

A. CALL TO ORDER AND ROLL CALL

Five Planning Commissioners were in attendance. (Anthony Farinacci, Mel Mulder, Jessica Hearn, Josh McGuire and Derek Biddle were present.)

B. PLEDGE OF ALLEGIANCE

Commissioner Hearn led the Pledge of Allegiance.

C. AMENDMENTS TO THE AGENDA

None.

D. APPROVAL OF THE AGENDA

COMMISSIONER MULDER MOVED TO APPROVE THE AGENDA

COMMISSIONER MCGUIRE SECONDED THE MOTION

MOTION PASSED 5-0

E. WITHDRAWN ITEMS

None

F. CONTINUED ITEMS

G. CONSENT ITEMS

APPROVAL OF MINUTES:

August 13, 2024, Planning Commission meeting.

COMMISSIONER MULDER MOVED TO APPROVE THE MINUTES

COMMISSIONER FARINACCI SECONDED THE MOTION

MOTION PASSED 4-0 (Commissioner Hearn abstained from the vote as she wasn't present at the last Planning Commission meeting).

H. PUBLIC HEARING ITEMS

Application:	2024-08
Application Name:	6683 Transmission Line Rebuild
Application Type:	Conditional Use Permit
Applicant:	XCEL Energy
Location:	From the Fruita Substation to the Uintah Substation

Description:
This is a request for approval of a Conditional Use Permit to reroute and rebuild approximately four (4) miles of transmission lines from the Fruita substation to the Uintah Substation.

Commissioner Farinacci recused himself from the application because he lived in the Kingsview neighborhood in which the current transmission line ran. He asked if he needed to leave the room or if he could sit in the back of the room and listen to the information?

Mary Elizabeth Geiger, City Attorney, stated that it was okay for him to sit in the back of the room but that he couldn't participate.

Mr. Henry Hemphill, City Planner, gave the staff presentation. He gave the Commissioners a packet that was submitted by the applicants after the Planning Commission packet was sent out to them late last week. He continued that in the documents was a response to comments from Staff and other review agencies. Since they received it today and yesterday, he wanted to give it to them and enter it into the record.

Commissioner Hearn asked if the documents were public comments or from the applicant themselves.

Mr. Hemphill stated that the information they received was from Excel Energy, the applicant, that is what they received.

Commissioner Hearn stated that she would like to take a recess to read them, and she preferred to do it before the applicant's presentation.

Henry Hemphill gave the staff presentation.

Slide 1 – Introduction

6683 Transmission Line Rebuild Conditional Use Permit

Slide 2 – Application

Mr. Hemphill gave the details of the application

Slide 3 – Legal Notice

Postcards: July 19, 2024

Newspaper: July 24, 2024

Site Postings: July 23, 2024

City Hall: July 26, 2024

*All legal notice completed in accordance with local law. Section 17.07.040 (E)

Mr. Hemphill talked about legal notice. He stated that legal notice was communicating with the public and tells them that there's an application pending and under review, that either is an administrative process or a conditional use permit or a public hearing process. He continued that those postcards, paper, a site posting, and a posting at City Hall, all are required within 15 days of the publicized first public hearing. He stated that those happened in July, and as they recalled, there have been 2 continuations. Those continuations have been made in the public hearing, both the original public hearing and the second continuance public hearing, so no

additional legal notice was required, but did want to mention that the public was invited to each one of these meetings and was done in accordance with local law.

Slide 4 – Legal Notice

All continuances granted in a public hearing and didn't require additional legal notice.

Mr. Hemphill showed an example which was one of six public notice signs that were posted in a conspicuous area around the city to inform the public if they're not within the postcard boundary, but passing by. He added that this was a picture in front of the Riverfront Park area, and then the postcard buffer was on the left side. He continued that this was a 350' buffer radius around the project as a whole and with the application they mapped out the line and did a buffer around that and included some additional parcels because there's some large ones that are affected.

Slide 5 – Public Hearings

August 13, 2024.

- Continuance granted by Planning Commission

September 10, 2024.

- Continuance granted by Planning Commission
- Requested continuances to have more time to discuss the conditions of approval.

Mr. Hemphill gave the history of the application. Mr. Hemphill noted that at the last meeting the chair felt like it was necessary, because they had multiple members of the public in attendance, to open it up to public testimony. There were no additional rebuttals from the applicant or staff to the Planning Commission and the public testimony was entered into the record.

Slide 6 – Coordination

- The City and Xcel representatives have met to discuss alternative routes with the potential of undergrounding.
 - In Kingsview Road.
 - In the Emergency Access Road with Sunset Pointe Development.
- Xcel provided response to comments and cost estimates to Staff on October 7th and 8th

Mr. Hemphill talked about the coordination efforts. He stated that the city has been in communication with Excel and Excel representatives and discussed this application. Some of the conditions that were mentioned, as a property owner, was the Riverfront Park and a condition to underground the lines through the park. They wanted to work through the application and the continuance in order to get feedback from the city. They talked about some alternative routes that could be proposed, one through Kingsview Road, which is already dedicated right of way, it does or will contain easements that could be allowed to use as a corridor and then through the emergency access road that was approved through the

Sunset Pointe project that leads down closer to where their route is proposed tonight. He added that those two routes were not being talked about tonight as part of their Conditional Use Permit application. These were a communication tool to say that they have alternative routes, and they do have a way to underground the lines. He continued that one of the elements that was submitted to them before this meeting was a response to comments about the alternative routes and the cost estimates associated with those

Slide 7 – Project Overview

- XCEL proposing to rebuild and reroute approximately 4 miles of transmission lines.
- Fruita Substation to the Uintah Substation.
- Current route originally constructed in 1956.
 - Runs directly through the Kingsview Subdivision.
- New line crossing multiple properties and multiple zoning districts.

Mr. Hemphill gave a description of the project overview. He stated that Excel Energy was proposing to rebuild and reroute approximately 4 miles of transmission lines. The location was from the Fruita substation to the Uintah substation, and it crosses multiple zoning districts within the City of Fruita. He also stated that it crosses over public lands and Unincorporated Mesa County's jurisdiction and through multiple private properties as well.

Slide 8 – Project Overview

- Conditional Use Permit (CUP) required in residential and industrial zones.
- Allowed in CSR zone, but PC must find the use as compatible in accordance with Section 17.05.080 (C) and (E). Criteria for allowed uses overlaps with CUP requirements.
- The Land Use Code allows multiple Land Use Applications with different processes to be heard together. Section 17.07.040 (B)(4)

Mr. Hemphill continued with more specific information on the project overview. He stated that a Conditional Use Permit was required for above ground and underground transmission lines in the residential and industrial zones. He said that this transmission line also ran through a Community Services and Recreation zone (CSR) and that in the Code this was allowed by right for both above ground and underground lines. He added that they were looking at two different application processes and the Land Use Code says that when multiple review processes link up with the same project that the processes go together through the stricter land use application, not an administrative decision for an allowed land use by right, but a public process for a Conditional Use permit. This was why those had been combined. This process is set forth in section 17.07.040 (B)(4). He continued that within allowed uses there still needed to be a compatibility criterion that should be considered and be considered as being met. The staff report broke it down, residential and industrial land uses and community services and recreation, or CSR Land uses. Mr. Hemphill said that the staff report that was presented suggested that in order to be compatible with the CSR zone district they needed to consider whether or not the allowed

use was compatible with the CSR zone district and the industrial and residential land zone districts as well. He reiterated that the City of Fruita was the property owner of the Riverfront Park.

Slide 9 – Land Use Process

- A Conditional Use is defined in Section 17.57 of the Fruita Land Use Code as a use which, because of its unique or varying characteristics, cannot be properly classified as an allowed use in a particular zone district.
- After due consideration, as provided for in Section 17.09.030 of the proposed use's impact upon neighboring land and of the public need for the particular use at a particular location, such conditional use may or may not be approved.
- Allowed uses must also be compatible with existing adjacent uses, the zone district and the Fruita Comprehensive Plan in accordance with Section 17.05.080(C). As these criteria overlap with CUP approval criteria they are considered together in this report.

Slide 10 – Land Use Process

- The CUP applies to all Industrial and Residential zoning districts.
 - City of Fruita is a review agency along with administering the application process.
- CUP does not apply to the CSR zoning district, but as an allowed use, Code requires compatibility.
 - City of Fruita is also a property owner of the Riverfront Park.

Slide 11 – CUP Criteria #1

1. The proposed use is consistent with the provisions and purposes of this Title, with the purposes of the zone in which it is located, and with the city's Comprehensive Plan;

Mr. Hemphill explained that the proposed use needed to be consistent with the provisions and purposes of this title. The purposes of the zone in which the lines are located, and within the city's Comprehensive Plan and the plan spoke to community values and goals and policies in which to aim, to preserve or implement those community values. He added that on page 69, goal #6 of the Comprehensive Plan, it states, preserve the natural features of the city and surrounding landscape through partnerships with local land managers and organizations. He continued that in order to be consistent and in conformance with the goal of preservation of the recreation facilities and natural environment, the Planning Commission must investigate and determine that the project meets this goal. He stated that staff had concerns related to how the proposed lines and the new poles would impact Fruita Riverfront Park, which must be addressed and pursuant to section 17.05.080 (C) which is compatibility.

Slide 12 – Map of Proposed Route Through Riverfront Park

Mr. Hemphill showed a depiction of a map with transmission lines running through Riverfront Park. He identified the structures as structure numbers 7, 8 and 9 DE. He stated that these lines could be in conformance with this criterion if placed underground. He continued that the underground transmission lines were an allowed use in the CSR Zone district, and in this instance would meet the compatibility requirements set forth in the Land Use Code. He mentioned that the industrial zones are compatible with existing and allowed uses in this area, and can be consistent with the Fruita Comprehensive Plan

Slide 13 – CUP Criteria #2

2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.05.080.C; and

Mr. Hemphill spoke about compatibility pursuant to criteria Section 17.050.08 (C). He said that the Land Use Code states that compatibility is provided when a proposed use can coexist with other existing uses in the vicinity without one use having a disproportionate or severe impact on other uses. He added that the Planning Commission may consider other existing uses approved in the area 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. He spoke about the Fruita Parks, Health, Open Space and Trails Master Plan or the PHROST plan. He stated that according to the PHROST Plan, Fruita Riverfront Park was previously named Kingsview Open Space and is located adjacent to Snooks Bottom along the Colorado River and State Highway 340. The Fruita Riverfront Park is approximately 37 acres in size and provides a high quality, open space resource for the Fruita community as an important riparian area. The Fruita Riverfront Park contains a disc golf course, social trails and natural undeveloped river access. He continued that this part in the PHROST plan was another reason why compatibility to underground the proposed transmission line made sense. He said that staff has been in talks with Excel Energy and their representatives to speak about some alternative routes, to avoid this area or go underground with the lines but the application before the Planning Commission was a Conditional Use permit for the above ground transmission lines from the Fruita substation to the Uintah substation.

Slide 14 – CUP Criteria #3 & #4

3. The proposed use will not materially endanger the public health or safety; and
4. Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use.

Mr. Hemphill explained that staff felt that rerouting the old line did make sense, and it was time to think about a relocation of this existing line that went right through the Kingsview Estate Subdivision. He said that there's quite a change in the aesthetics of what that reroute and rebuild would look like, and the right of way it would take to accomplish the rebuild, in its current location which was why the relocation and reroute is in a different area than where it was currently. He stated that staff felt that criteria #4 has been met with little to consider, as far as the utilities that this transmission line will be using to operate.

Slide 15 – Sunset Pointe Emergency Access

Mr. Hemphill showed a map with the Sunset Pointe emergency access. He said it was close to the new route being proposed and followed a utility easement currently in place that would allow Sunset Pointe sanitary sewer service and utility access.

Slide 16 – Public Comments

- Both written public comments and verbal public comments have been received regarding this application.
 - Public testimony received at the September 10, 2024, Planning Commission meeting.

Slide 17- Review Comments

- Public Works
- Engineering
- Ute Water
- Parks & Recreation
- Lower Valley Fire District
- Colorado Parks & Wildlife

Mr. Hemphill spoke about the review agency comments and said that the applicant had responded to those comments. One of the conditions of approval is to adequately resolve any outstanding or outstanding review agency comments before construction.

Slide 18 – Conditions of Approval

1. Underground transmission line Structure Numbers 7, 8, 9-DE.
2. Adequately address/resolve any outstanding review agency comments.

Mr. Hemphill reminded the Planning Commission that the City of Fruita was the property owner, that they are a review agency, and their comments did apply.

Slide 19 – Staff Recommendations

- Because the application meets or can meet the criteria in Section 17.09.030 of the Fruita Land Use Code, Staff recommends **approval** of the proposed Conditional Use Permit for the 6683 Transmission Line Rebuild as proposed with the condition that all review comments and issues identified in the Staff Report be adequately resolved, including a condition that the transmission lines be undergrounded for line Structure numbers 7, 8, 9-DE as depicted in the application.

Slide 20 – Suggested Motion – pg. 28 packet

- Madam Chair, because the application meets or can meet the criteria in Section 17.09.030 of the Fruita Land Use Code, I move we **approve** the proposed Conditional Use Permit application for the 6683 Transmission Line Rebuild with the condition that all review comments be adequately resolved prior to the start of construction and that the transmission lines be undergrounded for line Structure numbers 7, 8, 9-DE as depicted in the application.

Slide 21 – Alternative Motion

- Madam Chair, because the application meets or can meet the criteria in Section 17.09.030 of the Fruita Land Use Code, I move we **approve** the proposed Conditional Use Permit application for the 6683 Transmission Line Rebuild with the condition that all review comments be adequately resolved prior to the start of construction and that the transmission lines be undergrounded for line Structure numbers 7, 8, 9-DE as depicted in the application.

Mr. Hemphill concluded his presentation.

Commissioner Mulder asked Mr. Hemphill a clarifying question. He questioned that the Conditional Use Permit was for an above ground structure, but the approval criteria was showing an in ground structure.

Mr. Hemphill responded that this was a condition of approval based on the review agency comments that they received. He stated that they were reviewing a Conditional Use permit for an above ground transmission line.

Mr. Brad McCloud, who lives at 2330 Elderberry Court in Grand Junction, Colorado, went up to speak. He stated that he was the area manager for community outreach in Western Colorado. He had several members of his team there including Angie, Sarah Jen, and online, Delaney and a couple of others representing their legal, our siting and land rights, team, engineering, and others that have been working on the application. He said that they had been working on this since 2022 and did multiple town hall meetings and public outreach. He thanked Staff for all the time they put into their project with the multiple locations and reroutes. He added that they came to get to where they were now and then currently to be able to work on some of the concerns. He thanked the Commission for giving the continuances so that they could continue to work with staff. He thanked the public that have worked with them to get to where they were right now.

Angie Woehler, a consultant with Excel Energy and a biologist by training and permitting specialist, went up to give a PowerPoint presentation. She gave some background on the project and a project overview. She stated that the lines were built in the fifties and needed to be torn down because of the wildfire risk and maintenance issues. The existing line goes through Kingsview Estates, and the proposed line goes out of Kingsview estate. The jurisdictions it goes through include Mesa County, BLM, City of Fruita, and then Bureau of Reclamation.

In 2021 was when they first started looking at routes and they did a very in-depth routing study to try to figure out where to possibly build this line. To get it out of the current alignment. Being within the neighborhood was a big concern. They analyzed a lot of different routes to figure out

where to put the line. They took a project area, looked at every possible route within that project area and created nodes, and then from those nodes they connected them to create thousands of alternative routes. Then they paired that down to 120, and then from that 120 they did 8 routes that had the most variety of changes because with routes there's a lot of overlap. Then they chose 8 routes that had the least amount of overlap to really analyze in a deep level. They looked at criteria with engineering, the length, the constructability, roads, other infrastructure like utilities, natural resources. She added that she was a biologist by training and that this was her forte. They looked at wetlands, rivers, streams, cultural, and paleontology, land use, residences, businesses, zoning, the plan developments, the jurisdictions, and then recreation. Over 32 miles were analyzed, based on all these criteria.

Ms. Woehler went over the timeline. In early 2021, they met with BLM and BOR to discuss the project, as that's where most of the line goes through the federal land to discuss the route options. In early 2022 route discussions began with the City of Fruita. They came with those 8 preliminary routes based on the routing study. From the routing study, they came up with weights and numbers that said which route was the best, looking at all the different criteria. In April they presented the proposed route to the City of Fruita, they had our preapplication meeting in May of 2022, and updated the current proposed route shared with the city. At first it went through Snooks Bottom, but that's a conservation area and the conservation easement would not allow this. The updated current proposed route was shared in late May and discussions with Mesa County happened in June. There was discussion about a joint permit application, because they were doing a Conditional Use permit with Mesa County, but they decided that they didn't want to do the permits together. Between November and January 2023, they worked with the city to complete Geotech borings to help us further design the line, and those Geotech borings included areas within Riverfront Park. There was a site visit on December 3rd with Mesa County, BLM BOR and City of Fruita staff, and there were some concerns with the park area. They had further discussions in that timeframe and worked with the Parks Department and the Public Works department to alleviate some of those concerns and revise the route through Riverfront Park. The applications were submitted this year to Mesa County and the City of Fruita.

Ms. Woehler talked about their community outreach efforts. She said that they did community outreach throughout the whole process. In January of 2022, they sent letters to 1500 residents in the buffer area, a big square by 2500 feet that surrounded all the routes that were considered. Letters went out to all of those residents to inform them of the project and the routes that they were considering, and an in-person meeting in February was held, a half page newspaper ad was put up in the Daily Sentinel and they had a public meeting in February where they discussed the routes. They had posters and handouts, and the public was there to provide their feedback on the route. She stated that she thought about 15 people stopped by, and mostly from Kingsview Estates and they were mostly concerned with the line within their neighborhood. An additional letter was sent out in February to inform everybody of a virtual open house that was also meant to get more feedback. They wanted that virtual option as well because of COVID. They received 11 comments via the open house. They had an email address open and a voicemail. There were a lot of concerns about visual impacts, recreation, wildlife and electromagnetic field, health, and all of those public comments were considered during the route selection. A final in person public meeting was held in July, and that was to present the public with the proposed route and the reasons behind it.

Ms. Woehler talked about the route. She said that they looked at a lot of different things and the route that was finally proposed was the one that they were seeing, the one that's in the application. She spoke about safety concerns. One of the routes that they did heavily look at was going up Highway 340 because that would avoid BLM land, it would avoid City of Fruita open space which seemed like a good option but how narrow Highway 340 was, and how many utilities are already there, it was just a big safety risk, and they could never get that approved. They considered the conservation easement near Snook's Bottom and the visual concerns with Kingsview Estates with keeping the lines in the same location. This was what brought this reroute in the first place. If they stayed in that same alignment, there's a lot of visual concerns from those residents, and going south into the BLM land, the national conservation area. Having a new right of way within the BLM in that area would just cause a lot more impact than putting it in the same corridor or close to the same corridor where it's already at. BLM did not want that to be an option, because that would just be a Greenfield project, and would impair people's view of the National Monument. There were a lot of visual impacts that were considered and putting the line, although it's not ideal because it is open space, but putting it down in the Riverfront Park the visual concern, since that area is topographically lower the visual impact from the neighborhood would be less than if it was up higher on the landscape. They worked with the Parks Department to not interfere with the golf course alignment and to move the route away from trees.

The original route hugged the cliff there through the park, but that would have to take out quite a few of those beautiful cottonwood trees. They worked with Public Works and Parks departments, they overlaid the golf course, the tee pads and the baskets, and worked to make the line not interfere with the layout of the course, and that's why it went from being a straight line to being this jagged line throughout that area. They also worked to have an area where there's not as many trees, so less trees would have to come down, if any. She showed a map and described where it overlaid on the right with the Sunset Point plans just to show them that emergency access road that Mr. Hemphill showed earlier and their route in alignment with that.

She talked about the poles and said that they were typical pole types and would be steel monopoles still operating at 69 Kv. She said that there were different pole types, depending on the terrain within the City of Fruita. She described the poles as steel monopole and showed some photos of these.

Ms. Woehler talked about utilities being a concern. She said that there were a lot of utilities going through the park area and within the city in general. They worked to get those utilities located and make sure the engineering of the line happened with those utilities in mind and to not interfere with those existing underground utilities. She spoke about construction methods. She stated that prior to construction, access roads are established, and construction methods are going to vary based on the terrain and the needs. There is going to be equipment such as bucket trucks, cranes, and helicopters. She added that no helicopters are proposed within the City of Fruita itself, but on the project, especially in those steep areas of the BLM. They will have to use helicopters in some of those areas and after construction poles will be temporary pulley systems to pull the conductor, and after construction, the area will be reclaimed and restored to the condition prior to construction.

Ms. Woehler talked about authorizations for the project. They had different permits within the City of Fruita. They would be working on floodplain development, permit right of way road permits which will come from Mesa County and similarly with CDOT. They have to cross I-70 and that this was a pretty big deal doing that crossing permit from CDOT. She included other agencies as well, federal agencies that they would be working closely with include BLM, BOR, CPW and working with SHPO because there's a lot of cultural resources in this area, working with army corps to get a Section 10 permit to cross the Colorado River which has already been obtained and working with fish and wildlife on any endangered species to make sure none of those fish are impacted.

Ms. Woehler gave details on the project schedule. She pointed out that the need was identified in 2015 when the concern from the neighborhood was brought up. In 2019 the project was revisited. In 2021 they did routing studies and started their preliminary engineering and environmental studies. In 2022 they did public outreach, those neighborhood meetings, the virtual meeting and then the route selection. Significant environmental surveys, including wetlands, wildlife, cultural that all took place in the last couple years from 2022 to 2024 and the right of way and land acquisition process started. The local land use, and the Federal permitting has all taken place this year and Federal permitting actually started in 2023. Pending permit approvals, construction would happen next summer, and the transmission line would be in service late 2025.

Ms. Woehler stated that the proposed use was consistent with the purpose of the zone in which it's located. She added that it was located in the industrial, the planned unit development and community services and recreation zones. The purpose of the industrial zone is to encourage nonpolluting industrial research and development activities. The community services, recreation zone provide public and private recreational land and the PUD district to encourage flexibility in development, exchange for community benefits.

Ms. Woehler pointed out that the project was consistent with the Comprehensive Plan. The major reason for this project was to provide reliable energy to the citizens of City of Fruita and the surrounding areas, encourage and support the land use the commercial areas ensure the development is compatible with natural landscape and hazard areas, support local business and preserve the natural features of the city and surrounding landscape through partnerships.

They believed that the proposed use is compatible with all the existing uses according to the Land Use table, transmission lines and utility lines are an allowed use, a conditional use in the industrial zone and allowed use in the CSR zone. The project crosses the PUD district, including Kingsview estate 1, 2 and 3 and the newly approved Sunset Pointe. She noted that Kingsview Estates was entitled and built around the preexisting 6683 line that was there before and the Sunset Pointe subdivision was approved, and their plans noted that 6683 transmission line would be removed. When Sunset Pointe that was approved, that line was said to be removed in their plans. The original line was going through Kingsview Estates and the rerouted line is moving that line away from that community and including Sunset Pointe. The project doesn't require a subdivision within the PUD and will follow the Conditional Use process.

Ms. Woehler stated that the proposed use won't endanger the public health, on the contrary, it's to help the public health and safety. Reliable electrical power is needed for lots of reasons. Powering homes, healthcare facilities, streetlights, traffic signals. Excel is going to rebuild the line for safety reasons, and it's built and maintained to meet or exceed safety standards of 2024 instead of the fifties, where the safety standards were not quite as good.

Ms. Woehler said that public services wouldn't be impacted. The project obviously doesn't utilize wastewater disposal or domestic water. There will be short term traffic impacts potentially just from increased construction vehicles, but those won't be long term, and they won't be significant, and there were no permanent impacts to storm drainage facilities. BMPS and sediment control will be in place during construction. She added that there were no significant impacts to the emergency services.

Ms. Woehler's last slide included Excel's website that has been up since the start of the project and an email address and hotline for public comments throughout the planning process.

Ms. Jen Chester, Manager of Siting and Land Rights Department, went up to speak.

Commissioner Mulder requested an opportunity to look at the newly submitted documents prior to Ms. Chester's explanation. He stated that they have had ample time to answer, three months, two extensions and he then mentioned that the posted green signs by the disc golf course disappeared with the wrong date on it. He continued that if they are considering approving a Conditional Use Permit above ground for Excel Energy tonight then they cannot in good faith make that approval. If this was an answer to something different, like burying the cable across Riverfront Park, that is not what they were there for.

Commissioner Hearn gave the Commission a 15-minute recess to allow the Commissioners time to read the documents.

Commissioner Hearn requested that Ms. Chester give a presentation on the letters for the record.

Ms. Jen Chester reintroduced herself as the Senior Manager of the Siting and Land Rights team at Excel Energy. She explained that she oversaw both land acquisition and land use permitting for their projects. She continued that the letter that the city received earlier today contained information on a couple of things. The first pieces of information were responses related to the conditions of approval that were recommended in the Staff Report. As she mentioned previously, there were two conditions of approval recommended by Staff, the first condition being a requirement to underground the transition line for structures number 7, 8 and 9 DE, which stands for dead end in case anyone was curious what that is a designation for. She stated that they provided information in that letter, and based on prior conversation with city staff as to how that undergrounding could be accomplished. She continued that if the city wanted to pursue that particular option, she wanted to note that undergrounding at the Riverfront Park would not be at the cost of Excel, and it would be at the cost of the City of Fruita. She said that this was further outlined in the letter regarding a prior PUC decision on a similar matter. She stated that in Mesa County in particular, where the PUC ruled, that a jurisdiction cannot

impose a condition on a utility to underground a line, if the cost differential for that undergrounding is greater than what would be proposed for the overhead, however, they are able to underground the line if the city were to enter into an agreement to do so and fund that undergrounding. She added that this was the information on condition number one. She continued that condition number two was related to adequately addressing any outstanding review agency comments. She said that they did go through each of those agency comments and provide a response to demonstrate where they have addressed those or where they have as part of their construction. She said that she was happy to go through each one of those in more detail, but wanted to start with a summary to see where they would not want more information.

Commissioner Hearn stated that this worked for her. She said that when they get to discussion or rebuttal they may ask some additional questions. She thanked her. She opened the meeting to public comments and gave the public instructions.

Mr. Daniel Emery, who lives at 930 Squire Court in Fruita, went up to speak. He strongly encouraged them not to provide this use permit based on what they were hearing today. He stated that he did not have all the details of the city plans, however, it did appear to go against the city's plan of trying to keep it natural looking. He had not heard anything from Excel other than the cost of burying the lines that would prevent them from burying the lines. He heard them say that they're doing this for safety purposes, however, if they wanted it to be safe, they would bury the line. Two months ago, they sent out warnings about having to turn off electricity because of the dangers of wildfires. He stated that they said the current poles were built to the safety standards fifty years ago and they were now obsolete so they're building them to today's standards. He wondered how quickly those will go obsolete. He added that now there are some other concerns, and a quick Google search will tell you that nobody wants to live near power lines. He was concerned about the decrease in property value anywhere from 10% to 30%, and an increase in homeowners' insurance from a fire standpoint. He asked, if the city does decide to go ahead with this how did they plan on compensating those individuals whom the power lines will go through their backyard? He stated that he was one of those individuals. He added that from a safety standpoint, from a damage standpoint the only reason these lines need to be above ground is because excel doesn't want to be the good neighbor that they say they are in their PR. They have the money to do it. They have the capability to do it. There's no reason to prevent them from doing it. He thanked them.

Commissioner Hearn asked if there was anyone online who wanted to give testimony.

There was none.

Philip Carleton, who lives at 642 Kaley Street, went up to speak. He said that he spoke at the last meeting and stated that everything that was said last month was in unanimous opposition to the plan and he believed it was part of public record. What he wanted to reiterate was that even though the planning for this may have started some years ago, it was just in 2023 that the Boulder County Fire Marshal found that Excel was partly responsible for the Marshall fire which destroyed over a thousand structures, killed 2 people, caused something like 2 billion dollars in damage and Excel is currently party to something like 200 lawsuits, because of one of their lines. He added that for the record it was not through any negligence but because the risk of elevated

power lines in a fire prone area adjacent to an urban development creates the risk of structures being destroyed and people dying. He stated that it is high risk, and that's why he had to roll his eyes when the applicant was saying, consistency with the city's Comprehensive Plan ensuring the development is compatible with the natural landscape and hazard areas and limits the risk of hazards to people and property. He didn't think anybody on the Commission thought that building 80-foot metal structures in the middle of a city park was compatible with the natural landscape and the only way to mitigate the risk to personal property was to bury every mile of that line. He said that this might sound excessive to Excel because they don't want to spend the money. He spoke about recent news on KKCO about Excel saying there might be intermittent power shutdowns in high wind days which happened after the last meeting. There was a red flag day when Excel was saying they might need to shut down power just because it's windy and because it will cause fires. He stated that just the other day it was Grand Valley Power said they are going to be bearing 4 miles of cable up on the Grand Mesa. Why? Because it's future prone, it mitigates fire risk, and because it was worth it to them. They did get a federal grant to help with that cost, but Excel doesn't need a federal grant because they made 1 1/2 billion dollars last year. He gave kudos to everybody on this Commission for keeping a straight face hearing the applicant say that this somehow respects the natural beauty of the space and reduces the risk to personal property and lives of Fruita residents because he thought that everybody knew it did neither. He thought the city should push for a plan which buries all 4 miles of these lines and the cost of that, whether that should fall on the city or Excel, was none of his business. He said that this was something to discuss, but he thought that everybody knew that the right thing to do is to do what will mitigate the risk to residents up there and to recreational users in that area and in 2024 with the dry season extending through most of the winter, and high winds being a frequent thing, the best thing for the city moving forward is to bury all of those lines. He thanked them.

Mr. Elliott Ramage, who lives at 977 Red Globe Drive, went up to speak. He stated that all the points that he wanted to make have already been made but the biggest thing that he just was observing this week moving here from Wyoming, moving his business here because of that viewshed was to reiterate why people are coming here, and that the this Planning Commission and the city should do everything they can to maintain what they already have, if not, make it better. He stated that if they want to keep responsible good growth going, these are the hard steps that they take. He thought that it was crazy that the city should have to pay for it, and he agreed that Excel could be completely responsible for this. He added that last night, as he was watching all the hurricane damage and worrying about friends and family there, they can't plan this. They are saying this plan is built on 2024 standards, these kinds of conditions need future planning. He gave the example of the current hurricane that could completely obliterate a huge part of Florida. There are people trapped on the interstates and they have to be thinking ahead of right now, because things are getting worse all the time, as far as climate. He said it was just an obvious factor. He added that he had friends that are firefighters in Wyoming and some of the fires in the Big Horns right now have just literally blown up like they've never seen before to the biggest fire that they've ever had. These firefighters don't even know how to deal with these kinds of fires now, because it's beyond what they're used to, the old way it was, it's not that way anymore. He stated that these can go underground, they can pay for it, and the city will reap the rewards. He thanked the Commission.

Commissioner Hearn gave the applicant the chance for rebuttal. She added that the comments would be for the record.

Ms. Jen Chester responded that the comments are related to undergrounding the line through the park. She wanted to let them know that their existing line was in place and homes were built around it. They are proposing to relocate that line at the request of the community from Kingsview Estates to somewhere else. They can rebuild in the current location if needed, however, based on public feedback the location selected was to move it to Riverfront Park. She continued that there have been some comments about impact. She said that there were additional impacts that come with underground construction when compared with overhead construction. In the overhead alignment they are talking about holes within the Riverfront Park. She understood that there are concerns about visual impact, they will be above ground, and you will be able to see them, however, they've been cited to avoid impact to the recreational facilities that exist in that park and additionally, the future emergency access road for Sunset Point is in the same area adjacent to half of the alignment and Riverfront Park. She stated that a future disturbance in that park that is not related to their transmission line. She talked about undergrounding transmission lines for construction purposes was very different than undergrounding something that you might see more commonly like distribution lines where it's a small trench and you lay a cable in that trench. The underground construction for transmission lines includes excavation of a wide trench many feet, and a trench that is very deep. They must bury these a minimum of 4 feet, have 4 feet of cover above them. The cables are put in conduit that is stacked in a grid pattern and then that that conduit grid is backfilled with concrete and then we place a soil or a fill on top of that. She added that this is for the entire length of the line. About every 2000 feet or so they have to place underground vaults that are about the size of a one car garage, perhaps as a kind of reference spatially. She said that those provide access for them to pull cable through those conduits, and then for future maintenance, should there be an issue. She stated that those are large and placed underground as well. She said that this was a very different impact than what it would take to drill for holes that are directly embedded, as well as those that are set on a concrete foundation, with a temporary access road between them and then that limited footprint.

Ms. Chester continued that regarding the standards and difference of standards, as mentioned, this line was built in the 50's. It is 2024, that line has been in place for nearly 75 years at this point. She said that this was a very good lifespan for wood poles, they do replace these with steel poles partially for longevity and partially because they are more wildfire resistant than a wood pole. In terms of when would this line become obsolete by standards, electric transmission standards have not necessarily changed in the last 75 years, what has changed are things like the conductor, the fact that they put in steel poles versus wood poles. They would expect this line built in its overhead configuration to last at least 75 more years if not longer. They don't know yet what the typical lifespan is of a steel pole, but if a wood pole lasts for 75 or more years, they have some of them that are 100 years old in their system, or nearly that we're working on replacing now. She said it could last at least that long. They are more than willing to work with the city to underground the line as desired, but I really do want to make sure that everyone understands that they are a regulated utility in the State of Colorado. The Public Utilities Commission oversees their operations, and they approve costs for them and their projects, and they will not approve the costs for an underground line to be paid for by their customers. She said that this was why they have to put in place agreements where entities requesting the

underground bear the cost. She said that she was happy to talk a little bit more, or have Brad talk a little bit more about their wildfire mitigation program if necessary but she didn't think that's what's before them for the hearing this evening. She was happy to get them more information on that. She really wanted to make sure, as they move forward, the condition for undergrounding. They were hoping to get some clarity this evening before a motion was made. She continued that the condition for undergrounding seemed to be not related to their Conditional Use permit, but something else. They hoped for everyone's benefit they can get some understanding of what that was actually related to, whether it's our Conditional Use permit, or something else. They also had in the letter they provided, shared information about a proposed revision to that condition that brings it into compliance with the PUC's prior rulings on undergrounding, and how that cost is allocated.

Mar Elizabeth Geiger, City Attorney, spoke. She stated that the applicant raised a point about clarification, and she believed Commissioner Mulder alluded to this earlier and Mr. Hemphill talked about it in his presentation. She stated that before them was the Conditional Use permit application that applied to the industrial and residential zone districts. They were going to refer to the PUDs as residential zone districts, because that's essentially the underlying district use for those. She continued that those zone districts do require a Conditional Use permit for overhead or underground transmission lines which are in the Code. She added that the CSR zone district, which is what encompasses Riverfront Park, underground and overhead transmission lines are an allowed use. Pursuant to the code allowed uses also require a finding of compatibility with existing or future uses surrounding the proposed new use. She said that this finding of compatibility is essentially an administrative finding by staff. She thought for some clarification here, Mr. Hemphill talked about that the Land Use Code requires combining applications when they're related and it's all one project and they go through the higher land use review. In this case that's going to you, the Planning Commission, instead of everything being just a staff administrative review. She stated that they are going to be looking at two actions when they do get to a motion, one is regarding the CUP, whether or not to grant it, whether or not it meets the criteria for the industrial and residential zone districts. The second piece is whether or not they confirm Staff's determination regarding compatibility with the proposal, and if there are any conditions applied to either one of those. She hoped that this clarified things for applicant and for the Commission and if they had questions, feel free to ask her.

Commissioner Hearn thanked her. She closed for public comment entered the discussion portion of hearing where the Commissioners will ask the applicant or staff a series of questions to help them get to a motion and a vote.

Commissioner Hearn asked if the staff still have the same recommended motion as in the staff report?

Ms. Geiger responded that it had changed slightly to reflect what she had just talked to them about. She said it had two sections. The staff approve the CUP as presented, over heading in the industrial and residential zones with a condition that all the review agency comments are met and confirming Staff's administrative decision that the portion within the CSR zone district as an allowed use be undergrounded to be compatible with the Riverfront Park.

Commissioner Biddle asked if he was correct in understanding, based on page two information that the additional expense to underground those lines through the emergency access route is 11.3, that's not some larger number, that is, in fact, just the undergrounding of that section?

Ms. Geiger stated that she would let the applicant answer that, but she just wanted to clarify that they don't have the alternative route, which is not what's in front of them, just to be clear. The route that is in front of them, as part of the application goes through Riverfront Park, and that's the section that Staff has recommended be undergrounded. She added that this alternative is something that Staff had discussed with the applicant during the period when this was continued, but it's not what's before them.

Commissioner Biddle stated that this was the way he understood it.

Ms. Chester said that this was not a typo, 11.3 million dollars is the estimate to underground the portion of the line essentially from Highway 340, through the Riverfront Park, up to a point just on the west side of the approved Sunset Pointe development. She said that if they were to estimate a smaller portion of that, so when they think about maybe the staff's recommendation that it be undergrounded between structures 7, 8, 9, it is still a very large number and it's not going to take that down to 25% of the number, it's still going to be a large number, say 10 million in the cost estimate, because of all that goes into the underground construction and the unknowns around placing that line underground because there would need to be several engineering studies completed in order to refine that cost estimate. She said it was not likely to go down very significantly, but it was possible. She continued that when they put forth those cost estimates in agreements with jurisdictions, developers, private entities, anyone who would ask for our line to be relocated, the estimates are their best estimate that they can give, based on the information in front of them. As they move forward, if they were to move forward with that relocation, those estimates can be refined, if ultimately the cost to complete the work is less than the dollars are reduced. They don't hold on to the money, it goes back. Whatever the cost is, is what ultimately is paid, however, the estimate for that undergrounding, for that that larger distance that I mentioned is 11.3 million dollars.

Commissioner Biddle thanked her. He wanted to know if he was correct in his understanding based on page 3 information, if the city and Excel do not come to an agreement or meet those key points that you have listed in 23 days that Excel intends to just proceed above ground? He asked if he was correct in understanding? He thought the date listed was from October 31, 2024.

Ms. Chester answered that in terms of what they listed in that particular relocation agreement, that date is a date and time. Part of what they are requesting, with the consideration to revise that particular condition if it's one the city would like to move forward with, although based on what she thought they heard on the motion, maybe it's a little different, is that to indicate that the condition as proposed to say that they are required to underground those lines without further discussion or indication about when that is decided leaves the project in jeopardy. They can't leave that line out there forever. They have a plan to rebuild it as part of their Wildfire Mitigation Plan and program. They are obligated to report to the state and to the PUC on their progress and rebuilding the lines that are part of that plan. She continued that if the city has a date by which they think that decision could be made, and it is different than October 31st, they

would be more than willing to talk about that date, and what would be workable, but the date that is in there is to indicate they would request the condition be revised to have a date certain, not just that it be placed underground because they have to get that agreement in place and agree to the funding in order to be able to accomplish that condition.

Commissioner Biddle stated that they had several paths forward tonight, one of which was to just deny the application. He wanted to know if they denied the application, what was Excel's path forward?

Ms. Chester responded that Sarah, their legal counsel, was ready to respond and let her know if she was incorrect. She thought that if their application tonight were to be denied, they would certainly consider the basis on which it was denied and evaluate their path forward. She added that typically they can work with jurisdictions to reach agreement and approval with conditions. They don't often see denial of their applications, because they do try to work so closely to get to an approvable project. She continued that if the city determines that they are not able to approve that, and the application is denied tonight, they will evaluate whether they would consider an appeal through a district court process, or also appeal to the Public Utilities Commission, who regulates our business.

Commissioner Hearn reminded the Commissioners that if they are going to vote against any application to cite the criteria that they think they don't meet or could not meet so that it gives them advice to be able to make those decisions.

Commissioner Biddle thanked Commissioner Hearn and stated that this was all he had.

Commissioner Mulder stated that first and foremost he had to get it through his head that this is a permit for above ground, across Fruita property. He added that second that there's going to be a permit for above ground across Mesa County property. Third there's going to be a permit from private citizens, if need be and then there's going to be a permit from Parks and Wildlife for above ground, all of this is going to be above, and the BLM. He said that he felt this proposal was reckless in itself and that the area it's proposed in is held near and dear to the citizens of Fruita. He continued that compatibility is an issue here that they were not near approaching. He added that they have poles there now that have been there for 50 plus years, and they are talking about putting up steel poles that will be there for 75 plus years. What he understood about direct bury was that it was there for eternity, so there will be no destruction in the future, there will be no fires, there will be no damage, there will be no downed power lines, and on and on and on. He added that residents, visitors, photographers, artists, and citizens of Mesa County know that what we have here in Fruita is near and dear to the citizens of Fruita. He stated that he knew that the powers that be in their ivory tower sent down this directive, said, "Go to Fruita and get your permits, this is what we're going to do." He said it was not going to be that easy. If they don't get it done, they are going to be fired and there will be people put in place that will get the job done. He said he had no doubt about that, and that Excel has ample money to do the job and do it right for the citizens of Fruita. Nothing that he has seen so far comes close to making him happy, making the citizens in the audience happy, making the letter writers happy, and making the general population of Mesa County happy. This was all he had to say.

Commissioner Hearn asked about Commissioner Mulder's statement on compatibility. She asked staff to walk through the criteria. She wanted staff to talk about the statement of the application as either meets or can meet the criteria?

Mr. Hemphill responded that the criteria meets or can meet statement typically goes along with any review comments or recommendations. If those recommendations or conditions are applied to the application or project, then it can meet those criteria that need to be considered, which is why they're a condition or a recommendation. He continued that when it meets it already, staff have analyzed the project and the associated criteria that it goes with and has determined that it meets it without any additional conditions or recommendations as proposed.

Commissioner Hearn stated that she thought what Commissioner Mulder was saying was that the application does not meet compatibility. She asked Commissioner Mulder if the criteria could be met.

Commissioner Mulder responded no, not as it was presented.

Commissioner Hearn asked not that as is presented, but are there conditions that they could add that would get them there?

Commissioner Mulder stated that they have got a condition here, they were talking about 60-foot poles and Fruita has long been adamant and 30 foot as maximum height. They've got a condition here that Excel says we've got to pay the difference for the construction of underground as opposed to above ground. He said that this was not a condition. He continued that Excel can and should pay for the project four miles and go to the Uintah substation. He didn't know why they couldn't take it down 340, run it underneath the 340 bridge, run it across and come across to Uintah substation from that direction. He asked why they felt they had to stick it in a park, stick it in a high visitation area, stick it in something that is valuable to the public in Mesa County? He stated that they didn't need to do that unless they put it in the ground.

Commissioner Hearn asked Commissioner Mulder if his suggestion was to put the entire line underground for just the business and the board?

Commissioner Mulder responded yes; it would be the entire line.

Commissioner McGuire stated that they can't create a condition of the entire line to be buried in this particular setting.

Ms. Geiger responded that they could have as a condition of approval that the entire line through the City of Fruita boundaries be undergrounded but that they don't have any jurisdiction over that those portions of the 4 miles that are outside and on county, BLM Or CPW Land.

Commissioner Hearn said that she was not saying that she was advocating for that, she was just trying to see if there's a place where they can meet those criteria.

Ms. Geiger asked if this answered the question?

Commissioner Hearn wanted an explanation a bit on what the PUC was and how they are beholden to the group.

Ms. Geiger said that the Public Utilities Commission is the regulatory agency that oversees public utilities in the State. She continued that there were some statutory provisions that are under the Public Utilities Commission that all public utilities must comply with. Also, the decision that they provided to them, is the agency overseeing, she believed as applicant said earlier, they could, depending on what the outcome was tonight, they might consider an appeal to the PUC. They might consider, and just to let the Commission know their appeal here would not be directly to the district court, they would have to go to City Council first. They would potentially appeal through the city's process or to the Commission. It is an executive agency, in other words, that decision was an appeal by Tristate to the PUC because San Miguel County had issued a Conditional Use permit that had undergrounding conditions. They appealed to the PUC for a decision as to whether or not that was applicable based upon the statutory provisions that apply to public utilities. She added that as a note, the county would then appeal that decision to the courts as well.

Commissioner Hearn asked if the applicant wanted to add anything?

Ms. Chester stated that generally it covered just a setting up in case they had other questions about the PUC. She elaborated, in terms of their responsibilities to the PUC as a regulated utility is they don't necessarily decide what they do and don't pay for that's why they are providing them with information about prior PUC decisions. They have an obligation to be prudent with their ratepayers dollars, and there is a basis for why things like underground or relocations at the request of an entity, whether that be a jurisdiction, developers or individual landowners sometimes is that they report to the PUC what their projects are, what the costs are essentially what their ratepayers are getting for the dollars that we pay, and then the cost of their work, and being a utility, gets spread out across the ratepayers in the State of Colorado. The PUC and other regulating bodies like them have determined that it's not acceptable for someone in a different part of the State to pay for a request from any one entity such as a jurisdiction, a developer or private landowner to do something like relocate the line or underground it. She continued that she wanted to, as a point of clarification, mention that underground lines also must be rebuilt. They are not there forever either. They have instances of underground lines in the City of Denver, for example, that they must rebuild because, like everything, even with proper maintenance, they do wear out. The challenge with underground line rebuilds is that when they rebuild them, they typically can't rebuild them in place. She mentioned that concrete duct bank, for example, that runs the length of the line, they would build it adjacent or in a different corridor. Those also must be rebuilt as well.

Commissioner Hearn wanted more of an answer for Commissioner Mulder's point of why, it couldn't be on 340, she believed the road was too narrow, too many utilities, and CDOT wouldn't give them right of way.

Ms. Chester responded that being located within or closely adjacent to roads is always something they look at as a routing opportunity if they can be along or adjacent existing linear infrastructure like Highway 340, like other pipelines, like other transmission lines, they evaluate that. She said

that when it comes to a road corridor, if they place the line within public road right of way, they are required to move it in the future, if that road is widened to get it out of the road right of way at our expense, at our ratepayers' expense. In the event they can locate immediately adjacent or outside, they can do that. She continued that when they looked at that corridor, while it may be possible, in certain instances the entire route up and around had conflicts where they couldn't reasonably place that. They don't want to put poles and things in where it would potentially be a hazard, they wouldn't put it in the middle of the road, for example. It is one that they evaluate, and if they can put it next to an existing linear facility, they would certainly try, it just wasn't possible in this case.

Ms. Geiger followed up, she stated that their options tonight really are four options. There is the recommended motion that's before them, there's been discussion about whether they could move to deny it, in which case they would need specific findings to support that denial, they could move to continue it with specific instructions to the applicant or to explore potential other routes or with any other direction to staff to work with applicant.

Commissioner McGuire asked if they were to deny it, or if it weren't to proceed past City Council, they already have the ability to rebuild those lines with the steel poles today. He asked if this was correct?

Ms. Chester asked for clarity. She asked if he was asking if they have the ability to rebuild it in its current alignment?

Commissioner McGuire said yes, if they didn't provide an option to work with this reroute opportunity, they see it as a fire hazard already, and based upon what he was hearing from them, they already need to address these lines as is, therefore, regardless of what they said, if they couldn't reroute it, if they couldn't give them the approval for that they would then need to update the existing lines where they stand to those same poles?

Ms. Chester stated that it would be something they would look at, it is something they have looked at over the life of the project as to whether they could rebuild it in place in that existing alignment. They typically, for most rebuilds, do rebuild in the existing alignment, that would be very typical for them through various jurisdictions, through developed areas. She added that one of the pictures that was in their presentation that had the helicopter of a pole suspended from it was a rebuild that we just completed recently in Glenwood Springs as an example. If the application were to be denied they would explore options to appeal, but they would also potentially explore the option of rebuilding in place. They have the land rights to do that, and they would have to determine what that would look like from a permitting perspective here with Fruita in terms of the application. It would be something they may have to consider again. They typically would do that, but didn't in this instance, because of the community outreach and the ask for them to consider a relocation to a different portion of the city.

Commissioner McGuire thanked her. He said he just wanted to make sure he understood that correctly.

Ms. Chester said that they do ongoing maintenance of their lines regularly, they don't just kind of throw their hands up in the air and say, Oh, gosh! It's old! They evaluate all their infrastructure very regularly. Their lines that are in wildfire risk zones, for example, are looked at annually. They look for things that they call defects, is there something minor wrong, is there something that needs attention more immediately, and they continue to maintain the line until they have it rebuilt. She continued that in some cases that means that they do have to replace structures even as part of that work. Some of their lines that have not been rebuilt replace structures as needed as part of their maintenance. That may be necessary on this line if they were not able to rebuild it on the schedule that they are looking at. She couldn't speak to any specific poles but it's part of their maintenance program.

Commissioner Hearn had a procedural question. She wanted to understand the alternative motion that was in front of them. She asked if it were to pass and in the discussions of undergrounding, or these new alignments, particularly the new alignments, would that need to be a new application for a new review, or would those stay administrative because it only relates to the CSR zone district?

Ms. Geiger stated that staff were telling her that this was correct. It would be an administrative application except for a different application, though with regard to the CSR zone district. She asked if she meant using one of these alternatives of either going to Kingsview.

Commissioner Hearn said yes, she didn't give context.

Ms. Geiger told them to remember that this was staff's recommended motion. They could approve with different conditions if they wanted to, they could approve with no conditions, they needed to make those findings that are required regarding compatibility and regarding the CUP that it does already meet those criteria without conditions. They have a recommended motion of approval but there are several different ways they could slice this.

Mr. Dan Caris, Planning Director, wanted to make it also abundantly clear that if the CUP were to be approved where they overhead transmission lines in the reroute were in the industrial zone and the residential zones or the PUD and they were confirming that the administrative decision was upheld with compatibility being the finding, the appeal would be that administrative decision of the compatibility.

Ms. Geiger stated that for a point of order, she knew that she closed public comment earlier but before they go into deliberation, they will need to close the public hearing. She recommended that she ask all their questions while the public, hearing still open.

Commissioner Hearn went through her list of questions and asked if anyone had outstanding questions, they were free to speak. She asked staff, given the letter that they were given today, do they feel that condition of approval number two that was in the original is now satisfied, and that's why they had the alternative motion? Condition two used to be that they adequately addressed the other agency's comments.

Mr. Hemphill stated that he couldn't speak necessarily for the review agencies that submitted comments, they would have to circulate their responses to the review agencies that had a chance to participate to determine whether or not they've adequately been addressed. As far as they can read it, it looked like they'd done their homework and responded to those comments. Again, they would procedurally, with an application like this they would send it back out for review just to confirm with Lower Valley Fire or Colorado Parks and Wildlife, or Public Works, have they addressed your comments or concerns? Then they would get something back that says that they're good.

Commissioner Hearn thanked him. She asked if there were any more questions. There were none. She closed the public hearing and started to deliberate.

Commissioner Mulder asked if she would like him to make a motion?

Commissioner Hearn stated that she understood what the public was saying, and she was not entirely convinced by the applicant and all their rebuttals, but she still believed that the criteria either are met or can be met. She continued that how they can be met is out of our decision, it's the city that makes those determinations, and if they don't, then it's appealed, or then it comes back as a different application, unless they want to bury more poles.

Commissioner Biddle thought that if they were to go with an alternative motion, they need to make sure that they back up any condition they're going to place with reasons such as safety, that needs to be in the motion he believed.

COMMISSIONER MULDER MADE THE MOTION TO APPROVE THE CONDITIONAL USE PERMIT 2024-08 6683 TRANSMISSION LINE REBUILD WITH EXCEL ENERGY PROVIDING THAT THE CITY OF FRUITA WILL GET FULL UNDERGROUND POWER LINES AND THERE WILL BE NO EXPENSE TO THE CITY OF FRUITA FOR ANY ADDITIONAL EXPENSE GOING IN AND THAT THE CITY OF FRUITA WOULD WRITE A LETTER TO MESA COUNTY, TO PARKS AND WILDLIFE, TO THE BLM, AND TO THE PRIVATE CITIZENS THAT MAY BE INVOLVED TO RECOMMEND THAT THEY DO NOT ACCEPT ANYTHING BUT BELOW GROUND UTILITY IN THE FOUR MILES BETWEEN RIMROCK AND UINTAH.

Ms. Geiger asked Commissioner Mulder if he had some findings to accompany that motion.

Commissioner Hearn elaborated, like some criteria you could point to that they didn't meet.

Commissioner Mulder said at the present time he does not, and if he needs findings, then it will be his motion to continue this for a month.

Ms. Geiger asked on what basis? So, if there's a motion to continue, there needs to be some specific direction to the applicant or to staff regarding that continuance, a basis for that.

Commissioner Mulder stated that the specific direction he was asking of staff is that they will accept nothing less than a direct barrier on Fruita's property and, second, they will have no

financial responsibility in the City of Fruita for any additional expense. He realized that the PUC had determined that they would probably have to pay but he didn't think it's their responsibility, so his motion stands as undergrounded with no financial responsibility for the City of Fruita.

Ms. Geiger asked if it was a motion to approve with that condition.

Commissioner Mulder stated that it was a motion to continue a motion to approve with those conditions.

Ms. Geiger asked if he found that those conditions are necessary to meet the criteria of compatibility, and the criteria laid out in the code for a Conditional Use Permit?

Commissioner Mulder thanked her.

Commissioner Hearn asked if there was a second?

Commissioner Biddle appreciated what Commissioner Mulder was trying to do but he couldn't second it. He asked staff what the process might look like with the scope of work that they provided if they approve an application that then goes back with a condition, what would that process look like? He has not seen this

Ms. Geiger was not totally sure what he was asking.

Commissioner Hearn asked if she could ask a question.

Ms. Geiger said that there was a motion that's been made and that there should be further discussion.

Commissioner Hearn answered Commissioner Biddle and stated that she believed he was asking what the process was if they were to approve Commissioner Mulder's motion and she believed the answer is the applicant could reject those conditions and not meet them with the city and remove their application or appeal. She asked if that answered it.

Commissioner Biddle responded that he couldn't second that motion.

Ms. Geiger stated that if there is no second, then the motion fails for lack of a second.

Commissioner Hearn stated that she couldn't second it. She knows they had public comment that spoke to burying the entire line. She thought it was an overreach for the city to ask for that and thought that there were other ways to meet compatibility, particularly in industrial zones. She thought that there could have been a compromise for some other amount of underground poles, and she was not entirely sure the legality of forcing a condition to be cost, that's a city council thing, that's a legal thing and didn't know if they could even do that.

Commissioner Biddle said that it took him back to his question but wanted to sit on it for now.

Ms. Geiger said it was correct. This would be a legal question.

Commissioner Hearn asked Commissioner McGuire if he was going to second.

Commissioner McGuire said no.

Commissioner Hearn asked for another motion.

Commissioner Biddle asked if without a motion, it would come back. How would the city handle the scope of work that might be presented by Excel if they make a motion that approves this with the condition of underground burial and then Excel, then presents the city with a scope of work, and essentially a bill of 11 million dollars. What might that process look like?

Ms. Geiger said that she believed, as they proposed in the letter, that they provided there is a process that requires the city to enter into certain agreements. That's their position. The city's position could still be it's at your cost. Her guess was that Excel was going to appeal that they've pretty much indicated that tonight. The city would either be involved with that appeal as an appeal to the City Council, or as a party to an appeal before the PUC. Right now, they still just have a motion without a second, Is that correct? She advised that there was no second then somebody could make another motion as that motion was failing.

COMMISSIONER MCGUIRE MOVED TO APPROVE THE CUP, IN THE INDUSTRIAL RESIDENTIAL ZONES OVERHEAD IS PRESENTED WITH 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 McGuire thought they were asking for a condition of undergrounding to be compatible with Riverfront Park so this is already going to be kicked by the City Council.

Commissioner Hearn stated that they were the decider.

Commissioner McGuire stated they had a condition.

Commissioner Hearn said that the city would then engage with the applicant to make sure that condition is agreeable.

Mr. Caris said that this would be an appeal of an administrative decision. The Planning Commission was the decision-making body for the CUP and they would approve the CUP, and then they would appeal the administrative decision based off of Staff's recommendation, which is their decision under the Code with an allowed use in the CSR zone. They would have to exercise their land use rights as opposed to being able to refute the condition that we're placing.

Commissioner McGuire stood with his motion.

Commissioner Hearn asked for a second.

COMMISSIONER BIDDLE SECONDED THE MOTION.

Ms. Geiger stated that they could still have discussion with a motion on the table.

Commissioner Biddle thought that this was not an overreach, and it's completely reasonable. It's going to be between the city and Excel to sort out costs. He didn't know the process that it'll go through but telling other entities, urging other entities to take a stand on something is an overreach. He didn't believe a condition could be based on the cost as well, either.

Commissioner Hearn thought this application was unique for the Planning Commission. They haven't disagreed at all on the industrial or residential areas. If this project were smaller and it didn't go through CSR zones, then they would have approved it. She added that what they were stuck on were typically administrative and the motion that's been suggested allows the city to continue those discussions with the applicant. She thought this was the most appropriate move forward. She was still floored by the number of permits and jurisdictions that they had to work with, that's very impressive. She works in Federal service, and does NEPA and SHPO, things and that's hard enough with one agency. She appreciated them bringing all the information they brought and working with the community as much as they have thus far.

Ms. Geiger said that what she heard was Commission members struggling a bit with parsing through the CUP and an administrative decision that's effectively already been made by staff. She continued that if the Commission felt more comfortable, they could amend that motion to just address the CUP in the industrial and residential zone districts. The applicant would still have its options to appeal an administrative decision by staff that impose the condition of undergrounding for compatibility in the park. She thought it might have gotten a little confusing, because it's all consolidated under the Code, but that is an option to amend that motion and just address the CUP in those two zone districts.

Commissioner Biddle liked the motion the way it was.

Commissioner Hearn was unsure of what utility it provided to remove it. If it were to pass as written, it goes to the city. If they amended it to take that out, then those decisions still go to the city. Unless she misunderstood, and a commissioner did have concerns with just the standard CUP being an industrial and residential.

Commissioner Hearn asked if there were any other comments before they voted.

MOTION PASSED 3-1

I. OTHER BUSINESS

1. Community Development Updates
None
2. Visitors and Guests.

None

3. Other Business.

Mr. Hemphill gave the Commission an update on the Code Amendments, and they will be effective on November 1, 2024.

Commissioner Hearn asked staff to consider overhead lines in parks not be an allowed use.

Adjournment 8:13 pm

Respectfully submitted,

Kelli McLean

Planning Technician, City of Fruita