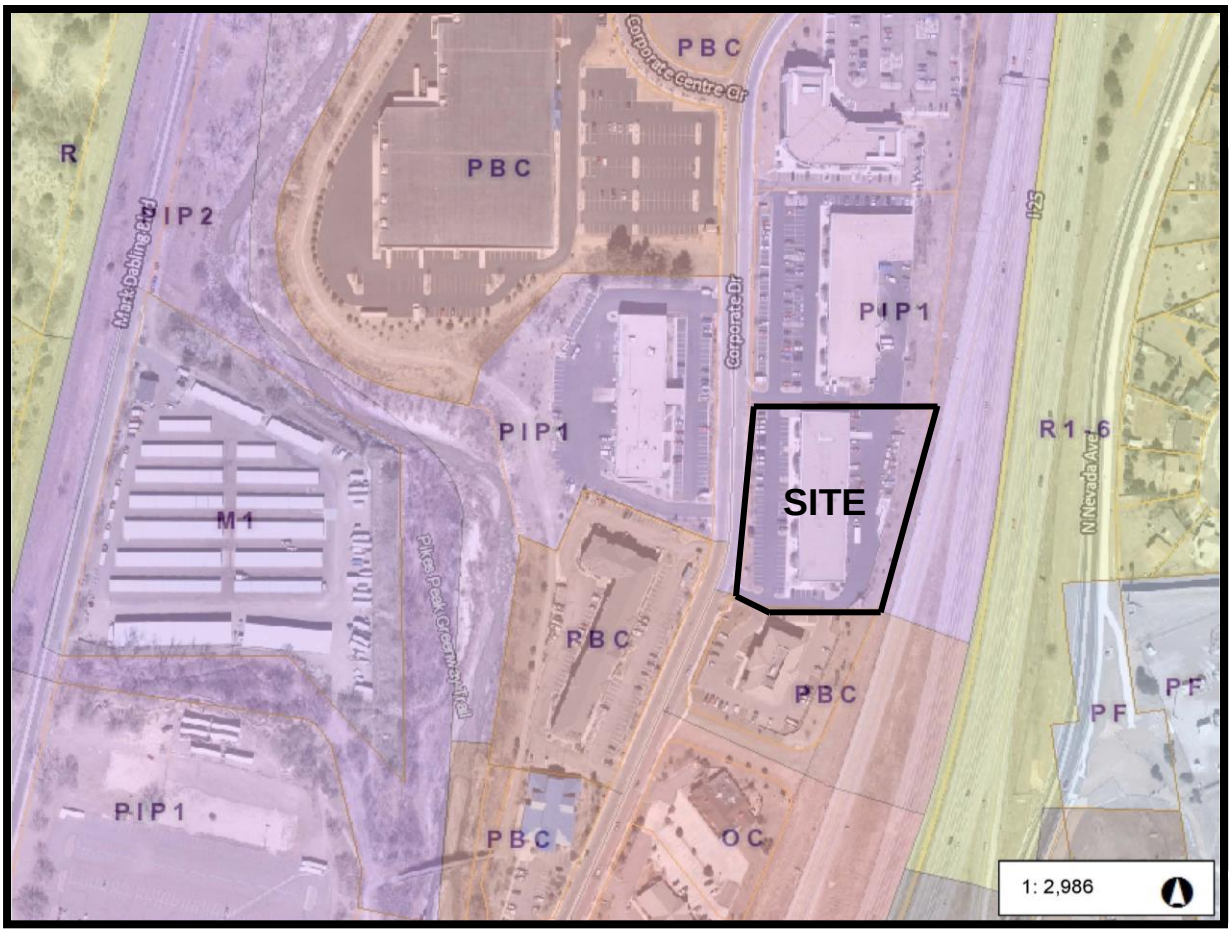
STAFF: RACHEL TEIXEIRA

FILE NO(S):
CPC UV 15-00020 – QUASI-JUDICIAL
CPC R 15-00019 – QUASI-JUDICIAL

PROJECT: CORPORATE CENTRE FILING NO. 5

APPLICANT: YOW ARCHITECTS

OWNER: COLUMBUS REAL ESTATE



PROJECT SUMMARY:

1. Project Description: This request is for administrative relief and use variance applications for a 2.34 acre site located east of Corporate Drive, north of the intersection of Corporate Drive and I-25. The applicant is requesting a use variance to expand an already operational specialty auto and service use with indoor sales and showroom located within an existing building and an administrative relief for 52 parking spaces where 60 spaces are the requirement. A use variance for this business was initially approved by the City Planning Commission in 2008 to occupy 4,982 square feet of the building. This application, if approved, will expand the use to a total of 13,700 square feet. **(FIGURE 2)**.
2. Applicant's Project Statement: **(FIGURE 2)**
3. Planning & Development Department's Recommendation: Approval of both applications.

BACKGROUND:

1. Site Address: 6275 and 6285 Corporate Drive.
2. Existing Zoning/Land Use: PIP-1/HS/UV (Planned Industrial Park with Hillside Overlay and Use Variance)/ Office/Warehouse/Retail.
3. Surrounding Zoning/Land Use:
   North: PIP-1 (Planned Industrial Park)/ Warehouse/Storage.
   South: PBC (Planned Business Center)/ Office.
   East: Interstate I-25.
   West: PIP-1 and PBC/ Light Industrial, Retail and Motel.
4. Comprehensive Plan/Designated 2020 Land Use: Employment Center.
5. Annexation: Golden Cycle Addition #1 (April 1966).
6. Master Plan: Rockrimmon.
7. Subdivision: Corporate Centre Filing No. 5.
8. Zoning Enforcement Action: None.
9. Physical Characteristics: The site is developed with an office/warehouse/retail building.

STAKEHOLDER PROCESS AND INVOLVEMENT:

The public process involved with the review of these two applications included posting of the site and sending postcards to ten adjacent property owners within 500 feet on two separate occasions, for the internal review and City Planning Commission meeting notifications. No comments were received.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES:

1. Review Criteria / Design & Development Issues:
   The applicant proposes to convert 13,716 square feet of space in an existing building for a specialty auto service use with indoor sales and showroom space. This use is not permitted in the PIP-1 zone and can only be initiated with approval of a use variance. There is also an application for administrative relief due to the shortage of eight parking spaces for the site since extra display parking spaces are being provided for the specialty auto and service use.

   The site also includes a 4,797 square foot office, showroom and storage use and 4,880 square foot specialty retail for the sales and service of factory produced accessible wheelchair vehicles (this was a previously approved use variance per File No. CPC UV 08-00106). The property is fully developed and no other additional site or off-site improvements are required.

   Staff believes that the proposed expansion of the existing use results in negligible, if any, impacts to the uses within the site, or surrounding properties, and allows a successful business to expand in its current location. Staff finds that the three review criteria for a use variance are met per City Code Section 7.5.803.B and the four review criteria for administrative relief are met per City Code Section 7.5.1102.

2. Conformance with the City Comprehensive Plan:

The specialty auto and service use proposed on the site complies with the employment center designation from the City Comprehensive Plan. The Comprehensive Plan statements that support this project are listed below:

Land Use Policy: Commercial Development.
Strategy LU 701f: Encourage New Commercial Development in New and Developing Corridors to Form Activity Centers.
Encourage new commercial development in new and developing corridors to take place in activity centers that incorporate a mix of uses and avoid large, single-use buildings and dominating parking areas.

Land Use Policy: Industry and Employment.
Strategy LU 801f: Plan and Locate Mixed Uses to Serve Industrial Areas.
Plan and locate complimentary mixed-use centers to serve the needs of employees in industrial areas, including commercial, service, and restaurant uses.

3. Conformance with the Area's Master Plan:
   The master plan for this site has been implemented.

STAFF RECOMMENDATION(S):

ITEM : B.1 CPC UV 15-00020 – USE VARIANCE

Approve the use variance for Corporate Centre Filing No. 5, to allow a specialty auto and service use with indoor sales and showroom to be located within an existing building located at 6275 and 6285 Corporate Drive in the PIP-1 zone, based upon the finding that the use variance complies with the three (3) review criteria for granting a Use Variance as set forth in City Code Section 7.5.803.B, subject to the following conditions and technical modifications:

Conditions of the Use Variance and technical modifications to be added to development plan:

1. No more than twenty (20) vehicles may be displayed outdoors and only within the designated display parking area on the property at any one time.
2. No outdoor storage of any automobile parts.
3. No sales banners, balloons or other additional advertising techniques are allowed in conjunction with the use.

ITEM : B.2 CPC R 15-00019 – ADMINISTRATIVE RELIEF

Approve the administrative relief for Corporate Centre Filing No. 5, to allow 52 parking spaces and 20 display spaces where 60 parking spaces are required based upon the finding that the administrative relief complies with the four review criteria in City Code Section 7.5.1102.

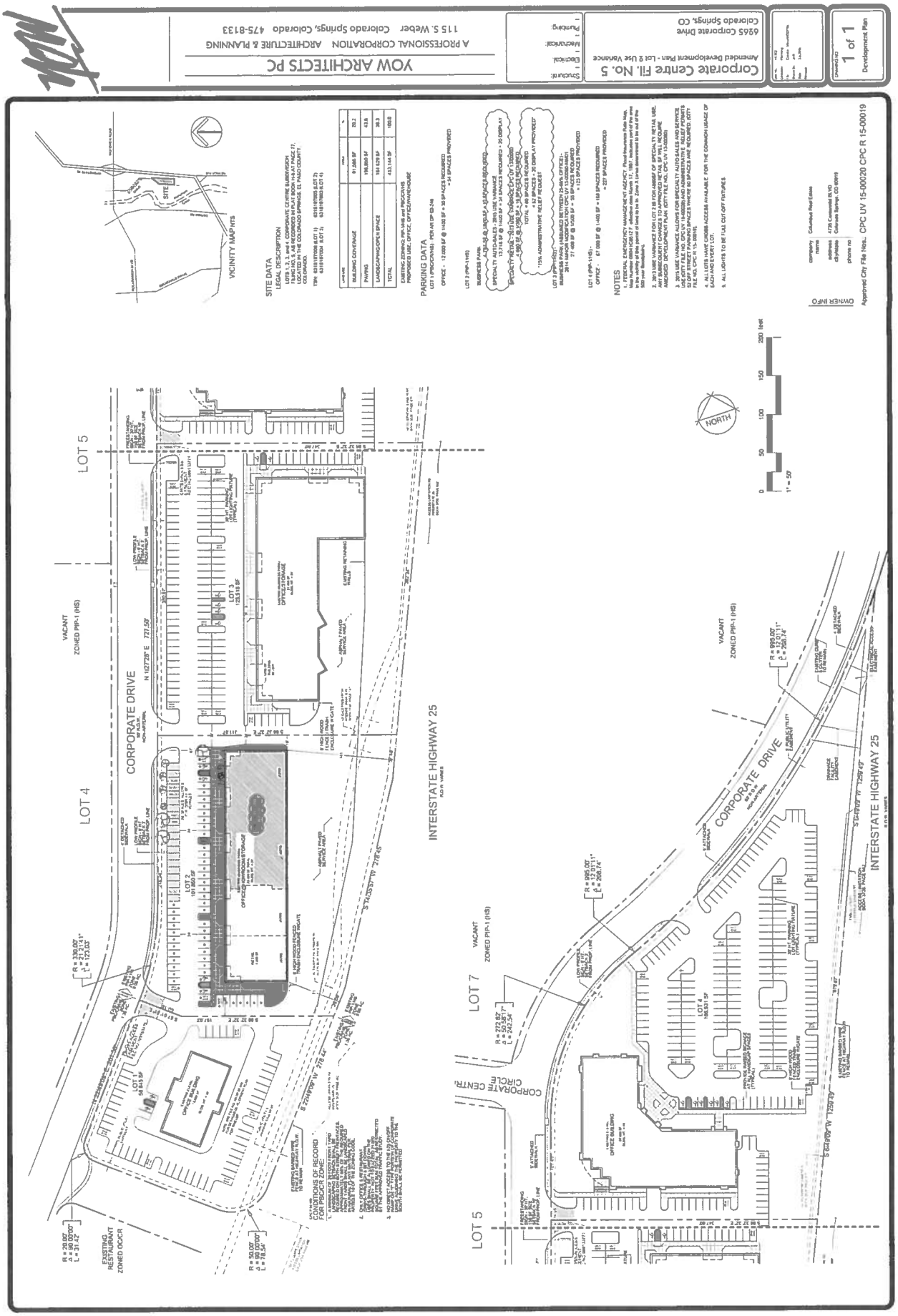

YOW ARCHITECTS PC
A PROFESSIONAL CORPORATION ARCHITECTURE & PLANNING
115 S. Weber Colorado Springs, Colorado 475-8133
Corporate Centre Fil. No. 5
Amended Development Plan - Lot 2 Use Variance
6245 Corporate Drive
Colorado Springs, CO
Structural:
Mechanical:
Electrical:
Plumbing:
Development Plan
SITE DATA
LEGAL DESCRIPTION
VICINITY MAP PTS
SITE
PARKING DATA
NOTES
OWNER INFO
Approved City File Nos.. CPC UV 15-00020 CPC R 15-00019
LOT 5
LOT 4
CORPORATE DRIVE
INTERSTATE HIGHWAY 25
VACANT
ZONED PIP-1 (HS)
LOT 7
CORPORATE CIRCLE
EXISTING RESTAURANT
ZONED OCCR
NORTH
1" = 50'

FIGURE 1

YOW ARCHITECTS PC
115 SOUTH WEBER STREET SUITE 200 COLORADO SPRINGS, COLORADO 80903
(719) 475-8133 www.yowarch.com

March 10, 2015

Rachel Teixeira
Planner II
City of Colorado Springs – Land Use Review
30 S. Nevada, Suite 155
Colorado Springs, CO 80903

RE: 6265 Corporate Centre – Minor Modification
TSN: 6318107005

DESCRIPTION:

This submittal is for the approval of a Minor Modification to an Approved Development Plan for parcel no.: 6318107005, Lot 2, Corporate Centre Fil. No.5. This 2.33ac site is located northwest of the Nevada and Corporate Drive Intersection. The site is currently zoned PIP1.

The proposal is for modified use change, in a PIP1 zone, for a previously approved specialty auto use. The previously approved specialty use area is being modified to ~13,700sf. Additional display parking is being provided at a limited capacity and cross parking agreements are in place for Lots 2 and 3. With the modified use area and display areas Lot 2 is seen as 8 spaces short of the required minimum. At this time administrative relief is being requested for the 13% shortage. No additional changes to the previously approved Use variances on the property are being requested and are to remain as previously approved.

No site or major building changes are being proposed at this time.

Should you require any additional information, please contact me at 719.475.8133.

Respectfully yours,

Jon Romero, Planner
YOW Architects pc

Lawrence Whittaker, AIA Architect
Director of Architecture

Steven L. Obering, Architect
Director of Planning

D. Gene Yergensen, Architect
Founding Principal

Kreg Obergfell, Architect
Project Architect

Jerry H. White, Architect
Project Architect

Brad McFarland, Architect
Project Architect

Jonathan Whittaker,AIA Architect
Project Architect

Jonathan Romero,RLA Planner/LA
Associate Director of Planning

Debra Obering, Office Manager
Bev Whittaker, Finance Officer

FIGURE 2

NEW BUSINESS CALENDAR

CITY PLANNING COMMISSION AGENDA

ITEM NO.:4

STAFF: LONNA THELEN

FILE NO:
AR NV 15-00075 – QUASI-JUDICIAL

PROJECT: **555 S. 8TH STREET**

APPLICANT: **JOHN NELSON**

OWNER: **THJ&J, LLC**

APPELLANT: **EIGHTH AVENUE LLC**

PROJECT SUMMARY:

1. Project Description: This project is an appeal of a nonuse variance request to allow 17 parking spaces where 34 are required to use the property as restaurant and retail. The existing 5,005 square foot structure is proposed to be used as half retail and half restaurant. In addition a 200 square foot ice house structure would be added to the site. The existing structure is 5,005 square feet in size and is parked using the City's standard of one parking stall per 300 square feet of retail space and the lot provides 17 on-site parking stalls. The utilization of 2,502 square feet of the building as restaurant and the addition of the 200 square foot retail ice house would change the parking ratio and increase the required number of on-site parking stalls required to 34 **(FIGURE 1)**. The non-use variance is for 17 spaces where 34 are required.

2. Applicant's Project Statement: **(FIGURE 2)**

3. Planning and Development Team's Recommendation: Denial of the appeal and approval of the nonuse variance.

BACKGROUND:

1. Site Address: 555, 557 and 559 S. Eighth Street
2. Existing Zoning/Land Use: C-6 (General Business) / retail
3. Surrounding Zoning/Land Use: C-6 (General Business) / commercial
   South: C-6 (General Business) / commercial
   East: C-6 (General Business) / commercial
   West: C-6 (General Business) / commercial
4. Comprehensive Plan/Designated 2020 Land Use: Mature Redevelopment Corridor
5. Annexation: Fountain Creek Addition #5 - 1967
6. Master Plan/Designated Master Plan Land Use: Westside Master Plan (1980) / Commercial General
7. Subdivision: Wal-Mart Center Filing No. 1 (1989)
8. Zoning Enforcement Action: None
9. Physical Characteristics: The site is roughly half an acre and is located on the northeastern corner of S. Eighth Street and W. Moreno Ave. The lot contains a 5,005 square-foot commercial building, 17 parking stalls and a generous landscape buffer to the west and south. The property is identified as Lot 4 of Wal-Mart Center Filing No. 1 **(FIGURE 3)** and is one of three pad sites within the larger commercial center. The primary lot within the center (Lot 1) is roughly 8.7 acres, roughly half of which is developed as a parking lot to accommodate the commercial use.

STAKEHOLDER PROCESS AND INVOLVEMENT:

The standard City notification and posting process was used with 18 property owners within 500 feet of the site notified at the time of submittal. A letter of opposition to this request dated March 9, 2015 is included **(FIGURE 4)**. The adjacent owner's primary concern is that approval of the application will negatively impact the use and value of Lot 1. The applicant responded with a formal reply dated March 24, 2015 **(FIGURE 5),** which includes a copy of the commercial center's "Declaration of Easements and Covenants." The nonuse variance application was approved on April 15, 2015 **(FIGURE 6)** and an appeal was filed on April 24, 2015 **(FIGURE 7).** Prior to the City Planning Commission hearing, the site will be posted and postcards mailed once again.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Review Criteria / Design & Development Issues:
   In October, 2008 the property owner THJ&J, LLC submitted a non-use parking variance to allow half of the 5,005 square-foot building to be utilized as a restaurant. The application was approved administratively in January, 2009. Ten days later an appeal was filed by Eighth Avenue LLC. At the February 19, 2009 Planning Commission hearing, the Commission upheld the appeal and overturned Staff's approval with a 5-3 vote. The applicant did not appeal Planning Commission's decision to City Council.

The applicant struggled to retain tenants in the subject building. City Code Section 7.5.907 states that "whenever a… nonuse variance has been finally disapproved by the Planning Commission or City Council, no further application shall be made for the same… nonuse variance affecting the same property, or a part thereof, for a period of twelve (12) months from the date of the final action of disapproval." As such, the applicant was required to wait until at least February, 2010 to resubmit the requested variance. An application was submitted on June 10, 2011. On August 18, 2011, City Planning Commission approved a nonuse variance to allow 15 spaces where 33 were required **(FIGURE 8)** for this site to allow half of the building to be used for retail and half of the building to be used for a restaurant. The Planning Commission's action also approved a drive thru around the west and south sides of the building for the proposed restaurant. The drive-thru required the removal of 2 parking spaces on the site. The Planning Commission's approval was not appealed to City Council. Per Section 7.5.807.A. the rights granted via a non-use variance expire if action is not taken to utilize those rights within 12 months of the date of final decision. Because the building was never occupied by a restaurant, nor was a drive-thru constructed, the 2011 variance expired nearly three years ago.

The current request is for 17 spaces where 34 are required. The plan proposes the same allowance for half of the building to have a retail use and half of the building to have a restaurant use; however, the proposal adds a 200 square foot ice house to the site which requires an additional parking space and removes the drive thru for the restaurant. The proposed ice house measures 24 feet long by 8 feet, 4 inches wide and is just over 14 feet tall. The building provides retail ice cubes in customized quantities to walk-up customers. In total the current proposal has one more parking space as compared to the previous request. (Previously the request was for 15 spaces where 33 are required and the current request is for 17 spaces where 34 are required.)

The City's Zoning Code includes a number of regulations applicable to the provision and design of private parking areas. The stated purpose of the City's off street parking standards is "to ensure the provision, location and design of off street parking areas that accommodate motor vehicles, while supporting the objectives and policies of the Comprehensive Plan, including balancing the needs of pedestrian and transit users with use of the automobile…" While City Code Section 7.4.205.J. requires off-street parking stalls to be located on the same lot as the use, the purpose described above alludes to a need to recognize the objectives and policies of the Comprehensive Plan and the need to balance the needs of pedestrians and transit users with the automobile.

According to the City's "parking space requirements by use" table found in Section 7.4.203.A. of City Code, a retail use is required to provide one parking stall for every 300 square feet of gross floor area; and a restaurant use is required to provide one parking stall for every 100 square feet of gross floor area. Using these ratios, the proposed use mix in the existing building is required to provide 34 on-site parking stalls; the plan illustrates only 17 stalls. The plan does include 2 additional stalls that are adjacent to the site, but the property line runs through the stalls.

The applicant acknowledges that City Code requires the 34 parking stalls on-site given the proposed mix of uses. However, the applicant also claims that the required non-use variance criteria are met and relief should be granted. A significant portion of this claim is based on the presence of a cross access and parking easement that was established in 1989 when the larger commercial center was being developed (see **FIGURE 5,** which includes a copy of the commercial center's Declaration of Easements and Covenants). There are two key sections to these documents. The first is Section 2.b. which states:

> "Parking and Incidental Use. For the benefit of all Owners, and their Guests, Declarants hereby establish as an appurtenance to each and every part of the Shopping Center a non-exclusive easement and right for vehicular and pedestrian use of, including delivery and service trucks and vehicles, all parking areas which are a portion of the Common Areas or Common Area Improvements. Notwithstanding the foregoing, all employees working at establishments on Lot 1 Property, shall park in parking areas on Lot 1 Property only."

Essentially, this language allows all owners and their guests to use any part of the center for vehicular and pedestrian use. The only stated restriction is that the employees of the Lot 1 establishments (Hobby Lobby and Office Depot) must park on Lot 1. The underlying implication of this statement is that the employees and customers of Lots 2, 3, and 4 may park on Lot 1.

The other key section of the legal declaration is Section 7, which states:

> "Parking Areas. No person or entity may place fences or other structures on any portion of the Common Areas or alter the flow of traffic and parking thereon, unless such alterations or structures are consistent with the Site Plan. There shall be maintained, at all times, on each Parcel, together with any parking on appurtenant easements adjacent thereto, the number of parking spaces required by any applicable zoning ordinance, building code, or other governmental regulation. No improvements shall be constructed on any Parcel, unless the required minimum parking will be maintained on such Parcel, and all other requirements herein are satisfied."

This section allows for each parcel's required parking stalls to utilize the parking easements adjacent to each parcel. This section also restricts the construction of "improvements" on each parcel to protect the center's parking supply. The current site plan adds back two stalls by eliminating the previously approved drive-thru on the site.

In evaluating the requested parking variance there is justification for evaluating the parking supply and demand of the entire center, especially given that part of the applicant's justification is based on the legal right to utilize parking stalls on Lot 1. As stated previously, the center was developed with four lots: Lot 1 (the largest at roughly 8.7 acres), Lot 2 (the smallest at roughly 0.25 acres), Lot 3 (roughly 0.55 acres), and the subject property Lot 4 (roughly 0.5 acres). Lots 2 and 3 of the original subdivision were replatted into a new configuration in 1991 via AutoZone Filing No. 1 which created a larger pad for an AutoZone retail store (roughly 0.66 acres) and a small lot that remains vacant today (roughly 0.15 acres). The current uses, required parking counts, and approximate parking supply are described in the following table:

Lot	Use	Parking Required	Parking Provided
W-M Lot 1	Office Depot / Hobby Lobby	290	487
AZ Lot 1	AutoZone	21	37
AZ Lot 2	vacant	0	0
W-M Lot 4	retail/restaurant (proposed)	34	19*
Totals		**345**	**543**

*The two stalls adjacent to the building with the property line running through them were included in this figure.

The table illustrates that there are approximately 198 more parking stalls in the center than are required by City Code. However, there are two additional issues that should be considered when evaluating the center's parking supply:

- Ramblin' Express – The owner of Wal-Mart Lot 1 (the 8.7 acre lot) has leased approximately 103 parking stalls at the northern end of the lot to Ramblin' Express for their use as a transportation terminal. This area has its own parcel number, but is still subject to the cross-access and parking easements applicable to the entire center. A transportation terminal is a permitted use in the C-6 zone and staff supports the use of the center's excess parking for a productive use. However, no formal review or approval of the use, circulation or signage has occurred to date.

- Future Redevelopment - The owner of Wal-Mart Lot 1 has met with staff through a formal pre-application meeting regarding the desire to develop a new fast-food restaurant on Lot 1 just north of the subject property. The stated intent of this action is to dissolve the vacant AutoZone Lot 2 and utilize the unused development potential for a larger and better located pad along S. Eighth Street. While staff supports this action in concept, no formal submittal has occurred to date.

Even after accounting for the transportation terminal use and allowing for future development within the center, staff concludes that there is more than adequate parking supply within the center.

Any request for a non-use variance must be evaluated using the three criteria found in Section 7.5.802.B of the City Code. These same criteria are expanded upon in Section 7.5.802.E. of the City Code. A brief analysis of the criteria follows:

- Extraordinary or Exceptional Physical Conditions: As concluded in the April 16, 2015 record of decision **(FIGURE 6)** staff finds that this criterion is met. The lot as platted is relatively small when considering the size of the approved building and the portion of the lot that contains landscaping, parking and drive aisles. A similar condition was present on Wal-Mart Filing No. 1's lots 2 and 3; they were replatted just two years after platting to allow for the construction of the existing AutoZone site. While that replat allowed for the development of the AutoZone, it also resulted in an extremely small (roughly 0.15 acres) lot that remains vacant over 20 years after its creation. The existing condition of the subject property, including its size, shape and the location of the building relative to the lot lines, are unique to the center and the area and present an exceptional condition that requires a variance to remedy.

- No Reasonable Use: The subject property has been occupied by a range of retail and office uses over the last two decades. However, recent years have been more difficult to attract and retain tenants. The owner believes that the addition of the ice house and the removal of the drive-thru lane will help the structure become reasonably marketable.

- No Adverse Impact: City Code requires that a non-use variance may not adversely impact to public health, safety and welfare or be injurious to surrounding properties. The adjacent property owner contends that the granting of the variance will force the applicant's employees and customers to utilize parking stalls on his property (Lot 1, Wal-Mart Filing No. 1) without legal rights. The applicant argues that they have legal rights to use the parking stalls on Lot 1. However, with or without the applicant's legal rights to use the stalls on Lot 1, the primary question is if the proposed variance will adversely impact the public or the adjacent property owners. Given the significant surplus in parking in the center staff finds that there is no reasonable expectation that the granting of this variance will adversely impact the public or the adjacent property owners.

Two last items that are not specifically identified as non-use variance criteria, but warrant discussion, include the request's conformance with the City's Comprehensive Plan and the request's consistency with similar approvals in the area and across the city.

- Comprehensive Plan: As described in the stated purpose of the City's off street parking standards (see the beginning of this section); the provision of off-street parking should support the objectives and policies of the Comprehensive Plan, and balance the needs of pedestrian and transit users with use of the automobile. The Comprehensive Plan includes a number of objectives and policies (see Section 2 below) that support the requested parking variances. In general terms, the Comprehensive Plan encourages mixed uses, transit oriented, and in-fill development. While the conversion of an existing retail space into a restaurant use does not fulfill these goals in their entirety, the

proposed project does better utilize the existing surplus in parking supply, thereby minimizing the impact to the City's transportation network and stormwater system.

- Similar Requests / Approvals: Requests similar to this application are not uncommon. While City Code requires each lot to provide their own parking, even in commercial centers, there often are reasons to support the requests. In light of this, the City even changed the parking code to account for the "commercial center" use in certain instances to allow for the use of one global parking ratio for the users to share. However, these provisions are not available in this case due to the fact that the subject property only has two uses. Regardless, staff was able to identify a number of instances over the last few years where administrative relief or non-use variances were granted to commercial centers to recognize shared parking opportunities. Once such example is directly across the street at 402 S. Eighth Street where staff approved 14 parking stalls where 19 are required for Captain D's fast-food restaurant. Staff finds that the proposed application is consistent with similar requests in the area and across the city.

After extensive review and consideration, staff finds that the required variance criteria are met.

2. Conformance with the City Comprehensive Plan:
Policy LU 203: Develop a Land Use Pattern that is Mutually Supportive with the Intermodal Transportation System
Develop a land use pattern that supports, and is in turn supported by, increased pedestrian, bicycle, and transit travel and that reduces the need for automobile use.

Policy LU 203: Develop a Land Use Pattern that is Mutually Supportive with the Intermodal Transportation System
Develop a land use pattern that supports, and is in turn supported by, increased pedestrian, bicycle, and transit travel and that reduces the need for automobile use.

Policy LU 401: Encourage Appropriate Uses and Designs for Redevelopment and Infill Projects
Work with property owners in neighborhoods, the downtown, and other existing activity centers and corridors to determine appropriate uses and criteria for redevelopment and infill projects to ensure compatibility with the surrounding area.

Objective LU 7: Develop Shopping and Service Areas to be Convenient to Use and Compatible with Their Surroundings
Colorado Springs has numerous commercial areas that provide the necessary goods and services for visitors and regional, community, and neighborhood residents. The location and design of these areas not only has a profound effect on the financial success of commercial businesses, but also on the quality of life for the residents. Regardless of whether a commercial development is intended to serve neighborhood, community, citywide, or regional functions, it must be located and designed to balance pedestrian, bicycle, automobile, and, in many cases, transit access. In addition, the location and design of commercial uses must be integrated into surrounding areas, rather than altering the character of surrounding land uses and neighborhoods. Incorporating a mix of uses will increase the diversity and vitality of commercial areas.

Strategy LU 702b: Redevelop and Infill Commercial Uses in Mature/Development Corridors to Form Activity Centers
Redevelop and infill commercial uses in mature/redevelopment corridors to support the formation and evolution of new activity centers. Coordinate the formation of new activity centers with the redevelopment of the entire corridor.

This project is extremely consistent with the City's Comprehensive Plan objectives, policies and strategies. The project is an infill project and it allows multimodal access to the site from the surrounding neighborhoods.

3. Conformance with the Area's Master Plan: The project falls within the 1980 Westside Master Plan where the site is identified within the "Commercial General" land use category. While there is little direct discussion of the S. Eighth Street area within the Plan, Staff concludes that the proposed project is consistent with the master plan.

4. Appeal review criteria. Pursuant to City Code Section 7.5.906.A..4, the appellant must substantiate the following criteria:

   a. Identify the explicit ordinance provisions which are in dispute.
   b. Show that the administrative decision is incorrect because of one or more of the following:
      (1) It was against the express language of this zoning ordinance, or
      (2) It was against the express intent of this zoning ordinance, or
      (3) It is unreasonable, or
      (4) It is erroneous, or
      (5) It is clearly contrary to law.
   c. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

   The appellant's justification is attached as Figure 7. Staff believes that appellant failed to demonstrate how the administrative decision meets the appeal criteria. Staff has provided sufficient evidence that the approval of the non-use variance was appropriate and meets the intent and purpose of non-use variances, particularly in light of the shared parking easement.

5. Infill and redevelopment policy. Although not yet adopted as part of the City's Comprehensive Plan, both the Executive and Legislative strategic plans set a high priority to the removal of barriers and providing solutions that enable redevelopment and infill of mature areas of the City, including adaptive reuse of vacant or underutilize properties. The work of the Infill and Redevelopment Steering Committee recently formed by the City Council and supported by Mayor Bach further supports staff's approval of the non-use variance.

STAFF RECOMMENDATION:

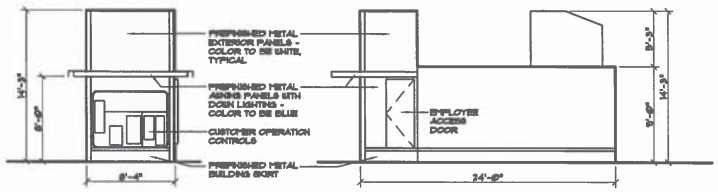
Item No: 4 CPC NV 15-00075 – Non-Use Variance

Deny the appeal and approve the non-use variance requests for 17 parking stalls where 34 are required based upon the finding that the request complies with the review criteria in City Code Section 7.5.802.B. and that the appeal criteria found in City Code Section 7.5.906.A.4 are not met.

555-559 SOUTH EIGHTH STREET

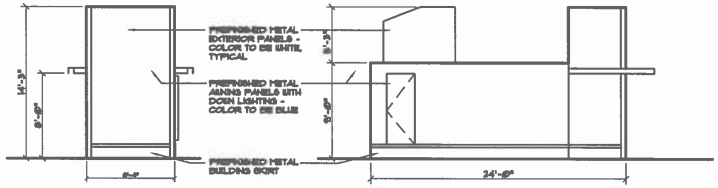
NON-USE VARIANCE/RESTAURANT PARKING

COLORADO SPRINGS, COLORADO 80909



NORTH (CUSTOMER) ELEVATION

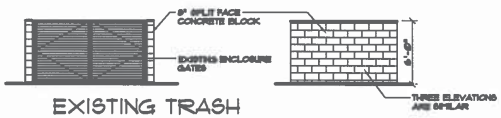
WEST (8TH STREET) ELEVATION



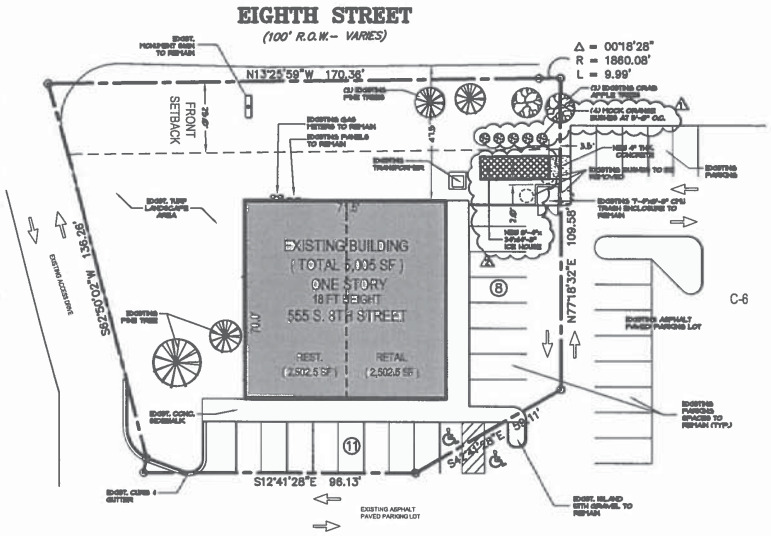
SOUTH ELEVATION

EAST ELEVATION

1 SD-1 ICE HOUSE ELEVATIONS
SCALE: 1/16"=1'-0"

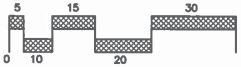


2 SD-1 EXISTING TRASH ENCLOSURE ELEVATIONS
SCALE: 3/16"=1'-0"



NORTH

SITE DEVELOPMENT PLAN
SCALE: 1"= 20'-0"



LEGAL DESCRIPTION:

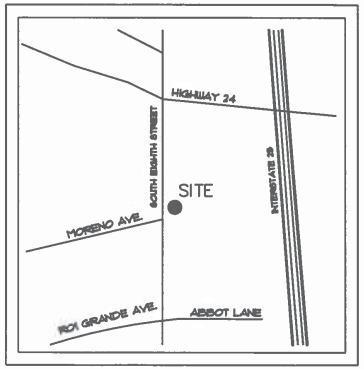
LOT 4 WAL-MART CENTER FIL NO 1 EX THAT PT DES AS FOLS: COM AT SW COR OF SD LOT 4, TH N 13°25'29" W 94.59 FT FOR POB, TH CONT N 13°25'29" W 75.77 FT TO A PT OF CUR, TH ALG ARC OF CUR R WITH A RAD OF 1860.08 FT A C/A OF 00°18'28" WHICH CHORD BEARS N 13°16'45" W 9.99 FT FOR AN ARC DIST OF 9.99 FT, TH N 77°18'32" E 109.58 FT, S 42°41'28" E 59.11 FT, S 12°42'47" E 34.45 FT, TH S 77°15'54" W 138.06 FT TO POB

NOTE:
AN APPLICATION TO THE EL PASO COUNTY GIS MAPPING OFFICE HAS BEEN SUBMITTED IN ORDER TO COMBINE THE EXISTING TWO LOTS INTO ONE. CITY PLANNING WILL BE COPIED WITH THE FINAL LEGAL DESCRIPTION FOLLOWING APPROVAL

DECLARATION OF EASEMENTS AND COVENANTS:

REFER TO BOOK 5679, BEGINNING PAGE 391, EL PASO COUNTY CLERK AND RECORDER, RECORDED OCTOBER 20, 1989 – #01869228

THERE IS PROVISION IN THE COVENANTS FOR 'NON-EXCLUSIVIVE EASEMENT AND RIGHT FOR VEHICULAR AND PEDESTRIAN USE OF.... ALL PARKING AREAS WHICH ARE A PORTION OF THE COMMON AREAS OR COMMON AREA IMPROVEMENTS,' PER ARTICLE 2, 'RECIPROCAL EASEMENTS,' PARAGRAPH 'b.'



NORTH

VICINITY MAP
NOT TO SCALE

PARKING SUMMARY:

USE	RATIO	SQUARE FOOTAGE	PARKING REQ'D.
EXIST. RESTAURANT	1/100	2502.5	25
EXIST. RETAIL	1/300	2502.5	8
ICE HOUSE (RETAIL)	1/300	200	1
TOTAL PARKING REQ'D.			34
TOTAL PARKING PROVIDED			19*

*TWO SPACES ARE ADJACENT TO THIS BUILDING; HOWEVER, THE PROPERTY LINE RUNS THROUGH THEM

NOTES:

1. THIS NON-USE VARIANCE IS TO ALLOW 17 SPACES WHERE 34 ARE REQUIRED AND THE ADDITION OF THE ICE HOUSE STRUCTURE.
2. THE ICE HOUSE WILL ONLY BE ALLOWED 40 S.F. OF SIGNAGE.

PROJECT DATA

OWNER:
THJ & J LLC
PO BOX 38715
COLORADO SPRINGS, CO 80937
TEL. 719-636-1555

PROPERTY ADDRESS::
555-559 SOUTH EIGHT STREET
COLORADO SPRINGS, CO

LOT SIZE (SF): 21,718 SF

ZONE DISTRICT: C8

TSN: 7413-41-0027

EXISTING/PROPOSED BUILDING SIZE:
5,005 SF EXISTING
200 S.F. NEW ICE HOUSE

EXISTING BUILDING USE:
RETAIL 50% / RESTAURANT 50%

PROPOSED BUILDING USE:
RETAIL(100%)

LOT COVERAGE: 47.9%

APPROVED
CITY OF COLORADO SPRINGS
AND
CITY PLANNING COMMISSION

AR NV 15-00075

Nelson Associates
Site & Plan Part, Colorado Springs, CO 80909 Phone (719) 633-7188 Fax (719) 633-7189
jpnelson@aol.com

SITE PLAN

555-559 SOUTH EIGHTH STREET
COLORADO SPRINGS, COLORADO
NON-USE VARIANCE/RESTAURANT PARKING

PROJECT NO. 0919
DRN. BY:
REVISIONS:
1 02-23-2015
2 03-20-2015

ISSUE DATE: 03-20-2015
SHEET: SD-1

FIGURE 1

John P. Nelson Associates
1626 East Pikes Peak
Colorado Springs, Colorado 80909
Phone: 719-632-3384
Fax: 719-632-1781
E-mail: john@jpnarch.com

MEMORANDUM

Date: February 23, 2015

TO: Lonna Thelan
City Planning Dept.
30 So. Nevada Ave.
Colorado Springs, CO 80903

REFERENCE: 555 SO. 8TH STREET; NON-USE VARIANCE

PROJECT STATEMENT:

Description: This non-use variance request involves the change in use of 2500SF of an existing retail building at 555-559 South 8th St. from retail to restaurant. The changes to the site include the installation of a freestanding ice vending kiosk with new landscaping screening. The new restaurant use requires an additional 16 parking spaces more than the existing retail space requires, per the zoning ordinance.

Justification:

1. **Extraordinary or Exceptional Physical Conditions: The existing building is located on a lot that is part of a larger commercial center. The existing lot is too small to accommodate the increased restaurant parking load within the existing lot lines. However, there is a cross parking agreement for all of the lots in this commercial center, and the available shared parking is more than adequate to absorb the additional spaces required for the proposed restaurant use.**
2. **No Reasonable Use: The existing building has been a general retail building in the past. However, a large portion of the building has been vacant over the last several years; quality retail tenants are difficult to attract to this location and tenant turnover has been high. There is a greater demand for restaurant space in this neighborhood and several national restaurant**

FIGURE 2

February 23, 2015

tenants have expressed interest in this building. The requested parking variance will allow more leasing options which will benefit both this building, the adjoining commercial center and the surrounding neighborhood.

3 No Adverse Impact: The intent of the Zoning Code is being met. The proposed restaurant use is an approved use in the existing C-6 zone, and there is adequate parking available in the center to absorb the additional 14 spaces required for the proposed restaurant use and still serve the existing tenants in the center adequately.

There are approximately 420 existing parking spaces that serve the large building that houses Office Depot and Hobby Lobby. On a typical day, no more than 15 to 20 of those spaces will be occupied by customers for those businesses at any one time. The parking area at the far North end of the lot is used by Ramblin' Express, and there are rarely more than 50 cars in this area; this activity is also intermittent. The presence of a quality restaurant franchise in this location will enhance the appearance of the center, and the increase in customer traffic will benefit the existing retail businesses as well.

The required 25' landscape setback along South 8th Street will be maintained. An additional hedge will be installed to screen the new kiosk. The variance will make it possible to more easily lease this building, which will bring positive new activity to this commercial center and the neighborhood.

Sincerely,

John P. Nelson

FIGURE 2

8178

WAL-MART CENTER FILING NO. 1

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 13,
TOWNSHIP 14 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN
CITY OF COLORADO SPRINGS, COUNTY OF EL PASO, STATE OF COLORADO

KNOW ALL MEN BY THESE PRESENTS

THAT EIRA **KERRICK**, FORMERLY KNOWN AS EIRA **DANDREA**, RAYMOND DELLACROCE, ROBERT DELLACROCE, AND BLAKEMORE McCARTY, AS TRUSTEE FOR JASSON DANIEL DELLACROCE, OWNERS, BEING THE OWNERS OF THE FOLLOWING DESCRIBED TRACT OF LAND:

LEGAL DESCRIPTION

A TRACT OF LAND BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 14 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF COLORADO SPRINGS, COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 14 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING CONSIDERED S00°00'37"W. THE CENTER QUARTER CORNER OF SAID SECTION 13, BEING MONUMENTED BY A 3" ALUMINUM SURVEY CAP STAMPED "R.L.S. NO. 10377" IN A RANGE BOX AND THE SOUTH QUARTER CORNER OF SAID SECTION 13 BEING MONUMENTED BY A NO. 5 REBAR AND ALUMINUM SURVEY CAP NO. 19620;

COMMENCING AT THE SOUTHWEST CORNER OF A TRACT OF LAND AS RECORDED IN BOOK 1399 AT PAGE 191 OF THE EL PASO COUNTY RECORDS BEING A NO. 5 REBAR FROM WHENCE THE CENTER CORNER OF SAID SECTION 13 BEARS N02°05'48"W A DISTANCE OF 1343.64 FEET, SAID POINT BEING THE POINT OF BEGINNING;

THENCE N89°03'25"E AND ALONG THE SOUTH LINE OF A TRACT OF LAND AS RECORDED IN BOOK 1399 AT PAGE 391 OF THE EL PASO COUNTY RECCADS AND ALONG SAID SOUTH LINE EXTENDED EASTERLY A DISTANCE OF 371.94 FEET TO AN ANGLE POINT ON THE WESTERLY BOUNDARY LINE OF PIKES PEAK BROADCASTING COMPANY SUBDIVISION AS RECORDED IN PLAT BOOK T-3 AT PAGE 26 OF THE EL PASO COUNTY RECORDS, SAID POINT BEING MONUMENTED BY A HOOK PIN AND CAP; THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY LINE OF SAID PIKES PEAK BROADCASTING COMPANY SUBDIVISION THE FOLLOWING TWO (2) COURSES:

1. S31°06'16"E A DISTANCE OF 148.43 FEET TO A HOOK PIN AND CAP;
2. S84°09'20"E AND ALONG THE SOUTHERLY LINE OF SAID PIKES PEAK BROADCASTING COMPANY SUBDIVISION AND ALONG SAID SOUTH LINE EXTENDED EASTERLY A DISTANCE OF 158.30 FEET;

THENCE N88°56'22"E A DISTANCE OF 192.40 FEET TO A POINT ON THE NORTHERLY EXTENSION OF THE WEST LINE OF THE TRACT OF LAND AS RECORDED IN BOOK 320 AT PAGE 14 OF THE EL PASO COUNTY RECORDS AS DEFINED BY EXISTING MONUMENTATION; THENCE S00°04'44"E AND ALONG THE WESTERLY LINE OF THE TRACT OF LAND AS RECORDED IN BOOK 320 AT PAGE 14 OF THE EL PASO COUNTY RECORDS AND THE NORTHERLY EXTENSION OF SAID WEST LINE BEING DEFINED BY EXISTING MONUMENTATION A DISTANCE OF 453.85 FEET; THENCE S60°12'45"W A DISTANCE OF 112.29 FEET; THENCE S71°29'10"W A DISTANCE OF 110.69 FEET; THENCE S89°55'15"W A DISTANCE OF 131.24 FEET; THENCE N29°21'02"W A DISTANCE OF 100.49 FEET; THENCE S89°22'46"W A DISTANCE OF 204.67 FEET; THENCE S62°50'02"W A DISTANCE OF 145.35 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF EIGHTH STREET AS DEFINED BY EXISTING MONUMENTATION; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) COURSES:

1. N12°41'28"W A DISTANCE OF 462.48 FEET TO A POINT BEING 30.00 FEET EAST OF THE NORTH/SOUTH CENTERLINE OF SAID SECTION 13;
2. N00°00'37"E AND ALONG A LINE 30.00 FEET EAST OF AND PARALLEL WITH THE NORTH/SOUTH CENTERLINE OF SAID SECTION 13 A DISTANCE OF 208.32 FEET;

THENCE S89°56'35"E A DISTANCE OF 19.40 FEET TO THE POINT OF BEGINNING, CONTAINING 446,000 SQUARE FEET OR 10.2388 ACRES.

DEDICATION

THE ABOVE OWNERS HAVE CAUSED SAID TRACT OF LAND TO BE PLATTED INTO LOTS AND A TRACT AS SHOWN ON THE PLAT. THE UNDERSIGNED DO HEREBY GRANT UNTO THE CITY OF COLORADO SPRINGS, THOSE PUBLIC EASEMENTS ON THE PLAT, AND FURTHER RESTRICTS THE USE OF ALL PUBLIC EASEMENTS TO THE CITY OF COLORADO SPRINGS AND/OR ITS ASSIGNS, PROVIDED HOWEVER, THAT THE SOLE RIGHT AND AUTHORITY TO RELEASE OR QUITCLAIM ALL OF ANY SUCH PUBLIC EASEMENTS SHALL REMAIN EXCLUSIVELY VESTED IN THE CITY OF COLORADO SPRINGS. THIS TRACT OF LAND HEREIN PLATTED SHALL BE KNOWN AS "WAL-MART CENTER FILING NO. 1" IN THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO.

OWNERS

IN WITNESS WHEREOF:

THE AFOREMENTIONED, EIRA KERRICK, FORMERLY KNOWN AS EIRA DANDREA, AN INDIVIDUAL, HAS EXECUTED THIS INSTRUMENT THIS 25th DAY OF May 1989, A.D.

Eira Kerrick
EIRA KERRICK,
FORMERLY KNOWN AS EIRA DANDREA,
AN INDIVIDUAL

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

THE ABOVE AND FOREGOING STATEMENT WAS ACKNOWLEDGED BEFORE ME THIS 23rd DAY OF May, 1989 A.D. BY EIRA KERRICK, FORMERLY KNOWN AS EIRA DANDREA, AN INDIVIDUAL.

WITNESS MY HAND AND OFFICIAL SEAL

MY COMMISSION EXPIRES: 3-8-91 NOTARY PUBLIC

THE AFOREMENTIONED, RAYMOND DELLACROCE, AN INDIVIDUAL, HAS EXECUTED THIS INSTRUMENT THIS 23 DAY OF May 1989, A.D.

RAYMOND DELLACROCE
AN INDIVIDUAL

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

THE ABOVE AND FOREGOING STATEMENT WAS ACKNOWLEDGED BEFORE ME THIS 23rd DAY OF May, 1989 A.D. BY RAYMOND DELLACROCE, AN INDIVIDUAL.

WITNESS MY HAND AND OFFICIAL SEAL

MY COMMISSION EXPIRES: 10-06-90 NOTARY PUBLIC

THE AFOREMENTIONED, ROBERT DELLACROCE, AN INDIVIDUAL, HAS EXECUTED THIS INSTRUMENT THIS 23 DAY OF May 1989, A.D.

ROBERT DELLACROCE
AN INDIVIDUAL

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

THE ABOVE AND FOREGOING STATEMENT WAS ACKNOWLEDGED BEFORE ME THIS 23rd DAY OF May, 1989 A.D. BY ROBERT DELLACROCE, AN INDIVIDUAL.

WITNESS MY HAND AND OFFICIAL SEAL

MY COMMISSION EXPIRES: 10-06-90 NOTARY PUBLIC

THE AFOREMENTIONED, BLAKEMORE McCARTY, AS TRUSTEE FOR JASSON DANIEL DELLACROCE, HAS EXECUTED THIS INSTRUMENT THIS 23rd DAY OF May 1989, A.D.

BLAKEMORE McCARTY, AS TRUSTEE FOR
JASSON DANIEL DELLACROCE

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

THE ABOVE AND FOREGOING STATEMENT WAS ACKNOWLEDGED BEFORE ME THIS 23rd DAY OF May, 1989 A.D. BY BLAKEMORE McCARTY, AS TRUSTEE FOR JASSON DANIEL DELLACROCE.

WITNESS MY HAND AND OFFICIAL SEAL

MY COMMISSION EXPIRES: 10-06-90 NOTARY PUBLIC

GENERAL NOTES

1. ● INDICATES RECOVERED MONUMENTS AS NOTED.
2. O INDICATES NO. 5 REBAR AND L.S. CAP NO. 10377 TO BE SET.
3. DATE OF PREPARATION IS MAY 19, 1989
4. INDICATES APPROXIMATE LIMITS OF 100-YEAR FLOODPLAIN AS DESIGNATED BY THE FLOOD INSURANCE RATE MAP PANELS 276 AND 278 OF 625, EFFECTIVE DATE DECEMBER 18, 1986.
5. A PORTION OF THE PROPERTY IS LOCATED WITHIN THE 100-YEAR FLOODPLAIN AS DESIGNATED BY F.E.M.A. DEVELOPMENT WITHIN THIS AREA IS SUBJECT TO THE FLOODPLAIN ORDINANCE.
6. TRACT "A" IS HEREBY DEDICATED TO THE CITY OF COLORADO SPRINGS AS ADDITIONAL RIGHT-OF-WAY FOR EIGHTH STREET.
7. INDICATES ONLY FRONTAGE BY WHICH SUBDIVISION CAN ACCESS 8TH STREET.
8. A NON-EXCLUSIVE EASEMENT FOR THE PURPOSES OF INGRESS AND EGRESS IS HEREBY GRANTED ACROSS ALL PARKING AREA CIRCULATION LANES.

4228-1

NOTICE IS HEREBY GIVEN

THAT THE AREA INCLUDED IN THE PLAT DESCRIBED HEREIN IS SUBJECT TO THE CODE OF THE CITY OF COLORADO SPRINGS, 1980, AS AMENDED.

"NO BUILDING PERMITS SHALL BE ISSUED FOR BUILDING SITES WITHIN THIS PLAT UNTIL ALL REQUIRED FEES HAVE BEEN PAID AS SPECIFIED BY THE CITY OF COLORADO SPRINGS.

NO BUILDING PERMITS SHALL BE ISSUED FOR BUILDING SITES WITHIN THIS PLAT UNTIL ALL REQUIRED FEES HAVE BEEN PAID AND ALL REQUIRED PUBLIC IMPROVEMENTS HAVE BEEN INSTALLED AS SPECIFIED BY THE CITY OF COLORADO SPRINGS OR, ALTERNATIVELY, UNTIL ACCEPTABLE ASSURANCES, INCLUDING BUT NO LIMITED TO LETTERS OF CREDIT, CASH, CONSTRUCTION BONDS, OR COMBINATIONS THEREOF, GUARANTEEING THE PAYMENT OF THE FEES AND THE COMPLETION OF ALL REQUIRED PUBLIC IMPROVEMENTS HAVE BEEN PLACED ON FILE WITH THE CITY OF COLORADO SPRINGS."

EASEMENTS

ALL EASEMENTS ARE AS SHOWN WITH THE SOLE RESPONSIBILITY FOR MAINTENANCE BEING VESTED WITH ADJACENT PROPERTY OWNERS.

SURVEYOR'S STATEMENT

THE UNDERSIGNED REGISTERED LAND SURVEYOR IN THE STATE OF COLORADO, HEREBY CERTIFIES THAT THE ACCOMPANYING PLAT WAS SURVEYED AND DRAWN UNDER HIS SUPERVISION AND ACCURATELY SHOWS THE DESCRIBED TRACT OF LAND, AND SUBDIVISION THEREOF, AND THAT THE REQUIREMENTS OF TITLE 38 OF THE COLORADO REVISED STATUTES, 1973, AS AMENDED, HAVE BEEN MET TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

JAMES R. FRAKER, REGISTERED LAND SURVEYOR — DATE 5/19/89
COLORADO NO. 20377
FOR AND ON BEHALF OF JR ENGINEERING, LTD.

APPROVALS

THE UNDERSIGNED HEREBY APPROVES FOR FILING, THE ACCOMPANYING PLAT OF WAL-MART CENTER FILING NO. 1:

PLANNING DIRECTOR — DATE 6/1/89

DIRECTOR OF PUBLIC WORKS — DATE 6/1/89

KNOW ALL MEN BY THESE PRESENTS

THAT THE CITY OF COLORADO SPRINGS, COLORADO, AUTHORIZED THE PLATTING OF THE ABOVE DESCRIBED TRACT OF LAND AS SET FORTH IN THE PLAT, AND AT THE SAME TIME AUTHORIZED THE UNDERSIGNED TO ACKNOWLEDGE THE SAME WHICH IS DONE ACCORDINGLY ON BEHALF OF THE CITY OF COLORADO SPRINGS, THIS 1st DAY OF June 1989, A.D.

BY: MAYOR OF COLORADO SPRINGS

ATTEST: CITY CLERK

CLERK AND RECORDER

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE AT 9:30 O'CLOCK A.M. THIS 7th DAY OF JUNE, 1989 A.D., AND DULY RECORDED IN PLAT BOOK D-4 AT PAGE 117.

RECORDER: ARDIS W. SCHMITT BY: DEPUTY

RECEPTION NO.: 1823163

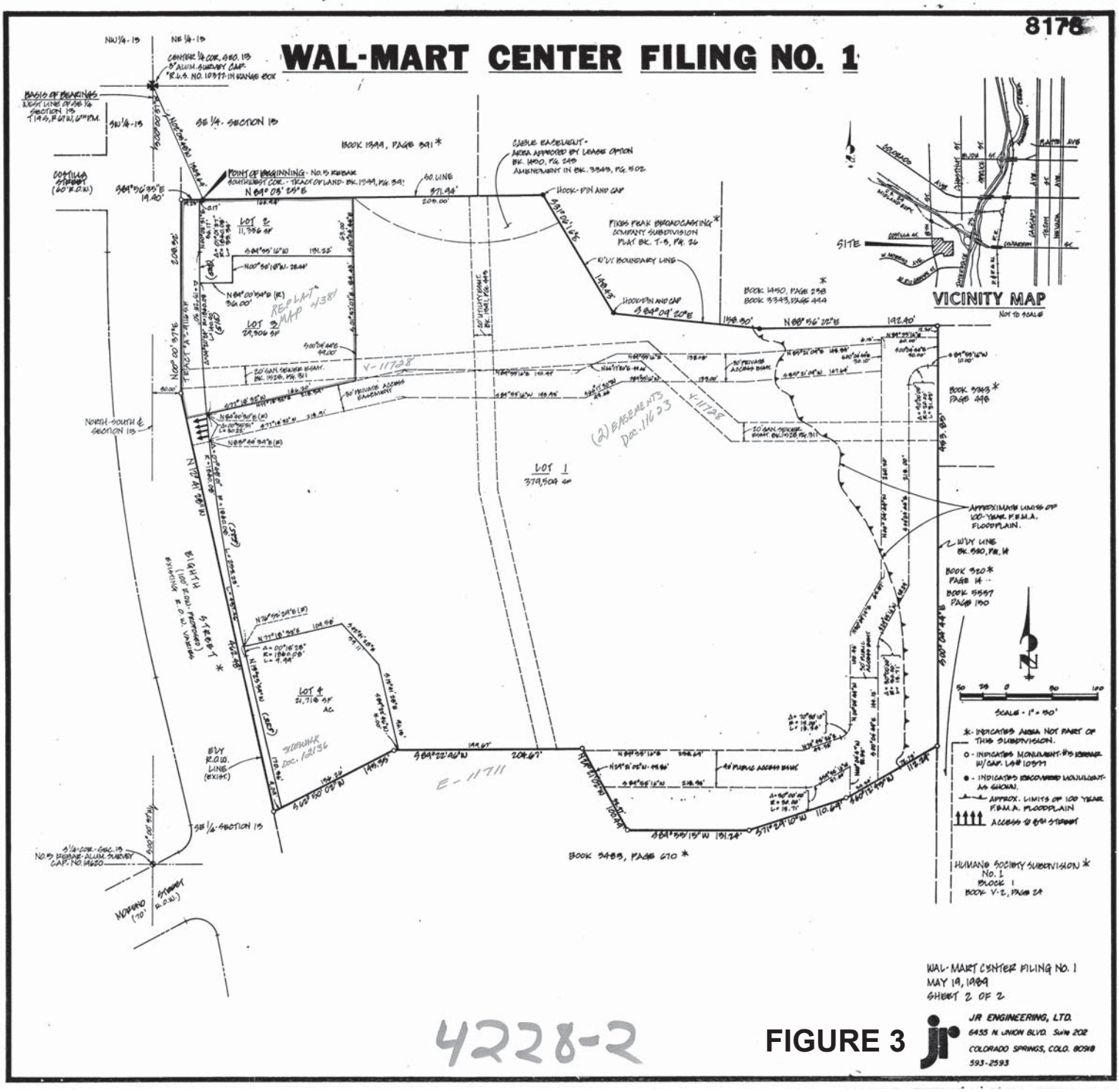
FEE: $ 20.00

SCHOOL FEE N/A - Commercial .00
BRIDGE FEE N/A - 1988 .00
PARK FEE N/A - Commercial .00
DRAINAGE FEE Exempt .00

WAL-MART CENTER FILING NO. 1
MAY 19, 1989
SHEET 1 OF 2

JR ENGINEERING, LTD.
6455 N UNION BLVD. Suite 202
COLORADO SPRINGS, COLO. 80918
593-2593

FIGURE 3



4228-2

FIGURE 3

BRADLEY D. HILL
ATTORNEY AT LAW
950 SOUTH CHERRY STREET, SUITE 1650
DENVER, COLORADO 80246

(303) 369-5510
FAX (303) 369-5509

March 9, 2015

Lonna Thelen,
Planner
City of Colorado Springs
Planning and Community Development
30 S. Nevada, Suite 105
Colorado Springs, Colorado 80901

Via email
lthelen@springsgov.com

RE: Case No. AR NV 15-00075
Property Address: 555-559 S. Eighth Street

Dear Ms. Thelen:

I represent Eighth Avenue Limited Liability Company ("Eighth Avenue"), the owner of real property located at 525 S. Eighth Street (Lots 1 and 2 of the Dandrea-Walmart Subdivision and Lot 2 of the Autozone Filing No. 1). Eighth Avenue's property is adjacent to 555-559 S. Eighth Street (Lot 4 of the Wal-Mart Filing No. 1), the property subject to the above-referenced application. These properties are located within the shopping center referred to as the Wal-Mart Shopping Center, its prior tenant.

Eighth Avenue recently received a post card notice that the owner of Lot 4 is requesting a non-use variance to enable it to increase the size and change the use of its building and property, without complying with the Colorado Springs Zoning Code parking requirements or the Declarations of Easements and Covenants pertaining to the property.

Given this short notice, Eighth Avenue informs the City that it objects to this application and requests the opportunity to supplement this objection, after a full review, and a hearing with the City of Colorado Springs Planning Commission.

The Applicant wants to increase the size and change the use of Lot 4 from retail to restaurant use and add a free standing vending kiosk. Both of these changes would intensify the use of the property. Accordingly, the Colorado Springs Zoning Code mandates that the Applicant have 33 parking spaces. The Owner only owns 19 spaces. It is short 14 parking spaces.

The Applicant is requesting that it be allocated those 14 additional parking spaces from the parking spaces owned by Eighth Avenue and located on Lot 1. Those 14 additional spaces would come from property the Applicant does not own. The Applicant is requesting that the City allow it to be given "de facto" ownership of parking spaces owned by Eighth Avenue, without obtaining Eighth Avenue's agreement or any payment for them.

Eighth Avenue is advised that the Applicant's current use of Lot 4 already exceeds the City's parking requirements by 2 spaces. It is not known whether a variance was ever obtained for that use. The first paragraph of the Applicant's Memorandum accompanying its Application states that its

FIGURE 4

The Applicant's request to increase the size and change the use of its building is self-imposed. There isn't any extraordinary or exceptional physical condition on Lot 4 that prevents the Applicant from the reasonable use of its Lot in conformance with the Colorado Springs Zoning Code.

The Applicant's request for a non-use variance to increase the size and change the use of its building and property is merely a desire to increase the market value of its property. It is a desire for a greater return on its investment. This is not a proper basis for a non-use variance.

Allocating 16 or 14 parking spaces owned by Eighth Avenue to the Owner of Lot 4 to enable it to increase the size and change the use of its building will result in the tortious interference of Eighth Avenue's ownership of the parking spaces and Eighth Avenue's lease obligations with and contractual rights of its Tenants. This could also amount to a "de facto" taking. At the very least, the non-use variance would impose a significant adverse impact upon Lot 1 and Eighth Avenue's property rights.

The Applicant cannot meet the criteria set forth in the Colorado Springs Municipal Code for a non-use variance. The City cannot permit a taking of Eighth Avenue's property by the Applicant. Eighth Avenue objects to the application and requests that it be denied administratively or that a hearing be held by the Planning Commission in accordance with the City's Zoning Code.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Bradley D. Hill

Bradley D. Hill

BDH/bh
cc: Edwin H. Shaufler,
Eighth Avenue Limited Liability Company
Richard Walker,
First Properties, Inc.

FIGURE 4

HOLLAND&HART LLP

S. Kent Karber
Phone (719) 475-6422
Fax (800) 718-4694
kkarber@hollandhart.com
47013.0006

March 24, 2015

VIA EMAIL Lthelen@springsgov.com AND U.S. MAIL

Ms. Lonna Thelen, Principal Planner
City Administration Building,
30 S. Nevada Avenue, Suite #105,
Colorado Springs, CO 80903

RE: Non-use Variance for 555-559 South Eighth Street (the "Property")
THJ&J, LLC: Owner/Applicant
Your File No.: AR NV 15-00075

Dear Ms. Thelen:

We represent Applicant in this matter. John Nelson forwarded me the letter dated March 9, 2015 from Bradley D. Hill, attorney-at-law, on behalf of one of the adjacent land owners to the subject Property. The focus of Mr. Hill's letter is to make the claim that a parking variance should not be granted on the theory that it would violate the Declaration encumbering the subject and adjacent property and would lead to a parking space deficit for the center. Neither position is correct.

The first claim can be dispelled by a review of the Declaration dated October 19, 1989, a copy of which is enclosed:

> "Section 2.b.: Parking and Incidental Use. For the benefit of all Owners, and their Guests, Declarants hereby establish as an appurtenance to each and every part of the Shopping Center a non-exclusive easement and right for vehicular and pedestrian use of, including delivery and service trucks and vehicles, all parking areas which are a portion of the Common Areas or Common Area Improvements. Notwithstanding the foregoing, all employees working at establishments on Lot 1 Property, shall park in parking areas on Lot 1 Property only."

This section could not be clearer that the Declaration created cross easements to benefit and burden each of the Lots. Instead of a center with a disjointed and compartmentalized parking arrangement, the Declaration (in the section quoted above and elsewhere) mandates that each of

FIGURE 5

the lots is subject to parking and access easements that benefit the other lots. There is simply no other logical reading of this section.

Further, Section 7 addresses the issue of parking and the adjacent easements:

> "Section 7: Parking Areas. No person or entity may place fences or other structures on any portion of the Common Areas or alter the flow of traffic and parking thereon, unless such alterations or structures are consistent with the Site Plan. **There shall be maintained, at all times, on each Parcel, together with any parking on appurtenant easements adjacent thereto, the number of parking spaces required by any applicable zoning ordinance, building code, or other governmental regulation" (Emphasis added).** No improvements shall be constructed on any Parcel, unless the required minimum parking will be maintained on such Parcel, and all other requirements herein are satisfied.

This section is also clear: that the required number of parking spaces for each lot shall be maintained on the lot and appurtenant adjacent easements. So, Section 2.b creates the easements and Section 7 clearly refers to the practice of using the adjacent areas to assist in addressing the parking load.

Applicant further takes issue with the following matters raised in Mr. Hill's letter:

> "The Applicant is requesting that it be allocated those14 additional parking spaces from the parking spaces owned by Eighth Avenue and located on Lot 1. Those 14 additional spaces would come from property the Applicant does not own. The Applicant is requesting that the City allow it to be given "de facto" ownership of parking spaces owned by Eighth Avenue, without obtaining Eighth Avenue's agreement or any payment for them."

Applicant is not seeking "de facto" ownership of parking spaces, whatever that is. Applicant is seeking a variance in the number of required parking spaces for its project on the Property. While it would be within the Commission's power to grant a variance for a reduced number of spaces without the existence of additional parking provided by the Amended Declaration of Covenants, the Center's 500 plus spaces, coupled with Applicant's contractual right to use some of those spaces, provides assurance that both the spirit and intent of the Zoning Code is upheld.

Mr. Hill further states:

> "More importantly, the parking spaces within Lot 1 are owned by Eighth Avenue. The Applicant may not appropriate or take Eighth Avenue's parking spaces to determine the Applicant's building size or use of Lot 4, nor may the City allocate or permit the allocation of those spaces to the Applicant without Eighth Avenue's agreement. Eighth Avenue does not give its consent and objects to the non-use variance."

FIGURE 5

The parking spaces within Lot 1 are presumably owned by Eighth Avenue, subject to an easement for parking and access. Eighth Avenue cannot prohibit customers of Applicant's Property from parking in spaces on Lot 1. It is false and misleading for Eighth Avenue to claim that in Applicant's request, it is seeking to appropriate or take spaces away from Eighth Avenue. Applicant (and its customers) already have the right to use those spaces, thus Applicant does not need to take or appropriate what it already is legally entitled to use.

Thank you for your consideration to this matter, and please call if you have any questions or comments.

Sincerely,

S. Kent Karber
of Holland & Hart LLP

SKK/sb

Enclosure/noted

cc: John Egan
John Nelson

7669084_1

FIGURE 5

EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

THIS AGREEMENT is made as of the_____ day _____, 1990, between Joseph F. Murphy (hereinafter referred to as "Murphy") and Springs 8, Inc., A Colorado corporation (hereinafter referred to as "Springs 8"), whose address is c/o Rosenbaum-Dean, 101 North Cascade, Suite 400, Colorado Springs, CO 80903.

RECITALS:

A. Springs 8 is the owner of Wal-Mart Subdivision, Lot 5 as shown on the plan attached hereto as Exhibit A hereof, said Lot being more particularly described in Exhibit B (Legal Description) attached hereto;

B. Murphy is the owner of Wal-Mart Subdivision, Lot 4 shown on the plan attached hereto as Exhibit A hereof, said Lot being more particularly described in Exhibit C (Legal Description) hereof; and

C. Springs 8 and Murphy desire that Lots 4 and 5 be developed, owned and operated in such a manner as to protect the value, desirability, and attractiveness of the Lots, and further desire that said Lots be subject to the easements, covenants, conditions, and restrictions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Murphy and Springs 8 do hereby agree as follows:

1. Building/Common Areas - Definitions.

a. "Building Areas" as used herein shall mean that portions of Lots 4 and 5 which are now or at any time in the future may be improved with permanent buildings.

b. "Common Areas" shall be all of Lots 4 and 5 which are not now or at any time in the future improved with permanent buildings. These common areas do include landscaping, loading areas, fences, walls, signs or poles.

2. Grant of Easements. Each party as grantor hereby grants to the other party as grantee and to their agents, customers, invitees, licensees, tenants and employees, a non-exclusive easement across the Common Areas upon the Lots for pedestrian or vehicular ingress to and egress from each Building Area, and from and to all streets and roads abutting the Lots, and including ingress and egress for delivery and service trucks and vehicles, and for vehicular parking upon the Common Areas. The easements granted hereby are only applicable to that portion of the Common Areas now or hereinafter actually improved (i.e., graded,

FIGURE 5

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ARDIS W. SCHMITT
El Paso County Clerk & Recorder

BOOK 5679 PAGE 391

65.00

DECLARATION OF EASEMENTS AND COVENANTS

This Declaration is made and entered into this 19th day of October, 1989, by Fidelity Exchange, Inc. whose address is c/o Alan Jahde, 4100 East Mississippi, Denver, Colorado, 80222, and Springs 8, Inc., whose address is 101 N. Cascade, Suite 400, Colorado Springs, Colorado 80903 (collectively referred to hereinafter as the "Declarants").

RECITALS

Fidelity Exchange, Inc. and Springs 8, Inc. own adjacent parcels of real property in Colorado Springs, Colorado which are legally described in Exhibits "A" and "B" attached to this Declaration, respectively. The property described in Exhibit "A" shall be referred to herein as Lot 1, the property described in Exhibit "B" as Lots 2-4. Declarants desire to develop their respective parcels of property as a functionally integrated retail shopping area (the "Shopping Center") substantially in accordance with the site plans (the "Site Plan") which is attached hereto as Exhibit "C". In order to do so, the parties desire to establish certain reciprocal easements, conditions and restrictions for the benefit of all the Shopping Center.

1. Building/Common Areas - Definitions.

a. "Building Areas" as used herein shall mean that portion of Lots 1, 2, 3, and 4 which are now or at any time in the future may be improved with permanent buildings, landscaping, loading areas, fences, walls, signs or poles.

b. "Common Areas" shall be all of Lots 1, 2, 3, and 4 which are not now or at any time in the future improved with permanent buildings, loading areas, fences, walls, signs or poles. "Common Areas" shall include landscaping, utilities, parking areas, sidewalks, driveways,

c. The "Gross Land Area of the Shopping Center" shall be deemed to be 436,884 square feet, based on the square footage of the land on which the Shopping Center is constructed. The "Relative Gross Area" of any Parcel shall be the Gross Land Area of that Parcel divided by the Gross Land Area of the Shopping Center. Thus, the "Relative Gross Area" of Lot 1 shall be 86.9, and the "Relative Gross Area" of Lot 2 shall be 2.58, and the "Relative Gross Area" of Lot 3 shall be 5.56, and the "Relative Gross Area" of Lot 4 shall be 4.96. It is hereby agreed that the owner of Lots 2-4 may require the owner of Lot 1 to amend or modify the existing square footage and subsequently replat the property of these lots to increase their size in accordance with the respective lots owner's development of said lot. The owner of Lot 1 hereby agrees to do this so long as Wal-Mart and any subsequent lender of Lot 1 approves the replat (which will not be unreasonably withheld by said lender), there are not resultant violations of any building or zoning codes, and there is no more than a 3% overall reduction in the land area of Lot 1.

2. Reciprocal Easements.

a. Ingress and Egress. For the benefit of all Owners and their Guests, Declarants hereby establish as an appurtenance to each and every parcel of the Shopping Center a non-exclusive easement for pedestrian and vehicular ingress to and egress from the Common Areas from and to all streets and roads abutting the Shopping Center, including ingress and egress for delivery and service trucks and vehicles across the driveways and sidewalks shown in the Site Plan. Nothing contained in this Declaration shall be deemed to prevent the installation and maintenance within the Common Areas of the Common Area Improvements, as shown on Exhibit "C".

b. Parking and Incidental Use. For the benefit of all Owners, and their Guests, Declarants hereby establish as an appurtenance to each and every part of the Shopping Center a non-exclusive easement and right for vehicular and pedestrian use of, including delivery and service trucks and vehicles, all parking areas which are a portion of the Common Areas or Common Area Improvements. Notwithstanding the foregoing, all employees working at establishments on Lot 1 Property, shall park in parking areas on Lot 1 Property only.

FIGURE 5

Each Owner of Lots 2-4 may require the Owner of Lot 1 to provide a list of the license plate numbers of the cars of all of their employees who work in the Shopping Center, so that each Owner of Lots 2-4 can enforce this section. No delivery or service vehicle serving a particular store or office may be parked in the Common Areas if such vehicle blocks access to any other store or office, or if such vehicle remains in the Common Areas for a greater period of time than reasonably necessary to make deliveries or complete the services for which the vehicle is brought into the Shopping Center.

c. Utilities and Surface Drainage. For the benefit of all Owners, Declarants hereby establish as an appurtenance to each and every part of the Shopping Center non-exclusive easements across, over, and under such portions of the Common Areas as are reasonably necessary for surface drainage and for the installation and operation of utilities deriving the Common Areas and the buildings in the Shopping Center including, but not limited to, the right to install, maintain, use, repair, and replace underground pipes, ducts, conduits, and wires for the purpose of transmitting and distributing electricity, gas, water, sewer and drainage, or telephone, television and other communication purposes, and for lighting purposes; provided, however, no such easement shall materially interfere with the use of any portion of the Shopping Center by Owners, or their Guests. Any Owner who shall damage or cause to be damaged the Common Area or Common Area Improvements in connection with the use of this easement or the installation of any utility lines or facilities, shall promptly repair such damage at the cost or expense of such Owner.

d. Recordation of Easements. Each Owner of any portion of the Shopping Center hereby agrees, for itself and its successors and assigns, that it will execute such documents in recordable form as may be reasonably necessary to effectuate the provisions of this Article II, including, but not limited to, any documents granting easement, licenses and similar rights to utility companies and governmental bodies or agencies thereof.

e. Survival of Easements. The non-exclusive easements created by this Article II shall be perpetual and shall survive the termination of this Declaration, except that such easements may be terminated by the recording of an agreement to terminate the easements, signed by all of the Owners.

f. Relocation of Easements. Each Owner shall have the right, at its own cost and expense, after thirty (30) days prior written notice to each other Owner, to relocate utility lines or facilities and accompanying easements for which easements are created under Article II, Section c., provided that (i) such relocation does not materially and adversely interrupt or diminish the utility services to any portion of the Shopping Center, (ii) such relocation does not disturb the structure of any buildings other than the buildings of the Owner who initiates the move, and (iii) such Owner promptly reimburses the other Owner for all actual damages caused by such relocation.

3. Restrictions on Use.

a. General Restrictions. Except as hereinafter provided, the Shopping Center and every portion thereof may be used for any office or retail use which does not violate applicable zoning, building, health, safety, and other applicable laws, ordinances, statutes, rules, and regulations or applicable governmental authorities. In order to insure the adequacy of parking, traffic flow patterns, and security, no portion of the Shopping Center shall be used as a massage parlor, "adult" bookstore, seller of "pornographic" materials, funeral parlor, or pawn shop.

b. Prohibitions. No part of the Shopping Center may be used in any manner which may endanger the health, safety or life of any person or which may unreasonably disturb any other Owner. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices (other than speakers used to take orders at "drive-up windows"), including without limitation security devices, shall be located, used, or placed upon any Parcel without the prior written approval of Owners, the sum of which is greater than seventy-five percent (75%). No activities shall be permitted upon any portion of the Shopping Center which will violate the provisions of any applicable statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No nuisance shall be

FIGURE 5

allowed upon any Parcel, nor shall any use or practice be allowed which interferes with the peaceful possession and proper use of the Shopping Center Property by any Owner. No damage to or waste of the Common Areas, or any part thereof, shall be committed by any Owner or any agent or employee of any Owner, and each Owner shall indemnify and hold the other Owners harmless against any loss resulting from any such damage or waste caused by him, or his agents or employees.

c. Storage and Trash Restrictions. Except in areas specifically designated and intended for such purpose, storage and trash containers in the Common Areas or in any area exposed to public view is prohibited. All trash containers shall be screened so as not to be visible to the public.

d. Responsibilities of Others Upon Premises. Each Owner shall be accountable for the conduct and behavior of its agents and employees while said agents and employees are upon its Parcel.

e. Maintenance. Each Owner shall keep its Parcel in a clean, sanitary and attractive condition. All rubbish, trash or garbage shall be regularly removed from the Shopping Center, and shall not be allowed to accumulate thereon.

f. Parking. There shall be no parking of automobiles, trucks or vehicles of any type upon any part of the Shopping Center, including without limitation any streets, except as shown for parking on the Site Plan; violation of this provision shall permit any Owner to remove the offending vehicle at the expense of the owner thereof.

g. Abandoned Vehicles. No abandoned vehicles or parts thereof shall be stored or parked upon any part of the Shopping Center, including but not limited to any residential street, alley or way of access within or adjacent to the Shopping Center. In the event that the Owner of any parcel shall determine in its sole discretion that a vehicle on its Parcel is an abandoned vehicle, then a written notice describing the vehicle will be personally delivered to the owner thereof (if such owner can be reasonably ascertained), and if the unused vehicle is not removed within 24 hours thereafter, or within any greater period of time provided by law, if any, such Owner shall have the right to remove the vehicle at the sole expense of the owner thereof. For the purpose of this Section, an "abandoned vehicle" is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home; housetrailer or other similar vehicle which has not been driven under its own propulsion, or has not been moved for a period of twenty-four (24) hours or longer.

4. Buildings

a. Signs. Subject to the provisions of all applicable laws and ordinances, the owner of each Parcel may, at its expense, place signs on their respective building or buildings and pylon signs allowed by applicable laws.

b. Permitted Encroachments. Notwithstanding the limitations contained in Article 4, Section a, an easement over the portion of the Common Areas immediately adjacent to the Building Areas is hereby granted to the Owner of such Building Area for:

1. Pedestrian sidewalks and planting areas;

2. Signs which are attached to the building or canopies;

3. Hose bibbs, standpipes, fire hose connections, downspouts, or floodlights, all of which are attached to the exterior wall of a building; and unattached floodlights may be placed in the Common Areas to light any building, so long as such lights do not interfere with the rights of others to use the Common Area as set forth herein;

FIGURE 5

4. Trash rooms and trash bins, so long as they are adjacent to the rear portion of any Building Area when possible and are screened or otherwise maintained out of sight or in a neat, odor free, and sightly condition;

5. Subsurface footings and foundations, retaining walls and eaves; and

6. The temporary erection of ladders, scaffolding and store front barricades during reasonable periods of construction, remodeling or repair of building and building appurtenances.

7. Utilization of Common Areas During Construction. During initial construction of improvements on the Building Areas, or during subsequent repair, renovation, or expansion thereof, Common Areas immediately adjacent to the construction site may be generally utilized as a part of the construction site to the extent reasonably necessary for such construction, repair, renovation, or expansion. Promptly on completion thereof, all building materials, equipment, and machinery shall be removed by the Owner who placed such materials, equipment or machinery on the Common Area, and the Common Areas so utilized shall be restored and thereafter maintained as required by this Declaration.

8. Mechanics' Liens. Except as specifically decided by all of the Owners, each Owner shall be liable for the cost of any improvements constructed on its Parcel, including the construction of Common Area Improvements, and any repairs, changes, renovations, alterations, or additions thereto, and each Owner shall indemnify and hold the other Owners harmless against any mechanic's liens or other claims filed against the other Owners Parcels or the Common Area with respect thereto.

5. Maintenance of Improvements.

a. Maintenance of Buildings. Each Owner in the Shopping Center shall:

1. subject to the provisions of Article 9, Section a. and Article 10, Section b., maintain or cause to be maintained the exterior of their buildings in a state of good repair (ordinary wear and tear excepted), in a clean condition, and free of trash and debris; and

2. arrange for the collection of all garbage and rubbish from their respective buildings.

b. Maintenance of Common Areas and Common Area Improvements. It will be the responsibility of each lot owner to cause, at its own expense, the Common Areas on its parcel to be maintained as follows:

1. Maintenance, repair, resurfacing and replacement of all paved surfaces, in a level, smooth, and evenly covered condition with the type of surfacing material originally installed or such substituted as shall in all respect be at least equal to such original material in quality, use, appearance, and durability;

2. Maintenance, repair and replacement of all curbs, curb-cuts, gutters, walkways and retaining walls;

3. Painting and striping of all parking areas;

4. Maintenance, repair and replacement of all directional signs, markers, artificial lighting facilities, including the replacement of fixtures and bulbs;

5. Maintenance, repair and replacement of any and all storm drains, storm water retention facilities, utility lines, sewers, and other utility systems;

6. Maintenance of all landscaped areas and replacement of shrubbery, plantings, and flowers.

FIGURE 5

7. Removal of all paper, debris, filth, and refuse, including thorough sweeping and maintenance in a clean and orderly condition.

8. Payment of all utility expenses related to any Common Area Improvements on its parcel.

9. The owners shall each pay the maintenance expense of the Common Areas on their respective Tract(s).

6. Real Estate Taxes and Special Assessments.

Each Owner shall pay or cause to be paid before they become delinquent, all Impositions levied or assessed against its Parcel and the improvements thereon including any portions thereof which are designated as Common Areas or Common Area Improvements.

7. Parking Areas.

No person or entity may place fences or other structures on any portion of the Common Areas or alter the flow of traffic and parking thereon, unless such alterations or structures are consistent with the Site Plan. There shall be maintained, at all times, on each Parcel, together with any parking on appurtenant easements adjacent thereto, the number of parking spaces required by any applicable zoning ordinance, building code, or other governmental regulation. No improvements shall be constructed on any Parcel, unless the required minimum parking will be maintained on such Parcel, and all other requirements herein are satisfied.

For the purposes of this Article, each parking space shall be at least nine (9) feet wide and eighteen (18) feet long, unless provided otherwise by applicable zoning ordinances and regulations.

8. Insurance.

a. Liability Insurance. At its own expense, each Owner shall maintain or cause to be maintained in full force and effect a policy or policies of comprehensive public liability insurance against claims and liability on account of bodily injury, death, and property damage incurred upon or about the building or improvements owned or occupied by each Owner and the Common Areas on each Owner's Parcel. Such insurance shall have limits of not less than One Million Dollars ($1,000,000.00) for bodily injury or death in any one accident or occurrence, and One Hundred Thousand Dollars ($100,000.00), in respect of destruction of or damage to property. Each policy shall name all other Owners as additional insureds. Each Owner may decide to self-insure to meet the obligation set forth in this Section.

b. Hazard Insurance - Buildings. Each Owner shall maintain or cause to be maintained in effect a policy or policies insuring it against loss, damage, and destruction of all buildings and improvements on its Parcel, including Common Area Improvements, by fire and all hazards covered by the standard form of extended coverage endorsement. Such insurance shall be in the amount of at least ninety percent (90%) of the replacement cost of such Improvements. Each Owner may decide to self-insure to meet the obligation set forth in this Section.

c. Certificates of Insurance. Each Owner shall deliver to each of the other Owners certificates establishing that the Owner has obtained and paid the premiums for the insurance required by this Article. If, at any time, any Owner fails to deliver to the other Owners a certificate establishing that such insurance is in full force and effect, the other Owners shall have the right to obtain such insurance on behalf of the Owner. The Owner shall reimburse the other Owners for the expense incurred in obtaining such insurance.

d. Policy Requirements. All insurance required under this Declaration shall:

1. (a). be carried in companies licensed in the State of Colorado and having a policyholder's rating of B or better and a service rating of VI or better by Alfred M. Best's Key Rating or shall be equivalently rated by any successor insurance company rating service;

FIGURE 5

CITY OF COLORADO SPRINGS PLANNING DEPARTMENT
RECORD-OF-DECISION FOR A NON-USE VARIANCE

FILE: AR NV 15-00075 **DECISION DATE: APRIL 16, 2015**

INFORMATION

Name of Applicant:	John Nelson
Address of Premises Involved:	555-559 S 8th St
Zone District:	C-6
Tax Schedule Number:	74134-10-027

REQUEST

A request by John Nelson with Nelson Associates on behalf of THJ&J for approval of a non-use variance for the following section of City Code: Section 7.4.203: to allow 17 parking spaces where 34 are required. The variance is requested to add a 200 square foot ice house and allow the existing structure to be used as half restaurant and half retail. The site is zoned C-6 (General Business), contains 0.5 acres, and is located at 555-559 S 8th Street.

AGENCY COMMENTS

No agency comments were received.

STAFF ANALYSIS

CITY CODE CRITERIA TO GRANT A NON-USE VARIANCE — CRITERIA MET OR NOT MET

1. 7.5.802 (B.1) Exceptional or Extraordinary Conditions — Met

The site was originally developed as part of the larger shopping center anchored by Wal-Mart. The site in question was originally developed as a retail space and required 16 parking spaces; the original site provided 17 parking spaces. The restaurant use, retail use and new ice house require 34 spaces. The site provides 17 spaces and 2 additional spaces in front of the building that are not entirely on the site for a total of 19 spaces.

The site is fully developed and cannot accommodate any additional parking spaces. A cross parking/access agreement was recorded at El Paso County Clerk and Recorder book 5679 page 391 when the shopping center was developed and allowed outlying pad sites the use of the parking spaces on the larger lot. Staff finds that due to this cross parking/access agreement there is adequate parking in the shopping center site as a whole to accommodate this addition of the ice house without negatively affecting other properties.

2. 7.5.802 (B.2) No Reasonable Use of Property — Met

As shopping centers age, renovations, changes of use, additions and redevelopment become necessary to keep shopping centers alive. The City encourages adaptive reuse over complete redevelopment when possible. The owners have creatively found a way to add a new user to the site to complement the existing users and generate additional use of the existing structure. The previously proposed variance included a drive thru that took up two spaces. The drive thru has been removed and the two spaces have been added back to the site. The new use only requires one spaces so the site is now parked with one additional space over what the previous variance allowed (AR NV 08-00592).

3. 7.5.802 (B.3) No Adverse Impact to Surrounding Property — Met

Staff finds no evidence that the granting of this variance will be detrimental to the public health, safety or welfare or injurious to the surrounding residential area, nor would it be inconsistent with any plans adopted by the City or weaken the general purpose of the Zoning Ordinance.

STAFF DECISION

APPROVED: Staff approves the non-use variance request due to the above criteria being met.

4/16/15
DATE OF DECISION

Lonna Thulen
STAFF MEMBER

FIGURE 6

APPLICANTS: THE DECISION PERTAINS ONLY TO THE APPLICATION YOU SUBMITTED. YOU MUST COMPLY WITH ALL OTHER APPLICABLE REQUIREMENTS OF THE CITY OF COLORADO SPRINGS AND THE REGIONAL BUILDING DEPARTMENT. A COPY OF THE RECORD-OF-DECISION AND APPROVED SITE PLAN SHALL BE SUBMITTED IN CONJUNCTION WITH A BUILDING PERMIT APPLICATION. THIS VARIANCE DOES NOT SUPERSEDE OR NULLIFY PRIVATE COVENANTS THAT MAY LAWFULLY IMPOSE OTHER RESTRICTIONS ON THE USE OF YOUR PROPERTY.

*******IMPORTANT*******

THE VARIANCE SHALL BE VOID IF ALL REQUIRED PERMITS ARE NOT OBTAINED WITHIN TWLEVE(12) MONTHS OF THE FINAL APPROVAL DATE.

The City of Colorado Springs is committed to excellent customer service. We would like to hear your comments about the service you received during the review of this application. Soon, you will receive an email from the City of Colorado Springs with a link to an electronic Customer Satisfaction Survey. Please take a few minutes to complete the survey. Your response is completely confidential.

FIGURE 6

CITY OF COLORADO SPRINGS

LAND USE REVIEW DIVISION
PLANNING & COMMUNITY
DEVELOPMENT DEPARTMENT

APPLICATION FORM FOR APPEAL OF ADMINISTRATIVE DECISION

Appellant: **EIGHTH AVENUE LLC** Telephone: **719.576.2288** Fax: **719.576.2277**

Address: **c/o Richard L. Walker, P.O. Box 696, Colorado Springs, CO 80901 e-mail:rlw@firstproperties1.co**

Premises Involved: 555-559 South 8th Street

City Planning File Number (if applicable): **AR NV 15-00075**

Address: **555-559 South Eighth Street, Colorado Springs, CO 80906**

Direction from nearest street intersection **This site is located on the NE corner of South Eighth St. and Moreno St.**

Tax Schedule No. **74134-10-027** Acreage **5005 sq. ft.**
(The tax schedule number can be obtained from the El Paso County Tax Assessor located at 27 E. Vermijo Avenue on the 2nd Floor; phone: 520-6600 or at their web site http://www.land.elpasoco.com)

Date of Receipt of Notice and Order or Date of Final Administrative Decision: **April 16, 2015**

Appeal of Decision Regarding:

Development/Landscape Plan _____ Subdivision Plat _____ Notice and Order _____

Hillside Site Plan _____ Administrative Relief _____ Non-Conforming Use _____

Sexually Oriented Business _____ Temporary Use Permit _____ Relocation payments _____

Similar Use Determination _____ Property Boundary Adjustment _____

Preservation Area Boundary Adjustment _____ Building Permit to Unplatted Land _____

Building Permit prior to Platting _____ Historic Preservation Board Determination _____

Home Occupation Permit _____ Human Service Establishment _____

Other: **NON-USE VARIANCE** _____

OFFICAL CITY PLANNING USE:

Fee Receipt # _____ Date Application Accepted _____
Completed Form _____ Intake Staff _____
Appeal Statement (2) _____ Vicinity Map _____
Authorization _____ Copy of Notice and Order (if applicable) _____
Applicant informed of Poster Pickup Date? Yes __ No __ If Yes, Date of Poster Pickup _____
Notification Options: Waive Notification _____ Adjacent _____ 500' _____ 1,000' _____
Assigned to: _____ (Notice to be sent at time of CPC/CC Hearing only)

OWNER/APPLICANT AUTHORIZATION:

The signature below certifies that I am the authorized appellant and that the information provided on this form is in all respects true and accurate to the best of my knowledge and belief. I familiarized myself with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit or other type of permit may be revoked without notice if there is a breach of representations or conditions of approval.

Gary R. Cowan 4/24/2015
Signature of Appellant Date

PRE-APPLICATION CONFERENCE:

A pre-application conference with the planning staff is not mandatory for these applications. However, if you would like a pre-application meeting, please call 385-5905 and one will be scheduled for you.

PROJECT TRACKING

City Planning maintains an internet-based project tracking system (**LUIStrack**) that reflects all significant processing benchmarks associated with each development application. Go to http://www.springsgov.com/luispublic/luispublic.asp to search for your application in **LUIStrack** project tracking.

PUBLIC NOTICE:

The following public notice requirements will be imposed in conjunction with the review of these applications:

- Written notification to the adjoining property owners within 500 or 1,000 feet (at planner's discretion) of the property site will be required. City Planning will coordinate with the applicant on the required postage amount with the postage amount required to be paid when the applicant picks up the public notice poster.
- A public notice poster will be provided to the applicant a minimum of ten (10) days prior to the public hearing date. The proposed project site must be posted, by the applicant for a minimum of ten (10) consecutive days. The poster should be posted in a very visible location on the site, which can be viewed by passing motorists and/or pedestrians without trespassing. The applicant is required to complete the affidavit (a copy will be attached to the poster) attesting to the specific dates that the site was posted. The applicant must check the site occasionally to confirm that the property continues to be posted throughout the posting period. If the poster is no longer in good shape or has disappeared from the site, please contact the City Planning Office at 385-5905 for a replacement poster.

FEES:

An application review fee will be required to accompany these applications (checks payable to City of Colorado Springs). The fee schedule is as follows:

Appeal of Administrative Decision to Planning Commission	City Planning Fee $175
Appeal of Planning Commission Decision to City Council	City Planning Fee $175

If you are indigent, your fee may be waived; please ask the planning staff for an Indigent Fee Waiver form if you wish to apply for this fee waiver.

APPLICATION REQUIREMENTS:

This application should be submitted to the City of Colorado Springs-Planning Office at 30 South Nevada Avenue, Suite 301. All applications must be completed in full and accompanied by the following information:

APPLICANT		PLANNER
✓	1. Two (2) copies of an **APPEAL STATEMENT** identifying the following: • A clear **DESCRIPTION** of the appeal. The file number, ordinance and/or provision must be identified and a brief summary of facts.	_____
	• A **JUSTIFICATION** based on the review criteria as set forth in Section 7.5.906 Justifying why the appeal should be approved.	_____
✓	2. A **VICINITY MAP** showing the parcel outlined with the adjacent streets within the neighborhood noted on a separate 8½" x 11" page.	_____
✓	3. A copy of the **NOTICE and ORDER** from the issuing agency (if applicable).	_____
	4. City Planning, City Planning Commission and/or the City Council may require other **ADDITIONAL INFORMATION** for this application as needed.	

INFORMATION REGARDING APPEAL OF A NOTICE and ORDER:

If you are appealing a Notice and Order issued by an official of the City of Colorado Springs, you are stating that one or both of the following are true:

1. You are not in violation of City Code and you believe the official is in error; and,
2. The abatement periood is unreasonable and should be lengthened.

FIGURE 7

INFORMATION REGARDING APPEAL OF A NOTICE AND ORDER, continued:

A perfected appeal shall operate as a stay of the enforcement process unless the City Agency which issued the Notice and Order certifies in writing that the condition giving rise to the decision constitutes an imminent hazard to the public health, safety and welfare or the violation is of such a short term nature that by the time an appeal hearing is held, the violation will have been terminated or moved to another site. You should take no further action regarding the alleged violation during this stay of proceedings. Do not continue construction, add on or otherwise modify your property or buildings. If you do, it is at your own risk and a completed project will not guarantee automatic approval. In no event will a variance be granted upon appeal from any order, requirement, decision or determination. Any variance will require the filing of a separate application and payment of applicable fees.

INFORMATION REGARDING AN APPEAL OF AN ADMINISTRATIVE DECISION:

An individual aggrieved by a decision made by an administrative officer of the City may appeal such a decision by filing a written notice specifying briefly the grounds of the appeal within ten (10) days from the date of mailing, posting, or personal service of notice of the decision. City Planning shall place the appeal on the Planning Commission agenda at the next regularly scheduled meeting occurring at least twenty-one (21) days but not more than forty-eight (48) days thereafter. After the public hearing, the Planning Commission shall have the power to affirm, reverse, or modify such decisions.

In accordance with the Zoning Code, individuals filing appeals of an administrative decision made by City Planning staff must substantiate the following in written form:

1. Identify the explicit ordinance provisions which are in dispute.
2. Show that the administrative decision is incorrect because of one or more of the following:
   a) It was against the express language of the Zoning Ordinance, or
   b) It was against the express intent of the Zoning Ordinance, or
   c) It is unreasonable, or
   d) It is erroneous, or
   e) It is clearly contrary to law.
3. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

Investigation: City Planning shall investigate the application and the facts bearing on the case to provide the information necessary for action consistent with the intent, purpose and requirements of the Zoning Code. City Planning shall report the findings to the Planning Comimission.

Appearance: If making an appearance of record, the following persons, are hereby defined as parties and shall be entitled by themselves or through a representative to participate in a public hearing before the Planning Commission:

1. The applicant or the appellant;
2. Either the owner or lessee of property of agent for the owner or lessee which is directly affected by the matter which is before the reviewing authority;
3. Any person, organization , group or governmental entity who demosntrate to the Planning Commission that they have a significant interest in the subject matter of the hearing;
4. Any member of the City administration.

The "appearance of record" shall mean either:

1. An oral statement sufficently identifying the person making the same or by his representaive made at the hearing, or
2. A written statement giving the name and address of the person making the appearnce signed by their representative and filed with the Planning Commission either prior to the beginning of the hearing or when permitted by the Planning Commsion.

FINAL DISPOSITION:

In consideration of an appeal, the Planning Commission may affirm, reverse or modify an administrative decision under their jurisdiction in accordance with of the Zoning Code. After receiving testimony, the Planning Commission shall announce its decision at the conclusion of the public hearing. The decisions shall set forth the findings of fact together with conditions of approval considered necessary to mitigate impacts and protect the public health, safety and welfare. The Planning Commission may recommend conditions, which are necessary and reasonable in order to further, the purpose of the Zoning Code. Such conditions may include, but are not limited to, setbacks, from adjacent uses or property lines, landscaping, screening, placement and size of signs, placement and amount of parking and access restrictions.

Appealing a Decision of the Planning Commission:
The decision of the City Planning Commission to approve or deny an application may be appealed to the City Council within ten days from the date of the public hearing decision. The appeal must be in writing and should be submitted to the City Clerk at 30 South Nevada Avenue, Suite 101 along with a $175.00 non-refundable fee. The appeal must include the file number of the item and specify briefly the grounds for the appeal. If a perfected appeal is filed within this ten-day period, the decision to approve or deny will be suspended until the appeal process in finalized.

Upon receipt of the subsequent appeal, the City Clerk shall schedule a public hearing before the City Council at the next meeting occurring at least thirteen (13) days thereafter. City Council has the power to refer any matter appealed back to Planning Commission for further consideration or affirm, reverse or modify the action of the Planning Commission. In all matters before the City Council relating to the actions of the Planning Commission, the entire file from City Planning pertaining to such matters shall be made a part of the record of the City Council. The file shall include but not be limited to Planning Commission minutes, maps, drawings, departmental reports and application. If the appellant wants to submit additional exhibits to Council to include in the record, the original of such exhibit and twelve (12) copies must be submitted to the City Clerk. If the exhibits are electronic, a disk must be given to the City Clerk. All exhibits are kept for a maximum of ten (10) working days after the time of appeal has expired.

At the public hearing, City Planning staff will summarize their recommendation and the Planning Commission's recommendation for the record. The appealant may present an argument in support of their position. An individual who has not appealed may present an argument in suppport of the appealant's position. A short rebuttal by the applicant shall be limited to issues raised during the preceding argument. Final comments from the applicant and all other parties are allowed only by permission of the Mayor. Final comments from City staff and staff's recommendation shall conclude the hearing. All questions will be directed through the Mayor who will then direct the question to the approprite person. Council may then make a decision on the matter or delay the decision. If final action is not taken at the public hearing, the Mayor will advise the audience when the matter will be considered.

Appealing a Decision of the City Council:
Once City Council has made a final decision to grant or deny an appeal, the administrative process shall be deemed to be exhausted. Any subsequent appeal must be made to the court.

DO NOT REMOVE THIS PAGE – IT MUST BE KEPT WITH THE ORIGINAL APPLICATION FORM!

The City of Colorado Springs-Planning Group is committed to ensuring that all of our services are accessible to those with disabilities. We encourage participation by all individuals. If you have a disability, advance notification of any special needs will help us better serve you. Please call City Planning at 385-5905 to request any special service that you may require. A one (1) week advance notice to allow us to accommodate your request is appreciated.

EIGHTH AVENUE LLC'S APPEAL STATEMENT

DESCRIPTION OF THE APPEAL:

FILE NO.: AR NV 15-00075
CITY CODE: SECTION 7.4.203

Eighth Avenue LLC hereby appeals The City of Colorado Springs Planning Department's Decision for a Non-Use Variance granted on April 16, 2015 to John Nelson to allow 17 parking spaces where 34 are required.

Eighth Avenue LLC is the owner of the shopping center located on Lot 1 on South Eighth Street adjacent to Lot 4 (555-559 South Eighth St.). It opposes the non-use variance granted based upon the following reasons:

The granting of this non-use variance impacts the Appellant's anticipated future development of its site because of the loss of the parking spaces requested by the applicant.

The staff based its decision in part upon: "A cross parking/access agreement was recorded at El Paso County Clerk and Recorder book 5679 page 391 when the shopping center was developed and allowed outlying pad sites the use of the parking spaces on the larger lot." In referencing this document, the staff ignored the objection to this requested non-use variance filed by Eighth Avenue, LLC's attorney Bradley D. Hill on March 9, 2015. Mr. Hill advised the staff in his objection that there was an Amended Declaration of Easements and Covenants recorded on February 26, 1990 in Book 5713 at Page 1465 that governed this situation, not the document cited by staff. The staff ignored the requirements set forth in Section 7 of the Amended Declarations that state:

> "…..There shall be maintained, at all times, on each Lot, together with any parking on appurtenant easements adjacent thereto, the number of parking spaces required by any applicable zoning ordinance, building code, or other governmental regulation. No improvements shall be construed on any Lot, unless the required minimum parking will be maintained on such Lot, and all other requirements herein are satisfied."

Mr. Hill's objection is attached hereto as Exhibit A and hereby incorporated herein by reference.

There are additional measures that could be taken by the Lot 4 owner to acquire the additional parking required to meet the requirements of City Code §7.4.203. Other land in the project could be leased from Eighth Avenue LLC, but no contact concerning this was attempted prior to filing for the variance.

FIGURE 7

No interpretation of the wording of either Section 2b or Section 7 of the Amended Declaration of Easements and Covenants would allow the allocation of additional spaces to the Applicant for building size and use purposes. The easement contained in the Amended Declaration merely grants the property owners, employees and customers the right to park within the shopping center. The parking spaces within Lot 1 are owned by Eighth Avenue, LLC and allowing the non-use variance in essence is a taking Appellant's property rights without any compensation.

By allowing this non-use variance, the staff has violated the terms and conditions of the Amended Declaration of Easements and Covenants and as a result Eighth Avenue, LLC will suffer and adverse impact. A restaurant site within the property owned by the Appellant is currently in the planning stages and to further support the parking requirement on the site, Appellant has purchased additional land adjacent to Lot 1. The statement by the staff that there is "adequate parking in the shopping center site as a whole to accommodate this addition....without affecting other properties" is erroneous as shown above.

It is the position of the Appellant that the City should adhere to the requirements set forth in City Code §7.4.203 in order to maintain consistency in the planning process. Granting this variance does not meet the requirements of **§ 7.4.205(J)** which states in part:

"Unless placed in a tract for common use, ***all required parking spaces shall be located on the same lot as the use.*** Access or maneuvering areas may be located on adjacent lots only if a recorded document is provided for common use and maintenance. The easement or tract shall be established by a statement on the recorded plat or separate recorded document. The recorded documents shall state that the easement or tract is to be used and maintained by all the lot owners within the development". (emphasis added)

This Section of the Code taken together with Section 7 of the Amended Declarations justifies the denial of the requested non-use variance.

CRITERIA REVIEW JUSTIFICATION:

a. The identities of the explicit ordinances provisions which are in dispute are 7.5.802(B.1), 7.5.802(B.2), 7.5.802(B.3) and particularly 7.4.205(J).
b. The administrative decision is incorrect because:
    1. It is against the express language of §7.4.205(J).
    2. It is against the express intent of §7.4.205(J).
    3. It is unreasonable because it impacts Eighth Avenue LLC's property rights.
    4. It is erroneous for the reasons stated above.
    5. It is clearly contrary to law and will force Eighth Avenue LLC to file a Declaratory Judgment action to define and protect its property rights with regard to the parking area located within its property.

FIGURE 7

c. There are no benefits to Eighth Avenue LLC and the adverse impact created by this decision are stated above . The burden of this decision will force additional legal expense and time on the Appellant to protect its property rights thus any benefits accrued by the community are outweighed by the burden being forced upon the Appellant.

WHEREFORE, it is respectfully requested that the Decision for a Non-Use Variance entered on April 16, 2015 be reversed and that the City require the applicant to acquire the necessary parking spaces for its intended operation either through lease arrangements with the surrounding property owners (which includes the Appellant) or the purchase of additional land in the development.

Respectfully submitted this 25th day of April, 2015.

The Law Office of Gary R. Cowan

By Gary R. Cowan

Gary R. Cowan, #2507
Attorney for Appellant
2665 Alder Point
Colorado Springs, CO 80904

FIGURE 7

BRADLEY D. HILL
ATTORNEY AT LAW
950 SOUTH CHERRY STREET, SUITE 1650
DENVER, COLORADO 80246
(303) 369-5510
FAX (303) 369-5509

March 9, 2015

Lonna Thelen,
Planner
City of Colorado Springs
Planning and Community Development
30 S. Nevada, Suite 105
Colorado Springs, Colorado 80901

Via email
lthelen@springsgov.com

RE: Case No. AR NV 15-00075
Property Address: 555-559 S. Eighth Street

Dear Ms. Thelen:

I represent Eighth Avenue Limited Liability Company ("Eighth Avenue"), the owner of real property located at 525 S. Eighth Street (Lots 1 and 2 of the Dandrea-Walmart Subdivision and Lot 2 of the Autozone Filing No. 1). Eighth Avenue's property is adjacent to 555-559 S. Eighth Street (Lot 4 of the Wal-Mart Filing No. 1), the property subject to the above-referenced application. These properties are located within the shopping center referred to as the Wal-Mart Shopping Center, its prior tenant.

Eighth Avenue recently received a post card notice that the owner of Lot 4 is requesting a non-use variance to enable it to increase the size and change the use of its building and property, without complying with the Colorado Springs Zoning Code parking requirements or the Declarations of Easements and Covenants pertaining to the property.

Given this short notice, Eighth Avenue informs the City that it objects to this application and requests the opportunity to supplement this objection, after a full review, and a hearing with the City of Colorado Springs Planning Commission.

The Applicant wants to increase the size and change the use of Lot 4 from retail to restaurant use and add a free standing vending kiosk. Both of these changes would intensify the use of the property. Accordingly, the Colorado Springs Zoning Code mandates that the Applicant have 33 parking spaces. The Owner only owns 19 spaces. It is short 14 parking spaces.

The Applicant is requesting that it be allocated those 14 additional parking spaces from the parking spaces owned by Eighth Avenue and located on Lot 1. Those 14 additional spaces would come from property the Applicant does not own. The Applicant is requesting that the City allow it to be given "de facto" ownership of parking spaces owned by Eighth Avenue, without obtaining Eighth Avenue's agreement or any payment for them.

Eighth Avenue is advised that the Applicant's current use of Lot 4 already exceeds the City's parking requirements by 2 spaces. It is not known whether a variance was ever obtained for that use. The first paragraph of the Applicant's Memorandum accompanying its Application states that its

FIGURE 7

increased restaurant use requires an additional 16 parking spaces, not 14. This would confirm the prior deficiency.

In 2005, this Applicant made a similar request to the City and was denied a variance. The City, including the City Attorney, concluded that the Applicant did not have legally sufficient parking spaces to support its intended use. Nothing has changed.

In 2011, the Applicant made another request for a variance. Eighth Avenue objected. The variance was granted on the specific condition that the Applicant commence with its change in use no later than August 18, 2012. The Applicant never commenced its change in use and the variance expired.

Now, more than 3 years later, the Applicant again seeks to increase the size and change the use of Lot 4 and now wants to add a free standing vending kiosk, all without complying with the parking requirements mandated by the Colorado Springs Zoning Code and the Declarations of Easements and Covenants pertaining to the property.

The Amended Declaration of Easements and Covenants recorded on February 26, 1990 in Book 5713 at Page 1465, govern the use of Lot 4. Paragraph 7 states in pertinent part as follows:

> "...There shall be maintained, at all times, on each Lot, together with any parking on appurtenant easements adjacent thereto, the number of parking spaces required by any applicable zoning ordinance, building code, or other governmental regulation. No improvements shall be construed (*sic*) on any Lot, unless the required minimum parking *will be maintained on such Lot,...*" (emphasis added.)

Unless the Applicant provides 33 parking on its Lot 4, the Applicant may not increase the size and change the use of its building and property as it is requesting.

The reciprocal easements for parking set forth in the Amended Declaration of Easements and Covenants do not allocate any additional spaces to the Applicant for building size and use purposes. The easement merely grants the property owners, employees and customers the right to park within the shopping center. The easement is not intended to allow the Applicant to appropriate parking spaces from another Lot to determine the size and use of the Applicant's property. The Applicant's requested increase in size and change in use do not comply with the City's minimum parking requirements and are in violation of the Declaration and Covenants pertaining to Lot 4.

The Applicant's assertion that the parking lot is underused is both inaccurate and not a basis to grant a non-use variance.

First, Eighth Avenue, itself and through lease agreements with its tenants, has contractual obligations for all of its parking spaces.

More importantly, the parking spaces within Lot 1 are owned by Eighth Avenue. The Applicant may not appropriate or take Eighth Avenue's parking spaces to determine the Applicant's building size or use of Lot 4, nor may the City allocate or permit the allocation of those spaces to the Applicant without Eighth Avenue's agreement. Eighth Avenue does not give its consent and objects to the non-use variance.

FIGURE 7

The Applicant's request to increase the size and change the use of its building is self-imposed. There isn't any extraordinary or exceptional physical condition on Lot 4 that prevents the Applicant from the reasonable use of its Lot in conformance with the Colorado Springs Zoning Code.

The Applicant's request for a non-use variance to increase the size and change the use of its building and property is merely a desire to increase the market value of its property. It is a desire for a greater return on its investment. This is not a proper basis for a non-use variance.

Allocating 16 or 14 parking spaces owned by Eighth Avenue to the Owner of Lot 4 to enable it to increase the size and change the use of its building will result in the tortious interference of Eighth Avenue's ownership of the parking spaces and Eighth Avenue's lease obligations with and contractual rights of its Tenants. This could also amount to a "de facto" taking. At the very least, the non-use variance would impose a significant adverse impact upon Lot 1 and Eighth Avenue's property rights.

The Applicant cannot meet the criteria set forth in the Colorado Springs Municipal Code for a non-use variance. The City cannot permit a taking of Eighth Avenue's property by the Applicant. Eighth Avenue objects to the application and requests that it be denied administratively or that a hearing be held by the Planning Commission in accordance with the City's Zoning Code.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Bradley D. Hill

Bradley D. Hill

BDH/bh
cc: Edwin H. Shaufler,
Eighth Avenue Limited Liability Company
Richard Walker,
First Properties, Inc.

FIGURE 7

VICINITY MAP

NOT TO SCALE

FIGURE 7

CITY OF COLORADO SPRINGS PLANNING DEPARTMENT
RECORD-OF-DECISION FOR A NON-USE VARIANCE

FILE: AR NV 15-00075 **DECISION DATE: APRIL 16, 2015**

INFORMATION

Name of Applicant:	John Nelson
Address of Premises Involved:	555-559 S 8th St
Zone District:	C-6
Tax Schedule Number:	74134-10-027

REQUEST

A request by John Nelson with Nelson Associates on behalf of THJ&J for approval of a non-use variance for the following section of City Code: Section 7.4.203: to allow 17 parking spaces where 34 are required. The variance is requested to add a 200 square foot ice house and allow the existing structure to be used as half restaurant and half retail. The site is zoned C-6 (General Business), contains 0.5 acres, and is located at 555-559 S 8th Street.

AGENCY COMMENTS

No agency comments were received.

STAFF ANALYSIS

CITY CODE CRITERIA TO GRANT A NON-USE VARIANCE — CRITERIA MET OR NOT MET

1. 7.5.802 (B.1) Exceptional or Extraordinary Conditions — Met

The site was originally developed as part of the larger shopping center anchored by Wal-Mart. The site in question was originally developed as a retail space and required 16 parking spaces; the original site provided 17 parking spaces. The restaurant use, retail use and new ice house require 34 spaces. The site provides 17 spaces and 2 additional spaces in front of the building that are not entirely on the site for a total of 19 spaces.

The site is fully developed and cannot accommodate any additional parking spaces. A cross parking/access agreement was recorded at El Paso County Clerk and Recorder book 5679 page 391 when the shopping center was developed and allowed outlying pad sites the use of the parking spaces on the larger lot. Staff finds that due to this cross parking/access agreement there is adequate parking in the shopping center site as a whole to accommodate this addition of the ice house without negatively affecting other properties.

2. 7.5.802 (B.2) No Reasonable Use of Property — Met

As shopping centers age, renovations, changes of use, additions and redevelopment become necessary to keep shopping centers alive. The City encourages adaptive reuse over complete redevelopment when possible. The owners have creatively found a way to add a new user to the site to complement the existing users and generate additional use of the existing structure. The previously proposed variance included a drive thru that took up two spaces. The drive thru has been removed and the two spaces have been added back to the site. The new use only requires one spaces so the site is now parked with one additional space over what the previous variance allowed (AR NV 08-00592).

3. 7.5.802 (B.3) No Adverse Impact to Surrounding Property — Met

Staff finds no evidence that the granting of this variance will be detrimental to the public health, safety or welfare or injurious to the surrounding residential area, nor would it be inconsistent with any plans adopted by the City or weaken the general purpose of the Zoning Ordinance.

STAFF DECISION

APPROVED: Staff approves the non-use variance request due to the above criteria being met.

4/16/15
DATE OF DECISION

Lonna Thelen
STAFF MEMBER

FIGURE 7

APPLICANTS: THE DECISION PERTAINS ONLY TO THE APPLICATION YOU SUBMITTED. YOU MUST COMPLY WITH ALL OTHER APPLICABLE REQUIREMENTS OF THE CITY OF COLORADO SPRINGS AND THE REGIONAL BUILDING DEPARTMENT. A COPY OF THE RECORD-OF-DECISION AND APPROVED SITE PLAN SHALL BE SUBMITTED IN CONJUNCTION WITH A BUILDING PERMIT APPLICATION. THIS VARIANCE DOES NOT SUPERSEDE OR NULLIFY PRIVATE COVENANTS THAT MAY LAWFULLY IMPOSE OTHER RESTRICTIONS ON THE USE OF YOUR PROPERTY.

*******IMPORTANT*******

THE VARIANCE SHALL BE VOID IF ALL REQUIRED PERMITS ARE NOT OBTAINED WITHIN TWLEVE(12) MONTHS OF THE FINAL APPROVAL DATE.

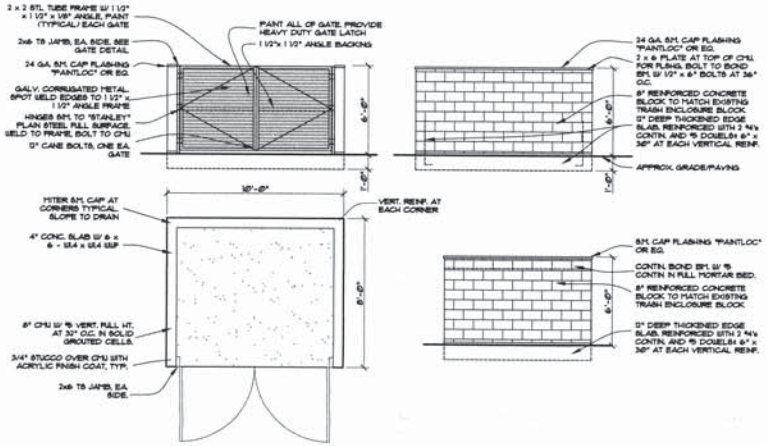
The City of Colorado Springs is committed to excellent customer service. We would like to hear your comments about the service you received during the review of this application. Soon, you will receive an email from the City of Colorado Springs with a link to an electronic Customer Satisfaction Survey. Please take a few minutes to complete the survey. Your response is completely confidential.

FIGURE 7

555-559 SOUTH EIGHTH STREET

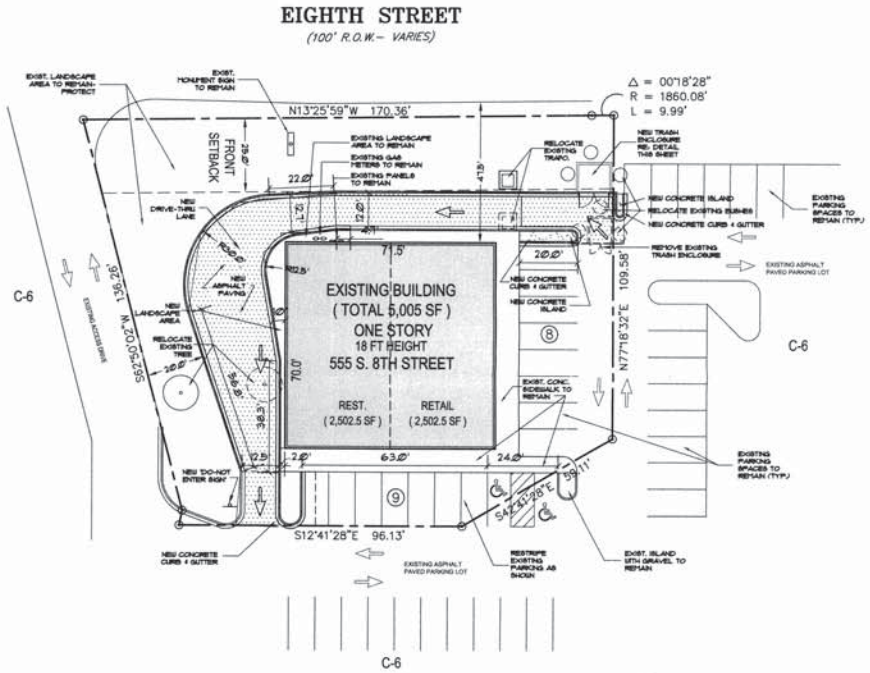
NON-USE VARIANCE/DRIVE-THRU ADDITION

COLORADO SPRINGS, COLORADO 80909



1 SD-1 TRASH DUMPSTER ENCL. DTL.

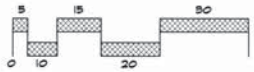
SCALE: 1/4"=1'-0"



NORTH

SITE DEVELOPMENT PLAN

SCALE: 1"= 20'-0"



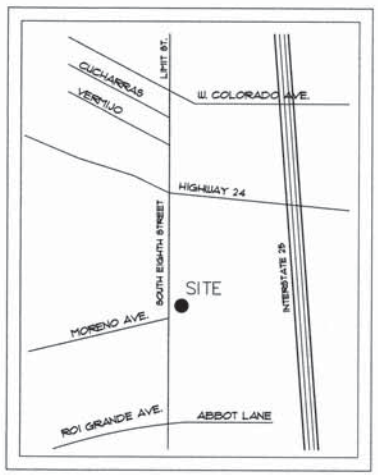
LEGAL DESCRIPTION:

LOT 4 WAL-MART CENTER FIL NO 1 EX THAT PT DES AS FOLS: COM AT SW COR OF SD LOT 4, TH N 13<25'29" W 94.59 FT FOR POB, TH CONT N 13<25'29" W 75.77 FT TO A PT OF CUR, TH ALG ARC OF CUR R WITH A RAD OF 1860.08 FT A C/A OF 00<18'28" WHICH CHORD BEARS N 13<16'45" W 9.99 FT FOR AN ARC DIST OF 9.99 FT,
TH N 77<18'32" E 109.58 FT, S 42<41'28" E 59.11 FT, S 12<42'47" E 34.45 FT, TH S 77<15'54" W 138.06 FT TO POB
NOTE:
AN APPLICATION TO THE EL PASO COUNTY GIS MAPPING OFFICE HAS BEEN SUBMITTED IN ORDER TO COMBINE THE EXISTING TWO LOTS INTO ONE. CITY PLANNING WILL BE COPIED WITH THE FINAL LEGAL DESCRIPTION FOLLOWING APPROVAL

DECLARATION OF EASEMENTS AND COVENANTS:

REFER TO BOOK 5679, BEGINNING PAGE 341, EL PASO COUNTY CLERK AND RECORDER, RECORDED OCTOBER 20, 1989 - #01869228

THERE IS PROVISION IN THE COVENANTS FOR 'NON-EXCLUSIVIVE EASEMENT AND RIGHT FOR VEHICULAR AND PEDESTRIAN USE OF... ALL PARKING AREAS WHICH ARE A PORTION OF THE COMMON AREAS OR COMMON AREA IMPROVEMENTS,' PER ARTICLE 2, 'RECIPROCAL EASEMENTS,' PARAGRAPH 'b.'



NORTH

VICINITY MAP

NOT TO SCALE

PARKING SUMMARY:

USE	RATIO	PARKING REQ'D.
RESTAURANT	1/100	25
RETAIL	1/300	8
TOTAL PARKING REQ'D.		33
TOTAL PARKING PROVIDED		17*

*TWO SPACES ARE ADJACENT TO THIS BUILDING; HOWEVER, THE PROPERTY LINE RUNS THROUGH THEM

PROJECT DATA

OWNER:
THJ & J LLC
PO BOX 38715
COLORADO SPRINGS, CO 80937
TEL. 719-636-1555

PROPERTY ADDRESS:
555-559 SOUTH EIGHT STREET
COLORADO SPRINGS, CO

LOT SIZE (SF):
21,718 SF

EXISTING/PROPOSED BUILDING SIZE:
5,005 SF

EXISTING BUILDING USE:
RETAIL

PROPOSED BUILDING USE:
RETAIL(50%)/RESTAURANT(50%)

EXISTING LOT COVERAGE:
47%

PROPOSED LOT COVERAGE:
74%

CPC NV 11-00068

Nelson Associates

555-559 SOUTH EIGHTH STREET
COLORADO SPRINGS, COLORADO
NON-USE VARIANCE/DRIVE-THRU ADDITION

PROJECT NO. 0910
DRN. BY:
REVISIONS:

APPROVED
AUG 1 8 2011
BY CITY PLANNING COMMISSION

ISSUE DATE: 6-9-2011
SHEET:
SD-1

FIGURE 8

NEW BUSINESS CALENDAR

CITY PLANNING COMMISSION AGENDA

ITEM NO.: 5.A -5.C

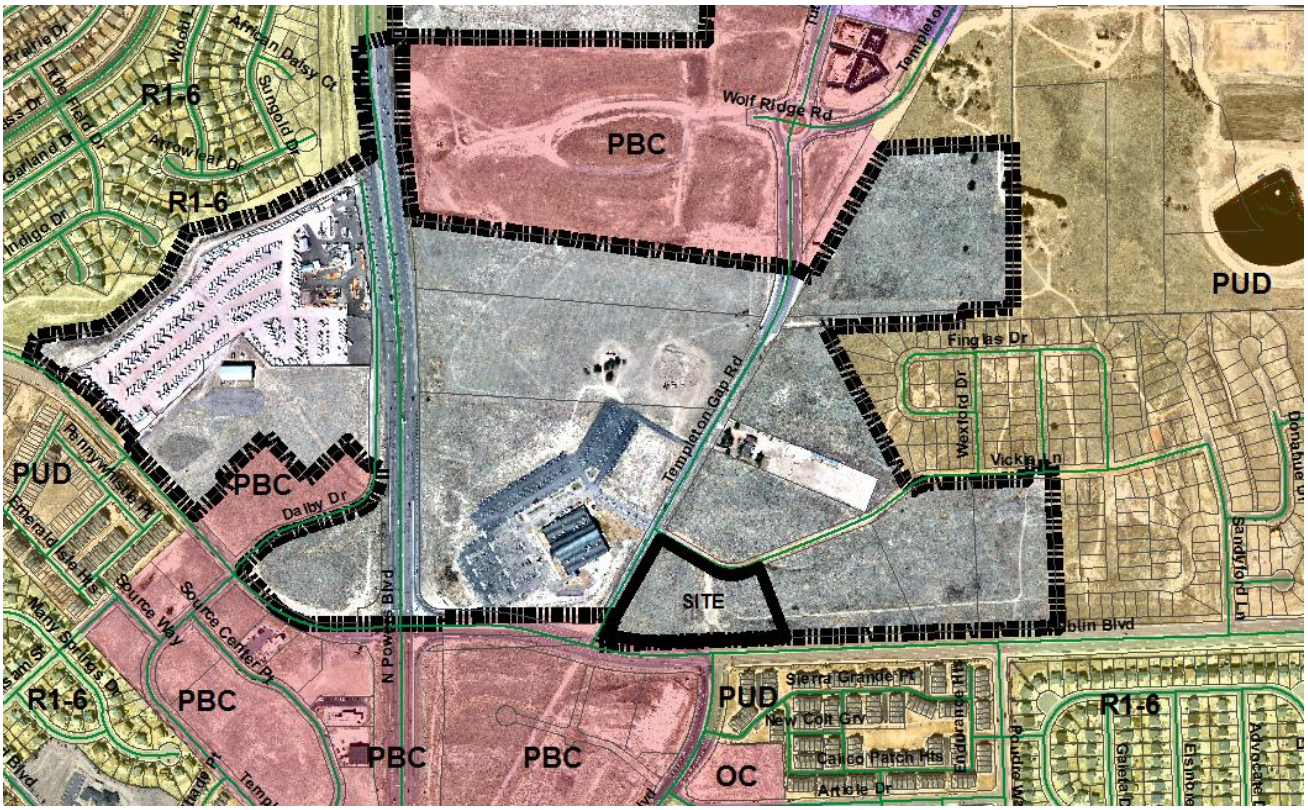
STAFF: MEGGAN HERINGTON

FILE NO(S):
CPC A 14-00133 – LEGISLATIVE
CPC ZC 14-00134 – LEGISLATIVE
CPC CP 14-00135 – QUASI-JUDICIAL

PROJECT: **TUTT CORNERS ADDITION**

APPLICANT: **CONFLUENT DEVELOPMENT**

OWNER: **MILLENNIUM VENTURE GROUP, INC.**



PROJECT SUMMARY:

1. Project Description: This project includes concurrent applications for annexation, zoning, and a concept plan for 4.8 acres located at the northeast corner of Templeton Gap Road and Dublin Boulevard.
   Zoning will establish the C-6/AO (General Business with Airport Overlay) zone for the property. The associated concept plan illustrates five potential commercial pad sites ranging in size from 0.4 acres to 1.4 acres. The extension of Tutt Boulevard through the property as well as private access is also illustrated. **(FIGURE 1)**

2. Applicant's Project Statement: **(FIGURE 2)**

3. Planning and Development Department's Recommendation: Staff recommends approval of the applications with one condition of approval for the annexation.

BACKGROUND:

1. Site Address: The site is currently addressed as 6045 Vickie Lane.
2. Existing Zoning/Land Use: The property is currently in unincorporated El Paso County. The property is currently vacant with a rural residential land use assigned to the property.
3. Surrounding Zoning/Land Use: North: Unincorporated El Paso County/Vacant
   South: PBC and PUD (Commercial and Townhomes)
   East: Unincorporated El Paso County/Vacant
   West: Unincorporated El Paso County (Church for All Nations)
4. Comprehensive Plan/Designated 2020 Land Use: There is no 2020 Land Use designation because the site is not yet within the City.
5. Annexation: The property is not yet annexed.
6. Master Plan/Designated Master Plan Land Use: There is no existing or planned master plan for this property.
7. Subdivision: Lot 2 of AA Subdivision.
8. Zoning Enforcement Action: None
9. Physical Characteristics: The property is vacant with no significant vegetation.

STAKEHOLDER PROCESS AND INVOLVEMENT:

The public process included posting the site and sending postcards to 228 property owners within 500 feet at application submittal and again prior to the Planning Commission hearing. No written comments were received.

Staff also sent the plans to the standard internal and external review agencies for comments. Commenting agencies included Colorado Springs Utilities, City Engineering, City Traffic, City Fire, City Finance, Police and E-911, and the Colorado Springs Airport.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Review Criteria / Design & Development Issues:

   Annexation
   The request is to annex the property into the municipal limits of the City of Colorado Springs and develop commercial pad sites. The annexation consists of 6.3 acres; 1.5 acres of Templeton Gap Road Right-of-Way and the 4.8 acre lot. The site is part of a

larger enclave, an area completely surrounded by the City limits, and contiguous to the municipal limits of the City of Colorado Springs. Therefore, the property is eligible for annexation. Because the property is less than ten acres, there is no master plan requirement, only annexation, zoning and concept plan are required at this time. A development plan will be required in the future for the new structures.

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 14, 2015. The FIA states that there are minimal identifiable marginal costs of providing services to this development, as the surrounding infrastructure and roadways are already being maintained by the City as they fall within the service area of surrounding parcels. The result of the FIA is a positive cumulative cash flow for the City during the 10-year timeframe. **(FIGURE 3)**

The annexation agreement is attached as **FIGURE 4**. Because the property is adjacent to a fast growing part of the City, and the infrastructure is developing, there are a number of off-site requirements outlined in the agreement including right-of-way dedications and improvements to Dublin Boulevard to facilitate access. There is also a cost recovery filed for Dublin Boulevard that will need to be paid with future platting. The standard Police and Fire service fees will be collected.

C-6/AO Zoning

The zoning request is to zone the 4.8-acre property C-6/AO (General Business with Airport Overlay). This will allow future development of any allowed or conditional uses in this district including a mix of commercial. There is a large area of PBC (Planned Business Center) zoned property to the south and southwest and significant residential development in the area. It is appropriate to establish a commercial node to serve the abundant residential development growing in the area. The proposed zone also fosters a mix of land uses, brings neighborhood services to the area, and is in conformance with the review criteria for zone changes found in City Code Section 7.5.603.

Concept Plan - Design

The concept plan illustrates five future commercial pad sites ranging in size from 0.4 acres to 1.4 acres. Building setbacks and landscape setbacks are illustrated on the plans. Access is provided from the new extension of Tutt Boulevard. A right-in right-out to Dublin Boulevard and a three-quarter movement from the private access that will be the vacated Templeton Gap right-of-way to Dublin is also illustrated. Access will also be provided to Vickie Lane north of the property. There are two building phases planned and uses include restaurants, a convenience store and other service uses.

Concept Plan - Roadway Configuration

The alignment of the Tutt Boulevard extension north of Dublin Boulevard bisects this property. The construction of Tutt is a PPRTA project. As part of the annexation, the owner is required to dedicate 107 feet of right-of-way for Tutt. The extension of Tutt to Vickie Lane will be funded mainly by PPRTA. The developer is responsible for the dedication of the right-of-way, water and sanitary sewer design and installation. The developer is also required to escrow funds for curb and gutter. A sidewalk recovery will be collected for the adjacent lots at time of building permit. The city will construct the improvements and collect the reimbursements from the developer.

The developer is also responsible for the design and construction of Vickie lane adjacent to future Lot 1 as illustrated on the concept plan. A cost recovery may be filed against the property owner on the north side of Vickie Lane for the road construction.

The concept plan states that the Templeton Gap Road right-of-way adjacent to the site may be vacated at a later date. Because of the new construction of Tutt moving north, Templeton Gap is no longer a needed/required roadway. There are certain conditions that need to occur before the applicant can petition Council to vacate Templeton Gap. Those conditions are specified on the concept plan. In order to make the vacation work, the construction of Tutt must first be completed. Only then would staff recommend approval of the Templeton Gap Road right-of-way vacation. Therefore, the applicant has shown that right-of-way as being vacated in the future to be used as private access for this development. They have worked closely with the Church for All Nations to the west to coordinate the vacation and overall development.

All of these developer and City/PPRTA requirements are outlined under the notes section of the concept plan.

City Code Section 7.5.501 outlines the requirements and review criteria for a concept plan. 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 will require the submission of a development plan, which will be reviewed administratively per City Code Section 7.5.502.

2. Conformance with the City Comprehensive Plan:
Comprehensive Plan 2020 Land Use Map: Since the property is not located within the City, it is not indicated with a land use on the 2020 Land Use Map; however, property will be included on the map as a continuation of the “Community Activity Center” that is shown on adjacent city properties at this corner.

The Comprehensive Plan and the Annexation Plat both highlight the importance of annexing enclave areas. The Comprehensive Plan strategies advocate a cooperative approach with the property owners and governmental entities to systematically eliminate enclaves.

Policy CIS 202: Annexation will be a Benefit to the City of Colorado Springs
Evaluate proposed annexations to determine if the request is a benefit to the City.

Policy LU 201: Promote a Focused, Consolidated Land Use Pattern
Locate new growth and development in well-defined contiguous areas in order to avoid leapfrog, scattered land use patterns that cannot be adequately provided with City services.

Strategy LU 203a: Locate the Places that People Use for Their Daily Needs and Activities Close to Each Other
Group and link the places used for living, working, shopping, schooling, and recreating and make them accessible by transit, bicycle, and foot, as well as by car.

Policy LUM 213: Potential Annexation Areas

Utilize the Potential Annexation Area designation for areas that are likely to be incorporated by the City.

Objective LU 3: Develop A Mix of Interdependent, Compatible, and Mutually Supportive Land Uses.
Over the past several decades, the location and design of development have created a pattern of isolated, disconnected, single-purpose land uses. An alternative to this type of land use pattern is one that integrates multiple uses, shortens and reduces automobile trips, promotes pedestrian and bicycling accessibility, decreases infrastructure and housing costs, and in general, can be provided with urban services in a more cost-effective manner.

Policy LU 301: Promote a Mixed Land Use Pattern
Promote development that is characterized by a mix of mutually supportive and integrated residential and non-residential land uses and a network of interconnected streets with good pedestrian and bicycle access and connections to transit.

Objective CCA 6: Fit New Development into the Character of the Surrounding Area
Often the overall character of a new development is not realized until the project is completed. This can lead to unintended impacts and incompatible development. Applicants for new developments need to clearly identify how their projects will fit into the character of the surrounding area and the community as a whole with respect to height, scale, bulk, massing, roof forms, signage, overall site design, pedestrian and vehicular access, and relation to the public right-of-way.

Policy CCA 601: New Development Will Be Compatible with the Surrounding Area
New developments will be compatible with the surrounding land uses and will complement the character and appearance of adjacent land uses.

It is the finding of the Land Use Review Division that the Tutt Corners Addition annexation, zoning and concept plan will substantially conform to the City Comprehensive Plan 2020 Land Use Map and the Plan's goals and objectives.

3. Conformance with the Area's Master Plan:
   There is no master plan for this area.

STAFF RECOMMENDATION:

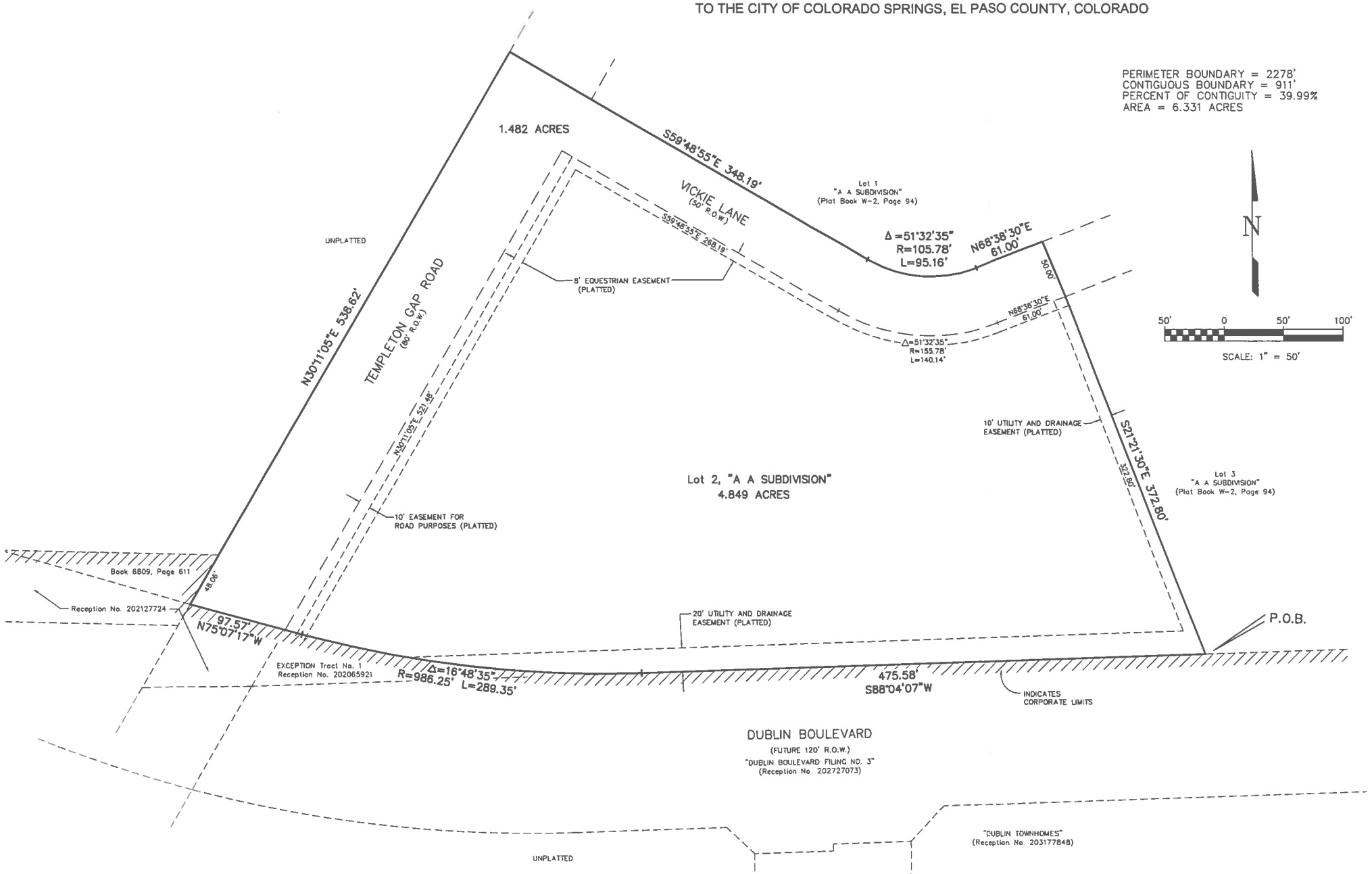
ITEM NO.: 5.A CPC A 14-00133 – ANNEXATION
Approve the Tutt Corners Addition annexation, based upon the findings that the annexation complies with all of the Conditions for Annexation Criteria as set forth in City Code Section 7.6.203 with the following condition of approval:

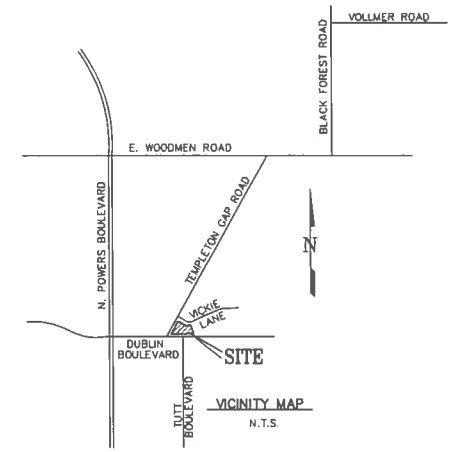
ITEM NO.: 5.B CPC ZC 14-00134 – ESTABLISHMENT OF THE C-6 ZONE
Approve the establishment of the C-6/AO (General Business with Airport Overlay) zone district, based upon the findings that the zoning request complies with the three (3) criteria for granting of zone changes as set forth in City Code Section 7.5.603(B).

ITEM NO. : 5 .C CPC CP 14-00135 – TUTT CORNERS CONCEPT PLAN
Approve the Tutt Corners Concept Plan based upon the findings that the concept plan meets the review criteria for concept plans as set forth in City Code Section 7.5.501.E

TUTT CORNERS ADDITION

A PORTION OF TNE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M.,
TO THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO





SURVEYOR'S CERTIFICATE

I, Daniel L. Kupferer, a Professional Land Surveyor in the State of Colorado, do hereby state that the map shown hereon is a correct delineation of the above described parcel of land and that at least one sixth (1/6) of the peripheral boundary of said parcel is contiguous to the present boundary of the City of Colorado Springs, El Paso County, Colorado.

PRELIMINARY COPY
SUBJECT TO FINAL
CITY APPROVAL

Daniel L. Kupferer
Colorado Professional Land Surveyor No. 18465

BE IT KNOWN BY THESE PRESENTS:

That MILLENNIUM VENTURE GROUP, INC., A DELAWARE CORPORATION, being the petitioner-of-interest for the annexation of the hereinafter described real property:

A tract of land being a portion of the Southwest Quarter of Section 7, Township 13 South, Range 65 West of the 6th P.M., also being Lot 2, A A SUBDIVISION (Plat Book W-2, Page 94, El Paso County, Colorado records), EXCEPT that tract described by document (Reception No. 202065921 (EXCEPTION Tract No. 1), said El Paso County records) and TOGETHER WITH those adjacent portions of Templeton Gap Road (80' R.O.W.) and Vickie Lane (50' R.O.W.), in El Paso County, Colorado, described as follows:

Beginning at the Southeast corner of said Lot 2 (all bearings in this description are relative to those platted in said SUBDIVISION);

thence S88°04'07"W along the Southerly line of said Lot 2, 475.58 feet to the Easterly corner of said EXCEPTION Tract No. 1;

thence on a curve to the right and along the Northerly line of said Tract No. 1, said curve having a central angle of 16°48'35", a radius of 986.25 feet for an arc distance of 289.35 feet;

thence N75°07'17"W along said Northerly line of Tract 1 and as extended Northwesterly, 97.57 feet to a point on the Northwesterly right-of-way line of said Templeton Gap Road;

thence N30°11'05"E along said Northwesterly right-of-way line of Templeton Gap Road, 538.62 feet to a point on the Northwesterly extension of the Northerly right-of-way line of said Vickie Lane

The following 3 courses are along said Northwesterly extension and the Northerly right-of-way line of Vickie Lane

1) S59°48'55"E, 348.19 feet;

2) on a curve to the left, said curve having a central angle of 51°32'35", a radius of 105.78 feet for an arc distance of 95.16 feet;

3) N68°38'30"E, 61.00 feet to a point on the Northwesterly extension of the Easterly line of said Lot 2;

thence S21°21'30"E along said Northwesterly extension and said Easterly line of Lot 2, 372.80 feet to the Point of Beginning;

Containing 6.331 acres, more or less.

IN WITNESS WHEREOF:

The aforementioned, MILLENNIUM VENTURE GROUP, INC., A DELAWARE CORPORATION, has executed this instrument:

MILLENNIUM VENTURE GROUP, INC., A DELAWARE CORPORATION

_____ _____
DATE

NOTARIAL:

STATE OF COLORADO }SS
COUNTY OF EL PASO

The above and aforementioned was acknowledged before me this _____ day of _____, 20____ A.D., by _____ for MILLENNIUM VENTURE GROUP, INC., A DELAWARE CORPORATION.

Witness my Hand and Seal_____

My Commission Expires _____

CITY APPROVAL:

On behalf of the City of Colorado Springs, the undersigned hereby approve for filing the accompanying annexation of TUTT CORNERS ADDITION.

_____ _____
City Engineer Date Director, Development Services Date

The annexation of the real property shown on this plat is approved pursuant to an ordinance made and adopted by the City of Colorado Springs, El Paso County, Colorado, by action of the City Council of the City of Colorado Springs at it's meeting on the

_____ day of _____, 20____ A.D.

ATTEST: _____ _____
City Clerk President of City Council

RECORDING:

STATE OF COLORADO }SS
COUNTY OF EL PASO

I hereby certify that this instrument was filed for record in my office at _____ o'clock ____M. this _____ day of _____, 20 ____ A.D., and is duly recorded under Reception No. _____ of the records of El Paso County, Colorado.

Chuck Broerman, Clerk and Recorder

Fee: _____ By: _____
Deputy

CALL BEFORE YOU DIG ...
811
DIAL 811
48 HOURS BEFORE YOU DIG, CALL UTILITY LOCATORS FOR LOCATING AND MARKING GAS, ELECTRIC, WATER AND SANITATION.

REVISIONS

No.	Description	By	Date
1	CHANGE OWNER NAME	DLK	01/20/15
2	CITY COMMENTS	RDG	03/16/15

H Scale: 1" = 50'
V Scale: N/A
Designed By: N/A
Drawn By: RDG
Checked By: DLK
Date: 09/23/14

Land Development Consultants, Inc.
PLANNING · ENGINEERING · SURVEYING
www.ldc-inc.com TEL: (719) 528-6133 FAX: (719) 528-6848
3898 MAIZELAND ROAD COLORADO SPRINGS, CO 80909

ANNEXATION PLAT
TUTT CORNERS ADDITION

Project No.: 14016
Sheet: 1 of 1

F:\14000\14016 - Tutt Corners\Surveying\Land_Plats\001\14aru.dwg

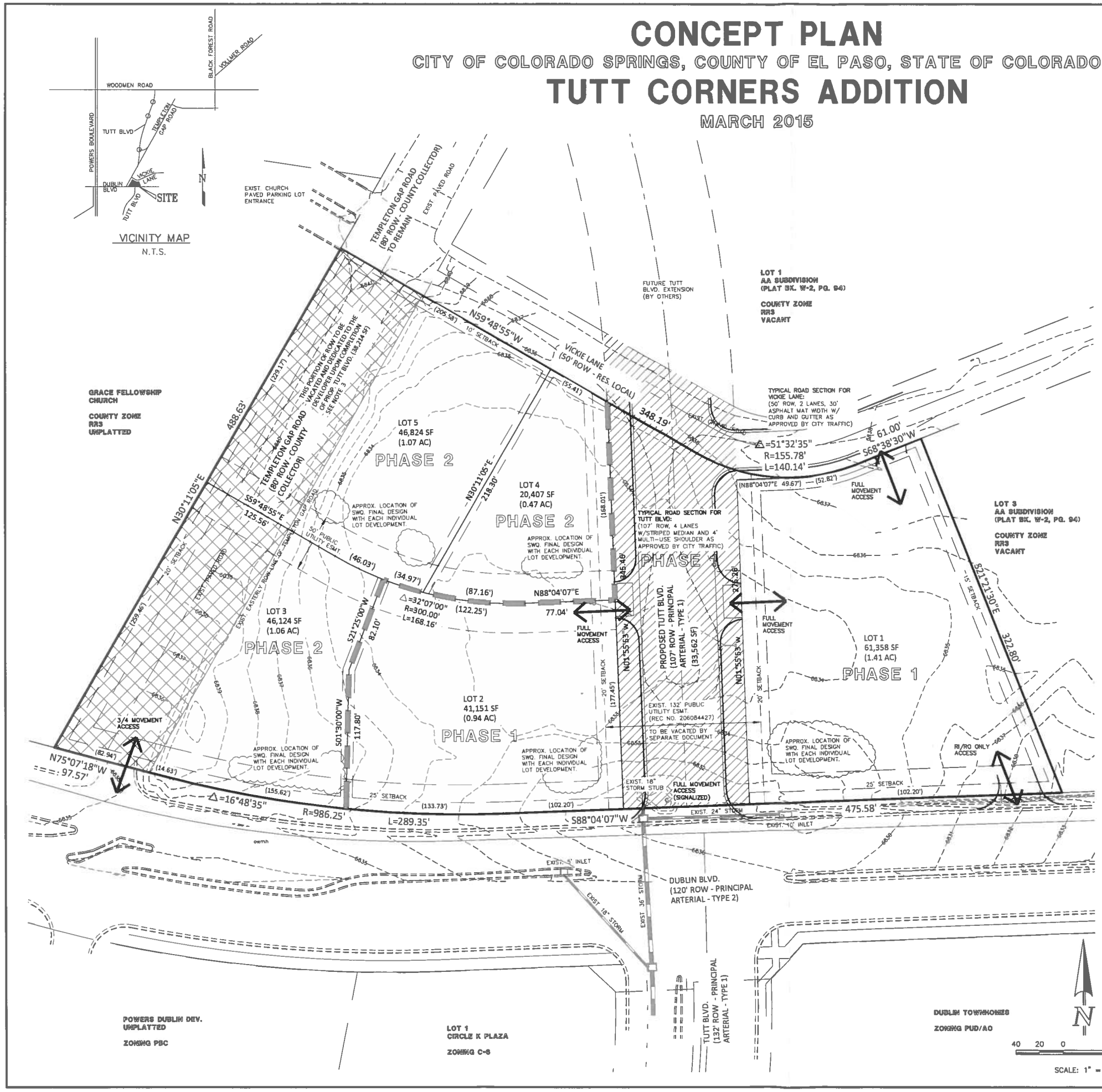
FIGURE 1

CONCEPT PLAN

CITY OF COLORADO SPRINGS, COUNTY OF EL PASO, STATE OF COLORADO

TUTT CORNERS ADDITION

MARCH 2015



LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF SECTION 7, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, BEING DESCRIBED AS FOLLOWS

BASIS OF BEARINGS: A PORTION OF THE WESTERLY BOUNDARY OF LOT 2, AA SUBDIVISION RECORDED IN PLAT BOOK W-2 AT PAGE 94, RECORDS OF EL PASO COUNTY, COLORADO, BEING MONUMENTED AT THE NORTHERLY END AT THE NORTHWESTERLY CORNER OF SAID LOT 2, BY NAIL AND DISK STAMPED "PLS #2692" AND AT THE SOUTHERLY END, AT THE NORTHWESTERLY CORNER OF A PARCEL OF LAND DESCRIBED IN A DOCUMENT RECORDED UNDER RECEPTION NO. 202065921, BY A NO. 4 REBAR AND SURVEYORS CAP STAMPED PLS #18465, AND IS ASSUMED TO BEAR S30°11'05"W, A DISTANCE OF 488.73 FEET

LOT 2, AA SUBDIVISION RECORDED IN PLAT BOOK W-2 AT PAGE 94 RECORDS OF EL PASO COUNTY, COLORADO

EXCEPTING THEREFROM THAT PARCEL OF LAND DESCRIBED IN A DOCUMENT RECORDED UNDER RECEPTION NO. 202065921, RECORDS OF EL PASO COUNTY, COLORADO.

CONTAINING A NET CALCULATED AREA OF 4.849 ACRES

TOGETHER WITH THAT PORTION OF TEMPLETON GAP ROAD, ALSO KNOW AS STATE HIGHWAY NO. 189 BEING MORE PARTICULARLY FOLLOWS;

COMMENCING AT THE NORTHWESTERLY CORNER OF LOT 2, AA SUBDIVISION RECORDED IN PLAT BOOK W-2 AT PAGE 94, RECORDS OF EL PASO COUNTY, COLORADO, SAID POINT BEING ON THE EASTERLY RIGHT OF WAY LINE OF TEMPLETON GAP ROAD, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE S30°11'05"W, ON THE WESTERLY BOUNDARY OF SAID LOT 2 AND THE EASTERLY RIGHT OF WAY LINE OF SAID TEMPLETON GAP ROAD A DISTANCE OF 488.73 FEET TO THE NORTHWESTERLY CORNER OF A PARCEL OF LAND DESCRIBED IN A DOCUMENT RECORDED UNDER RECEPTION NO. 202065921, SAID POINT ALSO BEING THE NORTHEASTERLY CORNER OF A PARCEL OF LAND DESCRIBED INA DOCUMENT RECORDED UNDER RECEPTION NO. 202127724,
THENCE N75°07'18"W, ON THE NORTHERLY BOUNDARY OF SAID PARCEL OF LAND DESCRIBED IN A DOCUMENT RECORDED UNDER RECEPTION NO. 202127724, A DISTANCE OF 82.94 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SAID TEMPLETON GAP ROAD;
THENCE N30°11'05"E, ON THE WESTERLY RIGHT OF WAY LINE OF SAID TEMPLETON GAP ROAD A DISTANCE OF 488.63 FEET.
THENCE S59°48'55"E, A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING

CONTAINING A CALCULATED AREA OF 0.877 ACRES

CONTAINING A TOTAL CALCULATED AREA OF 5.726 ACRES.

SITE DATA:

OWNER/DEVELOPER:	MILLENNIUM VENTURE GROUP, INC DBA: MVG DEVELOPMENT 2240 BLAKE STREET, SUITE 200 DENVER, COLORADO 80205 303-339-5178	TOTAL SITE AREA:	5.726 ACRES
		EXISTING ZONING: PROPOSED ZONING:	RR-5 (COUNTY) C6
PROPOSED USES:	CONVENIENCE STORE W/GAS RESTAURANTS/FAST FOOD/DRIVE-IN RETAIL SALES/ AND OTHER ALLOWED USES IN C6 ZONE	MAX. BLDG. HEIGHT:	50'
BUILDING SETBACKS:	25' (PERIPHERY OF ZONE)		
LANDSCAPE SETBACKS:	DUBLIN BLVD. (MAJOR ART.) 25' MIN. TUTT BLVD. (MINOR ART.) 20' MIN VICKIE LANE (NON-ART.) 10' MIN. ADJACENT TO RESIDENTIAL 15' MIN.		
PARKING REQUIREMENTS:	CONVENIENCE STORE W/GAS RESTAURANTS/FAST FOOD/DRIVE-IN ALL OTHER PERMITTED USES IN C6 ZONE	1 SPACE / 300 SF 1 SPACE / 100 SF PER CHAPTER 7, CITY CODE	
ANTICIPATED CONSTRUCTION:	FALL 2015 (PHASE 1) SPRING 2016 (PHASE 2)		

THIS PROPERTY HAS BEEN GRANTED A GEOLOGIC HAZARD EXEMPTION, PREPARED BY KUMAR & ASSOCIATES, INC. DATED JANUARY 2004

NO PORTION OF THIS SITE IS LOCATED WITHIN A FLOODPLAIN AS DETERMINED BY THE FLOOD INSURANCE RATE MAPS (F.I.R.M.) MAP NUMBER 08041C0537F, EFFECTIVE DATE MARCH 17, 1997.

THIS AREA IS SUBJECT TO AN AVIGATION EASEMENT TO THE CITY OF COLORADO SPRINGS, RECORDED UNDER RECEPTION NO._____ OF THE EL PASO COUNTY RECORDS.

NOTICE: THIS PROPERTY MAY BE IMPACTED BY NOISE CAUSE BY AIRCRAFT OPERATING INTO AND OUT OF THE COLORADO SPRINGS MUNICIPAL AIRPORT. THE BUYER SHOULD FAMILIARIZE HIMSELF/HERSELF WITH THIS POTENTIALITY AND THE RAMIFICATIONS THEREOF.

NOTES:

1. PROJECT WILL BE PLATTED, PERMITTED AND DEVELOPED OVER A SERIES OF TWO PHASES TO COINCIDE WITH COMPLETION OF THE REQUIRED PUBLIC IMPROVEMENTS.
2. PHASE 1 INCLUDES THE FOLLOWING REQUIRED FOR DEVELOPMENT OF LOTS 1-2. REFERENCE THE FINAL PLAT FOR TUTT CORNERS FILING NO. 1:
   A. TUTT BLVD. IMPROVEMENTS: THE CONSTRUCTION OF THE EXTENSION OF TUTT BLVD. (FROM DUBLIN BLVD THRU VICKIE LANE) WILL BE FUNDED BY THE CITY OF COLORADO SPRINGS & PPRTA WITH SPECIFIC CONTRIBUTIONS BY THE DEVELOPER. THE DESIGN WILL REQUIRE COORDINATION BETWEEN THE CIVIL CONSULTANT AND PPRTA.

      DEVELOPER RESPONSIBILITIES: DEDICATION OF 107' RIGHT-OF-WAY (DUBLIN BLVD TO VICKIE LANE), WATER & SANITARY SEWER DESIGN/INSTALLATIONS ALONG THIS PORTION OF ROADWAY. DEVELOPER WILL FILE COST RECOVERY FOR UTILITY INSTALLATIONS SERVING THE ADJACENT PROPERTIES. AT TIME OF FINAL PLAT, THE DEVELOPER WILL ESCROW $19.60/LF FOR C&G ALONG BOTH SIDES OF THE ROADWAY ADJACENT TO LOTS 1, 2 & 4. AT TIME OF BUILDING PERMIT PER INDIVIDUAL LOT, THE CITY WILL COLLECT A RECOVERY FOR THE COST OF SIDEWALK BASED ON $26.75/LF.

      CITY/PPRTA RESPONSIBILITIES: ALL ROADWAY DESIGN AND CONSTRUCTION COSTS INCLUDING SIDEWALK/PED. RAMPS, STORM SEWER AND TRAFFIC SIGNAL (TUTT & DUBLIN) EXCEPT THOSE LISTED IN THE DEVELOPER RESPONSIBILITIES ABOVE. CITY AGREES TO COMMENCE CONSTRUCTION OF TUTT BLVD. AS SOON AS PRACTICAL AFTER DEVELOPER HAS COMPLETED THEIR UTILITY INSTALLATIONS AND CITY COMPLETED THE STORM SEWER CONST.

   B. VICKIE LANE IMPROVEMENTS: DEVELOPER IS RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE SOUTH HALF OF THE ROADWAY ADJACENT TO LOT 1, HOWEVER, DEVELOPER AGREES TO DESIGN AND CONSTRUCT THE FULL WIDTH ROADWAY INCLUDING ASSOCIATED UTILITIES AND CURB AND GUTTER DEVELOPER WILL FILE COST RECOVERY FOR THE NORTH HALF THE ROAD AND ASSOCIATED UTILITY INSTALLATIONS SERVING THE ADJACENT PROPERTIES. THE DEVELOPER IS RESPONSIBLE TO CONSTRUCT A TWO LANE PIONEER ROAD BETWEEN TUTT BLVD. AND TEMPLETON GAP (WHICH MAY BE VACATED WHEN TUTT BLVD. IS EXTENDED FURTHER NORTH) ONLY IF THE FOLLOWING: TUTT BLVD IS NOT ALREADY EXTENDED NORTH OF VICKIE LANE OR THE PIONEER ROAD HAS NOT BEEN CONSTRUCTED BY OTHERS.
3. PHASE 2 INCLUDES THE FOLLOWING REQUIRED FOR THE DEVELOPMENT OF LOTS 3-5:
   A. THE VACATION OF THAT PORTION OF TEMPLETON GAP RD. AS SHOWN ABOVE AND FINAL PLATTING OF LOTS 3 AND 5 CANNOT TAKE PLACE UNTIL ONE OF THE FOLLOWING:
      - CONSTRUCTION OF TUTT BLVD (DUBLIN BLVD TO VICKIE LN.) AND TEMPORARY VICKIE LANE CONNECTION FROM TUTT BLVD. TO TEMPLETON GAP HAS BEEN COMPLETED ALONG WITH A DIRECT ACCESS POINT PROVIDED FOR THE CHURCH
      - CONSTRUCTION OF TUTT BLVD (DUBLIN BLVD TO VICKIE LN.) AND THE CITY HAS COMPLETED THE FUTURE TUTT BLVD. EXTENSION (VICKIE LN. NORTH TO TEMPLETON GAP) ALONG WITH A DIRECT ACCESS POINT PROVIDED FOR THE CHURCH.

   B. UPON COMPLETION OF EITHER ITEM ABOVE, A SEPARATE RIGHT-OF-WAY VACATION REQUEST MAY BE SUBMITTED FOR THE PORTION OF TEMPLETON GAP SHOWN HEREON (DUBLIN BLVD. TO VICKIE LN.), DEDICATED TO DEVELOPER AS A PRIVATE ACCESS DRIVE FOE THE PROPOSED DEVELOPMENT, ALONG WITH A FINAL PLAT FOR THE DEVELOPMENT OF PHASE 2. TEMPLETON GAP WILL REMAIN OPEN FOR PUBLIC USE UNTIL SUCH TIME.
4. THE EXISTING 132' PUBLIC UTILITY EASEMENT WILL BE VACATED (VIA SEPARATE DOCUMENT) AND REPLACED WITH THE PROPOSED 107' RIGHT-OF-WAY FOR TUTT BLVD. SEE FINAL PLAT FOR PHASE 1.
5. NO ADDITIONAL ROAD IMPROVEMENTS ALONG DUBLIN BLVD. ARE REQUIRED WITH THIS DEVELOPMENT EXCEPT FOR THOSE DESCRIBED IN NOTE 7.
6. ON-SITE STORMWATER QUALITY WILL BE HANDLED WITHIN EACH INDIVIDUAL LOT DEVELOPMENT.
7. DEVELOPER RESPONSIBLE FOR 6' DETACHED SIDEWALK ALONG THE NORTH SIDE OF DUBLIN BLVD WITHIN ESMT. AS APPLICABLE. ON-SITE SIDEWALK DESIGN AND CONSTRUCTION WITH EACH INDIVIDUAL LOT DEVELOPMENT.
8. DEVELOPER TO COORDINATE WITH CSU RE: BOTH ON AND OFF-SITE UTILITY INFRASTRUCTURE DESIGN REQUIREMENTS.
9. DEVELOPER ACKNOWLEDGES THE DUBLIN BLVD. COST RECOVERY FEE OF $154.44/LF OF DUBLIN FRONTAGE WHICH WILL BE PAID AT FINAL PLATTING. (BASED ON THE PROPERTY FRONTAGE ADJACENT TO DUBLIN INCLUDING RIGHT-OF-WAY WIDTH FOR TUTT BLVD. BUT NOT TO INCLUDE RIGHT-OF-WAY WIDTH FOR TEMPLETON GAP.) FEE IS SUBJECT TO A SIMPLE INTEREST OF 10% PER YEAR - $154.44/LF IS FOR 2015.

CPC CP 14-135

CLASSIC
CONSULTING
ENGINEERS & SURVEYORS
6385 Corporate Drive, Suite 101 (719)785-0790
Colorado Springs, Colorado 80919 (719)785-0799 (Fax)

TUTT CORNERS ADDITION
CONCEPT PLAN

DESIGNED BY	MAW	SCALE	DATE	4-16-15	
DRAWN BY	MAW	(H) 1"= 40'	SHEET	1	OF 1
CHECKED BY		(V) 1"= N/A	JOB NO	2467.00	

FIGURE 1

N:\246700\DRAWINGS\DEVELOPMENT\246700CP 4-15-15.dwg, 4/16/2015 10:00:28 AM, B.WToshiba2.47.pc3

Land Development Consultants, Inc.
Surveying • Planning
3898 Maizeland Road
Colorado Springs, CO 80909
Phone: 719-528-6133
Fax: 719-528-6848
www.ldc-inc.com

TUTT CORNERS
LEGAL DESCRIPTION

A tract of land being a portion of the Southwest Quarter of Section 7, Township 13 South, Range 65 West of the 6th P.M., also being Lot 2, A A SUBDIVISION, Plat Book W-2, Page 94, El Paso County, Colorado records, EXCEPT that tract described by document at Reception No. 202065921 (Exception Tract No. 1) said El Paso County records and TOGETHER WITH those adjacent portions of Templeton Gap Road (80' right-of-way) and Vickie Lane (50' right-of-way) in El Paso County, Colorado, described as follows:

Beginning at the Southeast corner of said Lot 2 (all bearings in this description are relative to those platted in said SUBDIVISION);

thence S88°04'07"W along the Southerly line of said Lot 2, 475.58 feet to the Easterly corner of said EXCEPTION Tract No. 1;

thence on a curve to the right and along the Northerly line of said Tract No. 1, said curve having a central angle of 16°48'35", a radius of 986.25 feet for an arc distance of 289.35 feet;

thence N75°07'17"W along said Northerly line of Tract No. 1 and as extended Northwesterly, 97.57 feet to a point on the Northwesterly right-of-way line of said Templeton Gap Road;

thence N30°11'05"E along said Northwesterly right-of-way line of Templeton Gap Road, 538.62 feet to a point on the Northwesterly extension of the Northerly right-of-way line of said Vickie Lane

The following three (3) courses are along said Northwesterly extension and the Northerly right-of-way line of said Vickie Lane

1) S59°48'55"E, 348.19 feet;

2) on a curve to the left, said curve having a central angle of 51°32'35", a radius of 105.78 feet for an arc distance of 95.16 feet;

3) N68°38'30"E, 61.00 feet to a point on the Northwesterly extension of the Easterly line of said Lot 2;

thence S21°21'30"E along said Northwesterly extension and said Easterly line of Lot 2, 372.80 feet to the Point of Beginning;

Containing 6.331 acres, more or less.

COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR
DANIEL LEE KUPFERER
18465
4-27-2015

FIGURE 1

Zoning Legal

Land Development Consultants, Inc.

3898 Maizeland Road
Colorado Springs, CO 80909

Phone: 719-528-6133
Fax: 719-528-6848

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www.ldc-inc.com

TUTT CORNERS
PROPERTY DESCRIPTION

Lot 2, A A SUBDIVISION, as recorded in Plat Book W-2, Page 94, Reception No. 932138 of the records of El Paso County, Colorado, EXCEPT that portion conveyed to the City of Colorado Springs by deed recorded April 24, 2002 at Reception No. 202065921, County of El Paso, State of Colorado.

COLORADO REGISTERED
DANIEL LEE KUPFERER
18465
4-27-2015
PROFESSIONAL LAND SURVEYOR

FIGURE 1

MVG | Development

TUTT CORNERS
PROJECT STATEMENT

February 2, 2015

The Tutt Corners project consists of 6.331 acres located on the north side of Dublin Boulevard at Tutt Boulevard. The property is currently in unincorporated El Paso County and has been submitted to the City of Colorado Springs for Annexation. The property is currently platted as Lot 2, AA Subdivision and includes the adjacent portions of Templeton Gap Road and Vickie Lane. This is essentially an infill annexation as the City boundary is adjacent on the south side and is one property away on the west and less than a quarter mile to the north.

The approval of the annexation, zoning and platting will allow for the development of Tutt Boulevard north of Dublin Boulevard and construction of a variety of commercial uses, including restaurants and a convenience store.

The property owner, MVG Development (MVG), is requesting a zone change from County RR-5 to City C-6 for the entire site. This will allow for a variety of retail uses. A Zone Change request, Concept Plan and Final Plat is being submitted for concurrent review. Project will be platted, permitted and developed over a series of two phases to coincide with completion of public improvements.

Tutt Corners Concept Plan details the phased development obligations for MVG and City of Colorado Springs.

Phase 1 - The construction of the extension of Tutt Blvd (from Dublin Blvd North to Vickie Lane) will be funded by the City of Colorado Springs & PPRTA. MVG will dedicate 107 feet of right-of-way needed for Tutt Boulevard and be responsible for utility design/construction and sidewalk/pedestrian ramps with each development plan. In return, the City will support the vacation of the 132' public utility easement within the same area. MVG is also responsible for the design and construction of south half of Vickie Lane east of Tutt Boulevard. Developer will propose cost recoveries for utility installations benefiting adjacent properties.

Phase 2 –The City will support the Templeton Gap ROW vacation and dedication to MVG once one of the following is completed:

- City's construction of Tutt Blvd and MVG's construction (temporary) of the Vickie Lane connection from Tutt to Templeton Gap has been completed; or
- City's construction of Tutt Blvd, and City has completed the future Tutt Blvd. extension to Templeton Gap.

Templeton Gap will remain open to the public until such time.

FIGURE 2

1509 York Street, 3rd Floor
Denver, CO 80206

(303) 573-6500
fax (303) 573-6503

www.mvgdev.com

TO: Meggan Herington, Principal Planner

FROM: Michael Miles, Senior Analyst

DATE: March 24, 2015

SUBJECT: **Tutt Corners Annexation - Fiscal Impact Analysis**

A copy of the fiscal impact analysis for the Tutt Corners is attached. At the request of the Planning Department, the Budget Office prepared a fiscal impact analysis estimating the City General Fund and Public Safety Sales Tax (PSST) Fund revenue and expenditures attributable to the Tutt Corners development for the period 2015-2024.

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 only the appropriate municipal funds.

The methodology used for the fiscal impact analysis is a case study approach, where a mini-budget process is undertaken in which City units are asked to project the increased marginal cost of providing services to the development for 2015-2024. The Budget Office estimates the city revenue, as outlined in the Revenue Notes, stemming from the development.

Most departments indicated that there were no identifiable marginal costs of providing services to this development, as the area is currently being serviced by public safety agencies, and the surrounding infrastructure and roadways are already being maintained by the City as they fall within the service area of surrounding parcels. The Fire Department ($32-$38), Police Department ($325-$378) and Streets Division ($5,070-$6,493) identified marginal increases in operation costs annually.

The result of the fiscal impact analysis is a positive cumulative cashflow for the City during the 10-year timeframe.

The Summary of Expenditures and Revenues is attached. Also, the Expenditure and Revenue Notes are attached that provide the methodology for calculating the expenditures and revenues.

FIGURE 3

GENERAL FUND FISCAL IMPACT ANALYSIS
SUMMARY OF EXPENDITURES AND REVENUE FOR TUTT CORNERS

	Projected 2015	Projected 2016	Projected 2017	Projected 2018	Projected 2019	Projected 2020	Projected 2021	Projected 2022	Projected 2023	Projected 2024
EXPENDITURES										
Total Salaries, Operating, and Capital Outlay										
Police	0	325	329	336	342	349	356	363	371	378
Fire	32	32	33	34	34	35	36	37	37	38
Public Works - Streets		317	327	337	347	357	368	379	390	472
Public Works - Transportation Engineering	0	0	0	0	0	0	0	0	0	0
Public Works - City Engineering	0	0	0	0	0	0	0	0	0	0
Public Works - Traffic	0	4,753	4,896	5,042	5,194	5,349	5,510	5,675	5,846	6,021
Parks, Recreation and Cultural Services	0	0	0	0	0	0	0	0	0	0
TOTAL EXPENDITURES	**32**	**5,428**	**5,585**	**5,749**	**5,917**	**6,091**	**6,270**	**6,454**	**6,644**	**6,909**
REVENUES										
Property Taxes	0	0	2,420	4,664	4,804	4,948	5,096	5,249	5,407	5,569
Specific Ownership Taxes	0	0	283	546	562	579	596	614	633	652
Road & Bridge Revenue	0	0	93	180	185	190	196	202	208	214
Sales Tax Revenue (Commercial Uses)	0	6,544	53,886	69,689	71,780	73,933	76,151	78,435	80,789	83,212
Sales and Use Tax Revenue (Building Materials)	15,600	14,000	0	0	0	0	0	0	0	0
Miscellaneous Revenue	0	0	0	0	0	0	0	0	0	0
General Fund Sub-Total	**15,600**	**20,544**	**56,682**	**75,078**	**77,330**	**79,650**	**82,040**	**84,501**	**87,036**	**89,647**
Public Safety Sales Tax Fund										
Sales Tax Revenue (Commercial Uses)	0	1,309	10,777	13,938	14,356	14,787	15,230	15,687	16,158	16,642
Sales and Use Tax Revenue (Building Materials)	3,120	2,800	0	0	0	0	0	0	0	0
Public Safety Sales Tax Fund Sub-Total	**3,120**	**4,109**	**10,777**	**13,938**	**14,356**	**14,787**	**15,230**	**15,687**	**16,158**	**16,642**
TOTAL REVENUE	**18,720**	**24,652**	**67,459**	**89,016**	**91,686**	**94,437**	**97,270**	**100,188**	**103,194**	**106,290**
REVENUE SURPLUS/DEFICIT (Total Rev. less Total Exp.)										
ANNUAL	**18,688**	**19,224**	**61,875**	**83,267**	**85,769**	**88,346**	**91,000**	**93,734**	**96,550**	**99,381**
CUMMULATIVE	**18,688**	**37,913**	**99,787**	**183,055**	**268,824**	**357,170**	**448,170**	**541,904**	**638,454**	**737,834**

FIGURE 3

REVENUE NOTES

Tutt Corners Annexation

General Fund/Public Safety Sales Tax Fund Fiscal Impact Analysis, 2015-2024

PROPERTY TAX:

It is assumed property taxes will be collected in the year 2017 based upon beginning construction in 2015 because of the time lag associated with placing assessed value onto the assessment rolls. The 2017 revenue is calculated by multiplying the City mill levy of 4.279 mills by the projected increase in City assessed valuation resulting from the proposed development. This assumes there is no change in the commercial assessment ratio of 29%. The cumulative assessed valuation includes a 3% annual increase in market values.

ROAD & BRIDGE REVENUE:

The Road & Bridge Revenue is calculated at 3.85% of the property tax revenues. This is based on the 2012 actual City road & bridge revenues as a percent of property tax revenue.

SALES AND USE TAX:

The revenue calculation assumes the existing General Fund tax rate and existing collection practices. Projections include sales tax revenue from the commercial sales projected to be completed at the stores in Tutt Corners area and the sale of building materials used in the projected construction of the commercial buildings in the development.

The Sale Tax Revenue for commercial businesses is projected by analyzing each type of business proposed for the development. The 4 proposed businesses are a convenience store with gasoline, two restaurants, and a coffee shop. Projected sales data was attained through small business data public websites. The projections assume a reduced percentage of the average expected sales because the area does not have a full build out of residential units. The sales tax projection on the convenience store assumes 10% of sales are taxable due to the product mix of gas and cigarettes along with other non-taxable food items. Both the restaurants and the coffee shop sales projections are based on a per employee sales assumption. The projections assume 15 employees for the coffee shop and 35 for each restaurant. Also, the projections assume there is a one-year construction/revenue collection lag. Projections include a 3% annual increase for inflation.

The Sales Tax Revenue for Building Materials is calculated based on sales taxable materials at 40% of the value of residential property.

FIGURE 3

EXPENDITURE NOTES:

Tutt Corners Annexation

General Fund/Public Safety Sales Tax (PSST) Fund Fiscal Impact Analysis, 2015-2024

POLICE:

As development occurs, the Police Department is responsible for regular police patrol and first response services in the area. However, the proposed annexation area is located within a serviced area, and the addition of 6.331 acres and 4 commercial lots will have a small identifiable marginal increase in cost of services for the Police Department within the next ten years of approximately $325 to $378 annually.

FIRE:

As part of the Annexation Agreement, the Annexor will pay their fair and equitable share of the expenses and equipment costs for the nearest fire station but this property is located within a currently serviced area. The only additional, operational, identifiable marginal costs of providing service to the annexed area are fuel, medical supplies and maintenance (~$32-$38 annually).

PUBLIC WORKS – STREETS, TRAFFIC ENGINEERING, CITY ENGINEERING:

There are small additional public infrastructure and maintenance obligations associated with this annexation in the next ten years. The parcel is an infill parcel so infrastructure adjacent the parcel is already existing and serving other parcels but streets, lighting and signage will need to be added to reach and address all lots. The identifiable increased costs to Public Works, are in the Traffic Division for lanes striping, signage, street lights, and a traffic light ($4,750-$6,050), and Streets Division to account for marginal increased costs of maintenance of roadway and drainage ($320-$475).

PUBLIC WORKS -TRANSIT:

There are currently no transit services in this area. There are no current plans to expand transit services to this area within the next ten years, thus there are no identifiable marginal costs within the next ten years.

PARKS:

There are currently no parks services in this area. There are no current plans to expand parks services to this area within the next ten years, thus there are no identifiable marginal costs within the next ten years.

FIGURE 3

TUTT CORNERS ADDITION ANNEXATION
ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement"), dated this 24th day of April, 2015, is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and Millennium Venture Group, Inc. ("Owner" or "Property Owner").

I.
INTRODUCTION

The Owner owns all of the real property located in El Paso County, Colorado, identified and described on the legal description attached as Exhibit A (the "Property").

The growth of the Colorado Springs metropolitan area makes it likely that the Property will experience development in the future. The Owner will be required to expend substantial amounts of funds for the installation of infrastructure needed to service the Property and, therefore, desires to clarify Owner's obligations for installation of or payment for any off-site infrastructure or improvements and with regard to the City's agreements with respect to provision of services to the Property and cost recoveries available to Owner. Subject to the terms and conditions set forth in this Agreement, both the City and Owner wish to annex the Property into the City to ensure its orderly development. In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which are acknowledged by each of the parties, the City and Owner agree as follows.

II.
ANNEXATION

The Owner has petitioned the City for annexation of the Property. The annexation will become effective upon the effective date of the ordinance documenting final approval by the City Council of the annexation (the "annexation ordinance") after satisfying all conditions precedent to annexation identified in this Agreement and the recording of (a) certified copies of the annexation ordinance and annexation plat in accordance with C.R.S. (a) certified copies of the annexation ordinance and annexation plat in accordance with C.R.S. 31-12-113, (b) a fully-executed original of this Agreement, and (c) a fully-executed Tutt Corners Addition special warranty deed and irrevocable consent to the appropriation, withdrawal, and use of groundwater as forth in Exhibit B with the El Paso County Clerk and Recorder.

All references to the Property or to the Owner's Property are to the Property described in Exhibit A except as otherwise indicated.

III.
LAND USE

The Tutt Corners Addition Concept Plan for the Property has been proposed and submitted to the City for approval. Owner will comply with the approved Concept Plan or an amended Concept Plan approved in accord

FIGURE 4

with applicable provisions of the Code of the City of Colorado Springs 2001, as amended or recodified ("City Code").

IV.
ZONING

A. Zoning. The Planning and Development Department of the City agrees to recommend that the initial zone for the Owner's Property shall be zoned C-6 upon annexation. Owner acknowledges and understands that the City Council determines what an appropriate zone is for the Property, and this recommendation does not bind the Planning Commission or City Council to adopt the recommended zone for the Property.

B. Change of Zoning. Any future change of zone request shall conform to the Concept Plan, as approved or as amended by the City in the future. Rezoning in accord with the zones reflected on the Concept Plan will occur prior to actual development of the site.

V.
PUBLIC FACILITIES

A. General. As land is annexed into the City it is anticipated that land development will occur. In consideration of this land development, the City requires public facilities and improvements to be designed, extended, installed, constructed, dedicated and conveyed as part of the land development review and construction process. Public facilities and improvements are those improvements to property which, after being constructed by the Owner and accepted by the City, shall be maintained by the City or another public entity. Generally, the required public facilities and improvements and their plan and review process, design criteria, construction standards, dedication, conveyance, cost recovery and reimbursement, assurances and guaranties, and special and specific provisions are addressed in Chapter 7, Article 7 of the City Code (the "Subdivision Code"). Public facilities and improvements include but are not necessarily limited to: (1) Utility facilities and extensions for water, wastewater, fire hydrants, electric, gas, streetlights, telephone and telecommunications (for water, wastewater, gas and electric utility service, refer to Chapter 12 of the City Code and Section VI. "Utilities Services" and Section VII. "Water Rights" of this Agreement.); (2) Streets, alleys, traffic control, sidewalks, curbs and gutters, trails and bicycle paths; (3) Drainage facilities for the best management practice to control, retain, detain and convey flood and surface waters; (4) Arterial roadway bridges; (5) Parks; (6) Schools; and (7) Other facilities and improvements warranted by a specific land development proposal.

It is understood that all public facilities and improvements shall be subject to the provisions of the Subdivision Code, unless otherwise specifically provided for under the terms and provisions of this Agreement. Those specifically modified public facilities and improvements provisions are as follows:

B. Metropolitan Districts. Not Applicable

C. Streets, Bridge and Traffic Control. Unless agreed to elsewhere in this Agreement the Owner agrees to construct, at the Owner's expense, those street, bridge and/or traffic improvements adjacent to or within the Property. These improvements shall also include mutually-acceptable dedications of right-of-way and easements, and extension of streets and right-of-way. The provisions of City Code §§ 7.7.706 (Reimbursements) and 7.7.1001-1006 (Arterial Roadway Bridges) are excluded. City participation or

FIGURE 4

reimbursement for Arterial Streets and Arterial Bridges within the Property will not be allowed.

1. On-Site or Adjacent Streets: Owner agrees to comply with timing and phasing of construction responsibilities outlined specifically on the Concept Plan at City file number CPC CP 14-00135.

a. Vickie Lane: Vickie Lane will be constructed by Owner as designated on the City approved development plans and as approved by City Engineering, Traffic and Transportation as part of this annexation. The Owner agrees to construct Vickie Lane adjacent to the north property line of the Property from the east boundary of the Property to Tutt Boulevard to City standards for a local residential street. The Owner further agrees to use the existing right-of-way and extend and construct Vickie Lane from Tutt Boulevard west to existing Templeton Gap Road, to pioneer road design standards if Tutt Boulevard has not been constructed. A cost recovery for Vickie Lane may be imposed.

b. Dublin Boulevard: Dublin Boulevard already exists adjacent to the Property. No further right-of-way or street improvements are necessary at this time, except Owner agrees to construct a pedestrian sidewalk as part of this annexation and the Tutt Corners project. Construction of the sidewalk will occur with the development of each lot that abuts Dublin Boulevard. The Certificate of Occupancy for buildings on each lot that abuts Dublin Boulevard will be conditioned upon the completion of the sidewalk adjacent to that lot. A cost recovery for Dublin Boulevard exists and the Owner agrees to pay its pro rata fair share cost.

c. Tutt Boulevard: Construction of Tutt Boulevard through the Property is a PPRTA project. Owner is responsible for installation of all utilities prior to the commencement of the construction of Tutt Boulevard. If the City installs the utilities, the City will collect cost recovery from the Owner for the cost of the utility installation, which shall be due upon demand.. The City will collect cost recovery from the Owner at the time of issuing building permits for each lot in the Property for the cost of sidewalk, curb and gutter. The amount of cost recovery for curb and gutter will be based on $19.60 per linear foot and for the cost of sidewalk based on $26.75 per linear foot.

2. Off-Site Streets and Bridges: Not Applicable.

3. Traffic Control Devices. Owner shall pay for installation of traffic and street signs, striping, and traffic control devices, and permanent barriers, together with all associated conduit for all streets within or contiguous to the Property as determined necessary by the City and in accord with uniformly applied criteria set forth by the City. Traffic signals will be installed only after the intersection warrants signals, as outlined in the Manual on Uniform Traffic Control Devices in use at the time or another nationally accepted standard. Once the intersection meets the outlined criteria, the City will notify the Owner in writing and the Owner will install the traffic signal within one hundred eighty (180) days after receipt of that notice. The Owner will be responsible for all components of the traffic signal, except the City will supply the controller equipment and cabinet (Owner will reimburse the City for its reasonable costs of the equipment and cabinet).

Street Cost Recovery. In addition to what is included in Section C(1) of this Article above, Owner shall pay for existing improvements to Dublin Boulevard east of Powers to Jim Morely on behalf of Ridgeview Development, LLC. The current (2015) cost shall be calculated at $154.44 per linear foot of Right of Way along Dublin Boulevard adjacent to the annexation, but not including the Templeton Gap right-of-way that may be vacated in the future. The cost recovery is due at the time of final plat and is subject to an annual 10% inflation factor

FIGURE 4

commencing on January 1 of each year.

D. Drainage. A Master Development Drainage Plan shall be prepared and submitted by the Owner to the City and approved by the City Engineer. Final Drainage Reports and Plans shall be prepared and submitted by the Owner to the City and approved by the City Engineer, prior to recording subdivision plats. Owner shall comply with all drainage criteria, standards, policies and ordinances in effect at the time of development, including but not limited to the payment of any drainage, arterial bridge and detention pond fees and the reimbursement for drainage facilities constructed. The Owner shall provide water quality for all developed areas; to be owned and maintained by the Owner. Owner shall be responsible for conformance with the Sand Creek Drainage Basin Planning Study. The obligations set forth in this Section V(D) shall be appurtenant to and run with the Property.

E. Parks: Any future residential uses are subject to standard parks fees.

F. Schools: Any future residential uses are subject to standard school fees.

G. Improvements Adjacent to Park and School Lands. Streets and other required public improvements adjacent to park and school lands dedicated within the Property will be built by the Owner without reimbursement by the City or any school district.

VI.
UTILITY SERVICES

A. Colorado Springs Utilities' ("CSU") Services: CSU's water, non-potable water, wastewater, electric, streetlight, and gas services ("Utility Service" or together as "Utility Services") are available to eligible customers upon connection to CSU's facilities or utility systems on a "first-come, first-served" basis, provided that (among other things) the City and CSU determine that the applicant meets all applicable City ordinances and regulations, and applicable CSU tariff requirements and regulations for each application for Utility Service. In addition, the availability of Utility Services is contingent upon the terms detailed herein and the dedication of public rights-of-way, private rights-of-way, or easements that CSU determines are required for the extension of any proposed Utility Service from CSU system facilities that currently exist or that may exist at the time of the proposed extension.

Owner shall ensure that the connection and/or extension of Utility Services to the Property are in accord with all codes and regulations in effect at the time of Utility Service connection and/or extension, including but not limited to CSU's tariffs, rules, and policies, City ordinances, resolutions, and policies, and Pikes Peak Regional Building Department codes. Further, as specified herein below, Owner acknowledges responsibility for the costs of any extensions or utility system improvements that are necessary to provide Utility Services to the Property or to ensure timely development of integrated utility systems serving the Property and areas outside the Property as determined by CSU.

CSU's connection requirements may require the Owner to provide a bond(s) or Letter of Credit, and to execute a Revenue Guarantee Contract or other CSU-approved guarantee for the extension of any Utility Service before CSU authorizes the extension of Utility Services and/or other utility systems improvements, and/or any request for service connection to the Property by Owner. Owner acknowledges that such connection requirements shall include Owner's payment of all applicable development charges, recovery-agreement charges, advance

FIGURE 4

recovery-agreement charges, aid-to-construction charges and other fees or charges applicable to the requested Utility Service, and any costs CSU incurs to acquire additional service territory for the Utility Service to be provided, including those costs specified in paragraph C below. Because recovery agreement charges, advance recovery-agreement charges, and aid-to-construction charges may vary over time and by location, Owner is responsible for contacting CSU's Customer Contract Administration at (719) 668-8111 to ascertain which fees or charges apply to the Property.

Owner acknowledges that annexation of the Property does not imply a guarantee of water supply, wastewater treatment system capacity, or any other Utility Service supply or capacity, and CSU does not guarantee Utility Service to the Property until such time as permanent service is initiated. Accordingly, no specific allocations or amounts of Utility Services, facilities, capacities or supplies are reserved for the Property or Owners upon annexation, and the City and CSU make no commitments as to the availability of any Utility Service at any time in the future.

B. Dedications and Easements: Notwithstanding anything contained in Section XI of this Agreement to the contrary, Owner, at Owner's sole cost and expense, shall dedicate by plat and/or convey by recorded document, all property (real and personal) and easements that CSU, in its sole discretion, determines are required for all utility-system facilities necessary to serve the Property or to ensure development of an integrated utility system, including but not limited to, any access roads, gas regulation or electric substation sites, electric transmission and distribution facilities, water storage reservoir/facility sites, and wastewater or water pump station sites. CSU, in its sole discretion, shall determine the location and size of all property necessary to be dedicated or otherwise conveyed.

Owner shall provide CSU all written, executed conveyances prior to platting or prior to the development of the Property as determined by CSU in its sole discretion. Owner shall pay all fees and costs applicable to and/or associated with the platting of the real property to be dedicated to the City, and all fees and costs associated with the conveyance of real property interests by plat or by separate instrument, including but not limited to, Phase 1 and Phase 2 environmental assessments, 'closing' costs, title policy fees, and recording fees for any deeds, permanent or temporary easement documents, or other required documents. Dedicated and/or deeded properties and easements are not, and shall not be, subject to refund or reimbursement and shall be deeded or dedicated to the City free and clear of any liens or encumbrances, with good and marketable title and otherwise in compliance with City Code § 7.7.1802.

Further, all dedications and conveyances of real property must comply with the City Code, the City Charter, and any applicable CSU policies and procedures, and shall be subject to CSU's environmental review. Neither the City nor CSU has any obligation to accept any real property interests. All easements by separate instrument shall be conveyed using CSU's then-current Permanent Easement Agreement form without modification.

If Owner, with prior written approval by CSU, relocates, requires relocation, or alters any existing utility facilities within the Property, then the relocation or alteration of these facilities shall be at the Owner's sole cost and expense. If CSU, in its sole discretion, determines that Owners' relocation or alteration requires new or updated easements, Owner shall convey those easements prior to relocating or altering the existing utility facilities using CSU's then-current Permanent Easement Agreement form without modification. CSU will only relocate existing gas or electric facilities during time frames and in a manner that CSU determines will minimize outages and loss of service.

FIGURE 4

C. Extension of Utility Facilities by CSU: Subject to the provisions of this Article, including sections A and B above, and all applicable CSU tariffs, rules, regulations, and standards, CSU will extend electric and gas service to the Property if CSU, in its sole discretion, determines that there will be no adverse effect to any Utility Service or utility easement. Owner shall cooperate with CSU to ensure that any extension of gas or electric facilities to serve the Property will be in accord with CSU's Line Extension and Service Standards.

1. Natural Gas Facilities: If prior to annexation any portion of the Property is located outside CSU's gas service territory, then upon annexation, CSU will acquire the gas service territory within the Property from the then-current gas service provider. Accordingly, Owner shall be solely responsible for all costs and expenses, including but not limited to attorneys' fees, that CSU incurs due to any Colorado Public Utilities Commission ("CPUC") filings made or arising from annexation of the Property. Owner shall support and make any CPUC filings necessary to support CSU's filings to the CPUC.

2. Electric Facilities: CSU, in its sole discretion, may require Owner to enter into a Revenue Guarantee Contract for the extension of any electric service or facilities, including any necessary electric transmission or substation facilities. If any portion of the Property is located outside CSU's electric service territory, then upon annexation, CSU will acquire the electric service territory within the Property that is not served by CSU from the then-current electric service provider in accord with C.R.S. §§ 40-9.5-201 *et seq.*, or 31-15-707, and Owner shall be solely responsible for all costs and fees, including but not limited to attorneys' fees, that CSU incurs as a result of or associated with the acquisition of such electric service territory. Accordingly, Owner agrees to pay the then-current electric service provider, directly, for the costs associated with CSU's acquisition of the electric service territory as specified in C.R.S. §§ 40-9.5-204 (1) (a) and 40-9.5-204 (1) (b) within 30 days of receipt of an invoice for such costs. Owners also agree to pay CSU for the costs associated with CSU's acquisition of the electric service territory as specified in C.R.S. §§ 40-9.5-204 (1) (c) and 40-9.5-204 (1) (d) within 30 days of receipt of an invoice for such costs.

   Further, Owner acknowledges sole responsibility for the costs that CSU incurs in the conversion of any overhead electric lines to underground service and the removal of any existing electric distribution facilities (overhead or underground) that were previously installed by the then-current electric service provider. These costs shall be paid by Owner concurrent with the execution of a contract between the Owner and CSU that obligates Owner to reimburse CSU for such conversion or removal of existing electrical facilities.

3. Water and Wastewater Facilities by CSU: Owner shall pay any advance recovery-agreement charges, recovery-agreement charges, or other fees or charges that are not currently approved by CSU for the Property, but which may become applicable as a result of any on-site or off-site water or wastewater system facilities that CSU or other developers may design and construct in order to ensure an integrated water or wastewater system supplying the Property. Additionally, Owner shall be subject to cost recovery for the engineering, materials and installation costs incurred by CSU in its design, construction, upgrade or improvement of any water pump stations, water suction storage facilities, water transmission and distribution pipelines, or other water system facilities and appurtenances and any wastewater pump stations or treatment facilities, wastewater pipeline facilities, or other wastewater collection facilities and appurtenances that CSU, in its sole discretion, determines are necessary to serve the Property.

D. Water and Wastewater System Extensions by Owners: Owner must extend, design, and construct all potable and non-potable water system facilities and appurtenances, and all wastewater collection system facilities, wastewater pump stations, and any water or wastewater service lines to and within the Property at

FIGURE 4

Owners' sole cost and expense in accord with all applicable CSU tariffs, rules, regulations, including CSU's Line Extension and Service Standards, and all City ordinances and regulations in effect at the time of each specific request for water or wastewater service. Consistent with City Code 7.7.1102 (B), Owners shall complete the design, installation and obtain preliminary acceptance of such utility facilities prior to CSU's approval of Owners' water and wastewater service requests.

Owner shall be solely responsible for all costs and fees associated with engineering, materials, and installation of all water system facilities and appurtenances, and all wastewater collection facilities and appurtenances, whether on-site or off-site, that are necessary to serve the Property or to ensure development of an integrated water or wastewater system serving the Property and areas outside the Property as determined by CSU. Further, Owner acknowledges that CSU may require that such water or wastewater system facilities be larger than necessary to serve the Property itself, and may require the Owner to participate with other development projects on a fair-share, pro rata basis in any necessary off-site system facilities improvements.

The plans, specifications and construction of the water facilities and appurtenances, and the wastewater facilities and appurtenances are each subject to CSU's inspection and written acceptance, and CSU shall make the final determination as to the size, location, point(s) of connection and the required appurtenances of the system facilities to be constructed. No work shall commence on any proposed water or wastewater extension facilities until CSU provides written approval of Owners' water or wastewater construction plans and copies of such approved plans are received by CSU's Planning and Engineering Department. Owners may only connect newly-constructed facilities to CSU's existing water or wastewater system upon CSU's inspection and written acceptance of such facilities.

As part of any development plan submittal for the Property, Owner acknowledges that a Preliminary Utility Plan, Wastewater Master Facility Report, Hydraulic Grade Line Request Form, and Hydraulic Analysis Report (as determined by CSU) are required and must be completed and approved by CSU.

The water distribution system facilities must meet CSU's criteria for quality, reliability and pressure. The water distribution system shall ensure capacity, pressure and system reliability for both partially completed and fully completed conditions and the static pressure of the water distribution system shall be a minimum of 60 psi. Also, to ensure the protection of public health and to maintain compliance with state regulatory requirements, the detailed plans for all customer-owned, non-potable water distribution systems, including irrigation systems, must be approved by CSU.

Further, Owner recognizes that the extension of water system facilities may affect the quality of water in CSU's water system. Consequently, Owner acknowledges responsibility for any costs that CSU, in its sole discretion, determines necessary to incur in order to maintain water quality in its system as a result of Owners' water system extensions, including but not limited to, the cost of any lost water, materials and labor from pipeline-flushing maintenance activities, temporary pipeline loop extensions, or other appurtenances and measures that CSU determines are necessary to minimize pipeline flushing and to maintain water quality ("Water-quality Maintenance Costs"). Owner shall reimburse CSU for such Water-quality Maintenance Costs within thirty (30) days of receipt of an invoice for such costs.

E. Limitation of Applicability: The provisions of this Agreement set forth the requirements of the City and CSU in effect at the time of the annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or CSU to adopt different ordinances, rules, regulations, resolutions, policies or

FIGURE 4

codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally and are in accord with the then-current tariffs, rates, regulations and policies of CSU. Subject to the provisions of the Article of this Agreement that is labeled "WATER RIGHTS," CSU's tariffs, policies, and/or contract agreements, as may be modified from time to time, shall govern the use of all Utilities Services, including but not limited to, groundwater and non-potable water for irrigation use by Owner for the Owner's exclusive use.

F. Southeastern Colorado Water Conservancy District: Notice is hereby provided that upon annexation the Property is subject to subsequent inclusion into the boundaries of the Southeastern Colorado Water Conservancy District ("District") pursuant to C.R.S. § 37-45-136 (3.6) as may be amended, and the rules and procedures of the District and shall be subject thereafter to a property tax mill levy for the purposes of meeting the financial obligations of the District. Owner acknowledges that water service for the Property will not be made available by CSU until such time as the Property is formally included within the boundaries of the District. District inclusion requires consent by the Bureau of Reclamation ("Reclamation"). Owner shall be responsible for taking all actions necessary for inclusion of the Property into the boundaries of the District, including but not limited to, any action required to obtain consent from Reclamation for inclusion into the District.

VII.
WATER RIGHTS

As provided in the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement and hereby incorporated by reference, Owner grants to the City, all right, title and interest to any and all groundwater underlying or appurtenant to and used upon the Property, and any and all other water rights appurtenant to the Property (collectively referred to as the "Water Rights"), together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the City to appropriate, withdraw and use the Water Rights. The Deed conveying the Water Rights shall be executed by Owner concurrently with this Agreement and shall be made effective upon the date of the City Council's final approval of the annexation of the Property. The Deed shall be recorded concurrent with the recording of the annexation agreement, annexation ordinance and plat at the El Paso County Clerk and Recorder's office.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, on behalf of Owner and all successors in title, Owner irrevocably consents to the appropriation, withdrawal and use by the City of all groundwater underlying or appurtenant to and used upon the Property.

In the event the City chooses to use or further develop the Water Rights that have been conveyed, Owner agrees to provide any and all easements required by the City prior to the construction and operation of any City well or water rights related infrastructure on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owner's Property without additional consent from Owner.

Upon annexation of the Property, any wells or groundwater developed by Owner prior to annexation will become subject to CSU's applicable tariffs, Rules and Regulations, and rates as amended in the future. Owner's uses of groundwater shall be subject to approval by the City and CSU, and shall be consistent with CSU's standards, tariffs, policies, and the City's ordinances, resolutions and policies for the use of groundwater now in effect or as amended in the future. No commingling of well and City water supply will be permitted.

FIGURE 4

VIII.
FIRE PROTECTION

After annexation of the Property to the City, fire protection services will be provided by the City through its Fire Department. After annexation, the Property will be assessed property taxes payable to the City.

IX.
FIRE PROTECTION FEE

Owner agrees to pay a fee of $1,631.00 per gross acre of the entire annexed area ("Fire Protection Fee") as the Owner's share of the capital cost of a new fire station and the initial apparatus purchase required to service this annexation as well as adjacent areas of future annexation The Fire Protection Fee will be due with the recordation of each future subdivision filing. The City agrees as future annexations occur within the service area of the proposed fire station the owners of future annexations will be required to pay a per-acre Fire Protection Fee to the City for the capital improvements to the fire station.

X.
POLICE SERVICE FEE

The Owner agrees to pay a fee of $670.00 per gross acre of the entire annexed area ("Police Service Fee") as Owner's share of the capital cost of a new police station and the initial equipment purchase required to service this annexation as well as adjacent areas of future annexation. The Police Service Fee will be due with the recordation of each future subdivision filing. The City agrees as future annexations occur within the service area of the proposed police station the owners of future annexations will be required to pay a per-acre Police Service Fee to the City for the capital improvements to the police station.

XI.
PUBLIC LAND DEDICATION

Owner agrees that all land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be platted and all applicable development fee obligations paid.

Owner agrees that any land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be free and clear of liens and encumbrances. All fees that would be applicable to the platting of land that is to be dedicated to the City (including park and school land) shall be paid by Owner. Fees will be required on the gross acreage of land dedicated as of the date of the dedication in accord with the fee requirements in effect as of the date of the dedication. All dedications shall be platted by the Owner prior to conveyance, unless otherwise waived by the City.

In addition, any property dedicated by deed shall be subject to the following:

A. All property deeded to the City shall be conveyed by General Warranty Deed.

B. Owner shall convey the property to the City within 30 days of the City's written request.

FIGURE 4

C. Any property conveyed to the City shall be free and clear of any liens and/or encumbrances.

D. All property taxes levied against the property shall be paid by the Owner through the date of conveyance to the City.

E. An environmental assessment of the property must be provided to the City for review and approval, unless the City waives the requirement of an assessment. Approval or waiver of the assessment must be in writing and signed by an authorized representative or official of the City.

XII.
SPECIAL PROVISIONS

Not applicable

XIII.
ORDINANCE COMPLIANCE

Owner will comply with all tariffs, policies, rules, regulations, ordinances, resolutions and codes of the City which now exist or are amended or adopted in the future, including those related to the subdivision and zoning of land, except as expressly modified by this Agreement. This Agreement shall not be construed as a limitation upon the authority of the City to adopt different tariffs, policies, rules, regulations, ordinances, resolutions and codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally.

XIV.
ASSIGNS AND DEED OF TRUST HOLDERS

Where as used in this Agreement, the term "the Owner" or "Property Owner," shall also mean any of the heirs, executors, personal representatives, transferees, or assigns of the Owner and all these parties shall have the right to enforce and be enforced under the terms of this Agreement as if they were the original parties hereto. Rights to specific refunds or payments contained in this Agreement shall always be to the Owner unless specifically assigned to another person.

Owner affirmatively states that there exist no outstanding deeds of trust or other similar liens or encumbrances against the Property.

XV.
RECORDING

This Agreement shall be recorded with the Clerk and Recorder of El Paso County, Colorado, and constitute a covenant running with the land. This Agreement shall be binding on future assigns of the Owner and all other persons who may purchase land within the Property from the Owner or any persons later acquiring an interest

FIGURE 4

in the Property. Any refunds made under the terms of this Agreement shall be made to the Owner and not subsequent purchasers or assigns of the Property unless the purchase or assignment specifically provides for payment to the purchaser or assignee and a copy of that document is filed with the City.

XVI.
AMENDMENTS

This Agreement may be amended by any party, including their respective successors, transferees, or assigns, and the City without the consent of any other party or its successors, transferees, or assigns so long as the amendment applies only to the property owned by the amending party. For the purposes of this article, an amendment shall be deemed to apply only to property owned by the amending party if this Agreement remains in full force and effect as to property owned by any non-amending party.

Any amendment shall be recorded in the records of El Paso County, shall be a covenant running with the land, and shall be binding on all persons or entities presently possessing or later acquiring an interest in the property subject to the amendment unless otherwise specified in the amendment.

XVII.
HEADINGS

The headings set forth in the Agreement for the different sections of the Agreement are for reference only and shall not be construed as an enlargement or abridgement of the language of the Agreement.

XVIII.
DEFAULT AND REMEDIES

If either Owner or City fails to perform any material obligation under this Agreement, and fails to cure the default within thirty (30) days following notice from the non-defaulting party of that breach, then a breach of this Agreement will be deemed to have occurred and the non-defaulting party will be entitled, at its election, to either cure the default and recover the cost thereof from the defaulting party, or pursue and obtain against the defaulting party an order for specific performance of the obligations under this Agreement and, in either instance, recover any actual damages incurred by the non-defaulting party as a result of that breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Agreement, as well as any other remedies provided by law.

FIGURE 4

XIX.
GENERAL

Except as specifically provided in this Agreement, City agrees to treat Owner and the Property in a non-discriminatory manner relative to the rest of the City. In addition, any consent or approval required in accord with this Agreement from the City shall not be unreasonably withheld, conditioned or delayed. City agrees not to impose any fee, levy or tax or impose any conditions upon the approval of development requests, platting, zoning or issuance of any building permits for the Property, or make any assessment on the Property that is not uniformly applied throughout the City, except as specifically provided in this Agreement or the City Code. If the annexation of the Property or any portion of the Property is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended, pending the outcome of the referendum election. If the referendum challenge to the annexation results in the disconnection of the Property from the City, then this Agreement and all its provisions shall be null and void and of no further effect. If the referendum challenge fails, then Owner and City shall continue to be bound by all terms and provisions of this Agreement.

XX.
SEVERABILITY

If any provision of this Agreement is for any reason and to any extent held to be invalid or unenforceable, then neither the remainder of the document nor the application of the provisions to other entities, persons or circumstances shall be affected.

FIGURE 4

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

CITY OF COLORADO SPRINGS

BY:_____

_____
President of City Council

ATTEST:

BY:_____
Sarah B. Johnson, City Clerk

APPROVED AS TO FORM:

BY:_____
Renee Congdon, Attorney
Office of the City Attorney

FIGURE 4

PROPERTY OWNER:

Millennium Venture Group, Inc.

By: _____
Name: Carolyn S. Powell
Its: Vice President

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 24TH day of April, 2015, by Carolyn S. Powell, as Vice President of and on behalf of Millennium Venture Group, Inc., as Owner.

Witness my hand and notarial seal.

My commission expires: 1-8-17

JOANNE M. TRUE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20044040717
MY COMMISSION EXPIRES JANUARY 08, 2017

Joanne M. True
Notary Public
Address: 2240 Blake St Ste 200
Denver, CO 80205

FIGURE 4

EXHIBIT A

LEGAL DESCRIPTION
[On pages immediately following this page.]

FIGURE 4

Land Development Consultants, Inc.
Surveying • Planning

3898 Maizeland Road
Colorado Springs, CO 80909

Phone: 719-528-6133
Fax: 719-528-6848
www.ldc-inc.com

TUTT CORNERS
LEGAL DESCRIPTION

A tract of land being a portion of the Southwest Quarter of Section 7, Township 13 South, Range 65 West of the 6th P.M., also being Lot 2, A A SUBDIVISION, Plat Book W-2, Page 94, El Paso County, Colorado records, EXCEPT that tract described by document at Reception No. 202065921 (Exception Tract No. 1) said El Paso County records and TOGETHER WITH those adjacent portions of Templeton Gap Road (80' right-of-way) and Vickie Lane (50' right-of-way) in El Paso County, Colorado, described as follows:

Beginning at the Southeast corner of said Lot 2 (all bearings in this description are relative to those platted in said SUBDIVISION);

thence S88°04'07"W along the Southerly line of said Lot 2, 475.58 feet to the Easterly corner of said EXCEPTION Tract No. 1;

thence on a curve to the right and along the Northerly line of said Tract No. 1, said curve having a central angle of 16°48'35", a radius of 986.25 feet for an arc distance of 289.35 feet;

thence N75°07'17"W along said Northerly line of Tract No. 1 and as extended Northwesterly, 97.57 feet to a point on the Northwesterly right-of-way line of said Templeton Gap Road;

thence N30°11'05"E along said Northwesterly right-of-way line of Templeton Gap Road, 538.62 feet to a point on the Northwesterly extension of the Northerly right-of-way line of said Vickie Lane

The following three (3) courses are along said Northwesterly extension and the Northerly right-of-way line of said Vickie Lane

1) S59°48'55"E, 348.19 feet;

2) on a curve to the left, said curve having a central angle of 51°32'35", a radius of 105.78 feet for an arc distance of 95.16 feet;

3) N68°38'30"E, 61.00 feet to a point on the Northwesterly extension of the Easterly line of said Lot 2;

thence S21°21'30"E along said Northwesterly extension and said Easterly line of Lot 2, 372.80 feet to the Point of Beginning;

Containing 6.331 acres, more or less.

COLORADO REGISTERED
DANIEL LEE KUPFERER
18465
4-27-2015
PROFESSIONAL LAND SURVEYOR

FIGURE 4

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER TUTT CORNERS ADDITION ANNEXATION

Millennium Venture Group, Inc. ("Grantor"), whose address is 2240 Blake Street, Suite 200, Denver, CO 80205, in consideration of the benefits received pursuant to the Tutt Corners Addition Annexation Agreement dated April 24, 2015 ("Annexation Agreement"), which is executed by Grantor(s) concurrently with this Special Warranty Deed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, sell and convey to the City of Colorado Springs, Colorado ("Grantee"), whose address is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all right, title, and interest in any and all groundwater, if any, underlying or appurtenant to and used upon the property described in Exhibit A ("Property") and any and all other water rights appurtenant to the Property collectively referred to as the "Water Rights", together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the Grantee to appropriate, withdraw and use the Water Rights; and Grantor(s) warrants title to the same against all claims arising by, through or under said Grantor(s). The Water Rights include but are not limited to those described in Exhibit B.

Furthermore, pursuant to C.R.S. § 37-90-137(4) as now exists or may later be amended, Grantor(s), on behalf of Grantor(s) and any and all successors in title, hereby irrevocably consent in perpetuity to the appropriation, withdrawal and use by Grantee of all groundwater underlying or appurtenant to and used upon the Property.

This Special Warranty Deed and the consent granted herein shall be effective upon the date of the City of Colorado Springs-City Council's final approval of the Annexation Agreement.

Executed this 30th day of April, 2015.

GRANTOR:

MILLENNIUM VENTURE GROUP, INC.

By: _____
Name: Carolyn S. Powell

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 30th day of April, 2015, by Carolyn S. Powell as Vice President of and on behalf of Millennium Venture Group, Inc., Grantor.

Witness my hand and official seal.

My Commission Expires: 7/11/2016

SUSAN K. TACKETT NOTARY PUBLIC STATE OF COLORADO

_____ (SEAL)

Notary Public

FIGURE 4

Accepted by the City of Colorado Springs

By: _____ this _____ day of _____, 2015
Real Estate Services Manager

By:_____ this _____ day of _____, 2015

Approved as to Form:

By: _____ Date: _____
City Attorney's Office

FIGURE 4

Exhibit A

LEGAL DESCRIPTION

To the
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater executed by Millennium Venture Group, Inc., Grantor on April 24, 2015.

[On pages immediately following this page.]

FIGURE 4

Land Development Consultants, Inc.
Surveying • Planning

3898 Maizeland Road
Colorado Springs, CO 80909

Phone: 719-528-6133
Fax: 719-528-6848
www.ldc-inc.com

TUTT CORNERS
PROPERTY DESCRIPTION

Lot 2, A A SUBDIVISION, as recorded in Plat Book W-2, Page 94, Reception No. 932138 of the records of El Paso County, Colorado, EXCEPT that portion conveyed to the City of Colorado Springs by deed recorded April 24, 2002 at Reception No. 202065921, County of El Paso, State of Colorado.

COLORADO REGISTERED
DANIEL LEE KUPFERER
18465
4-27-2015
PROFESSIONAL LAND SURVEYOR

FIGURE 4

Exhibit B

To the
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater executed by Millennium Venture Group, Inc. as Grantor on April 24, 2015.

All right, title and Interest in and to all water and water rights, whether such rights are adjudicated, determined or not as vested by virtue of the Warranty Deed attached on the following pages.

FIGURE 4

Recorded Electronically
ID_____
County_____
Date_____ Time_____

When recorded return to:
Millennium Venture Group, Inc.
2240 Blake Street, Suite 200
Denver, Colorado 80205
Attention: General Counsel

WARRANTY DEED

THIS WARRANTY DEED, made this 30 day of January, 2015, between **TKO DELOPMENT, LLC, l/k/a TKO DEVELOPMENT, LIMITED LIABILITY COMPANY**, a Colorado limited liability company, as grantor ("Grantor"), and **MILLENNIUM VENTURE GROUP, INC.**, a Delaware corporation, whose legal address is 2240 Blake Street, Suite 200, Denver, Colorado 80205, of the County of Denver and State of Colorado, as grantee ("Grantee"):

WITNESSETH, that the Grantor, for and in consideration now paid to them, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell convey and confirm all right, title and Interest in and to all water and water rights, whether such rights are adjudicated, determined or not, along with all appurtenant rights therein, on or under the land described as follows:

Lot 2, AA Subdivision, as recorded in Plat Book W-2 at Page 94, Reception No. 932138 of the recorded of El Paso County, Colorado, EXCEPT that portion conveyed to the City of Colorado Springs by deed recorded April 24, 2002 at Reception No. 202065921, County of El Paso, State of Colorado.

Also known by street and number as: 6045 Vickie Lane, Colorado Springs, Colorado 80923

[SIGNATURE AND AKNOWLEDGEMENT ON THE FOLLOWING PAGE]

F0503554
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FIGURE 4

IN WITNESS WHEREOF, The Grantor has caused its corporate name to be hereunto subscribed by its Manager the day and year first above written.

GRANTOR:

TKO DELOPMENT, LLC,
l/k/a **TKO DEVELOPMENT,**
LIMITED LIABILITY COMPANY,
a Colorado limited liability company

By: _____
Name: Randy Ottaway, Manager

State of **Colorado**)
)ss
County of El Paso)

The foregoing instrument was acknowledged to before me this 29 day of January, 2015, by Randy Ottaway as Manager of TKO Development, Limited Liability Company, a Colorado limited liability company.

My commission expires:
6/3/18

_____
Notary Public

TARA K. GRAHAM
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20024017997
MY COMMISSION EXPIRES JUNE 3, 2018

FIGURE 4

NEW BUSINESS CALENDAR

CITY PLANNING COMMISSION AGENDA

ITEM NO: 6.A - 6.B

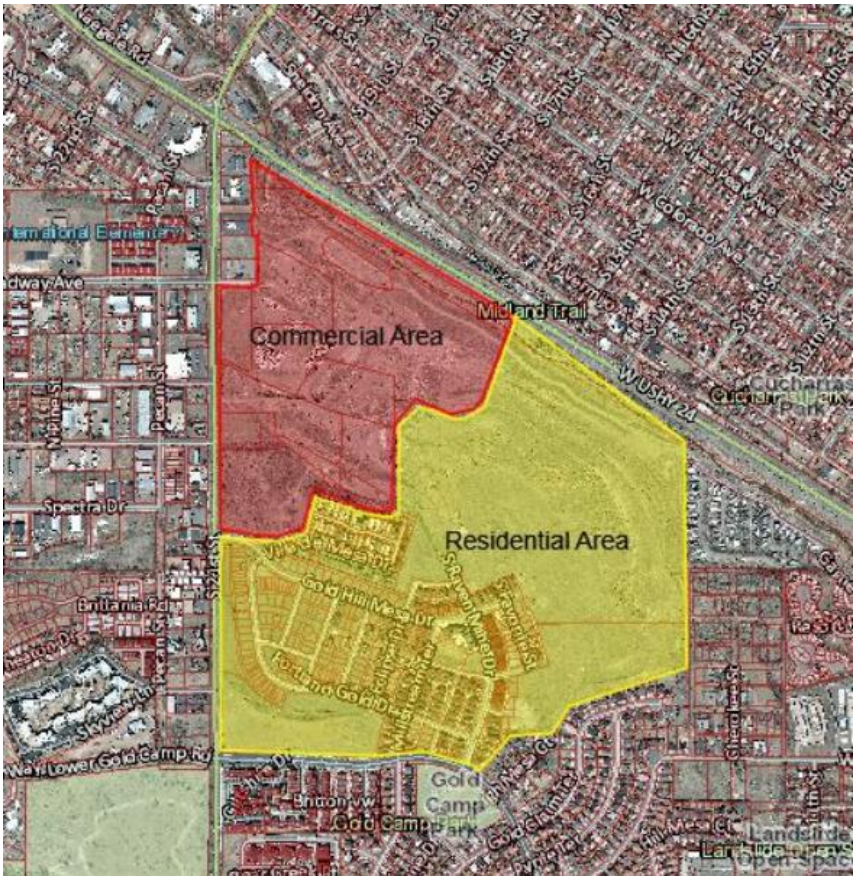
STAFF: PETER WYSOCKI

FILE NO: CPC MP 04-00012-A1MJ15

PROJECT: GOLD HILL MESA AMENDED URBAN RENEWAL PLAN and GOLD HILL MESA COMMERCIAL AREA URBAN RENEWAL PLAN

APPLICANT: COLORADO SPRINGS URBAN RENEWAL AUTHORITY

OWNER: GOLDEN CYCLE INVESTMENTS, LLC



PROJECT SUMMARY:

1. Project Description: This is a request by the Colorado Springs Urban Renewal Authority on behalf of Golden Cycle Investments, LLC for Planning Commission's determination that:

   a. The amended Gold Hill Mesa Urban Renewal Plan is consistent with the City's Comprehensive Plan; and,
   b. The Gold Hill Mesa Commercial Area Urban Renewal Plan is consistent with the City's Comprehensive Plan.

   The current Gold Hill Mesa Urban Renewal Plan ("GHMURP") was initially adopted by the City Council in May 2004 (Resolution 99-04). The original GHMIRP covers approximately 200 acres, consisting of commercially and residentially designated areas. The purpose of this amendment is to remove the commercial area from the original plan and to establish a new urban renewal plan for the commercial area. The new Amended Gold Hill Mesa Urban Renewal Plan (for the residential area) is attached as **FIGURE 1**; the Gold Hill Mesa Commercial Area Urban Renewal Plan is attached as **FIGURE 2**.

   The Gold Hill Mesa Development is generally located in the southwestern portion of the City at the southeast quadrant of Highway 24 and South 21st Street.

   As previously adopted urban renewal plans, this request is being processed as a master plan. City Code is silent on how urban renewal plans are to be adopted by the City. The master plan adoption procedures simply provide an avenue for a formal process. The amended and the commercial Gold Hill Mesa Urban Renewal Plans are not intended to be land use policy documents as typical master plans considered by the Planning Commission and City Council.

2. Applicant's Project Statement. Included in **FIGURE 1** and **FIGURE 2.**
3. Planning and Development Department's Recommendation: Staff recommends that the City Planning Commission find that the proposed amended urban renewal plan and the new urban renewal plan for the commercial area are in conformance with the City of Colorado Springs Comprehensive Plan.

BACKGROUND:

1. Existing Zoning/Land Use**:** TND and PBC.
2. Surrounding Zoning/Land Use: Residential, Commercial and Industrial.
3. Comprehensive Plan/Designated 2020 Land Use: Mature Development Corridor.
4. Zoning Enforcement Action: None identified.
5. Physical Characteristics: The residential area is being developed into a traditional neighborhood development with single family and multi-family units on what was the site of a gold refining operation. The site contains tailings and a mitigation plan has been implemented to allow residential uses to be developed.

   The commercial area has not been developed and remains unimproved with shrubs and grasses. The majority of the area has been used as a land fill. The area slopes gently to the north and west into Fountain Creek.

STAKEHOLDER PROCESS AND INVOLVEMENT:

The Colorado Springs Urban Renewal Authority has followed the requirements of Colorado Revised Statutes ("CRS") 31-25-107. Notification of a blight conditions survey was sent to the property owners and the Colorado Springs Urban Renewal Authority ("CSURA") held 2 public meetings on January 27, 2015 and February 25, 2015 to review the proposed plans. CSURA approved both plans at the February 25th meeting.

To satisfy the requirements of City Code pertaining to master plan adoption/amendments, standard postcards were sent to the property owners within the entire Gold Hill Mesa urban renewal area. As of the writing of this report, staff did not receive any communication from the property owners.

Review by other City departments and external agencies is not necessary at this point. Development related reviews will occur once development applications are submitted for specific projects.

MAJOR ISSUES/COMPREHENSIVE PLAN CONFORMANCE/ANALYSIS OF REVIEW CRITERIA:

1. Approval of an Urban Renewal Designation:
Urban renewal authorities, urban renewal plans and the use of tax increment financing (TIF) are regulated by CRS Title 31, Article 25. The intent of urban renewal plans is to encourage and facilitate redevelopment and to eliminate blight within the designated area, ideally consistent with a city's comprehensive plan. For the purpose of urban renewal, "blighted area" is defined in CRS. In order for an area to be classified as blighted, it must exhibit 4 of 12 characteristics also stipulated in CRS. A blight conditions survey was completed for the commercial area. The survey concludes that as a stand-alone area, separated from the original GHMURA, it qualifies as a "blighted area". The conditions survey is attached as **FIGURE 3**.

In accordance with CRS 31-25-107(2), prior to City Council approval of an urban renewal plan or a substantial amendment to an existing plan, the plan or amendment must first be reviewed and a recommendation offered by the City Planning Commission regarding its conformity to the City Comprehensive Plan. If no recommendation is offered by the City Planning Commission within 30 days of submittal, the City Council may proceed to act upon the submitted plan or amendment.

Pursuant to CRS, urban renewal plans sunset 25 years after their adoption. The most common method of funding improvements is through the issuance of bonds by an urban renewal authority in order to "front" the money for specified improvements. The bonds are then repaid by the urban renewal authority using the revenue generated from the incremental increase in sales and property taxes collected within the urban renewal area. This is commonly referred to as tax increment financing or "TIF". It should be noted that creation of an urban renewal area does not change the tax rate - the tax increment yields are generated by the increases in property values and sales of taxable goods above the taxes collected prior to the adoption of the plan. (Typically, the year prior to or the year a plan was adopted serves as the "base year" from which the increment is determined. The "base year" rates are later adjusted every two years to establish a new base.) It should be noted that CSURA normally receives 100% of the property tax increment; however, the portion of the City's 2% of the general sales tax increment is negotiated through a separate agreement with the City.

The adoption of the Amended Gold Hill Mesa Urban Renewal Plan will separate the proposed commercial area from the original Gold Hill Mesa Urban Renewal Plan. This will allow CSURA, among other powers, to enact property tax and sales tax increment financing to assist with the financing of infrastructure and site remediation requirements necessary to eliminate and prevent the spread of blighted conditions in the commercial area for a full 25-year period. The amended plan area will not change the tax increment collection period for the residential area that was approved as part of the original plan adoption in 2004 (2004-2029).

Approval of the urban renewal plan for the commercial area will essentially start a new 25-year term for improvements associated with the commercial site. This will allot CSURA additional time to repay the bonds and likely increase the amount of capital that can be secured via bonding.

Comprehensive Plan/Master Plan Conformance: The role of the Planning Commission is clearly defined in CRS. The Planning Commission is responsible for determining if the amended and commercial Gold Hill Mesa Urban Renewal Plans are consistent with the City's Comprehensive Plan.

Staff believes that the Amended Gold Hill Mesa Urban Renewal Plan and the Gold Hill Mesa Commercial Area Urban Renewal Plan are consistent with and implement the Polices and Strategies of the 2001 Comprehensive Plan. Specifically:

a. Neighborhood Chapter Policies and Strategies, which generally state that the City should promote neighborhood revitalization, redevelopment, utilize incentives and improve infrastructure. The proposed urban renewal plans provide a mechanism to fund improvements that otherwise may not be feasible due to the blighted conditions of the area. The area is located in a mature and highly visible corridor that has recently seen some notable infill and redevelopment. Eliminating blight is critical to continued successful revitalization of the Southwest portion of the City.

b. Land Use Chapter Policies and Strategies, which encourage varying neighborhood patters and mix of land uses. In its entirety, the Gold Hill Mesa redevelopment area provides a mix of traditional neighborhood design single-family and multi-family housing, open space and adjoining commercial center. In a larger context, the Gold Hill Mesa redevelopment area is compatible with the surrounding neighborhoods and development patterns.

STAFF RECOMMENDATION:

Item No. 6.A- 6.B CPC MP 04-00012-A1MJ15 (*two separate motions are required*)

A. Recommend approval of the Amended Gold Hill Mesa Urban Renewal Plan to the City Council based on the finding that it is consistent with the City's 2001 Comprehensive plan; and,

B. Recommend approval of the Gold Hill Mesa Commercial Area Urban Renewal Plan to the City Council based on the finding that it is consistent with the City's 2001 Comprehensive Plan.

Attachments

FIGURE 1 - Amended Gold Hill Mesa Urban Renewal Plan
FIGURE 2 - Gold Hill Mesa Commercial Area Urban Renewal Plan
FIGURE 3 – Conditions Survey for the Commercial Area

Amended Gold Hill Mesa

Urban Renewal Plan

Prepared for:

City of Colorado Springs City Council
and
Colorado Springs Urban Renewal Authority (CSURA)

January 27, 2015

Prepared by:

Ricker|Cunningham (formerly Leland Consulting Group)

FIGURE 1

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Section 5.0:	**Project Implementation**	15
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Section 7.0:	**Changes & Minor Variations from Adopted Plan**	20

Supporting Documents Available Under Separate Cover

Exhibit 1: Gold Hill Mesa Urban Renewal Area Conditions Survey, 2003
Exhibit 2: Gold Hill Mesa Amended Urban Renewal Plan - El Paso, County Impact Report, 2015

FIGURE 1

Amended Gold Hill Mesa

Urban Renewal Plan

Colorado Springs, Colorado
January, 2015

Prepared for: Colorado Springs City Council and Colorado Springs Urban Renewal Authority

1.0 Preface and Background

1.1 Preface

This Amended Gold Hill Mesa Urban Renewal Plan (the "Amended Plan" or the "Amended Urban Renewal Plan") has been prepared for the Colorado Springs Urban Renewal Authority of the City of Colorado Springs, (the "**Authority**") and Colorado Springs City Council (the "**City Council**") pursuant to the provisions of the Urban Renewal Law of the State of Colorado, Part 1 of Article 25 of Title 31, Colorado Revised Statutes, 1973, as amended (the "**Act**"). The administration of this project and the enforcement of this **Amended Plan**, including the preparation and execution of any documents implementing it, shall be performed by the **Authority**.

1.2 Description of Amended Urban Renewal Area

The Amended Gold Hill Mesa Urban Renewal Area (referred to herein as "the Amended Urban Renewal Area" or "the **Amended Area**") is located in the western portion of the city of Colorado Springs. Properties within its boundaries are generally bound on the north by several properties generally located in the southeastern quadrant of U.S. Highway 24 and Fountain Creek, and South 21st Street, , formerly part of the Gold Hill Mesa Urban Renewal Area and now part of the Gold Hill Mesa Commercial Area. The **Amended Area**'s southwestern boundary is South 21st Street and southern boundary is Lower Gold Camp Road (formerly Fountain Boulevard).The A-1 Village Mobile Home Park and a wooded area are located along its eastern boundary. The Villa de Mesa townhome community located in the center of the **Amended Area** continues to be excluded. The boundaries of the **Amended Area** are delineated in **Figure No. 1**, and described in the legal description presented in Appendix A. The figure will control the boundary description in case of any conflict.

FIGURE 1

1.2.2 Figure 1, Amended Urban Renewal Area

1.3 Purpose of the Plan

This Amended Gold Hill Mesa Urban Renewal Plan is intended to reduce, eliminate and prevent the spread of blight; as well as stimulate growth and development within the its boundaries. Further, it promotes local objectives expressed in the City of Colorado Springs Comprehensive Plan, amended in 2002, with respect to appropriate land uses, improved traffic, and other public improvements; provided that the delineation of such objectives shall not be construed to require that any particular project necessarily promote all such objectives. Its purpose, however, is to remove several undeveloped tracts envisioned for commercial development from the existing Urban Renewal Area in order to establish a new Gold Hill Mesa Commercial Area Urban Renewal Plan, focused exclusively on promoting investment within that new Commercial Area. The **Amended Area** will retain the existing residential neighborhood and promote additional development for the remainder of the existing **Tax Increment Financing (TIF) Area**.

FIGURE 1

1.4 Public Participation

This **Amended Plan** has been made available to property owners in the **Amended Area**, as well as Colorado Springs residents and business interests , to the extent provided for in the Colorado Public Records **Act**, Colo. Rev. Stat. Title 24, Article 72, Part 2 as the same may be amended from time to time, and pursuant to policies adopted by the **Authority**.

Presentation of this **Amended Plan** was made to the Planning & Zoning Commission on **date**, and **City Council** of Colorado Springs, on **date**.

1.5 Definitions

In addition to terms previously defined in the text, the following terms are used in this **Amended Plan**:

Act – means the Urban Renewal Law of the State of Colorado, Part 1 of Article 25 of Title 31, Colorado Revised Statutes, as amended. Unless otherwise stated, all capitalized terms herein shall have the same meaning as set forth in the **Act**.

Area – means the original Gold Hill Mesa Urban Renewal Area.

Amended Area – means the Amended Gold Hill Mesa Urban Renewal Area as depicted in Figure No. 1 and legally described in Appendix B.

Amended Plan or **Amended Urban Renewal Plan** – means this Amended Gold Hill Mesa Urban Renewal Plan.

Authority – means the Colorado Springs Urban Renewal Authority (CSURA).

City Council – means the **City Council** of the City of Colorado Springs.

Comprehensive Plan – the City of Colorado Springs Comprehensive Plan adopted 2000.

C.R.S. – means the Colorado Revised Statutes, as amended from time to time.

Impact Report – means the Gold Hill Mesa Amended Urban Renewal Area El Paso County Impact Report prepared by RickerlCunningham (formerly Leland Consulting Group), dated January, 2015 and presented to the CSURA Board under separate cover.

Improvement District or Special District – means a **Special District** created to make improvements, typically to public space infrastructure, in a given area.

FIGURE 1

Municipal Sales Tax Increment - means the municipal sales **Tax Increment Revenue** allocated to the **Authority**.

Plan or **Urban Renewal Plan** – means the original Gold Hill Mesa Urban Renewal Plan.

Property Tax Increment - means the **Property Tax Increment Revenue** allocated to the **Authority**.

Survey – means the Gold Hill Mesa Conditions Survey, prepared by Ricker|Cunningham (formerly Leland Consulting Group), completed in 2003, and presented to the CSURA Board under separate cover.

Study Area – means the geographic area studied in the context of the **Survey** for the purpose of determining its collective eligibility for a designation of "blight" as defined by the **Act**.

Tax Increment Area – means all or a portion of the **Amended Area** designated as a **Tax Increment Area**, as defined and pursuant to the procedures set forth in this **Amended Plan**.

Tax Increment Finance (or Financing) (TIF) – means a financing mechanism which uses future incremental revenues resulting from private investment within an established **Tax Increment Area** to fund improvements for the public benefit.

Tax Increment Revenue – means the incremental revenues (property and / or sales tax) allocated to the **Authority** by the **Act**.

Urban Renewal Project (or the Project) – means any work or undertaking carried out under the **Act**.

2.0 Qualifying Conditions

The Gold Hill Mesa Conditions Survey completed in 2003, (the "**Survey**"), was prepared by the Denver, Colorado office of Ricker|Cunningham, formerly Leland Consulting Group. The Survey included a written report, supported by tables and exhibits all of which illustrated the location of qualifying conditions of "blight" as defined by the **Act**. in.

The legal term "blighted area" describes a wide array of urban problems, which can range from physical deterioration of buildings and the environment, to health, social and economic problems in a particular area. Based on the **Survey** completed in

FIGURE 1

connection with adoption and approval of the original **Urban Renewal Plan** found eight of the following 11 qualifying conditions of blight, as defined in the **Act**, present within the Urban Renewal Area. Before an urban renewal plan can be adopted by a community's governing body (City Council), the Area must first be determined to be a "blighted area" as defined in Section 31-25-103(2) of the **Act**, which provides that, in its present condition and use, there is the presence of at least four (or five in cases where the use of eminent domain is anticipated) of the 11 factors listed below (see below), and that collectively these conditions substantially impair or arrest the sound growth of the municipality, retard the provision of housing accommodations, or constitute an economic or social liability; and, is a menace to the public health, safety, morals, or welfare:

a) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

b) Unsanitary or unsafe conditions;

c) Predominance of defective or inadequate street layout;

d) Slum, deteriorated, or deteriorating structures;

e) Inadequate public improvements or utilities;

f) Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;

g) Deterioration of site or other improvements;

h) Unusual topography;

i) Endangerment to life or property;

j) Environmental contamination of buildings;

k) Inadequate public improvements or utilities; or

l) If there is no objection of such property owner or owners and the tenant or tenants of such owner or owners to the inclusion of such property in an urban renewal area.

Note: The statutory factors presented here are slightly different than those currently used, due to legislative amendments that occurred since adoption of the original Gold Hill Mesa Urban Renewal Plan.

FIGURE 1

3.0 Relationship to Comprehensive Plan

A general plan for the City, known as the Colorado Springs Comprehensive Plan (the "**Comprehensive Plan**"), was updated in 2000. That plan specifically states the following objective, "Support the redevelopment of older, obsolete industrial areas with a mix of uses in new activity centers, including residential, employment, commercial, recreational and entertainment uses;" and, elimination of conditions that would deter or inhibit future growth and revitalization efforts." This **Amended Plan** supports, implements, and is in conformance with the goals of the **Comprehensive Plan**. Specific elements of the **Comprehensive Plan** that this **Amended Plan** will further include those presented in the Gold Hill Mesa Urban Renewal Plan and Appendix A, here.

3.1 Land Use

Policy LU 201:	Promote a Focused, Consolidated Land Use Pattern: Locate new growth and development in well-defined contiguous areas in order to avoid leapfrog, scattered land use patterns that cannot be adequately provided with City services.
Policy LU 301:	Promote a Mixed Land Use Pattern: Promote development that is characterized by a mix of mutually supportive and integrated residential and non-residential land uses, and a network of interconnected streets with good pedestrian and bicycle access and connections to transit.
Strategy LU 301a:	Support Mixed-Use Development in Neighborhoods: Support mixed-use development through neighborhood plans and zoning revisions. Develop zoning guidelines and standards that support mixed-use development and pedestrian access by facilitating the integration of residential and non-residential land uses.
Strategy LU 301b:	Develop Criteria for Integrating a Mix of Uses in New and Established Development Areas: Develop criteria for integrating a mix of uses in areas of new development and within existing neighborhoods. Complimentary uses may be located in proximity to one another on a single parcel or across multiple parcels, or within a single building or group of buildings as appropriate.

FIGURE 1

Policy LU 302:	Encourage Development of Mixed-Use Activity Centers: Encourage the development of activity centers designed to include a mix of uses that compliment and support each other such as commercial, employment-related, institutional, civic and residential. A walkable, pedestrian friendly environment will tie the mix of uses in activity centers together. Activity centers will vary in size, intensity, scale and types of uses depending on their function, location and surroundings. Activity centers will be designed so they are compatible with, accessible from, and serve as a benefit to the surrounding neighborhood or business area.
Objective LU 4:	Encourage Infill and Redevelopment: Encourage infill and redevelopment projects that are in character and context with existing, and surrounding development. Infill and redevelopment projects in existing neighborhoods make good use of the City's infrastructure. If properly designed, these projects can serve an important role in achieving quality, mixed-use neighborhoods. In some instances, sensitively designed, high quality infill and redevelopment projects can help stabilize and revitalize existing older neighborhoods.
Policy LU 602:	Integrate Housing with Other Supportive Land Uses: Integrate housing with supportive land uses, such as employment, education, health facilities, recreation and shopping, to ensure functional and attractive neighborhoods.
Strategy LU 801g:	Support and Encourage the Redevelopment of Obsolete Industrial Areas as Activity Centers: Support the redevelopment of older, obsolete industrial areas with a mix of uses in new activity centers, including residential, employment, commercial, recreational and entertainment uses.

3.2 Neighborhoods

Objective N 3:	Integrate a variety of housing types and densities with amenities, services, and retail uses to generate

FIGURE 1

opportunities and choices for households. When the character, context and scale of the surrounding neighborhood are taken into account, mixed-use developments can provide unique opportunities for employment, shopping, housing choice, and public gathering space, while having a positive impact on the neighborhood.

3.3 Transportation

Strategy T 103a: Integrate Mixed Land Use: Provide opportunities for mixed land uses to afford proximity choices for working, shopping, recreational and other activities. Encourage a variety of uses in activity centers, commercial centers, employment centers, regional centers and corridors.

Strategy T 103c: Improve Pedestrian and Transit Opportunities: Introduce sidewalks and paths between the buildings and through the parking lots in activity centers to provide opportunities for pedestrian use. Direct linkages to regional transit and local bus routes will be made.

3.4 Community Infrastructure and Services

Objective CIS 1: Provide Efficient Services: Individual developers determine the timing of development, which makes it difficult for the City to pro-actively determine future service requirements and thus plan for their provision and maintenance in a systematic fashion. SCIP will be used to address deficiencies in infrastructure and services in the City. Strategic planning will be utilized as the process for programming and funding new infrastructure and service needs. The Strategic Network of Long-Range Plans will form the basis for identifying and programming future infrastructure and service needs.

Policy CIS 102: Use Master Plans and Strategic Planning for Making Infrastructure and Services Decision: Master plans for developing areas are the basis for making decision about the delivery and timing of new infrastructure and

FIGURE 1

services in a manner consistent with the 2020 Land Use Map and the Strategic Network of Long-Range Plans.

Policy CIS 103: New Development Will Pay Its Fair Share of the Cost of Additional Infrastructure and Services: Ensure that new development pays its proportional fair share of the costs of new infrastructure and services required to serve the new development

Strategy CIS 103c: Utilize the Strategic Network of Long-Range Plans for Ongoing Requirements: Funding mechanisms developed through strategic planning efforts will support maintenance and service requirements for existing and new infrastructure.

3.5 Natural Environment

Strategy NE 101d: Use Master Plans to Refine Open Space: Use individual master plans to identify and conserve significant natural features, natural areas, and greenways in individual master plans that are generally consistent with the Open Space Plan, Comprehensive Plan policies, and the 2020 Land Use Map. Update individual master plans with City and property owner coordination.

Strategy NE 201e: Mining Activities: Formulate strategies to mitigate and/or eliminate the negative effects of mining activity on the City's mountain backdrop and the region's recreational and tourism resources.

Objective NE 3: Minimize Environmental Hazards and Constraints: Take into account natural and man-made hazards and the appropriate relationship between the natural and built environment in all planning policy, and development decisions. Minimize impacts from natural and man-made hazards to protect citizens, property and the environment. The City, County, and other appropriate governmental agencies will cooperatively develop plans, programs, regulations, and incentives to reduce the impacts from natural and man-made hazards.

FIGURE 1

3.5 Community Character

Policy CCA 601: New Development Will Be Compatible with the Surrounding Area: New developments will be compatible with the surrounding land uses and will complement the character and appearance of adjacent land uses.

4.0 Land Use Plan and Plan Objectives

4.1 General Description

The original Urban Renewal Area comprised approximately 200 (of the original 249 acre **Study Area**). The Commercial Area portion which is being eliminated from the original Urban Renewal Area comprises approximately 70 acres, and the remaining **Amended Area** 195 acres. The original **Area** was generally bounded on the north by U.S. Highway 24 and Fountain Creek, on the west by South 21st Street, on the south by Lower Gold Camp Road (formerly Fountain Boulevard), and on the east by the A-1 Village Mobile Home Park and wooded area to its south. The Villa de Mesa Townhome community was excluded from the **Area**. The **Amended Area** is similar, with the exception of the exclusion of 16 parcels located in the southeast quadrant of U.S. Highway 24 and South 21st Street planned for commercial development.

The cornerstone of the developer's and community's vision for revitalization of the Gold Hill Mesa site is creation of a high quality mixed-use traditional neighborhood development including both residential and commercial uses. Since adoption of the original Gold Hill Mesa Urban Renewal Area Plan in 2004, a range of housing products have been developed within the Gold Hill Mesa traditional neighborhood development. Other uses originally envisioned, including village commercial, region-serving commercial, employment and transit improvements have not occurred, but are now being actively promoted in the commercial portion of the original **Area**. Within the residential neighborhood, multiple pocket parks connect uses, as well as pathways and other open space elements, all of which are regulated by neo-traditional neighborhood principles and design standards. Conditions identified in the **Study Area** which served as proof that it was eligible for an urban renewal under the **Act** included the presence of: a flood plain, faulty lots in terms of layout, and extreme topography. Improvements to-date, have been primarily funded by **Tax Increment Financing** and a **Special District** millage.

FIGURE 1

This **Amended Plan** describes the **Authority**'s intention to continue development of residential product types within the **Amended Area** and encourage commercial development in that portion being made part of a new urban renewal area, the Gold Hill Mesa Commercial Urban Renewal Area. **Tax Increment Financing Revenues** from future development in the commercial area will assist in funding public improvements and mitigating blighting conditions.

4.2 Development Objectives

Development objectives for this Amended Urban Renewal Area include continued development of a variety of residential land uses at densities that will distinguish one area from another. Objectives to achieve this end include:

a) eliminate and prevent blight;

b) promote a standard for urban-scale neighborhoods and infill development;

c) provide an attractive entry to the city;

d) deliver superior infrastructure (telecommunications and recreation);

e) provide a mix of land uses supportive of, and complementary to planned improvements in the Amended Urban Renewal Area;

f) generate a mix of uses that helps ensure vitality within the project and surrounding area;

g) provide densities and intensities of land uses appropriate to a mixed-use master planned community;

h) provide ease of pedestrian circulation;

i) design safe, convenient pedestrian linkages between the **Amended Area** and nearby recreational and commercial centers;

j) provide well-designed parking sufficient to meet the needs generated by development projects in the **Amended Area**;

k) provide improvements that link residential areas to the balance of the property;

FIGURE 1

l) encourage the continued presence of businesses adjacent to the **Amended Area** that are consistent with the vision; and

m) encourage the development of affordable housing equivalent to a minimum of 20% of all housing units in the **Amended Area**. (Note: Affordability is assumed to address the housing needs of purchasers at or below 80% of the median household income for the Colorado Springs Metropolitan Area.)

4.3 Design Objectives

Design objectives for the **Amended Area** include flexibility, adaptability to a mix of uses consistent with prevailing market conditions, and architectural character and treatment reflective of traditional neighborhood development. Other objectives include:

a) facilitate pedestrian-oriented development with internal vehicular connections;

b) generate a mix of land uses that help ensure vitality within the **Amended Area**;

c) produce a variety of land use densities and amenities to address market demand, and enhance developer participation;

d) ensure parking opportunities are maximized without negatively impacting vehicular and pedestrian circulation, visual quality and compatibility, and convenient access;

e) produce vehicular traffic patterns designed to enhance access into and out of the Amended Area;

f) design safe, convenient pedestrian linkages between the **Amended Area** and nearby residential and business park developments;

g) minimize pedestrian / vehicular conflicts;

h) design and construct public improvements consistent with design objectives for the entire **Amended Area**; and

i) develop lighting standards and signage that exhibit a unified theme and complement proposed structures.

FIGURE 1

4.4 Building Standards

All development shall conform to the **Comprehensive Plan**, zoning code, and any site-specific regulatory documents for properties in the Amended Urban Renewal Area.

In conformance with the **Act** and this **Amended Plan**, the **Authority** may adopt additional design standards and other requirements applicable to properties in the **Amended Area**.

4.5 Public Improvements and Facilities

The **Authority** may undertake certain actions to make the **Amended Area** more attractive for private investment. The **Authority** may, or cause others to, install, construct, and reconstruct any public improvements in the **Amended Area**, including, without limitation, streets, sidewalks, underground utility and service facilities, streetscapes, pedestrian corridors, and parking facilities. The **Authority** may also, or cause others to, install, construct and reconstruct any other authorized improvements, including, without limitation, other authorized undertakings or improvements for the purpose of promoting the objectives of this **Amended Plan** and the **Act**.

Public projects are intended to stimulate private sector investment. . The combination of public and private investment will assist in attracting investment and converting the **Amended Area** into a viable mixed-use residential and commercial business center that generates increased property and sales tax revenues for the City of Colorado Springs, School District 11, and El Paso County.

4.5.1 Infrastructure

New infrastructure that is required will be located in public rights-of-way or dedicated easements. These systems will be added to the existing infrastructure to the extent possible. Existing services may be removed or abandoned to accommodate new development in the **Amended Area**.

In undertaking all activities and improvements pursuant to this **Amended Plan**, the **Authority** shall comply with all applicable building

FIGURE 1

and zoning regulations, and other applicable ordinances of the City. All development in the **Amended Area** shall comply with this **Amended Plan**, all applicable building and zoning regulations, and other applicable ordinances of the City.

4.6 Other Improvements and Facilities

Whereas there could be other non-public improvements in the Amended Urban Renewal Area that may be required to accommodate development, the **Authority** may assist in the financing or construction of these improvements.

5.0 Project Implementation

5.1 Property Acquisition and Land Assemblage

The **Authority**, through the purchase of land or y condemnation, either in accordance with the **Act** and this **Amended Plan**, may acquire property. Acquisition of property by eminent domain is an action which must be approved by a majority vote of the **City Council** of the City of Colorado Springs. Property acquired, by the **Authority** may temporarily operate ,manage, rent or lease said property, until which time as it is disposed of for redevelopment.

5.2 Relocation Assistance

It is not anticipated that acquisition of real property by the **Authority** will result in the relocation of any individuals, families, or business concerns. However, if such relocation becomes necessary, the **Authority** shall adopt a relocation plan consistent with specific objectives which will be identified in that plan.

5.2.1 Mitigate Inconvenience and Expense

Development of any relocation program for the **Amended Area** will be designed to mitigate the inconvenience and expense of individuals, families and business concerns that may be displaced by acquisition of property by the **Authority**.

5.2.2 Information Program

Any relocation program will be accompanied by an information program to keep all affected parties advised of relocation activities on a continuing basis and to encourage all such parties to keep the **Authority** informed of their needs and requirements.

FIGURE 1

5.3 Demolition, Clearance, and Site Preparation

In carrying out this **Amended Plan**, it is not anticipated that the **Authority** will be required to demolish or clear buildings, structures or other improvements from property, however, development activities may require such demolition and clearance to eliminate unhealthy, unsanitary, and unsafe conditions, or obsolete or uses detrimental to the public welfare, and otherwise remove and prevent the spread of deterioration.

With respect to property acquired by the **Authority**, it may demolish and clear, or contract to demolish and clear, those buildings, structures and other improvements from property if, in the judgment of the **Authority**, such building, structures or other improvements are not to be rehabilitated in accordance with this **Amended Plan**. The **Authority** may also undertake such additional site preparation activities, as it deems necessary, to facilitate the disposition and redevelopment of such property.

5.4 Property Disposition

The **Authority** may sell, lease, or otherwise transfer real property or any interest in real property subject to covenants, conditions and restrictions, including architectural and design controls, time restrictions on development, and building requirements, as it deems necessary to redevelop such property. Real property or interests in real property may be sold, leased or otherwise transferred for uses in accordance with this **Amended Plan**. All property and interest in real estate acquired by the **Authority** in the **Amended Area** that is not dedicated or transferred to public entities, shall be sold or otherwise disposed of for redevelopment in accordance with the provision of this **Amended Plan** and the **Act**.

5.5 Redevelopment and Rehabilitation Actions

Redevelopment and rehabilitation actions within the **Amended Area** may include such undertakings and activities as are in accordance with this **Amended Plan** and the **Act**, including without limitation: demolition and removal of buildings and improvements; installation, construction and reconstruction of public improvements; elimination of unhealthful, unsanitary or unsafe conditions; elimination of obsolete or other uses detrimental to the public welfare; prevention of the spread of deterioration; and, provision of land for needed public facilities, all as set forth herein.

FIGURE 1

5.6 Redevelopment Agreements

The **Authority** is authorized to enter into Redevelopment Agreements or other contracts with developer(s) and such other individuals or entities as are determined by the **Authority** to be necessary or desirable to carry out the purposes of this **Amended Plan**. Such Redevelopment Agreements, or other contracts, may contain such terms and provisions as shall be deemed necessary or appropriate by the **Authority** for the purpose of undertaking the activities contemplated herein and in the **Act**, and may further provide for such undertakings by the **Authority**, including financial assistance as may be necessary for the achievement of the objectives of this **Amended Plan** or as may otherwise be authorized by the same.

6.0 Project Financing

6.1 Public Investment Objective

As reflected in this **Amended Plan**, it is the intent of the **Authority** that the public sector continues to play a significant role in revitalization efforts as a strategic partner. Experience has proven that a critical component to the success of any revitalization strategy is participation by both the public and private sectors; further, that leveraging of resources is key as no one entity, either public or private, has sufficient resources alone to sustain a long-term improvement effort. Typical public infrastructure investments may include any or all of the following: unified streetscape elements, access and circulation improvements, parking and utilities.

6.2 Authorization

The **Authority** is authorized to finance this **Amended Plan** by any method authorized under the **Act** or any other applicable law, including without limitation, the following:

The **Authority** is authorized to issue notes and bonds in an amount sufficient to finance all or part of this **Amended Plan**; or borrow funds and create indebtedness; and, the principal, interest, costs and fees of such any indebtedness paid for with any lawfully available funds of the **Authority**.

Debt may include bonds, refunding bonds, notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, or any other obligation lawfully

FIGURE 1

created. Pursuant to the Olson decision of the Colorado Court of Appeals, Article X, Section 20 (TABOR) and the Colorado Constitution, the debt options of an urban renewal authority in Colorado are not limited.

6.3 Project Revenues

Tax Increment Financing

The **Amended Plan** contemplates that a primary method of financing this project shall be the use of municipal sales (exclusive of the Trails, Open Space and Parks and Public Safety Sales Tax Fund portions) and **Property Tax Increment**. The use of **Sales Tax Increment** will be considered only after **City Council** receives a plan of financing from the **Authority** outlining the proposed amounts and purpose for which the **Municipal Sales Tax Increments** are to be used. Upon **City Council** approval, the **Municipal Sales Tax Increment** will be distributed in accordance with the **Tax Increment Financing** provisions of Section 31-25-107 (9), **C.R.S.** which is by this reference incorporated herein as if set forth in its entirety. If there is any conflict between the **Act** and this **Amended Plan**, the provisions of the **Act** shall control, and the language herein automatically deemed to conform to the statute.

All property and sales taxes collected within the **Tax Increment Area**, by or for the benefit of any public body, shall be divided for a period not to exceed 25 years as follows:

a) That portion of the taxes which are produced by the levy at the rate fixed each year by or for each such public body upon the valuation for assessment of taxable property in the **Amended Area** last certified, prior to the effective date of approval of this **Amended Plan**, or as to an area later added to the **Amended Area**, the effective date of the modification of the **Amended Plan** or that portion of municipal sales tax collected within the boundaries of said **Amended Area** in the twelve-month period ending on the last day of the month prior to the effective date of approval of this **Amended Plan**, or both such portions, shall be paid into the funds of each such public body as are all other taxes collected by or for said public body.

b) That portion of said property taxes and that portion of said sales taxes in excess of such amounts in subparagraph a) shall be allocated to and, when collected, paid into a special fund of the **Authority** to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans or advances to, or indebtedness incurred by (whether

FIGURE 1

funded, refunded, assumed or otherwise) the **Authority** for financing or refinancing, in whole or in part, the **Urban Renewal Project** within the **Amended Area**. Any excess **Municipal Sales Tax** collections not allocated pursuant to this subparagraph shall be paid into the funds of the municipality.

c) The portion of taxes described in subparagraph b may be irrevocably pledged to the **Authority** for the payment of the principal of, interest on, and any premiums due in connection with such bonds, loans, advances, and indebtedness.

d) The City and the **Authority** may enter into agreements with other public bodies and private parties to provide financial assistance in support of development projects consistent with this **Amended Plan** as may be more fully set forth in the provisions of such agreements. Existing agreements between the City and private parties that are consistent with this **Amended Plan** are intended to remain in full force and effect.

6.4 Financing Mechanisms / Structures

The **Authority** recognizes that **Tax Increment Financing** is one tool which can be made available to facilitate investment and that others are needed. The **Authority** is committed to making a variety of strategies and mechanism available which are financial, physical, market and organizational in nature. It is the intent of this **Amended Plan** that the tools may be used either independently or in various combinations. Given the obstacles associated with infill and Brownfield development, the **Authority** recognizes that it is imperative that solutions and resources be put in place which are comprehensive, flexible and creative. Among those deemed reasonable for the **Amended Area** are **Improvement District(s)** and / or an overlay district.

6.5 Authority Participating Interest in Private Development Projects

The **Authority** may require a participating interest in private development projects in which it provides financial support. The philosophy behind this is that public support is frequently needed for projects of this nature, in order to fill a gap left by available traditional financing. In the event the project(s) produces revenues in excess of a market rate of return, the public sector might become a partner and share in the success of the project. In this event, the **Authority** may also require an excess profits provision. The terms of the participating interest and excess profits provisions will be negotiated in the Redevelopment Agreement(s).

FIGURE 1

7.0 Changes and Minor Variations from Adopted Plan

7.1 Changes in the Approved Urban Renewal Plan

This **Amended Plan** may be modified pursuant to the provisions of the **Act** governing such modification, including Section 31-25-107 thereof, as the same may be amended from time to time.

7.2 Minor Variations

In specific cases, where a literal enforcement of the provisions contained in this **Amended Plan** constitutes an unreasonable limitation beyond the intent and purpose of these provisions, the **Authority** may allow minor variances from these provisions. In such cases, the **Authority** shall notify the City.

7.3 Inter-Agency Cooperation

For the purpose of this **Amended Plan**, the **Authority** may enter into one or more Cooperation Agreements with the City or other public bodies pursuant to the **Act**. The City and **Authority** recognize the need to cooperate in the implementation of this **Amended Plan** for, but not limited to, such items as project financing and administering the construction of public improvements. This paragraph shall not be construed to require any particular form of cooperation.

FIGURE 1

Gold Hill Mesa Commercial Area

Urban Renewal Plan

City of Colorado Springs, Colorado

January 2015

Prepared for:

Colorado Springs Urban Renewal Authority
City of Colorado Springs City Council

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FIGURE 2

Gold Hill Mesa Commercial Area
Urban Renewal Plan

City of Colorado Springs, Colorado

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Gold Hill Mesa Commercial Area
Urban Renewal Plan

City of Colorado Springs, Colorado

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Appendix B: Gold Hill Mesa Commercial Area Urban Renewal Boundaries Legal Description

Gold Hill Mesa Commercial Area
Urban Renewal Plan

City of Colorado Springs, Colorado

1.0 Introduction

1.1 Preface

This Gold Hill Mesa Commercial Area Urban Renewal Plan (the / this **"Plan"** or the / this **"Urban Renewal Plan"**) has been prepared for the City of Colorado Springs ((the **"City"**). It will be carried out by the Colorado Springs Urban Renewal Authority (**"CSURA"** or the **"Authority"**) for the City of Colorado Springs (the **"City"**). It will be carried out by the Authority, pursuant to the provisions of the Urban Renewal Law of the State of Colorado, Part 1 of Article 25 of Title 31, Colorado Revised Statutes (or **"C.R.S."**), 1973, as amended (the **"Act"**). The administration and implementation of this Plan, including the preparation and execution of any documents implementing it, shall be performed by the Authority.

1.2 Blight Findings

Under the Act, an urban renewal area is a blighted area, which has been designated as appropriate for one or more Urban Renewal Projects. In each urban renewal area, conditions of blight, as defined by the Act, must be present, and in order for the Authority to exercise its powers, the City Council (the "**City Council"**) must find that the presence of those conditions of blight, "substantially impairs or arrests the sound growth of the municipality or constitutes an economic or social liability, and is a menace to the public health, safety, morals or welfare."

The Gold Hill Mesa Commercial Area Conditions Survey (the **"Survey"**), prepared by RickerlCunningham, dated Janaury, 2015, presented to the CSURA Board

under separate cover, demonstrates that the survey area (the **"Study Area"**), as defined in the Survey, is a blighted area under the Act.

1.3 Other Findings

Based on the findings of the Survey, the Gold Hill Mesa Commercial Area (the **"Area"**), as defined in Section 1.4 below, is appropriate for one or more urban renewal activities and undertakings authorized by the Act to be advanced by the Authority.

It is the intent of the City Council in adopting this Plan that the Authority has available to it powers authorized in the Act which are necessary and appropriate to accomplish the objectives stated herein. Further, it is the intent of this Plan that the Authority exercise these powers for the elimination of qualifying conditions in the Area and furtherance of the goals and objectives of the community general plan.

The powers conferred in the Act are for public uses and purposes for which public money may be expended; therefore, this Plan is in the public interest and necessity -- such finding being a matter of legislative determination by the City Council.

1.4 Urban Renewal Plan Area Boundaries

The Area includes all properties within the City limits as delineated in **Figure No. 1** and described in the legal description presented in Appendix B. The boundaries of the Area include approximately 70 acres of land generally defined to include 16 legal parcels and adjacent rights-of-way. Geographically, it is situated in the southwestern portion of the City of Colorado Springs and southeast quadrant of West U.S. Highway 24 and South 21st Street within the existing Gold Hill Mesa Urban Renewal Area. That urban renewal area, established by the Colorado Springs City Council in 2004, was created in an effort to mitigate impacts associated with a former gold processing facility within the property, known as the Golden Cycle Mill. In case of a conflict between the figure and legal description, **Figure No. 1** shall control.

Figure No. 1: Gold Hill Mesa Commercial Area Urban Renewal Boundary Map

1.5 Public Participation

The CSURA Board accepted this Plan on XX, at a regular meeting of the Authority. Notification of the public hearing to property owners and business concerns within its boundaries, waived notice of the public hearing whereas this is a "voluntary urban renewal area," or in other words, an urban renewal area that was requested by its owners and business interests.

The Colorado Springs Planning & Zoning Commission reviewed the Plan on XX and recommended adoption of the same by the Colorado Springs city Council, whereas it was considered consistent with the City's Comprehensive Plan, the City of Colorado Springs Comprehensive Plan, adopted in 2000, as amended. Whereas it is the intent of the Authority and City Council to provide for public participation in proposed developments and planning efforts which advance the intent of this Plan, development proposals submitted for approval by CSURA will continue to be made available to the public in a open meeting format.

2.0 Definitions

Act – means the Urban Renewal Law of the State of Colorado, Part 1 of Article 25 of Title 31, Colorado Revised Statutes, as amended. Unless otherwise stated, all capitalized terms herein shall have the same meaning as set forth in the Act.

Area – means the Gold Hill Mesa Commercial Area Urban Renewal Area as depicted in Figure No. 1 and legally described in Appendix B.

Authority – means the Colorado Springs Urban Renewal Authority (CSURA).

City Council – means the City Council of the City of Colorado Springs.

Comprehensive Plan – the City of Colorado Springs Comprehensive Plan adopted 2000.

Cooperation Agreement – means any agreement between the Authority and City, or any public body (the term "public body" being used in this Plan is as defined by the Act)

respecting action to be taken pursuant to any of the powers set forth in the Act or in any other provision of Colorado law, for the purpose of facilitating public undertakings deemed necessary or appropriate by the Authority under this Plan.

C.R.S. – means the Colorado Revised Statutes, as amended from time to time.

Impact Report – means the Gold Hill Mesa Commercial Area El Paso County Impact Report prepared by RickerlCunningham, dated Janaury, 2015 and presented to the CSURA Board under separate cover.

Improvement District – means a special district created to make improvements, typically to public space infrastructure, in a given area.

Municipal Sales Tax Increment - means the municipal sales tax increment revenue allocated to the Authority as defined in Section 7.3.3 of this Plan.

Plan or **Urban Renewal Plan** – means this Gold Hill Mesa Commercial Area Urban Renewal Plan.

Property Tax Increment - means the property tax increment revenue allocated to the Authority as defined in Section 7.3.3 of this Plan.

Redevelopment / Development Agreement – means one or more agreements between the Authority and developer(s) and / or property owners or such other individuals or entities as may be determined by the Authority to be necessary or desirable to carry out the purposes of this Plan.

Survey – means the Gold Hill Mesa Commercial Area Conditions Survey, prepared by RickerlCunningham, dated Janaury, 2015, and presented to the CSURA Board under separate cover.

Study Area – means the geographic area studied in the context of the Survey for the purpose of determining its collective eligibility for a designation of "blight" as defined by the Act.

Tax Increment Area – means all or a portion of the Area designated as a Tax Increment Area, as defined and pursuant to the procedures set forth in Section 7.3 of this Plan.

Tax Increment Finance (or Financing) (TIF) – means a financing mechanism which uses future incremental revenues resulting from private investment within an established Tax Increment Area to fund improvements for the public benefit.

Tax Increment Revenue – means the incremental revenues (property and / or sales tax) allocated to the Authority by the Act as defined in Section 7.3.3 of this Plan.

Urban Renewal Project (or the Project) – means any work or undertaking carried out under the Act.

3.0 Plan Purpose and Vision

The purpose of this Plan is to reduce, eliminate and prevent the spread of blight and to stimulate growth and investment within the Area boundaries. To accomplish this purpose, the Plan is intended to promote local objectives expressed in adopted community plans and advance the priorities of the Comprehensive Plan. The City of Colorado Springs Comprehensive Plan (the **"Comprehensive Plan"**), was adopted in 2000 as an amendment to the previous plan adopted in 1991. Presented below is an excerpt (taken verbatim) from that document that describes its content and intentions for advancing *A Vision for the Future of Colorado Springs*. Additional excerpts are presented in Appendix A for this Plan and referenced in Section 5.0 below.

3.1 Plan Vision (is the same as the Comprehensive Plan vision)

City of Colorado Springs Comprehensive Plan - Vision Statement

The vision is based on preserving, protecting, and sustaining the best characteristics of our built and natural environment, effectively addressing our community needs, and giving positive direction to the changes and growth we can anticipate.

Our Community Envisions a Colorado Springs ….

That is the most liveable city on the Front Range of the Rocky Mountains;

That respects its heritage and natural setting;

That projects a highly attractive image and protects its unique character and scenic beauty;

That provides an incomparable system of open spaces, natural areas, and greenways;

That is truly a city of neighborhoods with affordable housing, walkable destinations, convenient parks, and quality schools;

That encourages innovation and creativity in development and the creation of an aesthetically appealing community;

That successfully integrates the uses and activities that meet the daily needs of residents, including housing, shops, work places, schools, parks, and civic facilities;

That has a transportation system with a high degree of efficiency, mobility, accessibility, connectivity, and a range of real choices for traveling between destinations within the community;

That is equitable and fiscally responsible in providing, maintaining, and upgrading services and infrastructure;

That supports the economic health of the community by maintaining a strong environment for business and education; and

That works proactively with other communities to create and maintain a high quality of life in the Pikes Peak Region.

Additional excerpts are presented in Appendix A.

3.2 Plan Objective

The principal objective of the Urban Renewal Project proposed for development within the Area is to alleviate conditions of blight by actively promoting investment and reinvestment in an infill location of the community which: integrates a mix of uses, enhances opportunities for non-vehicular mobility, and preserves and protects its natural resources. The principal objective of this Plan is to make financial resources available to assist with addressing those conditions of blight identified herein and in supporting documents, especially those that could render the Project infeasible.

3.3 Development and Design Objectives

Although the Act authorizes the Authority to undertake zoning and planning activities to regulate land use, including establishing maximum or minimum densities and instituting select building requirements, the CSURA Board anticipates that the City will regulate land use and building requirements through existing municipal codes and ordinances, all as may be amended from time to time. Therefore, the following development and design objectives are not intended to be regulating, but rather informative. Note: Properties that comprise the Area that is the subject of this Plan were originally part of the existing Gold Hill Mesa Urban Renewal Plan area, established in 2004 with adoption of the Gold Hill Mesa Urban Renewal Plan by the Colorado Springs City Council. Further, whereas that remains an active urban renewal area, the following objectives are the same as or similar to those stated in that plan.

Development and design objectives to further this Plan's intentions include the following:

a) eliminate and prevent the spread of blight
b) promote a higher standard of development
c) promote region-serving commercial development
d) improve the relationship between this area and the balance of the western portion of the community
e) provide an attractive entry to the city

f) deliver superior infrastructure (telecommunications and recreation)

g) provide a mix of land uses supportive of, and complementary to, planned improvements in the Area

h) generate a mix of uses that helps ensure vitality within the project and surrounding area

i) provide densities and intensities of land uses appropriate for a mixed-use master planned community

j) provide ease of pedestrian circulation

k) design safe, convenient pedestrian linkages between the Area and nearby recreational and commercial centers

l) provide well-designed parking sufficient to meet the needs generated by development projects in the Area

m) provide improvements that link residential concentrations to the Area

n) encourage the continued presence of businesses adjacent to the Area that are consistent with the vision

3.4 Plan Implementation

As the plan administrator, CSURA will seek to advance the objectives listed above through the following if deemed necessary:

- Financing of development projects and critical infrastructure; and
- Agreements with private, public and other partners to undertake redevelopment projects.

Further, CSURA will work in cooperation with the City to advance the objectives through:

- Investment in the public realm (roadway, parks, open space);
- Encouragement of development consistent with or exceeding existing standards; and
- Judicious use of limited resources.

4.0 Blight Conditions

Before an urban renewal plan can be adopted by the City, the Area must be determined to be a "blighted area" as defined in Section 31-25-103(2) of the Act, which provides that, in its present condition and use, the presence of at least four (or five in cases where the use of eminent domain is anticipated), of the following factors (see below) in the Area, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare:

(a) Slum, deteriorated, or deteriorating structures;

(b) Predominance of defective or inadequate street layout;

(c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(d) Unsanitary or unsafe conditions;

(e) Deterioration of site or other improvements;

(f) Unusual topography or inadequate public improvements or utilities;

(g) Defective or unusual conditions of title rendering the title nonmarketable;

(h) The existence of conditions that endanger life or property by fire or other causes;

(i) Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;

(j) Environmental contamination of buildings or property;

(k.5) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements; or

(l) If there is no objection by the property owner or owners and the tenant or tenants of such owner or owners, if any, to the inclusion of such property in an urban renewal area, "blighted area" also means an area that, in its present condition and use and, by reason of the presence of any one of the factors specified in paragraphs (a) to (k.5) of Section 31-25-103(2), substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare.

As explained earlier in this Plan, factor "l" above applies whereas there is no objection by the Area's property owners and other business interests. However, despite the statutory allowance for the presence of fewer factors when creation of an urban renewal area is being requested voluntarily, every effort was made during preparation of the Gold Hill Mesa Commercial Area Conditions Survey, dated January, 2015, to identify all of the factors that may be impacting properties within its boundaries.

The general methodology for conducting the Survey is to: (i) define the area of study; (ii) gather information about properties, infrastructure and other improvements within the Area; (iii) evaluate evidence of blight through field reconnaissance, review of aerial photography, discussions with representatives of various City departments; and, (iv) record observed and documented identified as "blight" factors in the Act.

Among the 11 qualifying factors identified in the Act, the Survey identified the presence of the following eight blight factors in the Study Area:

(b) Predominance of defective or inadequate street layout

(c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness

(d) Unsanitary or unsafe conditions

(e) Deterioration of site or other improvements

(f) Unusual topography or inadequate public improvements or utilities

(h) The existence of conditions that endanger life or property by fire or other causes

(j) Environmental contamination of buildings or property

(k5) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements

5.0 Plan Relationship to Other Community Documents

5.1 Plan Conformity

Implementation of this Plan supports the objectives and requirements of the Comprehensive Plan with respect to connectivity to neighborhoods, accessibility

to open space, completion of infrastructure, and preservation of natural features, and quality design that promotes Colorado Springs's unique identity. As development occurs in the Area, it shall conform to the Comprehensive Plan and any subsequent updates; the Pikes Peak Regional Building Code and any rules, regulations, and policies promulgated pursuant thereto; any site-specific planning documents that might impact properties in the Area including, but not limited to, City-approved site, drainage, and public improvement plans; and, any applicable City design standards, all as in effect and as may be amended from time to time. Finally, existing conditions present within the Area will be remedied by the proposed Plan and funded in part by tax increment revenues and improvements phased as the market allows.

5.2 Consistency with Comprehensive Plan

As explained above, a general plan for the city known as the City of Colorado Springs Comprehensive Plan, was adopted in 2000 as an amendment to the 1991 plan of the same name. CSURA, with the cooperation of the City, private enterprise and other public bodies, will undertake projects and activities described herein in order to eliminate the identified conditions of blight while also implementing the goals and objectives of the Comprehensive Plan and all other City-adopted plans which impact properties within the Area. Key goals and policies of that plan which this Gold Hill Mesa Commercial Area Urban Renewal Plan will advance are described in detail in Appendix A.

5.3 Relationship to Other Community Plans

Implementation of this Plan will be consistent with development objectives expressed in all community adopted and accepted plans that pertain to development in the Area.

6.0 Authorized Urban Renewal Undertakings and Activities

Whereas the Act allows for a wide range of activities to be used in the implementation of an urban renewal plan, it is CSURA's intent to provide both financial assistance and public improvements in partnership with property owners and other affected parties in order to accomplish the objectives stated herein. Public-private partnerships and other

forms of cooperative development will be essential to CSURA's strategy for preventing the spread of blight and eliminating existing blighting conditions. Specific undertakings of the Authority in the furtherance of this Plan as described as follows.

6.1 Complete Public Improvements and Facilities

CSURA may, or cooperate with others to, finance, install, construct, and reconstruct any public improvements. Additionally, it may, or cooperate with others to, demolish and clear existing improvements for the purpose of promoting the objectives of the Plan and Act.

While public projects should, whenever possible, stimulate (directly or indirectly) desired private sector investment, it is the intent of this Plan that the combination of It is the intent of this Plan that the combination of public and private investment that occurs in the Area will contribute to the overall economic well-being of the community at-large.

As described in Section 4.0 of this Plan, eight qualifying conditions of blight were identified in the Study Area which is the same as the Urban Renewal Plan Area and the subject of this Plan. This Plan will attempt to remedy those conditions by providing resources for certain public improvements including, but not limited to, the following:

(b) Predominance of defective or inadequate street layout

Predominance of defective or inadequate street layout can be considered present when existing roads are insufficient to meet the needs of improvements within the Area, or there is a lack of streets or the streets that are in place are deteriorating. Adjacent to the Area along its western edge and principal point of access, streets are in disrepair and inadequate, with few if any accommodations for safe movement by either pedestrians or bicyclists. Within the Area, there are no roads leaving numerous parcels without access. Finally, there are numerous incidents of remnant infrastructure and other debris that contributes to an overall sense of blight and degradation. Urban

renewal resources could be used to assist with the removal of this debris and construction of adequate roadway improvements.

(c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness

In addition to limited access to and within the Area as explained under Factor (b) above, there are also lot constraints which negatively impact the ability of parcels within its boundaries to development, among them their size and shape. Several properties are either too small to be developed to City-standards without being part of a larger assemblage. Others are so irregular in shape that they could not accommodate a feasible improvement. Many of these same parcels also suffer from significant lack of utility making them unmarketable. Urban renewal resources could be used to assist with the same items listed under Factor (b) above.

(d) Unsanitary or unsafe conditions

Multiple factors contribute to unsafe conditions in the Area, among them is a lack of "complete streets" or streets with sidewalks, parking, lighting and accommodations for pedestrians and bicycle movement. As explained under (b) above, complete streets provide a safe environment for both vehicular and non-vehicular traffic. Unsanitary and unsafe conditions result when these accommodations are not present.

In addition to roadway conditions, additional threats to persons and property considered in the context of this factor and present within the Area include a variety of environmental contaminants resulting from earlier mining activities and waste disposal. Urban renewal resources could be used to assist with remediation of the site and removal of all contaminants.

(e) Deterioration of site or other improvements

Properties within the Area are vacant and unimproved, and all exhibit signs of deterioration as evidenced by the presence of weeds and debris, previous fence materials and trash, and a lack of improvements including landscaping, both of which could reasonably be expected given their zoning. Urban renewal resources could be used to assist with the removal of trash and completion of public improvements.

(f) Unusual topography or inadequate public improvements or utilities

Properties in the Area all suffer from extreme grade changes, some natural and others man-made and resulting from previous mining activities. Improvements and utilities including streets, curbs and gutters, lighting, sidewalks, bicycle paths and trails; as well as water, sewer and storm water systems are all available to properties in the Area from adjacent rights-of-way, but currently do not exist within the Area. In addition, overhead utility lines are present, primarily along its northern border. Roadways located adjacent to the Area are also considered deficient in size and accommodations for non-vehicular movement, and those located west of the Area are deteriorating. Urban renewal resources could be used to assist with filling (leveling) portions of the Area, constructing retaining walls, completing improvements (including utility lines), and / or relocating or under-grounding overhead utility lines.

(h) The existence of conditions that endanger life or property by fire or other causes

This factor applies to threats to site users from fire, flooding, environmental contamination and other causes. Despite its adjacency to Fountain Creek, none of the properties are located within a flood zone. There is, however, as stated above, the known presence of environmental contaminants in the Area. Urban renewal resources could be used to assist with the removal of environmental contaminants as identified under Factor (d) above.

(j) Environmental contamination of buildings or property

See discussion under Factors (d) and (h) above.

(k5) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements

As explained above, properties in the Area are vacant and unimproved, despite their zoning classification - PBC (Planned Business Center). The entire Gold Hill Mesa Urban Renewal Area, including those properties in the subject Area could all be described as "infill" within the greater Colorado Springs Metropolitan Area whereas they are surrounded by established residential neighborhoods and commercial developments. The City's Comprehensive Plan includes numerous references to the community's objective to encourage development and redevelopment of infill properties within its boundaries. Urban renewal resources could be used to assist with improvements that make development of properties within the Area feasible.

6.2 Complete Other Improvements and Facilities

Whereas there could be non-public improvements in the Area that may be required to accommodate development and redevelopment and still benefit the public, the Authority may assist in the financing or constructing these improvements to the extent authorized by the Act.

6.3 Promote Development and Redevelopment

A key concept associated with implementation of this Plan is targeted investment that will serve to catalyze development within the Area and on adjacent properties, as well as fund future public improvements. The potential impact of this investment to El Paso County is quantified in the Gold Hill Mesa El Paso County Impact Report presented to the CSURA Board under separate cover.

6.4 Adopt Standards

As stated earlier, all development in the Area shall conform to applicable rules, regulations, policies and other requirements and standards of the City, along with any other governmental entity which has jurisdiction within its boundaries. While the Act allows for the adoption of standards and requirements applicable to projects undertaken in an urban renewal area, in the context of this Plan, it is the Authority's intention that investment in the Area conform to City-approved documents.

6.5 Modify the Plan

The Authority may propose, and City Council may make, modifications to this Plan as may be necessary provided they are consistent with the Comprehensive Plan and any subsequent updates. Additionally, any such amendments made in accordance with this Plan and as otherwise contemplated, must also be compliant with the Act. Finally, CSURA may, in specific cases, allow non-substantive variations from the provisions of this Plan if it determines that a literal enforcement of the provision would constitute an unreasonable limitation beyond the intent and purpose stated herein.

6.6 Review the Plan

The ongoing review process for the Plan is intended to provide a mechanism to allow those parties responsible for administering and implementing key projects within its boundaries to periodically evaluate its effectiveness and make adjustments to ensure efficiency in implementing these activities. To this end, the following steps are presented to serve as a guide for <u>future</u> Plan review:

(a) The Authority may propose modifications, and City Council make such modifications as may be necessary provided they are consistent with the Comprehensive Plan and any subsequent updates, as well as the Act.

(b) Modifications may be developed from suggestions by the Authority, property and business owners, and City staff operating in support of CSURA and advancement of this Plan.

6.7 Provide Relocation Assistance

While it is not anticipated as of the date of this Plan that acquisition of real property will result in the relocation of any individuals, families, or business concerns; if such relocation becomes necessary, the Authority will adopt a relocation plan in conformance with the Act.

6.8 Demolish, Clear and Prepare Improvements

While not anticipated as of the date of this Plan, CSURA may, on a case-by-case basis, elect to demolish or cooperate with others to clear buildings, structures and other improvements within the Area in an effort to advance projects deemed consistent with the vision stated herein. Additionally, existing Development or Cooperation Agreements may require such demolition or site clearance to eliminate unhealthy, unsanitary, and unsafe conditions; obsolete uses deemed detrimental to the public welfare; and, otherwise remove and prevent the spread of deterioration.

6.9 Acquire and Dispose of Property

While the Act allows for the acquisition of property by negotiation or any other method, it is not the intent of this Plan that the Authority uses its resources to acquire property by eminent domain. Further, while the urban renewal law permits acquisition by eminent domain, in the context of this Plan the CSURA Board will confer decisions of eminent domain to the Colorado Springs City Council. Properties acquired by entities other than the Authority may temporarily be operated, managed and maintained by the Authority if requested to do so by the acquiring entity and deemed in the best interest of the Urban Renewal Project and the Plan. Such property shall be under the management and control of the Authority and may be rented or leased pending its disposition for redevelopment.

The Authority may sell, lease, or otherwise transfer real property or any interest in real property subject to covenants, conditions and restrictions, including architectural and design controls, time restrictions on development, and building requirements in accordance with the Act and this Plan.

6.10 Enter into Redevelopment / Development Agreements

The Authority may enter into Redevelopment / Development Agreements or other contracts with developer(s) or property owners or such other individuals or entities determined to be necessary to carry out the purposes of this Plan. Further, such Agreements, or other contracts, may contain terms and provisions deemed necessary or appropriate for the purpose of undertaking the activities contemplated by this Plan and the Act. Any existing agreements between the City and private parties that are consistent with this Plan are intended to remain in full force and effect, unless all parties to such agreements agree otherwise.

6.11 Enter Into Cooperation Agreements

For the purpose of this Plan, the Authority may enter into one or more Cooperation Agreements pursuant to the Act. Whereas the City and CSURA recognize the need to cooperate in the implementation of this Plan, these Cooperation Agreements may include without limitation the planning, financing, installation, construction and / or reconstruction of public or other eligible improvements. This paragraph shall not be construed to require any particular form of cooperation.

6.12 Create Tax Increment Areas

The boundaries of the Urban Renewal Area shall be as set forth in Section 1.5 and more fully described in Appendix B. It is the intent of the City Council in approving this Plan to authorize the use of Tax Increment Financing by the Authority within this Area, as part of its efforts to advance the vision, objectives and projects described herein. Pursuant to the provisions of Section 31-25-107(9) of the Act, the City Council in approving this Plan further contemplates that a single Tax Increment Area will be created with adoption of this Plan by City Council. Notwithstanding such distinction, the Authority is specifically

authorized to expend the revenue from Property and Sales Tax Increments to the extent authorized by the Act and this Plan for a period not to exceed the statutory requirement of twenty-five years.

While this Gold Hill Mesa Commercial Area Urban Renewal Plan contemplates that the primary method of assisting with financing eligible expenses in the Area will be through the use of Property Tax Increment Revenue, City Council may allocate Municipal Sales Tax Increments, if requested to do so by the Authority, and only after receipt of a financing plan outlining the proposed amounts and purpose for which the Municipal Sales Tax Increment is to be used. Upon City Council approval, the Municipal Sales Tax Increment will be allocated and distributed in accordance with the Tax Increment Financing provisions of Section 31-25-107 (9), C.R.S., which is by this reference incorporated herein as if set forth in its entirety.

7.0 Project Financing

7.1 Public Investment Objective

A critical component to the success of any urban renewal strategy is participation by both the public and private sectors. Leveraging of resources will be key as no one entity, either public or private, has sufficient resources alone to sustain a long-term improvement effort. Possible public infrastructure investments may include, but will not be limited to completing: pedestrian improvements including construction of sidewalks, street lights and other design enhancements intended to improve safety for vehicular and non-vehicular movement; roadway improvements including curbs, gutters, and drainage infrastructure; and, utilities under the authority of the City; as well as, providing financial assistance for expenses considered eligible under the Act.

7.2 Financial Mechanisms

CSURA may finance undertakings pursuant to this Plan by any method authorized under the Act or any other applicable law, including without limitation of the following: issuance of notes, bonds and other obligations as defined in the Act in an amount sufficient to finance all or part of this Plan;

borrowing of funds and creation of indebtedness; reimbursement agreements; and / or utilization of the following: federal or state loans or grants; interest income; annual appropriation agreements; agreements with public or private entities; and loans, advances and grants from any other available sources. The principal, interest, costs and fees on any indebtedness are to be paid for with any lawfully available funds of the Authority.

Debt may include bonds, refunding bonds, notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, or any other obligation lawfully created.

7.3 Tax Increment Financing

Activities may be financed by the Authority under the Tax Increment Financing provisions of the Act. Such tax incremental revenues may be used for a period not to exceed the statutory requirement, which is presently twenty-five years after the effective date of the creation of a new Tax Increment Area as set forth in Section 6.12 above.

7.3.1 Special Fund

In accordance with the requirements of the law, the Authority shall establish a Tax Increment Revenue Fund for the deposit of all funds generated pursuant to the division of ad valorem property and municipal sales tax revenue described in this section.

7.3.2 Base Amount

The Base Amount includes that portion of the property taxes which are produced by the levy at the rate fixed each year by or for each public body upon the valuation for assessment of taxable property in the Tax Increment Area last certified prior to the effective date of approval of the Plan (or future amendments); and, that portion of municipal sales taxes collected within the boundaries of the Tax Increment Area in the twelve-month period ending on the last day of the month prior to the

effective date of approval of the Plan and paid to the public body, as are all other taxes collected by or for said public body.

7.3.3 Incremental Revenues

Incremental revenues including that portion of said property, and if authorized by City Council, municipal sales taxes in excess of the base amount set forth in Section 7.3.2 above shall be allocated to and, when collected, paid into the Authority's Tax Increment Revenue Fund. The Authority may use these funds to pay the principal of, the interest on, and any other premiums due in connection with the bonds of, loans or advances to, or indebtedness incurred (whether funded, refunded, assumed, or otherwise) by the Authority, for financing or refinancing, in whole or in part, any portion of an Urban Renewal Project considered eligible under the Act. Unless and until the total valuation for assessment of the taxable property in any Tax Increment Area exceeds the base valuation, all of the taxes levied upon taxable property in the Tax Increment Area shall be paid into the funds of the respective public bodies. Also, when such bonds, loans, advances and indebtedness, including interest thereon and any premiums due in connection therewith, have been paid, all taxes upon the same taxable property shall be paid to the respective public bodies.

Further, the incremental portion of said taxes, as described in this subsection 7.3.3, may be irrevocably pledged by the Authority for the payment of, principal and interest on, and any premiums due in connection with such bonds, loans, advances and / or indebtedness incurred by Authority to finance an Urban Renewal Project (as defined in the Act); except:

(a) Any offsets collected by the County Treasurer for return of overpayments or any funds reserved by the Authority for such purposes in accordance with Section 31-25-107(9)(a)(III) and (b), C.R.S.

FIGURE 2

(b) Any reasonable (as determined by the Authority) set-asides or reserves of incremental taxes paid to the Authority for payment of expenses associated with administering the Plan.

If there is any conflict between the Act and this Plan, the provisions of the Act shall prevail, and the language in the Plan automatically deemed to conform to the statute.

7.4 Other Financing Mechanisms and Structures

This Plan is designed to provide for the use of TIF as one tool to facilitate investment and reinvestment within the Area. However, in addition to tax increment revenue, the Authority shall be authorized to finance implementation of this Plan and Urban Renewal Projects within its boundaries, by any method authorized by the Act. Given the obstacles associated with redevelopment, the Authority recognizes that it is imperative that solutions and available resources are comprehensive, flexible and creative. To this end, the Authority is committed to making a variety of strategies and mechanisms available which are financial, physical, market and organizational in nature, since it is the intent of this Plan to use the tools either independently or in various combinations. If not available through CSURA, it may contract with the City to administer specific incentives.

8.0 Severability

If any portion of this Plan is held to be invalid or unenforceable, such invalidity will not affect the remaining portions of the same.

Gold Hill Mesa Commercial Area
Urban Renewal Plan

City of Colorado Springs, Colorado

Appendix A:

City of Colorado Springs Comprehensive Plan, adopted 2000 (excerpts taken verbatim, but formatted for emphasis)

<u>City of Colorado Springs Comprehensive Plan</u> adopted 2000 (excerpts taken verbatim)

Introduction

Major Issues Addressed by the Plan

This Plan is based on the concept that how the City deals with its growth issues will be more effective in improving our quality of life than any attempts to slow down or stop growth. The city has significant room to grow, and so our challenge is to improve the character of physical development, while protecting and preserving the natural features of the city's setting. Major issues thus correspond to the subjects of the Plan's chapters.

1. Develop a coordinated land use pattern that efficiently uses land by encouraging mixed-use activity centers rather than segregated land uses.
2. Recognize the central importance of all neighborhoods.
3. Create opportunities for travel modes that can reduce the rate of growth in automobile use.
4. Evaluate effective tools for assessing the fiscal impact of development.
5. Continually improve the community's stewardship of its natural setting.
6. Strengthen the quality of development's visual character and appearance.
7. Maintain a citywide context or perspective as an integral part of incremental land use decision-making.

The Organization of the Plan

The Plan is then organized into the following policy chapter headings, each containing sets of objectives, policies, and strategies and supporting maps:

I. Land Use
II. Neighborhoods
III. Transportation
IV. Community Infrastructure and Services
V. Natural Environment
VI. Community Character and Appearance
VII. 2020 Land Use Map

Objectives are, in essence, goal statements, in that they represent a desired result. Policies

represent a more focused statement of action to achieve an objective. Strategies represent specific steps and frequently identify tools or techniques that should be developed.

Chapter 1 - Land Use

Definitions

Activity Center: Activity center is a general term for a mixed-use center that integrates a range of uses and activities which complement and support each other. Typically, an activity center includes a predominant type of use, such as commercial or employment-related, that is then supported by a mix of one or more other uses, such as residential, civic, or institutional. The predominant use generally determines the type of center. Activity centers vary in size, intensity, scale, and their mix of supportive uses, depending on their purpose, location, and context. In each case, activity centers are intended to be mixed use and pedestrian-oriented and to establish good connections and transitions to surrounding areas. The Comprehensive Plan includes the following types of activity centers.

Infill Development: Development of vacant parcels within a built up area. Parks and open space are also considered as infill, since they are permanent uses for vacant parcels.

Mixed-Use Development: Development that integrates two or more land uses, such as residential, commercial, and office, with a strong pedestrian orientation.

Redevelopment: Development of sites that were formerly developed and cleared or that require the clearance of existing structures and improvements prior to new building.

Significant Natural Features: Those ridgelines, bluffs, rock outcroppings, view corridors, foothills, mountain backdrops, unique vegetation, floodplains, streams, surface water, air, natural drainage ways and wildlife habitats that contributes to the attractiveness of the community.

Strategic Network of Long-Range Plans: A network of long-range plans to be developed for transportation, infrastructure, and services as identified in the City's Strategic Plan. They include the Intermodal Transportation Plan, the Long-range Public Works Infrastructure and Services Plan, the Long-Range Plan for Police Services, the Long-range Plan for Fire Services, the Parks Capital System Master Plan, and the Parks System Services Master Plan.

Transit-Oriented Development: Development that supports transit use through a concentration

and mix of uses and pedestrian connections.

Land Use Pattern

Objective LU 2: Develop A Land Use Pattern That Preserves the City's Natural Environment, Livability, And Sense of Community

A focused pattern of development makes more efficient use of land and natural and financial resources than scattered, "leap frog" development. In contrast to dispersed patterns of development, a consolidated pattern helps to decrease traffic congestion and facilitates the ability of the City to provide needed services and public facilities, such as street maintenance, public transit, police and fire protection, and emergency services.

A more focused land use pattern should be planned to better protect open spaces and natural resources, deliver public facilities and services more effectively, provide a greater range of options for housing in neighborhoods, preserve the unique character of the community, and make available a greater range of choices in modes of transportation.

Policy LU 201: Promote a Focused, Consolidated Land Use Pattern

Locate new growth and development in well-defined contiguous areas in order to avoid leapfrog, scattered land use patterns that cannot be adequately provided with City services.

Strategy LU 203b: Concentrate and Mix Uses

Concentrate and mix activities and uses in and around defined centers in order to create more diversity and synergy between uses, combine destinations, support more effective transit service, and provide viable pedestrian and bicycle access and circulation.

Land Use Mix

Objective LU 3: Develop A Mix of Interdependent, Compatible, and Mutually Supportive Land Uses

Over the past several decades, the location and design of development have created a pattern of isolated, disconnected, single-purpose land uses. An alternative to this type of land use pattern is one that integrates multiple uses, shortens and reduces automobile trips, promotes pedestrian and bicycling accessibility, decreases infrastructure and housing costs, and in general,

can be provided with urban services in a more cost-effective manner.

Policy LU 301: Promote a Mixed Land Use Pattern

Promote development that is characterized by a mix of mutually supportive and integrated residential and non-residential land uses, and a network of interconnected streets with good pedestrian and bicycle access and connections to transit.

Strategy LU 301a: Support Mixed-use Development in Neighborhoods

Support mixed-use development through neighborhood plans and zoning revisions. Develop zoning guidelines and standards that support mixed-use development and pedestrian access by facilitating the integration of residential and non-residential land uses.

Policy LU 302: Encourage Development of Mixed-Use Activity Centers

Encourage the development of activity centers designed to include a mix of uses that compliment and support each other, such as commercial, employment-related, institutional, civic, and residential. A walkable, pedestrian friendly environment will tie the mix of uses in activity centers together. Activity centers will vary in size, intensity, scale, and types of uses depending on their function, location, and surroundings. Activity centers will be designed so they are compatible with, accessible from, and serve as a benefit to the surrounding neighborhood or business area.

Strategy LU 302b: Promote Pedestrian Orientation of New Activity Centers to the Public Right-of-Way and Public Spaces

Orient buildings within activity centers toward the street, sidewalks, or public spaces to facilitate pedestrian access and circulation.

Strategy LU 302e: Incorporate Mixed-Use Activity Center Principles into the Design of New and Redeveloping Employment and Commercial Centers

Design and develop commercial and employment centers as activity centers that include a range of integrated uses, such as retail, concentrated office, research and development, institutional, entertainment, and civic activities.

Strategy LU 303a: Design Pedestrian-Friendly Environments

Plan and design neighborhoods and activity centers as coordinated pedestrian-friendly environments.

Infill and Redevelopment

Objective LU 4: Encourage Infill and Redevelopment

Encourage infill and redevelopment projects that are in character and context with existing, surrounding development. Infill and redevelopment projects in existing neighborhoods make good use of the City's infrastructure. If properly designed, these projects can serve an important role in achieving quality, mixed-use neighborhoods. In some instances, sensitively designed, high quality infill and redevelopment projects can help stabilize and revitalize existing older neighborhoods.

Strategy LU 401a: Identify Infill and Redevelopment Opportunities and Target Public Investments

Identify major infill and redevelopment opportunities and target infrastructure improvements to the preferred infill development and redevelopment areas.

Strategy LU 401b: Provide Incentives to Foster Private Reinvestment

Utilize incentives to encourage infill and redevelopment. Regulatory incentives can be used to expedite the development approval process. Available financial incentives, such as rehabilitation loans/grants, if targeted and strategic, should be utilized to support additional investment in the community, as well as to assist existing residents to remain in areas that are redeveloping.

Residential

Strategy LU 502c: Plan Community Activity Centers to Serve Residential Areas

Plan community activity centers to serve more than one neighborhood in a residential area.

FIGURE 2

Housing

Policy LU 602: Integrate Housing with Other Supportive Land Uses

Integrate housing with supportive land uses, such as employment, education, health facilities, recreation and shopping, to ensure functional and attractive neighborhoods.

Commercial Development

Objective LU 7: Develop Shopping and Service Areas to be Convenient to Use and Compatible with Their Surroundings

Colorado Springs has numerous commercial areas that provide the necessary goods and services for visitors and regional, community, and neighborhood residents. The location and design of these areas not only has a profound effect on the financial success of commercial businesses, but also on the quality of life for the residents. Regardless of whether a commercial development is intended to serve neighborhood, community, citywide, or regional functions, it must be located and designed to balance pedestrian, bicycle, automobile, and, in many cases, transit access. In addition, the location and design of commercial uses must be integrated into surrounding areas, rather than altering the character of surrounding land uses and neighborhoods. Incorporating a mix of uses will increase the diversity and vitality of commercial areas.

Policy LU 701: Plan and Develop New Commercial Areas as Activity Centers

Plan and develop new commercial areas as regional centers, commercial centers, community activity centers, or neighborhood centers according to their function, size, location, intensity, and mix of uses. The development of commercial areas in linear, "strip" configurations along roadways will be discouraged.

Strategy LU 701a: Locate New Commercial Uses in Activity Centers

Locate new commercial (retail, office, services, etc.) development in identified regional centers, commercial centers, and community or neighborhood activity centers. Prohibit strip commercial development along new major roadways.

FIGURE 2

Strategy LU 701b: Locate and Design Neighborhood Centers to be Local Pedestrian-Oriented Amenities

Design neighborhood centers primarily for walk-up pedestrian access with low-impact uses and a limited range of convenience goods and services that benefit neighborhood residents. Locate neighborhood centers to take advantage of daily activity patterns, such as the corner of a residential collector street, at the entrance to a neighborhood, or in conjunction with a park, school, civic use, or public space. Prohibit auto-related uses and other uses that produce noxious fumes or excessive light and noise.

Strategy LU 701f: Encourage New Commercial Development in New and Developing Corridors to Form Activity Centers

Encourage new commercial development in new and developing corridors to take place in activity centers that incorporate a mix of uses and avoid large, single-use buildings and dominating parking areas.

Policy LU 702: Design Commercial Redevelopment and Infill Projects as Activity Centers

Design all commercial redevelopment and infill projects as activity centers that incorporate a mix of uses, pedestrian orientation, and transit service wherever possible.

Strategy LU 702a: Redevelop Obsolete Commercial Areas as Activity Centers

Redevelop commercial areas that are obsolete or underutilized either as community activity centers, commercial centers, or employment centers, depending on their size, location and primary function.

Strategy LU 702b: Redevelop and Infill Commercial Uses in Mature/Development Corridors to Form Activity Centers

Redevelop and infill commercial uses in mature/redevelopment corridors to support the formation and evolution of new activity centers. Coordinate the formation of new activity centers with the redevelopment of the entire corridor.

Strategy LU 702c: Support and Encourage the Evolution of Existing Commercial Areas into Activity Centers

Support and encourage the evolution and transformation over time of existing commercial areas from their exclusive auto orientation and single use functions into activity centers with mixed uses, pedestrian and transit orientation, and better relationships to the surrounding residential areas.

Strategy LU 703e: Encourage the Redevelopment of Obsolete Community Activity Centers and Redevelopment Corridors as Mixed-use Activity Centers

Support the redevelopment of aging local commercial centers and redevelopment corridors as mixed-use activity centers.

Chapter 2 - Neighborhoods

Definitions

Neighborhood: A geographic sub-area within the city that contains residential land uses. The extent of a neighborhood is variable and may be defined by tradition, period of building and development, or subdivision patterns. Neighborhood boundaries may include such features as major streets or other physical features.

Enhancement

Objective N 2: Enhance Neighborhoods

Preserve and enhance existing and established neighborhoods and support developing and redeveloping neighborhoods. While neighborhoods change over time, there are certain fundamental characteristics of most neighborhoods, such as natural features and landscaping, building and street patterns, historic and cultural features, parks, open space and schools, which need to be preserved in order to maintain their character. At the same time, there are new and developing residential areas that need to be supported so that they emerge as well-functioning neighborhoods.

Strategy N 202c: Support School Districts in Their Efforts to Enhance Neighborhood Schools

Engage in cooperative programs with the school districts, to increase school enrollment in those facilities with existing or projected surplus capacity, and to enhance the quality of neighborhood schools.

Strategy N 202d: Target Financial Assistance Programs to Attract Families

Structure financial assistance programs to attract families with children to neighborhoods containing schools with surplus capacity. Programs may include low interest loans for first time homebuyers, below market rate loans to construct or rehabilitate housing for families with children, and mortgage down payment assistance.

Strategy N 202e: Encourage Development of Public Gathering Places in Redeveloping Neighborhoods

Encourage the development of a landscaped, outdoor center in each redeveloped neighborhood to serve as a focal point and gathering place for the public. This may occur in conjunction with existing schools, parks, recreational facilities, supporting retail uses, community centers, neighborhood life centers, or other civic or institutional uses. Where existing facilities are inappropriate, a new center may be developed.

Strategy N 203b: Achieve Balanced Mix of Land Uses

Use the land development review process to plan well-functioning new neighborhoods. Reserve planned land uses in new neighborhoods to achieve a balanced mix of land uses over time.

Strategy N 203f: Develop Gathering Places

Plan and develop a landscaped, outdoor center for each new neighborhood in conjunction with schools, parks, recreational facilities, supporting retail uses, community centers, neighborhood life centers or other civic or institutional uses to function as a focal point and gathering place for the public.

Mixed-Use

Objective N 3: Vary Neighborhood Patterns

Integrate a variety of housing types and densities with amenities, services, and retail uses to generate opportunities and choices for households. When the character, context and scale of the surrounding neighborhood are taken into account, mixed-use developments can provide unique opportunities for employment, shopping, housing choice, and public gathering space, while having a positive impact on the neighborhood.

Policy N 301: Identify and Develop Mutually Supportive Mixed Uses

Develop an appropriate mix of land uses and differing housing types in both new and existing neighborhoods.

Strategy N 301a: Identify Non-Residential Land Uses that Support Neighborhoods

Identify the type, scale and nature of non-residential uses that contribute to the efficient functioning and attractiveness of neighborhoods.

Policy N 302: Promote Development of Mixed-Use Neighborhoods

Provide residents the choice of walking, bicycling or driving to parks, schools, work, shopping, places of worship, and transit stops in their own and other neighborhoods.

Chapter 3 - Transportation

Planning and Mobility

Policy T 103: Transportation System and Land Use Pattern

Develop a land use pattern and a transportation system that are mutually supportive. Enhance access to housing, jobs, schools, goods and services, shopping, and recreation through the joint planning of land uses and transportation. Link sites used for living, working, shopping and recreating and make them accessible via transit, bike, foot and car.

Strategy T 103a: Integrate Mixed Land Use

Provide opportunities for mixed land uses to afford proximity choices for working, shopping, recreational and other activities. Encourage a variety of uses in activity centers, commercial centers, employment centers, regional centers and corridors.

Livable Communities

Strategy T 201e: Bicycle and Pedestrian Safety

Designed pedestrian and bicycle facilities, including sidewalks, on-road lanes, off-road trails, connections, crossings, signals, and bridges to facilitate movement in a safe and efficient manner. Facilitate convenient and safe bicycle and pedestrian movement at crossings and traffic signals.

Strategy T 201f: Roadway Beautification

Conduct and implement a citywide street beautification plan. Design residential streets that minimize road mat width and include detached sidewalks, landscaping and adequate pedestrian crossings to enhance neighborhoods. Maintain and protect existing landscaped medians. Include landscaped medians or side parking in new street design. Design streetlights for pedestrian use and to complement neighborhood character. Place utility boxes, cable boxes and similar facilities as unobtrusively as possible, with consideration for operability and safety.

Strategy T 201g: Recognize Neighborhood Character

Plan, develop and implement a transportation system that enhances the livability of residential neighborhoods. Recognize the importance of and contribution to neighborhood identity and integrity by protecting and improving the quality of life within neighborhoods, while at the same time facilitating the movement of pedestrian, bike and vehicular traffic. Include traffic calming and pedestrian safety in transportation projects located within neighborhoods.

Strategy T 201h: Streetscape and Neighborhood Creation and Preservation

Develop streetscape design criteria that consider the elements essential to the creation and preservation of neighborhood character, including trees, medians, parkways, scenic vistas and the relationship between homes and roadways. Incorporate historic elements such as

landscaping, medians, smaller turning radii and narrower configurations in historic neighborhoods. Incorporate design criteria fostering neighborhood livability in all new development and redevelopment.

Policy T 202: Improve Mobility with Multi-Modal System

Plan and develop an integrated all-mode transportation system. Facilities and services will jointly serve all modes while respecting and maintaining the integrity of existing neighborhoods. Support and implement alternative modes and facilities to help maintain and increase Colorado Spring's attractive quality of life.

Strategy T 202a: Improve Mobility Options

Develop a transportation system that increases mobility options, including alternative ways to travel and strategies to manage demand.

Strategy T 202b: Transportation and Land Use

Provide mobility choices for City residents, visitors and businesses in support of the City's land use and development visions, objectives and policies.

Strategy T 202c: Incorporate Non-motorized Transportation Facilities

Incorporate non-motorized transportation facilities into the planning and construction of general transportation improvements, including road construction, bridge construction, subdivision development and new transit systems.

Chapter 5 - Natural Environment

<u>Definitions</u>

Open Space: Areas in a natural or primarily natural state containing significant natural, aesthetic, or cultural features that warrant permanent protection.

Environmental Hazards and Constraints

Objective NE 3: Minimize Environmental Hazards and Constraints

Take into account natural and man-made hazards and the appropriate relationship between the natural and built environment in all planning, policy, and development decisions. Minimize impacts from natural and man-made hazards to protect citizens, property, and the environment. The city, county, and other appropriate governmental agencies will cooperatively develop plans, programs, regulations, and incentives to reduce the impacts from natural and man-made hazards.

Policy NE 301: Develop Plans and Regulations

Develop plans and regulations to protect environmental quality and important ecological functions and minimize hazards to health and property through development reviews and implementation of plans and ordinances addressing environmental hazards and constraints.

Strategy NE 301a: Refine Plans and Regulations

Continually refine plans and regulations to address floodplains, streams/drainageways, hillsides and geologic hazards and ensure consistency between these planning and implementation tools

Strategy NE 301d: Mitigate Identified Hazards

Develop and use mitigation plans to minimize risk to life and property by structural and non-structural design or modification of actions. Use mitigation plans where it is not otherwise practical to place structures or human activities outside of these hazard areas. Discourage new development in delineated hazard areas.

Chapter 6 - Community Character/Appearance

Built Environment and Natural Setting

Streets

Policy CCA 401: Support Mixed Land Uses

The City will encourage design that supports mixed land uses and promotes compatibility, accessibility, and appropriate transitions between uses that vary in intensity and scale.

Strategy CCA 401b: Design Mixed-use to Provide Significant Benefits

Design mixed-use development, including infill and redevelopment, to provide significant benefits to the surrounding area.

Strategy 501b: Locate and Design Public Places to Give Quality, Identity, and Focus to the Community

Locate and design public spaces and civic facilities to set a standard in quality design, to provide a focal point and meeting place, and to express community identity within the context of the surrounding private development.

Mixed Uses

Objective CCA 4: Integrate Different Land Uses

The separation of land uses that exists in Colorado Springs increases the reliance on the automobile and detracts from the dynamic urban setting. Integrating land uses increases the opportunities for various modes of travel and contributes to a more interesting and appealing land use pattern. Colorado Springs will encourage new development to integrate a diversity of land uses.

Gold Hill Mesa Commercial Area
Urban Renewal Plan

City of Colorado Springs, Colorado

Appendix B:

Gold Hill Mesa Commercial Area Urban Renewal Plan Boundaries Legal Description

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Gold Hill Mesa Commercial Area

Conditions Survey

City of Colorado Springs, Colorado

January 2015

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FIGURE 3

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Gold Hill Mesa Commercial Area

Conditions Survey

City of Colorado Springs, Colorado

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Table 1: Gold Hill Mesa Commercial Area - Police Incidents
Table 2: Gold Hill Mesa Commercial Area - Summary of Findings

FIGURE 3

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Gold Hill Mesa Commercial Area

Conditions Survey

City of Colorado Springs, Colorado

1.0 Introduction

The following report, the Gold Hill Mesa Commercial Area Conditions Survey (the **"Survey"**) was prepared for the Colorado Springs Urban Renewal Authority (CSURA) and Colorado Springs City Council (the **"City Council"**) in November 2014. The purpose of this work was to analyze conditions within a defined Study Area (also referred to here as **"the Survey Area**" or **"the Area"**) in order to determine whether factors contributing to blight are present and whether the Area may, therefore, be considered eligible as an urban renewal area under the provisions of the Colorado Urban Renewal Law.

The Survey Area includes parcels generally located in the southwestern portion of the city, and specifically in the southeast quadrant of U.S. Highway 24 and South 21st Street within the existing Gold Hill Mesa Urban Renewal Area, as reflected in **Figure 1**. That urban renewal area, established by the Colorado Springs City Council in 2004, was created in an effort to mitigate impacts associated with a former gold processing facility within the property, known as the Golden Cycle Mill. The mill operated from 1906 to 1949 and processed approximately fifteen million tons of ore from Cripple Creek and Victor area gold mines. An environmental assessment was performed during the early part of this century, under the State of Colorado's Voluntary Cleanup Program (VCP). The results of that assessment identified the presence of several heavy metals in the soils, yet concluded that the site could accommodate a mix of residential and commercial uses if the soil were stabilized and a "cap" placed over it.

Since formation of the Gold Hill Mesa Urban Renewal Area, development has been limited to construction of the Gold Hill Mesa traditional neighborhood community, located south of the existing Villa de Mesa condominium development. While planned for, no commercial construction has occurred, but is now being aggressively pursued for development within the Survey Area. Given the amount of time that has passed (10 years) since the original urban renewal area was created, and significant changes in the real estate industry, many the result of a "great recession" that occurred between 2008 and 2012 and impacted real estate markets locally, regionally and nationally, the

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Figure 1: Survey Area Boundaries

FIGURE 3

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property owners are requesting that parcels within the Survey Area be removed from the existing area and relocated within a new urban renewal area to be referred to as Gold Hill Mesa Commercial Area. Whereas property owners and business concerns within the its boundaries have requested inclusion in an urban renewal area, thereby making it a "voluntary district," they waived their right to receive notice that the Survey was commencing.

This Gold Hill Mesa Commercial Area Conditions Survey represents a necessary step in the determination of blight and establishment of an urban renewal area with the intent of addressing the conditions outlined herein. As such, it is also an important step in advancing goals set out in the community's comprehensive planning documents, specifically those related to infill development and redevelopment.

Establishment of an urban renewal plan area, after a declaration of blight, will allow the City of Colorado Springs, through its urban renewal authority, to use designated powers to assist in the mitigation of "blighting conditions" (as defined by the Act) within its boundaries.

2.0 Definition of Blight

A determination of blight is a cumulative conclusion based on the presence of several physical, environmental, and social factors defined by state law. In reality, blight is often attributable to a multiplicity of conditions, which, in combination, tend to contribute to the phenomenon of deterioration of an area. For purposes of this Survey, the definition of a blighted area is based upon the definition articulated in the Colorado Urban Renewal Law, as follows:

"Blighted area" means an area that, in its present condition and use and, by reason of the presence of at least four of the following factors, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare:

(a) Slum, deteriorated, or deteriorating structures;
(b) Predominance of defective or inadequate street layout;
(c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

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(d) Unsanitary or unsafe conditions;

(e) Deterioration of site or other improvements;

(f) Unusual topography or inadequate public improvements or utilities;

(g) Defective or unusual conditions of title rendering the title non-marketable;

(h) Existence of conditions that endanger life or property by fire or other causes;

(i) Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;

(j) Environmental contamination of buildings or property;

(k.5) Existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements;

(l) If there is no objection of such property owner or owners and the tenant or tenants of such owner or owners, if any, to the inclusion of such property in an urban renewal area, "blighted area" also means an area that, in its present condition and use and, by reason of the presence of any one of the factors specified in paragraphs (a) to (k.5) of this subsection (2), substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals or welfare. For purposes of this paragraph (1), the fact that an owner of an interest in such property does not object to the inclusion of such property in the urban renewal area does not mean that the owner has waived any rights of such owner in connection with laws governing condemnation.

Source: Colorado Revised Statute 31-25-103(2).

While the conclusion of whether an area constitutes a legally "blighted area" is a determination left to municipal legislative bodies, this Survey provides documentation as to the presence of the aforementioned physical, environmental and social factors as they exist within the boundaries defined herein. Note: It is not legally necessary for *every* factor to be present in a proposed urban renewal area in order for it to be considered "blighted". In addition, a given factor need not be present on each and every parcel or structure in order to be considered, but rather, only needs to be present somewhere in the area as a whole. In other words, the presence of one or more well-

FIGURE 3

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maintained, non-blighted buildings or parcels does not necessarily preclude a finding of blight for a larger area in which blighting factors are present[1]. Rather, an area qualifies as blighted when *four* or more factors are present (or *five* factors, in cases where the use of eminent domain is anticipated). As explained in item (l) above, this threshold may be reduced to the presence of *one* blighting factor in cases where no owners of property or other business interest within its boundaries objects to inclusion in an urban renewal area. This Factor (l) applies in this instance whereas the Area's owners and business interests requested inclusion in an urban renewal area. Despite the statutorily allowable lower threshold (presence of one factor), every effort was made to identify all factors that are present and impacting properties within the Area boundaries.

With this understanding, this Gold Hill Mesa Commercial Area Conditions Survey offers conclusions regarding the presence of qualifying conditions in the Survey Area; however, the Colorado Springs City Council will make a final determination as to whether they are sufficient in number and magnitude to constitute a finding of "blight" under Colorado Urban Renewal Law.

3.0 Study Methodology

RickerlCunningham personnel conducted field investigations during the month of November in 2014, for the purpose of documenting conditions within the categories of blight listed above and described in greater detail below. Pertinent Geographic Information Systems (GIS) data was obtained from Colorado Springs Utilities and the City of Colorado Springs, discussions held with City Staff, and materials reviewed, all of which informed the conclusions presented herein.

Whereas the 11 factors listed in the Urban Renewal Law (see Section 2.0 of this report) contain few specific details or quantitative benchmarks to inform the survey process, the report's authors, RickerlCunningham, used a checklist of more specific categories of blighting conditions, developed from completion of more than 75 similar surveys for more than 35 communities in Colorado and other western states.

[1] While not clearly addressed in Colorado Urban Renewal law, this interpretation has been favored by the courts.

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(a) Slum, deteriorated, or deteriorating structures

This factor is said to be present when the physical condition of structures in the area present specific life-safety concerns. Sub-categories include deterioration or absence of the following:

- Roof
- Walls fascia board and soffit
- Foundation
- Gutters and downspouts
- Exterior finish
- Windows and doors
- Stairways and fire escapes
- Mechanical equipment
- Loading areas
- Fences, walls and gates
- Other non-primary structures

(b) Predominance of defective or inadequate street layout

This factor is said to be present when the layout (or non-existence) of streets or roads creates problems for health, safety, welfare or sound development. Sub-categories include inadequate or elevated:

- Vehicular access
- Internal circulation
- Driveway definitions and curb cuts
- Parking layout
- Traffic accident history

(c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness

This factor is said to be present when lot size or configuration inhibits or is likely to inhibit sound development. Sub-categories include inadequate or unsafe:

- Lot shape or layout

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- Vehicular access - parcels with poor access are usually found to have both category (b) and (c) present
- Lot size

(d) Unsanitary or unsafe conditions

This factor is said to be present when safety hazards and conditions are likely to have adverse effects on the health or welfare of persons in the area due to problems with a lack of infrastructure. Sub-categories include the presence of:

- Poorly lit or unlit areas
- Cracked or uneven sidewalks
- Hazardous contaminants
- Poor drainage
- Flood hazards
- Steep slopes
- Unscreened trash or mechanical equipment
- Pedestrian safety issues
- High crime incidence
- Lack of fire protection
- Vagrants, vandalism and graffiti

(e) Deterioration of site or other improvements

This factor is related to factor (a), and said to be present when land and/or structures have been either damaged or neglected. Sub-categories include the presence of, deteriorating or lack of:

- Billboards
- Signage
- Poorly maintained properties, streets, and other public improvements
- Trash, debris and weeds
- Parking surfaces, curbs and gutters
- Landscaping

FIGURE 3

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(f) Unusual topography or inadequate public improvements or utilities

This factor represents the combination of two formerly separate factors. To that end, it is said to be present when the topography is incompatible with development (hilly, sloped, etc.) or properties are lacking complete public infrastructure. Sub-categories include the presence of, deteriorating or lack of:

- Slopes or unusual terrain
- Street pavement
- Curb and gutter
- Street lighting
- Overhead utilities
- Sidewalks
- Roads
- Water and sewer service
- Storm water quality and drainage improvements

(g) Defective or unusual conditions of title rendering the title non-marketable

This factor is said to be present when there are problems with the marketability of property titles, including unusual restrictions, unclear ownership, etc. Due to the expense of title searches, this blight factor is typically not examined unless developers or land owners provide documentation of known problematic title issues. (No sub-categories).

(h) Existence of conditions that endanger life or property by fire or other causes

This factor is said to be present when site and / or building maintenance or use issues exist that may threaten site users. This factor also includes potential threats from fire or other causes. Sub-categories include the presence of:

- Fire safety problems
- Hazardous contaminants
- High frequency of crime
- Floodplain and flood hazards

FIGURE 3

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(i) Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidations, deterioration, defective design, physical construction, or faulty or inadequate facilities

This factor is said to be present when primary improvements, specifically those described in the context of factors (a) and (d) above, as well as property, poses a danger to the extent that habitation and/or daily use is considered unsafe. Sub-categories include the presence or lack of:

- Hazardous contaminants
- Fire safety infrastructure
- Unsafe building facilities
- All of the factors listed under (h) above

(j) Environmental contamination of buildings or property

This factor is said to be present when there exist threats from chemical or biological contamination. Unlike category (i) above, this factor can be said to exist even when such contamination does not pose a direct health hazard, so long as it causes other problems (i.e. inhibits development). Sub-categories include the presence of:

- Hazardous contaminants

(k.5) Existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements

This factor is said to be present when properties or their improvements are underutilized; or, there is a disproportionate amount of public service being provided. For instance, properties generating frequent calls for police or fire service or code enforcement often require more than their share of services. Sub-categories include the presence of:

- High frequency of fire calls
- High crime incidence

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- Site and building underutilization
- All of the factors listed under (d) and (h) above

4.0 Survey Area History

The Survey Area includes 16 legal parcels and adjacent rights-of-way comprising approximately 70 acres (parcel acres). As reflected in **Figure 2,** parcels in the Area are zoned PBC (Planned Business Center), with the remainder of parcels in the larger Gold Hill Mesa Urban Renewal Area zoned TND (Traditional Neighborhood Development). These designations allow for a higher density mix of uses including residential, retail and office. Although both zones encourage mixed land uses, the PBC zoning emphasizes commercial uses while the TND zoning emphasizes residential. **Figure 3** illustrates parcel ownership which includes Golden Cycle Investments LLC and Gold Hill Mesa Metro District No. 1, both Colorado Springs-based entities.

Although all of the subject properties are vacant and unimproved, the Area is surrounded by existing uses including the Villa de Mesa condominium development and Gold Hill Mesa traditional neighborhood development, along with a large concrete smokestack, leftover from previous mining related activities. Established residential neighborhoods are also located west and east of the Area, fronting the western edge of South 21st Street and eastern border of the existing urban renewal area. Several commercial facilities front the eastern edge of South 21st Street including a vacant bank building, restaurant, 7-11 anchored retail center, and Advanced Auto Parts store. A free-standing commercial operation offering sporting goods and supplies is located due north of the Area along the northern edge of U.S. Highway 24.

5.0 Summary of Findings

The presence of blight that "*…substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare..."* [Colorado Revised Statute 31-25-103(2)]

It is the conclusion of this report that, within the Survey Area, there are physical conditions sufficient to meet criteria established in the Act as "blighting factors." Specifically, eight of the possible 11 blight factors were found to be present including:

FIGURE 3

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Figure 2: Zoning Classifications Map

FIGURE 3

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Figure 3: Property Ownership Map

FIGURE 3

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b) predominance of defective or inadequate street layout; c) faulty lot layout in relation to size, adequacy, accessibility, or usefulness; d) unsanitary or unsafe conditions; e) deterioration of site or other improvements; f) unusual topography or inadequate public improvements or utilities; h) existence of conditions that endanger life or property by fire or other causes; j) environmental contamination of buildings or property; and, k.5) substantial physical underutilization or vacancy of sites, buildings, or other improvements. Each of these is described in greater detail below.

(b) Predominance of defective or inadequate street layout

Predominance of defective or inadequate street layout can be considered present when existing roads are insufficient to meet the needs of existing or planned land uses (as determined by existing zoning) within an area (capacity), there is a lack of streets, or the streets that are in place are deteriorating or substandard. All three of these conditions exist either within or surrounding the Survey Area. Despite a zoning classification of PBC (Planned Business Center), there are no roads or supporting infrastructure improvements within the Area, or larger Gold Hill Mesa Urban Renewal Area, with the exception of those serving the Gold Hill Mesa neighborhood. The lack of internal streets has left numerous parcels without the Area's boundaries without access - direct or indirect.

Among the streets surrounding the Survey Area, both U.S. Highway 24 and South 21st Street lack appropriate accommodations for non-vehicular movement. South 21st Street shows signs of pavement degradation, and lacks curbs, gutters and sidewalks. While sidewalks are present in the vicinity of the existing commercial uses near the intersection of South 21st Street and South Highway 24, they are incomplete and were not constructed to municipal standards. Lighting within the roadways is minimal, and combined with ill-defined curb cuts and the hilly terrain, makes access to the Area challenging. Based on a review of the City's 2012 (5-year) Capital Improvement Plan and 2012 City Budget, improvements to South 21st Street were identified as an unfunded "high priority capital project." Specifically, the City desires to widen the street to four lanes from U.S. Highway 24 south to Lower Gold Camp Road, and complete supporting improvements for safe vehicular and non-vehicular movement.

Experience has shown that inadequate or ill-defined streets can contribute to an unsafe environment that can result in a high frequency of adverse traffic

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incidents. According to the Colorado Springs Police Department, there were 875 traffic accidents in the vicinity of the Survey Area, between January 2014 and January 2015, the highest category of incidents among property damage, violent crimes, proactive policing and disorderly conduct calls, and noise complaints. Of these traffic incidents, the majority appear to have occurred within South 21st Street.

According to the Colorado Springs Police Department, in 2011, the last year for which data was available, there were 8,646 traffic accidents in the city as a whole (responded to by Springs' Police). Whereas the number of all incidents in the Area appears to have remained fairly constant over the last decade, traffic-related occurrences in the vicinity of the Area represent roughly 10 percent of the city total. **Table 1** provides an overview of police incidents in the vicinity of the Survey Area between 2004 and 2011 based on information available from the City of Colorado Springs Police Department (annual reports 2004 through 2011).

(c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness

In addition to limited access to and within the Area, other parcel-related conditions which negatively impact the ability of properties within its boundaries to develop include size and shape. As evidenced in **Figure 1**, several properties are either too small or too irregular in shape to be developed to City-standards without being part of a larger assemblage. Size relative to zoning is a particular concern whereas site coverage, density, and parking ratios are dictated by use, irrespective of parcel size, thereby rendering some properties economically "useless." Similarly, many of those parcels with an irregular shape also suffer from a significant lack of utility, rendering them unmarketable. A parcel with limited usefulness due to shape is one that when developed leaves substantial portions either under-utilized or with limited access or visibility.

While small and irregular shaped residential lots are not uncommon, particularly in established urban neighborhoods, they are less concerning than commercial lots in a similar environment with the same condition. Commercial properties that lack either access and / or visibility have less value than those with access and visibility. Those that are further hampered by inadequate size and / or shape are even less valuable and many instances unmarketable. Commercial parcels in the

FIGURE 3

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Table 1
Gold Hill Mesa Commercial Area - Police Incidents

Offense	2004	2005	2006	2007	2008	2009	2010	2011	% Chg 04-11
Homicide	1	1	2	0	0	0	1	0	
Sex Offense - Force	3	8	5	8	3	6	4	6	
Robbery	7	2	3	10	2	6	3	4	
Aggravated Assualt	17	16	15	15	15	13	13	12	
Burglary	70	75	61	66	44	39	48	32	
Theft - Larceny	238	206	190	149	125	121	197	187	
Theft - Motor Vehicle	30	34	26	22	16	20	29	28	
Arson	2	2	2	1	0	0	1	5	
Simple Assualt	26	25	26	27	29	30	33	25	
Intimidation	4	1	1	0	1	5	1	6	
Forgery	29	27	17	11	10	7	6	4	
Fraud	55	45	43	58	47	34	36	33	
Embesslement	1	2	1	0	2	0	2	1	
Stolen Property	3	6	4	2	1	4	4	0	
Vandalism	82	77	71	64	53	45	56	44	
Weapons Violation	5	1	4	3	3	2	5	5	
Prostitution	0	0	0	0	0	0	0	0	
Sex Offense - Non-Force	0	0	0	10	2	1	2	2	
Narcotics	23	35	26	34	29	26	21	18	
Gambling	0	0	0	0	1	0	0	0	
Kidnapping	3	3	2	5	1	1	4	3	
Extortion	1	0	0	0	0	0	0	0	
Pornography	0	0	0	0	0	1	0	0	
Bribery	0	0	0	0	0	0	0	0	
Sub-Total	600	566	499	485	384	361	466	415	-30.83%
Bad Checks	2	0	0	0	0	0	0	0	
Peeping Tom	0	0	0	0	0	0	0	0	
Family Offenses	3	5	1	3	3	3	5	6	
DUI	0	0	0	0	0	0	0	0	
Liquor Laws	2	0	0	1	3	4	2	2	
Disorderly Conduct	1	0	2	3	4	2	3	0	
Trespass	2	2	4	3	4	2	2	8	
Other	41	37	41	52	35	51	46	38	
Sub-Total	51	44	48	62	49	62	58	54	5.88%
Total	651	610	547	547	433	423	524	469	-27.96%

Source: City of Colorado Springs Police Department Annual Reports 2004 through 2011; and, Ricker Cunningham.

Area suffer from most if not all of these conditions and will require a significant amount of infrastructure investment to overcome these obstacles.

d) Unsanitary or unsafe conditions

Multiple factors were identified that contribute to unsafe conditions in the Survey Area among them, insufficient improvements for vehicular and non-vehicular

FIGURE 3

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movement due to inadequate streets and limited, if any, accommodations for pedestrians or bicycles; coupled with a hilly terrain and ill-defined access points. In addition to these, there are known environmental contaminants in the Area, due to past mining efforts and resulting waste. More details regarding environmental hazards are presented in the context of Factor (j) below.

Other conditions considered in the context of this factor include steep slopes, which have already been identified, and the presence of a flood zone, high levels of criminal activity, and a lack of fire protection equipment. Despite the Area's proximity to Fountain Creek, located along its northern boundary (as depicted in **Figure 4**), no parcels in the Area are known to be impacted by a 100-year flood zone. With regard to criminal activity, according to the Colorado Springs Police Department, the number of criminal incidents in the Area between 2004 and 2011 appears to have remained fairly constant, if not declining. Finally, no information was available regarding fire protection equipment in the Area, which is not unusual since all of the subject parcels are vacant and unimproved.

Conditions observed that while not unsafe are unsanitary, yet contributing to an overall appearance of neglect and considered in the context of this factor, include the presence of weeds, unscreened trash, and numerous incidents of remnant infrastructure including concrete blocks, fencing materials and building foundations.

(e) Deterioration of site or other improvements

In the context of developed properties, this Factor (e) deterioration of site or other improvements, generally considers the absence or condition of parking, landscaping, and / or signage, improvements expected within commercial properties. Whereas parcels in the Survey Area are vacant and unimproved, conditions considered relate more to the overall appearance of parcels, and whether they are being maintained or neglected. Based on visual inspections, and as reported above, there are numerous instances of weeds, unscreened trash, and remnant infrastructure. Further, it is obvious that this was once the site of significant mining and dumping operations.

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Figure 4: 100 Year Flood Zone Map

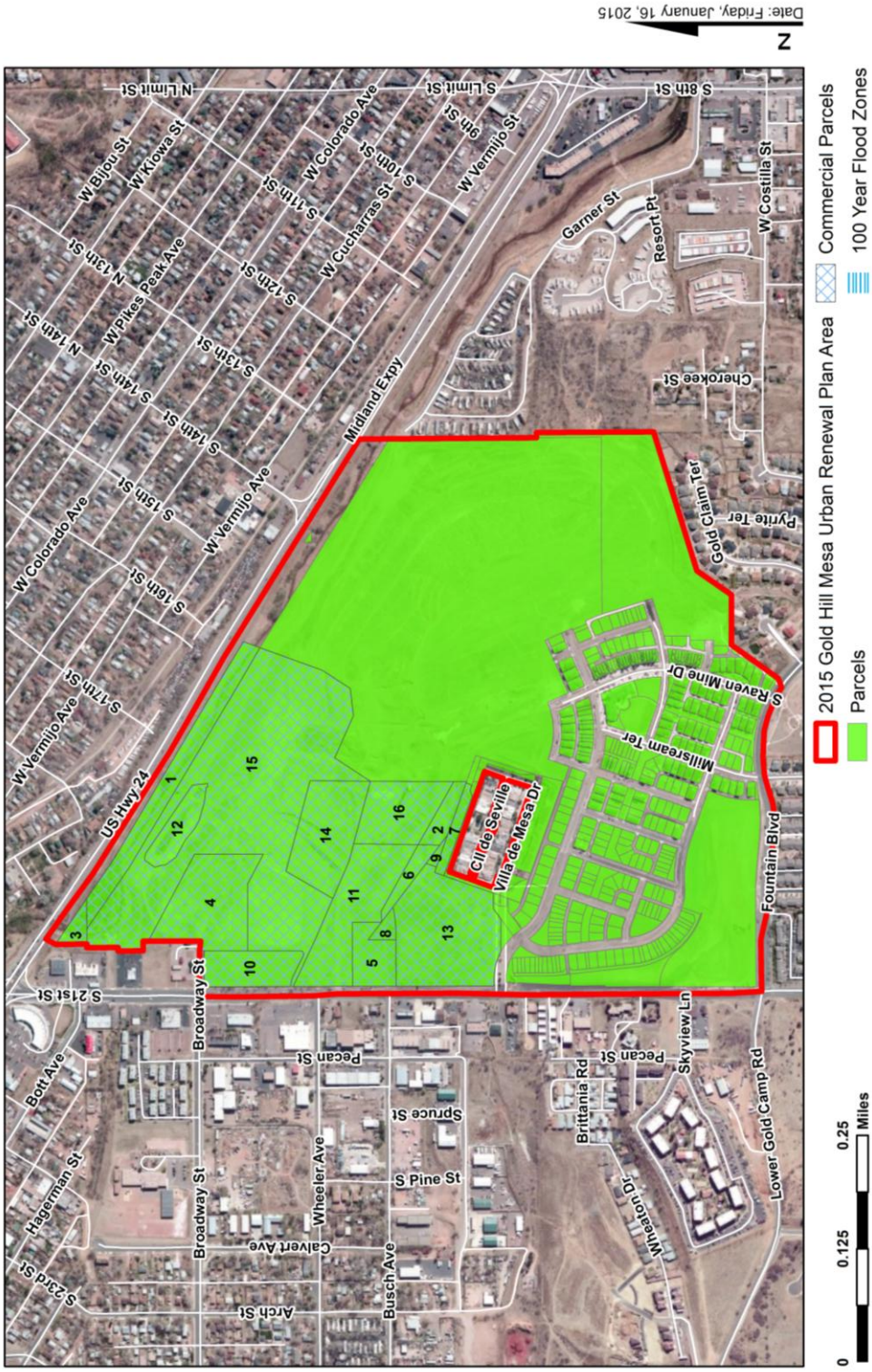

FIGURE 3

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(f) Unusual topography or inadequate public improvements or utilities

Grade changes and slopes on potentially developable properties are considered a "blighting condition" under the Act whereas they necessitate costly improvements such as retaining walls, drainage improvements, fill or dirt, and reinforced foundations. In addition, steep slopes can negatively impair a site's visibility (value) and limit its usefulness as measured by total developable acres. The topography of the properties in the Area is dominated by the deposition of the gold tailings. Large channels have been formed through erosion of the hillside toward Fountain Creek. The site drains from the southwest to the northeast with elevations varying from 6250 to 6000 feet above sea level. the top of the hill is relatively flat with slopes varying from 0.5% to 5.0%. The hill slopes steeply towards Fountain Creek at varying degrees from 10.0% to 25.0%. The steep slopes and soil properties have contributed to a large amount of erosion on the face of the hill. Deep cuts into the hillside are readily visible from U.S. Highway 24. As such, the Area exhibits unusual topography in all but a few parcels. While the most severe slopes can be found around the sides of a mesa feature (visible in the aerial), most of the other parcels share at least some irregularity of terrain that serves to constrain development.

Inadequate infrastructure, the second condition considered in the context of this factor, can mean either a lack of infrastructure or limits on the capacity of the infrastructure that exists. The exception being the presence of overhead utilities which, while often present and allowed on and within municipal parcels, are considered a visual and functional condition which contributes to an overall appearance of blight. Overhead utilities are visible within the Survey Area, particularly along its northern border.

Based on the author's familiarity with the Area since they prepared the survey for the original Gold Hill Mesa Urban Renewal Area, it is known that all major utilities are available to properties within the Area from adjacent rights-of-way, but that no improvements existing within the Area's parcels. In order to make parcels within the Area available for development, infrastructure and utility lines will have to be brought into the Area.

FIGURE 3

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(h) Existence of conditions that endanger life or property by fire or other causes

Factors that threaten site users which were either observed or identified in the Survey Area include all of those conditions previously discussed and including inadequate infrastructure for non-vehicular movement, the impact of its terrain on a suboptimal road system, and the presence of hazardous waste. Properties under the oversight of the Environmental Protection Agency (EPA) are discussed under Factor (j) below.

(j) Environmental contamination of buildings and properties

A review of materials published by the State of Colorado on behalf of the Federal Government related to properties that are presently under the oversight of the EPA, revealed that there are two locations under review within the existing Gold Hill Mesa Urban Renewal Area, one of which is within the Survey Area. **Figure 5** illustrates their location.

Properties within the Area and larger urban renewal area are impacted by environmental contamination stemming from the accumulation of tailings from the ore refinement process that took place at the Golden Cycle Mill from 1905 to 1949. Specifically, both lead and arsenic have been detected in the soils.

Environmental studies suggest that health risks from accidental exposure (via ingestion, inhalation, and skin contact) to these contaminants is limited, even for potential residents and site construction workers. however, the risk of wind-borne erosion, groundwater seepage into Fountain Creek, and unknown long-term health effects have made this contamination a concern for neighborhoods and local officials alike.

(k.5) Existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements

Whereas the state statute defines this factor as including <u>either</u> high levels of municipal services <u>or</u> underutilization or vacancy of properties or buildings, Ricker|Cunningham investigated both conditions. With regard to criminal incidents, as discussed under Factor (b) above, police incidents in the vicinity of

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Figure 5: Facilities Subject to EPA Oversight

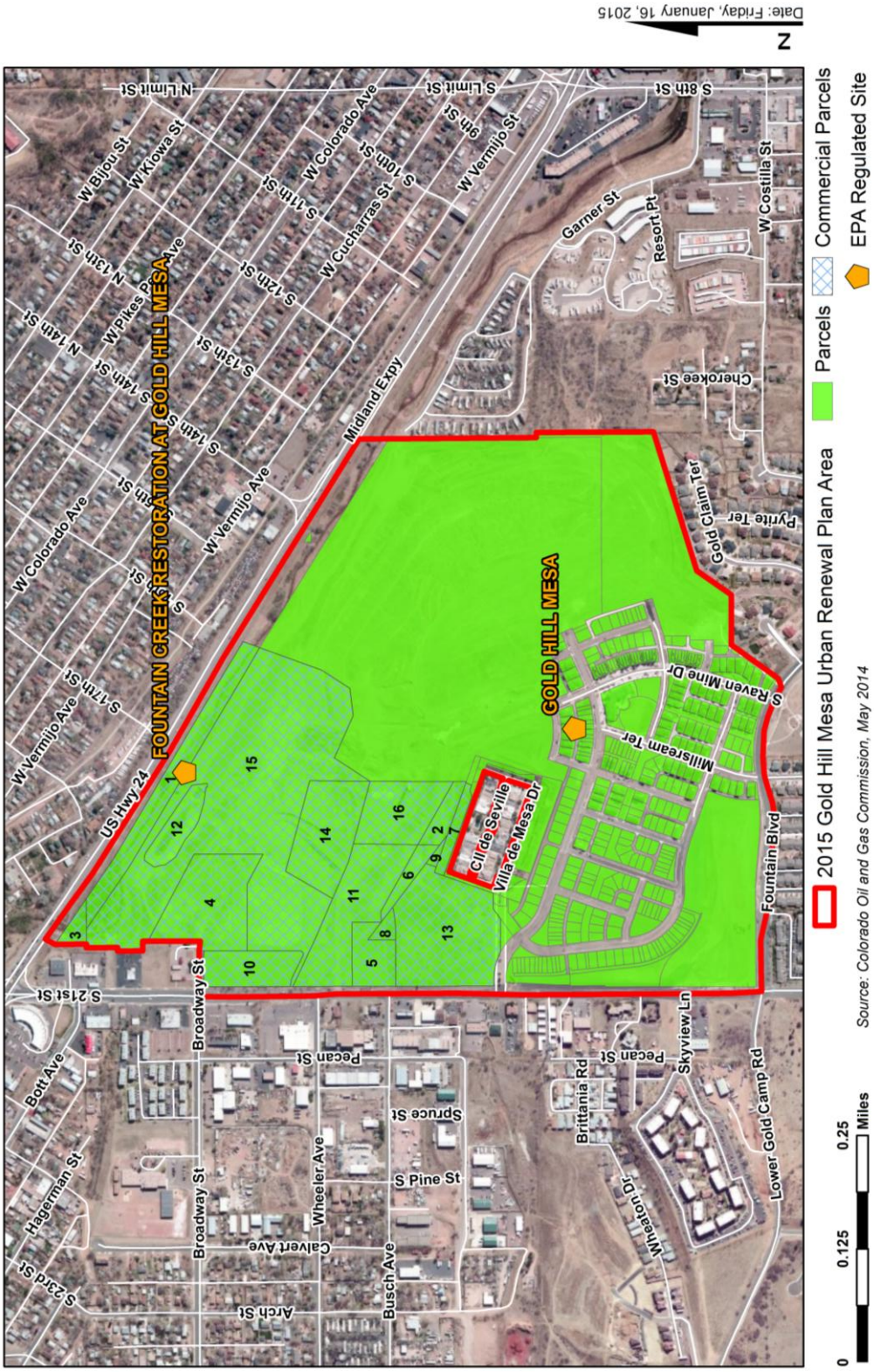

FIGURE 3

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the Area appear to have declined slightly over the past few years. While traffic-related occurrences could be thought to command a slightly disproportionate share of services and resources compared to other locations within the city, they are not being considered here. However, what is being considered is the unimproved condition of properties within the Survey Area boundaries. While the balance of properties within the existing Gold Hill Mesa Urban Renewal Area are developed or developing, parcels within the Survey Area remain vacant. Further, a review of aerial photography for the western half of the Colorado Springs Metropolitan Area highlights how developed this portion of the city is, with the exception of properties in the Area, making them an obvious opportunity for infill development. While less than favorable market conditions have contributed to the delay in attracting commercial operators, the larger factor has likely been the presence of adverse conditions, many of which have been sited herein.

6.0 Summary of Factors

Table 2 summarizes the findings across all surveyed parcels. As explained earlier in this report, it is not legally necessary for *every* factor to be present in an area being considered for an urban renewal designation, in order for it to be found "blighted". In addition, a given factor need not be present on each and every parcel or within each and every structure (if any) to be counted, but rather, only needs to be present somewhere in the area as a whole. As shown, eight of the 11 total possible factors were found, to some extent, within the Survey Area. Additionally, all eight factors (as discussed earlier) were present to a degree that appeared likely to have a significantly negative impact on the public's safety and welfare and impede the Area's ability to achieve sound growth and attract quality development.

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Table 2
Gold Hill Mesa Commercial Area - Summary of Findings

Blight Qualifying Factor	Present Total Survey Area
(a)	
(b)	x
(c)	x
(d)	x
(e)	x
(f)	x
(g)	
(h)	x
(i)	
(j)	x
(k5)	x
Total Factors	8

Source: RickerlCunningham.

FIGURE 3

APPENDIX

Development Application Review Criteria

7.5.501 (E): <u>CONCEPT PLAN REVIEW CRITERIA:</u>

D. Concept Plan Review Criteria: A concept plan shall be reviewed using the criteria listed below. No concept plan shall be approved unless the plan complies with all the requirements of the zone district in which it is located, is consistent with the intent and purpose of this Zoning Code and is compatible with the existing and proposed land uses surrounding the site.

1. Will the proposed development have a detrimental effect upon the general health, welfare and safety or convenience of persons residing or working in the neighborhood of the proposed development?
2. Will the proposed density, types of land uses and range of square footages permit adequate light and air both on and off the site?
3. Are the permitted uses, bulk requirements and required landscaping appropriate to the type of development, the neighborhood and the community?
4. Are the proposed ingress/egress points, traffic circulation, parking areas, loading and service areas and pedestrian areas designed to promote safety, convenience and ease of traffic flow and pedestrian movement both on and off the site?
5. Will the proposed development overburden the capacities of existing streets, utilities, parks, schools and other public facilities?
6. Does the proposed development promote the stabilization and preservation of the existing properties in adjacent areas and surrounding residential neighborhoods?
7. Does the concept plan show how any potentially detrimental use-to-use relationships (e.g., commercial use adjacent to single-family homes) will be mitigated? Does the development provide a gradual transition between uses of differing intensities?
8. Is the proposed concept plan in conformance with all requirements of this Zoning Code, the Subdivision Code and with all applicable elements of the Comprehensive Plan? (Ord.94-107; Ord. 01-42; Ord. 03-157; Ord. 09-78)

7.5.502 (E): <u>DEVELOPMENT PLAN REVIEW CRITERIA:</u>

E. Development Plan Review Criteria: A development plan shall be reviewed using the criteria listed below. No development plan shall be approved unless the plan complies with all the requirements of the zone district in which it is located, is consistent with the intent and purpose of this Zoning Code and is compatible with the land uses surrounding the site. Alternate and/or additional development plan criteria may be included as a part of an FBZ regulating plan.

1. Will the project design be harmonious with the surrounding land uses and neighborhood?
2. Will the proposed land uses be compatible with the surrounding neighborhood? Will the proposed development overburden the capacities of existing streets, utilities, parks, schools and other public facilities?
3. Will the structures be located to minimize the impact of their use and bulk on adjacent properties?
4. Will landscaping, berms, fences and/or walls be provided to buffer the site from undesirable views, noise, lighting or other off site negative influences and to buffer adjacent properties from negative influences that may be created by the proposed development?
5. Will vehicular access from the project to streets outside the project be combined, limited, located, designed and controlled to channel traffic to and from such areas conveniently and safely and in such a manner which minimizes traffic friction, noise and pollution and promotes free traffic flow without excessive interruption?
6. Will all the streets and drives provide logical, safe and convenient vehicular access to the facilities within the project?
7. Will streets and drives within the project area be connected to streets outside the project area in such a way that discourages their use by through traffic?
8. Will adequately sized parking areas be located throughout the project to provide safe and convenient access to specific facilities?
9. Will safe and convenient provision for the access and movement of handicapped persons and parking of vehicles for the handicapped be accommodated in the project design?
10. Will the design of streets, drives and parking areas within the project result in a minimum of area devoted to asphalt?
11. Will pedestrian walkways be functionally separated from vehicular traffic and landscaped to accomplish this? Will pedestrian walkways be designed and located in combination with other easements that are not used by motor vehicles?
12. Does the design encourage the preservation of significant natural features such as healthy vegetation, drainage channels, steep slopes and rock outcroppings? Are these significant natural features incorporated into the project design? (Ord. 94-107; Ord. 95-125; Ord. 01-42; Ord. 02-64; Ord. 03-74; Ord. 03-157; Ord. 09-50; Ord. 09-78)

7.5.603 (B): ESTABLISHMENT OR CHANGE OF ZONE DISTRICT BOUNDARIES:

B: A proposal for the establishment or change of zone district boundaries may be approved by the City Council only if the following findings are made:

1. The action will not be detrimental to the public interest, health, safety, convenience or general welfare.
2. The proposal is consistent with the goals and policies of the Comprehensive Plan.
3. Where a master plan exists, the proposal is consistent with such plan or an approved amendment to such plan. Master plans that have been classified as implemented do not have to be amended in order to be considered consistent with a zone change request.
4. For MU zone districts the proposal is consistent with any locational criteria for the establishment of the zone district, as stated in article 3, "Land Use Zoning Districts", of this Zoning Code. (Ord. 94-107; Ord. 97-111; Ord. 01-42; Ord. 03-157)

NONUSE VARIANCE REVIEW CRITERIA:

7.5.802 (B): CRITERIA FOR GRANTING A NONUSE VARIANCE:

B. Criteria For Granting: The following criteria must be met in order for any nonuse variance to be granted:

1. The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district; and
2. That the extraordinary or exceptional physical condition of the property will not allow a reasonable use of the property in its current zone in the absence of relief; and
3. That the granting of the variance will not have an adverse impact upon surrounding properties.

Nonuse variances to the parking and storage regulations (article 4, part 2 of this chapter) and to the sexually oriented business separation requirements (part 13 of this article) are subject to additional criteria set forth in subsections C and D of this section.

USE VARIANCE REVIEW CRITERIA:

7.5.803 (B): CRITERIA FOR GRANTING A USE VARIANCE:

The following criteria must be met in order for a use variance to be granted:

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to the property or class of uses in the same zone so that a denial of the petition would result in undue property loss; and
2. That such variance is necessary for the preservation and enjoyment of a property right of the petitioner; and also
3. That such variance will not be detrimental to the public welfare or convenience nor injurious to the property or improvements of other owners of property.

7.5.906 (A.4): APPEALS:

A. Appeals of Administrative Decisions:

4. Criteria For Review Of An Appeal Of An Administrative Decision: In the written notice, the appellant must substantiate the following:

a. Identify the explicit ordinance provisions which are in dispute.

b. Show that the administrative decision is incorrect because of one or more of the following:

(1) It was against the express language of this zoning ordinance, or

(2) It was against the express intent of this zoning ordinance, or

(3) It is unreasonable, or

(4) It is erroneous, or

(5) It is clearly contrary to law.

c. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

ADMINISTRATIVE RELIEF REQUEST REVIEW CRITERIA:

7.5.1102: FINDINGS NECESSARY TO GRANT ADMINISTRATIVE RELIEF:

To grant administrative relief, all of the following criteria must be met:

A. The strict application of the regulation in question is unreasonable given the development proposal or the measures proposed by the applicant or that the property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district and such conditions will not allow a reasonable use of the property in its current zone in the absence of relief.
B. The intent of this Zoning Code and the specific regulation in question is preserved.
C. The granting of the administrative relief will not result in an adverse impact on surrounding properties.
D. The granting of the administrative relief will not allow an increase in the number of dwelling units on a parcel. Administrative relief shall not be used to create or modify lots to the extent that they no longer meet the minimum lot size for the zone district in which they are located. (Ord. 86-39; Ord. 91-30; Ord. 94-107; Ord. 01-42; Ord. 03-16)

7.6.203: CONDITIONS FOR ANNEXATION:
To assist the City Council in its decision, each proposal for annexation shall be studied to determine whether:

E. The area proposed to be annexed is a logical extension of the City's boundary;

F. The development of the area proposed to be annexed will be beneficial to the City. Financial considerations, although important, are not the only criteria and shall not be the sole measure of benefit to the City;

G. There is a projected available water surplus at the time of request;

H. The existing and projected water facilities and/or wastewater facilities of the City are expected to be sufficient for the present and projected needs for the foreseeable future to serve all present users whether within or outside the corporate limits of the City;

I. The annexation can be effected at the time the utilities are extended or at some time in the future;

J. The City shall require as a condition of annexation the transfer of title to all groundwater underlying the land proposed to be annexed. Should such groundwater be separated from the land or otherwise be unavailable for transfer to the City, the City, at its discretion, may either refuse annexation or require payment commensurate with the value of such groundwater as a condition of annexation. The value of such groundwater shall be determined by the Utilities based on market conditions as presently exist;

K. All rights of way or easements required by the Utilities necessary to serve the proposed annexation, to serve beyond the annexation, and for system integrity, shall be granted to the Utilities. Utilities, at the time of utility system development, shall determine such rights of way and easements;

L. If the proposed annexation to the City overlaps an existing service area of another utility, the applicant shall petition the PUC (Public Utilities Commission) or other governing authority to revise the service area such that the new service area will be contiguous to the new corporate boundary of the City.

After the foregoing have been studied in such depth as the City Council shall require, the City Council in its discretion may annex or not annex the proposed area. In the event the City Council chooses to annex, it may require a contemporary annexation agreement specifying the installation and the time of installation of certain public and utility improvements, both on site and off site, that are required or not required under this Subdivision Code. City Council may specify such other requirements, as it deems necessary. In the event the City Council chooses not to annex, utilities shall not be extended unless Council is assured that an agreement for annexation can be enforced, and that the remaining provisions of this section for annexation subsequent to extension of utilities have been met. (Ord. 96-44; Ord. 01-42)