

SUBJECT

Resolution 2012-103 Making Findings of Fact and Related Determinations Regarding the Appeal of the August 7, 2012 Administrative Hearing Officer's Decision Regarding the Aspen Heights PDP.

EXECUTIVE SUMMARY

On August 16, 2012, the City of Fort Collins Hearing Officer issued a written decision approving Aspen Heights PDP, with one condition ensuring proper landscaping associated with the clubhouse. On August 30, 2012, Mr. Tom Lawton filed a Notice of Appeal seeking redress of the Hearing Officer's decision.

On October 30, 2012, City Council voted 5 - 0 to modify the Hearing Officer's decision by requiring the following:

1. The applicant must provide a shuttle bus for use of project residents, with the understanding that if there is insufficient ridership demand to support the need for the shuttle bus, the applicant may apply for a minor amendment to the approved Final Plan to reduce or eliminate this shuttle bus requirement.
2. To the extent reasonably feasible, the applicant shall, at the time of submittal of the Final Plan and in consultation with City staff: (a) enhance the design of the naturalized drainage channel transecting the property in such a manner as to provide an increased width and/or vegetation diversity provided that such enhancement does not unduly diminish the capacity of the channel to carry the anticipated stormwater flow; and (b) enhance the wetland mitigation area through increased size and/or vegetation diversity.

In order to complete the record regarding this appeal, Council should adopt a Resolution making findings of fact and finalizing its decision on the Appeal.

BACKGROUND / DISCUSSION

The Appellants' Notices of Appeal were based on allegations that the Hearing Officer failed to conduct a fair hearing and failed to properly interpret and apply relevant provisions of the Land Use Code.

At the October 30, 2012 hearing on the matter, Council considered the testimony of City staff, the appellants and the applicants. In subsequent discussion at this hearing, Council determined that the Hearing Officer did not fail to conduct a fair hearing.

Regarding the issue of whether or not the Hearing Officer properly interpreted and applied relevant provisions of the Land Use Code, Council offered a motion to determine that the Hearing Officer did not fail to properly interpret and apply relevant provisions of the Land Use Code subject to two conditions. This motion had the effect of modifying the Hearing Officer's decision by adding the two aforementioned requirements. City Council voted 5 - 0 to approve the motion thus modifying the decision of the Hearing Officer.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

RESOLUTION 2012-103
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING FINDINGS OF FACT AND RELATED DETERMINATIONS
REGARDING THE APPEAL OF THE AUGUST 16, 2012
ADMINISTRATIVE HEARING OFFICER APPROVAL OF THE
ASPEN HEIGHTS PROJECT DEVELOPMENT PLAN

WHEREAS, on August 16, 2012, the City's Administrative Hearing Officer (the "Hearing Officer") approved a project development plan for the project known as Aspen Heights Project Development Plan (the "PDP"); and

WHEREAS, on August 30, 2012, a Notice of Appeal of the Hearing Officer's decision was filed with the City Clerk by Tom Lawton (the "Appellant"); and

WHEREAS, on October 30, 2012, the City Council, after notice given in accordance with Chapter 2, Article II, Division 3, of the City Code, considered said appeal, reviewed the record on appeal, heard presentations from the Appellant and other parties-in-interest and, after discussion, upheld the decision of the Hearing Officer; and

WHEREAS, City Code Section 2-57(g) provides that no later than the date of its regular meeting after the hearing of an appeal, City Council shall adopt, by resolution, findings of fact in support of its decision on the appeal.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that, pursuant to Section 2-57(g) of the City Code, the City Council hereby makes the following findings of fact and conclusions:

1. That the grounds for appeal as stated in the Appellant's Notice of Appeal conform to the requirements of Section 2-48 of the City Code.
2. That the Hearing Officer conducted a fair hearing in approving the PDP.
3. That the Hearing Officer properly interpreted and applied the provisions of the Land Use Code in approving the PDP.
4. That the City Council's determination to uphold the decision of the Hearing Officer is subject to the following conditions:
 - a. The applicant must provide a shuttle bus for use of project residents, with the understanding that if there is insufficient ridership demand to support the need for the shuttle bus, the applicant may apply for a minor amendment to the approved Final Plan to reduce or eliminate this shuttle bus requirement.

- b. To the extent reasonably feasible, the applicant shall, at the time of submittal of the Final Plan and in consultation with City staff: (a) enhance the design of the naturalized drainage channel transecting the property in such a manner as to provide an increased width and/or vegetation diversity provided that such enhancement does not unduly diminish the capacity of the channel to carry the anticipated stormwater flow; and (b) enhance the wetland mitigation area through increased size and/or vegetation diversity.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 6th day of November, A.D. 2012.

Mayor

ATTEST:

City Clerk