

EL PASO



COUNTY

COMMISSIONERS:
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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

TO: Board of County Commissioners
Darryl Glenn, President

FROM: Nina Ruiz, PM/Planner II
Gilbert LaForce, PE Engineer II
Craig Dossey, Executive Director

RE: Project File #: CS-17-001
Project Name: Hellbusch Rezone
Parcel No.: 71151-00-008

OWNER:	REPRESENTATIVE:
David P Hellbusch 4215 Bobby Kay Place Colorado Springs, CO 80908	Jerry Hannigan 19360 Spring Valley Road Monument, CO 80132

Commissioner District: 1

Planning Commission Hearing Date:	09/05/2017
Board of County Commissioners Hearing Date:	10/10/2017

EXECUTIVE SUMMARY

A request by David Hellbusch for map amendment (rezone) approval from the RR-5 (Residential Rural) zoning district to the CS (Commercial Services) zoning district to legalize an existing automobile and boat storage yard. The 3.75 acre property is zoned RR-5 (Residential Rural) and is located northwest of the intersection of Monument Lake Road and Mitchell Avenue, Section 15, Township 11 South, Range 67 West of the 6th Principal Meridian, El Paso County, Colorado. This property is located within the boundaries of the Tri-Lakes Comprehensive Plan (2000). A variance of use was previously approved by the Board of County Commissioners (BoCC) for the same parcel to allow a small engine repair business (PCD File No. VA-13-002, BOCC Resolution 13-442). A separate variance of use request to allow an automobile and boat storage yard was denied by the BoCC on July 12, 2016, citing incompatibility with the surrounding area (PCD File No. VA-15-007).



BoCC 16947 10/10/17 (R)

A. REQUEST/WAIVERS/MODIFICATIONS/AUTHORIZATION

Request: A request for map amendment (rezone) approval from the RR-5 (Residential Rural) zoning district to the CS (Commercial Services) zoning district.

Waiver(s)/Modification(s): There are no waivers or modifications associated with the request

Authorization to Sign: There are no associated documents requiring a signature by the Board of County Commissioners President.

B. Planning Commission Summary

Request Heard: September 5, 2017, as a regular item

Recommendation: Denial

Waiver Recommendation: N/A

Vote: 6 to 1 with Planning Commission Member Egbert in opposition

Vote Rationale: N/A

Summary of Hearing: See minutes attached

Legal Notice: N/A

C. APPROVAL CRITERIA

In approving a Map Amendment (rezoning), the following findings shall be made:

The application is in general conformance with the El Paso County Master Plan including applicable Small Area Plans or there has been a substantial change in the character of the neighborhood since the land was last zoned;

The rezoning is in compliance with all applicable statutory provisions including, but not limited to C.R.S §30-28-111 §30-28-113, and §30-28-116;

The proposed land use or zone district is compatible with the existing and permitted land uses and zone districts in all directions; and

The site is suitable for the intended use, including the ability to meet the standards as described in Chapter 5 of the Land Development Code, for the intended zone district.

D. LOCATION

North: RR-5 (Residential Rural)	Residential
South: Town of Monument	Residential
East: Town of Monument	Recreational vehicle & boat storage
West: RR-5 (Residential Rural)	Residential

E. BACKGROUND

The 3.75 acre metes and bounds parcel was created in 1950, prior to subdivision regulations being adopted by the El Paso County Board of County Commissioners (BoCC) on July 17, 1972, pursuant to C.R.S. §30-28-101. The property was zoned A-5 (Agricultural) in 1955. Due to changes of the nomenclature of the El Paso County Land Development Code (2016), the A-5 zoning district has been renamed as the RR-5 (Residential Rural) zoning district.

The property was used as a nursery with small engine repair as an accessory use beginning in the 1970's. The nursery use has since been discontinued, and the small engine repair was legalized through approval of a variance of use in 2013 (PCD file no. VA-13-002, BOCC Resolution 13-442). A variance of use request to allow an automobile and boat storage yard was submitted in 2015 and received a recommendation for approval from the Planning Commission but was later denied by the BoCC on July 12, 2016, citing incompatibility (PCD File No. VA-15-007). The majority of the surrounding properties are zoned RR-5 (Residential Rural). At the BOCC hearing, there was testimony provided by the owner of a nearby residential property who expressed concerns regarding visual impacts (Resolution No. 16-255 attached). The automobile and boat storage use on the property continued, and a notice of violation was issued February 8, 2017. The automobile and boat storage use is still occurring on the site, and the violation file remains open.

The proposed map amendment (rezone) to the CS (Commercial Services) zoning district would allow the automobile and boat storage yard to continue as an allowed use. Approval of the rezoning would also allow the use of the property to change to any of the allowed principal uses identified in Table 5-1 of Code (see attached for a copy of Table 5-1). The small engine repair is also an allowed use in the CS (Commercial Services) zoning district, meaning the previously approved variance of use would be rendered unnecessary should the map amendment (rezoning) request be approved.

F. ANALYSIS

1. Land Development Code Analysis

The adjacent property to the east is within the incorporated boundaries of the Town of Monument and is an outdoor recreational vehicle and boat storage facility (Mt. Herman RV Storage). The Hellbusch property, which is the subject of this map amendment request, has been used for non-residential purposes since the 1970's and no additional impacts are anticipated to adjacent properties beyond those currently occurring.

The Code requires outside storage to be 100 percent screened from view (Section 5.2.38.B of the Code) with the screening to be provided on the subject property. Off-site landscaping does not count towards the total landscaping requirement since the adjacent property owners could remove the vegetation in the future. All visual impacts will be addressed through the required site development plan review. The landscaping standards require the applicant to install trees along the perimeter of the property in those areas where the existing onsite vegetation does not provide screening, and to maintain the privacy fence for screening. The site development plan must demonstrate that the applicant can provide adequate onsite parking, circulation, fencing, and screening to accommodate both the existing small engine repair and the desired automobile and boat storage yard.

The attached aerial map of the area depicts the nearby property lines, ownership, and structures. Most of the directly adjacent residentially zoned properties are vacant. There is an adjacent parcel with a single family residence located directly to

the west of the subject property. The residence is on a shared driveway and is under the same ownership as the Mt. Herman RV Storage facility. Across the railroad tracks to the east is a subdivision within the Town of Monument. Due to the terrain, natural vegetation, and screening of the adjacent Mt. Herman storage facility the adjacent properties cannot easily view the existing Hellbusch storage facility. Approximately 400 feet northwest of the Hellbusch storage facility, across Crystal Creek, is another single family residence. Existing vegetation along the creek helps screen the storage facility from view at the residential structure; however, the storage facility may be viewed from their northern property line.

As mentioned briefly above, the property is adjacent to the railroad. Residential development adjacent to a railroad is typically discouraged and undesirable due to noise and safety concerns. Section 8.4.2.B.2 of the Land Development Code would require a noise study with noise mitigation if a request to rezone this property to a residential zoning district were to be submitted today. With that being said, it is very likely that the noise contours would render portions of the Hellbusch property unusable for residential purposes. Given that the property is currently zoned for residential uses, there would not be a requirement to go through the map amendment (rezoning) process; therefore, development of the property for residential uses could occur without prior evaluation of the noise impacts associated with the railroad. Furthermore, there is no evidence of existing noise mitigation measures (e.g., walls, berms, etc.) onsite that could help minimize the impacts of the railroad noise.

2. Zoning Compliance

The applicant is requesting to rezone the subject property to the CS (Commercial Services) zoning district. The CS (Commercial Services) zoning district is intended to accommodate retail, wholesale or service commercial uses that serve the general public. The density and dimensional standards for the CS (Commercial Services) zoning district are as follows:

- Minimum zoning district area- 2 acres
- Minimum lot size – none
- Setbacks – 25 foot front, side and rear.
- Maximum building height – 45 feet
- Maximum lot coverage – none

A site development plan demonstrating compliance with the dimensional standards as well as the development standards included in Chapter 6 of the Land Development Code (2016) is required. Approval of this rezoning application will bring the existing uses onsite into compliance pending administrative approval of a site development plan.

3. Policy Plan Analysis

The El Paso County Policy Plan (1998) has a dual purpose; it serves as a guiding document concerning broader land use planning issues, and provides a framework to tie together the more detailed sub-area elements of the County Master Plan. Relevant policies are as follows:

Policy 6.1.1- Allow for a balance of mutually supporting interdependent land uses, including employment, housing and services in the more urban and urbanizing areas of the County.

Policy 6.1.10- Ensure that new development will not create a disproportionately high demand on public services and facilities by virtue of its location, design or timing.

Policy 6.1.11 - Plan and implement land development so that it will be functionally and aesthetically integrated within the context of adjoining properties and uses.

Policy 6.1.15- Recognize the need for new development and redevelopment to respond to changes in demographic, market and technological conditions.

Policy 6.3.4 - Commercial, office, industrial and, residential development should be compatible with surrounding land uses in terms of scale, intensity and potential impacts.

The applicant's property has been used for non-residential purposes since the 1970's. The 1998 aerial (attached) shows a landscaping business, which has since been discontinued, that extended into three (3) of the four (4) adjacent parcels. The landscaping business included greenhouses as well as the unscreened outside storage of landscaping materials. In viewing the 2016 aerial (attached), the site appears markedly different with most of the greenhouses being removed and much of the area being redeveloped into automobile and boat yards with paved storage areas, screening, and established storage spaces.

Since the initial zoning of this portion of the County in 1955 to A-5, this area has been urbanized. The Plan encourages a balance of mutually supporting interdependent land uses, including employment, housing and services in urbanizing areas of the County. The adjacent property to the east is within the incorporated boundaries of the Town of Monument and is utilized as an outdoor recreational vehicle and boat storage facility. There is an ever-increasing need for storage facilities due to the urbanization of El Paso County. Many residents do not have space on their urban lot to store a boat or recreational vehicle. The redevelopment of

this site from a landscaping business to an automobile and boat storage yard is in response to market demand.

The foremost impact associated with the automobile and boat storage yard is visual. The development standards found in Chapter 6 of the Land Development Code promote aesthetic integration of the use within the context of adjoining properties and uses. Some of the screening requirements in Chapter 6 include:

- Outside storage shall be 100 percent screened from view
- When adjacent to a residential property, a 15 foot buffer is required with plantings of 1 tree every 25 feet, with 1/3 of the trees being evergreen, which would apply to the southwestern property boundary.

The proposed CS zoning could presumably be considered more compatible with the surrounding land uses in terms of visual integration of the existing RV storage into the area if the applicant complies with the development standards and mitigates all visual impacts to the surrounding properties.

4. Small Area Plan Analysis

The property is within the Tri-Lakes Comprehensive Plan (2000), specifically Subarea 4 - Monument and Jackson Creek. Retail and service uses are recommended for this subarea:

“Monument/Jackson Creek lies at the point where the economic spheres of influence for both the Colorado Springs area and the Greater Denver Region overlap. While this created tremendous opportunities for growth in the residential sector, it also creates need in the retail and service sector. Monument will be the community which addresses those needs.” (Page 100)

The CS (Commercial Services) zoning district is intended to accommodate retail, wholesale or service commercial uses that serve the general public. The Tri-Lakes Plan supports retail and service uses in this subarea based upon the citation included above if the use is to be located within the Town of Monument. In this instance, the application may only be consistent with the Tri-Lakes Plan if the property were to be annexed into Town of Monument.

Unlike other sub-areas in the Tri-Lakes Plan, the Monument and Jackson Creek subarea analysis does not contain a Land Use Scenario discussion. The Land Use Scenarios provided in the Plan for the other sub-areas include recommendations for development such as acceptable residential densities, allowances or restrictions for non-residential uses, and general land use policies pertaining to other topical areas (e.g., transportation, geological conditions, etc.). The lack of a Land Use Scenario discussion for the Monument/Jackson Creek sub-area creates a certain level of uncertainty as to the consistency of the proposed rezoning application with the sub-area and the overall Tri-Lakes Plan. As stated in the applicant's letter of intent,

“Annexing into the Town of Monument was explored again last winter but requires water and sewer connections which are currently not available at a cost that the owner can bear.”

The lack of a Land Use Scenario discussion leads to ambiguity as to what uses should be allowed within the sub-area for properties within unincorporated El Paso County. The property being used for noncommercial purposes for nearly fifty years, being located directly adjacent to the Town of Monument where commercial uses are supported, and being located adjacent to the railroad where residential uses are highly discouraged may indicate that the sub-area was intended to allow for some retail and service uses.

For the reasons stated above, staff recommends that any finding of consistency with the County master plan in relation to the land use, be based primarily upon a finding of consistency with the Policy Plan.

5. Other Master Plan Elements

The El Paso County Wildlife Habitat Descriptors (1996) identifies the property as having a low wildlife impact potential.

The Master Plan for Mineral Extraction (1996) identifies potential upland deposits in the area of the subject property. A mineral rights certification was prepared by the applicant indicating that, upon researching the records with El Paso County, no severed mineral rights exist.

G. PHYSICAL SITE CHARACTERISTICS

1. Hazards

No physical hazards were identified in the review of the rezone request.

2. Wildlife

The El Paso County Wildlife Descriptors Map, adopted as an element of the El Paso County master plan, shows this area as having low potential impact to wildlife. Both the United States Fish & Wildlife Service (USFWS) and El Paso County Environmental Services were notified of the request and had no comments.

3. Floodplain

No portion of the property is located within a FEMA 100-year floodplain as designated in the current FEMA Flood Insurance Rate Map (FIRM) Numbers 08041C0276F and 08041C0260F.

4. Drainage and Erosion

The site is located within the Crystal Creek (FOMO5300) drainage basin, which is a studied basin. No drainage or bridge fees are assessed with rezoning applications.

A final drainage report and grading and erosion control plan is required with the subsequent site development plan application. The report and plan shall identify

permanent best management practices (BMPs) to mitigate water quality and flood control impacts generated by the existing automobile and boat storage yard.

5. Transportation

The applicant provided a copy of the traffic impact study that was submitted with the previously approved variance of use for the adjacent Mount Herman Boat and RV Storage (located within the incorporated boundaries of the Town of Monument) dated February 6, 2014, and prepared by LSC, Incorporated. The study shows that trip generation rates for an automobile and boat storage yard are low (0.09 average weekday trips per unit); thus, a traffic impact study was not required. Based on the prior variance of use request for 80 spaces, the automobile and boat storage yard would generate approximately 7.2 average daily trips. Since the automobile and boat storage yard is not anticipated to generate over 100 more daily vehicle trips than would have been generated under the previous zoning, County Road Impact fees are not triggered at this time.

The previous variance of use approval for small engine repair estimated 15 weekday trips. The CS (Commercial Services) zoning allows the applicant to submit land uses with a higher trip generation than the automobile and boat storage yard. Trip generation for any site plan applications established under the CS (Commercial Services) zoning shall be evaluated to determine if the imposition of fees based on zoning actions is triggered. The road impact fee is triggered when the cumulative trips generated by all the land uses established under the CS (Commercial Services) zoning exceeds 100 more trips than the previous zoning.

Access to the property is through a shared driveway with Mount Herman Boat and RV Storage at the east end of the intersection of Monument Lake Road and Mitchell Avenue. Mount Herman Boat and RV Storage widened, realigned and paved the access point as part of their site plan approval in Monument. No further improvements are necessary at this time.

H. SERVICES

1. Water

Findings concerning water supply are not required with a rezone request. The property is currently served by a well.

2. Sanitation

Wastewater services will be provided by the existing on-site wastewater treatment systems (OWTS). El Paso County Public Health had no objection to the proposed request. No RV dump station is proposed.

3. Emergency Services

The site is located within the boundaries of the Tri-Lakes Monument Fire Protection District. A referral was sent to the District and no comments were received.

4. Utilities

Mountain View Electric Association currently provides electrical service to the property.

5. Metropolitan Districts

The property is not within a metropolitan district.

6. Parks/Trails

El Paso County Parks did not identify any planned parks or trails on or near the property.

7. Schools

The development is located within Lewis-Palmer School District No. 38.

I. APPLICABLE RESOLUTIONS: See attached

J. STATUS OF MAJOR ISSUES

There are no outstanding concerns.

K. CONDITIONS AND NOTATIONS

Should the Planning Commission and the Board of County Commissioners find that the request meets the criteria for approval outlined in Section 5.3.5 (Map Amendment, Rezoning) of the El Paso County Land Development Code (2016), staff recommends the following conditions and notations.

CONDITIONS

1. The applicant shall apply for and receive approval of site development plan demonstrating compliance with all development standards, to include landscaping within 120 days of this action.
2. The developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements. Applicable agencies include, but are not limited to: the Colorado Parks and Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed threatened species.
3. Any future or subsequent development and/or use of the property shall be in accordance with the use, density, and dimensional standards of the CS (Commercial Services) zoning district and with the applicable sections of the Land Development Code and Engineering Criteria Manual.
4. This map amendment (rezoning) action is subject to compliance with the County Road Impact Fee Program, however the initial intended uses of a small engine repair and automobile and boat storage yard do not collectively meet the 100 additional daily trip threshold for payment of Road Impact fees. Additional

development of the site pursuant to the CS (Commercial Services) zoning, including but not limited to changes in use or expansion of the existing uses, may trigger application of the Road Impact fee. The fee imposed is on the cumulative trips generated by uses not accounted for under the previous RR-5 (Residential Rural) zoning.

NOTATIONS

1. If a zone or rezone petition has been disapproved by the Board of County Commissioners, resubmittal of the previously denied petition will not be accepted for a period of one (1) year if it pertains to the same parcel of land and is a petition for a change to the same zone that was previously denied. However, if evidence is presented showing that there has been a substantial change in physical conditions or circumstances, the Planning Commission may reconsider said petition. The time limitation of one (1) year shall be computed from the date of final determination by the Board of County Commissioners or, in the event of court litigation, from the date of the entry of final judgment of any court of record.
2. Rezoning requests not forwarded to the Board of County Commissioners for consideration within 180 days of Planning Commission action will be deemed withdrawn and will have to be resubmitted in their entirety.

L. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified two (2) adjoining property owners on September 25, 2017 for the Board of County Commissioners meetings. Responses will be provided at the hearing.

M. ATTACHMENTS

Vicinity Map
Letter of Intent
Rezone Map
2016 Aerial Map
1998 Aerial Map
Table 5-1, Principal Uses, of the Land Development Code (2016)
BoCC Resolution 16-255
Planning Commission Minutes
Planning Commission Resolution
Board of County Commissioners Resolution

El Paso County Parcel Information

File Name: CS-17-001

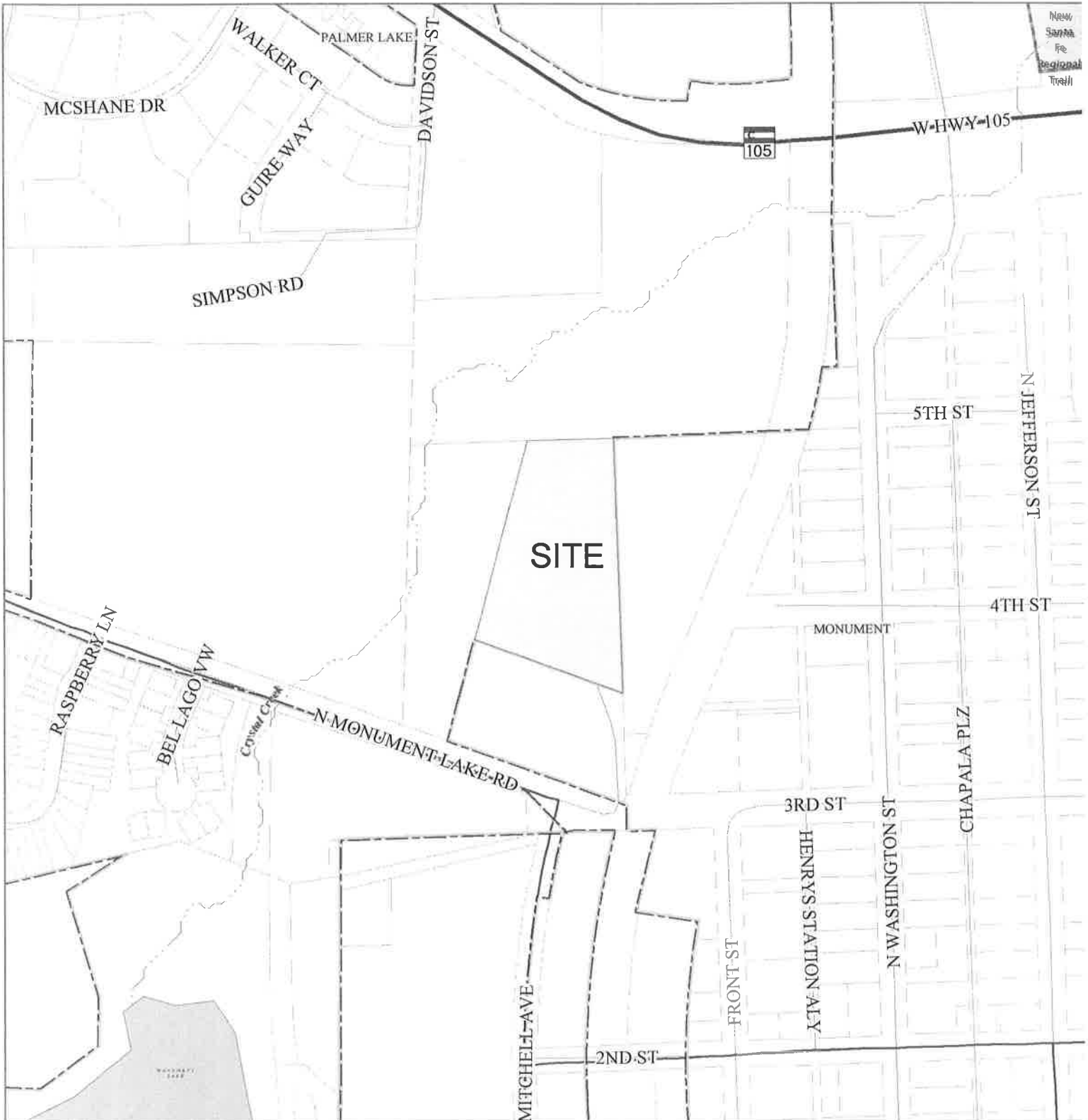
PARCEL	NAME
7115100008	HELLBUSCH DAVID P

Zone Map No.: --

ADDRESS	CITY	STATE
4215 BOBBIE KAY PL	COLORADO SPRINGS	CO

ZIP	ZIPLUS
80908	1357

Date: August 16, 2017



Please report any parcel discrepancies to:
 El Paso County Assessor
 1675 W. Garden of the Gods Rd.
 Colorado Springs, CO 80907
 (719) 520-6600



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Jerome W.

HANNIGAN and ASSOCIATES, INC.

Land Planning • Land Surveying • Land Development Consulting

Date: February 06, 2017

Rev: 5/3/17; 6-15-17

Job Number: 17-002

**LETTER OF INTENT
MONUMENT SMALL ENGINE REPAIR & STORAGE**

Monument Small Engine Repair & Storage is a proposed Commercial Service rezoning to permit adding outside vehicle storage on a 3.86 acre parcel occupied by Monument Small Engine Repair, a long standing business in the Tri-Lakes area of the County. This parcel and several adjoining parcels including those west of the Railroad but within the Town of Monument were used for a landscape business including greenhouses, maintenance shop and storage, and display yard which began in the 1970's and has since closed. A Variance of Use was approved by the Board of Commissioners in October 2013 to permit the small engine repair use to continue within an RR-5 zoned area. The small engine business is a permitted use in the CS zone as is outside storage. No additional uses are proposed or anticipated. Although in the County, the property adjoins the Town of Monument on the east and south. More specifically, the property lies north of Monument Lake Road and just west of the Denver & Rio Grande Railroad in Section 15, T11S, R67W, 6th P.M.

As mentioned, the property to the east is within the Town and zoned Planned Industrial. That 3.98 acre parcel, known as "Mt. Herman RV Storage" is used for outside storage use. The parcel adjoining to the south is within the Town and zoned Planned Residential District to accommodate the single family house within it that used to be the landscape business owner's home. It now belongs to the owner of Mt. Herman RV Storage who resides there. North of that and adjoining our parcel to the west, County RR-5 zoning covers a 2.86 acre parcel that had greenhouses and a small house on it. This parcel, too, is owned by the owner of Mt. Herman RV Storage. The house remains and the owner's son-in-law resides there. Adjoining our site to the north is a 10.76 acre RR-5 parcel that is vacant and houses the floodplain of Crystal Creek. The floodplain functions as a transition zone from the platted residential lots northwesterly and Highway 105 on the north, to the railroad, town and this site. The owner of the floodplain parcel owns and resides on an adjoining 5.04 acre parcel and leases the floodplain parcel to others for grazing.

The proposed storage use is in keeping with that same use adjoining and makes constructive use of about an acre of the unused portion of the property. It will generate additional income making the cyclical small engine business more secure and, hopefully, eventually adding an employee. All necessary utilities including a commercial use well and septic system currently serve the site and the existing business provides on site management and security during normal business hours from Monday through Saturday.

Access to the property is from the east end of Monument Lake Road near where it intersects the railroad. Easements totaling at least 34 feet in width run north approximately 150 feet through the residential parcel to the property. Mitchell Avenue joins Monument Lake Road in a "T" intersection perhaps 100 feet west of this access. Both roads are two lane asphalt paved from this intersection; south on Mitchell and west on Monument Lake. Both function as a local access road.

(2)

The short 100 foot portion of Monument Lake Road going east from Mitchell has served only to provide access to these parcels and has recently been widened, realigned and surfaced from the intersection through Mt Herman's residential parcel to their Storage business. This is the same access Monument Small Engine uses and these upgrades are sufficient for this proposed use as well.

The area devoted to storage slopes gently down to the west, is approximately 1.25 acres (32.4% of the site) in size and lies on the northern and eastern portion of the property, directly adjoining and at about the same elevation as Mt. Herman RV Storage. The drive lanes and storage stalls are paved with recycled asphalt and spaces are delineated with polypropylene rope. Approximately 70 twelve foot wide spaces are possible, ranging from 11 feet to 44 feet in length. A 6 foot high basket weave cedar fence has been placed around the storage area on this site which matches that on the Mt. Herman Storage site. Although there are no published ITE trip generation rates for this use, when completed, this storage business is expected to add about 7.5 trips per weekday to the current 10 trips based on the traffic analysis done for Mt. Herman Storage. That number of trips is well within the capacity of the current improved access.

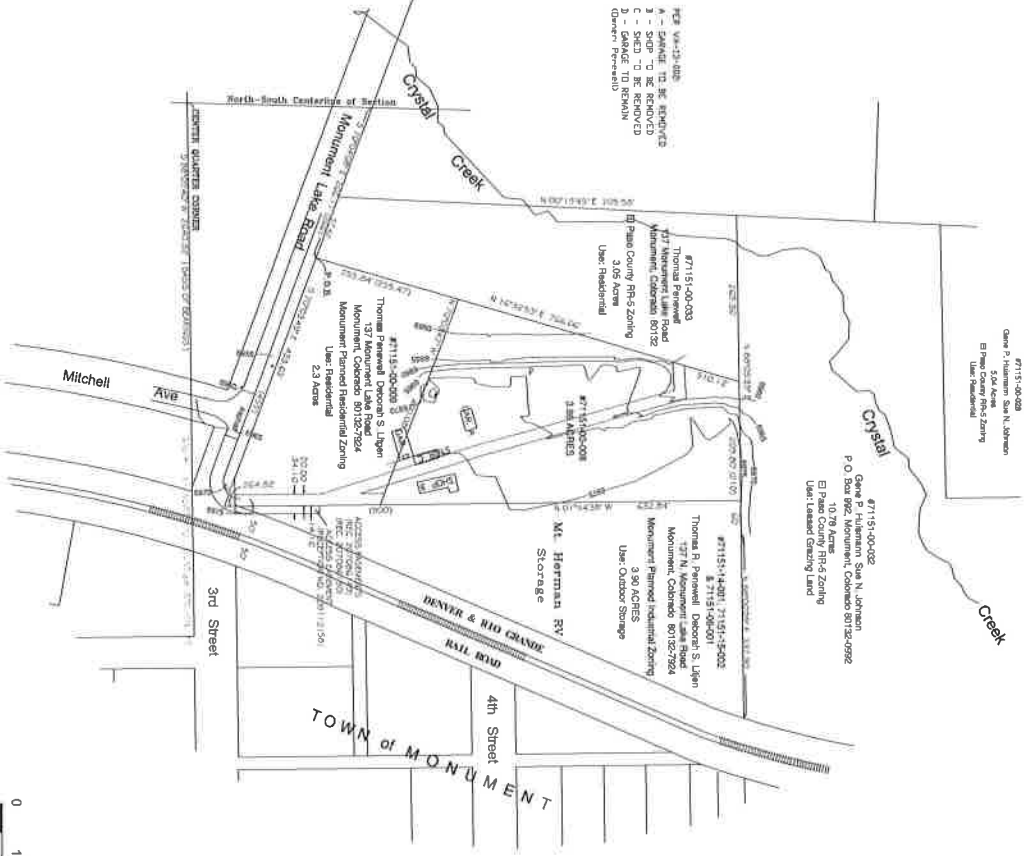
The current RR-5 zoning is simply the zone category now assigned to the original County initiated zoning of A-5 done in 1955. This parcel has never been rezoned, consequently, as the initially agricultural land uses dwindled away it left the still viable but non-conforming small engine repair which was approved with the Variance of Use in 2013. A Variance of Use was denied by the County last year for this storage use, perhaps because rezoning was thought a better solution. Annexing into the Town of Monument was explored again last winter but requires water and sewer connections which are currently not available at a cost that the owner can bear. And, as previously mentioned, sufficient water and wastewater capacity exists onsite currently for all planned uses.

The property lies within Sub Area 3 of the 2000 Tri Lakes Comprehensive Plan which is the applicable Small Area Plan that is part of the County Master Plan. Discussion in the Sub Area 3 chapter focuses on existing residential uses rather than any commercial land use and therefore has little to say other than that parts of the sub area may be able to annex into either Monument or Palmer Lake at a later time. At the time the Tri Lakes Plan was formulated, this parcel and all adjoining parcels (13 acres +) were an active commercial use as the Mountain Farmer. Indeed, they were active even before the previous 1983 Tri Lakes Plan. Little was felt needed to address.

Storage use on this site is compatible with the industrial, storage and business uses adjoining in the Town and nearby commercial uses in Palmer Lake or the Tri Lakes Fire District Station no. 1 on Highway 105 and of course the railroad. Any visual concerns are mitigated by the fencing and required or proposed landscaping. The storage use is minimal (30% of the adjoiner) and will not adversely affect neighboring property values. Sufficient infrastructure and emergency services already exist for the proposed use.

MONUMENT SMALL ENGINE REPAIR & STORAGE

A Rezoning to Commercial Service in the
 NE Quarter of Section 15, Township 11 South,
 Range 67 West of the 6th P.M., El Paso County,
 Colorado



VICINITY MAP
(no scale)



PROPERTY DESCRIPTION:

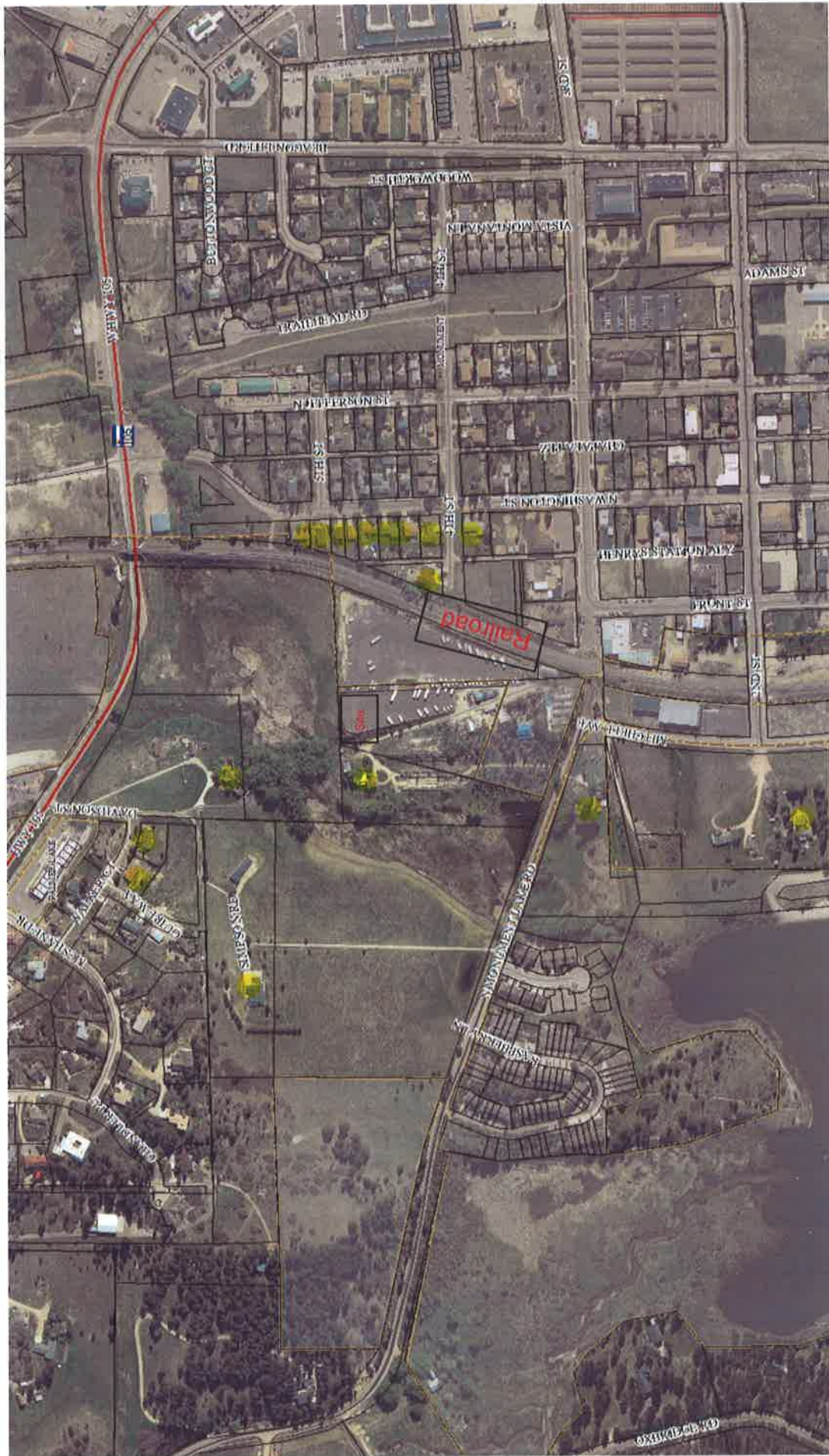
Reception No. 207089984
 A tract of land being a portion of the Southwest Quarter of the North-east Quarter of Section 15, Township 11 South, Range 67 West of the 6th P.M., El Paso County, State of Colorado described as follows:
 Beginning at a point on the North Right-of-Way line of the former Colorado Springs and Denver Street Railway, the said point being 288 feet 15 inches measured on the North Right-of-Way line of the said State Highway and 366 feet Northwesterly from the center of the said Section 15; Thence Southwesterly to the North Right-of-Way line of the said State Highway; Thence Westerly along the former Colorado Springs and Denver Road 900 feet; Thence Westerly of 4th Street 210 feet to a point approximately 10 feet Northwesterly of the center of the said State Highway; Thence Southwesterly 800 feet, more or less, to the Point of Beginning in the Town of Monument, El Paso County, Colorado.
 EXCEPT the portion so described in Exhibit 14, Exhibit by dated recorded September 27, 1991, Book 1552 at Page 548.

NOTE:

Original Zoning is R-5. Current Land Use is Small Engine Repair.
 (A) Permitted Commercial Service (Use) which was Approved as V-1-3-02
 Proposed Zoning is Commercial Service in either with the Small Engine Shop and about an area of Outdoor Boat and Camp Storage.

Property Address: Zarr Davidson Street
 Property Owner: Applicant David P. Helbach
 4715 96th Ave. West
 Colorado Springs, Colorado 80909
 Mineral Rights Owner: No Severed Mineral Rights

<p> </p>	<p> H&E ASSOCIATES, INC. LAND DEVELOPMENT CONSULTING 1480 PENNY WALKER ROAD COLORADO SPRINGS, CO 80909 TEL: 719-593-7444 FAX: 719-593-7445 </p>	<p> Monument Small Engine Repair & Storage Zone Change Map in Section 15, T11S, R67W (In) P. M. El Paso County, Colorado Monument Small Engine Repair 1/16/02 1/16/02 </p>
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Residence





Chapter 5 Use and Dimensional Standards
 Updated thru 05/17/2016
 Table 5-1 Principal Uses

Use Type	Agricultural Zoning Districts		Residential Zoning Districts										Commercial Zoning Districts			Industrial Zoning Districts				Obsolete Zoning Districts				Subject to Specific Use Standards?	Site Development Plan Required to Initiate Use?	Site Plan Required to Initiate Use?				
	F-5	A-35	A-5	RR-5	RR-2.5	RR-0.5	RS-20000	RS-6000	RS-5000	RM-12	RM-30	RT	MHP	MHS	MHFR	RVP	CC	CR	CS	I-2	I-3	C-1	C-2				M	R-4		
CMRS Facility, Freestanding		S															S	S	S	S	S	S	S	S	S	S	YES	YES		
CMRS Facility, Stealth		S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	A	A	A	A	A	A	A	A	A	A	YES	YES		
Commercial or Retail as Part of Overall Shopping Center																	A	A	A								YES			
Community Building		S	S	S	S	S	S	S	S	S	S	S	S	S	S	A	A	A	A			S	S	A			YES	YES		
Composting Facility																						S		S			YES			
Construction Equipment Storage and Field Offices, Temporary	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	YES	YES		
Contractor's Equipment Yard																			S	A			S	A			YES			
Convenience Store																	A	A	A											
Copy Shop																	A	A	A								YES	YES		
Dairy		A ³	A ³	A ³																				S			YES			
Dry Cleaning Plant																				A	A						YES	YES		
Dwelling, Attached Single-Family																														
Dwelling, Detached Single-Family	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A					S				YES	YES	
Dwelling, Multifamily																												YES		
Dwelling, Two-Family	S	A	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S										YES	
Educational Institution, Private	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S					S	S	A		YES		

Notes:

- ¹"A" = Allowed Use, "S" =Special Use, "T"= Temporary Use
- ²Minimum lot area of 5 acres irrespective of nonconforming lot or parcel status
- ³Minimum lot area of 10 acres irrespective of nonconforming lot or parcel status
- ⁴Minimum lot area of 35 acres irrespective of nonconforming lot or parcel status
- ⁵Use may be an allowed use or special use depending on size and other criteria. See specific use criteria.
- ⁶A minimum of 1acre is required for a private stable.
- ⁷Marjuana Club is prohibited in all zoning districts.
- ⁸Use requires central water and wastewater services.

Chapter 5 Use and Dimensional Standards
 Updated thru 05/17/2016
 Table 5-1 Principal Uses

Use Type	Agricultural Zoning Districts		Residential Zoning Districts										Commercial Zoning Districts			Industrial Zoning Districts				Obsolete Zoning Districts				Subject to Specific Use Standards?	Site Development Plan Required to Infiltrate Use?	Site Plan Required to Infiltrate Use?								
	F-5	A-3.5	A-5	RR-5	RR-2.5	RR-0.5	RS-20000	RS-5000	RS-5000	RM-12	RM-30	RT	MHP	MHS	MHPR	RVP	CC	CR	CS	I-2	I-3	C-1	C-2				M	R-4						
Publishing Companies																				S	A	A			A								YES	
Race Track			S ²	S ²																													YES	
Ranch	A ³	A ³	A ³	A ³																														
Recreation Camp	S	S	S	S							S																						YES	
Recreational Vehicle and Boat Storage																	S			A	A	A			A								YES	
Recycling Facility																																	YES	
Rehabilitation Facility																				A	A	A			A	A							YES	
Religious Housing																																	YES	
Religious Institution	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A												YES	
Rendering Plant			S	S ²																													YES	
Rental Services																				A	A	A			A	A							YES	
Repair Shop																				A	A	A			A	A							YES	
Restaurant																				A	A	A			A	A							YES	
Retail Sales, General																				A	A	A			A	A							YES	
Retirement Center																				A	A	A			A	A							YES	
Riding Academy			A ²	S ²	S ²																												YES	

Notes:

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- ⁴Minimum lot area of 35 acres irrespective of nonconforming lot or parcel status
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- ⁶A minimum of 1 acre is required for a private stable.
- ⁷Marijuana Club is prohibited in all zoning districts.
- ⁸Use requires central water and wastewater services.

Chapter 5 Use and Dimensional Standards
 Updated thru 05/17/2016
 Table 5-1 Principal Uses

Use Type	Agricultural Zoning Districts		Residential Zoning Districts														Commercial Zoning Districts			Industrial Zoning Districts			Obsolete Zoning Districts				Subject to Specific Use Standards?	Site Development Plan Required to Infill Use?	Site Plan Required to Infill Use?							
	F-5	A-35	A-5	RR-5	RR-2.5	RR-0.5	RS-20000	RS-5000	RS-5000	RM-12	RM-30	RT	MHP	MHS	MHPR	RVP	CC	CR	CS	I-2	I-3	C-1	C-2	M	R-4											
Temporary Housing	T	T	T	T																								YES		YES						
Theater																	S	A	A										YES							
Theater, Outdoor	S		S														S	S	S										YES							
Tower, Commercial (non CMRS)		S															S	S	S	S	S	S	S	S	S	S		YES								
Trash Transfer Facility																												YES								
Tree Farm	A	A	A	A																																
Truck and Recreational Vehicle Repair Garage																			A	S	A							YES								
Truck Farm		A ²	A																																	
Truck Stop		S ²																	S ²																	
Vehicle Repair Garage																	S	S	A	S	S							YES								
Warehouse																	S		A	A	A															
Warehouse, Flammable Material																																				
Waste Tire Recycling			S																										YES							
Wholesale Business																	S		A	A	A								YES							
Wind/Meteorological Measuring Facilities	S	S	S	S							S																	YES					YES			

Notes:
 A = Allowed Use, *S* = Special Use, *T* = Temporary Use
¹Minimum lot area of 5 acres irrespective of nonconforming lot or parcel status
²Minimum lot area of 10 acres irrespective of nonconforming lot or parcel status
³Minimum lot area of 35 acres irrespective of nonconforming lot or parcel status
⁴Use may be an allowed use or special use depending on size and other criteria. See specific use criteria.
⁵A minimum of 1acre is required for a private stable.
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Chapter 5 Use and Dimensional Standards
 Updated thru 05/17/2016
 Table 5-1 Principal Uses

Use Type	Agricultural Zoning Districts			Residential Zoning Districts												Commercial Zoning Districts			Industrial Zoning Districts			Obsolete Zoning Districts				Subject to Specific Use Standards?	Site Development Plan Required to Initiate Use?	Site Plan Required to Initiate Use?		
	F-5	A-35	A-5	RR-5	RR-2.5	RR-0.5	RS-20000	RS-6000	RS-5000	RM-12	RM-30	RT	MHP	MHS	MHPR	RVP	CC	CR	CS	I-2	I-3	C-1	C-2	M	R-4					
Wood Sales (Firewood)	S	S	S																S										YES	
Yard Sales	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T			

Notes:

A = Allowed Use, "S" =Special Use, "T"= Temporary Use

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El Paso County, CO



216077394

RESOLUTION NO. 16-255

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

DISAPPROVAL OF VARIANCE OF USE FOR HELLBUSH OUTDOOR RV &
BOAT STORAGE (VA-15-007)

WHEREAS, David P. Hellbush did file a petition with the Development Services Department of El Paso County for approval of a Variance of Use within the RR-5 (Residential Rural) Zone District to allow an automobile and boat storage yard where such is not permitted; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on June 21, 2016, upon which date the Planning Commission did by formal resolution recommend approval of the subject Use Variance petition; and

WHEREAS, a public hearing was held by this Board on July 12, 2016; and

WHEREAS, based on the evidence, testimony, exhibits, study of the master plan for the unincorporated area of the county, recommendations of the El Paso County Planning Commission, comments of the El Paso County Development Services Department, comments of public officials and agencies, and comments from all interested parties, this Board finds as follows:

1. That proper posting, publication and public notice were provided as required by law for the hearings before the Planning Commission and the Board of County Commissioners.
2. That the hearings before the Planning Commission and Board of County Commissioners were extensive and complete, that all pertinent facts, matters and issues were submitted, and that all interested parties were heard at those hearings.
3. That for the following reason(s), the proposed variance of use is not in the best interest of the health, safety, morals, convenience, order, prosperity, and welfare of the citizens of El Paso County:
 - a. That the proposed use is not compatible with the surrounding area, harmonious with the character of the neighborhood, is detrimental to the surrounding area, detrimental to the future development of the area, and detrimental to the health, safety, or welfare of the inhabitants of the area and the County.

NEW DOC



- b. That the site plan for the proposed variance of use will not provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping.
 - c. That the strict application of any of the provisions of the Land Development Code would not result in peculiar and exceptional practical difficulties or undue hardship on either the owner or the contract purchaser of the property.
13. That the proposed land use does permit the use of any area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.
14. That for the above-stated and other reasons, the proposed variance of use is not in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

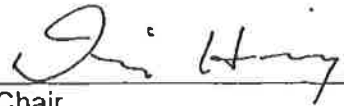
NOW, THEREFORE, BE IT RESOLVED the Board of County Commissioners of El Paso County, Colorado, hereby disapproves the request by David P. Hellbush for a Variance of Use to allow an automobile and boat storage yard within the RR-5 (Residential Rural) Zone District where such is not a permitted use for the unincorporated area of El Paso County as described in Exhibit A, which is attached hereto and incorporated by reference;

DONE THIS 12th day of July, 2016, at Colorado Springs, Colorado.

ATTEST
By: 
County Clerk & Recorder



BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: 
Chair

Resolution No. 16-255
EXHIBIT A

A tract of land being a portion of the southwest quarter of the northwest quarter of Section 15, Township 11 South, Range 67 West of the 6th Principal Meridian, County of El Paso, State of Colorado, being described as follows:

Beginning at a point on the north right of way line of the present Colorado Springs and Denver State Highway, the said point being 266 feet southeasterly from the north and south centerline of the said Section 15 as measured on the north right of way line of the said State Highway, and 366 feet northeasterly from the center of the said Section 15;

Thence southeasterly on the north right of way line of the said State Highway 455 feet to the former Colorado Springs and Denver Road;

Thence northerly along the former Colorado Springs and Denver Road 900 feet;

Thence westerly at right angles 210 feet to a point approximately 10 feet west and 50 feet north of a certain springs;

Thence southerly 800 feet, more or less, to the point of Beginning.

In the Town of Monument, El Paso County, Colorado.

Except that portion to Charles M. Wittier and Hilda M. Wittier by deed recorded September 27, 1960 in Book 1826 at Page 246.

EL PASO

COMMISSIONERS:
DARRYL GLENN (PRESIDENT)
MARK WALLER (PRESIDENT PRO TEMPORE)



COUNTY

STAN VANDERWERF
LONGINOS GONZALEZ
PEGGY LITTLETON

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

Planning Commission (PC) Meeting
Tuesday, September 5, 2017
El Paso County Planning and Community Development Department
2880 International Circle, Hearing Room
Colorado Springs, Colorado 80910

PRESENT AND VOTING: JIM EGBERT, ALLAN CREELY, KEVIN CURRY, TONY GIOIA, LAWRENCE WOOD, KEVIN MASTIN AND JOAN LUCIA-TREESE

ABSENT: SABRINA RAINEY, BRIAN RISLEY, AND MITCHELL SMITH

STAFF PRESENT: CRAIG DOSSEY, NINA RUIZ, KARI PARSONS, ELIZABETH NIJKAMP, GILBERT LAFORCE, TOMMY HOFF, AND EL PASO COUNTY ATTORNEYS COLE EMMONS AND KENNETH HODGES

CS-17-001

RUIZ

**MAP AMENDMENT (REZONE)
HELLBUSCH REZONE**

A request by David Hellbusch for approval of a map amendment (rezoning) of 3.75 acres from RR-5 (Residential Rural) to CS (Commercial Service). The property is located north of the intersection of Monument Lake Road and Mitchell Avenue. (Parcel No. 71151-00-008)

Ms. Nina Ruiz gave a brief overview of the request and asked **Mr. Cole Emmons** to go over the Approval Criteria for a map amendment (rezone).

Ms. Ruiz introduced the applicant's representative **Mr. Jerry Hannigan** to give their presentation and answered questions from the Planning Commission.

Mr. Hannigan, gave his presentation and answered questions from the Planning Commission. His presentation is on permanent file.

Mr. Curry – My questions concentrate primarily on zoning. I question the zoning of the adjoining properties that are immediately to the east and south. Answer from **Mr. Hannigan** – The property to the south is zoned residential to accommodate the house

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

that runs the storage site. The one to the east is zoned planned development industrial. The use of storage is more commercial than industrial.

Mr. Curry -- There are some potentially approved uses associated with the rezone that might not be appropriate relative to the property there, such as a garbage dump or sexual explicit business. **Answer from Mr. Hannigan** -- That access is problematic; it's a dirt drive. When Mt. Herman came in, the Town of Monument required some improvements. This used to be an old railroad access that was abandoned. The residential parcel does join a public road, but there's no access to any of the other parcels. If you were going to propose a use on this particular property that was going to require anything more than 100 ADT, I suspect that it would require a dedicated ROW and construction of a road. I don't think the access situation is conducive to anything beyond what we already have there.

Mr. Curry – Regarding the Board of County Commissioners and their rationale for their disapproval included several factors. The proposed use by right was incompatible with the neighborhood. And the other thing that is relevant to zoning is that commercial uses could interfere with mineral extraction. If this property is rezoned, can you address why those wouldn't be concerns? **Answer from Mr. Hannigan** -- As far as mineral rights, the mineral rights have not been severed and therefore would not be an exercise of mineral rights that would impact that property. I don't agree with the BoCC's comments regarding compatibility. It wasn't until later in the BoCC hearing that it was obvious to some that the use had already begun and was in place without permission. We as a County do not have any way to address a situation like that without doing one of two things. One is to approve and create conditions that fix a problem or you punish and deny. My opinion of what happened that day is that the Commissioners did not want to approve and perhaps give some credence to the idea that you can get do things like that. Personal opinion only.

Mr. Mastin – When I look at the reasons for not approving the variance, I get the impression that it was denied, and so rather than do anything to address the variance, the thought was to get it rezoned instead. However, there's still verbiage from the County Commissioners that says "the proposed use is not compatible with the surrounding area, harmonious with the character of the neighborhood ..." and we have 38 homeowners that are against doing this. All that being said, the use is separated by a fence line by what is already being done. How is this one compatible when the other one just like it is not? At what point do we hear the 38 homeowners concerns? **Answer from Mr. Hannigan** – At the rezone stage you cannot address that, but at the site development plan you can address those concerns. It is the intent of the applicant that the use can be re-implemented. There are landscaping requirements at the site development stage as well. As far as the 38 homeowners, they come primarily from further away than adjacent. They see this use of course, but they also see the other businesses. There isn't a lot in the way of live landscaping, but there will be according the site development plan.

Mr. Egbert – Does **Mr. Hellbusch** have an access through those properties to the south? Answer from **Mr. Hannigan** – Yes, it's an easement, not a dedicated roadway.

Mr. Gioia – Since we brought up the access easement, are there any restrictions to the easement? Answer – no, but there is only one burden that it has to allow access to the residential property.

Ms. Ruiz then gave her presentation and answered questions from the Planning Commission.

Mr. Gilbert LaForce gave his engineering findings. His presentation is on permanent file.

IN FAVOR: None

IN OPPOSITION:

Mr. Gene and Sue Huismann – Our property is adjacent to the Hellbusch property. We've heard this is a hardship. We don't agree. We've heard that it's seasonal; that's incorrect. I have become even more concerned about what future uses could look like. You're opening it up for many issues in the future. Also, we do not find it aesthetically pleasing which is one of your approval criteria. In addition, our property is one property with two parcel numbers, so to refer to it as vacant property is inaccurate. We don't believe he has met the conditions of his approved variance, for example a permanent structure instead of a temporary one. There are site plan issues from the original variance including sloping issues with no retaining walls and nothing built to County standards. The rezone would directly impact this property and its value. The 2016 Variance was denied and RVs and trailers were directed to be moved. Up until July 2017, no RVs or trailers were removed. It does not fit with the majority of the surrounding area which is housing. This is a big impact to our neighborhood and community. We are very worried about the extreme slope coming into our property. There are noxious weeds encroaching and there is a high visual impact.

Mr. Egbert – One of the things we hear a lot of is they have a property they like with the view and then they have a neighbor wants to develop and they want to claim it's a hardship; but the views in Colorado are not protected. To me, it seems like a lot of what you bring up has to deal with views. The view looking at the existing RV storage isn't a problem, but it's very similar to the one in question. Answer/comments from **Mr. and Mrs. Huismann** – It's not just about the views. Things have been done on that property and haven't gone through the proper channels, like grading, etc. Going from residential to commercial is not appropriate when you have residential on three sides.

Mr. Hannigan gave **Mr. Duncan Bremer** an opportunity for rebuttal. This is a hearing on a rezone and not a site development plan. The rezone is important, but the property was probably zoned inaccurately. The residential zoning is clearly not the right zone.

Mr. Curry – A great number of things you argue are relative to the rezoning are actually applicable to the usage. You spoke of the RVs not being very tall, but a CMRS tower can be much taller and a rezone would allow it. You spoke of the lack of intensity of use with an RV storage facility, but a great number of other approved commercial uses would be a higher intensity of use. You spoke about noise and fumes, and the lack of those things with an RV park, but the potential uses for other commercial uses could be much greater such as a garbage disposal site. So, to me I'm not convinced that a rezone is necessary to achieve what you're trying to do. Answer from **Mr. Bremer** – As I stated before, I think it's been wrongly zoned and it should be zoned commercial. Staff says its compatible and recommend approval, and I think in most cases, the County has appropriate Site Development Plans that assess those noise, odor, etc. issues. (NOTE: staff does not make recommendations and did not make this statement in the public hearing)

Mr. Curry – Would you say then that the other two residential properties are zoned incorrectly? Answer from **Mr. Bremer** – I don't represent them, but there are residences on them. There are zones where residences and commerce are compatible. That's just not the case anymore. In general, it's a healthy thing. No one is going to want to build a house on this property. It's good planning to zone it commercial use.

Mr. Mastin – Is the reason you think it's necessary to zone this residential because the owner made commercial improvements on the property for the parking lot, the fill was all done without going through the necessary processes. They acquired a residential property, did those commercial improvements, and requested a variance which was denied. How does requesting this to be changed to commercial change any of the reasons why the Commissioners denied it in the first place? I'll quote you what they said again. "The proposed use is not compatible with the surrounding area, harmonious with the character of the neighborhood, is detrimental to the surrounding area, detrimental to the future development of the area, and detrimental to health, safety, or welfare of the inhabitants of the area in the County." How does rezoning this commercial mitigate that? Answer from **Mr. Bremer** – Having been a Commissioner, I can speak with some experience. Those resolutions are drafted beforehand by staff for the benefit of the Commissioners so they don't have to draft something in hearing which could be a pretty ugly process. I believe what happened in this situation is there was a motion to approve the variance which didn't get sufficient approval, which in turned caused a disapproval. So, yes those findings are put into a resolution. The purpose of drafting that resolution and to frankly avoid a lawsuit from someone who is disappointed in their motion, it is designed to lay the foundation to say we found all these things and its within our role and discretion to find; and therefore a judge will say he can't overcome their discretionary findings. So, that's the context in why the motion was there, and admittedly, when this comes back before the Board, some of the members who voted to deny are still on the Board. We will have an uphill battle to say the Board made a mistake when they made those findings. I'm perfectly willing to tell them they made a mistake.

Mr. Gioia – In the report it states that no physical hazards are identified, but the Huismann's pointed out garbage in the grading material. Answer from **Ms. Ruiz** – The application was sent over to the Health Department and they did not identify any concerns. If they want to file a complaint with the EPA, there is an opportunity to do that online. For the grading, that would be up to the Site Development Plan to legalize what needs to be completed. If a Grading and Erosion Control Permit is required, it will be determined at that time.

Mr. Creely – There was a suggestion that we change Condition #1. Answer from **Ms. Ruiz** – **Mr. Dossey** offered me a re-wording of that condition. "The applicant shall apply for and receive approval of a site development plan demonstrating compliance with all development standards in the Land Development Code, including the applicable landscaping requirements, within 120 days from the date of approval by the Board of County Commissioners. The Planning and Community Development Director shall have the authority to allow an additional 45 days for completion of the site development plan upon request by the application within the initial 120 days if the Planning and Community Development Director finds that the applicant has made a good faith effort to receive such approval. Failure to comply with this requirement will result in a zoning violation as defined in the El Paso County Land Development Code, and will be subject to appropriate means of enforcement."

Mr. Emmons – The site development plan is a requirement of the rezoning; therefore I don't think it is appropriate to condition a rezone application with what needs to be addressed within the site development plan.

Ms. Ruiz – With the applicant's variance of use request for the small engine shop that was approved in 2013, it wasn't a condition of approval that they complete the site development plan; but it is a requirement to get a site development plan with any new commercial use. Even if the storage use is no longer there because all the RVs have been removed, they are still in violation because that site development plan has not been applied for and approved; so it's important to have this condition because of the delay already since 2013. We need to get them into compliance and on a pretty tight timeline and be able to close this project.

Mr. Dossey – We have a lot of uses that just start operating and they come into enforcement, and that process could take years. We've done the years thing at this point, and it's time for the property to come into compliance. That's why there is a timeline that is needed. If we don't do that, then we have to go through the enforcement process which would be the outcome anyway if they don't meet this requirement. By adding that language, of good faith effort, and if they haven't done anything, I won't extend it. I have to see a good faith effort on their part. We have to deal with enough of these uses out there that are deliberately not following the rules, or unknowingly not following the rules, that I don't think we should create more of the same.

DISCUSSION:

Mr. Gioia – While I agree with some of the statements regarding a right to a view, when we are talking about a rezone and one of the policy guidelines does say that it has to be functionally and aesthetically integrated. So that aesthetically means to me that we are talking about a view. I also have to say that I have a problem with stating they have issue with the Board of County Commissioners denial rationale. They believe it was a punishment of a scofflaw. I did not see that language in there, they said it has to be compatible. They stated it's not compatible and we may differ on our opinions, but I believe they've spoken pretty clearly about what their rationale is regarding their decision. For myself, I am going to abide by the County Commissioners even though last time I voted for the variance.

Mr. Creely – I also voted for it last time, but not with a lot of enthusiasm. The property was used for the intended use and seems compatible, but to rezone and open it up to any number of things where it's not compatible is my concern. I don't believe the Board made the decision to punish anyone. I will be voting against the request.

Ms. Lucia-Treese – concur with my colleagues. I am not comfortable approving this request. I feel making that comment against a previous BoCC decision is somewhat disingenuous and to say that the BoCC is punishing someone is not helpful to the process of the current issues. I will be voting against the request.

Mr. Curry – I share the concern about the Board of County Commissioners and their decision. I must admit, Mr. Bremer's arguments to the boiler plate language was compelling, but I'm not convinced it was persuasive. For me I go back to our four criteria for this rezone request. The first is that it's in compliance with the plans. Staff point out that we are not really clear that it is in compliance. We are also not clear that it is not in compliance. Compliance with statutory provisions, I think we are in compliance there. I look at the zone compatibility, and I struggle there. With regard to suitability, I think we are okay there as well. In thinking about the BoCC and the compatibility issue, I just can't get past the fact that there are a whole lot of other uses that could come with a rezone. Their decision was clear, but I still like the idea of a variance and not a rezone. I don't think I'm going to be able to support this request for a rezone.

Mr. Egbert – I found Mr. Bremer's arguments to be very persuasive. Looking at this as a land use issue rather than what specifically is going to be there, that area is going to be commercial. As Mr. Bremer said, it really has been commercial from the time the owners started using it. I will support the rezone because I think that's the right answer, and I feel like the things we are hung up on will work out through the site development plan process.

PC ACTION: GIOIA MOVED/CREELY SECONDED TO DENY REGULAR ITEM NO. 4, CS-17-001 FOR APPROVAL OF A MAP AMENDMENT (REZONE) FOR HELLBUSCH UTILIZING RESOLUTION PAGE 28 CITING INCOMPATIBILITY (MORE PARTICULARLY DESCRIBED ON PAGE 17-029) AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION PASSED FOR DENIAL (6-1). MR. EGBERT WAS THE NAY VOTE.

MAP AMENDMENT (REZONING) (RECOMMEND DENIAL)

Commissioner Gioia moved that the following Resolution be adopted:

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF EL PASO

STATE OF COLORADO

RESOLUTION NO. CS-17-001

WHEREAS, David P. Hellbusch did file an application with the El Paso County Planning and Community Development Department for an amendment of the El Paso County Zoning Map to rezone property in the unincorporated area of El Paso County as described in Exhibit A, which is attached hereto and incorporated herein by reference, from the RR-5 (Residential Rural) zoning district to the CS (Commercial Service) zoning district; and

WHEREAS, a public hearing was held by this Commission on September 5, 2017; and

WHEREAS, based on the evidence, testimony, exhibits, consideration of the master plan for the unincorporated area of the County, presentation and comments of the El Paso County Planning and Community Development Department and other County representatives, comments of public officials and agencies, comments from all interested persons, comments by the general public, and comments by the El Paso County Planning Commission Members during the hearing, this Commission finds as follows:

1. That the application was properly submitted for consideration by the Planning Commission;
2. That proper posting, publication and public notice were provided as required by law for the hearing before the Planning Commission;
3. That the hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested persons and the general public were heard at that hearing;
4. The proposed map amendment (rezoning) is not in general conformance with the El Paso County Master Plan including applicable Small Area Plans.
5. The proposed land use or zone district is not compatible with existing and permitted land uses and zone districts in all directions.
6. The site is suitable for the intended use, including the ability to meet the standards as described in Chapter 5 of the Land Development Code, for the intended zone district

7. The proposed land use does not permit the use of any area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.
8. For the above-stated and other reasons, the proposed amendment of the El Paso County Zoning Map is not in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission recommends that the petition of David P. Hellbusch for an amendment to the El Paso County Zoning Map to rezone the following described property located in the unincorporated area of El Paso County from the RR-5 (Residential Rural) zoning district to the CS (Commercial Service) zoning district be denied by the Board of County Commissioners:

AND BE IT FURTHER RESOLVED that this Resolution and the recommendations contained herein be forwarded to the Board of County Commissioners for its consideration.

Commissioner Lucia-Treese seconded the adoption of the foregoing Resolution.

The roll having been called, the vote was as follows:

Commissioner Gioia	aye
Commissioner Creely	aye
Commissioner Curry	aye
Commissioner Mastin	aye
Commissioner Wood	aye
Commissioner Lucia-Treese	aye
Commissioner Egbert	nay

The Resolution was adopted by a vote of 6 to 1 by the El Paso County Planning Commission, State of Colorado.

DATED: September 5, 2017

EXHIBIT A

A tract of land being a portion of the Southwest Quarter of the North-east Quarter of Section 15, Township 11 South, Range 67 West of the 6th Principal Meridian, County of El Paso, State of Colorado described as follows:

Beginning at a point on the North Right-of-Way line of the present Colorado Springs and Denver State Highway, the said point being 266 feet Southeasterly from the North and South centerline of the said Section 15 as measured on the North Right-of-Way line of the said State highway and 366 feet Northeasterly from the center of the said Section 15; Thence Southeasterly on the North Right-of-Way line of the said State Highway 455 feet to the former Colorado Springs and Denver Road; Thence Northerly along the former Colorado Springs and Denver Road 900 feet; Thence Westerly at right angles 210 feet to a point approximately 10 feet West and 50 feet North of a certain springs; Thence Southerly 800 feet, more or less, to the Point of Beginning in the Town of Monument, El Paso County, Colorado. EXCEPT that portion to Charles M. Whittier and Hilda M. Whittier by deed recorded September 27, 1960 in Book 1826 at Page 246,

RESOLUTION NO. 17-

**EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS, STATE OF
COLORADO**

**APPROVAL OF THE HELLBUSCH REZONE MAP AMENDMENT
(REZONING) (CS-17-001)**

WHEREAS David P. Hellbusch, did file an application with the El Paso County Planning and Community Development Department for an amendment to the El Paso County Zoning Map to rezone for property located within the unincorporated area of the County, more particularly described in Exhibit A, which is attached hereto and incorporated by reference from the RR-5 (Residential Rural) zoning district to the CS (Commercial Service) zoning district; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on September 5, 2017, upon which date the Planning Commission did by formal resolution recommend approval of the subject map amendment application; and

WHEREAS, a public hearing was held by this Board on October 10, 2017; and

WHEREAS, based on the evidence, testimony, exhibits, consideration of the master plan for the unincorporated area of the County, presentation and comments of the El Paso County Planning and Community Development Department and other County representatives, comments of public officials and agencies, comments from all interested persons, comments by the general public, comments by the El Paso County Planning Commission Members, and comments by the Board of County Commissioners during the hearing, this Board finds as follows:

1. The application was properly submitted for consideration by the Board of County Commissioners.
2. Proper posting, publication, and public notice were provided as required by law for the hearings before the Planning Commission and the Board of County Commissioners of El Paso County.
3. The hearings before the Planning Commission and the Board of County Commissioners were extensive and complete, all pertinent facts, matters and issues were submitted and reviewed, and all interested persons were heard at those hearings.
4. The proposed zoning is in compliance with the recommendations set forth in the Master Plan for the unincorporated area of the county.

5. The proposed land use will be compatible with existing and permitted land uses in the area.
6. The proposed land use does not permit the use of any area containing a commercial mineral deposit in a manner, which would interfere with the present or future extraction of such deposit by an extractor.
7. For the above-stated and other reasons, the proposed Amendment to the El Paso County Zoning Map is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.
7. Changing conditions clearly require amendment to the Zoning Resolutions.

NOW, THEREFORE, BE IT RESOLVED the El Paso County Board of County Commissioners hereby approves the petition of David P. Hellbusch to amend the El Paso County Zoning Map to rezone property located in the unincorporated area of El Paso County as described in Exhibit A, which is attached hereto and incorporated by reference, from the RR-5 (Residential Rural) zoning district to the CS (Commercial Service) zoning district;

BE IT FURTHER RESOLVED the following conditions and notations shall be placed upon this approval:

CONDITIONS OF APPROVAL

1. The applicant shall apply for and receive approval of site development plan demonstrating compliance with all development standards, to include landscaping within 120 days of this action.
2. The developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements. Applicable agencies include, but are not limited to: the Colorado Parks and Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed threatened species.
3. Any future or subsequent development and/or use of the property shall be in accordance with the use, density, and dimensional standards of the CS (Commercial Services) zoning district and with the applicable sections of the Land Development Code and Engineering Criteria Manual.
4. This map amendment (rezoning) action is subject to compliance with the County Road Impact Fee Program, however the initial intended uses of a small engine repair and automobile and boat storage yard do not collectively meet the 100 additional daily trip threshold for payment of Road Impact fees.

Additional development of the site pursuant to the CS (Commercial Services) zoning, including but not limited to changes in use or expansion of the existing uses, may trigger application of the Road Impact fee. The fee imposed is on the cumulative trips generated by uses not accounted for under the previous RR-5 (Residential Rural) zoning.

NOTATIONS

1. If a zone or rezone petition has been disapproved by the Board of County Commissioners, resubmittal of the previously denied petition will not be accepted for a period of one (1) year if it pertains to the same parcel of land and is a petition for a change to the same zone that was previously denied. However, if evidence is presented showing that there has been a substantial change in physical conditions or circumstances, the Planning Commission may reconsider said petition. The time limitation of one (1) year shall be computed from the date of final determination by the Board of County Commissioners or, in the event of court litigation, from the date of the entry of final judgment of any court of record.
2. Rezoning requests not forwarded to the Board of County Commissioners for consideration within 180 days of Planning Commission action will be deemed withdrawn and will have to be resubmitted in their entirety.

AND BE IT FURTHER RESOLVED the record and recommendations of the El Paso County Planning Commission be adopted, except as modified herein.

DONE THIS 10th day of October, 2017, at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:

By: _____
President

By: _____
County Clerk & Recorder

EXHIBIT A

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