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FORT COLLINS MUNICIPAL COURT 215 N. Mason Fort Collins, CO 80521 Phone (970) 221 6800	
Plaintiffs: Colleen Hoffman, Rick Hoffman, Ann Hunt v. **Defendant :** THE CITY COUNCIL OF THE CITY OF FORT COLLINS, the governing body of a Colorado municipal corporation; and THE ADMINISTRATION BRANCH OF THE CITY OF FORT COLLINS, by and through its City Manager, Darin Atteberry.	▲ COURT USE ONLY ▲ Case Number:
Parties without attorney Colleen Hoffman, pro se 1804 Wallenberg Drive Fort Collins, CO 80526 (970) 484 8723 cohoff@comcast.net Rick Hoffman, pro se 1804 Wallenberg Fort Collins, CO 80526 (970) 484 5154 rick-hoffman@comcast.net Ann Hunt, pro se 1800 Wallenberg Drive Fort Collins, CO 80526 (970) 484 5242 ARH4@COMCAST.NET	
COMPLAINT AND REQUEST FOR INJUNCTIVE RELIEF	

Plaintiffs, Colleen Hoffman, Rick Hoffman and Ann Hunt, in this Complaint alleging abuse of discretion by the City Council of the City of Fort Collins and request for injunctive relief, hereby state and allege as follows:

Introduction

The City of Fort Collins (the City) is a home rule municipality in the state of Colorado. Pursuant to authority granted Article XX section 6 of the Colorado Constitution, the City of Fort Collins has adopted a City Charter. By adoption of a home rule City Charter (the Charter), the City has claimed authority over all

planning and zoning issues in the City. All powers of the city and the determination of all matters of policy pertaining to planning and zoning are vested in the Defendant City Council. See Charter Article II section 5 (b) (8).

The powers of the City in the field of planning and zoning include the exclusive authorization for the construction of improvements on real property within the corporate limits of the City and no improvements may be constructed without such authorization. The process of granting authorization for the construction of improvements, also referred to as vested rights, is generally known as development review and is defined and controlled by the laws of the City of Fort Collins as adopted by Ordinance of the Council and amended from time to time in the City Code, the Land Use Code and the zoning map.

The development review process grants vested rights upon a public hearing held by a decision maker, who thereafter makes a determination as to whether or not the proposed development conforms with standards for development and use found in the Land Use Code and the zoning map. Such public hearing and resulting decision are quasi-judicial and may be appealed to the Council in accordance with procedure established in the City Code. The City Council's review of a decision from a lower tribunal is also quasi-judicial in nature. As such, an abuse of discretion by the City Council is subject to appeal to a court of competent jurisdiction. This complaint is such an appeal.

Article VII section 1 of the Charter states, in relevant part:

> There shall be a Municipal Court vested with original jurisdiction of all causes arising under the City's Charter and ordinances. ...
>
> Rules of procedure, costs and fees shall be enacted by the Council upon recommendation of the Municipal Judge.

The Supreme Court of the State of Colorado has ruled that language substantially similar to that of Article VII section 1 means precisely what it says. The Municipal Court of the City of Fort Collins has exclusive original jurisdiction over this matter. *See Town of Frisco v Baum*, 90 P. 3d 845 (Colo 845). However, despite the existence of the plain and simple language requiring that the Council enact rules of procedure for the Municipal Court, which has been extant in the Charter since adoption in 1954, the Council has never adopted rules for adjudicating causes arising under the City's Charter and ordinances except for those infractions of Ordinances in which a summons has been served on an individual.

In the absence of such rules as required by the Charter, this complaint is submitted to this court in the form and style that best match other rules of civil procedure, such as the rules for district and county courts of the state of Colorado. In this regard, this complaint takes the form of an alleged abuse of discretion

similar to C.R.C.P. Rule 106 (a)(4) and a request for a temporary injunction for the pendency of this matter similar to C.R.C.P. Rule 65. However, the adoption of this convention and a good faith effort to adhere to existing rules of civil procedure adopted in other courts does not bind this procedure to those rules. For example, this complaint and its request for relief from the Municipal Court is authored with the intent of filing with the Municipal Court no more than 28 days from the final action of the lower tribunal as prescribed by C.R.C.P. Rule 106. However, the failure of the Defendant City Council to adopt any rules regarding a statute of limitations of the tolling of time for such matters, despite the responsibility to do so lying in mandamus for over half a century, does not enforce upon this proceeding a *de facto* statute of limitations.

In fact, the Plaintiffs have speculated that there may be no due process available in this matter because of the absence of rules required by the City Charter. This complaint is reasonably the most suitable process available. However, the filing of this complaint does not indicate in any way that the Plaintiffs believe that this process is adequate process and may not be construed as a stipulation or representation of trust in this process.

The complication of adjudicating an allegation of abuse of discretion by a lower tribunal without adequate rules of procedure is not the only irregularity present in this matter. The City of Fort Collins has, for a long period of time, conducted its administrative and quasi-judicial affairs in the arena of development review with a general disregard for rule of law. The legislative intent of the standards for development review and the very modest protections that such standards provide the citizens of Fort Collins are ill observed. The present case brought before the Municipal Court brings the bad faith and exploitation into view and exposes various deficiencies in process at the same time. The failure to refine and evolve process and the absence of fidelity to the purpose of the ordinances that control development review may be traced to an administrative paradigm that has lost sight of the public interest.

Parties

1. The City of Fort Collins is a home rule municipality located in Larimer County, Colorado and organized by a City Charter adopted in accordance with Article XX section 6 of the Colorado constitution. The Defendant Administrative Branch of the City of Fort Collins is under the supervision and control of the City Manager, Darin Atteberry, pursuant to Article III of the Charter. In particular, the administrative affairs of the Defendant Administrative Branch include the granting of final vested rights in development review proceedings

including but not limited to the execution of a development agreement with the City, re-platting of land and the approval of a Final Development Plan (FDP).

2. The Defendant City Council of the City of Fort Collins is the governing body of the City of Fort Collins pursuant to Article II of the charter. In particular, the Defendant City Council's review of appeals from development review hearings conducted by the Planning and Zoning Board lies in mandamus and is quasi-judicial in nature.

3. The Plaintiffs are citizens of Fort Collins. All own property in the vicinity of the property considered for vested development rights by the Defendants. All were interested parties in the review of the application for vested rights by the Fort Collins Planning and Zoning Commission. Plaintiffs Ann Hunt and Colleen Hoffman were appellants before Defendant City Council in the quasi-judicial proceeding that precedes this action in Municipal Court.

Venue and Jurisdiction

4. The Municipal Court of the City of Fort Collins has original jurisdiction of all matters arising from the Charter and ordinances of the City of Fort Collins. (See Introduction and Article VII of the Charter). All matters complained of and all requests for injunctive relief here arise from the Charter and ordinances of the City. All actions of the Defendant City Council complained of herein are matters of exclusively local interest. All controlling laws in this matter are local laws that have been duly adopted in a field of exclusively local interest. All administrative actions of the Defendant Administrative Branch sought to be enjoined and restrained by the Plaintiffs are exclusively matters of local control. Venue is proper in this court.

5. The Plaintiffs herein allege an abuse of discretion by the Defendant City Council in failing to ensure that the laws of the City of Fort Collins applicable to review of a proposed construction of improvements on property within the city limits were applied uniformly and fairly. Said laws create for the Plaintiffs a legally protected right. The Plaintiffs further allege that this abuse of discretion will deprive Plaintiffs of property rights and quality of life. The Municipal Court of the City of Fort Collins has subject matter jurisdiction over this dispute.

6. The Defendant Administrative Branch of the City of Fort Collins is required by Article III section 2 (f) to enforce the laws and ordinances of the city. The award of vested development rights to a party for a proposed construction of improvements that is inconsistent and incompatible with the standards of the Land Use Code is a failure to enforce the laws and ordinances of the city. The Municipal Court of the City of Fort Collins has jurisdiction over the Defendant Administrative Branch in this dispute.

7. The decisions of the Defendant City Council of the City of Fort Collins, when acting in a quasi-judicial capacity for the purposes of reviewing matters of exclusively local interest is subject to further judicial review by a superior court. The Municipal Court of the city of Fort Collins is superior court by virtue of Article VII of the Charter as established in *Town of Frisco v. Baum,* supra. The Municipal Court of the City of Fort Collins has personal jurisdiction over the Defendant City Council in this dispute.

General allegations

8. On November 10, 2016, the Planning and Zoning Board (the "Board") reviewed and approved the inappropriately named Landmark Apartments Expansion Project Development Plan PDP#160013 (the "PDP" or "Project").

9. Two separate Notices of Appeal of the Board's approval of the PDP were filed with the City Clerk on November 22, 2016 pursuant to Chapter 2, Article II, Division 3, of the City Code; one by Per Hogestad, the Hogestad Appeal, and the other by Plaintiffs Colleen Hoffman and Ann Hunt, the Hoffman-Hunt Appeal. See exhibits 1 and 2.

10. Generally, the appeals noted in the preceding paragraph alleged that the Planning and Zoning Board had failed to apply relevant standards of the Land Use Code that require a buffer around city owned natural areas or floodways and standards for compatibility of new construction with existing development in adjacent parcels. The appeals also alleged that the procedure utilized by the city for review of the proposed construction of improvements was incompatible with the known circumstances of the land ownership and prior awards of vested rights.

11. On January 31, 2017, the City Council, after notice given in accordance with Chapter 2, Article II, Division 3, of the City Code, consolidated and considered both Appeals, reviewed the record on appeal and the applicable LUC provisions, and heard presentations from the Appellants and the opponent of the Appeals, the applicant for the PDP. As is the custom of Defendant Administrative Branch, the staff of the City of Fort Collins planning department participated in the appeal process in a substantial capacity with an undisputable bias shown to the position of the opponent of the Appeals.

12. The activities of the Defendant City Council during the appeal hearing may be reasonably and accurately described as ignoring the substance of the grounds for the appeals that were brought by the Plaintiffs. Two examples that support this statement are provided in the following two paragraphs. These examples do not complete the totality of averments that support the relief requested in this petition, but are sufficient for the purposes of granting the relief requested.

13. The Plaintiffs and co-appellant upon consolidation had averred that the 50' foot buffer required by Section 3.4.1 of the Fort Collins Land Use Code would not be preserved by the proposed construction of improvements and that the Planning and Zoning Board had failed to adequately apply this requirement to their decision to grant approval of the PDP. This fact cannot be disputed upon examination of the facts and the law, but the Defendant City Council, in a manner not inconsistent with prior actions in similar quasi-judicial actions, chose to ignore the requirements of the LUC and overlook the failure of the lower tribunal to ensure these requirements were satisfied.

14. Plaintiffs and co-appellant upon consolidation had also averred that the proposed construction of improvements and anticipated use of the new development could not be reasonably deemed compatible with the adjacent, long-established single family neighborhood pursuant to the requirements for compatibility adopted by ordinance in Section 3.5.1 of the Land Use Code. Such averment is wholly supported by the cursory examination of the density and intensity of use inherent in the PDP. In this case, improvements and use with indisputably *higher* density and intensity than the existing Landmark Apartment complex, to which the PDP is purported to be an expansion of, are proposed to be sandwiched in between the existing Landmark Apartment complex and a single family neighborhood. No reasonable definition or understanding of compatibility could hold that a development of very high density and intensity could be positioned between two existing developments, one of relatively high density and intensity (existing Landmark Apartments) and one of low density and intensity (Sheely and Wallenberg single family homes). Yet, that is precisely what the Defendant City Council held.

15. A further deficiency in process and result was averred by the Plaintiffs and was similarly ignored by the Defendant City Council. In its procedural advancement of the PDP, Defendant Administrative Branch had apparently held that the construction of new improvements should be considered an expansion of the existing Landmark Apartments development. As such, certain requirements of the Land Use Code that would be applicable to a stand-alone PDP for a multi-unit development were automatically deemed to have been satisfied by existing amenities and appurtenances of the existing Landmark Apartments. However, there is no support for the conclusions drawn by using this approach. The platting of the parcels involved and the nature of the application that originated this development review do not, in any way, support the conclusions drawn. In the alternative, it is conceivable that the construction of new improvements and future use might have been reviewed by the Planning and Zoning Board as a major amendment to an existing, approved Overall Development Plan (ODP), but that

was not the approach used and the decisions of the Planning and Zoning Board could not be based upon the possibilities of this approach.

16. When approving this project, the Defendant City Council relied on information from a flawed Ecological Characterization Study (ECS) that downplayed the importance of the city owned open space (storm drainage canal) as a wildlife movement corridor. The study was too short to accurately assess the value of the open space as a wildlife movement corridor. The study failed to detect or failed to report many species of wildlife that move through, hunt, and reside in the area at least part of the year. Section 3.4.1 D of the LUC states the ECS shall describe without limitation the wildlife use of the area showing the species of wildlife using the area, times and seasons of use, and value the area provides for such wildlife. These requirements were not met by the ECS.

17. Upon conclusion of the hearing in the quasi-judicial matter of the appeal, Defendant City Council's decision was made by motion. The practical effect of that decision was made official pursuant to City Code by the adoption, at its next regular meeting held on February 7, 2017, of RESOLUTION 2017-011 OF THE COUNCIL OF THE CITY OF FORT COLLINS ADOPTING FINDINGS OF FACT AND CONCLUSIONS REGARDING THE APPEAL OF THE PLANNING AND ZONING BOARD DECISION APPROVING THE LANDMARK APARTMENTS EXPANSION, PDP#160013. See exhibit 3, the Resolution.

First claim for relief

18. The Plaintiffs incorporate the General Allegations as if fully set forth herein.

19. In making and adopting what Resolution 2017-011 termed its 'findings of fact and conclusions' , the Resolution stated in (4):

> That the Board did not fail to properly interpret and apply LUC Division 3.5-Building Standards, including but not limited to LUC §3.5.1-Building and Project Compatibility, when the Board approved the PDP on November 10, 2016, except that .... the Board's decision approving the PDP shall be modified to include the additional six conditions,

20. In making and adopting what Resolution 2017-011 termed its 'findings of fact and conclusions' , the Resolution also stated in (5):

> That the Hogestad Appeal and the Hoffman-Hunt Appeal *are without merit* and are denied.

21. The logical failing of these two adjacent conclusions is absurd. The appeals could not have been *without merit* and yet have resulted in the imposition of six conditions upon the development proposal. Such idiosyncrasies are not uncommon. This matter must be remanded on appeal to the Defendant City

Council for further proceedings consistent with a finding that the appeals had merit.

Second claim for relief

22. The Plaintiffs incorporate the General Allegations and the first claim for relief as if fully set forth herein.

23. The Defendant City Council made no findings of fact concerning any of the other specific allegations made in the Appeals other than that noted in the First claim for relief.

24. Section 3.4.1 (E) (2) (c) of the Land Use Code enumerates purposes for which the buffer zone of a Natural Habitat of Feature may be disturbed. The Defendant City Council failed to correctly ascertain that Planning and Zoning Board had failed to apply this standard to the development proposal as alleged by the Plaintiffs in their appeals. This was an abuse of discretion by the Defendant City Council. This matter must be remanded with instructions to find that the LUC requirements under section 3.4.1 are not satisfied by the development proposal, the Planning and Zoning Board did not properly apply the requirements of the LUC and to take appropriate actions.

Third claim for relief

25. The Plaintiffs incorporate the General Allegations and the first and second claims for relief as if fully set forth herein.

26. The Defendant City Council made no findings of fact concerning any of the other specific allegations made in the Appeals other than that noted in the First claim for relief.

27. Section 3.4.1 of the Land Use Code justifiably creates a clear expectation that new development adjacent to existing development comply with minimal standards of compatibility. It is axiomatic that transitions from areas of high density and intensity to areas of lower density and intensity are required by the Land Use Code. A development that introduces a density and intensity higher than adjacent development on either side cannot be construed to be consistent with a transitional compatibility standard. A progression from high to higher to low density is not consistent in any way with the Land Use Code's requirements for compatibility. The Defendant City Council made no finding of fact regarding matters of public interest to explain or justify the failure of the development proposal to comply with the LUC's compatibility requirements. This was an abuse of discretion. This matter must be remanded with instructions that the Defendant City Council find that the development proposal is not compatible with existing development under the LUC, that the Planning and Zoning Board did not properly apply the requirements of the LUC and to take appropriate actions.

Fourth claim for relief

28. The Plaintiffs incorporate the General Allegations and the first, second and third claims for relief as if fully set forth herein.

29. The Defendant City Council abused its discretion by failing to find that the Planning and Zoning Board had not applied section 3.8.30 Multi Family Dwelling Development Standards. The development proposal put forth by the PDP was described in the title of the PDP as an expansion of the Landmark Apartments. Yet, on the basis of land title and platting, the new construction is a new multi-family unit that may be sold independently. The two developments at issue here are separate parcels with different legal descriptions that were purchased separately at different time periods and may be sold independently. Yet, the requirements of the section 3.8.30 (C) of the Land Use Code for open space was not satisfied under the erroneous presumption that the open space of the existing adjacent development satisfied the requirement. This allows for a more dense and intense development as was previously claimed as a deficiency and abuse of discretion in the Third Claim for relief, rather than requiring that the 'expansion' meets the requirements of the LUC on its own merits.

30. This case must be remanded with instructions to determine that the Planning and Zoning Board failed to properly interpret and apply the provisions of the Land Use Code and to take appropriate actions.

Fifth claim for relief

31. The Plaintiffs incorporate the General Allegations and the first, second, third and fourth claims for relief as if fully set forth herein.

32. In making its decision to approve the PDP, the Planning and Zoning Board utilized a flawed and deficient Ecological Characterization Study (ECS). Upon appeal, the Plaintiffs alleged that the ECS was deficient in terms of adequately describing wildlife species present on the site from time to time and was authored without an understanding of the range of uses throughout the entire year. The ECS asserts that the site is lacking in wildlife value which is incorrect.

33. The Defendant City Council abused its discretion by failing to find that the Planning and Zoning Board had considered evidence that was substantially false or grossly misleading. This matter must be remanded with instructions commensurate with this claim.

Sixth claim for relief

34. The Plaintiffs incorporate the General Allegations and all previous claims for relief as if fully set forth herein.

35. The Plaintiffs are at risk of injury should the Defendant Administrative Branch execute a development agreement or grant approval of a Final Development Plan (FDP) on the basis of the deficient approval of the PDP by the Planning and Zoning Board and the abuse of discretion of the Defendant City Council complained of herein.

36. The Defendant Administrative Branch must be enjoined and ordered to refrain from any administrative action that would further the construction of improvements as have been unlawfully granted approval by the actions of the City of Fort Collins during the pendency of the resolution of this complaint.

Prayer for relief

WHEREFOR, the Plaintiffs respectfully request that this Court determine that the Defendant City Council abused its discretion on the occasion of an appeal brought by Plaintiffs as described in the claims above and so remand the case to the City Council for the making of findings of fact and conclusions consistent with the claims expressed here,

And

The Plaintiffs request injunctive relief in the form of a temporary injunction enjoining and barring certain administrative actions completing the grant of vested rights to development during the pendency of resolution of all claims made herein.

Respectfully submitted this 7th day of March, 2017

Colleen Hoffmann
Colleen Hoffmann

Rick Hoffmann
Rick Hoffmann

Ann Hunt
Ann Hunt

1804 Wallenberg Dr.

Ft. Collins, CO 80526

Address of Lead Plaintiff

ATTACHMENT 1

City Clerk's Public Hearing Notice and Notice of Site Visit

City Clerk
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80522
970.221.6515
970.221-6295 - fax
fcgov.com/cityclerk

PUBLIC HEARING NOTICE

Appeal of the Planning and Zoning Board Decision regarding the Landmark Apartments Expansion, located at the southeast quadrant of Shields/Prospect intersection

The Fort Collins City Council will hold a public hearing on the enclosed appeal.

Appeal Hearing Date:	Tuesday, January 31, 2017
Time:	6:00 pm (or as soon thereafter as the matter may come on for hearing)
Location:	Council Chambers, City Hall, 300 LaPorte Avenue, Fort Collins, CO
Agenda Materials:	Available after 2 pm, January 19, 2017, in the City Clerk's office and at fcgov.com/agendas.

- *Why am I receiving this notice?* City Code requires a Notice of Hearing to be provided to Parties-in-Interest, which means you are the applicant of the project being appealed, have a possessory or proprietary interest in the property at issue, received a City mailed notice of the hearing that resulted in the decision being appealed, submitted written comments to City staff for delivery to the decision maker prior to the hearing resulting in the decision being appealed, or addressed the decision maker at the hearing that resulted in the decision being appealed.

- *Can I submit any written materials for this appeal?* New evidence is only permitted under City Code Subsection 2-55(b)(1) or (2). If you have evidence that is admissible under these two subsections, it must be submitted in writing to the City Clerk's Office by 5:00 pm, Tuesday, January 24, 2017. Further information is available in the Appeal guidelines online at fcgov.com/appeals.

If you have questions regarding the appeal process, please contact the City Clerk's Office (970.221.6515). For questions regarding the project itself, please contact Tom Leeson, Community Development and Neighborhood Services Director (tleeson@fcgov.com or 970.221.6287).

The City of Fort Collins will make reasonable accommodations for access to City services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call the City Clerk's Office at 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance.

Wanda Winkelmann

Wanda Winkelmann, City Clerk

Notice Mailed: January 13, 2017

Cc: City Attorney
Planning Department
Planning and Zoning Board

Please see other side for Site Visit Notice

City Clerk
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80522

970.221.6515
970.221-6295 - fax
fcgov.com/cityclerk

NOTICE OF SITE INSPECTION

An appeal of the Planning and Zoning Board decision of November 10, 2016, regarding the Landmark Apartments Expansion will be heard by the Fort Collins City Council on Tuesday, January 31, 2017.

Pursuant to Section 2-53 of the City Code, members of the City Council will be inspecting the site of the proposed project on January 25, 2017, at 3:00 p.m.. Notice is hereby given that this site inspection constitutes a meeting of the City Council that is open to the public, including the appellants and all parties-in-interest. The Project is located at the southeast quadrant of the Shields/Prospect intersection. The gathering point for the site visit will be at the east end of Hobbit Street.

> The purpose of the site inspection is for the City Council to view the site and to ask related questions of City staff to assist Council in ascertaining site conditions. There will be no opportunity during the site inspection for the applicant, appellants, or members of the public to speak, ask questions, respond to questions, or otherwise provide input or information, either orally or in writing. Other than a brief staff overview and staff responses to questions, all discussion and follow up questions or comments will be deferred to the hearing on the subject appeal to be held on January 31, 2017

Any Councilmember who inspects the site, whether at the date and time above, or independently shall, at the hearing on the appeal, state on the record any observations they made or conversations they had at the site which they believe may be relevant to their determination of the appeal.

If you have any questions or require further information, please feel free to contact the City Clerk's Office at 970-221-6515.

Wanda Winkelmann

Wanda Winkelmann, City Clerk

Notice Mailed: January 13, 2017

Cc: City Attorney
Planning

Please see other side for Public Hearing Notice

ATTACHMENT 2

Notice of Appeal

- Notice of Appeal filed by Per Hogestad, November 22, 2016

For City Clerk's Use Only: Date Filed: Nov. 22, 16 Initials: MW

NOTICE OF APPEAL

Action Being Appealed: Landmark Apartments Expansion PDP#160013	**Date of Action:** Nov. 10,2016
Decision Maker (Board, Commission, or Other): Planning and Zoning Board	

Appellant/Appellant Representative (if more than one appellant): Name, address, telephone number(s), and email address of an individual appellant authorized to receive, on behalf of all appellants, any notice required to be mailed by the City to the appellants.

Name: Per Hogestad	**Phone #:** 970-481-4469 970-484-5027
Address: 1601 Sheely Dr. Fort Collins,CO. 80526	**Email:** Per.Hogestad@comcast.net

GROUNDS FOR APPEAL

The Decision Maker committed one (1) or more of the following errors (check all that apply):

☐ Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter. List relevant Code and/or Charter provision(s) here, by specific Section and subsection/subparagraph:

_____

_____

_____

(Attach additional sheets as necessary)

☑ Failure to conduct a fair hearing in that:

☐ The Board, Commission, or Other Decision Maker exceeded its authority or jurisdiction as contained in the Code or Charter;

☐ The Board, Commission, or Other Decision Maker substantially ignored its previously established rules of procedure;

☑ The Board, Commission, or Other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading. Describe any new evidence the appellant intends to submit at the hearing on the appeal in support of these allegations[2]: _____

RE: Summery sheets attached

_____; or

☐ The Board, Commission, or Other Decision Maker improperly failed to receive all relevant evidence offered by the appellant.

☐ The Board, Commission, or Other Decision Maker was biased against the appellant by reason of a conflict of interest or other close business, person or social relationship that interfered with the decision maker's independence of judgment. Describe any new evidence the appellant intends to submit at the hearing on the appeal in support of these allegations[2]: _____

_____

_____.

Instructions:

1. For *each allegation* marked above, please attach a separate summary of the facts contained in the record which support the allegation. Each summary is limited to two pages, Times New Roman 12 point font. Please restate allegation at top of first page of each summary.

2. No new evidence will be received at the hearing in support of these allegations unless it is either described above or offered in response to questions presented by Councilmembers at the hearing.

LUC 3.4.6 has not been satisfied. The Planning and Zoning board considered misleading testimony based on personal opinion represented as fact.

(LUC; 3.4.6 requires effective screening of glare)

The appellant is seeking an eight foot high fence, two feet higher than the city standard six foot fence. We believe that the taller fence will help mitigate the light spill issue and bring the project closer to compliance with LUC 3.4.6.

The City Planner presented unfounded personal opinion as fact to the Planning and Zoning board. The planner states without evidence that the distance that separates the proposed project from the existing residential neighborhood will mitigate light spill and glare on adjacent properties. The planner further states that a standard six foot high fence is adequate to reduce light spill on the adjacent single family neighborhood with no basis for this assertion.

The appellant will demonstrate that a standard six foot high fence will not effectively screen light spill and glare created by adjacent head-in parking and poorly aligned drive isles. The appellant will present photographic evidence depicting light spill and glare based on the proposed plan. The evidence will support the allegation that LUC 3.4.6 has not been satisfied and that the board considered misleading testimony based on opinion represented as fact.

Neighborhood representatives have repeatedly asked the development team for an eight foot high fence without success. The unwillingness of the development team to work with the neighborhood has been typical throughout the design process.

LUC 3.5.1 D has not been satisfied. The Planning and Zoning board considered misleading testimony based on personal opinion represented as fact.
(LUC 3.5.1 D; minimize infringement of privacy of dissimilar land uses)

The appellant is seeking the removal of all balconies facing the single family neighborhood. This will help to mitigate the lack of compatibility and privacy by reducing the intensity of use.

The City Planner presented unfounded personal opinion as fact to the Planning and Zoning board. The planner states without any evidence that the distance that separates the proposed project from the existing residential neighborhood will mitigate privacy and noise concerns satisfying LUC 3.5.1 D. The planner further states without evidence that the grade differences of the proposed development will cause the elevation of the proposed balconies to be the same or lower than the existing neighborhood decks and patios.

The appellant by testimony will demonstrate that based on current conditions the proximity of the proposed project will not mitigate privacy concerns and does not meet the requirements of LUC 3.5.1 D.
The appellant will present testimony that the grades of the northwest Sheely property (1601 Sheely) are affectively the same as that of the proposed project. Given the similar grades then the proposed balconies will be substantially higher than the Sheely property. The testimony will support the allegation that LUC 3.5.1 D has not been met and that the board considered misleading testimony based on opinion represented as fact.

Neighborhood representatives have repeatedly asked the development team to remove balconies that face the single family residential neighborhood without success. It is disappointing that the development team chose to ignore neighborhood concerns.

LUC3.4.1 has not been satisfied. The Planning and Zoning board was not given complete and current information.

LUC 3.4.1 (F) (2) Provide new wildlife connections across the site to allow for continuance of existing wildlife movement between habitats.
This LUC requirement has not been met.

The appellant is seeking a council review of LUC 3.4.1 (E). The city planning staff has approved a reduction of more than 50% of the required natural habitat buffer zone,

The staff report and the Planning and Zoning Board agenda package did not contain the up-dated Ecological Characterization Study. The Planning and Zoning Board based its decision on outdated and incomplete information. The board should have had the benefit of the 2016 updated ECS report, the West Central Plan and the Nature in the City document. Together these documents clearly define the City's goals for Natural areas.

City staff stated that the wetlands are the only feature that requires protection. This is incorrect. LUC 3.4.1 requires the restoration of existing wildlife corridors. The requirement has not been met.

The appellant will present testimony and photographs that will demonstrate that there are established wildlife corridors on the project site.

LUC 3.8.30 has not been satisfied. The Planning and Zoning board considered misleading testimony based on personal opinion represented as fact.
(LUC 3.8.30 required 25' Buffer Yard)

The appellant is seeking the relocation of the paved emergency driveway/pedestrian walk encroaching into the required buffer zone. The relocation of the driveway/pedestrian walk will satisfy LUC3.8.30 and will help to mitigate the intensity of use at the edge of residential property. The action will also assure the consistent and equitable application of the buffer zone requirement over all of the multiple residential property lines.

The City Planner presented unfounded personal opinion as fact to the Planning and Zoning board. The planner states without evidence that the emergency drive is a low impact seldom used component. The planner asserts that because of the low impact the emergency driveway can be located in the no build buffer zone that is intended exclusively for landscape buffering. The planner falsely implies that the pavement would be some sort of non-pavement looking material. The planner further states that the driveway would only be used occasionally by a few bicycles.

The appellant will present testimony and photographs and diagrams that will demonstrate that the drive way clearly encroaches on the no-build twenty-five foot wide buffer zone. We will demonstrate that the driveway will be the primary route to and from CSU and will carry most if not all of the current apartment building population as well as the proposed development population. This will greatly add to the intensity of use directly adjacent to the residential properties. Photographic evidence of current pedestrian movement will illustrate desire lines that indicate future pedestrian movement. The appellant will also provide written testimony that unlike the planner's opinion will definitively identify conventional paving requirements as proscribed by Poudre Valley Fire Authority's requirement for heavy equipment.

The unwillingness to respect the 25' Buffer is indicative of the development team's lack of commitment to work with the neighborhood.

ATTACHMENT 3

Notice of Appeal

- Notice of Appeal filed by Colleen Hoffman and Ann Hunt, November 22, 2016

For City Clerk's Use Only: Date Filed Nov. 22, '16 Initials: DW

NOTICE OF APPEAL

Action Being Appealed: Approval of Landmark Apartments Expansion

Date of Action: Nov. 10, 2016

Decision Maker (Board, Commission, or Other): Planning + Zoning Board

Appellant/Appellant Representative (if more than one appellant): Name, address, telephone number(s), and email address of an individual appellant authorized to receive, on behalf of all appellants, any notice required to be mailed by the City to the appellants.

Name:	Phone #:
Colleen Hoffman/Wallenberg HOA	970-484-8723
Address:	**Email:**
1804 Wallenberg Dr FC 80525	Cohoff@comcast.net

GROUNDS FOR APPEAL

The Decision Maker committed one (1) or more of the following errors (check all that apply):

☒ Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter. List relevant Code and/or Charter provision(s) here, by specific Section and subsection/subparagraph:

see attached

(Attach additional sheets as necessary)

☒ Failure to conduct a fair hearing in that:

☐ The Board, Commission, or Other Decision Maker exceeded its authority or jurisdiction as contained in the Code or Charter;

☐ The Board, Commission, or Other Decision Maker substantially ignored its previously established rules of procedure;

☐ The Board, Commission, or Other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading. Describe any new evidence the appellant intends to submit at the hearing on the appeal in support of these allegations[2]: _____; or

☒ The Board, Commission, or Other Decision Maker improperly failed to receive all relevant evidence offered by the appellant.

☐ The Board, Commission, or Other Decision Maker was biased against the appellant by reason of a conflict of interest or other close business, person or social relationship that interfered with the decision maker's independence of judgment. Describe any new evidence the appellant intends to submit at the hearing on the appeal in support of these allegations[2]: _____.

Instructions:

1. For *each allegation* marked above, please attach a separate summary of the facts contained in the record which support the allegation. Each summary is limited to two pages, Times New Roman 12 point font. Please restate allegation at top of first page of each summary.

2. No new evidence will be received at the hearing in support of these allegations unless it is either described above or offered in response to questions presented by Councilmembers at the hearing.

APPELLANTS

Name: Ann R. Hunt	Date: 11/22/2016
Signature: Ann R. Hunt	Email: arh4@comcast.net
Address: 1800 Wallenberg Dr., Ft. Collins, CO 80526	Phone #: 970-218-5844 (C) 970-484-5242 (H)
Please describe the nature of the relationship of appellant to the subject of the action of the Board, Commission or other Decision Maker:	

Name:	Date:
Signature:	Email:
Address:	Phone #:
Please describe the nature of the relationship of appellant to the subject of the action of the Board, Commission or other Decision Maker:	

Name:	Date:
Signature:	Email:
Address:	Phone #:
Please describe the nature of the relationship of appellant to the subject of the action of the Board, Commission or other Decision Maker:	

Name:	Date:
Signature:	Email:
Address:	Phone #:
Please describe the nature of the relationship of appellant to the subject of the action of the Board, Commission or other Decision Maker:	

ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY

FAILURE TO PROPERLY INTERPRET AND APPLY RELEVANT PROVISIONS OF THE LAND USE CODE

3.5 Compatibility

3.5 compatibility is not the same as 3.4.7 which is the LPC historic compatibility. The corner off the SE corner of this parcel is owned by the Wallenberg neighborhood HOA and will be affected by the higher density, intensity of use, increased noise, lack of privacy, traffic, and parking. The proposal claims to be an expansion of the current Landmark Apartments on Shields (8 acres, 15.2/units per acre) to 18-23 units/acre on this new site. We ask for clarification on the units per acre since the City owns almost an acre drainage and wetland crescent through the SW portion of this property and should not be included in the calculations of the dwelling units per acre. By removing City-owned property, the density of this proposed development is 23 units/acre which is substantially higher than the existing Landmark Apartments and therefore does not allow the needed passive green space per code. The proposed development states that because it's an "expansion," it will use the existing pool/clubhouse and drainage canal for this new project. The code cannot be applied willy-nilly – either this is an expansion of the current Landmark Apartments and the density should match OR be lower as it approaches the single family areas to the east and the entire parcel re-platted to be one property to prevent a sell off in the future of just this one legal description that is relying on the other existing property to meet code via amenities/green space. The proposal allows access to the site via the existing Landmark Apartments parking lots, which is challenging. In the future, an access easement could be granted by the owner to facilitate the sale of the property.

If this is not an Expansion Project and re-platted to one property, then the project should meet code with the necessary streets , ingress/egress, 25' setbacks including egress driveway, and 50' setback from the wetland as a stand-alone, new development project. The property was recently purchased, has a separate legal description and could easily be sold individually in the future, so it should be considered as a new development and not an expansion to a current property. We ask Council to apply the code as such. Density is still a concern and a transition needs to be made from existing Landmark to a lower density to be compatible with the existing homes to the east and southeast. The City Planner stated that the density question wasn't even considered. There is a need for a lower density transition project from the existing 15/units per acre to single family homes. This project is an increase in overall density and is, therefore, not compatible and does not provide an adequate transition which does affect neighborhood livability. Since the Wallenberg HOA owns the previously mentioned corner, we request an 8' fence from the Sheely property line corner to the wetland/canal in order to prevent the future occupants of this site from walking/biking across the community property. People tend to use the path of least resistance and will short cut to the street or bike path and could hang out/congregate on HOA property. Also, there is not enough parking currently for the existing Landmark Apartments and residents park in the open field to the south or on Hobbit. Future occupants will attempt to drive from West Prospect to this area via our neighborhood. Based on previous experience, when drivers discover there is no street access, our circular streets become a virtual racetrack as they try to find a way back to West Prospect. And/or they will park on Wallenberg Drive and access this property via the bike path or the HOA-owned corner property decreasing privacy and increasing congestion, noise, and creating an unsafe condition at the Northwest corner of Wallenberg Drive. Adequate parking is a must.

In summary: the owner/developer cannot have it both ways. Either this is an actual expansion with a re-plat to one legal description to prevent a sell-off of one parcel in the future that doesn't meet code requirements, that actually resembles the current property with lower density, increased open space, and amenities OR it is a new, stand-alone project and must meet the requirements for set-backs from the wetlands, adequate passive green space, ingress/egress, and streets, building heights, etc.

THE BOARD IMPROPERLY FAILED TO RECEIVE ALL RELEVANT EVIDENCE OFFERED BY THE APPELLANT

Neighborhood residents were allowed two minutes per person, not enough time to present information on the wetland area or discuss the recent submittal of a recently updated ecological study of which the neighborhood was not aware, and which may not have been included in the packet for the evening's discussion (it was mentioned that the document was "on-line" during the meeting). Planners admitted that the 50' setback was not being required and in fact it is closer to 40' overall. We ask Council to apply "Nature in the City" to the city-owned property that bisects this project and require the 50' setbacks. The cumulative effects of many new developments on West Prospect that are surrounding and towering over our neighborhood make any green space critically important and, therefore, this wetland area should not be compromised. In addition, the buildings and parking lot do not provide for water absorption when the rainfall exceeds the canal's ability to handle the increased water. There are many eyewitnesses to the 1997 flood that devastated our neighborhood. We need to insure that there is adequate drainage through the wetland area and canal. The city owns this parcel for a reason. Let's be sure it can function fully.

When this property was bank owned, the neighborhood approached the city to purchase this site since the city was already a part owner of this property, in order to keep it open for a pocket park which our area does not have, or more "Nature in the City," but the request was denied. The developer/owner has their hired staff and City staff to present a complete picture on behalf of the property owner. We are volunteers, with limited experience trying to make our views known and get totally upstaged and virtually ignored, even admonished by a P&Z member. We, therefore, rely on our elected officials to take another look at this proposal to minimize the negative effects on our neighborhood and our quality of life.

AGENDA ITEM SUMMARY

City Council

January 31, 2017

STAFF

Clark Mapes, City Planner

SUBJECT

Consideration of Two Appeals of the Planning and Zoning Board Decision on November 10, 2016, Approving the Landmark Apartments Expansion Project Development Plan.

EXECUTIVE SUMMARY

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

APPEAL #1

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

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

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

The allegation involves issues regarding:

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

APPEAL #2

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

- Failure to properly interpret and apply relevant provisions of the Land Use Code, and

- Failure to conduct a fair hearing.

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

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

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

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

BACKGROUND / DISCUSSION

On November 10, 2016, the Planning and Zoning Board considered the application for the Landmark Apartments Expansion Project Development Plan. The project was approved on a vote of 5-0 (Kirkpatrick, Carpenter absent) based on the findings of fact and information contained in the Staff Report. The Staff Report is provided as **Attachment 4**.

APPEAL #1

The question for City Council regarding the first appeal is:

Did the Planning and Zoning Board fail to conduct a fair hearing, in that the Board considered evidence relevant to its findings which was substantially false or grossly misleading?

The appeal cites evidence related to several Land Use Code (Code) Sections, listed below.

Code Section 3.4.1 - Natural Habitats and Features

The appeal asserts that the Board's decision was based on outdated and incomplete information because the Staff Report included an attached 2012 Ecological Characterization Study (ECS) for the site, rather than a 2016 update to the 2012 ECS.

Specific information cited in the appeal involves the habitat buffer zone along the drainage channel through the site, and wildlife connections that the Appellant finds on the site which the Appellant contends must be restored or provided for by Code.

The 2016 ECS update was included in the materials provided for the record and posted online prior to the Board hearing.

The information in the 2012 ECS is not outdated. It is replicated in the 2016 update—its information is the current ecological characterization of the site.

Habitat Buffer Zone. The only additional information in the 2016 update is a recommendation for meeting performance standards to allow for a reduction in a general 50-foot buffer requirement along the channel. The recommendation states:

> "Mitigation can best be accomplished by plantings of native shrub and tree species as well as select herbaceous species...and that these plantings would increase overall vegetation structural and wildlife habitat diversity, provide visual screening between developed sites and the buffer zone, and improve water quality of surface runoff before it enters the existing wetland drainage."

The staff report explains the recommendation, and the plan fully incorporates the information with native trees, shrubs, grasses, and herbaceous species to be added to the channel buffer where non-native grasses and weeds currently exist.

Pertinent evidence includes:

- Staff Report, bottom of Page 7 through Page 8, regarding staff's use of the ECS to ensure mitigation measures in the plan to meet the required performance standards.

- Verbatim Transcript Page 16 line 43 through Page 17 line 18, regarding the components of the plan that respond to the ECS.

Wildlife Connections. The appeal notes the presence of wildlife connections, or corridors, across the site, and contends that they must be protected. The ECS found that the project area has low ecological value and supports no important habitat features beyond the wetlands in the drainage channel. This information is the same in the ECS in the Board's agenda materials, and the ECS update noted in the appeal.

Staff has conducted numerous site visits at different times of the year and concurs with this assessment. Staff stated at the hearing that the wetlands and channel itself are the only features that warrant protection through Code requirements. Staff acknowledged that the site is providing habitat as an open field at this point, but that the wetlands are the only feature that requires protection.

Pertinent evidence includes:

- ECS pages 16 and 17 of 25 in the pdf document, regarding habitat value of the site.
- Verbatim Transcript Page 17 lines 20-26, regarding staff comments on habitat value of the site relative to Code requirements.

Code Section 3.4.6 - Glare or Heat

The appeal contends that staff provided misleading testimony based on opinion represented as fact regarding light spillover from headlights and the effectiveness of a six-foot high fence.

Specific assertions in the appeal are that:

- "The planner states without evidence that the distance that separates the proposed project...will mitigate light spill and glare on adjacent properties."
- "The planner further states that a six foot high fence is adequate to reduce light spill on the adjacent single family neighborhood with no basis for this assertion."

Pertinent evidence includes:

- Verbatim Transcript Page 12 lines 16-17, regarding the Appellant's testimony in regard to a fence.
- Verbatim Transcript Page 17 lines 30-38, regarding staff comments on headlight mitigation.
- Verbatim Transcript Page 18 lines 27-35, regarding staff comments on fence height.
- Staff Report Page 6, top bullet item and the first paragraph below the bullets, regarding staff findings on parking lot screening.

Findings on parking lot screening are part of evaluation of landscaping under Code Section 3.2.1 which requires parking lot screening; and also evaluation of Section 3.5.1 which requires project compatibility.

Code Section 3.4.6 is not mentioned in the record, and has never been considered by staff with respect to parking lot screening for typical vehicle headlight impacts. Rather, this Section has always been found to pertain to operations of buildings or machinery that generate intense glare.

To help understand the allegation regarding Section 3.4.6, the Code language is shown below:

"3.4.6 - Glare or Heat
(A) ***Purpose.*** This Section is intended to protect the community and neighborhood from glare, defined as a harsh, uncomfortably bright light. Glare can inhibit good visibility, cause visual discomfort and create safety problems. This Section is also intended to protect the neighborhood from the adverse effects of reflected heat that could be caused by a proposed land use.
(B) ***General Standard*** . If the proposed activity produces intense glare or heat, whether direct or reflected, that is perceptible from any point along the site's property lines, the operation shall be

conducted within an enclosed building or with other effective screening sufficient to make such glare or heat imperceptible at the property line.

(C) ***Glare From Manufacturing Sources*** . Manufacturing processes that create glare, such as welding, shall be conducted within an enclosed building or be effectively screened from public view. If the source of the glare is proposed to be screened with plant material, then the applicant must show that the screening will be effective year-round."

Regardless of technicalities of interrelated Code Sections, the essential issue of headlights in proposed parking lots is a matter that is addressed in the plan and Staff Report.

Code Section 3.5.1(D) - Building and Project Compatibility, Privacy Considerations

The appeal contends that staff provided misleading testimony regarding balconies in the plan which would have privacy and noise impacts; and specifically regarding grade differences of the proposed development causing proposed balconies to be placed lower than decks and patios on existing neighborhood houses. A specific allegation involves the northernmost property in the Sheely neighborhood.

Pertinent evidence includes:

- Verbatim Transcript, Page 10 lines 23-27 comprising neighbor comments on noise from partying.
- Verbatim Transcript, Page 12 lines 20-25 comprising neighbor comments on balconies in the plan.
- Verbatim Transcript, Page 17 lines 39-41 through Page 18 lines 1-9, regarding staff comments on the balcony issue and specifically regarding the northernmost Sheely property.
- Applicants presentation, slides 39-44, showing the balconies in the architectural design and the relative grades of the project and the existing neighborhood.

Code Section 3.8.30(F)(1) - Orientation and Buffer Yards

The appeal contends that staff provided unfounded personal opinion as fact regarding an emergency access-only drive connection to Prospect Road at the north edge of the project.

The issue is that a 25-foot buffer yard is required in multifamily residential developments where they abut existing single-family development. In the plan, the outer 5 feet of a 20-foot emergency access drive extends into the required 25-foot buffer yard area (thus making the buffer yard only 20 feet wide rather than 25 feet wide for the outer 50-foot portion of the 260-foot property boundary with the abutting lot.)

This issue had not been recognized by staff or the applicants prior to the hearing.

Pertinent evidence includes:

- Verbatim Transcript Page 20 line 4 through Page 21, line 3, regarding staff comments on the issue.

The appeal is seeking relocation of the facility, and the applicants have informed staff that they have a proposed solution in response to the appeal, for consideration at the appeal hearing.

APPEAL #2

Appeal #2 presents two questions for City Council:

1. Did the Planning and Zoning Board fail to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and the Charter?

2. Did the Planning and Zoning Board fail to conduct a fair hearing, in that the Board improperly failed to receive all relevant evidence offered by the appellant?

First question from Appeal #2

This question, about failure to properly interpret and apply the Code, involves several issues noted below.

Density. The appeal compares the density of the proposed plan to the density of the existing Landmark Apartments and contends that the proposed density should not be allowed.

Pertinent evidence, in the Verbatim Transcript, includes:

- Page 11, lines 2-4 summarizing comments from a neighbor.
- Page 11, lines 34-38 comprising comments from a neighbor, who is the appellant.
- Page 13, lines 7-17 summarizing comments from a neighbor.
- Page 18, lines 10-26 comprising staff comments.
- Page 23, lines 21-29 comprising applicant comments.
- Page 24 lines 8-17 comprising staff comments.
- Page 24, lines 20-26 comprising applicant comments.
- Page 26, lines 36-40 comprising a Board member's comments.
- Page 27, lines 7-29 comprising a Board member's comments.

Expansion of Existing Landmark Apartments. The appeal raises questions about components of the plan that are based on joint use with the existing Landmark Apartments; and concerns about those components if ownership would change.

Pertinent evidence includes:

- Staff Report Page 15, sixth paragraph, which states:

  "Notes or a Minor Amendment to Landmark Apartments plans will be included with a Final plan to confirm the joint accessibility of all facilities."

This approach is typical for projects that involve changes to previously approved plans-i.e., the previously approved plans are amended as needed to reflect new circumstances, and to ensure that development functions as approved regardless of any changes of ownership.

Increased Traffic, Parking, Walking, and Bicycling in the Existing Neighborhood. The appeal describes concerns about occupants of the proposed development entering the existing neighborhood via a path connection to Wallenberg Drive. The path connection crosses a drainage easement owned by a neighborhood HOA.

Pertinent evidence includes:

- Verbatim Transcript Page 10 lines 5-7, and Page 11 lines 31-33 comprising comments from a neighbors.
- Verbatim Transcript Page 16, lines 1-14 comprising staff comments.

Second question from Appeal #2

This question, about failure to conduct a fair hearing by failing to receive all relevant evidence offered by the appellant, involves a primary allegation that neighborhood residents were allowed two minutes per person, and that was not enough time to present information on the wetland area or discuss the recent submittal of a recently updated ecological study of which the neighborhood was not aware, and which was not included in the Board's packet.

The Board chair did allocate two minutes per person based on 15 people who wanted to speak.

Pertinent evidence includes:

- Verbatim Transcript Page 9 lines 19-20, regarding the Chair's allocation of time per person.

As noted previously, staff unintentionally attached a 2012 ECS to the Staff Report, and not a 2016 ECS update which was available. The 2016 update of the ECS was posted online and included in the hearing record.

The attached report contains the same information as the update, with the exception of a recommendation to add native trees, shrubs, and other plantings along the drainage channel to meet Code standards for a habitat buffer. The recommendation is thoroughly incorporated into the plan and the Staff Report.

ATTACHMENTS

1. City Clerk's Public Hearing Notice and Notice of Site Visit (PDF)
2. Notice of Appeal filed by Per Hogestad (PDF)
3. Notice of Appeal filed by Colleen Hoffman and Ann Hunt (PDF)
4. Staff Report (with attachments) provided to the Planning and Zoning Board (PDF)
5. Materials provided to the Planning and Zoning Board before the hearing (PDF)
6. Applicant presentation to the Planning and Zoning Board (PDF)
7. Verbatim Transcript (PDF)
8. Powerpoint presentation (PDF)

RESOLUTION 2017-011
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING FINDINGS OF FACT AND CONCLUSIONS REGARDING THE APPEAL OF THE PLANNING AND ZONING BOARD DECISION APPROVING THE LANDMARK APARTMENTS EXPANSION, PDP#160013

WHEREAS, on November 10, 2016, the Planning and Zoning Board (the "Board") reviewed and approved the Landmark Apartments Expansion Project Development Plan PDP#160013 (the "PDP" or "Project"); and

WHEREAS, pursuant to Chapter 2, Article II, Division 3, of the City Code, two separate Notices of Appeal of the Board's approval of the PDP were filed with the City Clerk on November 22, 2016; one by Per Hogestad (the "Hogestad Appeal") and the other by Colleen Hoffman and Ann R. Hunt (the "Hoffman-Hunt Appeal") (Hogestad, Hoffman and Hunt are referred to collectively as the "Appellants"); and

WHEREAS, the Hogestad Appeal asserts that the Board failed to conduct a fair hearing because it considered evidence relevant to its findings that was substantially false or grossly misleading related to standards set forth in the Land Use Code (the "LUC") in rendering its decision, specifically LUC Sections 3.4.1 (related to natural habitats and features), 3.4.6 (related to glare or heat), 3.5.1 (related to privacy as a component of compatibility) and 3.8.30 (related to compliance with standards regarding a 25 foot side-yard buffer); and

WHEREAS, the Hoffman-Hunt Appeal asserts that Board: (1) failed to conduct a fair hearing because it improperly failed to receive all relevant evidence offered by the appellant; and (2) failed to properly interpret and apply LUC Section 3.5 regarding compatibility; and

WHEREAS, on January 31, 2017, the City Council, after notice given in accordance with Chapter 2, Article II, Division 3, of the City Code, consolidated and considered both Appeals, reviewed the record on appeal and the applicable LUC provisions, and heard presentations from the Appellants and the opponent of the Appeals, the applicant for the PDP (the "Applicant"); and

WHEREAS, after discussion, the City Council found and concluded based on the evidence in the record and presented at the January 31, 2017, hearing (the "Appeal Hearing") that:

1. The Board did conduct a fair hearing on November 10, 2016 in its consideration of the PDP and did not consider evidence relevant to its decision that was substantially false or grossly misleading or improperly fail to receive all relevant evidence offered by the Appellants; and

2. The Board properly interpreted and applied the provisions of the City Code and LUC when it approved the PDP, except that pursuant to City Code Section 2-55(f), the Board's decision approving the PDP shall be modified to include the following additional conditions, as proposed or agreed by the Applicant at the Appeal Hearing:

i. The Applicant must install signage requesting that drivers dim lights to reduce headlight glare into surrounding residential windows;
ii. The Applicant must add landscaping and other features to the Project as reasonably feasible to mitigate headlight glare into surrounding residential windows;
iii. The Applicant must remove all balconies from the east side of Building A;
iv. The Applicant must remove any balconies that would extend into any natural area buffer;
v. The Applicant must shift the emergency access road on the Project five feet to the west from the location shown on the plans approved by the Planning and Zoning Board;
vi. The applicant must add landscaping and other features to the Project to discourage pedestrian traffic on the voluntary trail that currently exists to the east of the proposed emergency drive;

These conditions are intended to address issues raised in the Hoffman-Hunt Appeal regarding compatibility of the proposed buildings and uses included in the Project when considered in the context of the surrounding area; and

3. Except as so stated, based on the evidence in the record and presented at the Appeal Hearing, the Hogestad Appeal and the Hoffman-Hunt Appeal are without merit and are denied.

WHEREAS, City Code Section 2-55(g) provides that no later than the date of its next regular meeting after the hearing of an appeal, City Council shall adopt, by resolution, findings of fact in support of its decision on the Appeals.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that, pursuant to Section 2-55(g) of the City Code, the City Council hereby makes and adopts the following findings of fact and conclusions:

1. That the grounds for appeal stated in the Hogestad Appeal and the Hoffman-Hunt Appeal conform to the requirements of Section 2-48 of the City Code.

2. That based on the evidence in the record and presented at the January 31, 2017, Appeal Hearing, the recitals set forth above are adopted as findings of fact.

3. That the Board did not fail to conduct a fair hearing on November 10, 2016 when it approved the PDP and it did not consider evidence relevant to its decision that was substantially false or grossly misleading or improperly fail to receive all relevant evidence offered by the Appellants.

4. That the Board did not fail to properly interpret and apply LUC Division 3.5-Building Standards, including but not limited to LUC §3.5.1-Building and Project Compatibility, when the Board approved the PDP on November 10, 2016, except that pursuant to City Code Section 2-55(f), the Board's decision approving the PDP shall be modified to

include the additional six conditions, as proposed or agreed by the Applicant at the Appeal Hearing, set forth above in the recitals, which conditions are intended to address issues raised in the Hoffman-Hunt Appeal regarding compatibility of the proposed buildings and uses included in the Project when considered in the context of the surrounding area.

5. That the Hogestad Appeal and the Hoffman-Hunt Appeal are without merit and are denied.

6. That adoption of this Resolution shall constitute the final action of the City Council in accordance with City Code Section 2-55(g).

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 7th day of February, A.D. 2017.

CITY OF FORT COLLINS SEAL COLORADO

Mayor

ATTEST:

W Winkelmann

City Clerk