

**PLANNING AND ZONING BOARD
WORKSESSION AGENDA
Friday, January 11, 2013, noon to 3 pm
281 N. College Conference Room A**

<p>Consent (20 minutes)</p> <ul style="list-style-type: none"> • LUC – Election Signs (Barnes) • LUC – Non-native Trees (Buchanan) <p>Discussion (60 minutes)</p> <ul style="list-style-type: none"> • SHAP (Sowder) • SPAR – PRPA Dixon Substation (Albertson-Clark) • SPAR – PRPA Timberline Substation (Albertson-Clark) <p>Other (15 minutes)</p> <ul style="list-style-type: none"> • 2012 Annual Report <p>Worksession Project Updates:</p> <ul style="list-style-type: none"> • Affordable Housing Redevelopment Displacement Mitigation Strategies (Waido) – 30 minutes • Citizen Feedback -Development Review Improvements (Burnett) – 45 minutes • CAG Representative – 10 minutes 	<p>City Council</p> <p>2/5/13 2/5/13</p> <p>2/19/13 1st Reading</p> <p>3/5/13 1st Reading</p>
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**PLANNING AND ZONING BOARD
JANUARY 11, 2013 WORK SESSION
AGENDA ITEM SUMMARY**

STAFF

Laurie M. Kadrich, Community Development & Neighborhood Services (CDNS) Director
Beth Sowder, Neighborhood Services Manager
Sarah Burnett, Neighborhood Development Review Liaison

SUBJECT FOR DISCUSSION

Planning and Zoning Board review and direction regarding concerns about the development review process

EXECUTIVE SUMMARY

Over the past several months, issues related to the development review process have been raised by a variety of individuals. One citizen outlined his concerns about the review process at the August 2012 Planning and Zoning Board meeting. At that time, it was suggested that the Planning and Zoning Board hold a work session to discuss these concerns as well as those raised elsewhere.

In October, the Neighborhood Development Review Liaison position was filled. A number of unsolicited comments have been received, as well as comments from individuals contacted proactively after appeal hearings were completed. At the December 17, 2012 Planning and Zoning Board Work Session, the Board indicated that they would like to review issues that have been raised at their January 11, 2013 Work Session. The Background/Discussion section below includes themes of comments during Planning and Zoning Board and City Council comment periods over the past several months.

It should be noted that no formal public engagement process has yet taken place. The issues listed below have been identified through various communications with approximately fifteen individuals, and, as such, may not be complete or representative of the feedback that might be received in a public engagement process.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. Does the Board want staff to use these themes as a basis to move forward with a public engagement process to explore ways to improve the development review process?
2. Of the issues identified to date, are there some that the Board agrees with and would like to handle separately from any public engagement process?
3. Are there other issues to be explored that the Board would like to add to those already identified?
4. What involvement would the Board like to have in following up on these issues?

BACKGROUND/DISCUSSION

The comments and concerns may be grouped in general themes, as listed below. These issues could be further examined by staff upon direction of the Board.

1. Lack of Information About Process

- Zoning and Land Use Code issues are complex and citizens struggle to know how to participate and to read and understand provisions on their own.
- Citizens often do not know there will be a staff report with a recommendation, and what that recommendation will be.
- Citizens often do not know that there will be a Planning and Zoning Work Session where staff reviews the project with Board members prior to hearing.
- Suggestion: review content of Citizen's Guide to Development Review, and update as needed.

2. Outreach and Transparency of Public Information

- Several have noted that conceptual reviews, neighborhood meetings, staff reviews, hearing agendas, and documents filed by applicants should be available online, and easily accessible.
- Some would like to be able to look up project listings by address, or break up listings by quadrants within the city, while other prefer looking up projects by project number or name.
- Several have noted a concern that scanned (pdf) documents on website are not searchable.
- One resident said she stumbled upon the Student Housing Action Plan (SHAP) information one day on the website, and believes outreach could be improved.
- One citizen believes all meetings with staff and applicant should be public.

3. Neighborhood Meetings

- A repeated theme is the residents are concerned that input from neighborhood meetings and citizen comments do not impact proposals, so that citizens are burdened with meetings, but with no actual beneficial outcome. (What is the real purpose of neighborhood meetings?)
- Several have noted a need to "close the loop" with neighborhoods regarding questions that were not answered at neighborhood meeting, and possibly to consider a way to give neighborhoods another chance to have more discussion at some point during the review process.
- There is a concern that neighborhood meetings are not well documented, and that the documentation is subject to the planner's discretion.

4. Staff Reports/Recommendations

- There is a belief that staff recommendations are a powerful influence on decisionmakers, and that they are written in such a way that it is difficult for the Board to reach a different conclusion. This seems particularly important on issues/projects that could be viewed as close calls by decisionmakers for meeting or not meeting standards.
- Why do staff reports not simply state the relevant standards and outline how the developer proposes to meet the standards?
- For more subjective standards and/or modifications, could the report provide justifications for decisionmakers to approve OR deny? This would provide decisionmakers with a rationale for a decision in either direction on standards that are more subjective.
- Another person suggested that staff should not make recommendations for modifications of standards, but instead to describe the code, the proposed modifications, and requirements that must be met in order to approve them.
- Staff not perceived to be neutral given actions and recommendations to approve.
- Citizens felt betrayed when staff report came out making recommendations to approve, when at neighborhood meeting, they were told staff was neutral in process.

5. Hearing Process Concerns

- Citizens report feeling disempowered by process; feel excluded from decision-making process that will impact daily lives.
- A concern been expressed about the fairness of staff presentations of projects to Board Members in Work Sessions.
- One developer expressed a concern that citizens who may be neutral or supportive may be afraid to speak up if their neighbors are opposed to a project.
- The disparity in time between City and applicant (often combined for 90 minutes of organized presentations for a project) as opposed for time for citizens who typically may speak only for three minutes has been noted by several residents.
- The current hearing lacks the opportunity for an organized presentation from a group of citizens.
- Others have noted that citizens are surprised to learn that a hearing is **not** a back and forth dialogue and that citizens are likely to have only three minutes to speak.
- The Planning and Zoning Board members (in hearings) and City Councilmembers (in appeal hearings) often dialogue freely with staff and applicant, but rarely do decisionmakers ask questions of citizens.
- In appeal hearings when the appellants are citizens, City Councilmembers often ask many questions and have dialogue with the developer's representatives, instead of with the appellants.
- During dialogue, promises are sometimes made by developers in order to gain approval in the hearing (or appeal hearing). When these statements are not included in the plan under review or in the motion to approve, the promises are meaningless.
- Citizen letters do not allow for dialogue.
- More than one citizen involved with more than one project has cited staff and developer conferring to plan rebuttal of citizen comments.
- Planning and Zoning Board comments:
 - There is a need for more neighborhood dialogue before a project reaches its hearing.
 - There is a need to set expectations prior to hearings so that the public is aware that staff will make recommendations.
 - Consider adding a pre-hearing meeting with neighborhoods. (A trigger would need to be determined.)
 - In conduct of the hearing, jargon should not be used.
 - Consider adding an outline of the hearing process with hearing notices, online, and/or on the screen at the hearing.
- A concern has been expressed about the enforceability of conditions of approval and how they are documented to ensure that they are (1) unambiguous, (2) include a remedy, and (3) comply with statutory limitations to vested entitlement.

This concern has been forwarded to the City Attorney's office for review; the City Attorney will advise City Council as needed.

6. Connection of the Development Review Process to Planning Documents

- What is the connection of the review process to the relevant planning documents?
- How can the variety of uses envisioned in City Plan or in sub-area plans be realized when projects are considered individually? Decisionmakers often cite such plans in their discussions, but final decisions tend to rest only on provisions of the Land Use Code.
- How can the cumulative effects of one type of development in an area (often discussed as a negative in planning documents) be addressed when projects are considered individually? Recent examples include (1) high density, short term tenancy housing in areas without grocery retail, (2) multiple Additions of Permitted Uses for offices in single family areas, and (3) auto-related uses on North College Avenue.

7. Use of Additions of Permitted Uses

- Citizens have expressed concerns about the use of Additions of Permitted Uses (APU), particularly in Low Density Residential (RL) district and Neighborhood Conservation, Low Density (NCL) district. Concerns include:
 - Staff recommends APU instead of rezoning (and that staff asserts it is not spot rezoning) since rezoning is difficult to get through. (In some cases, neighbors prefer APU to rezoning.)
 - APU grants windfall to property with APU, adversely impacts neighboring property values (citing example of sale of property immediately following APU on Shields/Mulberry).
 - The permanent nature of the APU leads to future uncertainty after sale of property.
 - Belief that maintaining low density residential zoning is not a priority of planning staff, and therefore recommendations to decision makers reflect that priority.
 - Perception that concerns were downplayed or ignored (in APU, alternate development must not create any greater negative impacts than other permitted uses).
- In Planning and Zoning Board Work Session discussion, the following questions were raised:
 - Should APU be allowed in cases of existing development but not for new development? If allowed for new developments, should there be higher standards?
 - If the approved use is not used for two years or more, should the APU expire and no longer be allowed?
- One citizen suggested that City Council examine reasons for establishing APU. This person believes it was added to the code with the intent of allowing minor changes to a zone district, but now that purpose is not being followed. This leads to unpredictability for existing property owners.

8. Specific Land Use Code (LUC) Concerns (in addition to Addition of Permitted Use)

- A need for better outreach and citizen participation when potential Land Use Code changes has been noted, particularly by staff and Board members.
- Suggestion: when Land Use Code changes are being considered, specific changes should be listed in the agenda, not just “Land Use Code Changes” as an agenda item.
- LUC standards in multifamily developments – “if we continue to permit inadequate parking in all of our residential infill on a routine basis, we will no longer look as we do now”
- Concern that no parking minimums in new/proposed Transit-Oriented Development (TOD) projects will impact neighboring properties adjacent to the TOD, and that the long term density goals of the City benefit developers while externalizing impacts and harming neighborhoods. (Concern that staff seems to be focused on achieving City Plan goal of increased density while overlooking City Plan goal to preserve neighborhood quality and character.)

9. Precedence

- One commenter felt staff doesn’t always consider the reason and extensive thought and review that Land Use Code provisions or changes were implemented (in this case the concern was the lot size minimum of 5,000 square feet in Neighborhood Conservation, Medium Density (NCM)).
- Similarly, another resident felt current practices for proposing Additions of Permitted Use (APU) were very different than what was presented to decisionmakers when the APU provisions were added to the code.
- There is a concern that granting modifications will set a precedent for future modifications even though the 5,000 square foot minimum lot size was implemented because it was deemed to be undesirable in the future.
- Another resident was also concerned about precedent-setting. This person believed the approval of an Addition of Permitted Use (APU) allowing multi-family development in an Residential,

Low Density (RL) district would be make it more likely that APU would be approved in more and more circumstances once precedent was set.

UPDATE ON EFFORTS TO INCREASE AVAILABILITY OF INFORMATION AND TRANSPARENCY

Because of customer feedback and CDNS's commitment to provide accessible information in a timely way, major efforts to improve the availability of information about development projects took place in 2012. Improvements will continue to be a priority of CDNS staff in 2013. These include:

- A weekly development review email and webpage with information on scheduled neighborhood meetings, Type 1 and 2 hearings, and other development-review related board and commission meetings.
- Complete Planning and Zoning Board packets and Administrative Hearing packets
- Improved and expanded access to documents related to specific projects through a newly-launched current projects webpage.
- Updated development review signage, adding a number to facilitate finding more information.
- Updated map of current projects, with links to more information about each project.
- New index of conceptual review projects to facilitate locating projects. Staff comments will be added starting in 2013.

ATTACHMENTS

Attachment 1

Citizen Communications

Planning and Zoning Board Work Session
January 11, 2013
Citizen Feedback – Development Review Process

Attachment 1 – Citizen Communications

- Statement read by Mark Kenning at the August 16, 2012 Planning and Zoning Board Meeting
- October 2, 2012 letter from Michelle Haefele
- October 15 and 16, 2012 emails from Eric Sutherland
- Notes from November 29, 2012 meeting with Andy Lewis
- December 7, 2012 email from Michelle Haefele
- December 18, 2012 email from Michelle Haefele
- Statement read by Paul Patterson at the December 18, 2012 City Council Meeting

(Statement read by Mark Kenning at August 16, 2012 Planning and Zoning Board Meeting)

P&Z approval process *Name address, remind of last meeting. Not to discuss results, just process.*

Did you know that the City has 27 boards and commissions that are staffed by volunteers just like you? They cover everything from air quality to affordable housing to art in public places to energy to golf to retirement issues! Thank goodness we have as many dedicated volunteers in our city as we do.

Now just for a moment, imagine that you had reason to appear before one of the other 26 boards – maybe you're advocating for your retired parents, or your favorite park is being neglected, or something else. Let's further assume that you had never before had reason to even attend meetings of this board. That's the position a lot of us were in last month, when we came to your hearing on Regency Lakeview. Afterwards, I felt really, really dis-empowered by the whole process. While you might not be able to fix it, I'm guessing that you also have no idea how absolutely unfair this process seems to an outsider. Frankly, it also makes the board look like puppets of the City staff - and given the time and intellectual effort you obviously spend on this, I doubt you appreciate being seen that way.

Here is how the process looked to my eyes, and a number of the neighbors have agreed that this generally represents their view too.

- 1) The very first meeting about this project was hosted by Ted Shepard about a year ago. The applicant wasn't there, the meeting was just to tell us about "the process." Although I may be remembering it out of context, several of us remember Ted telling us that "The City is neutral in this process." Given their subsequent actions and the recommendation that you approve both the APU and the PDP, I don't think that was a true statement. Thus we feel a bit betrayed.
- 2) Then came two public meetings with City representatives and the applicant. Beforehand, nearby neighbors received a mailing informing them of the meeting.
- 3) Next, the applicant submitted a plan. Ted was kind enough to not only bring by a full set of plans, but spent nearly an hour going over them with me. I agreed to share the information with neighbors and the three HOAs most affected by the project. He later sent me the City response to Regency. Ted and Ward volunteered to meet with neighborhood groups to answer questions, and indeed a number of us met with them for several hours one evening (end of

May?).

But at that point things kinda stopped, and the neutrality thing seemed to go away. Ted called several of us to let us know that the APU and PDP would be considered at your July 19 meeting, because letters notifying us of that fact were not mailed in time to meet the mandated two-week notice. *It was only after asking* what staff's recommendation would be that Ted provided us the City's recommendation report given to you. *It was only by looking on the city website* that we happened to learn that you have a work session the Friday before each meeting, and that letters should be submitted before that meeting. *It was only after asking* that we found we could attend the work session, but couldn't speak. It was starting to feel like you didn't really want our input! At that work session (which I could not attend), the City staff went through their reasoning for recommending both the APU and PDP. They suggested what we thought were irrelevant things, (like you visit other places where medium density abuts single-family homes which had nothing to do with the validity of the APU process); they downplayed or ignored things we thought were important (that under APU rules, alternate development MUST not create ANY greater negative impacts than the amount normally resulting from the other permitted uses listed in the zone district). And here's the thing: *there was no format for anyone outside city staff to point these things out to you, nor to offer reasons why you maybe should NOT approve the APU or PDP.* And that's the crux of our frustration: we think you only heard one side. And it only got worse at the public meeting July 19.

After opening the meeting, the City and Applicant took more than 90 minutes to go through (again?) their plans and the reasoning for why you should approve both the APU and PDP. After that, I would think it would have been helpful *to you* had there been time for an opposition spokesman to have 20 or 30 minutes to lay why you shouldn't approve the APU. *But there IS no format for a formal opposition presentation!* Instead, the meeting was opened to citizen input, on a first-come, first-served, 3 minutes apiece basis, though Mr Smith was kind enough to grant four of us a little more time. A few people spoke for the project, including the listing agent (Larry Stroud). Yet there was no format for anyone to point out the inappropriateness of his input! It seemed that anyone from anywhere could step up in any order and say anything; thus the chances of you gleaning anything of substance from the citizen input portion had to be quite small. To add insult to injury, the city and applicant were then given another hour to rebut citizen input! But was there a format for citizens to question or rebut the City's or applicant's statements? No!

I don't know if it's your rules (and how does one find *that* out) but while you the board freely dialogued

with city staff and the applicant, none of you ever asked a question of any of the citizens opposing the APU. Yet I know you were listening, because we made a point about the LUC forbidding use of an APU to approve a prohibited use in a zoning district, and you later asked the Assistant City Attorney to explain how you should interpret that. While she gave you what sounded to me like a flip answer, I later learned it was indeed factually correct. I only wish there could have been a way for me to have asked for clarification that evening (or better yet, before that evening)!

If I were on your board, I'd want to be sure I had as much good information as I could before coming to a decision. So if I ruled the City's P&Z process, I would include a format by which a formal opposition group would be recognized (if so desired) for any proposal. This group would appoint a spokesman who would be allowed to dialog with you at your work session, asking you and staff questions, answering your questions and making a case for the opposition. At your public hearing, this spokesman would get equal time to make their case publicly – and have access to the technological toys to do so. The board would be encouraged to dialog with that spokesman just as you do with staff and applicants. In return, I'd limit individual citizen input to say 30 minutes. I might even require that they offer only viewpoints not already covered by the applicant, opposition spokesman or another citizen. By doing this, the board would hear arguments and information that the City staff and applicant might not otherwise give you. It might help you make a more informed decision, and would certainly make you look less like City puppets, and let the common citizen feel like his/her voice was heard.

Staff may scoff at this idea, saying that input and opposition can be made via letters. But letters don't allow for dialog between citizens and the board. They may also say that citizens have plenty of time at the public meetings to give input, ask questions and figure things out. But going back to my opening statement, for most of us, this is our first and only time with this process. At the time of the public meetings, zoning was still a vague idea; I didn't know the LUC played into the process. We didn't even know what an APU was, let alone its many nuances. We've learned on the fly. By the time we were halfway knowledgeable, we were seemingly barred from using that knowledge! The net result is that a lot of citizens felt excluded from a decision-making process that will absolutely impact our daily lives.

My hope and plea is that you'll work to fix this for the future. That you'll consider the idea of an opposition spokesman to have voice at all of your meetings. That you'll let those with points of view contrary to City Staff help inform the important decisions that you make.

Date: October 2, 2012

To: City Council, City Leaders

From: Michelle Haefele, 623 Monte Vista Ave, Fort Collins, CO 80521 (970-493-7898)

RE: Addition of a Permitted Use in Single Family Residential Zones

I am writing to ask the City Council to enact an ordinance which would discontinue the use of the "Addition of a Permitted Use" (APU) in single family residential zones. The APU is itself inappropriate, process is unfairly rigged to favor developers, citizen input is essentially ignored, and access to information on the process and specific projects is difficult, if not impossible to obtain.

While I understand that there might be some circumstances where an APU is a useful tool (allowing additional industrial uses in industrial or commercial zones for example), it is not appropriate in residential zones. The permanent conversion from single family residential to commercial or multi-family property destroys the protection for single family residential zoning (which is the most important function of zoning).

Allowing individual property owners to essentially "rezone" their property without going through the rezoning process has two effects – it gives these property owners an unearned windfall (all such requests are for conversions to higher valued uses) and it reduces the property values for the remaining homeowners. I have heard repeated assertions that an APU is not spot rezoning, but the permanence of these changes has the identical effect on the remaining residential property owners.

It is patently unfair for someone who owns single family residential property to ever expect to simply convert it to a more lucrative use. This is essentially an end-run around the zoning, making zoning irrelevant. As a homeowner we expect the city to protect our residential property values and quality of life. This process destroys that trust.

In the last three years, we have had two houses converted to offices in our neighborhood (both within two blocks of our home). Throughout the city there have been other such conversions, as well as APUs converting single family residential to multi-family residential. These conversions destroy the protection that zoning is supposed to give single family homes.

It is unfortunate that planners refer to conversions from single family residential to multi-family, commercial, industrial, etc. as "up zoning." It would be more appropriate to view single family neighborhoods as the pinnacle of zoning, the most sacrosanct zone, rather than the least valuable. Our homes are, for most of us, the biggest investment we will ever make. It is an outrage that our city planning department colludes with would-be developers to enrich these developers at the expense of the rest of us.

Furthermore, the process whereby city planners cooperate with developers to make a presentation to the Planning and Zoning Board is unfair. Citizens speaking against these conversions are given only limited time to speak (often only three minutes). Following citizen input, the city staff (whose salaries are paid for by these very citizens) confer with the developer to make a rebuttal presentation to the P&Z Board. Citizens are never given any additional opportunity to speak. In one case it is clear from the email messages included in the public record that city planners had apparently actually solicited supportive comments from the developer. This is unacceptable, the city planners should be working for all residents of Fort Collins and not working to force through such objectionable projects.

Making matters worse, citizens who attempt to educate themselves about the actions of the Current Planning Department are thwarted by a lack of transparency and publically accessible documents and information. I have been requesting a major revision of the way that the Current Planning Department

informs the residents of Fort Collins about their activities since at least November of 2011 (almost a year now), to no avail.

The only response that I, and others making this request, have received, are assurances that “we are working on it.” This is unacceptable. This information should be made available on-line, organized by address and project name. An interested citizen should be able to go to the page or portion of the website pertaining to a specific project (denoted by address) and find all meeting dates, agendas, minutes, staff reports, staff notes of meetings with applicants/developers and any other documents that pertain to the project starting from the minute that project comes into the Current Planning Department’s office. Again, this information should be organized by address/project.

Right now bits and pieces of any given project may or may not be found in various locations on the Current Planning website, under categories such as the wildly out-of-date “current planning” list, the neighborhood meetings, hearing agendas (which are organized by date) and conceptual review (again, organized by date). None of the minutes from any of these meetings are ever available (or at least not in any obvious way).

It is virtually impossible to keep up with all the development actions going on in the city. The new yellow signs, replacing the old green ones are an insult not an improvement. As before, after seeing a sign while away from home, one still has to remember an address (or a project number) and call the planning department. In one case in our neighborhood, we called and were emailed a document that had not been made available to the public, but one which contained considerable information about the project and which should have been readily available.

This department has the potential to inflict considerable negative impacts on city residents, especially in single family neighborhoods (as has been the case in our neighborhood). Knowing this, a diligent homeowner has to dig through often out of date lists of several types of meetings, actions, and decisions on the completely convoluted website. There is no place where all the actions (including those of the Zoning Board of Appeals and the Planning and Zoning Board) are compiled BY ADDRESS. Furthermore notes from the various meetings are not made available on the website and are only rarely emailed to those who attend neighborhood meetings.

In a wholly inadequate response to this request the department now sends out an email which simply directs the reader right back to the torturous, out-of-date, incomplete Department website.

I am requesting that a complete listing by address of all actions occurring on a property be compiled in one place (by project and address). This information should be updated at least weekly. The “current projects” document that is available on the city website is ridiculously out of date. Several projects with which I am familiar are listed but they include out of date information (some as old as several months even though new actions have been taken).

I am asking that this department make this radical change in the transparency of their actions because they have the potential to radically alter our property values and quality of life with decisions that are often made solely by city planning staff in very generous cooperation with developers. Even in cases where the final decision rests with the Planning and Zoning Board, there are almost no examples where the Board has rejected a proposal that city planning staff have recommended – in many cases despite overwhelming opposition from residents of the affected neighborhoods.

Finally, recent attempts at reform have included increased neighborhood meetings. However the input from neighbors at these meetings does not, in most cases, make it into final proposals. In the end neighbors are burdened with additional meetings, but with no actual beneficial outcome. Input from residents must be taken into account.

I feel that being fully informed of every project – including all the staff reports, documents filed by applicants, meeting minutes (including “internal” meetings between city staff and applicants) would give citizens at least some ammunition in what has begun to look like a losing battle between our own city staff and the residents they are supposed to serve.

Sincerely,

Michelle Haefele

Sarah Burnett

Subject: FW: Precedence and planning.

From: Eric Sutherland [<mailto:sutherix@yahoo.com>]
Sent: Tuesday, October 16, 2012 3:51 PM
To: Jason Holland
Cc: Sarah Burnett; Karen Cumbo; Steve Roy; Laurie Kadrach
Subject: Precedence and planning.

Mr. Holland,

The entire philosophical and operational constructs that our Land Use Code was built upon and constructed from revolves around precedent. Our system of laws, the Code being a piece of same, is front loaded and back filled with precedent.

Take the strange little notion of little c little l common law. Yes, that very basis of our society. Precedent play a role? Sure.

Now get fancier, throw in a capital letter - English common law. Precedent is the discriminating factor.

Now let's look a little closer at land use law in the state of Colorado. Is precedent a concept without meaning, the way you seemed to infer? I don't think so. If another application for sub-dividing a lot in the NCM were to be turned down at some point in the future, the case could be made that our laws are being applied arbitrarily and capriciously. Such an argument might carry some weight in a court of law.

Precedence is why your staff report was found wanting. Although the precedent for lot sizes under 5,000 exists in the NCM and other places, this practice was reversed and redefined to be undesirable in the future. A new precedent was formed. It took a long time. I remember thinking to myself, "How strangely drawn out, how time consuming this consensus building stuff can be."

Your staff report dumped a heap of molding garbage on the consensus embodied in that precedent without even giving so much as lip service to the reasons the consensus was achieved. Sorry, but the precedent of reversing a precedent - by virtue of a couple months of public meetings and a couple votes by elected representatives - is the one we observe today. You will find it written down in the Land Use Code. Everyone knew that the capacity for infill and redevelopment would be diminished by the amendment to the LUC. I do think the prioritization of infill has moved up a few notches since then, but it was a priority way back in 200x when the LUC amendments were voted in as well.

... and so, we do observe precedent. Precedent is the immutable inscrutable of public life. Precedent is the minor chord and the major lift in our culture. The past and the future. People ignore it out of ignorance, nothing else.

Precedent is the reason I am writing this right now. The precedent of a Sr. Planner calling an applicant at around midnight while the latter was vacationing in Hawaii The precedent of a City Councilman recusing himself from hearing that appeal because he lived in the neighborhood - the very same neighborhood that he would, just months later, craft legislation that restricted personal property rights. (Do you get it? Manvel was chicken to rule on a development review appeal for the same neighborhood he was happy to introduce to heavy handed building restrictions. A citizens petition, another institution of precedent, turned that decision back.)

You don't know anything about planning unless you understand precedents and precedence. Yes, we operate under the guidance of our laws, but never without every measure of thought that can be used to understand how our actions will influence future events. That is what planning is. If you are not planning for the future, what are you planning for?

The way you should have approached the Maldonado application is pretty straight forward. There are a number of factors that could possibly suggest extraordinary circumstances. Said circumstances might possibly merit a departure from the law.

Damned if anyone who disrespects precedent the way you did should be making that determination though. Such decision making power is vested, by law and by precedent, in the authority of a hearing officer. Your staff report was written as if to make up her mind for her. That is not your job.

Let's review this. The only language in the Code that speaks to the making of recommendations in development review is: This recommendation shall address each standard required to be considered by this Land Use Code prior to approval of the development application.

Note that this does not state that a recommendation for a modification of a standard is necessary or advisable. It's not. A recommendation regarding the compliance of a development proposal with any and all standards included in the Code is welcome. A recommendation to disregard a standard is not.

(The use and importance of recommendations as defined for takings, sec. 2.13, is a little different. This section, by the way forms the basis of my testimony regarding the length of time the applicant has resided and owned 412 N. Whitcomb.)

I spend well over \$100 (the cost of an appeal) in my own time every day trying to make sure our collective enterprises do not fail us in these trying times. Obviously, the circumstances of the applicant need to be weighed when making such a decision, but I have next to zero reticence about using the appeal process to carry the message forward.

I look forward to an amended staff report upon continuation of the administrative hearing.

Eric Sutherland
(970) 224 4509

From: Eric Sutherland [<mailto:sutherix@yahoo.com>]
Sent: Monday, October 15, 2012 1:46 PM
To: Jason Holland
Cc: Sarah Burnett
Subject: Re: FW: 412 North Whitcomb, Maldonado proposed subdivision PDP 120021

Mr. Jason Holland,

Please accept this comment as part of the record of the Maldondo PDP 1200021. I have a parent/teacher conference scheduled for this afternoon. This comment, submitted by email, shall establish my standing as a person of interest in the hearing.

The observation that 4,500 ft is only minimally below the standard for lot size does not reflect the fact that the minimum lot size was set extraordinarily low in the NCM. That happened because there were platted lots that had not been built upon that were only slightly larger. Establishing 10,000 ft as the minimum that could be subdivided in the NCM was a lengthy process. There was little support for any effort made to make it smaller, if it existed at all. I can remember that process well.

A number of the statements made in the staff report for this PDP are incorrect. Your process is flawed. The intent and results of carefully vetted and long accepted changes to the LUC are being compromised by your misunderstanding. Equally important, the entire process of development review that our Land Use Code represents is either fantastically misdesigned or you just aren't following it.

Eric Sutherland
(970) 224 4509

--- On Mon, 10/15/12, Eric Sutherland <sutherix@yahoo.com> wrote:

From: Eric Sutherland <sutherix@yahoo.com>

Subject: Re: FW: 412 North Whitcomb, Maldonado proposed subdivision PDP 120021

To: "Sarah Burnett" <SBurnett@fcgov.com>

Date: Monday, October 15, 2012, 12:35 PM

Thanks for sending along. Absolutely crazy way to do things - the planners write the Decision Makers decision for them in advance of the hearing. Why even hold the hearing?

I mean, if we have criteria for granting modifications, why not leave it to the hearing officer/P&Z to make the determination of whether or not the criteria are met?

Why recommend anything? Why not simply establish the facts and the arguments?

I have a meeting w/ my son's teacher this afternoon ... at 4:00. Why are administrative hearings held during work hours? Why is there no way to for citizens to represent their concerns and attain person of interest status other than physically attending the hearing?

The observation that 4,500 ft is only minimally below the standard for lot size does not reflect the fact that the minimum lot size was set extraordinarily low in the NCM. That happened because there were platted lots that had not been built upon that were only slightly larger. Establishing 10,000 ft as the minimum that could be subdivided in the NCM was a lengthy process. There was no effort made to make it smaller. I can remember that process well.

Andy Lewis
11/29/12

Lack of easy online access to material was noted. (Discussed pending improvements for easier access.)

Also citizens did not get everything prior to hearing; not all materials were shared in advance.

A systematic concern – which rules take precedence? As a lawyer looked at rules:

- Easy to find LUC
- Hard to find other rules and to know which apply (e.g., LCUASS and Multi-modal plan)
- How does one determine what rules take precedence?
- LUC tells you how to interpret and what to do if there is a contradiction (guidelines about more specific/restrictive)
- Believes there are contradictions between standards in the MultiModal Manual vs. LCUASS, and the day of the Regency appeal hearing, he was informed that the LCUASS standards applied rather than MultiModal (but the LUC cited the MultiModal manual). (I am not sure of the specific LUC section citing where Multi-Modal Manual is cited here.)

Perception from Neighborhood Meeting vs. Staff Report:

- Impression was that the city is neutral in process and doesn't pick sides
- Developers must "pay to play"
- Surprised then to see staff report, which was not neutral.
 - Questions why report does not say "here is the standard", and "here's how the developer proposes to meet the standard".
 - Spoke of history of zoning and was advocating a position
 - Noted reliance of decisionmakers on staff

Inconsistencies in staff position between rezoning hearing in 2009 and APU

- As an attorney, trained to look for inconsistencies
- In 2009, staff said that requirements for medians and traffic lanes would have to be met if rezoned
- With the Regency proposal, the staff position changed (median and traffic lane standards did not have to be met)

Appeal Rules

- Felt he was appealing the City planning staff's position and City's P&Z Board decision, not the developer. (Who should be responding to the appeal?)
- There is a 2-page limit on each issue in an appeal. Feels this is too restrictive, and may not be adequate to explain. As a result, they just listed the appeal issue, and did not attempt to explain.
- In other proceedings, he said appellants might receive a written response from the (city's) attorney in advance of the proceeding; doesn't like the idea that there is no response.
- Concerned that council gets information from the attorneys and no one knows if they have received legal advice, nor what they have heard if they have received something. (In court proceedings, everyone is privy to all information that the judge/decisionmaker receives.)

Staff Responses During Appeal Hearing

- Felt that staff gave quite brief answers in response to Council questions, did not fill in “the rest of the story”, and that answers were tilted toward the direction they wanted the Councilmembers to go. (Issue related to requirement for intersections over 56 feet to have pedestrian refuge.)

Addition of a Permitted Use (APU)

- Believes purpose/intent of APU is not being followed, and that P&Z/Council should ask: what use did we intend for it to have?
- Believes it was intended for minor changes; has reviewed examples given when APU LUC changes were being discussed.
- Felt staff used the most extreme examples (rather than typical patterns) of what uses were permitted in an RL district and traffic in an RL district to justify the additional traffic
- Asks: how do you define compatibility/character of a zone?
- Believes that Regency/Lakeview would have been precedent-setting, and that a church could close doors and seek another use entirely for their property through APU.

Sarah Burnett

From: Michelle Haefele <michhaef@frii.com>
Sent: Friday, December 07, 2012 11:07 AM
To: Gerry Horak
Cc: City Leaders; Laurie Kadrach; Sarah Burnett
Subject: RE: APU in Single Family Residential Neighborhoods

I just received the latest edition of "This Week in Development Review" and realized that I have not heard anything about the issue of APUs in single family neighborhoods which I brought to your attention in October. I would like to reiterate that the APU should be eliminated as an option at the very least in single-family zone districts. See earlier email messages below.

I also feel compelled to ask again for more transparency and better organization of the information about the activities of the Current Planning Department. I have been making such a request for over a year (since November 2011) and nothing has changed in the way information is made available to the public except to change the color of the "Development Proposal" signs.

The information on the Current Planning website is still so poorly organized that an unbelievable amount of work is necessary to find out what is going on in one's neighborhood. The newsletter merely sends the reader to the poorly organized website.

I have asked repeatedly that all the materials that pertain to a particular project be gathered in one place on the website and that these projects be organized by address.

I should be able to go to the page or portion of the website pertaining to a project and find all meeting dates, agendas, minutes, staff reports and any other documents that pertains to the project starting from the minute that project comes into the Current Planning Department's office. Again, this information should be organized by address (and project name if applicable) and the information should be updated at least weekly. The "current" development list is, as of today, two and half months out of date (the document is dated September 21).

Right now bits and pieces of any given project may or may not be found in various locations on the Current Planning website, under categories such as the wildly out-of-date "current planning" list, the neighborhood meetings, hearing agendas (which are organized by date) and conceptual review (again, organized by date). Furthermore notes from the various meetings are not made available on the website and are only rarely emailed to those who attend neighborhood meetings.

This department has the potential to radically reduce our property values and quality of life with decisions that are often made solely by city planning staff in very generous cooperation with developers (see below regarding the APU). Even in cases where the final decision rests with the Planning and Zoning Board, there are almost no examples where the Board has rejected a proposal that city planning staff have recommended – in many cases despite overwhelming opposition from residents of the affected neighborhoods. It is therefore vital that information about development activities be made easily available so that as diligent homeowners we can readily learn about actions which may affect our property values and quality of life in a timely manner.

Michelle Haefele

623 Monte Vista Ave.
Fort Collins CO 80521
970-493-7898

To: Sarah Barnett

From: Michelle Haefele, 623 Monte Vista Ave. Fort Collins, CO 80521, 970-493-7898

Date: December 18, 2012

RE: Current Planning Map

Sarah,

I am reluctant to give any comments on this map application. I had seen it earlier this fall and it does not in any way, shape or form address the issues I have been putting before this department. This format is overly complicated, and it does not contain the information I'm looking for. I am asking that the department put all the documents, records and other information that pertains to a particular project in one place on the Current Planning website, organized by address (sorted by street name).

I envision a list of addresses with maybe a short description of the project (e.g. 123 Main Street – APU request). This address would be a live link that I could click to be redirected to a page that contains every single bit of information about the project: who owns the property, who's the developer, the property zoning, what the applicant is asking for, and all the documents and records that pertain to the project - the application, meeting agendas, meeting minutes and/or notes, written summaries of all findings by staff, minutes of hearings, notes from meetings between staff and developers, etc. – every single bit of info about the project. It could certainly include a link to the map showing the location, but going from the map to the info is too difficult and unwieldy and still requires looking at several pages which still do not contain the relevant info.

The *Work Flow* is meaningless to me as a non-planner. I'm not looking for a check-off list of completed tasks. I want the details – the documents associated with each step or review should be available (and in a more user friendly format). I want to know how staff arrived at the conclusion to recommend approval or not, what transpired at meetings between city staff and the developers, etc. All of this is technically public information and it should be readily available.

There are no documents attached to the *City Docs* link for any of the projects I looked at. The *Related Records* section of the *Citizen Access* page is empty for nearly every project I looked at. For a couple of projects there is a *Final Plan* listed in the *Related Records* section, but when I click *View* it just sends me back to the top of the *Citizen Access* page.

I did notice that on the *Home* tab on the *Citizen Access* page one can find a list of projects, but these are listed by name not address and only link to the almost completely useless *Citizen Access* site.

This might be a good place to start though. List all the projects by addresses (you could also have project name, but that is much less useful) and actually include all the documents and records.

The map itself is difficult to see, it's sort of "hazed out" so that it is very difficult to read street names making it practically impossible to find anything. The grey font color on the *Citizen Access* page is also difficult to see.

And again, this is way too complex. I just want all the documents and records for a project in one location on the web. This includes the info that is already there in several locations (hearing agendas, neighborhood meeting notices, etc.), plus all the minutes and notes for these hearings and meetings, as well as every other piece of info about the project. These documents and records should be all together in one place for each project, even if it means posting some things (like *Conceptual Review* agendas) which include several projects in more than one place.

The weekly newsletter could just contain a list of any new projects that come into the Current Planning office that week with the address and short description (see above) and a link to the projects' pages, which would include all documents and records of anything that has thus far transpired on the project.

I am asking that this department take steps which will enable interested citizens to be fully informed at the earliest possible time – that is, as soon as an application is received, about projects being proposed in this city, and in a very clear, easily accessible format (this map system is not at all accessible).

Once any city staff spends any time working on something it becomes public business and should be immediately available to the public in an easily accessible format.

December 18, 2012

Dear Council Members,

My wife, Kathryn Dubiel, and I were involved in the appeal of the Regency Development request for an Addition of Permitted Use (APU). Based on our experience, we think the APU is vaguely defined and reasonable people can come to very different conclusions on its application. We request the City Council review the APU section of the Land Use Code. Let me be specific on a couple items.

A Purpose section should be added to the APU that details the intended uses of the APU. Since the APU section of the code has been amended several times since 1998, this will entail a review of both the City Staff discussion notes and City Council agenda notes. Currently we have been unable to do this for many of the amendments to the APU section.

The prohibited uses for most zoning district are given as those not listed as approved,... with the exception that those approved under the APU process are OK. Given the vagueness within the APU we think explicit prohibited uses should be added for zoning districts. It seems reasonable that these prohibited uses would be based on characteristics such as density, building attributes, and other such clearly defined attributes.

We also request that the City Council suspend the APU process until the suggested review is conducted.

Thank-you for considering my comments,

Kathryn Dubiel and Paul L Patterson
2936 Eindborough,
Fort Collins, CO 80525

Jan 4, 2013

Dear Sarah Burnett,

I would like to submit the following observations and suggestions to the Planning and Zoning Board (P&Z) January 11 working session.

We were involved in the appeal of the Regency Development request for an Addition of Permitted Use (APU). Based on our experience, we think the APU is vaguely defined and reasonable people can come to very different conclusions on its application. From our perspective, the best solution is to remove the APU from the Land Use Code (LUC) and use the rezoning section of the LUC. If the P&Z decides there are uses for the APU, then we have some specific suggestions.

A Purpose section should be added to the APU that details the intended uses of the APU. Since the APU section of the code has been amended several times since 1998, this will entail a review of both the City Staff discussion notes and City Council agenda notes.

The prohibited uses for most zoning district are given as those not listed as approved,... with the exception that those approved under the APU process are OK. Given the vagueness within the APU, we think explicit prohibited uses should be added for zoning districts. It seems reasonable that these prohibited uses would be based on characteristics such as density, building attributes, and other such clearly defined attributes.

Section 1.3.4(C) "Codification of New Use" gives a process for the Director to add a permitted use to the entire zone district. This should be removed and the section restricted to adding a permitted use that is limited to development proposal for which the APU was requested. If the Director wishes to add a permitted use to an entire zone, then they should use the rezoning process.

We also request that the P&Z recommend to the City Council that the use of the APU process be suspended until the P&Z review is completed and any changes to LUC are enacted.

Thank-you for considering our comments and suggestions,

Paul L Patterson and Kathryn Dubiel
2936 Eindborough,
Fort Collins, CO 80525

Date: January 7, 2013

To: Sarah Burnett

From: Michelle Haefele and Michael Knowles, 623 Monte Vista Ave, Fort Collins, CO 80521 (970-493-7898)

RE: Addition of a Permitted Use (APU) in Single-Family Residential Zones

Dear Ms. Burnett,

Please forward these comments to the Planning and Zoning Board for their January 11 work session.

We are writing to ask that the city discontinue the use of the "Addition of a Permitted Use" (APU) in single-family residential zones, at least until several issues can be addressed, if not altogether.

The APU is itself inappropriate (especially in single-family residential zones), the process is unfairly set up to favor applicants over residents, public access to information on the process and specific projects is difficult, if not impossible to obtain, and citizen input is essentially ignored.

While we understand that there might be some circumstances where an APU is a useful tool (allowing additional industrial uses in industrial or commercial zones for example), it is almost never appropriate in single-family residential zones. The permanent conversion from single-family residential to commercial or multi-family property destroys the protection for single-family residential zoning (which is the most important function of zoning).

Allowing individual property owners to essentially "rezone" their property without going through the rezoning process has two effects – it gives these property owners an unearned windfall (all such requests are for conversions to higher valued uses) and it reduces the property values for the remaining homeowners. We have heard repeated assertions that an APU is not spot rezoning, but the permanence of these changes has the identical effect on the remaining residential property owners.

It is patently unfair for someone who owns single-family residential property to ever expect to simply convert it to a more lucrative use. This is essentially an end-run around the zoning, making zoning irrelevant. As homeowners we expect the city to protect our residential property values and quality of life. This process destroys that trust.

The process whereby city planning staff cooperate with would-be developers to make a presentation to the Planning and Zoning Board is unfair. Citizens speaking against these conversions are given only limited time to speak (often only three minutes). Following citizen input, the city staff (whose salaries are paid for by these very citizens) confer with the developer to make a rebuttal presentation to the P&Z Board. Citizens are never given any additional opportunity to speak. In one case it is clear from the email messages included in the public record that city planners had apparently actually solicited supportive comments from the developer. This is unacceptable, the city planners should be working for all residents of Fort Collins and not working to force through such objectionable projects.

The lack of readily available information on APUs and other actions of the Current Planning Department makes the situation even worse. Citizens who attempt to educate themselves about the actions of the department are thwarted by a lack of transparency and a dearth of publicly accessible documents and information. We have been requesting a major revision of the way that the Current Planning Department informs the residents of Fort Collins about all projects since at least November of 2011 (over a year now). The response of the Current Planning Department has been, thus far, inadequate. All information pertaining to any action, including APU requests, should be made easily available on-line, organized by address and project name, so interested citizens can easily keep track of actions in our

neighborhoods. This information should be posted by address as soon as a conceptual review request is submitted and updated at least weekly.

Finally, recent attempts at reform for the development processes (including the APU) have included increased neighborhood meetings. However the input from neighbors at these meetings does not, in most cases, make it into final proposals. In the end neighbors are burdened with additional meetings, but with no actual beneficial outcome. Input from residents must be taken into account.

It is for these reasons that we are requesting that the APU be abolished or at least revised substantially (and until acceptable revisions can be made the use of the APU should be suspended).

Sincerely,

Michelle Haefele and Mike Knowles