

January 31, 2017

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Special Meeting – 6:00 PM

● ROLL CALL

PRESENT: Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak  
Staff Present: Atteberry, Daggett, Winkelmann

● CITIZEN PARTICIPATION

Mike Pruznick discussed circumstances under which errors or mistakes were corrected.

● CITIZEN PARTICIPATION FOLLOW-UP

● DISCUSSION ITEMS

1. Consideration of Two Appeals of the Planning and Zoning Board Decision on November 10, 2016, Approving the Landmark Apartments Expansion Project Development Plan. (Planning and Zoning Board Decision Upheld, with conditions)

*The purpose of this item is to consider two appeals of the Planning and Zoning Board decision, on November 10, 2016, approving the Landmark Apartments Expansion Project Development Plan. On November 22, 2016, two separate Notices of Appeal were filed.*

**APPEAL #1**

*To aid discussion of the two appeals, the appeal filed by Per Hogestad is referred to as Appeal # 1 in this agenda item summary.*

*Appeal # 1 alleges that the Decision Maker committed the following error:*

- *Failure to conduct a fair hearing in that The Board considered evidence relevant to its findings, which was substantially false or grossly misleading.*

*The allegation involves issues regarding:*

- *Environmental protection per Land Use Code (Code) Section 3.4.1, with an emphasis on a habitat buffer along a drainage channel, and other wildlife corridors on the site.*
- *Glare from headlights, per Code Section 3.4.6.*
- *Privacy considerations as an aspect of compatibility, per Code Section 3.5.1(D).*
- *Encroachment into a required 25-foot buffer yard along an abutting single-family lot, per Code subsection 3.8.30(F)(1).*

**APPEAL #2**

*An appeal filed by Colleen Hoffman and Ann Hunt is referred to as Appeal #2. It alleges that the Decision Maker committed the errors of:*

- *Failure to properly interpret and apply relevant provisions of the Land Use Code, and*
- *Failure to conduct a fair hearing.*

*Regarding failure to properly interpret and apply relevant provisions of the Land Use Code, the allegation involves issues regarding:*

- *Project density.*
- *Project portrayal as an "expansion" of the existing Landmark Apartments.*
- *Project tenants parking, walking and bicycling in the existing neighborhood.*

*Regarding failure to conduct a fair hearing, the allegation cites evidence regarding:*

- *Improper failure to receive all relevant information offered by the appellant. Neighborhood residents were allowed two minutes per person, not enough time to present and discuss information.*

Mayor Troxell opened the appeal hearing.

City Attorney Daggett reviewed the appeal process.

Mayor Troxell noted the Council is acting in a quasi-judicial manner.

All parties-in-interest identified themselves.

Mayor Troxell identified the time limits for presentations and rebuttals.

Tom Leeson, Community Development and Neighborhood Services Director, discussed the 3.7-acre site of the proposed project, which includes a 0.7-acre City-owned drainage channel. The proposal is for five buildings with a total of 68 apartments in a mix of one, two, and three bedroom units. The Planning and Zoning Board approved the proposal on a 5-0 vote with two members absent. The Landmark Preservation Commission considered the project at three different meetings with a final recommendation to the Planning and Zoning Board to approve the plan on a 6-1 vote.

Leeson discussed the allegations of both appeals which involve light spillover from headlights, privacy concerns, wetland buffers, and issues relating to an emergency access drive.

Mayor Troxell asked Councilmembers to disclose information relating to the site visit. Councilmember Campana stated he attended the site visit with Councilmembers Overbeck and Stephens. The site was observed and questions were asked relating to the wetland and property boundary.

Councilmember Stephens stated they observed the site and wetland area.

Councilmember Overbeck stated the site was entered from Hobbit Street and the wetland area was observed.

Mayor Troxell noted Council has received new information from the applicant in response to appeal allegations.

Colleen Hoffman, appellant, stated she has a packet of information, including a survey, and is unsure if the information was given to the Planning and Zoning Board. Mayor Troxell stated he would accept the evidence and asked the applicant if there is an objection. Dave Derbes, applicant representative, replied he does not object to the additional materials but requested time to review them.

(Secretary's Note: Council took a brief recess at this point in the meeting to allow the applicants to review the additional materials.)

Mr. Derbes stated his team has no objection to the new evidence presented by the appellants.

## **APPELLANT PRESENTATION**

Per Hogestad, appellant, stated the emergency access drive encroachment on the wetland buffer is 8 feet, not 5 as mentioned by Leeson. He discussed the buffer from his property, which is less than 25 feet and stated the balconies on the east side of the closest building will directly overlook his patio. He requested Council require the removal of the balconies facing the single-family neighborhood, citing the Land Use Code section indicating the infringement of privacy should be minimized between dissimilar land uses.

Mr. Hogestad discussed the potential headlight spillover into his neighborhood and discussed the use of the wetland area by wildlife.

Ms. Hoffman stated her appeal is based on Land Use Code Section 3.5, compatibility. She expressed concern regarding density and intensity of use and stated the proposed density is much higher than the existing Landmark Apartments and does not allow any buffering or transition to her neighborhood. Ms. Hoffman also expressed concern regarding parking in her neighborhood and stated adequate fencing using quality materials is a requirement. She expressed concern regarding a possible change of ownership for the expansion and stated this project does not have any connection to the existing Landmark Apartments:

Ms. Hoffman discussed the importance of the wildlife channel and stated it must function fully with no encroachments for the benefit of water drainage, wildlife, and wetland habitat.

Rick Hoffman, party-in-interest, discussed the findings of the ecological characterization study as they relate to the wildlife data presented in the report. He stated the site is a vital link between Red Fox Meadows and the Spring Creek corridor and stated additional species should be added to the list of those using the site.

## **APPLICANT PRESENTATION**

Mr. Derbes discussed the City reviews of this project, which include staff, Landmark Preservation Commission, and Planning and Zoning Board reviews, all of which have recommended approval of the project.

In terms of the appeal allegations, Mr. Derbes noted the updated ecological characterization study was included in the public record for the Planning and Zoning Board. He discussed the efforts made to ensure the performance standards regarding the wetland buffer were met.

Regarding the allegation the City Planner presented unfounded personal opinion as fact, Mr. Derbes asserted the information presented was founded and based on professional judgement. In terms of concerns relating to light spillover, Mr. Derbes stated the Land Use Code states fences shall be no more than 6-feet in height if located within any rear yard or side yard setback area.

Mr. Derbes discussed the applicable Land Use Code sections relating to balconies and the distances of the project from the existing residences. He stated third-story balconies were removed from building A and massing concerns were addressed by stepping the building down in the middle portion to break up the long, horizontal roof line.

Regarding the emergency access drive, Mr. Derbes stated his contention is that the emergency access drive encroachment is not adversely impacting the neighbors or decreasing the intended benefit of the side yard buffer.

Mr. Derbes discussed the various shared amenities, access drive, and management for the existing Landmark Apartments and the proposed expansion. He stated the project meets or exceeds all applicable criteria for a stand-alone project. On-site parking is provided which meets Land Use Code requirements. Mr. Derbes noted the MMN zone district in which this project is located is intended to serve as a transition between the surrounding neighborhoods and the commercial core.

### **APPELLANT REBUTTAL**

Mr. Hogestad stated staff referred to the emergency drive aisle as having a low impact on the buffer, being seldom used, and being constructed of recycled asphalt. He stated none of those statements are fact or based on the Land Use Code. In terms of the balconies, he stated the distance will not mitigate the privacy issue. Distance will also not mitigate the light spillover issue nor will plantings mitigate the buffer intrusion.

Ms. Hoffman stated the proposed density is too high and density cannot be calculated including the City-owned parcel. She expressed concern the project could be sold off independently from the existing Landmark Apartments.

Mr. Hoffman stated the ecological characterization study, while completed, was flawed.

Mr. Hogestad noted the Nature in the City and West Central documents were adopted by Council and are very specific regarding habitat preservation and enhancement and land stewardship promotion.

### **APPLICANT REBUTTAL**

Mr. Derbes stated the three governing documents pertaining to this site: City Plan, the West Central Plan, and MMN zoning regulations, all call for this type of development and density. He discussed the efforts made by the developer to address neighborhood concerns and reviewed quotes from the Planning and Zoning Board supporting the project. The applicant would be willing to address the emergency access road encroachment should Council desire.

Mayor Troxell closed the hearing.

(Secretary's Note: The Council took a brief recess at this point in the meeting.)

Councilmember Cunniff asked what prevents vehicles other than emergency vehicles from going on the access road. Clark Mapes, City Planner, replied there will be a gate.

Councilmember Cunniff asked if the gate will still allow pedestrian access. Mapes replied in the affirmative.

Councilmember Cunniff asked if Council could request a variance be applied for an 8-foot fence. Mapes replied in the affirmative.

Councilmember Cunniff asked if a land survey that rechecked grade lines was completed. Mapes replied a grading plan exists.

Councilmember Cunniff requested additional information regarding the perceived discrepancy between the on-site measurements made by the appellants and what the plan seems to show. Mr. Derbes stated a full survey and grading plan were submitted as part of the PDP process; however, he does not have the grading plan as part of the presentation.

Councilmember Cunniff asked if any consideration was given to views of the foothills from the buffer zone. Stephanie Blochowiak, Environmental Planner, discussed the language in the updated ecological characterization study which states the project area does not provide any significant or unobstructed views of natural areas or other important visual features.

Councilmember Cunniff asked if a distinction is made between a stand-alone and “add-on” application. Mapes replied in the negative and stated this proposed plan meets the standards for a stand-alone application. Also, plans for the existing development will be amended with easements that ensure the joint use of facilities regardless of ownership.

Mayor Pro Tem Horak asked how that would be enforced. Mapes replied it would be a Code and zoning enforcement matter.

Councilmember Cunniff stated there seems to be three primary infringements on the buffer: the corner of a parking lot, the shared plaza structure, and portions of two buildings. He asked if the mitigation would have been the same if the infringements were only non-structural. Blochowiak replied each project is considered independently.

Councilmember Cunniff asked if the voluntary pedestrian trail could be moved away from the adjacent properties. Mapes replied a landscaping buffer could be included. Mr. Derbes replied there is a pedestrian connection to Prospect on the west side of the drive approach.

Councilmember Stephens asked if staff feels the ecological characterization study is flawed, as alleged by the appellants. Blochowiak replied there is no reason for staff to question the study as it was provided by a reputable company with much field experience. The wildlife corridor was not identified as significant in part because it is surrounded by two major roads and other buildings and infrastructure. The corridor is not identified as a wildlife corridor by Colorado Parks and Wildlife or by the City’s Natural Areas department.

Councilmember Stephens asked about the surface of the emergency access drive. Mapes replied the surface will be determined in the final plans; however, it is likely to be concrete.

Councilmember Stephens asked if it would be possible for Council to make a determination regarding the fence height. Judy Schmidt, City Attorney’s Office, replied it would be possible for Council to condition the approval on the project receiving a modification before final plans.

Councilmember Stephens asked if the 8-foot fence would help with the light spillover issue. Mapes replied he could not say for sure; however, one would assume so.

Councilmember Martinez asked if staff found a compatibility issue with the balconies. Mapes replied staff did not make a finding regarding privacy infringement given the balconies do not loom over neighboring properties.

Councilmember Martinez asked if there are parking lot lights. Mapes replied there will be lighting with no spillover glare onto neighboring properties, per the Code.

Councilmember Martinez asked if drivers could be asked to dim headlights in the parking lot. Mr. Derbes replied signage could be installed to request drivers dim their lights.

Councilmember Martinez asked the appellants what information they feel they did not receive. Ms. Hoffman replied that comment was related to the ecological characterization study update which was only posted online just prior to the Planning and Zoning Board meeting.

City Attorney Daggett noted the update was available to the Board and the public, and was in the record of the decision.

Councilmember Martinez asked why individuals were only given two minutes to speak at the Planning and Zoning Board hearing. Mapes replied that time is set at the discretion of the Board based on the number of speakers.

Mr. Hogestad questioned due process given the less than three minutes of speaking time. City Attorney Daggett replied a two-minute speaking time is not legally inadequate; however, Council has the purview to make a decision that time was inadequate.

Councilmember Martinez asked if this project would have a negative impact on the Nature in the City program. Blochowiak discussed the vision and goals of the program. She stated staff and the applicant have worked on the buffer zone to make it fit the Nature in the City vision for connectivity. Wildlife using the area are urban-adapted and the proposed design will allow for additional adaptation. Blochowiak stated the project meets or exceeds the vision for Nature in the City.

Councilmember Overbeck stated fencing is an important aspect of impact mitigation.

Councilmember Overbeck asked when ecological characterization studies occur. Blochowiak replied the study generally aligns with the development review process timeline. The document is due a minimum of ten days prior to the PDP submittal; therefore, the study can happen at any time of the year. She acknowledged the addition of other species, as mentioned by the appellants, is a fair point; however, she stated the consultants are trained wildlife biologists who would recognize signs of species even if they were not physically present. Also, the seasonality of the urban-adapted species does not change much. City staff makes thorough site visits throughout the year.

Councilmember Campana made a motion, seconded by Councilmember Martinez, that the Planning and Zoning Board conducted a fair hearing in its consideration of the Landmark Apartments Expansion PDP and it did not consider evidence relevant to its decision that was substantially false or grossly misleading, nor did it fail to receive all relevant evidence offered by the appellants. Based on the evidence in the record and presented at this hearing that the Hogestad and Hoffman/Hunt appeals alleging the Planning and Zoning Board did not conduct a fair hearing are hereby found to be without merit and are denied.

Councilmember Cunniff discussed some process improvements he would like to see regarding the availability of information to the public and amount of speaking time allotted.

<b>RESULT:</b>	<b>PLANNING AND ZONING BOARD HELD A FAIR HEARING AND DID NOT CONSIDER EVIDENCE THAT WAS SUBSTANTIALLY FALSE OR GROSSLY MISLEADING</b>
<b>MOVER:</b>	Gino Campana, District 3
<b>SECONDER:</b>	Ray Martinez, District 2
<b>AYES:</b>	Stephens, Overbeck, Troxell, Cunniff, Horak, Martinez, Campana

Councilmember Campana stated it would be typical to have sidewalks and drives within the 25-foot buffer. In terms of the balconies, he stated the distance between the properties is sufficient to avoid a looming feeling. He stated an 8-foot fence would not aid in protecting a view corridor; however, the parties involved can discuss that issue. Regarding the ecological characterization study not being available until the hearing, he stated there were no substantive changes from the 2012 study. The density requirements are being met and changes have been made to the project to aid in increasing compatibility.

Mayor Troxell stated the final design should address the emergency access encroachment issue.

Councilmember Stephens noted the applicant indicated a willingness to move the access in order to maintain the 25-foot buffer. She encouraged the neighborhood and applicant to work together on the headlight issues.

Councilmember Cunniff stated he has five specific concerns for which he would like conditions: headlight glare mitigation or signage, removing the balconies from the second floor of the east elevation of Building A, moving the emergency drive, mitigating the voluntary trail with plantings, and further mitigation of the wildlife buffer.

Councilmember Cunniff asked if any balconies are within the buffer zone. Mapes replied the corner of the building encroaches into the buffer zone; however, no balconies encroach.

Councilmember Cunniff suggested the removal of balconies that are closer than 50 feet to the natural element.

Councilmember Campana asked the applicant if that condition would be acceptable. Mr. Derbes replied in the affirmative.

Councilmember Campana made a motion, seconded by Councilmember Martinez, to add the following conditions to the Council's approval of the Planning and Zoning Board decision approving the Landmark Apartments Expansion PDP: adding signage to request drivers dim headlights in the parking lot, removing balconies on the east side of Building A, moving the emergency access drive 5 feet to the west, providing mitigation techniques for the voluntary trails that may be created, and removing any balconies that are within 50 feet of the natural element. Except as so stated, based on the evidence in the record and presented at this hearing, the Hogestad and Hoffman/Hunt appeal are hereby found to be without merit and are denied.

Councilmember Cunniff stated he would like the applicant, staff and neighborhood to develop a mitigation plan for the headlights that may include signage, but that could include other measures.

Councilmember Campana stated he could accept that; however, he was hesitant to place too many conditions involving the need for further collaboration.

Councilmember Martinez noted he is not in favor of requiring the removal of the balconies.

Mayor Pro Tem Horak asked the applicant if they have worked with the neighboring properties to develop some type of boundary other than a fence. Mr. Derbes replied the buffer plan currently includes extensive landscaping and a privacy fence.

Councilmember Cunniff discussed the importance of being sensitive to existing residents when creating infill projects.

City Attorney Daggett reviewed the conditions made in the motion.

Councilmember Campana noted the Land Use Code provides predictability for all land owners and thanked staff, the applicant, and appellants for their engagement.

Ms. Hoffman noted the project was approved by the Planning and Zoning Board with the condition the Hobbit Street right-of-way be approved and requested that condition also be included.

<b>RESULT:</b>	<b>PLANNING AND ZONING BOARD DECISION UPHELD, WITH CONDITIONS</b>
<b>MOVER:</b>	Gino Campana, District 3
<b>SECONDER:</b>	Ray Martinez, District 2
<b>AYES:</b>	Stephens, Overbeck, Troxell, Cunniff, Horak, Martinez, Campana

● **OTHER BUSINESS**

Mayor Pro Tem Horak requested City Attorney Daggett follow up regarding the information a staff attorney provided to Mr. Hogestad.

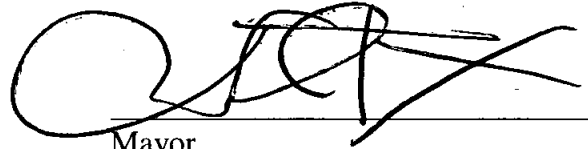
Councilmember Martinez discussed a National League of Cities Public Safety and Crime Prevention conference call and provided Council with the Salvation Army year-end report.

Councilmember Cunniff requested staff follow-up regarding Planning and Zoning Board process issues.



● **ADJOURNMENT**

The meeting adjourned at 9:52 PM. .

  
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Mayor

ATTEST:

  
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City Clerk

