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Board of County Commissioners  
Holly Williams, District 1  
Carrie Geitner, District 2  
Stan VanderWerf, District 3  
Longinos Gonzalez, Jr., District 4  
Cami Bremer, District 5

## SUMMARY MEMORANDUM

TO: El Paso County Board of County Commissioners  
FROM: Planning & Community Development  
DATE: 9/28/2023  
RE: VA232; 7135 Templeton Gap - Landscaping Business

### Project Description

A request by Ben Fisk for approval of a Variance of Use on 5.00 acres to allow a contractor's equipment yard in the RR-5 (Residential Rural) district. The applicant is currently using the property for a contractor's equipment yard. The subject property is adjacent to properties within the City of Colorado Springs, that are currently zoned PUD and C6, as well as properties within Unincorporated El Paso County that are zoned RR-5 (Residential Rural) and CR (Commercial Regional). The property is located 7135 Templeton Gap and is 0.33 miles south of the intersection of East Woodmen Road and Templeton Gap Road.

### Notation

Please see the Planning Commission Minutes from September 7, 2023, for a complete discussion of the topic and the project manager's staff report for staff analysis and conditions.

### Planning Commission Recommendation and Vote

Ms. Merriam moved / Mr. Moraes seconded for approval, for the Variance of Use utilizing the resolution attached to the staff report, with two conditions and three notations, that this item be forwarded to the Board of County Commissioners for their consideration. The motion was **approved (7-0)**. The item was heard as a called-up consent agenda item. There was no public opposition.

### Discussion

There were no public comments regarding this item. The Planning Commissioners had limited discussion as to why the applicant could not rezone the property to a commercial zoning district. Staff stated that a commercial zoning district would allow for all commercial uses allowed in that zoning district to be permitted on the property whereas a Variance of Use is for a specific commercial use and would protect the neighborhood from larger commercial development.

### Attachments

1. Planning Commission Minutes from 9/7/2023.
2. Signed Planning Commission Resolution.
3. Planning Commission Staff Report.
4. Draft BOCC Resolution.

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## **EL PASO COUNTY PLANNING COMMISSION**

### **MEETING RESULTS (UNOFFICIAL RESULTS)**

Planning Commission (PC) Meeting  
Thursday, September 7, 2023  
El Paso County Planning and Community Development Department  
2880 International Circle – Second Floor Hearing Room  
Colorado Springs, Colorado

#### **REGULAR HEARING, 9:00 A.M.**

**PC MEMBERS PRESENT AND VOTING:** SARAH BRITTAIN JACK, JAY CARLSON, BRANDY MERRIAM, ERIC MORAES, BRYCE SCHUETTPELZ, WAYNE SMITH, AND CHRISTOPHER WHITNEY.

**PC MEMBERS VIRTUAL AND VOTING:** NONE.

**PC MEMBERS PRESENT AND NOT VOTING:** JIM BYERS.

**PC MEMBERS ABSENT:** THOMAS BAILEY, BECKY FULLER, JEFFREY MARKEWICH, KARA OFFNER, AND TIM TROWBRIDGE.

**COUNTY STAFF PRESENT:** MEGGAN HERINGTON, JUSTIN KILGORE, JOSHUA PALMER, GILBERT LAFORCE, KYLIE BAGLEY, CARLOS HERNANDEZ MARTINEZ, DANIEL TORRES, ED SCHOENHEIT, ASHLYN MATHY, MIRANDA BENSON, AND LORI SEAGO.

**OTHERS PRESENT AND SPEAKING:** JENN EISENHART, WAYNE ROBINSON, GAIL ROBINSON, PATTY ERNST, MARGARET WEISHUHN, CHRIS JEUB, MATT DUNSTON, BARB KUNKEL, PAM RESNER, HEATHER TIFFANY, MIKE PROVENCAL, ALTON GANSKY, VICKI DAVIS, CORY TOWN, BRYAN CANAAN, JAKE VAN PELT, RIKKI VAN PELT, MELANIE SWEET, JOE BARAN, JANET SCHULTE, AND STEVE CLARK.

#### **1. REPORT ITEMS**

**A. Planning Department.** The next PC Hearing is Thursday, September 21, 2023, at 9:00 A.M.

#### **2. CALL FOR PUBLIC COMMENT FOR ITEMS NOT ON THE HEARING AGENDA.**

**Ms. Jenn Eisenhart** spoke about her difficult experience with a developer from a past project regarding utility improvements and following the approved design guidelines. She mentioned LDC Chapter 8 requirements. It was asked that she give her contact info to Mr. Kilgore so that he and Ms. Seago can investigate the situation and get back to her.

**3. CONSENT ITEMS**

**A. Adoption of Minutes of meeting held August 17, 2023.**

**PC ACTION: THE MINUTES WERE APPROVED AS PRESENTED BY UNANIMOUS CONSENT (7-0).**

**B. VR236**

**MATHY**

**VACATION AND REPLAT  
POWERS CENTRE FILING NO. 3A**

A request by Oliver Watts Consulting for approval to Vacate and Replat one (1) lot into three (3) lots. The 5.55-acre property is zoned CR (Commercial Regional) and is located east and south of the intersection of Powers Boulevard and Palmer Park Boulevard. (Parcel No. 5406304050) (Commissioner District No. 2).

**NO PUBLIC COMMENT OR DISCUSSION.**

**PC ACTION: MORAES MOVED / BRITAIN JACK SECONDED TO RECOMMEND APPROVAL OF CONSENT ITEM NUMBER 3B, FILE NUMBER VR236 FOR A VACATION AND REPLAT, POWERS CENTRE FILING NO. 3A, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH SIX (6) CONDITIONS, ONE (1) NOTATION, AND A RECOMMENDED FINDING OF CONDITIONAL SUFFICIENCY WITH REGARD TO WATER QUALITY, QUANTITY, AND DEPENDABILITY, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

**C. P233**

**MATHY**

**MAP AMENDMENT (REZONE)  
16850 STEPLER ROAD - REZONE**

A request by Charlie Stewart for approval of a Map Amendment (Rezoning) of 36.38 acres from RR-5 (Residential Rural) to RR-2.5 (Residential Rural). The property is located at 16850 Stepler Road, approximately one-half mile from the intersection of Settlers Ranch Road and Stepler Road. (Parcel No. 6100000485) (Commissioner District No. 1).

**PC ACTION: THIS ITEM WAS PULLED TO BE HEARD AS A CALLED-UP CONSENT ITEM BY MR. WHITNEY.**

**D. MS226**

**MATHY**

**MINOR SUBDIVISION  
MCDANIELS ROAD MINOR SUBDIVISION**

A request by Greg Zindorf for approval of a 40-acre Minor Subdivision illustrating four (4) single-family residential lots. The property is zoned RR-5 (Residential Rural) and is located at 22755 McDaniels Road, at the corner of McDaniels Road and Log Road (Parcel No. 3400000295) (Commissioner District No. 4).

**PC ACTION: THIS ITEM WAS PULLED TO BE HEARD AS A CALLED-UP CONSENT ITEM PER PUBLIC REQUEST.**

E. P232

BAGLEY

**MAP AMENDMENT (REZONE)  
2020 N. ELLICOTT - CORDERO FIL. 2 REZONE**

A request by Angel Cordero for approval of a Map Amendment (Rezoning) of 16.59 acres from A-35 (Agricultural) to A-5 (Agricultural). The property is located at 2020 North Ellicott Highway and is 1.5 miles north of the intersection of Ellicott Highway and Highway 24. (Parcel No. 3400000482) (Commissioner District No. 4).

**PC ACTION: BRITAIN JACK MOVED / MERRIAM SECONDED TO RECOMMEND APPROVAL OF CONSENT ITEM NUMBER 3E, FILE NUMBER P232 FOR A MAP AMENDMENT (REZONE), 2020 N. ELLICOTT - CORDERO FIL. 2 REZONE, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH TWO (2) CONDITIONS AND TWO (2) NOTATIONS, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

F. VA232

BAGLEY

**VARIANCE OF USE  
7135 TEMPLETON GAP - LANDSCAPING BUSINESS**

A request by Ben Fisk for approval of a Variance of Use on 5.00 acres to allow a contractors equipment yard in the RR-5 (Residential Rural) zoning district. The property is located at 7135 Templeton Gap Road and is 0.33 miles south of the intersection of East Woodmen Road and Templeton Gap Road. (Parcel No. 5307000005) (Commissioner District No. 2).

**PC ACTION: THIS ITEM WAS PULLED TO BE HEARD AS A CALLED-UP CONSENT ITEM BY MR. CARLSON.**

**4. CALLED-UP CONSENT ITEMS:**

3C. P233

MATHY

**MAP AMENDMENT (REZONE)  
16850 STEPLER ROAD - REZONE**

A request by Charlie Stewart for approval of a Map Amendment (Rezoning) of 36.38 acres from RR-5 (Residential Rural) to RR-2.5 (Residential Rural). The property is located at 16850 Stepler Road, approximately one-half mile from the intersection of Settlers Ranch Road and Stepler Road. (Parcel No. 6100000485) (Commissioner District No. 1).

**STAFF & APPLICANT PRESENTATIONS**

**Mr. Carlson** asked for the definition of Agricultural Stand and asked if produce could be both sold and stored.

**Ms. Mathy** answered that it could be any agricultural structure and doesn't specify the storage. She stated there should be a buffer between the stand and neighbors. Presentation continued.

**Mr. Whitney** asked if the area was surrounded by RR-5.

**Ms. Mathy** answered that it is surrounded by RR-5 and PUD.

**Mr. Whitney** asked how the lots are smaller than 5 acres if the zoning is RR-5.

**Ms. Mathy** answered that they may have been platted that way, which can happen for many reasons.

**Mr. Carlson** asked to be shown which parcels are less than 5 acres.

**Ms. Mathy** pointed several out on the slideshow image. Presentation continued.

**Mr. Whitney** clarified that even though they are only requesting to rezone currently, they could have the ability to subdivide later. Ms. Mathy confirmed. Presentation Continued.

**Mr. Kilgore** answered the earlier question regarding surrounding lot sizes. The adjacent properties are 3.82, 2.5, and 2.5 acres. Presentation Continued.

**Ms. Herington** provided clarification that the surrounding area is not entirely RR-5. She referred to an image in the presentation. The pink represents a PUD of 2.5-acre zoning.

**Mr. Whitney** referred to the staff report's analysis.

**Ms. Mathy** explained that different resources (GIS, Assessor, etc.) were showing different results, but the PUD is accurate.

**Mr. Carlson** asked about the zoning of the lot directly north of the subject property.

**Ms. Merriam** asked for the GIS overlay of the surrounding area.

**Ms. Mathy** showed the GIS of the zoning. The parcel immediately north is PUD.

**Ms. Merriam** asked if livestock is on the properties south and east of the subject property.

**Ms. Mathy** answered that the zoning is RR-5.

**Ms. Herington** added that livestock would be allowed on those properties, but PCD can't answer whether or not they're raising livestock.

**Mr. Whitney** stated he's familiar with the area and there is livestock. Presentation continued.

**Mr. Moraes** pointed out that the rezone map provided by the applicant shows RR-5 as the surrounding zoning.

**Mr. Noah Brehmer**, with Kimley Horn & Assoc., reiterated that there is a disconnect between the Assessor's Office and the current PUD zoning per GIS. The PUD is correct.

**NO PUBLIC COMMENTS. NO FURTHER DISCUSSION.**

**PC ACTION: BRITAIN JACK MOVED / SMITH SECONDED TO RECOMMEND APPROVAL OF CALLED-UP ITEM NUMBER 3C, FILE NUMBER P233 FOR A MAP AMENDMENT (REZONE), 16850 STEPLER ROAD -**

**REZONE, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH FIVE (5) CONDITIONS AND TWO (2) NOTATIONS, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (6-1).**

**IN FAVOR:** BRITTAIN JACK, CARLSON, MORAES, SCHUETTPELZ, SMITH, AND WHITNEY.

**IN OPPOSITION:** MERRIAM.

**COMMENTS:** MS. MERRIAM is concerned about losing land in the eastern part of the County. It's part of the culture. MR. SCHUETTPELZ clarified that he felt comfortable recommending approval because the area is truly surrounded by RR-2.5 and PUD of that same size. This is a good transition.

**3D. MS226**

**MATHY**

**MINOR SUBDIVISION  
MCDANIELS ROAD MINOR SUBDIVISION**

A request by Greg Zindorf for approval of a 40-acre Minor Subdivision illustrating four (4) single-family residential lots. The property is zoned RR-5 (Residential Rural) and is located at 22755 McDaniels Road, at the corner of McDaniels Road and Log Road (Parcel No. 3400000295) (Commissioner District No. 4).

**STAFF & APPLICANT PRESENTATIONS**

**Ms. Merriam** asked if each property would need their own well and septic systems. (Carlos confirmed) She then asked if septic systems would affect the floodplain.

**Ms. Seago** explained that the State Engineer's Office issues the well permits and determines location. The County Public Health Department issues septic system permits and determines location.

**Mr. Carlson** asked if driveways could cross the floodplain.

**Mr. Hernandez Martinez** answered that he doesn't think they can. Grading within a floodplain is deferred to the PPRBD Floodplain Administrator and is typically not allowed.

**Ms. Herington** added that the floodplain is in a "no-build" area identified on the plat which would mean that no roads or driveways are allowed within that area.

**Mr. Carlson** clarified then that if homes were built on the south side of the floodplain, they would not be able to access Log Road to the north.

**Mr. Hernandez Martinez** agreed and stated they would need access from McDaniels Road.

**Mr. LaForce** stated he needed to make a correction. He stated "no-build" refers to structures. Roads and/or driveways could be allowed but would need additional permitting from the PPRBD Floodplain Administrator. It's not generally recommended because someone could be stranded in their home if they're not able to cross their driveway during a flood. There is no ECM criterion that says they can't do it.

**Ms. Herington** reiterated that from the Planning perspective, when single-family home site plans are reviewed by PCD, they *are* evaluated with the floodplain and "no-build" designation in mind.

She stated PCD would have a say in the site of the homes and whether they cross the floodplain. It is PCD's intent that the homes should not need to cross the floodplain to access the road.

**Mr. Carlson** stated that he is concerned that someone in the future could propose subdividing the lots further (for example, cutting each lot in half). He asked if the newly created lots could be granted access to any other road besides McDaniels Road to the north.

**Ms. Herington** stated that if someone was proposing a subdivision in the future, they would need to go through this same process and that topic would be explored at that time.

**Mr. Whitney** asked if the property was currently zoned RR-5. (Ms. Mathy confirmed.) He further asked if the area is surrounded by A-35 zoning. (Ms. Mathy confirmed.)

**Mr. Carlson** clarified that the rezoning was already approved.

**Ms. Mathy** confirmed and further stated that the proposed lots exceed the RR-5 5-acre minimum.

**Mr. Carlson** asked what the word "illustrated" means within the context used for this project. Is that implying there would be a later change to the number of lots.

**Ms. Mathy** used the word "shown". She further stated that the 4 lots currently proposed are also what is shown on the applicant's Final Plat. They are each under 10 acres.

**Ms. Herington** mentioned that the lot sizes are under 10 acres each, so they would not easily be able to further subdivide as Mr. Carlson was asking. Presentation continued.

**Mr. Smith** asked how much area is available on which to build a home under the assumption that home sites will be restricted to the north of the floodplain on the western lot.

**Mr. Guman**, with William Guman & Assoc., stated he did not have the exact amount of square footage available, but there should be plenty of space to accommodate a home of a similar size to the existing home on the far eastern lot. There's no way to know where a future owner will propose to build a home, but it cannot be within the floodplain.

**Ms. Herington** asked Ms. Mathy to clarify the next steps in the process before homes are built.

**Ms. Mathy** explained that after this Minor Subdivision, individuals may pull building permits and bring site plans to the PCD admin staff for review. Nothing further is presented to PC/BOCC.

**Mr. Guman** added that the PPRBD Floodplain Administrator will also review the plans. Presentation continued.

**Mr. Byers** asked if the existing driveway will be relocated or if there is a proposed access easement. If the land is subdivided, that driveway would go through a neighboring lot.

**Mr. Guman** stated a new driveway will be built.

## **PUBLIC COMMENTS**

**Mr. Wayne Robinson** stated that McDaniels Road was recently out of service for 3 weeks due to a 16' deep, 28' long washout. He stated that all the water that comes from the north runs through the eastern proposed lots.

**Ms. Gail Robinson** stated that the proposed lots would access McDaniels road along her pasture. She stated that when they purchased their property, it was surrounded by 40-acre lots. She discussed the past zoning changes in the area. There are subdivided parcels but there are also large-acreage parcels. McDaniels Road washed out in June of 2023. She stated that people would need to build driveways on bridges if they put their homes south of the floodplain. She thinks the Master Plan calls for the area to be preserved.

**Mr. Moraes** clarified that the Planning Commission failed to make a motion regarding the McDaniels rezone in November of 2022, resulting in no recommendation being sent to the BOCC.

**Ms. Patty Ernst** stated she raises cattle and horses in the area. She spoke about zoning. There are RR-5 5-acre lots on Hwy 94 in the Mayberry subdivision. She opposed those rezones. When there was flooding on the subject parcel, the flooding also went across Log Road. She disagrees with the size of the parcels due to the floodplain. She discussed the overall acreage being different than the buildable acreage. She doesn't think the land should be subdivided into 4 lots.

## **DISCUSSION**

**Mr. Moraes** asked if there is any type of warning the County issues to a potential buyer that a property contains a floodplain.

**Ms. Seago** answered that it's depicted on the plat which is recorded as public record. A potential property owner doing their due diligence should easily find that information.

**Ms. Brittain Jack** commented that Ms. Robinson has her own 40 acres that she can do with as she wishes. This application is about someone else's private property.

**PC ACTION: BRITTAIN JACK MOVED / SCHUETTPELZ SECONDED TO RECOMMEND APPROVAL OF CALLED-UP ITEM NUMBER 3D, FILE NUMBER MS226 FOR A MINOR SUBDIVISION, MCDANIELS ROAD MINOR SUBDIVISION, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH TEN (10) CONDITIONS, TWO (2) NOTATIONS, AND A RECOMMENDED FINDING OF SUFFICIENCY WITH REGARD TO WATER QUALITY, QUANTITY, AND DEPENDABILITY, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (6-1).**

**IN FAVOR:** BRITTAIN JACK, CARLSON, MERRIAM, MORAES, SCHUETTPELZ, AND WHITNEY.

**IN OPPOSITION:** SMITH.

**COMMENTS:** Mr. Smith thinks floodplain concerns need to be further investigated. Mr. Whitney commented that zoning concerns are not part of the consideration regarding the subdivision request.



**VARIANCE OF USE  
7135 TEMPLETON GAP - LANDSCAPING BUSINESS**

A request by Ben Fisk for approval of a Variance of Use on 5.00 acres to allow a contractors equipment yard in the RR-5 (Residential Rural) zoning district. The property is located at 7135 Templeton Gap Road and is 0.33 miles south of the intersection of East Woodmen Road and Templeton Gap Road. (Parcel No. 5307000005) (Commissioner District No. 2).

**STAFF & APPLICANT PRESENTATIONS**

**Mr. Carlson** asked about the location of the driveway.

**Mr. Hernandez Martinez** referenced a map in the presentation to show the driveway on Templeton Gap Road. Presentation continued.

**Mr. Carlson** asked about the City zoning on the property to the south.

**Ms. Bagley** stated she would research the City's zoning while the applicant presents. (The applicant addressed the answer during their presentation. The southern area is zoned PUD AO, and the western area is zoned C6.) Presentation continued.

**Mr. Carlson** asked about the current layout of the lot. Does it match the proposed site plan?

**Mr. Fisk**, the applicant, answered that most of the lot matches the site plan and meets all setbacks.

**Mr. Schuettepelz** asked why rezoning was not an option.

**Mr. Fisk** stated City services (e.g., water) are not yet available. As the southern parcel is developed, it may become an option.

**Mr. Schuettepelz** asked how lacking City services prevented rezoning. Can he operate with his well and septic systems?

**Mr. Fisk** mentioned the cost of bringing the water line to his property.

**Mr. Schuettepelz** clarified that he's not talking about annexation, he is asking why rezoning to commercial within the County isn't an option.

**Ms. Bagley** explained that if the applicant wanted to rezone to commercial, he would need to apply for a commercial well. That could also allow for greater commercial development to move into the area near the existing residential. By pursuing a Variance of Use, that surrounding residential area is protected.

**NO PUBLIC COMMENTS****NO FURTHER DISCUSSION**

**PC ACTION: MERRIAM MOVED / MORAES SECONDED TO RECOMMEND APPROVAL OF CALLED-UP ITEM NUMBER 3F, FILE NUMBER VA232 FOR A VARIANCE OF USE, 7135 TEMPLETON GAP - LANDSCAPING BUSINESS, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH TWO (2) CONDITIONS AND THREE (3) NOTATIONS, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (7-0).**

## 5. REGULAR ITEMS

### A. MS233

**BAGLEY**

#### **MINOR SUBDIVISION GUNNERS RIDGE**

A request by Drew Makings for approval of a 38.83-acre Minor Subdivision illustrating four (4) single-family residential lots. The property is zoned RR-5 (Residential Rural) and is located at 12172 Goodson Road and is directly northwest of the intersection of Goodson Road and Ayer Road. (Parcel No. 5214000014) (Commissioner District No. 2).

#### **STAFF & APPLICANT PRESENTATIONS**

**Mr. Moraes** asked for clarification regarding the requested waiver from the LDC.

**Ms. Bagley** clarified that the letter of intent indicates no waiver, but the applicant does need to request a waiver. This was caught during the review process. The applicant was not asked to resubmit a new letter of intent. She apologized that the waiver was not part of the PC report packet and ensured the BOCC would be presented with the waiver request. Presentation continued.

**Mr. Moraes** asked if lining the three smaller lots on the eastern side had been considered. Would that have forgone requesting the waiver?

**Mr. Drew Makings**, the applicant, stated that it may have forgone the waiver, but would not have allowed for buildable lots due to the powerline easements along the eastern side of the parcel.

#### **NO PUBLIC COMMENTS**

#### **DISCUSSION**

**Mr. Moraes** asked to review the criteria of approval for a waiver from the LDC (Section 7.3.3). As he looks through the criteria, he isn't sure the request meets criteria number 5.

**Mr. Makings** stated that one of the requirements was to have a shared driveway. If the subdivided lots were moved to the east, it would not be possible to meet that requirement.

**PC ACTION: SCHUETTEL MOVED / SMITH SECONDED TO RECOMMEND APPROVAL OF REGULAR ITEM NUMBER 5A, FILE NUMBER MS233 FOR A MINOR SUBDIVISION, GUNNERS RIDGE, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH EIGHT (8) CONDITIONS, TWO (2) NOTATIONS, ONE (1) WAIVER, AND A RECOMMENDED FINDING OF SUFFICIENCY WITH REGARD TO WATER**

**QUALITY, QUANTITY, AND DEPENDABILITY, AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (6-1).**

**IN FAVOR:** BRITAIN JACK, CARLSON, MERRIAM, SCHUETTPELZ, SMITH, AND WHITNEY.

**IN OPPOSITION:** MORAES.

**COMMENTS:** Mr. Moraes stated he did not think the criteria of approval for the waiver were met, so he could not vote in favor of the application.

## **5. REGULAR ITEMS**

**B. AL2217**

**HOWSER**

### **SPECIAL USE COLORADO KIDS RANCH PUMPKIN PATCH**

A request by Colorado Pumpkin Patch, LLC for approval of a Special Use on 40.52 acres to allow agritainment activities with additional conditions in the RR-5 (Residential Rural) zoning district. The property is located at 18065 Saddlewood Road. Agritainment is a permitted use by right in the RR-5 zoning district; however, agritainment which does not comply with the provisions of the Land Development Code shall require Special Use approval. (Parcel No. 611600001) (Commissioner District No. 1).

#### **STAFF PRESENTATION**

**Mr. Carlson** asked if the applicant could still operate the pumpkin patch with a 50-car limit if this proposal is not approved.

**Mr. Kilgore** confirmed. They may need to adjust the site plan, but it would remain approved.

**Mr. Carlson** stated the tulip festival was retroactively denied.

**Mr. Kilgore** confirmed and clarified that a future tulip festival could be approved with a 50-car limit. The presentation continued.

**Mr. Carlson** asked if the property had access to Hwy 105.

**Mr. Kilgore** stated it does not. Traffic gains access through the subdivision. Presentation continued.

**Mr. Moraes** asked if access to Hwy 105 would have been allowed if they were proposing a subdivision.

**Mr. Torres** answered that it would not likely meet the requirements of the ECM, but a deviation request would need to be submitted to analyze the specific details. There is a subdivision just north of this location that has temporary access to Hwy 105. That plat identifies that Hwy 105 access shall be closed once access is provided from another road to the northeast.

**Mr. Moraes** stated the western red line on the presentation image looks like it is covering something.

**Mr. Torres** stated it's an existing driveway that does not connect to Hwy 105. Presentation continued.

**Mr. Carlson** clarified during presentation of the conditions/notations that PCD could retract approval of the Special Use if the applicant is found to be in violation.

**Mr. Kilgore** stated that would be at the discretion of the BOCC. PCD could not directly rescind approval, it would need to go through a process.

**Mr. Moraes** asked how long that process takes. Is it a longer timeframe than these events occur?

**Mr. Kilgore** answered that he doesn't have an exact amount of time because it involves the Code Enforcement procedure. Once a complaint is received, the officer goes out to observe, issues a notice of violation, and they give the property owner time to remedy the situation. If it's not resolved, the Executive Director issues a letter, which escalates to the BOCC. It takes time.

**Mr. Moraes** commented that the agritainment events are short-term.

**Mr. Kilgore** agreed and noted the background slides of the presentation did show that multiple Code Enforcement cases were closed because the event had discontinued during that process. Presentation continued.

**Mr. Whitney** clarified that the applicant could host their events with 50 cars today. (Mr. Kilgore confirmed.) Mr. Whitney further clarified that the current request is to host their events with up to 325 cars. (Mr. Kilgore confirmed.) Mr. Whitney asked what effect the 120-day requirements outlined in the proposed conditions of approval would have on hosting this year's pumpkin patch event.

**Mr. Kilgore** answered that his understanding is that the applicant is requesting approval of this proposal prior to hosting this year's pumpkin patch event so they can operate under this Special Use approval of 325 cars and work on the necessary improvements (Site Development Plan and screening improvements) in a tiered system afterwards to get where they need to be for the following season.

**Mr. Whitney** clarified that approval of this proposal with the existing conditions/notations would take effect for the 2024 season. This year's pumpkin patch event would proceed with 325 cars and no improvements. By next year, they will need to meet the outlined conditions.

**Mr. Kilgore** confirmed and made note of condition 4; roadway improvements prior to 9/1/2024.

## **APPLICANT PRESENTATION**

**Mr. Moraes** asked how the number of 325 was decided as the maximum number of cars.

**Ms. Ruiz**, with Vertex Consulting, answered that they evaluated the highest number of cars they experienced recently (275) and added a buffer.

**Mr. Carlson** pointed out that it was mentioned several times during the presentation that events are only currently taking place for 6 weeks and 2 weekends during the year. He asked if the applicant could host events at the proposed capacity throughout the entire year if this proposal is approved.

**Ms. Ruiz** stated that could be correct; theoretically, they could be in operation all year.

**Mr. Carlson** asked if there is anything keeping people from parking on the public roads and walking into the event if the event meets the capacity of 325 cars.

**Ms. Ruiz** answered that terms within the LDC for Special Use specify that all parking must be on-site. Off-site parking could result in revocation of the approval.

**Mr. Kilgore** stated that they would expect people to park on-site.

**Mr. Carlson** proposed a scenario where people may be turned away from the parking lot due to the set limit. If that family then parked on the public road and walked into the event, what would happen? That could happen because there's nothing to keep people from parking on the road.

**Mr. Kilgore** stated he would defer to Code Enforcement to answer that question.

**Mr. Moraes** asked if the traffic generation table during the applicant's presentation was using the assumption of 325 vehicles. (Ms. Ruiz confirmed.) He then asked how May 15<sup>th</sup> relates to the annual tulip festival.

**Ms. Ruiz** answered that it may fluctuate depending on when the bloom occurs, but May 15<sup>th</sup> is typically the first weekend of the tulip festival.

## **PUBLIC COMMENTS IN SUPPORT**

**Ms. Margaret Weishuhn** is concerned that the cars may be limited to 50. There are workers at every amenity. After employee parking, that wouldn't leave many spaces for visitors. Limiting parking would shut down the pumpkin patch. There are pros and cons to the location but it should be in the country. People know about the pumpkin patch and travel to it every year. The Chapmans run Awana and help neighbors. She stated the pumpkin patch is good for families.

**Mr. Chris Jeub** stated that traffic and congestion were commonly mentioned in the letters of opposition, but he didn't observe any problems on his frequent travels to Denver while taking Hwy 105. He thinks trust should be put in the traffic studies. He mentioned the Master Plan and stated it encourages agricultural business like the pumpkin patch. He stated the sacrifice the Chapmans are presenting to maintain this type of business is encouraging to him. He urged the PC to "make this work" through the bumps in the road and to approve the 325 parking spots for the limited time it would be used to keep the pumpkin patch as part of the County.

**Mr. Matt Dunston** stated the pumpkin patch is a key feature of the area. He stated that parties with musicians at Limbach Park in Monument have more than 50 cars gathered. When thinking of the region, he thinks about Monument Academy, churches, golf courses, and the YMCA. He thinks the pumpkin patch is in the perfect location. He spoke about the background of the property. The pumpkin patch honors agrarian roots. He referenced Ms. Ruiz' comments regarding the BOCC adopting the 50-car limit. He stated the past BOCC acknowledged that some could exceed that 50-car limit when it makes sense and meets the criteria. He stated PC and BOCC typically review land-use items that deviate from what has historically been there, but he thinks this proposal (to allow up to 325 cars) keeps what has historically been there. He added that it may not be for the PC to

discuss, but \$750,000 (the applicant's estimated cost of improvements) is a lot of money. He thinks the County should help with that cost.

**Ms. Barb Kunkel** stated she supports investing in kids, teenagers, and the future. She stated the pumpkin patch is important to the kids in the community. She likes the hands-on learning and environment. She has a tradition that all families from her martial arts school go to the pumpkin patch together. Their group alone would exceed 50 cars. The Chapmans are looking for a solution that sustains the business and the farm with a win-win to the community and their family. The pumpkin patch has become a local tradition for many people of all ages.

**Ms. Pam Resner** is disappointed that a solution was not agreed upon before getting to this point. She works at the pumpkin patch. She mentioned that the Master Plan addresses tourism, which the pumpkin patch increases. People come from surrounding towns and cities. The business trains future workers who then go out in the community and share their experience. Kids learn service and community interaction. She stated it's a healthy, safe place to gather for teens. She stated the Master Plan identifies employment in the area should be promoted. She stated youth programs, schools, and businesses gather at the pumpkin patch to strengthen connections, which promotes the health, safety, and wellness of the community.

**Ms. Heather Tiffany** shared that her daughters both work at the pumpkin patch and love being there. She referenced a moment earlier in public hearing where a woman was opposed to the subdivision of 40 acres near her; Ms. Brittain Jack stated that the owner of the 40 acres can use it how they want. She stated the Chapmans are choosing to use their land in this way and they should be able to use it how they'd like.

## **PUBLIC COMMENTS IN OPPOSITION**

**Mr. Mike Provencal** stated that this neighborhood is an equestrian residential neighborhood. He doesn't understand how a business license was issued within a residential neighborhood. He has observed their business growing and a changed limit in their parking. He stated that he sees this as a company wanting to make more money at the neighborhood's expense. He stated that while he was walking his dog on Canterbury Dr last pumpkin patch season, he encountered a friend and her daughter riding horses. The traffic disregarded the speed limit and ignored the pedestrians and horseback riders so that they had to go into the shoulder to avoid being hit. He doesn't think a business like this belongs in their neighborhood.

**Mr. Alton Gansky** stated the Canterbury Dr is a narrow winding road with many hills. There are inadequate shoulders and steep drop-offs. When there is two-way car traffic, it becomes very dangerous for anyone walking dogs or riding horses. He stated there is a need for dust control and mitigation. Dust can linger in the air for up to 10 days. He researched articles on carcinogens caused by traffic. Traffic needs to slow down. He stated there are 4 entrances to the neighborhood that lead to Canterbury Dr which was not meant for heavy two-way traffic. He thinks someone is going to get hurt. Spraying water on the road to mitigate dust is going to cause the wells to run dry. All 4 roads within the subdivision would need to be paved, or the pumpkin patch would need to be given access to Hwy 105. He can't go outside when they are having events.

**Ms. Vicki Davis** stated she no longer feels safe walking down her own street. The children can no longer ride their bikes and neighbors with horses can no longer ride on the roads. She stated the pumpkin patch is an amazing thing, but they're not taking the neighborhood and families into consideration. They have never followed the existing 50-car limit and have not been held accountable. She doesn't believe they will follow a 325-car limit or keep events limited to 6 weeks and 2 weekends as they declare.

**Mr. Cory Town** lives at the intersection of Canterbury and Saddlewood. He supports the activities promoted by the pumpkin patch but he stated that the effect it's having on his property during the events is terrible. He does not oppose the agritainment permit as it exists with a 50-car limit because that is what he believes to be reasonable when they only have access through the residential community. He understood traffic would increase when this began 5 years ago, but the limit has been exceeded many times. He is concerned for the safety of children and people walking or riding horseback in the community. He mentioned the excessive amount of dust caused by traffic on dirt roads that are not meant for the high volume of use. He also mentioned the fire risk; there is only one entrance/exit on a small dirt driveway with no access to Hwy 105. There are no fire hydrants in the Canterbury subdivision. He observed people littering trash, and once saw someone flick a cigarette butt from their car window as he was blocked from exiting his driveway. He stated cars already park along Saddlewood (as was discussed earlier in the hearing). He stated that he has continuously had to pick up trash on his property along Saddlewood.

**Mr. Bryan Canaan** (Gave presentation, slideshow attached.) Topics included argued compatibility with the Master Plan: large-lot residential should preserve the rural aesthetic, businesses should not be located on a rural residential dirt road, and there should be compatibility with the character of the existing developed area. Semi-trucks deliver pumpkins to the property because they're not grown on-site. Topics also included the quantity and scale of commercial-style events (year-round), the high number of people visiting the property, not meeting the State's definition of "agritourism", and attractions not being agricultural in nature as defined by State legislation.

**Mr. Jake Van Pelt** (Gave presentation, photos attached.) Topics included: Traffic putting their kids in danger, the dust causing hazardous breathing conditions, and the events overburdening the community infrastructure and environment.

**Ms. Rikki Van Pelt** (Gave presentation, photos attached.) Topics included how she believes the application does not meet 2 Special Use criteria of approval; number 2, The Special Use will be in harmony with the character of the neighborhood and will generally be compatible with the existing and allowable land uses in the surrounding area; and number 6, The Special Use will not otherwise be detrimental to the public health, safety, and welfare of the present or future residents of El Paso County. The community is a quiet equestrian neighborhood. The dust caused by the high volume of traffic on the dirt road is affecting her health. Events held on the property have not been following the existing regulations. The scale of traffic is causing unsafe conditions.

**Ms. Melanie Sweet** (Gave presentation, photos attached.) Topics included: The existing roads being used for the high volume of traffic, the safety of pedestrians, and the safety of her family. The traffic and street parking blocked access to her own property. She supports agriculture, but

the reality of what is taking place on the subject property is dangerous. Livestock were once allowed to open graze. The current use is not preserving the land.

**Mr. Joe Baran** stated he was almost hit by cars twice on Canterbury Drive last fall during weekday pumpkin patch events. After that happened, he counted 51 cars traveling south and 29 cars traveling north on Canterbury within 15 minutes. He stated it's unsafe within his neighborhood.

**Ms. Janet Schulte** stated she was disappointed by the applicants' failure to address the safety measures that they will take moving forward. She reiterated that the applicant has not complied with the initial agritainment permit. She doesn't have confidence that the proposed 5-year public improvement mitigation plan will be followed. The traffic issue makes it unsafe for residents. There is no screening proposed along the east side of the property.

**Mr. Steve Clark** (on the phone) mentioned that most letters received in support are not residents that have to live with the excessive traffic in their covenant-controlled subdivision. He stated this type of proposal would not be allowed within other covenant-controlled subdivisions like Broadmoor. He reiterated the discussion regarding unsafe traffic. He stated the proposed fencing for mitigation would destroy the open, rural aesthetic. Without Hwy 105 access, he is opposed to the application.

## **DISCUSSION**

**Mr. Craig Dossey**, with Vertex Consulting, addressed the public comments. He stated that the neighborhood being described as a residential equestrian neighborhood is "categorically wrong" because the LDC does not limit the use to residential or equestrian. He stated it is not a residential equestrian neighborhood. He addressed the agritainment use within the neighborhood and mentioned that the State made sure to define agritainment as a land-use type. He stated the Chapmans are not exceedingly profitable. They cannot control the behavior of traffic, but they are proposing safe improvements. He disagrees with County staff's traffic improvement assessment because he thinks the intersection is already functioning at an acceptable level of service. Dust caused by cars would be addressed when the road improvements are completed, and he stated the dust being caused by the activities is less than it would be if they were farming the land. Addressing the concerns that high levels of traffic for events will be year-round; it could be. He stated that anyone who runs a business and is expected to put in the financial investment that the County is requiring would need to host events year-round to see a return. He stated he's not sure horses should be allowed on the neighborhood roads. They're public-maintained roads. Mr. Chapman tried to get access off Hwy 105 but the County denied the deviation. He disagreed that the Master Plan calls for businesses to gain access off a major roadway because it specifically says, "located on", not "accesses onto". The business is adjacent to Hwy 105. Access points onto arterial roads are limited. He stated agritainment is more in-line with the character of the area than single-family development because agriculture predates residential. Regarding the allegations of disregard for the rules, he stated that Mr. Kilgore's timeline showed a history of compliance and that litigation for non-compliance was never initiated. He stated County staff gave the Chapmans bad information and once Mr. Chapman realized his business needed to grow and that he was not in compliance, he realized he needed to make improvements. He stated that residents set out speed and counting strips and found that speeding was not an issue. Screening was not proposed on the east side of the property because a fence would not block anything due to topography. The homes on the east



side are higher in elevation and it would take a taller structure than a standard fence to be effective, which would increase the cost to Mr. Chapman. He mentioned that the neighbor across the driveway from the Chapmans sent in a letter of support. He then reiterated comments made by those in support of the agritainment use. He stated the modified conditions that they proposed in their presentation make a compromise that the applicant can meet. He stated the Chapmans would never be able to afford the road improvements if they were limited to 50 cars.

**Ms. Merriam** asked if a partnership with law enforcement to address traffic was explored.

**Mr. Dossey** stated Mr. Chapman didn't anticipate his business growing like it did. There's no way to anticipate the number of cars each day. He thinks Mr. Chapman would be open to hiring law enforcement, but that depends on cost.

**Mr. Whitney** asked for Mr. Dossey's rebuttal to the assessment that the events are no longer agricultural in nature, no longer agritainment, but are more of an amusement park.

**Mr. Dossey** answered that he doesn't think there's a great definition of agritainment. He stated that when agritainment was drafted in the LDC, they looked to the State for a definition but that wasn't a lot of help. He stated that not every accessory land-use is going to be captured explicitly in the definitions, but that doesn't mean it's not compatible with the principal use. A pumpkin patch by itself may be boring. Some of the attractions are necessary to maintain the business, however there's a fine line between what is necessary for the business and it turning into something else. That's why the site plan is reviewed.

**Mr. Whitney** stated that was his understanding from the comments of opposition; while it began with the right idea, it has morphed into something different.

**Mr. Dossey** replied that it happens with Variance of Use and Special Use applications; a slide into something different. However, the site plan and the letter of intent are enforceable documents. If it's not within those documents, it's not allowed on the property.

**Mr. Moraes** asked if there's an admission fee for the events on the property.

**Mr. Dossey** verified with the applicant that there is an admission fee.

**Mr. Moraes** then stated that the use seems to be sliding into the "Amusement Center, Outdoor" definition from the LDC. There are several similarities. He thinks there can be a case that it falls under outdoor amusement center when it goes from a fall festival and a tulip festival to year-round events to make money.

**Mr. Dossey** stated that applicants depend on PCD staff to determine what the use is.

**Mr. Moraes** commented that a citizen could go to PCD staff and say it's not agritainment anymore. If PCD staff agrees, it could become a Code Enforcement issue.

**Mr. Smith** asked if the pursuit of access to Hwy 105 had been exhausted. He asked if there was a way to appeal the denial of access.

**Mr. Dossey** answered that when he was the Planning Director in the past, it was his belief that any decision he made should be able to be appealed to the BOCC. He then stated that when they asked if they could appeal the engineering department's denial, they were told no. He stated there is no avenue for them to appeal.

**Ms. Herington** added that the County Engineer is in attendance and can give more information of the reasoning behind the denial for access off Hwy 105. Things have changed since Mr. Dossey was the Director. The County Engineer and Engineering are both now under Public Works.

**Mr. Dossey** stated he wanted to correct Ms. Herington and the County Engineer was in a different department when he was Director and he could not override the County Engineer.

**Mr. Carlson** reminded the audience that the PC decision is a recommendation to the BOCC and not a final decision.

**Mr. Moraes** asked what PCD staff thought of the applicant's proposed conditions of phasing.

**Mr. Carlson** asked if there were now 10 conditions of approval.

**Mr. Kilgore** clarified that the applicant's representation has proposed 10 conditions. PCD staff's 4 recommended conditions are the compromise between the applicant's request and what is required by Code. He stated the application is still going back and forth with review comments and Ms. Ruiz just submitted a revised Letter of Intent (that is before the board). He stated the application has not been addressed to PCD staff's satisfaction.

**Mr. Moraes** noted that the limit of 325 cars is not listed in the 4 conditions on the resolution.

**Mr. Kilgore** stated that could be added. Normally there is a condition of approval that refers to the letter of intent, but that hasn't been finalized at this point.

**Mr. Moraes** agreed that it normally refers to the letter of intent, but the conditions presented refer to the site plan, which he does not see limiting the cars to 325. He referred to the rebuttal comment that the applicant can't control the behavior of the drivers and comparisons to traffic in other areas of Colorado Springs, but a major difference in this area is the lack of sidewalks. Canterbury Dr and Saddlewood Rd are local roads, not arterials or collectors. When he looks at the ECM definition for local roads, it says, "accesses shall not be allowed to compromise the safety, health or welfare of roadway users." The roadway users are vehicles, pedestrians, and, in this area, horseback riders. The applicant spoke on levels of service, which is all about traffic and turning movements, but nothing about safety. The criteria of approval for Special Use talks about hazards. He reiterated that the Special Use request is about increased cars over 50, not agritainment. The applicant's rebuttal was mostly about the agritainment, not the increase in cars. He stated that he reads the criteria of approval by replacing the term "special use" with "more than 50 vehicles". For example, will *more than 50 vehicles* create traffic hazards in the surrounding area? He wonders if the increase in the number of cars can be allowed incrementally. For example, allow up to 100 cars to see how it is going, or the increase in allowed vehicles will only be permitted until a certain date and then will be reevaluated. He suggested increments for if more events are added and the requested 325 cars is no longer 6 weeks of the year but 30 weeks of the year. As it is presented now, it's going from 50 allowed cars to 325 allowed cars on the property, which he thinks is too far regarding safety on a local roadway.

**Mr. Whitney** clarified that Mr. Moraes would read the fourth criteria of approval as, "The allowance of 325 cars will not create unmitigated traffic congestion or traffic hazards in the surrounding area...".

**Mr. Moraes** answered that he would use the phrase, "anything more than 50" because that's what is already allowed.

**Ms. Merriam** asked again if law enforcement should be guiding people during events. Is law enforcement the proper use for public safety?

**Mr. Moraes** responded that the idea is doable but hasn't been part of the plans submitted by the applicant. Providing law enforcement as a mitigating solution has not been included or offered in the application. The concern is not Hwy 105, but after the traffic is in the neighborhood.

**Ms. Merriam** asked if PCD staff considered law enforcement.

**Mr. Kilgore** answered that PCD cannot compel the applicant to hire off-duty law enforcement. He wasn't part of PCD when this project began, but he usually suggests to applicants that it would be in their best interest to involve law enforcement when hosting major events.

**Mr. Carlson** asked Ms. Seago what the PC should consider as the request because he sees different language in paperwork in front of him, including differing conditions and notations.

**Ms. Seago** answered that she understands the focus of the discussion has been a limit of 325 cars, though that is not part of the conditions. PC can add that to the conditions. The PC is considering agritainment under added parameters.

**Mr. Carlson** clarified that the added parameters are the conditions and notations.

**Ms. Seago** confirmed. The conditions and notations are up to the PC.

**Mr. Carlson** sought clarification on what is being requested.

**Ms. Herington** added that it's difficult because there is no approved site development plan. The number 325 came from the traffic study, which triggered the roadway improvements needing to be installed. The County is not recommending a limit of 325 cars, just saying that the number 325 was used in the traffic study to determine roadway improvements. The site development plan will show how many parking spots on-site are being requested, which drives the limit of vehicles. She suggested that if the PC wants to add a condition of approval to include a limit to the number of vehicles, PCD staff would need to have a site plan to look at to determine that possibility.

**Mr. Kilgore** agreed and added that Ms. Seago or the PC can come up with added recommended conditions for the BOCC.

**Mr. Schuettpelz** added that in addition to the potential limit on the number of vehicles, the PC is also considering the conditions regarding the timeline of the required improvements. PCD made recommendations and the applicant has come back with a suggested 5-year span. He compared the situation to when other developers come in with proposals; they're not given negotiated timelines to make improvements.

**Mr. Moraes** stated he didn't think the request was ready for "prime time". He referred to the PCD recommended conditions of approval. The applicant didn't seem to have objections to number 1, but there is no site plan presented. How can they vote on the recommendation if they don't have a site plan in front of them?

**Ms. Herington** answered that a site plan as referenced in condition number 1 is included with the packet and shows the general location of fencing, etc. Condition number 2 specifies that a site *development* plan is required within 120 days. The site development plan gives more specific details.

**Mr. Moraes** understood.

**Mr. Carlson** clarified that if they approve of what they have presented before them, it would be after this year's pumpkin patch before improvements are made.

**Mr. Kilgore** advised that the BOCC will consider this application on 9/14/2023 at 1:30 p.m.

**Mr. Dossey** clarified that the site development plan doesn't get reviewed by the PC or BOCC. The site plan is tied to the Special Use and is reviewed by the BOCC, and the site development plan is reviewed administratively. Regarding the discussion of hiring officers or off-duty law enforcement as traffic mitigation, he stated the County told them it was not a viable option and physical improvements to the roads were still required. He stated they've tried to mitigate the traffic impact but can only work within what the engineers and regulations tell them to do.

**Ms. Brittain Jack** mentioned a previous project that had multiple agencies collaborating.

**Mr. Dossey** mentioned that part of the solution for that project was to lease parking space from another nearby business. He stated that he discussed with the applicant, and Mr. Chapman is agreeable to setting the parking limit at 325 and delineating the spaces so the County can verify.

**Mr. Whitney** stated he would feel better about having a defined number included in the conditions instead of leaving it open to anything over 50 vehicles.

**Mr. Josh Palmer**, the County Engineer, spoke with Ms. Merriam to clarify what she meant when suggesting uniformed traffic control.

**Ms. Merriam** clarified that law enforcement has its own definition of public safety, and since public safety is listed in the LDC criteria, she is unsure if the County has a definition of public safety and if PCD needs to coordinate with law enforcement.

**Mr. Palmer** gave details about the discussion that took place between his department and the applicant. He stated they had discussed the possibility of using a temporary work zone as an alternative to the requirement for turn lanes or other improvements to Hwy 105. When Mr. Dossey mentioned that the idea was shot down, it wasn't done to dissuade uniformed traffic control as a mitigation factor to the neighborhood. They only denied using work zone conditions as an alternative to the requirement to install turn lanes on Hwy 105. His primary concern regarding any improvement in the area is its impact on Hwy 105 because it is an arterial roadway. He listed types of concerns that are evaluated. He mentioned that something not considered

within the discussion on level of service was the traffic already using the two-lane road. He stated there are no turn lanes or shoulders, so as traffic is leaving or turning into the neighborhood, it backs up and causes delays. He explained that depending on how far the back-up goes, it could cause site-distance issues and cause accidents. Part of the discussion with the applicant included work zone conditions (flaggers, traffic control, etc.) but it was not appropriate. He stated that uniformed traffic control may still be an option that could be pursued further, but it's more applicable to the safety concerns (speeding, parking, unsafe driving, etc.).

**Ms. Merriam** asked if Mr. Palmer is indicating there are other options that have not been evaluated.

**Mr. Palmer** stated he does not recall if uniform traffic control was specifically discussed but it could be an option. He does not see it as a viable option to get around the requirement for intersection improvements on Hwy 105. He added that the County is open to additional traffic control measures within the neighborhood (signage, reinforcement, etc.). One of those options could be uniformed traffic control but he's unsure of their availability.

**Ms. Brittain Jack** mentioned another area on Hwy 105 that has no traffic control and asked about its mitigation.

**Ms. Seago** questioned the relevance of the issue.

**Ms. Brittain Jack** clarified that she's asking about access off Hwy 105.

**Mr. Palmer** answered that it would be mitigated by installing turn lanes.

**Ms. Brittain Jack** further clarified that there are other instances along Hwy 105 where access has been granted and she wonders if the rules apply the same to everyone.

**Ms. Seago** responded that because her example involves a school, it was not required to go through the same site development plan process with the County. She added that if they had been required to go through the same process, Ms. Brittain Jack may not be experiencing the traffic situation she described.

**Mr. Palmer** agreed and added there is a project in the works on Hwy 105 to mitigate traffic issues.

**Mr. Carlson** reiterated that the applicant has agreed to an added condition limiting the vehicle count to 325. If applicable, he reminded anyone making a motion to include that detail if they choose.

***(A motion was made with no modification to the County's recommended conditions or notations)***

**Mr. Moraes** agreed that the pumpkin patch is great for the community and the County, but he is considering the application as it has been presented. He believed the incremental conditions suggested by the applicant were reasonable. He would have liked to see an incremental gain in the number of vehicles allowed to see how it works, especially with the history of violations. Though they are discussing the intersections, they are not focusing on the safety within the Canterbury neighborhood. He is not in support of the motion.

**Mr. Whitney** clarified that Ms. Brittain Jack did not include an added condition of approval to limit the number of parked vehicles at 325. (She did not.)

**Mr. Carlson** explained that the way the motion was made, they would be recommending approval of the Special Use to allow more than 50 cars. They would not be recommending a limit on the number of vehicles or anything else.

**PC ACTION: BRITTAIN JACK MOVED / MERRIAM SECONDED TO RECOMMEND APPROVAL OF REGULAR ITEM NUMBER 5B, FILE NUMBER AL2217 FOR SPECIAL USE, COLORADO KIDS RANCH PUMPKIN PATCH, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH FOUR (4) CONDITIONS AND THREE (3) NOTATIONS, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION FAILED (2-5), RESULTING IN A RECOMMENDATION FOR DENIAL.**

**IN FAVOR:** BRITTAIN JACK AND MERRIAM.

**IN OPPOSITION:** CARLSON, MORAES, SCHUETTELPELZ, SMITH, AND WHITNEY.

**Ms. Merriam** stated she believes that both sides have another way to address the issue but there's an answer in there. She stated that she voted in support of the motion because she thinks there needs to be more options available than were discussed.

**Mr. Schuettpelz** stated that in addition to earlier comments, he disagreed with the timeframe proposed to make the necessary improvements. The applicant stated they wouldn't be able to complete the improvements in the recommended time, but he believes 5 years is too long. He doesn't think the discussion of turning traffic adequately addresses the nature of the problem. Regarding the criteria of approval, he stated the added traffic *does cause* an undue burden.

**Mr. Carlson** agreed that the pumpkin patch is fantastic for the community, but it is causing a negative impact on the neighborhood. He doesn't think the BOCC or State intended that a venue should be routed through a residential neighborhood when they promoted agritainment. Other pumpkin patches that he can think of are more remote and when people are exiting, they have easier access to major roads. He hopes they can find a solution but thinks that directing the proposed number of people through a neighborhood will be tough to get done.

**C. NON-ACTION ITEMS - NONE.**

**MEETING ADJOURNED** at 3:09 P.M.

**Minutes Prepared By:** Miranda Benson

VARIANCE OF USE (RECOMMEND APPROVAL)

Merriam moved that the following Resolution be adopted;

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF EL PASO

STATE OF COLORADO

RESOLUTION NO. VA-23-002

7135 TEMPLETON GAP - LANDSCAPING BUSINESS

WHEREAS, Fisk Landscapes did file an application with the El Paso County Planning and Community Development Department for approval of a variance of use to allow a contractor's equipment yard within the RR-5 (Residential Rural) zoning district for property in the unincorporated area of El Paso County as described in Exhibit A, which is attached hereto and incorporated herein by reference; and

WHEREAS, a public hearing was held by this Commission on September 7, 2023; 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. The application was properly submitted for consideration by the Planning Commission;
2. Proper posting, publication and public notice were provided as required by law for the hearing before the Planning Commission;
3. 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. All exhibits were received into evidence;
5. The proposed land use does not permit the use of an area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor;
6. All data, surveys, analyses, studies, plans, and designs as are required by the State of Colorado and El Paso County have been submitted, reviewed, and found to meet all sound planning and engineering requirements of the El Paso County Subdivision Regulations; and

7. For the above-stated and other reasons, the proposed special use is in the best interest of the health, safety, morals, convenience, order, prosperity, and welfare of the citizens of El Paso County.

WHEREAS, as stated in Section 5.3.4.C of the El Paso County Land Development Code (as amended), the Planning Commission and Board of County Commissioners may consider the following criteria in approving a Variance of Use:

1. The strict application of any of the provisions of the Code would result in peculiar and exceptional practical difficulties or undue hardship;
2. The variance of use is generally consistent with the applicable Master Plan;
3. The proposed use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the surrounding area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and County;
4. The proposed use will be able to meet air, water, odor or noise standards established by County, State, or Federal regulations during construction and upon completion of the project;
5. The proposed use will comply with all applicable requirements of the Code and all applicable County, State, and Federal regulations except those portions varied by this action;
6. The proposed use will not adversely affect wildlife or wetlands;
7. The applicant has addressed all off-site impacts;
8. The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping; and/or
9. Sewer, water, storm water drainage, fire protection, police protection, and roads will be available and adequate to serve the needs of the proposed variance of use as designed and proposed.

NOW, THEREFORE, BE IT RESOLVED, the El Paso County Planning Commission recommends approval of the variance of use to allow a contractor's equipment yard within the RR-5 (Residential Rural) zoning district with the following conditions and notations:

**CONDITIONS**

1. Approval is limited to the use of a contractor's equipment yard, as discussed and depicted in the applicant's letter of intent and site plan drawings. Any subsequent addition or modification



to the use beyond that described in the applicant's letter of intent and as shown on the site plan shall be subject to approval of a new Variance of Use request.

2. A site development plan shall be applied for and approved to legalize the existing use on the site within six (6) months of the date of Variance of Use approval by the Board of County Commissioners. The deadline may be extended by the PCD Director, at his or her discretion, if the Director finds that the applicant has made a good faith effort to secure such approval.

#### NOTATIONS

1. Variance of Use approval includes conditions of approval and the accompanying site plan and elevation drawings. No substantial expansion, enlargement, intensification, or modification shall be allowed except upon reevaluation and public hearing as specified in the El Paso County Land Development Code.
2. The Board of County Commissioners may consider revocation and/or suspension if zoning regulations and/or Variance of Use conditions/standards are being violated, preceded by notice and public hearing.
3. If the Variance of Use is discontinued or abandoned for two (2) years or longer, the Variance of Use shall be deemed abandoned and of no further force and effect.

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

MORAES seconded the adoption of the foregoing Resolution.

The roll having been called, the vote was as follows: (circle one)

Thomas Bailey	aye / no / non-voting / recused / <u>absent</u>
Sarah Brittain Jack	<u>aye</u> / no / non-voting / recused / absent
Jim Byers	aye / no / <u>non-voting</u> / recused / absent
Jay Carlson	<u>aye</u> / no / non-voting / recused / absent
Becky Fuller	aye / no / non-voting / recused / <u>absent</u>
Jeffrey Markewich	aye / no / non-voting / recused / <u>absent</u>
Brandy Merriam	<u>aye</u> / no / non-voting / recused / absent
Eric Moraes	<u>aye</u> / no / non-voting / recused / absent
Kara Offner	aye / no / non-voting / recused / <u>absent</u>
Bryce Schuettpelz	<u>aye</u> / no / non-voting / recused / absent
Wayne Smith	<u>aye</u> / no / non-voting / recused / absent
Tim Trowbridge	aye / no / non-voting / recused / <u>absent</u>
Christopher Whitney	<u>aye</u> / no / non-voting / recused / absent

The Resolution was adopted by a vote of 7 to 0 by the Planning Commission of the County of El Paso, State of Colorado.

DONE THIS 7<sup>th</sup> day of September 2023 at Colorado Springs, Colorado.

EL PASO COUNTY PLANNING COMMISSION

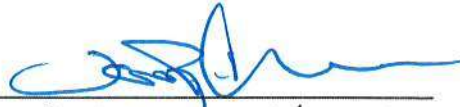
By:   
Jay Carlson, Vice-Chair

EXHIBIT A

TRACT IN SW4NE4 OF SEC 7-13-65 AS FOLS, BEG AT A PT ON ELY LN OF SD SW4NE4 505.15 FT SLY THEREON FROM NE COR OF AFMD TR, TH WLY PARA WITH N LN OF SD SW4NE4 466.69 FT, S AT R/A 466.69 FT, E AT R/A 466.69 FT TO ELY LN OF SW4NE4, TH NLY ALG SD LN 466.69 FT TO POB, TOG WITH R/W FOR RD OVER S 25.0 FT, L 1/2 MR

COMMISSIONERS:  
CAMI BREMER (CHAIR)  
CARRIE GEITNER (VICE-CHAIR)

HOLLY WILLIAMS  
STAN VANDERWERF  
LONGINOS GONZALEZ, JR.

**PLANNING & COMMUNITY DEVELOPMENT**

**TO:** El Paso County Planning Commission  
Thomas Bailey, Chair

**FROM:** Kylie Bagley, Planner III  
Carlos Hernandez, Engineer I  
Meggan Herington, AICP, Executive Director

**RE:** Project File Number: VA232  
Project Name: 7135 Templeton Gap - Landscaping Business  
Parcel Number: 5307000005

<b>OWNER:</b>	<b>REPRESENTATIVE:</b>
Fisk Landscaping Ben Fisk 13845 Ranklin Rd Elbert, CO 80106	Fisk Landscaping Ben Fisk 13845 Ranklin Rd Elbert, CO 80106

**Commissioner District: 2**

<b>Planning Commission Hearing Date:</b>	<b>9/7/2023</b>
<b>Board of County Commissioners Hearing Date:</b>	<b>9/28/2023</b>

**EXECUTIVE SUMMARY**

A request by Ben Fisk for approval of a Variance of Use for 5 acres to allow a contractors equipment yard in the RR-5 (Residential Rural) district. The property is located 7135 Templeton Gap Road and is 0.33 miles south of the intersection of East Woodmen Road and Templeton Gap Road.

**A. WAIVERS/DEVIATIONS/AUTHORIZATION**

**Waiver(s)/Deviation(s):** There are no waivers/deviations associated with this application.

**Authorization to Sign:** There are no documents associated with this application that require signing.

**B. APPROVAL CRITERIA**

Pursuant to Section 5.3.4 of the Land Development Code (As Amended), the Planning Commission and Board of County Commissioners may consider the following criteria in approving a Variance of Use:

- The strict application of any of the provisions of this Code would result in peculiar and exceptional practical difficulties or undue hardship.
- The proposed use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the surrounding area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and County;
- The proposed use will be able to meet air, water, odor or noise standards established by County, State or federal regulations during construction and upon completion of the project;
- The proposed use will comply with all applicable requirements of this Code and all applicable County, State and federal regulations except those portions varied by this action;
- The proposed use will not adversely affect wildlife or wetlands;
- The applicant has addressed all off-site impacts;
- The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping; and/or
- Sewer, water, storm water drainage, fire protection, police protection, and roads will be available and adequate to serve the needs of the proposed Variance of Use as designed and proposed.

**C. LOCATION**

North:	RR-5 (Residential Rural)	Single-Family Residential
South:	City of Colorado Springs	Vacant Land
East:	RR-5 (Residential Rural)	Vacant Land
West:	City of Colorado Springs	Automobile and Boat Storage

**D. BACKGROUND**

The subject property is zoned RR-5 (Residential Rural), which does not allow for a contractor’s equipment yard. A contractor’s equipment yard is a service establishment

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primarily engaged in general contracting or subcontracting in the construction, repair, maintenance, or landscape trades. It may include administrative offices, workshops and the indoor or outdoor storage of tools, equipment, materials, and vehicles used by the establishment. The applicant is requesting a Variance of Use to continue using the property for storage of landscaping equipment for his commercial business.

A code enforcement violation was issued on March 9, 2023, for unauthorized use within the RR-5 zoning district. The code enforcement case states that inspection photos show the residential property being used for the landscaping business with significant materials storage and employee parking on site.

The property is located in an area of the County that is adjacent to the incorporated boundaries of the City of Colorado Springs. The properties adjacent to Templeton Gap Road, west of the subject property, are zoned CS (Commercial Service), CR (Commercial Regional), and within the City of Colorado Springs that is currently used for Automobile and Boat Storage. The properties to the east of the subject property are zoned RR-5 and are single-family residential uses.

If the Variance of Use is approved, the applicant will be required to submit and receive approval of a site development plan. The site development plan will need to be substantially consistent with the site plan provided with the Variance of Use application and provide a more detailed depiction of the proposed use, including landscaping, parking, and lighting.

## **E. ANALYSIS**

### **1. Land Development Code and Zoning Analysis**

Pursuant to Table 5-1 of the Land Development Code, a contractor's equipment yard is not a permitted use in the RR-5 zoning district. The requested use is not consistent with the use allowances of the RR-5 zoning district without approval of a Variance of Use.

The Land Development Code defines "Contractor's Equipment Yard" as:

"A service establishment primarily engaged in general contracting or subcontracting in the construction, repair, maintenance or landscape trades. It may include administrative offices, workshops and the indoor or outdoor storage of tools, equipment, materials, and vehicles used by the establishment."



A contractor's equipment yard is allowed by Special Use in the CS (Commercial Service), I-2 (Limited Industrial), and C-2 (Commercial) zoning districts and as a permitted use in the I-3 (Heavy Industrial), and M (Industrial) zoning districts.

The subject property will be required to provide a landscaping buffer long the lot, parcel, or tract line on the non-residential use property between the non-residential use and a residential zoning district. The subject property will be required to provide buffering where it is adjacent to the RR-5 zoned parcels to the north and east. Any outside storage will be subject to Section 5.2.40 of the Land Development Code which requires materials to be screened by a solid fence or vegetation and storage cannot exceed the height of the screening. This will be reviewed during the site development plan application.

## **F. MASTER PLAN ANALYSIS**

### **1. Your El Paso County Master Plan**

#### **a. Placetype Character:** Urban Residential

*The Urban Residential placetype consists of established neighborhoods immediately adjacent to equally dense or more dense urban neighborhoods in incorporated areas, as well as new, largely residential neighborhoods in previously undeveloped areas where centralized utility services are available. The Urban Residential placetype provides for a mix of development densities and housing types within a neighborhood. Urban Residential placetypes generally support accessory dwelling units as well. The dense urban development and high intensity of existing Urban Residential areas make it difficult to distinguish them from adjacent incorporated areas. The development of an Urban Residential placetype will strongly depend upon availability of water and wastewater services.*

*An interconnected network of pedestrian and bicycle infrastructure make Urban neighborhoods walk-able internally and well-connected to adjacent placetypes. Highly accessible parks and open space are integrated throughout the neighborhood. Neighborhood-serving retail areas in this placetype should be conveniently connected and accessible to residents of the nearby neighborhood. Commercial uses should be located along main or perimeter streets rather than imbedded within primarily residential areas. Cimarron Hills is the most prominent example of this placetype.*

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## Recommended Land Uses:

### Primary

- *Single-family Detached Residential (5 units per acre lots or more)*
- *Single-family Attached Residential*
- *Multifamily Residential*

### Supporting

- *Mixed Use*
- *Restaurant*
- *Commercial Retail*
- *Commercial Service*
- *Institutional*
- *Parks*
- *Office*

## Analysis:

The property is located within the Urban Residential placetype. The Urban Residential placetype offers an opportunity for El Paso County to redefine its growth areas through highly desirable, connected, and complete neighborhoods with a mix of housing products and density. Relevant goals and objectives are as follows:

**Goal LU2:** *“Coordinate context-sensitive annexation and growth strategies with municipalities.”*

**Objective LU2-2:** *“The character and intensity of new development or redevelopment in County enclaves should match that of the development in the municipality surrounding it.”*

**Goal LU3:** *“Encourage a range of development types to support a variety of land uses.”*

**Objective LU1-1:** *“Development should be consistent with the allowable land uses set forth in the placetypes first and second to their built forms and guidelines.”*

**Specific Strategy:** *“The New Development areas will be significantly transformed as new development takes place on lands currently largely designated as undeveloped or agricultural areas. Undeveloped portions of the County that are adjacent to a built out area should be developed to match the character of that adjacent development or to a different supporting or otherwise complementary one such as an employment hub or business park adjacent to an urban neighborhood.”*

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**Goal ED1-1:** *“Recruit new businesses and spur the development of growing sectors.”*

**Objective ED1-5:** *“Allow residents to manage compatible, low-intensity personal businesses from their home to create greater opportunities for new companies to be established.”*

The proposed Variance of Use intends a commercial service that is a supporting land use within the Urban Residential placetype. The property is currently a residential parcel that is adjacent to existing commercial businesses. If the Variance of Use is approved, the property would match the character of the adjacent developments within the County and City of Colorado Springs.

A site development plan is required to be submitted and approved prior to issuance of a building permit for the property. The site development plan will be required to meet the development standards of the Land Development Code, not limited to buffering, landscape, lighting, drainage, and parking.

**b. Area of Change Designation: New Development**

*These areas will be significantly transformed as new development takes place on lands currently largely designated as undeveloped or agricultural areas. Undeveloped portions of the County that are adjacent to a built out area will be developed to match the character of that adjacent development or to a different supporting or otherwise complementary one such as an employment hub or business park adjacent to an urban neighborhood.*

**Analysis:**

Approval of the Variance of Use will allow for a contractor’s equipment yard. The properties along East Woodmen Road and Templeton Gap Road are developing as commercial or higher density residential uses, approval of the Variance of Use would take the residential property and develop it into a commercial use that will be compatible to the surrounding area, which is consistent with the level of change expected in the New Development Area of Change. The uses that are adjacent to the parcel consist of commercial businesses and residential structures.

The subject property will be required to screen any outside storage materials and provide landscape buffers from the adjacent residential zoned properties to the north and east.



**c. Key Area Influences: Enclaves or Near Enclaves**

*Enclaves are areas of unincorporated El Paso County that are surrounded on all sides by an incorporated municipality, primarily the City of Colorado Springs but enclaves or near enclaves exist within or adjacent to other municipalities. The largest enclave is Cimarron Hills, an urbanized community with nearly 18,000 residents, but several smaller enclaves exist around other areas of Colorado Springs as well.*

*The majority of the enclaves are developed or partially developed in a manner that would require significant improvement for annexation. These include roadway improvements, storm-water improvements and utility infrastructure upgrades. Most enclave areas are accessed by municipal roads, experience the impacts of urban stormwater runoff, or are otherwise served by one or more municipal utilities. The character and intensity of new development or redevelopment in these enclaves should match that of the development in the municipality surrounding it. Discussion with the City of Colorado Springs and other municipalities regarding the possible annexation of these areas should be continued and revisited regularly to explore means to finance improvements and service debt to make annexation a feasible consideration.*

**Analysis:**

The subject property is within unincorporated El Paso County but is adjacent to the City of Colorado Springs. Properties south of Woodmen Road have been developing into small commercial sites acting as a transitional buffer to the residential uses to the south. This is consistent with the character expected in this Key Area.

**2. Water Master Plan Analysis**

Water sufficiency is not required for a Variance of Use application. Water service for the parcels will continue to be provided by an existing well.

**3. Other Master Plan Elements**

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a low wildlife impact potential. El Paso County Community Services, Environmental Division was sent a referral and has no outstanding comments.

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

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## **G. PHYSICAL SITE CHARACTERISTICS**

### **1. Hazards**

No hazards were identified during the review of the variance of use application which would restrict continued use of the facility.

### **2. Floodplain**

The FEMA Flood Insurance Rate Map, 08041C0537G, indicates that the property is outside of a floodplain. There are no expected impacts from the requested Variance of Use to a floodplain.

### **3. Drainage and Erosion**

The property is located within the Sand Creek Drainage Basin (FOFO2000). Drainage and bridge fees are not assessed with Variance of Use requests if no platting action is required. Per aerial imagery and existing contours, stormwater runoff generally flows from north to southeastern direction.

Due to the amount of land disturbance that has occurred, a final drainage report, grading and erosion control plan, and additional documents will be required at the Site Development Plan stage. The final drainage report shall provide hydrologic and hydraulic analysis to identify and mitigate the drainage impacts of the development to downstream properties and stormwater runoff.

### **4. Transportation**

The property obtains access through Templeton Gap Road. Templeton Gap Road is a City of Colorado Springs (COS) owned and maintained roadway classified as a Collector. The property is not required by the COS to have a driveway access permit. The proposed site is projected to generate an average of 40 vehicle trips per day per the applicant's Letter of Intent. The property will be subject to the El Paso County Road Impact Fee program (Resolution No. 19-471), as amended.

## **H. SERVICES**

### **1. Water**

Water is provided by an existing well.

### **2. Sanitation**

Wastewater is provided by an existing onsite wastewater treatment system.

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**3. Emergency Services**

The property is not within a Fire Protection District. The planning department reached out to the Falcon Fire District and City of Colorado Springs Fire District. The City of Colorado Springs Fire District stated that in the event of an emergency they will respond to the property and charge the owner after the emergency.

**4. Utilities**

Electrical service is provided by Mountain View Electric Association, Inc., (MVEA) and natural gas is provided by Colorado Springs Utilities. MVEA and Colorado Springs Utilities were each sent a referral and have no outstanding comments.

**5. Metropolitan Districts**

The property is not located within a metropolitan district.

**6. Parks/Trails**

Land dedication and fees in lieu of park land dedication are not required for a Variance of Use application.

**7. Schools**

Land dedication and fees in lieu of school land dedication are not required for a Variance of Use application.

**I. APPLICABLE RESOLUTIONS**

See attached resolution.

**J. STATUS OF MAJOR ISSUES**

There are no major issues associated with this application.

**K. RECOMMENDED CONDITIONS AND NOTATIONS**

Should the Planning Commission and Board of County Commissioners find that the request meets the criteria for approval outlined in Section 5.3.4 of the El Paso County Land Development Code (As Amended), staff recommends the following conditions and notations:

**CONDITIONS**

- 1. Approval is limited to the use of a contractor’s equipment yard, as discussed and depicted in the applicant’s letter of intent and site plan drawings. Any subsequent



addition or modification to the use beyond that described in the applicant's letter of intent and as shown on the site plan shall be subject to approval of a new Variance of Use request.

2. A site development plan shall be applied for and approved to legalize the existing use on the site within six (6) months of the date of Variance of Use approval by the Board of County Commissioners. The deadline may be extended by the PCD Director, at his or her discretion, if the Director finds that the applicant has made a good faith effort to secure such approval.

### **NOTATIONS**

1. Variance of Use approval includes conditions of approval and the accompanying site plan and elevation drawings. No substantial expansion, enlargement, intensification, or modification shall be allowed except upon reevaluation and public hearing as specified in the El Paso County Land Development Code.
2. The Board of County Commissioners may consider revocation and/or suspension if zoning regulations and/or Variance of Use conditions/standards are being violated, preceded by notice and public hearing.
3. If the Variance of Use is discontinued or abandoned for two (2) years or longer, the Variance of Use shall be deemed abandoned and of no further force and effect.

### **L. PUBLIC COMMENT AND NOTICE**

The Planning and Community Development Department notified eight (8) adjoining property owners on August 18, 2023 for the Planning Commission and Board of County Commissioners meetings. Responses will be provided at the hearing.

### **M. ATTACHMENTS**

Map Series  
Letter of Intent  
Site Plan  
Draft Resolution

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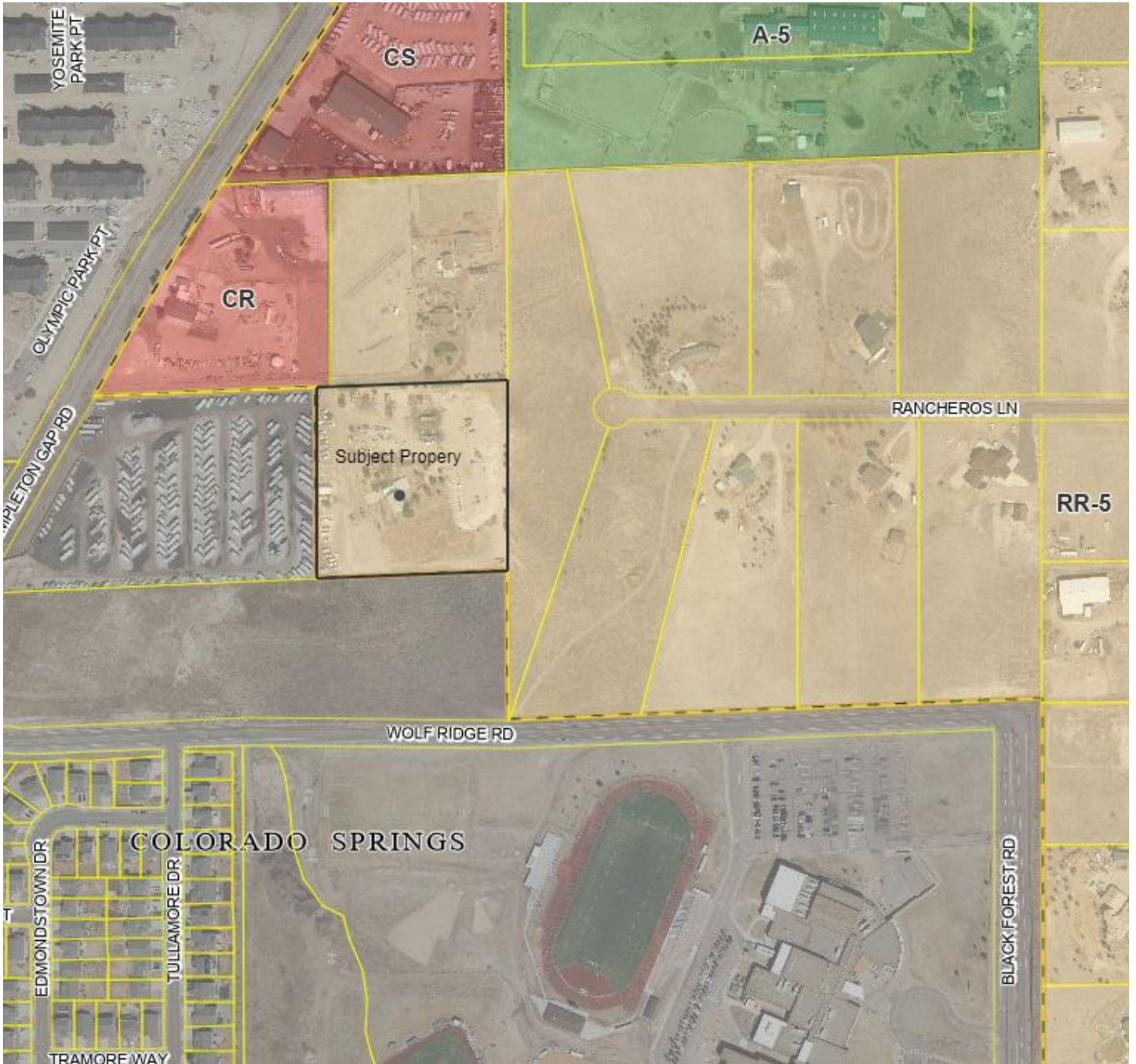


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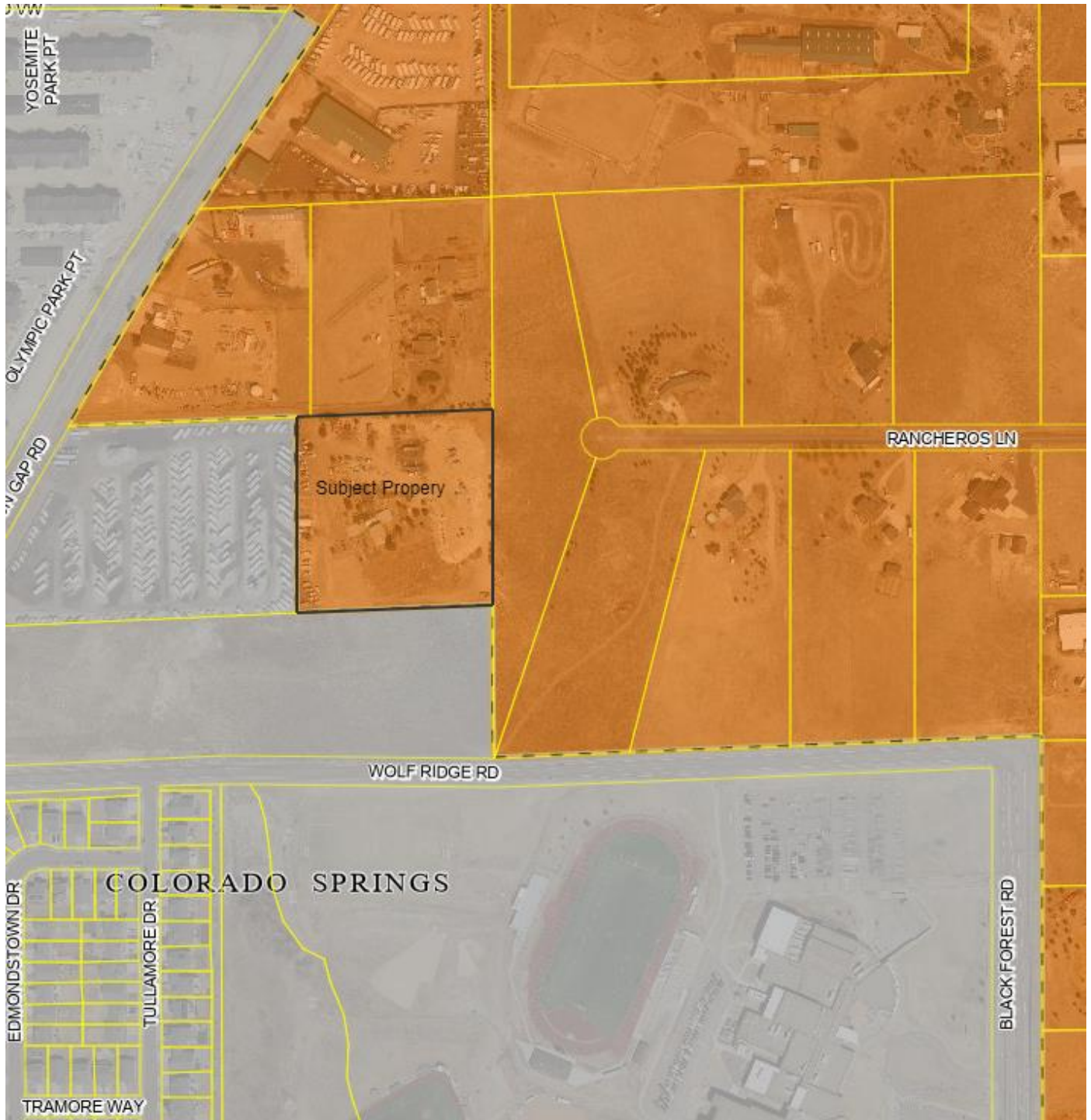
# Map Exhibit #1: Aerial



# Map Exhibit #2: Zoning



# Map Exhibit #3: Placetype

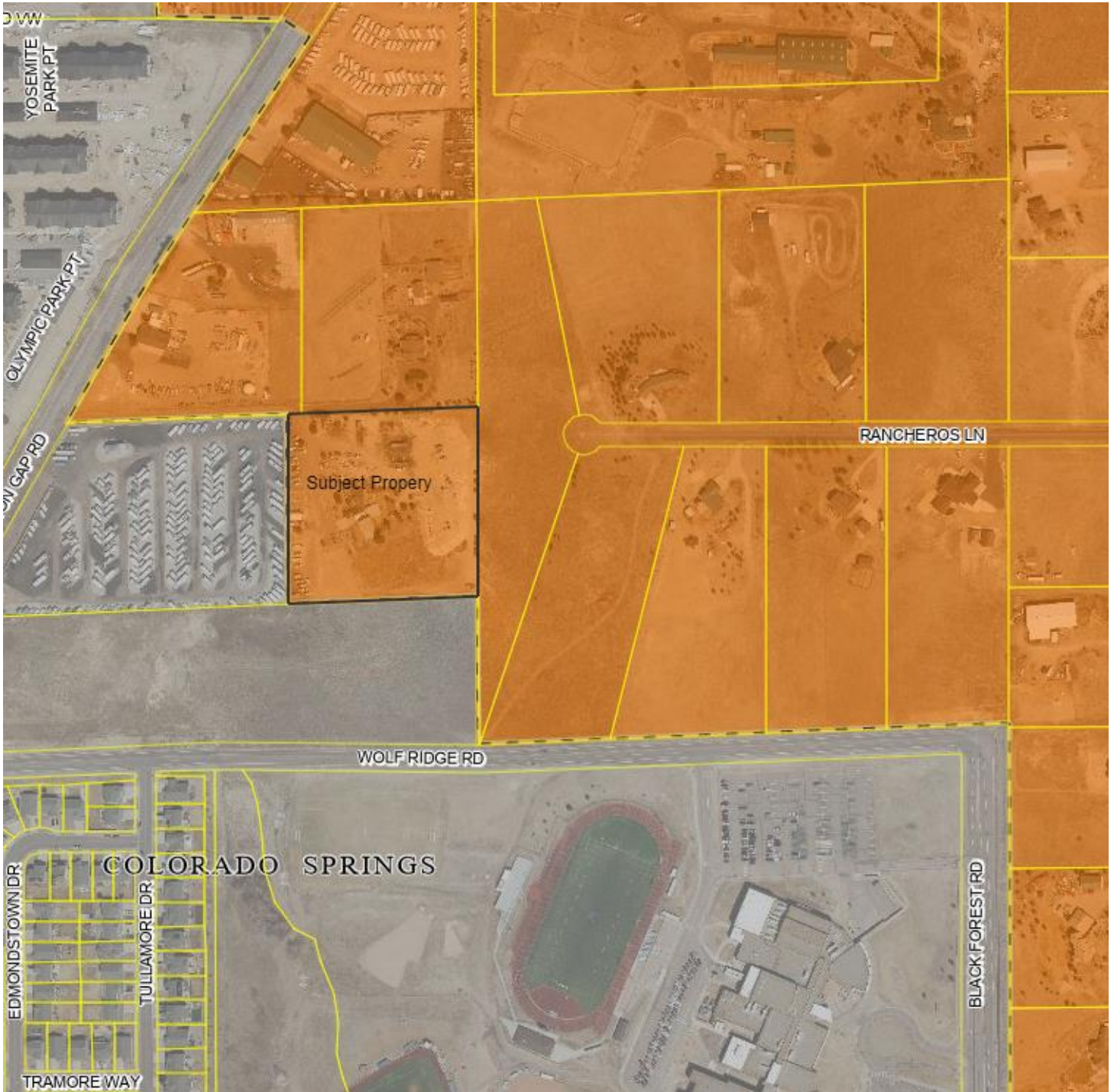


## Legend






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|--|--|
| <span style="display: inline-block; width: 15px; height: 15px; background-color: #d9ead3; border: 1px solid black; margin-right: 5px;"></span> Rural                 | <span style="display: inline-block; width: 15px; height: 15px; background-color: #5bc0de; border: 1px solid black; margin-right: 5px;"></span> Employment Center   |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: #fff2cc; border: 1px solid black; margin-right: 5px;"></span> Large-Lot Residential | <span style="display: inline-block; width: 15px; height: 15px; background-color: #27ae60; border: 1px solid black; margin-right: 5px;"></span> Regional Open Space |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: #fcf8e3; border: 1px solid black; margin-right: 5px;"></span> Suburban Residential  | <span style="display: inline-block; width: 15px; height: 15px; background-color: #27ae60; border: 1px solid black; margin-right: 5px;"></span> Mountain Interface  |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: #f4cccc; border: 1px solid black; margin-right: 5px;"></span> Urban Residential     | <span style="display: inline-block; width: 15px; height: 15px; background-color: #5bc0de; border: 1px solid black; margin-right: 5px;"></span> Military            |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: #f4cccc; border: 1px solid black; margin-right: 5px;"></span> Rural Center          | <span style="display: inline-block; width: 15px; height: 15px; background-color: #fce4ec; border: 1px solid black; margin-right: 5px;"></span> Utility             |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: #d9534f; border: 1px solid black; margin-right: 5px;"></span> Regional Center       | <span style="display: inline-block; width: 15px; height: 15px; background-color: #d9d9d9; border: 1px solid black; margin-right: 5px;"></span> Incorporated Area   |



# Map Exhibit #4: Area of Change

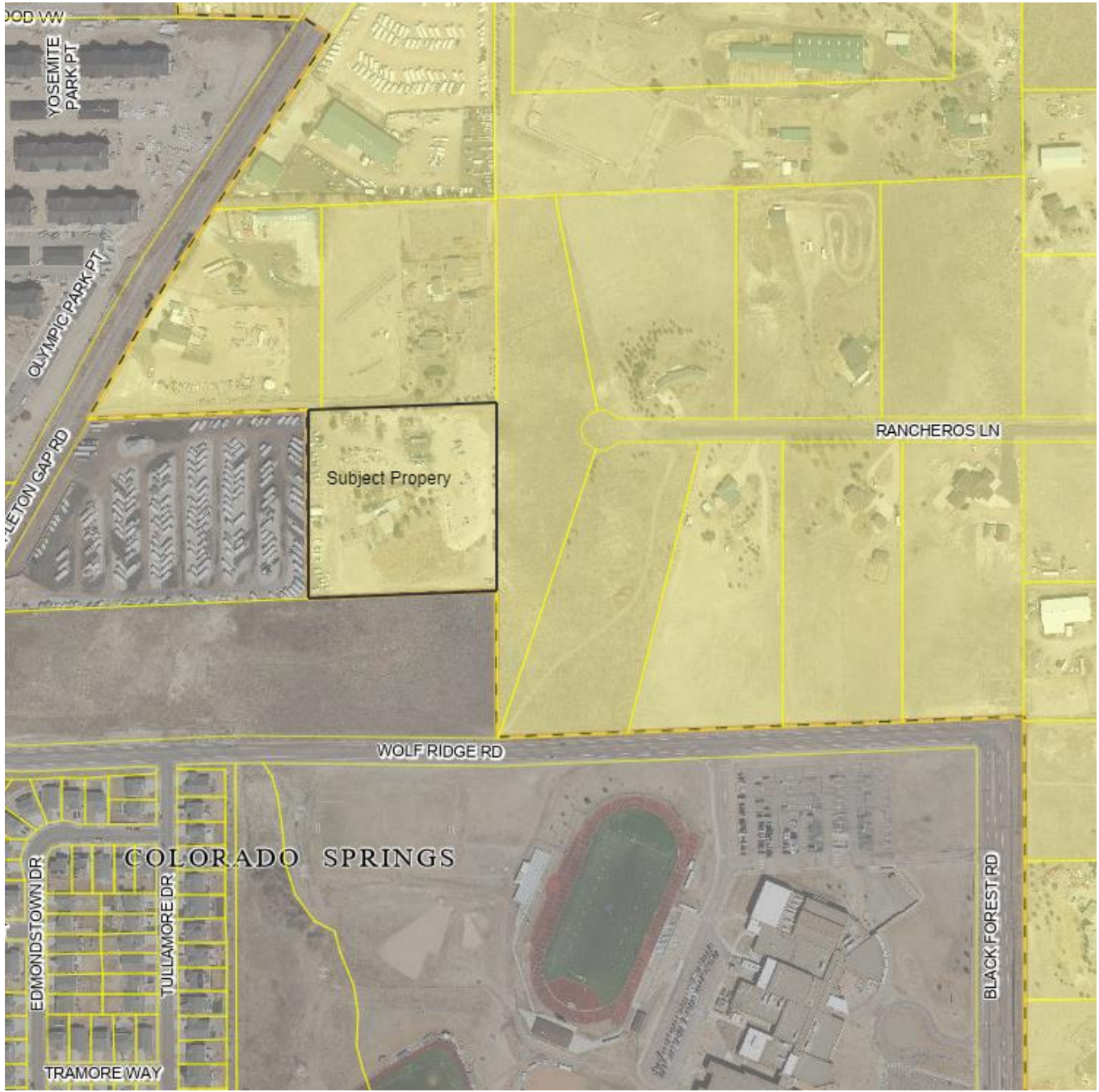


## Legend

-  Protected/Conservation Area
-  Minimal Change: Undeveloped
-  Minimal Change: Developed
-  New Development
-  Transition



# Map Exhibit #5: Key Areas Of Change



## Legend

- Military Installations
- Potential Areas for Annexation
- Enclaves or Near Enclaves
- Small Towns & Rural Communities
- Fountain Creek Watershed Flood Control & Greenway District
- Forested Area
- Pikes Peak Influence Area
- Tri-Lakes Area
- Colorado Springs Airport/Peterson Field
- Uncommon Natural Resources

**Letter of Intent**

1. Ben Fisk. 719-237-8157. [Ben@fisklawnsapes.com](mailto:Ben@fisklawnsapes.com)
2. Ben Fisk. 719-237-8157. [Ben@fisklawnsapes.com](mailto:Ben@fisklawnsapes.com)
3. 7135 Templeton Gap Rd. Colorado Springs CO 80923
4. Property tax schedule: 5307000005
5. RR-5
6. A detailed analysis summarizing how the request complies with each of the following Criteria of Approval in Chapter 5 of the Land Development Code:
  - a. The strict application of any of the provisions of this Code would result in peculiar and exceptional practical difficulties or undue hardship – **lack of suitable parcels in this area for landscaping companies, along with this area not having residential properties immediately surrounding it.**
  - b. The proposed use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the surrounding area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and County - **This 5-acre parcel is currently zoned RR-5 and is in a unique position within El Paso County. With only 1 true “residential” neighbor, this parcel of land is well suited for our application. We’re bordered by an RV storage lot, a construction company and vacant land thus my landscaping company fits into the surrounding uses.**

**We’ve already done a lot of improvements on this property to maintain a clean and presentable appearance for our neighbors and community. When originally purchasing this property, the weeds were 5-6 feet tall as it hadn’t been taken care of in years. There were several species of noxious weeds that we’ve eradicated over the past few years. Most of the existing trees have been pruned or removed if dead. We’ve landscaped the front and back yards beautifying the property. We’ve also hauled over 140 tons of debris, old metal and trash off of the property left by the previous owner.**
  - c. The proposed use will be able to meet air, water, odor or noise standards established by County, State or federal regulations during construction and upon completion of the project – **Yes, no comments**
  - d. The proposed use will not adversely affect wildlife or wetlands – **Yes, no comments**
  - e. The applicant has addressed all off-site impacts – **Yes, no comments**
  - f. The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping – **Yes, site plan**

shows parking. Plenty of space and designed for traffic circulation. Screening is provided by trees to the north, existing block wall to the west, proposed block wall to the south (to be constructed by south property owner when property to south is developed per City of Colorado Springs Planner). Additionally there are some trees on the east property line to help with screening. Front and back yards around the house structure have been landscaped as well as mature trees around house as shown on site plan. There is also an area designated as green space – see site plan. This is native grass.

- g. Sewer, water, storm water drainage, fire protection, police protection, and roads will be available and adequate to serve the needs of the proposed variance of use as designed and proposed – **Yes. Understand we are outside of official fire protection from CSFD and Falcon Fire and will be charged from CSFD for responding to any events/fires at this parcel. There is a fire hydrant located on Wolf Ridge Dr. that is approx. 400' from southern property line.**

7. RR-5, CAD-O

- 8. A discussion summarizing the proposed request and compliance with the applicable requirements of the Land Development Code. - **I'm requesting a variance of use for a landscaping business and outside storage at 7135 Templeton Gap Rd. We are also requesting a 5000 sq ft metal building, detached garage, with those details in a different application. We are requesting this variance of use for my landscaping company because of the lack of suitable properties in this area for a landscaping company. After meeting with neighbors to the east and north, the two other RR-5 parcels, they are both in full support of this request. We believe this request to be in compliance with Land Development Code**

- 9. A discussion regarding how the proposed request complies with the definition of the proposed use and any applicable use specific standards within the Land Development Code.
  - a. **Grading & Erosion: We have regraded approx. 1 acre of this property to create more level space for new building area. Erosion mitigation has been completed between north property line and new coffin block wall. This area has revegetated. The dirt that was cut for new building area was moved to the south. This hill to the south will be receiving erosion mitigation as a part of this project.**
  - b. **Stormwater: Proposed request will not adversely affect adjacent properties or existing stormwater runoff patterns.**

10. A discussion regarding anticipated traffic generation and access, unless a separate traffic study is required and is being provided.

- a. **Traffic Discussion (No TIS)**
  - **Vehicular Traffic: Daily vehicle trip generation varies based on season but generally does not exceed 40. Peak hour trips do not exceed 10.**
  - **There are no additional proposed minor or major roadway intersections**

- The increase in the number of vehicular trips does not exceed the existing trip generation by more than 10 peak hour trips or 100 daily trip ends
- The change in the type of traffic to be generated does not adversely affect the traffic currently planned for and accommodated within, and adjacent to, the property
- The acceptable LOS on the adjacent public roadways, accesses, and intersections will be maintained
- No roadway or intersection in the immediate vicinity has a history of safety or accident problems
- There is no change of land use with access to a State Highway.
- Pedestrian Traffic: proposed use will not generate any new pedestrian traffic.
- Bicycle Traffic: proposed use will not generate any new bicycle traffic

**Additional Traffic Notes:**

- Property is being accessed by a shared roadway with neighbor to north.



- Approx. 15-20 team members drive here each day
- Customers don't come to our site except on very rare occasions
- We receive on average 1 delivery vehicle per day (Amazon, Fedex, UPS etc)
- We receive on average 1 larger delivery per week (tandem dump truck)
- We park 24 trucks (mostly F250's & F350's)
- We park 12 trailers (some enclosed utility trailers and some flatbed trailers)
- We have approx. 20 snow plows that are currently sitting outside but will be stored in building once approved/built
- We have a 221F compact wheel loader on property most of the time
- We have 5 skid loaders (most of the time they are on landscape sites)

Road impact fees: **We are aware of road impact fees as a part of this application**

Thank you for your consideration,

Ben Fisk

719-237-8157

[ben@fisklawnsapes.com](mailto:ben@fisklawnsapes.com)



RESOLUTION NO. 23-

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

APPROVE FOR A VARIANCE OF USE  
7135 TEMPLETON GAP - LANDSCAPING BUSINESS (VA232)

WHEREAS, Fisk Landscapes did file an application with the El Paso County Planning and Community Development Department for approval of a Variance of Use within the RR-5 (Residential Rural) zoning district to permit a contractor's equipment yard within the unincorporated area of the County, more particularly described in Exhibit A, which is attached hereto and incorporated by this reference; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on September 7, 2023, upon which date the Planning Commission did by formal resolution recommend approval of the subject variance of use.

WHEREAS, a public hearing was held by this Board on September 28, 2023; and

WHEREAS, based on the evidence, testimony, exhibits, recommendations of the El Paso County Planning Commission, 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 County Commissioners during the hearing, this Board finds as follows:

1. That the application for the variance of use was properly submitted for consideration by the Board of County Commissioners.
2. 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.
3. 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 persons and the general public were heard at those hearings.
4. That all exhibits were received into evidence.
5. That 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.

6. That for the above-stated and other reasons, the proposed variance of use is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

WHEREAS, pursuant to Section 5.3.4 of the El Paso County Land Development Code, as amended, in approving this variance of use, the Board of County Commissioners considered one or more of the following criteria:

1. The strict application of any of the provisions of the Land Development Code would result in peculiar and exceptional practical difficulties or undue hardship on either the owner or the contract purchaser of the property;
2. The proposed use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the surrounding area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and the County;
3. The proposed use will be able to meet air, water, odor or noise standards established by County, State or Federal regulations during construction and upon completion of the project;
4. The proposed use will comply with all applicable requirements of the Land Development Code and all applicable County, State, and Federal regulations except those portions varied by this action;
5. The proposed use will not adversely affect wildlife or wetlands;
6. The applicant has addressed all off-site impacts;
7. The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping; and/or
8. Sewer, water, storm water drainage, fire protection, police protection, and roads will be available and adequate to serve the needs of the proposed Variance of Use as designed and proposed.

NOW, THEREFORE, BE IT RESOLVED the Board of County Commissioners of El Paso County, Colorado, hereby approves the application for a variance of use to allow a contractor's equipment yard within the RR-5 (Residential Rural) zoning 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 herein by this reference;



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

CONDITIONS

1. Approval is limited to the use of a contractor's equipment yard, as discussed and depicted in the applicant's letter of intent and site plan drawings. Any subsequent addition or modification to the use beyond that described in the applicant's letter of intent and as shown on the site plan shall be subject to approval of a new Variance of Use request.
2. A site development plan shall be applied for and approved to legalize the existing use on the site within six (6) months of the date of Variance of Use approval by the Board of County Commissioners. The deadline may be extended by the PCD Director, at his or her discretion, if the Director finds that the applicant has made a good faith effort to secure such approval.

NOTATIONS

1. Variance of Use approval includes conditions of approval and the accompanying site plan and elevation drawings. No substantial expansion, enlargement, intensification, or modification shall be allowed except upon reevaluation and public hearing as specified in the El Paso County Land Development Code.
2. The Board of County Commissioners may consider revocation and/or suspension if zoning regulations and/or Variance of Use conditions/standards are being violated, preceded by notice and public hearing.
3. If the Variance of Use is discontinued or abandoned for two (2) years or longer, the Variance of Use shall be deemed abandoned and of no further force and effect.

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

DONE THIS 28<sup>th</sup> day of September 2023 at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

ATTEST:

By: \_\_\_\_\_  
Chair

By: \_\_\_\_\_  
County Clerk & Recorder

EXHIBIT A

TRACT IN SW4NE4 OF SEC 7-13-65 AS FOLS, BEG AT A PT ON ELY LN OF SD SW4NE4  
505.15 FT SLY THEREON FROM NE COR OF AFMD TR, TH WLY PARA WITH N LN OF  
SD SW4NE4 466.69 FT, S AT R/A 466.69 FT, E AT R/A 466.69 FT TO ELY LN OF  
SW4NE4, TH NLY ALG SD LN 466.69 FT TO POB, TOG WITH R/W FOR RD OVER S 25.0  
FT, L 1/2 MR