



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT
JANUARY 7, 2025**

Application #: 2024-08
Application Name: 6683 Transmission Line Rebuild (the “Project”)
Application Type: Appeal
Applicant: XCEL Energy (PSCo)
Description: This is an appeal by PSCo Energy of the Planning Commission’s confirmation of the administrative decision that the portion of the Project within the CSR zone district must be undergrounded in order to be compatible with the Riverfront Park.

Project Description:

This is an appeal of the Fruita Planning Commission’s decision at its regular meeting on October 8, 2024, confirming Staff’s administrative decision requiring the new transmission line to be placed underground in the Community Services & Recreation (CSR) zone in order to be compatible with the Riverfront Park. City of Fruita Land Use Code (“LUC”) Section 17.25.030 (A) states that, “*Any person aggrieved by a decision by the Community Development Director, Planning Commission, Historic Preservation Board, or Board of Adjustment may appeal such decision as outlined herein*” and that any application for appeal must be filed in writing with the Community Development Department within thirty (30) days of the decision.

The applicant submitted its application for appeal to the Community Development Department on November 7, 2024, and Staff deemed the application to be timely and complete in accordance with Section 17.25.040 (A) on November 12, 2024. ****This appeal is proceeding under the previous LUC language regarding appeals as the updated LUC section had not yet gone into effect. A copy of this former language is attached for reference and are summarized below.**

Because this is an appeal of a decision made by the Planning Commission, LUC Section 17.25.020 (B) states, “*The City Council shall have the authority to hear and decide all other appeals of decisions made by the Community Development Director, Planning Commission, Historic Preservation Board, or Board of Adjustment.*”

LUC Section 17.25.040 (B) states, “*The party making the appeal (the appellant) shall have the burden of proving the necessary facts to warrant reversal or amendment of the decision being appealed. Such proof shall include applicable specific section references within this Code and*

shall be provided with the application. The application shall be based on the record established in the decision-making process.”

Attachments with this Staff Report:

- Staff Report dated October 8, 2024, for Item 2024-08.
- Application to Planning Commission.
- Documents added to the record from the October 8, 2024, Planning Commission meeting.
 - Cost Estimates – dated October 3, 2024
- Minutes of Planning Commission Meeting from October 8, 2024, pertaining to Item 2024-08.
 - Audio Recording of October 8, 2024, Planning Commission at this [link](#). (recording also found on the City’s website located under the Planning Commissions October 8, 2024, meeting information page)
- Appeal Submission Documents.
- Letter of Completeness dated November 12, 2024.
- Supplemental Legal Notice for Appeal Application.
- Previous Appeal LUC Language

City Council must consider:

City Council shall consider the following, in accordance with LUC Section 17.25.040 (E)(1)(i-iv), in determining whether to affirm, reverse or amend decision or interpretation made by the Planning Commission:

- i) The facts stated in the application, as presented by the appellant;
- ii) The requirements and intent of the applicable standards from this Code compared to the decision that is being appealed;
- iii) Evidence related to how the applicable standards from this Code have been administered or interpreted in the past; and
- iv) Consistency with the Comprehensive Plan.

SUMMARY OF OCTOBER 8, 2024, PLANNING COMMISSION MEETING MINUTES

Planning Commission Motion:

COMMISSIONER MCGUIRE MOVED TO APPROVE THE CUP, IN THE INDUSTRIAL AND RESIDENTIAL ZONES OVERHEAD AS PRESENTED WITH THE CONDITION THAT ALL REVIEW AGENCY COMMENTS ARE MET AND CONFIRMING STAFFS ADMINISTRATIVE DECISION THAT THE PORTION WITHIN CSR ZONE DISTRICT AS

AN ALLOWED USE BE UNDERGROUNDED IN ORDER TO BE COMPATIBLE WITH THE RIVERFRONT PARK.

COMMISSIONER BIDDLE SECONDED THE MOTION.

MOTION IS APPROVED 3-1

The following is a summary of the Planning Commission's discussion on the application (adopted meeting minutes attached with this application):

1. The Planning Commission understood that the existing transmission lines were outdated.
2. The Planning Commission felt it necessary for the transmission line to be compatible through the CSR Zone and with the Riverfront Park, that the line be underground through this portion of the project. In this Zone District, overhead and underground transmission lines are uses by right. Pursuant to LUC 17.07.040 (B)(4), with a use by right the decision-making body may still review whether such use is compatible with the surrounding land uses in the interest of the public for concurrent review.
3. The Planning Commission determined that all other areas within the City Limits, the above ground transmission lines meet the criteria of the Fruita Land Use Code for issuance of a conditional use permit.
4. The Planning Commission received additional information about the application related to the cost of undergrounding the transmission line and needed time to review the new materials provided.
5. The Planning Commission asked about other alternative routes that avoid the Riverfront Park area.
6. The Planning Commission understood that PSCo could rebuild in its existing location but that PSCo had worked with the City and surrounding landowners to reach a more favorable route as proposed.

SUMMARY OF THE APPLICANT'S APPEAL APPLICATION

- **Appeal Overview:**
 - The appeal concerns PSCo's application to rebuild its 6683 Transmission Line (Line 6683), a 70-year-old transmission line serving several communities in Mesa County, including the City of Fruita. The rebuilt line will pass through Residential, Industrial and CSR Zone Districts.
 - The line must be rebuilt to ensure the continued provision of safe and reliable electricity to these communities.
- **Planning Commission Approval:**

- The Planning Commission approved the CUP to install overhead transmission lines within Industrial and Residential zones – *this decision is not being appealed*.
- The Planning Commission confirmed the Administrative Decision that the portion of the line within Riverfront Park (zoned CSR) must be undergrounded to be compatible with the park.
- The appeal argues that this undergrounding condition is flawed for three key reasons.

ARGUMENTS BY PSCO ON APPEAL:

- **First Argument - Inconsistency with Fruita's Code:**
 - The undergrounding condition is inconsistent with Fruita's Municipal Code (Code), which allows above-ground transmission lines in the CSR zone as an allowed use that can coexist with other park uses.
- **Second Argument - Violation of Colorado Case Law:**
 - Colorado case law prohibits local governments from conditioning or denying a use by right (like above-ground transmission lines) without adequate review criteria.
 - The City's Code only includes a compatibility requirement without specifics as to how this is applied; regardless, the Planning Commission failed to properly apply per the Code anyway.
 - The transmission line can coexist with other park uses, such as the disc golf course and recreational trails, and the Planning Commission did not provide a basis to conclude otherwise.
- **Third Argument - High Costs of Undergrounding:**
 - Undergrounding Line 6683 through Riverfront Park would impose an additional cost of \$9.7 to \$11.3 million, which the City would have to bear if the Planning Commission's decision is upheld.
 - The Colorado Public Utility Commission (PUC) has rejected local attempts to require undergrounding transmission lines due to the high cost, as it can be up to ten times more expensive than above-ground lines.
 - The PUC has ruled that such additional costs should not be passed onto PSCo's ratepayers but must be covered by the jurisdiction that imposes the requirement.
- **Conclusion:**
 - The appeal argues that the City's decision to require the undergrounding of the new transmission line through the Riverfront Park (CSR Zone District) is both legally and financially flawed, with the additional costs for undergrounding being paid by PSCo potentially being rejected by the PUC if the City Council upholds the Planning Commission's ruling. PSCo provides a proposed condition of

approval that if Council upholds the Planning Commission’s confirmation of the administrative decision that the transmission lines must be undergrounded in order to be compatible with existing uses, it should add a condition that the undergrounding should occur along the Kings Road route and if the City does not enter into an agreement with PSCo to do so within 30 days then PSCo can move forward with overheading the lines within the CSR District.

STAFF ANALYSIS OF THE LAND USE CODE

This is an excerpt from the Code showing permitted uses by right and those uses that are conditional.

Table 17.05.090 - LAND USE TABLE												
	RE	LLR	CR	SFR	MP	DMU	C-1	C-2	I	CSR	NCO	FLU
Utility Corridors												
Transmission Lines (above ground)	C	C	C	C	C	C	C	C	C	A	C	*
Transmission Lines (underground)	C	C	C	C	C	C	C	C	C	A	C	*
All Other	C	C	C	C	C	C	C	C	C	C	C	*

* -Means not allowed

A - Means allowed outright in the indicated zone, subject to compatibility with surrounding properties, pursuant to Section 17.05.080.C, and any applicable special and supplementary zoning regulations and standards.

C - Allowed by Conditional Use Permit only, pursuant to Conditional Use Permit Section 17.09.030.

Staff Report:

In accordance with Section 17.07.040 (B)(4) of the LUC, the CUP for the line within the Residential and Industrial zone districts and the Administrative review of the line within the CSR zone district were consolidated into one process in the interest of the public. While the Staff Report dated October 8, 2024, consolidated the Administrative review and the CUP, the information below focuses on the Applicant’s appeal of the Planning Commission’s confirmation of the Administrative Decision to require undergrounding the portion of the transmission line through the CSR zone district, which is commonly referred to as the Riverfront Park.

Additionally, this information considers the criteria contained in the LUC related to an Administrative review of an allowed land use.

The Applicant has provided written arguments stating that the Administrative Decision to require undergrounding of the transmission lines through the CSR zone district is inconsistent with the Fruita Municipal Code which allows above-ground transmission lines in that zone district, that the decision is in violation of Colorado case law, and that requiring the lines to be underground would impose significant additional costs which must be paid for by the City.

The Applicant correctly states that the Planning Commission deemed the above ground transmission lines compatible in the Industrial and Residential zones. However, doesn't provide additional evidence to support that fact that the above transmission lines are already located in these zones, but overhead lines are not currently located in the CSR zone over the Riverfront Park. The CSR zone district helps implement the open space, trails, and parks policies of the City's Master Plan which is further supported in the Fruita Parks, Health, Recreation, Open Space, and Trails Master Plan (PHROST).

The Applicant has stated that the Planning Commission did not provide a basis in their decision to affirm the Administrative decision to underground the transmission lines in the CSR zone district. However, in accordance with Section 17.25.040, the burden of proof is on the appellant (here the Applicant) to prove that a decision should be overturned, not on the staff or Planning Commission to prove that its decision should be upheld. The appeal letter states that the above ground transmission lines can co-exist with the existing uses in the Riverfront Park and with associated recreational uses, stating that Colorado's state legislature pass a bill in 2022 (Exhibit E) encouraging the co-location of recreational parks and trails within transmission line corridors. However, that bill encourages trails and recreational uses *to be allowed and built within existing overhead transmission line corridors and easements*; in the Riverfront Park, PSCo does not have an existing easement nor are there existing overhead transmission lines. The Administrative decision to require undergrounding of the lines doesn't deny the application, it simply determines that in order to be compatible with the city's CSR zone district and the existing recreational uses therein and associated Master Plans, such lines must be placed underground. Even if the Powerline Trails Act applied in this instance, the Planning Commission's decision to affirm this requirement doesn't deny the application for the transmission line rebuild and thus, it doesn't deny the Applicant from delivering electricity to Colorado's cities and towns. The Riverfront Park already provides amenities described in this Act which consist of recreational access and opportunities, access to scenic landscapes and cultural features, and sustainable connections – without any transmission lines. The Applicant provided images of above ground transmission lines with trails below them (Exhibit F to Notice of Appeal) in an attempt to support their appeal request. However, the images don't provide any context related to any local land use zoning regulations or approval criteria for determining as to how the lines got there and why. Applicant does not have an existing easement through the Riverfront Park for any transmission lines.

The Application argues that the undergrounding decision is inconsistent with the City's Municipal Code; however, the appeal arguments fail to cite meeting the City's Master Plan or the

City's Parks, Health, Recreation, Open Space and Trails Master Plan, which are specifically incorporated into by the Code as part of the compatibility analysis.

As described in Code Section 17.05.080 (C) Land Use Compatibility Criteria states, *"The City seeks to provide a fair and consistent manner in which to consider compatibility within the overall context of the Fruita Comprehensive Plan, existing adjacent land uses, applicable zoning district requirements, and other city codes and regulations. Nothing in this Section shall prevent the City of Fruita from denying a land use application based on relevant Code requirements or taking enforcement action against a property owner where a nuisance or other Code violation occurs. For all land uses, "compatibility" is provided when a proposed land use can coexist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the other use(s). The applicable city decision-making body may consider other uses existing and approved and may consider all potential impacts relative to what customarily occurs in the applicable zone and those which are foreseeable, given the range of land uses allowed in the zone. The review authority may require conditions of approval to promote compatibility between uses."* Staff conducted this same analysis for the CUP in the Industrial/Residential zone districts as it did for the allowed use in the CSR zone district. Staff has determined that the new high-voltage transmission lines (considerably larger lines and considerably larger poles than what currently exists for the transmission line) proposed through the CSR zone district can be compatible with the overall context of the Fruita Comprehensive Plan, existing adjacent land uses, applicable zoning district requirements, and other city codes and regulations *if placed underground*. Planning Commission confirmed this determination. With those conditions, the proposed use can be consistent with the provisions and purposes of the Land Use Code and with the city's Comprehensive Plan. Some of the community values included in the Comprehensive Plan are: *"Fruita is a community where people are invested and constantly working to make the community better"* and, *"Fruita provides quality services efficiently to its residents and businesses."* The Comprehensive Plan contains statements and goals related to Parks, Health, Recreation, Open Space, and Trails in Chapter 5. It's important to mention this because the application proposes new transmission line locations in the Fruita Riverfront Park. The Plan speaks to enhancement and preservation for new and existing park spaces and protecting the natural environment. Goal #6 on page 69 of the Comprehensive Plan states, *"Preserve the natural features of the city and surrounding landscape through partnerships with local land managers and organizations."*

In addition to the City's Comprehensive Plan, Fruita's Parks, Health, Open Space, and Trails Master Plan (PHROST) says this about the Fruita Riverfront Park, *"Fruita Riverfront Park was previously named Kingsview Open Space. This parcel is located adjacent to Snooks Bottom along the Colorado River and SH340. Fruita Riverfront Park is approximately 37 acres in size. This park provides a high-quality open space resource for the Fruita community and is an important riparian location. Fruita Riverfront Park contains a disc golf course, social trails, and natural, undeveloped river access."* (page 50, PHROST Plan).

It is Staff's position, which was reaffirmed by the Planning Commission, that the Transmission Line proposed through the CSR zone can be considered compatible and in conformance with Section 17.05.080(C) of the LUC if placed underground as explained above. Undergrounding the lines will ensure that the natural and undeveloped areas of the park are not adversely affected by

the nearby large transmission lines and the disc golf course and social trails can operate and be maintained in a manner that continues the specific high-quality open space that the Park ensures. Large overhead transmission lines and towers could prevent further recreational improvements or disc golf relocations (at the very least would dictate where such could go) and interfere with views and serenity of the Park.

Fruita's Code is clear that just because a land use is designated as allowed in a particular zone district, it is not automatically compatible with existing surrounding uses. As set forth herein, the Community Development department had determined that overhead lines through the Riverfront Park (CSR Zone District) would not be compatible with the existing uses therein or the comprehensive plans' statements and goals regarding that park specifically and parks more generally.

The Applicant's appeal states that, *"While the Planning Commission may not like the fact that above ground transmission lines are an approved use in CSR zoning, as a matter of policy, the City has broadly allowed above ground transmission lines within that zone district. Absent a specific conflict with this Project and the particular uses within Riverfront Park, under the Code's standards, the City cannot disallow PSCo's proposed use here."* First, the City does not have any record of approving above ground transmission lines in any CSR zone, so this statement is entirely misleading. Second, this argument fails to acknowledge that the Planning Commission acted in a fair and consistent manner, taking public comments, Staff recommendations, applicants' testimony, and appropriate discussion. The Planning Commission's motion is valid and states that the project can be found compatible with the CSR zone if placed underground. The appeal letter makes it seem that the decision made by the Planning Commission was that they "may not like it", which is untrue and misleading. Each land use application is unique which is why the Code provides the compatibility criteria to be considered in all cases. In addition, the appeal criteria that need to be considered in this instance is evidence related to how the applicable standards from this Code have been administered or interpreted in the past which the Application has not provided specific reasoning at this time.

Although Applicant argues that the City's Code provision requiring a compatibility analysis for allowed uses is contrary to Colorado case law, such is not the case. As set forth above, the Code provides the criteria for analyzing compatibility. This is the same analysis that was conducted by Staff in recommending approval of the CUP in the Residential and Industrial Zone Districts. The Planning Commission meeting minutes and audio, as well as the Staff Report for the October 8, 2024 meeting, reflect that Staff conducted this analysis and that Planning Commission understood it. The Code provides sufficient specificity for such analysis and this was certainly not a situation where the City exercised "unfettered discretion," as Staff looked closely at the PHROST Plan and specific statements regarding the purpose of the Riverfront Park. It is important to note that PSCo has not appealed or complained about this compatibility analysis and language with regard to the issuance of the CUP for overhead lines in the Industrial and Residential Zone Districts; it does not follow that such is defective or contrary to law with respect to the compatibility analysis in the CSR Zone District.

Staff's position on undergrounding the transmission lines through the CSR zone/Riverfront Park was made clear to the applicant ahead of the original Planning Commission hearing date for August 13, 2024. PSCo then asked the Planning Commission for a continuation of the public hearing for more time to work with City Staff. The Planning Commission respectfully agreed to this continuation and made a motion to reschedule the public hearing for September 10, 2024. On September 5, 2024, PSCo asked for an additional continuation of the public hearing to be rescheduled to October 8, 2024. On the night of September 10, the Planning Commission opened the application up for public comments but there was no discussion on the application. This was meant for the public to be able to provide public testimony on the project due to the further continuation. Additionally, the Planning Commission granted the continuation, allowing PSCo additional time to respond to referral agency and staff comments. Staff had requested numerous times that PSCo provide a written, substantiated estimate of the costs of undergrounding the transmission lines through Riverfront Park and Sunset Pointe for the City's preferred route that would avoid the Park. Staff received some cost estimates from PSCo Energy on Tuesday, October 8, 2024, and the information received from PSCo was entered into the public record during the Planning Commission public hearing that night. However, such information does not show any comparisons or information as to how PSCo arrived at the numbers.

In addition, or over a month, Staff has asked PSCo for information concerning the status of its permitting from other land use agencies for this transmission line rebuild (Mesa County, BLM), and just received information (on January 1, 2025) that such permits have not been acquired, though PSCo has not provided information as to where it is in the permitting process with those agencies. . It is also not clear what PSCo's timeframe is for construction and how it intends to rebuild/redirect this line. Because Staff has not received information regarding the other agencies' permitting requirements, Staff does not know if any other agency is requiring undergrounding of lines or placing other restrictions/conditions on the new transmission lines through sensitive areas.

Although the appeal documents submitted contain some additional information on the application, it is still the position of Staff that the transmission lines proposed through the CSR zone be placed underground for the reasons explained above.

Legal Notice:

See attached Supplemental Legal Notice for Appeal.

Review Comments:

All review comments received are included with the October 4, 2024, Staff Report as consolidated review comments. Review Comments were received by Public Works, Engineering, Ute Water, Parks & Recreation, Lower Valley Fire District, and Colorado Parks

and Wildlife. Review comments from these entities should be adequately addressed/resolved before construction.

Public Comments:

Public comments have been received by Staff and all that have been received are included with the application materials in the packet for the October 8, 2024, Planning Commission Hearing. Public comments were also entered into the record at the September 10, 2024, Planning Commission meeting.

OPTIONS AVAILABLE TO THE CITY COUNCIL:

1. Affirm the Planning Commission's decision to approve the administrative decision that the transmission lines must be undergrounded within the Riverfront Park.
 - a. This would keep the Planning Commissions original decision to underground the transmission line in the CSR zone.
2. Reverse the Planning Commission's decision.
 - a. This would approve the aboveground transmission line in the CSR zone.
 - b. Must state findings of fact to support reversing the Planning Commission's decision based upon applicant's compliance with the Compatibility Criteria in Section 17.05.080 (C) of the Fruita Land Use Code.
 - c. May attach conditions of approval on any appeal to ensure the health, safety, and welfare of the City.
3. Amend the Planning Commission's decision.
 - a. This could include the condition proposed by PSCo to underground the lines through Kingsview Road instead of the Riverfront Park