

May 2, 2017

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

● ROLL CALL

PRESENT: Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

Staff present: Atteberry, Daggett, Winkelmann

● AGENDA REVIEW: CITY MANAGER

City Manager Atteberry stated Item No. 7, *Second Reading of Ordinance No. 058, 2017, Reappropriating Funds Previously Appropriated in 2016 But Not Expended and Not Encumbered in 2016*, will be moved to Council-pulled items to add a Whereas clause. Council will consider a motion to adjourn to May 9, 2017.

● CITIZEN PARTICIPATION

Mary Copco, Fort Collins Symphony Executive Director, announced the final concert of the season on May 13.

Wes Kenny, Fort Collins Symphony Music Director, stated he is delighted to live in Fort Collins and discussed the May 13 concert.

Becky Kutz Osterberg, Fort Collins Symphony cellist, played a cello piece.

Meg Dunn, Landmark Preservation Commission Chair, announced May as Historic Preservation Month and presented Council with a book highlighting the Fort Collins Old Town area as a good example of historic preservation.

Adam Eggleston discussed capital expansion fees and requested the fees be phased in over time.

Jan Moraczawski, Larimer County Department of Health and Environment, supported the smoke-free downtown area as an example of a proven strategy for youth smoking prevention.

Tim Carney discussed heavy traffic on Lemay and Country Club Road and stated the City should be responsible for providing alternative access to the area given annexations.

Daniel Morali, Larimer County Department of Health and Environment, supported the smoke-free downtown area.

Garrison Bennet, Eco Car 3, discussed the competition to turn a gas-powered Camaro into an energy-friendly car.

Ben Lorden, Eco Car 3, discussed the hybrid design and maintenance of the performance requirements of the Camaro.

Bradley Nelson, Eco Car 3, thanked the City and Council for supporting CSU and its Engineering program.

Karen Wagner stated the town of Wellington, the County, and City of Fort Collins should work together to solve transportation problems in the north part of town. She asked Council follow the lead of Adams and Boulder County commissioners to halt oil and gas operations until all operations have been inspected for public safety.

Jeffrey (no last name given) discussed the Old Town smoking ban and intoxicated individuals in Old Town.

Sharon Stewart requested oil and gas operations not be reopened and expressed concern about air quality.

Paul Patterson questioned considering short-term rentals as a non-conforming use.

Mary Anderson expressed concern about development near existing oil and gas wells.

Trish Miller discussed the Firestone explosion related to an abandoned oil well and opposed development near oil and gas wells.

Gretchen Carney stated the City should oppose further development in the north part of town until adequate infrastructure is in place.

Anita Glasgow expressed concern regarding adequate infrastructure in the northeast part of town.

Joe Rowan expressed concern regarding upcoming impact fees.

David Prosser discussed traffic on Country Club Road.

Monte Barry discussed an increased number of car trips to other grocery stores given the closure of Safeway at Mulberry and College.

● **CITIZEN PARTICIPATION FOLLOW-UP**

Councilmember Martinez asked if there are plans for a grocery store near Mulberry and College. City Manager Atteberry replied the current property owner is interested in seeing a retail grocer at the site; however, the City does not have an active role in that process.

Councilmember Martinez commended the cellist and thanked the Eco Car 3 presenters. He asked about the status of oil and gas well inspections. Lucinda Smith, Environmental Services, introduced Cassie Archuleta, Air Quality Program Lead and local government designee on oil and gas issues. Archuleta stated she has been in contact with Fort Collins' operators and the Colorado Oil and Gas Control Commission asking about similarities and differences between Fort Collins' oil and gas wells and those in Firestone. The wells in Firestone are high-pressure gas wells and the oil wells within the City limits are low-pressure oil wells that require water injection to get the oil flowing. Additionally, Fort Collins' wells are older with very low capacity.

Councilmember Martinez asked about the cause of the fatal Firestone explosion. Archuleta replied the cause was related to a gas flow line which was inappropriately disconnected from a gas well.

Councilmember Martinez requested input regarding the northeast traffic concerns. City Manager Atteberry replied the best opportunity for individuals to participate in the future of area transportation is coming up with the City Plan and Master Street Plan revamping process. He stated he can facilitate conversations between Traffic Operations and citizens.

Councilmember Summers congratulated the Eco Car 3 team and suggested a proactive approach to the traffic issues.

Councilmember Overbeck requested a memo regarding traffic issues on Country Club Road.

Councilmember Stephens thanked the Symphony representatives and the Larimer County Health Department employees. She congratulated the Eco Car 3 team and requested a more in-depth review of the oil and gas well issue.

Councilmember Cunniff requested a timeline of when sales tax licenses were granted to short-term rentals.

Mayor Troxell congratulated the Eco Car 3 team and noted short-term rentals and shared economies will be further discussed among Council members.

● **CONSENT CALENDAR**

Councilmember Martinez withdrew Item No. 10, *Resolution 2017-039 Authorizing the Execution of the Third Amendment to First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange*, from the Consent Agenda.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt and approve all items not withdrawn from the Consent Agenda.

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| RESULT: | ADOPTED [UNANIMOUS] |
| MOVER: | Gerry Horak, District 6 |
| SECONDER: | Bob Overbeck, District 1 |
| AYES: | Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak |

1. **Consideration and Approval of the Minutes of the March 7, 2017 Regular Council Meeting and the March 17, 2017 Special Council Meeting. (Adopted)**

The purpose of this item is to approve the minutes from the March 7, 2017, Regular Council meeting and the March 17, 2017 Special Council meeting.

2. **Second Reading of Ordinance No. 053, 2017, Appropriating Prior Year Reserves in the Transportation Fund for Consulting Services Related to Interstate 25 (I-25) Traffic Solution Efforts. (Adopted)**

This Ordinance, unanimously adopted on First Reading on April 18, 2017, renews a one-year contract with a lobbying and communications firm (Capitol Solutions) to advocate for solutions to Interstate 25 traffic congestion and appropriates \$30,000 from the Transportation Fund reserves to

pay for these services. City leaders are working in partnership with regional partners to identify and pursue funding for the I-25 corridor in Northern Colorado. Numerous regional efforts, initiatives, and actions have been taken or are underway to urge the Colorado legislature and Colorado Department of Transportation (CDOT) to accelerate improvements to Interstate 25 (I-25) and find long-term sustainable funding for the state's transportation infrastructure needs. This \$30,000 appropriation for services will continue to augment and enhance regional efforts and ensure Fort Collins has representation in discussions on I-25.

3. **Second Reading of Ordinance No. 054, 2017, Appropriating Prior Year Reserves in the General Fund for Waste Reduction and Diversion Projects Approved as Part of the Waste Innovation Program. (Adopted)**

This Ordinance, unanimously adopted on First Reading on April 18, 2017, appropriates \$150,000 accumulated during 2016 in the Waste Innovation Fund account into the City's General Fund account for approved projects to develop new organizational processes that enable departments to divert more waste material from landfill disposal.

4. **Second Reading of Ordinance No. 055, 2017, Appropriating Prior Year Reserves in the Storm Drainage Fund Perform Stream Rehabilitation Improvements on McClellands Creek in Connection with the Twin Silo Park Development Project and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program. (Adopted)**

This Ordinance, unanimously adopted on First Reading on April 18, 2017, appropriates \$454,500 from prior year reserves in the Storm Drainage Fund to perform stream rehabilitation improvements on McClellands Creek and authorizing transfers to the Cultural Services Fund for the Art in Public Places (APP) program in connection with the Twin Silos Park project.

5. **Second Reading of Ordinance No. 056, 2017, Amending Chapter 9 of the Code of the City of Fort Collins and Adopting by Reference the 2015 International Fire Code, with Amendments. (Adopted)**

This Ordinance, unanimously adopted on First Reading on April 18, 2017, adopts the 2015 International Fire Code as amended. The International Code Council (ICC) publishes updated codes every three years. The Poudre Fire Authority Board of Directors has reviewed and approved this code package and is requesting the code be adopted as amended.

6. **Second Reading of Ordinance No. 057, 2017, Adopting the Fort Collins Utilities Water and Wastewater Design Criteria Manual. (Adopted)**

This Ordinance, unanimously adopted on First Reading on April 18, 2017, adopts a Water and Wastewater Criteria Manual that establishes minimum standards for designing public improvements within the Fort Collins Utilities (FCU) water and wastewater service areas.

7. **Second Reading of Ordinance No. 059, 2017, Making Various Amendments to the Land Use Code. (Adopted)**

This Ordinance, unanimously adopted on First Reading on April 18, 2017, adopts a variety of revisions, clarifications and additions to the Land Use Code that have been identified since the last update in December 2015.

8. **Items Relating to the Tax Code. (Adopted)**

- A. Postponement of Second Reading of Ordinance No. 060, 2017, Amending Article II of Chapter 25 and Division 2 in Article IX of Chapter 26 of the Code of the City of Fort Collins Concerning the City's Tax and Utility Refund Programs to May 16, 2017.

- B. Postponement of Second Reading of Ordinance No. 061, 2017, Amending Article III of Chapter 25 of the Code of the City of Fort Collins Concerning the Imposition, Collection, and Enforcement of the City's Sale and Use Taxes to May 16, 2017.
- C. Postponement of Second Reading of Ordinance No. 062, 2017, Amending Article IV of Chapter 25 of the Code of the City of Fort Collins Concerning the City's Lodging Tax to May 16, 2017.

Staff requests postponement of Second Reading of these Ordinances to May 16, 2017, due to additional time needed to vet the definition for "Disabled individual" with the Commission on Disability. **If these items are pulled from the Consent Calendar, Council may choose to postpone the Ordinances or consider them on Second Reading, in Council's discretion.**

9. **Resolution 2017-040 Repealing Resolution 2017-010 and Authorizing the Initiation of Exclusion Proceedings of Annexed Properties Within the Territories of the Poudre Valley Fire Protection District and the Windsor-Severance Fire Protection District. (Adopted)**

The purpose of this item is to repeal Resolution 2017-010 and to enact a new Resolution to clarify that the Lodgepole Investments LLC Annexation is within the territory of the Windsor-Severance Fire Protection District rather than the Poudre Valley Fire Protection District. This Resolution will also authorize the City Attorney to file a petition in the Larimer County District Court to exclude five properties within the Poudre Valley Fire Protection District that were annexed into the City in 2016, and to file a petition in the Weld County District Court to exclude one property within the Windsor-Severance Fire Protection District that was annexed into the City in 2016. The properties affected by this Resolution are Lodgepole Investments, LLC Annexation, Maverik First Annexation, Mountain's Edge Annexation, East Prospect at Boxelder Creek Annexation, Majestic Place Annexation, and the Cache la Poudre River Annexation. C.R.S. Section 32-1-502 requires an order of exclusion from the district court to remove these annexed properties from special district territories. The properties have been receiving fire protection services from the Poudre Fire Authority and will continue to do so. The City Attorney's Office files petitions each year seeking exclusion for all properties annexed in the previous year that should be removed from the fire protection districts (Districts) to avoid double taxation.

● **CONSENT CALENDAR FOLLOW-UP**

Councilmember Cunniff requested information regarding the design of the creek improvements relating to Item No. 4, *Second Reading of Ordinance No. 055, 2017, Appropriating Prior Year Reserves in the Storm Drainage Fund Perform Stream Rehabilitation Improvements on McClellands Creek in Connection with the Twin Silo Park Development Project and Transferring Appropriations to the Cultural Services and Facilities Fund for the Art in Public Places Program.*

● **STAFF REPORTS**

Mayor Troxell stated a competitive process was held in the Youth Advisory Board and two students were selected to go to the National League of Cities.

Sarah Stone, Recreation Supervisor and Staff Liaison to the Youth Advisory Board, accompanied Vivian Bear and Betsy Pruznick to the National League of Cities in Washington D.C. Bear and Pruznick discussed their trip and goals to experience, learn, and connect.

Councilmember Martinez stated interviews for new boardmembers has just occurred.

Bear and Pruznick discussed the community chalkboard idea they have planned for the Foothills Mall.

Kelly Bernish, Director of Safety, Security and Risk Management, discussed the City's historical focus on safety and the newer focus of injury prevention and safety. The primary goal is to avoid injuries to employees and citizens.

Councilmember Overbeck asked if seasonal and hourly workers receive this message as well. Bernish replied in the affirmative.

● **COUNCILMEMBER REPORTS**

Councilmember Overbeck reported on the upcoming CSU open house regarding game day operations and stated the rolling coal bill passed in the State House.

Councilmember Martinez reported on the Affordable Housing Board presentation at his last listening session, the Elevations Credit Union groundbreaking, and a tour of the walkway under Shields at Elizabeth.

Councilmember Summers reported on the breakfast for the Center for Family Outreach.

Councilmember Stephens reported on the work the Center for Family Outreach does in the community.

Mayor Pro Tem Horak reported on the Platte River Power Authority Board meeting.

Mayor Troxell discussed Fort Collins high schools participating in the National Robotics competitions.

● **CONSIDERATION OF COUNCIL-PULLED CONSENT ITEMS**

10. **Second Reading of Ordinance No. 058, 2017, Reappropriating Funds Previously Appropriated in 2016 But Not Expended and Not Encumbered in 2016. (Adopted on Second Reading)**

This Ordinance, unanimously adopted on First Reading on April 18, 2017, reappropriates 2016 appropriations approved by City Council that lapsed at the end of 2016. City Council authorized expenditures in 2016 for various purposes. The authorized expenditures were not spent or could not be encumbered in 2016 because:

- *there was not sufficient time to complete bidding in 2016 and therefore, there was no known vendor or binding contract as required to expend or encumber the monies*
- *the project for which the dollars were originally appropriated by Council could not be completed during 2016 and reappropriation of those dollars is necessary for completion of the project in 2017*
- *to carry on programs, services, and facility improvements in 2017 with unspent dollars previously appropriated in 2016.*

In the above circumstances, the unexpended and/or unencumbered monies lapsed into individual fund balances at the end of 2016 and reflect no change in Council policies.

Mike Beckstead, Chief Financial Officer, reaffirmed the determination that there is a benefit to the utility rate payers associated with the broadband strategic planning effort. To this end, a Whereas clause has been added since First Reading for clarity and transparency.

Eric Sutherland stated the nexus between the broadband strategic planning efforts and the utility fees is not strong enough to support the conclusion as it needs to be made under the City Charter. He stated the other provision of the Ordinance that should be reviewed is the expenditure of KFCG money to study the impact of NISP on the Poudre River.

City Attorney Daggett stated what is being presented to Council on Second Reading includes an additional "Whereas" clause which she read into the record.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Stephens, to adopt Ordinance No. 058, 2017, on Second Reading as amended.

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| RESULT: | ORDINANCE NO. 058, 2017, ADOPTED ON SECOND READING AS AMENDED [5 TO 2] |
| MOVER: | Gerry Horak, District 6 |
| SECONDER: | Kristin Stephens, District 4 |
| AYES: | Stephens, Overbeck, Troxell, Cunniff, Horak |
| NAYS: | Martinez, Summers |

11. Resolution 2017-039 Authorizing the Execution of the Third Amendment to First Amended Intergovernmental Agreement Pertaining to the Development of the Interstate 25/State Highway 392 Interchange: (Adopted)

The purpose of this item is to amend the City of Fort Collins and Town of Windsor Intergovernmental Agreement pertaining to the development of the Interstate 25/State Highway 392 interchange to allow single-family residential as a permitted use on a portion of the Windsor side of the Corridor Activity Center Overlay Zone.

Tom Leeson, Community Development and Neighborhood Services Director, stated the original IGA with Windsor was adopted in 2010 and established permitted uses, design standards, and revenue sharing agreement. In 2015, Windsor proposed adding single-family housing and automobile dealerships to the list of permitted uses and enhanced design standards. The design standards were adopted by both communities and the automobile dealerships withdrew their application. The current proposal from Windsor is to amend the IGA to allow single-family use on a portion of the Muth property located on the northeast corner of I-25 and Highway 392.

Leeson discussed the proposed revenue sharing and special assessment fees for original investments.

Eric Sutherland stated his comments are to contrast what is happening with this intersection with what is happening with the plan to fund improvements to I-25. He commended the collaboration and revenue sharing arrangements in this agreement but opposed funding development by regional partners.

Councilmember Cunniff stated he would like to discuss tax increment financing at the Council retreat. He asked about the payback interval. Leeson replied the timing is based on build-out and stated the read-before packet contains a table comparing the proposed zoning with the existing zoning and the resulting difference in sales tax collection. Tom Muth, property owner, stated commercial development will follow housing development. The build-out timeline for the residential aspect is likely within four years.

Councilmember Martinez made a motion, seconded by Mayor Pro Tem Horak, to adopt Resolution 2017-039.

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| RESULT: | RESOLUTION 2017-039 ADOPTED [UNANIMOUS] |
| MOVER: | Ray Martinez, District 2 |
| SECONDER: | Gerry Horak, District 6 |
| AYES: | Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak. |

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

● **DISCUSSION ITEMS**

12. **Consideration of an Appeal of the Planning and Zoning Board Decision Regarding the Water's Edge Project Development Plan. (Planning and Zoning Board Decision Upheld)**

The purpose of this item is to consider an appeal of the Planning and Zoning Board (the "Board") decision to approve the Water's Edge Project Development Plan. On March 29, 2017, an appeal was filed challenging the Planning and Zoning Board Decision made at the March 16, 2017, hearing (the "Hearing").

The Appeal includes the following assertions:

The Planning and Zoning Board failed to conduct a fair hearing, in that:

- 1. The Board improperly failed to receive all relevant evidence offered by the Appellants.*
- 2. The Board was biased against the Appellants by reason of a conflict of interest or other close business, personal or social relationship that interfered with the decision maker's independence of judgment. In support of this assertion, the Appellants intend to introduce new evidence stated as "Pattern of indifference toward, and bias against Serramonte Highlands by Fort Collins."*

Mayor Troxell stated Council is acting in a quasi-judicial role for this appeal.

City Attorney Daggett provided an overview of the appeal process and new evidence received by Council.

Mayor Troxell asked parties-in-interest to identify themselves and outlined time allocations for presentations.

Tom Leeson, Community Development and Neighborhood Services Director, discussed the Waters' Edge project proposal and requested modifications of standard. The project was approved in March by the Planning and Zoning Board and that approval was appealed by 29 residents of the Serramonte Highlands development. The notice of appeal asserts the Board failed to receive all relevant evidence offered by the appellants and that the Board was biased against the appellants by reason of a conflict of interest or other close business, personal, or social relationship that interfered with the decision-maker's independence of judgement.

The appellants alleged three specific claims: emails from residents of Serramonte Highlands were forwarded to City Planner Jason Holland prior to the hearing, and at the hearing, the clerk indicated many emails from Hearthfire had been received, but no mention of the Serramonte Highlands emails was made, an email from Amanda Gentile, a Serramonte Highlands resident,

sent to and acknowledge by Jason Holland, is missing from the supplemental correspondence for the hearing, and several important issues raised by the Serramonte Highlands emails contained in the supplemental correspondence were not discussed during the hearing sparking concern they were never read.

Leeson discussed evidence pertinent to the assertions.

Mayor Troxell asked Councilmembers to discuss observations made during the site visit.

Councilmember Cunniff stated he oriented himself with the site and observed the plugged and abandoned oil well on the property.

Councilmember Overbeck stated he asked questions regarding well head locations.

Councilmember Summers stated he got a general layout of the property and proposed project.

Mayor Troxell stated he looked at the site and surrounding neighborhoods and walked to the well site.

Mayor Troxell asked if there is any new evidence any parties-in-interest intend to offer. John Daharsh asked that the email from Amanda Gentile be allowed to be presented during his presentation. The applicants presented no objection.

Councilmembers and City Attorney Daggett had a discussion regarding the admission of emails and other evidence and no objections were heard.

APPELLANT PRESENTATION

Mr. Daharsh discussed Ms. Gentile's email being sent to the planner and not received by the Board and noted it has been mentioned that Ms. Cosmas misspoke at the Board hearing when she referenced emails as being from Hearthfire residents. He discussed the concerns mentioned in various emails that were not mentioned in the summary presented to the Board.

Regarding the conflict of interest allegation, Mr. Daharsh stated a clear pattern of bias against Serramonte Highlands has existed throughout the history of this PDP and appears to be related to Serramonte Highlands not being within City limits. He stated the City only discussed density in relation to the entire site and has not addressed repeated request for different distribution of the homes on the site. He stated the largest lot sizes should be placed along the border with Serramonte Highlands given the precedent the City set with Hearthfire.

Mr. Daharsh expressed concern the LMN zoning will bring crime and police activity to the area. He stated neighbors are not opposed to development on the property but are requesting their opinions be heard and considered, and that a meaningful and obvious transition including more space be included.

APPLICANT PRESENTATION

Jim Martell, attorney representing the applicants, discussed the conditions of approval imposed by the Planning and Zoning Board: to install a traffic light at the corner of Turnberry and Country Club Road, the 55+ age restrictions, the elimination of two units adjacent to Serramonte Highlands, and the restriction of those houses bordering Serramonte to one story.

Mr. Martell discussed the appeal allegations of failure to conduct a fair hearing by failing to receive all relevant evidence and bias on the part of the Board. He stated the City's definition of bias involves a conflict of interest and is not the same definition used by Mr. Daharsh. He stated there is no requirement for discussion of every item, simply a requirement that all documents be received, and noted the residents of Serramonte attended neighborhood meetings.

Mr. Martell stated a mistake was made when Ms. Gentile's email was not given to the Board; however, the Board did not refuse to accept evidence given the email was used to express concerns, not to present evidence. He requested Council uphold the approval by the Planning and Zoning Board.

APPELLANT REBUTTAL

Mr. Daharsh stated he was not alleging the Board was biased, but rather the City of Fort Collins. The City would benefit financially from revenue generation on the site. He stated there was no discussion of a buffer and transition between the subject property and the Serramonte FA-1 property. He reiterated concerns about the proposed development dramatically impacting the quality of life in his neighborhood.

Patrick Renworth stated a conflict of interest does exist because, despite working and paying taxes in Fort Collins, residents of Serramonte are not treated equally.

Noreen Reist noted the developer was willing to remove additional units in order to meet some of the requests of Serramonte residents; however, the City would not allow that change as the development would then not meet the standards for minimum dwelling units per acre.

APPLICANT REBUTTAL

Mr. Martell stated the City does not approve subdivisions to benefit financially from tax revenue. He stated the City must allow development that fully complies with City Codes.

COUNCIL DISCUSSION

Councilmember Martinez asked how the City defines bias. City Attorney Daggett replied the Code does not actually define "bias", although it is used in the discussion of the grounds for this appeal. There is a specific reference to conflict of interest that addresses the bias ground for an appeal. Conflicts of interest are defined as personal or financial and there is no evidence of any of the Board members having such a conflict.

Councilmember Cunniff asked if the City currently collects fees sufficient to cover all the impacts of new development within City limits. Leeson replied fees do not completely cover the cost of development, although fees are being examined. There are very few land uses that actually give a return to the municipality enough to cover the cost of serving it.

Councilmember Cunniff asked if Serramonte Highlands is within the City's growth management area. Jason Holland, City Planner, replied in the affirmative.

Councilmember Cunniff asked if the transitions would be compatible if Serramonte Highlands were annexed as Urban Estate. Holland replied in the affirmative and stated buffers and transitions are examined based on a comparison of uses rather than a comparison of zoning.

Mayor Troxell asked if the Hearthfire development was approved under different versions of City code. Holland replied Urban Estate exists to the western portion of Waters' Edge primarily because of views and Richard's Lake.

Councilmember Overbeck asked about the September neighborhood meeting and references to oil well buffers. Holland replied a project similar to this was approved in 2010, at which time residential setbacks from oil wells were 150 feet. The approved plan expired, and changes were made to buffer standards requiring a 350-foot buffer prior to the plan being submitted again for development review. That buffer also applies to plugged and abandoned oil wells. The Board approved the modification to reduce the 350-foot buffer to 150 feet.

Councilmember Overbeck asked about standard 3.8.26(c). Holland replied that Land Use Code section addresses buffering.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Martinez, that Council find that the Planning and Zoning Board conducted a fair hearing in its consideration of the Waters' Edge Project Development Plan #160006, did not improperly fail to receive all relevant evidence offered by the appellants, and was not biased against the appellants by reason of a conflict of interest or other close business, personal, or social relationship that interfered with its independence of judgement. He further moved that based on the evidence in the record and presented at this hearing, the appeal alleging the Planning and Zoning Board did not conduct a fair hearing is hereby found to be without merit and is denied.

Mayor Pro Tem Horak stated the appeal was about a fair hearing rather than about buffer standards. He stated revenue is never a consideration in a land use decision.

Councilmember Cunniff stated he would support the motion given the format of the appeal and its allegations.

Councilmember Summers noted there is evidence the Board made amendments to the plan's northern boundary to the extent it could.

Councilmember Martinez stated there is no evidence of bias or conflict of interest and the email that was not received by the Board did not present any evidence.

Councilmember Stephens noted Council was charged with determining whether this was a fair hearing.

- **RESULT:** PLANNING AND ZONING BOARD DECISION UPHeld [7 TO 0]
- **MOVER:** Gerry Horak, District 6
- **SECONDER:** Kristin Stephens, District 4
- **AYES:** Stephens, Overbeck, Troxell, Cunniff, Horak, Martinez, Summers

● **OTHER BUSINESS**

Councilmember Cunniff requested and received Council support to get an assessment of underground oil and gas lines in an urgent manner.

Mayor Pro Tem Horak stated the Boxelder Basin Regional Stormwater Authority has a new member, Martina Wilkinson.

● **ADJOURNMENT**

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adjourn to May 9, 2017 at 6 PM to consider an agreement dealing with the Boxelder Stormwater Authority, a possible Executive Session, and any other items as may come before Council.

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| RESULT: | ADOPTED [UNANIMOUS] |
| MOVER: | Gerry Horak, District 6 |
| SECONDER: | Ross Cunniff, District 5 |
| AYES: | Martinez, Stephens, Summers, Overbeck; Troxell, Cunniff, Horak |

The meeting adjourned at 10:01 PM.



A handwritten signature in black ink, appearing to be "Gerry Horak", is written over a horizontal line. Below the signature, the word "Mayor" is printed in a simple, sans-serif font.

ATTEST:

A handwritten signature in black ink, appearing to be "W Winkelmann", is written over a horizontal line.

City Clerk