

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

**SPECIAL MEETING**

THURSDAY, MARCH 13, 2014

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

CHAIR GONZALEZ CALLED THE MEETING TO ORDER AT 8:30 A.M.  
THE MEETING ADJOURNED AT 9:45 A.M.

**PRESENT:**

Donley  
Gonzalez  
Ham  
Henninger  
Markewich  
Phillips  
Shonkwiler  
Sparks  
Walkowski

**ABSENT:**

**ALSO IN ATTENDANCE:**

Mr. Peter Wysocki, Planning and Development Director  
Mr. Marc Smith, City Municipal Attorney

**RECORD OF DECISION**

**COMMUNICATIONS**

Mr. Wysocki announced the Informal meeting will occur immediately after the Special meeting.

Commissioner Gonzalez is term limited as of May 9, 2014. Commissioner Gonzalez announced that during next week's formal meeting the Planning Commission should be prepared to nominate a commissioner to take his seat as the next Planning Commission representative on the Downtown Review Board.

# CITY OF COLORADO SPRINGS PLANNING COMMISSION

## RECORD-OF-DECISION

### ITEM 1

#### STAFF PRESENTATION

Mr. Mike Schultz, City Planner II, presented PowerPoint slides (Exhibit A). Mr. Schultz distributed an email noting that the homeowners association (HOA) and applicant have agreed upon landscaping. Mr. Schultz requested this be included as a condition of record (Exhibit B).

Mr. Schultz added a condition of record #2 as recommended by the HOA: Landscaping to be installed within three months and the entire back of the building be repainted within 18 months of Planning Commission approval of the use variance.

Commissioner Markewich inquired if there were hourly restrictions regarding truck traffic and loading/unloading in the back of the building. Mr. Schultz stated that it was indicated to staff that employee shifts would end at 7 or 8 pm.

Commissioner Donley inquired if the warehouse use carries with the property. Mr. Schultz stated yes. If the use were to cease for a period of one year, then a new application would need to be submitted for review by the City. The applicant is planning to sign a five-year lease.

Commissioner Gonzalez inquired how the proposed use would affect the vacancy rate. Mr. Schultz stated the center would be approximately 70% occupied with 30% vacancy.

#### APPLICANT PRESENTATION

Mr. Rick Turner, Kimco Realty, appreciated City staff moving this forward and holding a special meeting. His company acquired this building and area 10 years ago. This applicant, as well as other candidates, are more of an e-commerce based tenant that need the big box retail buildings. He provided a history of the applicant's business since the 1980s. This tenant's truck traffic is lower than a grocery store. There will be no manufacturing on-site.

Commissioner Ham inquired if there are any planned improvements for curb appeal along Circle Drive. Mr. Turner stated they will continue to maintain the lot, and plan to improve the site in the near future.

Commissioner Donley noticed there is a restriction of delivery trucks before 6am, and inquired if there is a need for outdoor storage. Mr. Turner stated no. The only outdoor storage would consist of a truck arriving too early and needing to spend the night in the front parking lot, and then would unload in the morning and leave the site.

Commissioner Markewich inquired if he'd be willing to tie the use variance to this specific tenant. Mr. Turner replied he is willing to, but preferred not to.

# CITY OF COLORADO SPRINGS PLANNING COMMISSION

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### **CITIZENS IN FAVOR**

Mr. Mike DeGrant, developer of Spring Creek and HOA president, appreciated City staff negotiating conditions of painting and landscaping with the applicant. He would prefer to see the building occupied rather than sit vacant.

Commissioner Phillips inquired if the HOA board has been turned over to the homeowners. Mr. DeGrant stated no, that has not occurred yet. There is a master HOA for the entire subdivision that meets on a regular basis which is well-funded and has no concerns about maintaining the proposed landscaping.

### **CITIZENS IN OPPOSITION**

None

### **APPLICANT REBUTTAL**

None

### **DECISION OF THE PLANNING COMMISSION**

Commissioner Donley initially had a negative reaction and felt this use or site should be rezoned or require a conditional use application. After the discussion, he felt there is a need for obsolete buildings to meet an exceptional and extraordinary need and condition. He opposed overnight outdoor storage and preferred not to allow manufacturing. He preferred limiting truck delivery with unloading and loading. He was delighted to see reuse of vacant buildings.

Commissioner Ham agreed with Commissioner Donley's comments. His main concern was that trucks would deliver too close to a residential neighborhood. If truck delivery time restrictions remain on the plan, then he was in support of the application.

Commissioner Henninger supported the use variance. He requested information regarding the current and anticipated growth of the remaining available land adjoining the commercial property and this was addressed by the HOA representative as being favorable with additional building to occur.

Commissioner Shonkwiler suggested the property management keep a close eye on the property to avoid illegal sign or banner use of the property. He supported the variance. He suggested City staff revise the City Code to allow these types of uses to invest in these types of vacancies.

Commissioner Phillips suggested the applicant continue coordinating with the HOA even after maintenance is turned over to the homeowners.

Commissioner Markewich supported the variance because it complies with the Comprehensive Plan and review criteria. He appreciated the cooperation between the applicant and the neighboring HOA.

Commissioner Gonzalez supported the variance. When he first visited the site he was concerned with buffering. He also commended the applicant and HOA coming to an agreement. He felt this application was in conformance with the Comprehensive Plan objectives for infill development. He felt the variance should not be tied to the user/tenant and preferred to leave options available to fill vacancies in this

# CITY OF COLORADO SPRINGS PLANNING COMMISSION

## RECORD-OF-DECISION

area of the city. That would provide developer a 12-month window to find another user or return it to a grocery user.

Commissioner Gonzalez suggested the potential motion maker include staff's suggested additional condition of approval:

Landscaping to be installed within three months and the entire back of the building be repainted within 18 months of Planning Commission approval of the use variance.

Commissioner Walkowski clarified that the plan notes on Sheet 5 state this variance is limited to the applicant/owner.

Commissioner Sparks supported the variance.

Commissioner Shonkwiler felt this variance should be applied to the land and not the owner/user.

Moved by Commissioner Donley, seconded by Commissioner Shonkwiler, to approve **Item No. 1-File No. CPC UV 14-00018**, the use variance to allow warehouse and distribution within a PBC (Planned Business Center) zone district based upon the finding that the use and plan comply with the criteria for granting a use variance and a development plan as set forth in City Code Sections 7.5.803.B and 7.5.502.E, and is subject to the following conditions of approval and technical modifications to the development plan:

### Condition of Approval

1. Outdoor storage of products, supplies, and merchandise is prohibited.
2. **Landscaping to be installed within 3 months and the entire back if the building be repainted within 18 months of CPC approval of the use variance (Refer to Exhibit B).**

### Technical Modifications

1. Document any agreements or coordination between Mike DeGrant of the Spring Creek HOA and the property owner / applicant regarding buffering or screening on the Spring Creek development side of the property.
2. In addition to the above landscaping/screening, show three (3) additional evergreen trees (min. six-feet tall) just east of the rear drive on Monterey. The trees shall be planted outside of the sight safety area as determined by the City Public Works Department.
3. Under Conditions of Approval: Replace note #1 with "No outdoor storage of product or supplies".
4. Note the City file number in the lower right hand corner of each plan page (CPC UV 14-00018).
5. Clarify the correct location of the 30-foot utility, access and drainage easement along the existing drive
6. Show the parking counts for each row of parking and indicate the total existing number of parking spaces.
7. Note and label the location of the accessible parking stalls on-site.

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

8. Note the location of all the rear loading docks associated with the tenant space. Also illustrate any intended parking area for the trailers. Any trailer parking shall not be within the shared drive-access.
9. Add the property address (the specific tenant address) to the Property Information on the front sheet.
10. On Note #5, correct "Conditional Use" to "Use Variance".
11. Illustrate the general location of the landscape medians throughout the shopping center.
12. Clarify if there is an existing cross access easement with the property immediately north of the shopping center; the travel route of the trucks through this drive appear to cross over the property line.
- 13. Strike number 5 listed on site plan page SP-01 regarding use variance approval limited to this user.**

The motion carried 9-0.

March 13, 2014  
Date of Decision

  
\_\_\_\_\_  
Edward Gonzalez, Planning Commission Chair

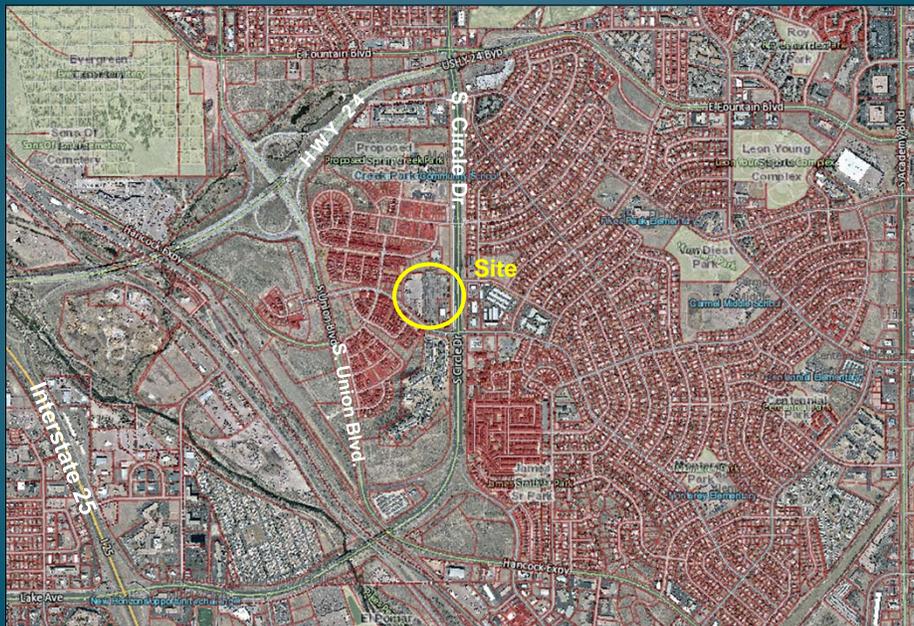
**CITY PLANNING  
COMMISSION  
SPECIAL MEETING  
MARCH 13, 2014**

**APPLICATION: USE VARIANCE FOR  
CAMERON'S PRODUCTS / SPRING CREEK  
SHOPPING CENTER**

**CITY FILE NO.: CPC UV 14-00018**

**PLANNER: MIKE SCHULTZ**

**USE VARIANCE - CPC UV 14-00018** **LOCATION MAP**



USE VARIANCE – CPC UV 14-00018 SITE & TENANT INFORMATION

Zoning: PBC (Planned Business Center)

Master Plan/Use: Spring Creek Master Plan / Commercial

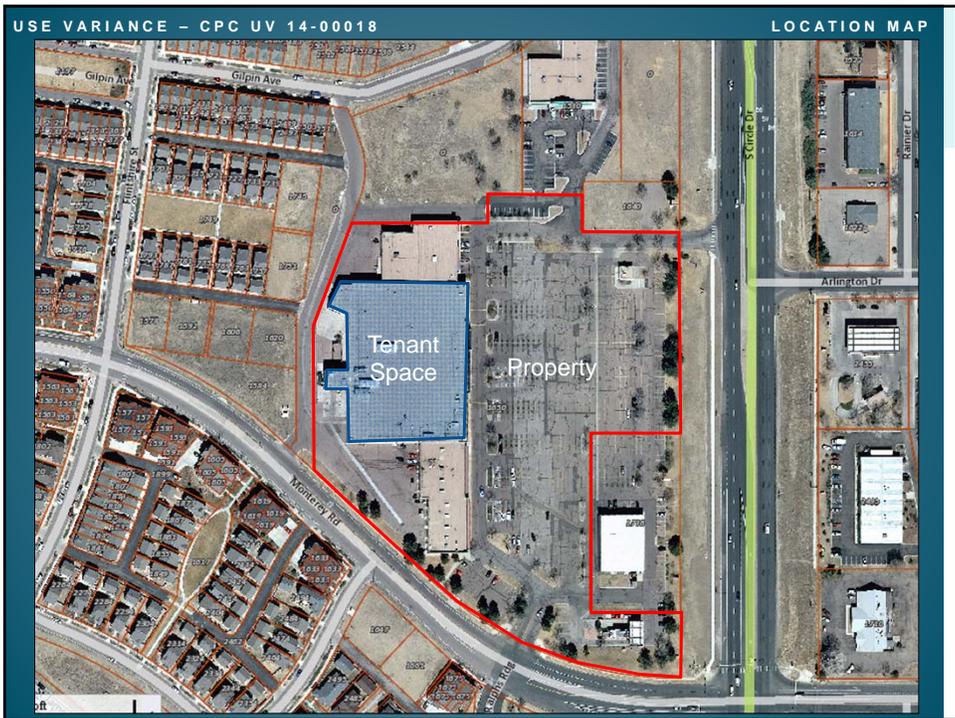
Comprehensive Plan / 2020 Land Use: Community Activity Center

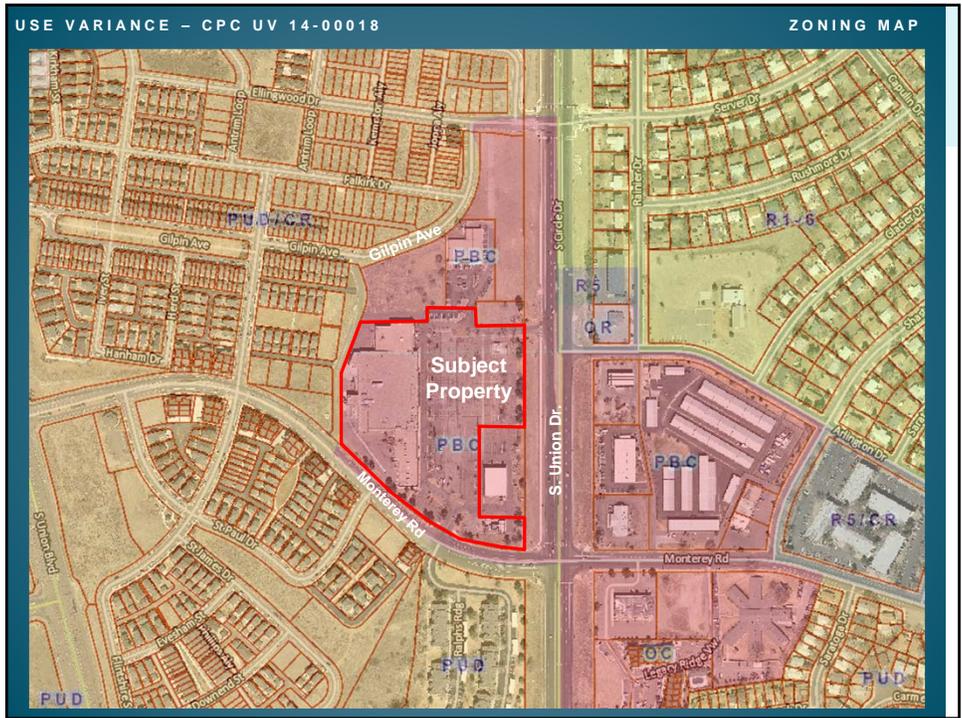
Spring Creek Shopping Center:

- 9.49 acres
- +/- 107,000 square feet
- 4 existing tenants
- > 75% vacant (staff est.)

Cameron's Products Space:

- +/- 65,000 square feet
  - 58,000 sq. ft. warehouse/distribution
  - 5,800 sq. ft. office
  - 1,500 sq. ft. retail





USE VARIANCE - CPC UV 14-00018 ISSUES AND CONSTRAINTS

**Resident and HOA Issues**

- Amount of truck traffic and truck routes;
- Current vacancy of the center / vagrants and vandalism;
- Trash pick up and condition of the building;
- Outdoor storage.

**Site Constraints**

- No buffer/landscape area available on shopping center site;
- Landscaping to be provided on Spring Creek property.



USE VARIANCE - CPC UV 14-00018

Framework of Agreement between Kimco and Spring Creek HOA

- Install landscaping as provided on preliminary landscape plan (shown, a final plan to be incorporated into development plan) within 3 months of date of CPC approval. (Landscaping will be maintained by Spring Creek HOA)
- Back side of entire length of building to be painted within 18 months of date of CPC approval.

Alley/Access Drive  
Monterey Rd.  
Spring Creek Shopping Center

USE VARIANCE – CPC UV 14-00018

Use Variance criteria (City Code Section 7.5.803.B. ):

**1. That there are *exceptional or extraordinary circumstances* or conditions applicable to the property involved or to the intended use of the property that do not apply generally to the property or class of uses in the same zone so that a denial of the petition would result in undue property loss; and**

As cited by the owner, **the 65,000 square feet of vacant retail space has become difficult to fill due to a lack of retailer and market demand**; filling vacant mid and big “box” retail has shown to be difficult throughout the city.

**2. That such a variance is necessary for the preservation and enjoyment of a property right of the petitioner; and**

Given the **physical and market constraints** applicable to the site, the requested **variance can be justified in order to enjoy reasonable use of the property**. If the use variance were denied the building could sit vacant and a nuisance to other surrounding property owners.

USE VARIANCE – CPC UV 14-00018

Use Variance criteria (City Code Section 7.5.803.B. ):

**3. That such variance will not be detrimental to the public welfare or convenience nor injurious to the property or improvements of other owners of property.**

The applicant has indicated **truck traffic will be similar** (or less) of that generated by the former grocery store; coupled with the owners agreement with the Spring Creek HOA to **install landscaping within 3 months and paint the back of the building within 18 months of the date of approval**. Along with the condition of approval and the agreed upon mitigation measures, staff finds the use will not be detrimental to the public welfare.

USE VARIANCE – CPC UV 14-00018

Staff Recommendation:

**Approve** the use variance for Cameron's Products to allow warehouse and distribution use within a PBC (Planned Business Center) zone district based on the finding that the use variance complies with the review criteria in City Code Section 7.5.803.B. subject to the conditions outlined below and the technical modifications outlined within the staff report.

1. Outdoor storage of products, supplies and merchandise is prohibited;
2. Landscaping to be installed within 3 months and the entire back of the building be repainted within 18 months of CPC approval of the use variance.

QUESTION  
S



## Schultz, Michael

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**From:** Mike Degrant <mdegrant@lowellneighborhood.com>  
**Sent:** Wednesday, March 12, 2014 5:33 PM  
**To:** 'Turner, Rick'  
**Cc:** Schultz, Michael  
**Subject:** RE: Border Planting

Rick,

The HOA will agree with the Landscaping to be installed within the next 3 months and the entire back of the building must be repainted within 18 months of the variance approval.

Mike

---

**From:** Turner, Rick [mailto:RTurner@kimcorealty.com]  
**Sent:** Wednesday, March 12, 2014 5:09 PM  
**To:** 'mdegrant@lowellneighborhood.com'; 'Schultz, Michael.(MdSchultz@springsgov.com)'; Connett, Terry; Davidson, Nikki  
**Subject:** Fw: Border Planting

Mr. Degrant,

If we agree to provide the screening as reflected on the attached landscape plan and paint the back side of the building within 18 months of the variance approval, will this be sufficient to mitigate the concerns of the HOA and gain support?

Rick Turner  
Director of Real Estate  
Phone (916) 580-2541  
Cell (916) 872-5116  
Alternate (720) 412-7725  
[rturner@kimcorealty.com](mailto:rturner@kimcorealty.com)

---

**From:** Turner, Rick  
**Sent:** Friday, March 07, 2014 02:47 PM Eastern Standard Time  
**To:** Mike Degrant (mdegrant@lowellneighborhood.com) <mdegrant@lowellneighborhood.com>  
**Cc:** mike.cerbo@ees.us.com <mike.cerbo@ees.us.com>; Schultz, Michael (MdSchultz@springsgov.com) <MdSchultz@springsgov.com>; chris@cameronsproducts.com <chris@cameronsproducts.com>; mpotterpartners@aol.com <mpotterpartners@aol.com>; Connett, Terry  
**Subject:** FW: Border Planting

Mr. Degrant,

Please find attached the proposed screening layout based on the conversation our team had with you on site. If this is acceptable we will proceed with this plan. Thank you again for taking the time to help us resolve this issue.

Rick Turner | Director of Real Estate  
**Kimco Realty Corporation**

4237 South Buckley Road | Aurora, CO 80013  
Direct [720-870-1210](tel:720-870-1210) | Mobile [720-412-7725](tel:720-412-7725) | Alternate [916-872-5116](tel:916-872-5116)  
[rturner@kimcorealty.com](mailto:rturner@kimcorealty.com)

NYSE: KIM

This transmittal is submitted solely for discussion purposes and is not an offer to lease nor does it create a legally binding obligation on either party and shall only represent discussion to negotiate, and each party acknowledges and agrees that it is proceeding with negotiations related to the proposed transaction at its sole cost and expense and that either party may terminate negotiations for any reason, at any time, without any liability or obligation whatsoever to the other party. Nothing herein is intended to be contractual in nature and neither party shall be bound by any of the terms and conditions set forth herein unless and until a formal Lease Agreement has been executed and delivered by both parties.

---

**From:** Andy Barrett [<mailto:abarrett@designscapes.org>]  
**Sent:** Friday, March 07, 2014 8:43 AM  
**To:** Connett, Terry; Turner, Rick; Davidson, Nikki  
**Cc:** Rob Massengale  
**Subject:** Border Planting

Terry,

Here is a design as well as numbers for the Spring Creek Shopping Center border planting. I have also included numbers for the additional 3 trees that the city has requested.

Please let me know if you have any questions.

Thank you,

Andy Barrett  
Commercial Account Manager

303.328.7693

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Version: 2014.0.4335 / Virus Database: 3722/7179 - Release Date: 03/11/14

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**From:** Turner, Rick <RTurner@kimcorealty.com>  
**Sent:** Wednesday, March 12, 2014 5:10 PM  
**To:** Schultz, Michael  
**Subject:** Fw: Border Planting  
**Attachments:** Spring Creek Tree Boarder Layout1 (1).pdf

Fyi below--

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Commercial Account Manager

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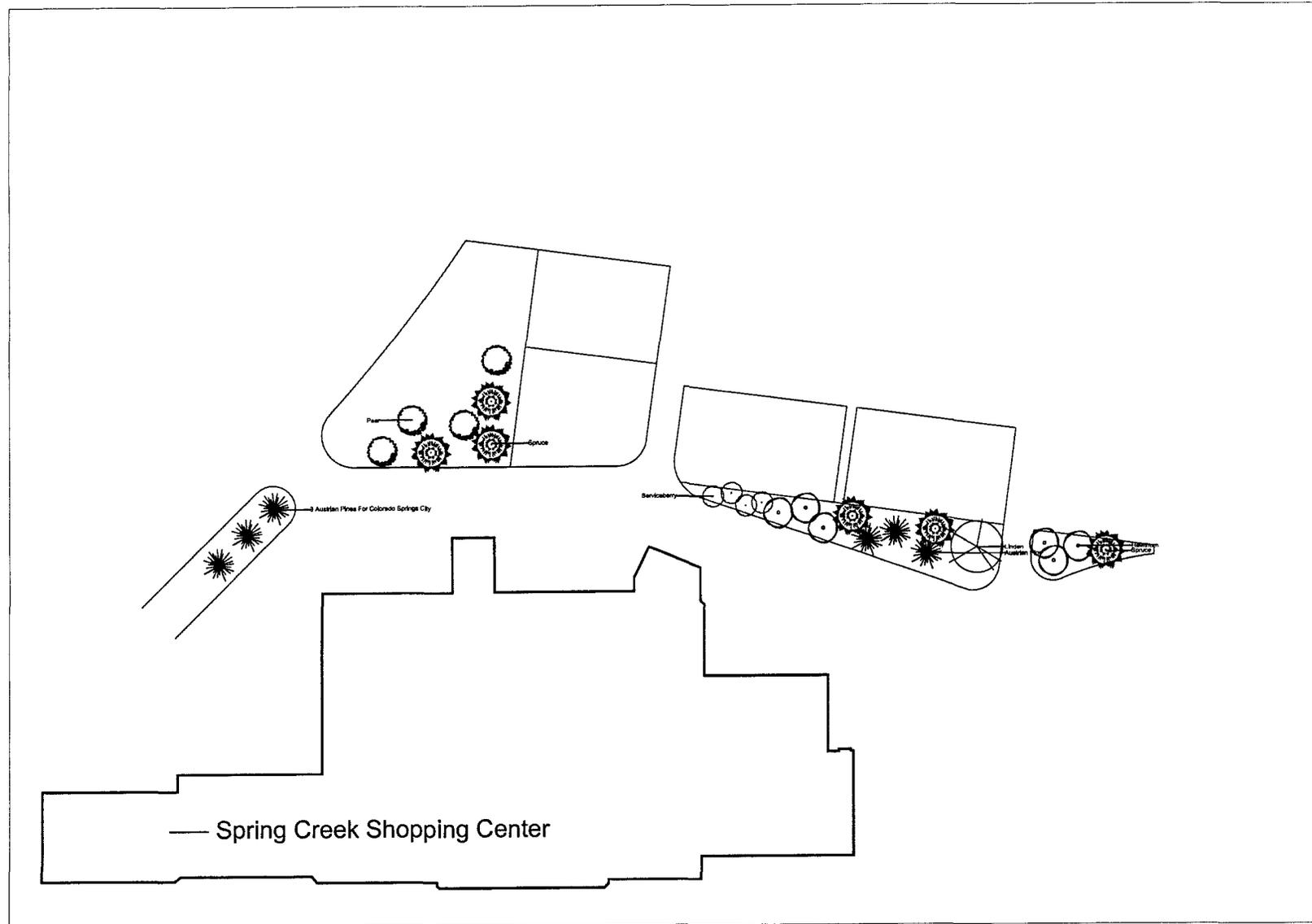
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PROJECT:	Spring Creek Property
	DRAWING NAME:
Colorado Springs	

DESIGNED BY:	CHK:
Andy Barrett	xxxx
REVISIONS:	

DATE: 3/7/2014	
LEGAL:	
PROJECT NO:	SHEET NO:
SEAL:	

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Scale 1/8" = 1'

**Item: 1**  
**Exhibit: B**  
**CPC Special Meeting: March 13, 2014**