

CITY COUNCIL

CITY OF FORT COLLINS

Held FEBRUARY 27, 2018

City Council Chambers

300 North Laporte Avenue

Fort Collins, Colorado

In the Matter of:

Consideration of an Appeal of the Planning and Zoning Board Decision Regarding Johnson Drive
Apartments Project Development Plan, PDP 170034

Meeting Time: 6:00 PM, February 27, 2018

Council Members Present:

Wade Troxell, Mayor
Gerry Horak, Mayor Pro Tem
Kristin Stephens
Ken Summers
Bob Overbeck
Ross Cunniff
Ray Martinez

Staff Members Present:

Darin Atteberry, City Manager
Carrie Daggett, City Attorney
Delynn Coldiron, City Clerk
Tom Leeson, Planning Director
Brad Yatabe, Assistant City Attorney
Rebecca Everette, Senior Environmental Planner

1 MAYOR WADE TROXELL: Tonight we have one item on our agenda, and it is consideration of
2 an appeal of the Planning and Zoning decision regarding Johnson Drive Apartments Project
3 Development, PDP number 170034. And, with that, and just to inform our audience and those watching
4 tonight, this is a little different than things that we normally see as Council where we normally act in a
5 judicial role...excuse me, in a legislative role, and tonight it's in a quasi-judicial role to hear this appeal.
6 And so, this consideration of an appeal of January...that took place...a hearing that took place on January
7 18, 2018, of the Planning and Zoning Board decision to approve the Johnson Drive Apartments Project
8 Development Plan. And, as I said earlier, it's PDP 170034. Are there any Council members who wish to
9 disclose a conflict of interest related to this appeal? Seeing none. And will the City Attorney please
10 provide a brief overview of the appeal process.

11 CITY ATTORNEY CARRIE DAGGET: Certainly, Mayor Troxell. This agenda item is a
12 hearing by the Council of an appeal filed by parties-in-interest pursuant to Chapter 2 of the City Code,
13 specifically Section 2-46 and succeeding Sections. The appeal seeks Council review of the January 18th,
14 2018 Planning and Zoning Board decision approving the Johnson Drive Apartments Project Development
15 Plan 170034. The Code requires the Council to review this matter based on the record of the decision of
16 the Planning and Zoning Board, and whatever other evidence is admitted in the course of the hearing this
17 evening.

18 The appeal alleges that the Planning and Zoning Board considered evidence relevant to its
19 decision that was substantially false or grossly misleading. So, the Council may consider new evidence if
20 described in the notice of appeal, or if submitted by parties opposing the appeal to the City Clerk by last
21 Wednesday. Otherwise, Council may ask questions of staff and parties-in-interest as part of this hearing
22 and may receive evidence in response to those questions. The Council is to review and consider the
23 evidence presented to the Planning and Zoning Board and the verbatim transcript of the Board hearing,
24 any new evidence admitted, and the arguments, responses, and discussion in tonight's hearing. The
25 subject matter of the appeal is limited to the issues identified in the notice of appeal. For this appeal, the
26 notice of appeal alleged that the Planning and Zoning Board failed to conduct a fair hearing by
27 considering relevant evidence that was substantially false or grossly misleading. In addition, the notice of
28 appeal alleged that the Planning and Zoning Board failed to properly interpret and apply the following
29 specified provisions of the Land Use Code: Land Use Code Section 2.4.2(H) regarding project
30 development plan review procedures, Land Use Code Section 4.21(A) regarding the purpose of the
31 General Commercial District standards, Land Use Code Section 3.4.1(I)(2) regarding natural habitats and
32 features, design and aesthetics, visual character of natural features, Land Use Code Section 3.10.5(F)(3)
33 regarding development standards for the transit-oriented development, or TOD, overlay zone, character
34 and image, and building height, and mitigation strategies and how they relate to the framework of the
35 Land Use Code.

36 Only parties-in-interest may participate in the appeal, and only at the time specified. Parties-in-
37 interest include the appellants, the applicant, any party with a proprietary or possessory interest in the land
38 that is the subject of the application, any person to whom the City mailed notice of the Planning and
39 Zoning Board hearing, any person or organization that provided written comments prior to or at the
40 Planning and Zoning Board hearing, or any person or organization that appeared at the Planning and
41 Zoning Board hearing. The Mayor is authorized to establish a separate time for consideration and
42 determination of procedural issues prior to the presentation of argument by the parties-in-interest. The
43 Mayor will ask members of Council who visited the site for this appeal to provide a summary of what
44 they observed. The Mayor will specify the period of time allowed for presentation by those supporting
45 the appeal and those opposing the appeal, and time for rebuttal. And at the conclusion of the hearing, the

1 Council will act by motion to determine whether the Planning and Zoning Board conducted a fair hearing,
2 and to determine whether the Board properly interpreted and applied the Land Use Code, in order to
3 resolve this appeal. A Resolution documenting the Council's findings and decision will be presented to
4 the Council no later than the Council's next regular meeting after completion of the hearing. And the
5 next regular Council meeting is next Tuesday, March 6th. That concludes my summary.

6 MAYOR TROXELL: Thank you very much. And with that, I'm going to identify who the
7 parties that are present here tonight...and please keep in mind that only parties-in-interest, as the City
8 Attorney pointed out, are entitled to participate in this hearing under our City Code. And so, will the
9 appellants please come forward...those appealing...please come forward and identify themselves and the
10 basis of their status as a party-of-interest.

11 MR. ERIC SUTHERLAND: Hello, my name is Eric Sutherland, party-in-interest by virtue of
12 attendance at the hearing and speaking to the item before Planning and Zoning Board. With me this
13 evening is Paul Patterson who enjoys the same status as a party-in-interest. Also here this evening is Tom
14 Pierce, who is a party-in-interest by virtue of owning property within the notice area. His wife was here
15 to speak to P and Z on the evening and he has a short statement to make.

16 MAYOR TROXELL: And which one is Tom? I'm sorry...okay, thank you. Thank you. And,
17 with that, are there other parties-in-interest who wish to speak in support of the appeal? And please come
18 forward and identify yourselves and the basis of your status as a party-of-interest. So, mention Tom and
19 his wife as well? Okay...and your name, I'm sorry. Would you please come forward and identify
20 yourself? Okay, never mind. If you're not intending to speak...thank you...I just wanted to make sure if
21 you wanted to, you were able to. Anyone else? Please come forward. And your name?

22 MR. BRIAN DWYER: Brian Dwyer.

23 MAYOR TROXELL: Brian...and last name again, I'm sorry.

24 MR. DWYER: Dwyer.

25 MAYOR TROXELL: Dwyer? Okay...and your relationship to a party-of-interest?

26 MR. DWYER: Yeah, we got a notice about the zoning...

27 MAYOR TROXELL: Got a notice? Okay, thank you very much. So, have four persons a party-
28 of-interest in support of the appeal, and Mr. Sutherland, if you want to come over and just answer this.
29 So, basically, you've got four persons including yourself, and so you'll need to coordinate the time
30 amongst the four of you. And so, I'll look to you to...

31 MR. SUTHERLAND: I think we've got it figured out Mayor, thank you. Yeah, I think we have a
32 plan of attack here.

33 MAYOR TROXELL: Okay.

34 MR. SUTHERLAND: So, we will be able to meet the time requirements.

35 MAYOR TROXELL: Okay, thank you. And will the applicant please come forward and identify
36 yourself?

37 MR. CRAIG RUSSELL: Good evening; I'm Craig Russell with Russell Mills Studios. I'm here
38 representing Next Chapter Properties. We have Patrick Quinn who will introduce himself.

1 MAYOR TROXELL: Okay.

2 MR. PATRICK QUINN: Good evening, Patrick Quinn, Chief Financial Officer Next Chapter
3 Properties.

4 MAYOR TROXELL: Okay, thank you. Thank you. And just the two of you will be supporting
5 the applicant?

6 MR. RUSSELL: Yeah; we also have Joe Delich who is our traffic consultant. He'll be here
7 probably momentarily.

8 MAYOR TROXELL: Okay, thank you.

9 MR. RUSSELL: Excuse me, he's here.

10 MAYOR TROXELL: Okay, very good. Thank you very much. And the same goes for you,
11 please coordinate your time amongst the three of you. And are there other parties-of-interest who wish to
12 speak in opposition of the appeal that are here tonight? Seeing none. Now we have a few other
13 preliminary items. And so, in terms of time allocation, Mr. Sutherland could you please come forward?
14 How much time to you need to make your appeal?

15 MR. SUTHERLAND: We were planning on 15 minutes, although there's a good chance we
16 might be able to finish up shorter than that.

17 MAYOR TROXELL: Okay, 15 minutes, thank you. And so...and I'll allow for 10 minutes of
18 rebuttal. So, both sides will have 15 minutes for their presentation starting off with the appellant and then
19 the applicant, and then we'll have 10 minutes of rebuttal for the appellant and the applicant. Is that...I
20 just want to look at the applicant. Is 15 minutes sufficient for you to make your presentation?

21 MR. RUSSELL: Yes, it should be.

22 MAYOR TROXELL: Okay, thank you very much. And so, now we're at the point of our hearing
23 to have a staff presentation. So, Darin, I'm going to look to you to please provide an explanation of the
24 nature of the appeal and a staff presentation.

25 CITY MANAGER DARIN ATTEBERRY: Mayor, I'm not going to provide the nature of the
26 appeal, I'll leave that up to Tom Leeson, who's our Planning Director in Planning, Development, and
27 Transportation, if that's okay with you?

28 MAYOR TROXELL: You bet.

29 CITY MANAGER ATTEBERRY: Tom?

30 MR. TOM LEESON: Thank you Darin, good evening Mayor and Council members. As
31 indicated, tonight's appeal of the Planning and Zoning Board decision to approve the Johnson Drive
32 Apartments Project Development Plan. Just to give you a brief overview, the PDP proposed a 5-story
33 mixed-use building immediately south of Johnson Drive, with 192 units, rent by the bedroom. It's a two-
34 and-a-half-acre site, there's 261 off-street parking spaces proposed within a parking garage, and the site is
35 located within the General Commercial zone...General Commercial zoning in the transit-oriented
36 development, or TOD, overlay zone.

37 The assertions of the appeal, as Ms. Daggett indicated, was a failure to conduct a hearing...a fair
38 hearing, and that the Board considered evidence relevant to its findings which was substantially false or

1 grossly misleading, and a failure to properly interpret and apply relevant provisions of the Land Use
2 Code. And I'll go over those assertions.

3 The first one, related to the failure to conduct a fair hearing...the appellant stated that the
4 illustration that was presented to the P and Z did not adequately represent the building and obstruction of
5 view scape from the park. And I want to show you some of the images that were presented to the P and
6 Z...these were views from Creekside Park to the west, which were the primary views of concern. And
7 you can see, that is facing west from Creekside Park with the MAX wall and underpass there, shown in
8 the foreground there. Just in staff comments, additional view impacts were not observed by staff due to
9 the fact that the MAX wall and existing buildings shown in the photographs...the project's location,
10 which was south of the Creekside Park and the fact that the site is separated by Johnson Drive, and so no
11 additional building or site design recommendations were made by staff for the Board to address views
12 from the park.

13 The second allegation was that the Planning and Zoning Board failed to properly interpret and
14 apply relevant provisions of the Land Use Code...there were five issues in the notices of appeal. The first
15 one dealt with the conditions of approval and that it represented a departure of legislative intent of the
16 development review process. The second one is that the PDP was not in compliance with the
17 requirements of the General Commercial zone, primarily that the PDP failed to provide a
18 pedestrian/bicycle pathway to the commercial areas to the south, even though such a pathway was
19 completely within the realm of possibility.

20 The third was that the Planning and Zoning Board failed to properly apply Section 3.4.1(I)(2) of
21 the Land Use Code and failed to properly apply Section 3.10.5(F)(3) of the Land Use Code, and I'll go
22 over those, as well as the mitigation strategies claimed in the PDP to affect reduction in the number of
23 spaces are inherently unenforceable and inconsistent with the Land Use Code. And to go over those each:
24 the first was the departure of legislative intent of the development review process and stated that the PDP
25 did not meet all of the standards of the Land Use Code if conditions must be imposed to bring the design
26 into compliance at some later date and time. It goes on to further state that the Land Use Code require the
27 decision maker find that the PDP meets all of the development standards.

28 The appellant further states that the P and Z failed to properly apply Section 2.4.2(H), which
29 basically states that a project development plan shall comply with all general development standards. The
30 staff response for that first allegation related to the conditions of approval...there are two sections within
31 the Land Use Code that specifically reference conditions of approval, Land Use Code Section 2.2.5, step
32 5, which is part of the review process, under staff report, says conditions for approval may also be
33 recommended to eliminate any areas of non-compliance or mitigate any adverse effects of the
34 development proposal. The second section that deals with conditions of approval is Land Use Code
35 Section 2.2.9, which is step 9, specifically stated conditions of approval, says the decision maker may
36 impose such conditions on the approval of the development application as are necessary to accomplish the
37 purposes and intent of this Code.

38 Second allegation is related to the PDP not being in compliance with the requirements of the
39 General Commercial zone. That section of the Code basically states that there is a need to meet auto
40 related...or meet the need for auto related and other auto related uses with planning and design that
41 accommodates pedestrians. So, basically saying it needs to meet the needs of both of those. And the
42 applicant...the appellant says the General Commercial is required to have infrastructure to allow
43 pedestrian access and the PDP failed to provide a pedestrian/bicycle pathway to the commercial areas to
44 the south. The staff response is that the Land Use Code section referenced is a purpose statement of the

1 General Commercial zone district. A development's transportation obligations are evaluated based on the
2 Land Use Code Section 3.6.4, which is Transportation Level of Service Requirements, and that a traffic
3 study was in fact submitted by the applicant's consultant, and that the bicycle and pedestrian levels of
4 service were evaluated as part of this project. The project, the PDP, contributes right-of-way and
5 required street improvements along Johnson Drive and Spring Court on the site. The appellant references
6 an additional trail connection that would cross the Sherwood Lateral to the south, at the south end of
7 Spring Court, and this connection is outside of the boundaries of the PDP. The connection was not
8 recommended as a requirement with the Johnson Drive PDP because the bicycle and pedestrian level of
9 service standards were met.

10 The third allegation is related to the...failed to properly apply Section 3.4.1(I)(2) of the Land Use
11 Code. This deals with the visual character of natural features, and basically the requirement to minimize
12 the degradation of the visual character of affected natural features within the site, and to minimize the
13 obstruction of scenic views to and from the natural features within the subject site. The appellants
14 referenced the Land Use section and its past application to a different project nearby, The Summit on
15 College parking garage major amendment, which is immediately to the north. The Section 3.4.1 applies
16 to the Lateral...the Sherwood Lateral on the southern portion of the site because that is the only natural
17 feature that is on the site. The Summit on College parking garage also used that section and applies to
18 Spring Creek corridor, which is on the southern part of the parking garage site. The Land Use Code
19 Section 3.4.1, Spring Creek, considered natural features affected by The Summit on College parking
20 garage, and the garage structure is adjacent to Spring Creek which triggered the establishment of the
21 buffer zone on the north end of the Spring Creek. In reference to the Sherwood Lateral, the Lateral is
22 currently a highly degraded natural feature. The PDP does provide ecological and visual enhancements to
23 the Sherwood Lateral as recommended by staff, and it demonstrated compliance with 3.4.1(L)(2) as
24 described in page 8 of the staff report. Additionally, there are no scenic views to or from the Sherwood
25 Lateral that are not already obstructed by the PDP's existing buildings, the storage units that are there, or
26 the MAX wall to the west, and no further recommendations were made than the enhancements to the
27 Sherwood Lateral buffer that were discussed in the staff report.

28 The fourth allegation is relative to the fail to properly apply Section 3.10.5(F)(3) of the Land Use
29 Code. This again specifically references the development standards for transit-oriented development.
30 I'm not going to read all of this, but there are certain standards related to character and image and
31 building height. Staff comments related to this is that the upper floor step backs of the PDP were
32 compliant with the standard, and that all four of these objectives were evaluated and considered as part of
33 the review. 3.10.5 was not specifically referenced in the AIS of the original staff report that went to P and
34 Z, but this was because all of these characteristics were evaluated as other parts of the AIS, and so it
35 would have been redundant to basically copy that as part of the 3.10.5.

36 The conclusions, basically, as part of the evaluation of 3.10.5 were that there was plenty of
37 transition space provided along streets, the materials and design details are used to provide comfortable
38 pedestrian scale, there were courtyards and façade step backs provided on all four sides of the buildings,
39 there was no substantial shadowing impacts, and public views were addressed, and there were no
40 additional adverse impacts. And just to share some of the images that were shared with P and Z, and
41 some of the analysis that went through...I'm not going to go through all of these, but I wanted to provide
42 this as part of the record, that there was buildings standards, building mass and scale reviewed, the
43 building details were reviewed, as well as views from Johnson Drive, view from the Sherwood Lateral,
44 and view from MAX guideway, all as part of the evaluation of that particular Code section.

1 The appellants' fifth Land Use Code allegation was that the parking mitigation strategies are
2 inherently unenforceable and inconsistent with the Land Use Code. The appellant stated that the Land
3 Use Code...or the grounds for appeal asserts that the provisions of the Land Use Code are equivalent of
4 an unconstitutional law and must be deemed a nullity when considered the sufficiency of the PDP. The
5 appellant goes on to state that no party, including the City, has any right or authority to enforce a
6 condition, for example that all residents of the proposed residential housing project be provided with
7 transit pass. It goes on to say that basically both mitigation strategies proposed by the applicant must be
8 construed as nullities. And the staff response to this is that the PDP complies with the TOD off-street
9 parking standards, two TOD, transit overlay district, parking mitigation strategies were provided: transit
10 passes and shared cars, and the City does have the authority to enforce all required elements of an
11 approved project plan including all parking provisions.

12 And just in summary, the assertions of the appeal were the failure to conduct a fair hearing and
13 that the Board considered evidence relevant to its findings which were substantially false and grossly
14 misleading, and failure to properly interpret and apply relevant provisions of the Land Use Code. And
15 that concludes my presentation.

16 MAYOR TROXELL: Thank you Tom, and with that, I'll look to our Council members. In light
17 of this additional information, please disclose any potential conflicts of interest or other possible reasons
18 for recusal. Seeing none, and then site visit...now, Council members, please describe your observations
19 during any site visit or any observation made during a site visit relevant to this appeal. And I don't
20 believe we...we didn't have an organized site visit so I'm just giving an opportunity in case there was a
21 site visit, and there wasn't. And so, with that, we'll move on to procedural issues related to tonight's
22 hearing. And no is the time to discuss and determine any general procedural issues or objections to be
23 addressed before the Council begins to hear arguments on the appeal. The issues on the appeal are
24 limited to only those that are in the notice of appeal, and these have been noted by the City staff and by
25 the City Attorney. So, as noted by the City Attorney, any new evidence is not allowed except in limited
26 circumstances. And in this appeal, new evidence is only allowed if it is one, related to the appellant's
27 allegations that the P and Z considered evidence relevant to its finding that was substantially false or
28 grossly misleading, or was biased against the appellant, and the new evidence was described in the notice
29 of appeal or submitted seven days prior to the hearing by the opponents of the appeal. Two, new
30 evidence is only allowed if it is offered by City staff and parties-in-interest in response to Council
31 questions, or third, new evidence is only allowed if it is offered by Council members based on their
32 observations at the site inspections.

33 So, new evidence is not permitted to address the claims that P and Z failed to properly interpret or
34 apply any of the cited provisions in the Land Use Code. So, if Council wishes to consider new evidence
35 related to these claims, the Council members will need to ask for such evidence or offer it if it is related to
36 any of their observations. New evidence...no new evidence was submitted to the City Clerk prior to the
37 hearing, so none has been included in the Council packet for the appeal. If there is new evidence that any
38 party-in-interest intends to offer, or if there is any objection to the consideration of the new evidence
39 submitted and included in the packet, now is the time to raise that matter. So, please note that parties are
40 expected to object if they have a concern about the admission of evidence. Do not rely upon staff or
41 Council members to object to new evidence. And so, now does the appellant, the applicant, or any other
42 party-in-interest or any Council member have any general procedural issues or objections or evidentiary
43 issues to be addressed before the Council begins to hear arguments on the appeal? Mr. Sutherland?

44 MR. SUTHERLAND: Yes, to begin with, I'd like the Council to note that our slide presentation
45 does include a graphic, which is new evidence, to represent the view from a person who might be in the

1 park of the mass and scale of the building. It's designed to give some representation. You could see from
2 Mr. Leeson's presentation that there was no evidence of this nature presented to P and Z prior to
3 the...prior to or during the hearing. And so, if there are objections to that, we will certainly field those
4 objections then. So, I have another procedural issue...

5 MAYOR TROXELL: Can I just ask a question on that first item and we'll go down step by step?

6 MR. SUTHERLAND: Sure.

7 MAYOR TROXELL: That particular...is it one slide?

8 MR. SUTHERLAND: Yeah, it's just one slide.

9 MAYOR TROXELL: And has it been reviewed by the applicant?

10 MR. SUTHERLAND: It has not; we got it to the City staff today around twelve o'clock. I don't
11 know if it was sent...if it was forwarded on to the applicant or not.

12 MAYOR TROXELL: Okay...and I'll get to you in just a moment. So, you have another issue?
13 Procedural issue?

14 MR. SUTHERLAND: There's two other issues that I'd like to raise here. The first is that there is
15 a section of the City Code, the Municipal Code, that controls this proceeding, which unequivocally states
16 that written materials is [*sic*] not to be presented to Council prior to or during the appeal. And obviously
17 we're already outside the proscription of that limitation of the Municipal Code; it's Section 2-55(B) of the
18 Municipal Code. And, of course, we've come with slides that had written materials...this is something
19 that only really connected in my own mind at about 11:30 today. And so, I'm suggesting that the Council
20 proceed with consideration of this deficiency in the process by adopting by vote of Council an agreement
21 that written materials such as the presentation that City staff just made, and other materials that the
22 applicant or the appellant wish to present on the big screen, shall be accepted into the hearing instead of
23 being prohibited as a narrow reading of the Municipal Code would require. And I'd also like to ask that
24 Council further find and stipulate that any such written materials shall become part of the record of this
25 hearing in case there is an appeal to the court above in this particular situation. So, it's something that...I
26 mean obviously there's been written materials provided in previous appeals, it's customary. But I just
27 think that we should respect the black letters on the white page here and recognize that there is this
28 deficiency, this irregularity, and deal with it at this point in time, and then perhaps legislatively fix that ex
29 post haste.

30 So, if you'd like to respond to that, I have one other concern, procedurally, that I'd like to...and
31 that was also communicated in my email to the City Clerk, City staff, about noon today as I found that
32 out.

33 MAYOR TROXELL: Okay, so let me just understand. So there's some issue with City Code as
34 it relates to this hearing, so it's outside this hearing and it's related to a City Code issue. Is that right?

35 MR. SUTHERLAND: No, it's the City Code that provides for the procedure for this proceeding
36 that we're engaged in right now.

37 MAYOR TROXELL: And we are following that.

38 MR. SUTHERLAND: And I could read that really quick here...it says...

39 MAYOR TROXELL: Actually, you can just reference it.

1 MR. SUTHERLAND: Section 2-55(B), it says no written materials to an appeal.

2 MAYOR TROXELL: Thank you...so...okay. So, I'm just going to ask the City Attorney to
3 respond to this particular issue. It seems like it's outside of the hearing itself and trying to make some
4 interpretive determination outside our hearing procedure.

5 CITY ATTORNEY DAGGETT: I think that Mr. Sutherland is pointing to a reference in the City
6 Code that, in the context of how these hearings have been conducted and the normal way that Council
7 does business, probably does not raise a significant issue; however, if the parties-in-interest to the appeal
8 are in agreement, and if Council would like to, for the record, confirm that there's no objection to the
9 agenda item summary that staff has provided, and the inclusion of that as part of the record, there could
10 be some benefit in documenting that agreement.

11 MAYOR TROXELL: Okay, so is that an interpretation that's agreeable? And so, basically, we'll
12 address each item on by one, so...

13 MR. SUTHERLAND: With the addition that it be understood that any written materials that
14 appear on the screen in our slides are part of the record of this proceeding and can be...will be preserved
15 in case it's appealed further.

16 CITY ATTORNEY DAGGETT: In case it's helpful, I can confirm that in producing a record for
17 this proceeding, we would include any of those materials.

18 MAYOR TROXELL: Okay. And then you had a third item?

19 MR. SUTHERLAND: Actually...I'm going to throw in one more item that Mr. Patterson just
20 explained to me. There is an error that I made, a really boneheaded mistake in that I quoted the wrong
21 section of the Land Use Code. This goes to our third part. Mr. Patterson will speak to that later on. And
22 of course, we're just providing advance notice that we will be looking at a different section of the Land
23 Use Code, just one number different, in the future, or asking Council's consideration for that. So, we just
24 wanted, you know, in the interest of fairness, to provide advance notice of that. The last thing I want to
25 discuss here...

26 MAYOR TROXELL: Hold on...so, I'm just trying to understand this one. You didn't cite
27 anything.

28 MR. SUTHERLAND: Yes, I think the citation is 3.4.1(I)(2), and the actual applicable standard
29 that we do not believe was followed was 3.4.1(I)(1)...okay...it's just, you know, complicated process, my
30 fault, I did not properly brief Council on what the relevant citation of the Land Use Code that is not being
31 followed in this particular situation. But, as I said, Mr. Patterson will talk to that later in our presentation.

32 MAYOR TROXELL: Well, hold on. We haven't...he may not...so let's get this clarified first.
33 So, this was an item that was...in your notice of appeal, you cited Section 3.4.1(I)(2) and you're trying to
34 make the case that it was an error and it should be Section 3.4.1(I)(1).

35 MR. SUTHERLAND: Correct.

36 MAYOR TROXELL: And, we'll see if...what the applicant...I don't know if they prepared and
37 so forth. Did you communicate that to the applicant?

38 MR. SUTHERLAND: No...I think it's quite clear in this situation that whether or not you view
39 that allegation is in your sound discretion at this point in time.

1 MAYOR TROXELL: Okay; and then you say you have a fourth?

2 MR. SUTHERLAND: Right...I'm very happy to see a certain stick-to-itiveness in terms of the
3 rule of law in here; that was not present in my last appeal. I want to make sure that people understand
4 that if new evidence is brought forward, as is your right to solicit from the parties-in-interest or staff, that
5 you can't make a decision on the basis of that. Okay...the last time I was up here for an appeal, that's
6 precisely what was happening, and it happened over my objection. The applicant submitted a complete
7 amendment to their plan, you guys didn't see it, I didn't even know what it was, and yet you adopted a
8 revision of the PDP based on this new evidence. And that's a failure of due process guys, that
9 disadvantage is mostly the applicant, because now...

10 MAYOR TROXELL: Mr. Sutherland...now I get a sense that you're lecturing, and I'm just
11 trying to understand. So, you're bringing up something related to a previous appeal and I don't know
12 which one you're talking about.

13 MR. SUTHERLAND: This was regarding bicycle parking, just trying to get bicycle parking in a
14 residential unit. And the only reason I'm bringing it forward is because I do think it's appropriate to
15 follow the specific procedures that are laid out in the City Code, and that precludes Council from utilizing
16 new evidence in whatever decision it makes, which was done last time.

17 MAYOR TROXELL: So, your point on this one is that we should be following City Code?

18 MR. SUTHERLAND: That's right

19 MAYOR TROXELL: Okay. Thank you. And so, there have been four items. The applicant, do
20 you have any procedural issues that you would like to bring forward? I'm going to...if you don't have
21 any additional ones, then I'm going to go down the four that as I understand it and see if you...to get your
22 response to those. So, would Mr. Russell or Mr. Quinn, or both, or all, please come forward?

23 So, the first item was the presentation...he suggests there's a slide of a viewshed that he's going
24 to show as new evidence, and do you have any response? Do you accept that?

25 UNIDENTIFIED MEMBER OF APPLICANT'S TEAM: On the basis that we have no idea what
26 this looks like, and Mr. Sutherland himself, I believe, sent an email to City staff specifically requesting no
27 new evidence be entered, we're going to object.

28 MAYOR TROXELL: Okay. And, looking at this one, I would...and it was just one slide, and so
29 I don't think that is...so I do sustain the objection so that one new slide will not be shown. So, I'll ask
30 Mr. Sutherland to please adjust the presentation that that viewshed not be shown.

31 So, the next issue is that City Code...basically to include all the materials tonight including our
32 agenda summary be included as evidence within the hearing tonight.

33 UNIDENTIFIED MEMBER OF APPLICANT'S TEAM: I would expect that would be part of
34 the standard procedure.

35 MAYOR TROXELL: Okay; so you're accepting of that? Okay, so we will allow for that AIS to
36 be included in all the information here tonight.

37 Next is the error in citing a different section of the Land Use Code...instead of (I)(2), it was
38 (I)(1). So, your comment on that?

1 UNIDENTIFIED MEMBER OF APPLICANT'S TEAM: Well, I would just note that, you know,
2 these appeals do take quite a bit of time for everybody to prepare for. Changing the criteria and the basis
3 of an appeal at this point in time, when we've prepared our presentation based on what was submitted, we
4 would object to that at this stage...we would ask you to consider that.

5 MAYOR TROXELL: Okay, I will sustain the objection that this is the basis of the hearing and
6 we are here tonight to actually hear the notice of the appeal, and so that...we will not actually hear the
7 Section 3.4.1(I)(1); we will hear the 3.4.1(I)(2), which was part of the notice of appeal. Yes sir?
8 Okay...what's that?

9 (**Secretary's Note: Unintelligible remarks made by a Council member to the Mayor at this point
10 in the meeting.)

11 MAYOR TROXELL: Okay, okay, good. So...and...so, Eric?

12 MR. SUTHERLAND: Yes sir?

13 MAYOR TROXELL: Mr. Sutherland, with regards to the error in the Land Use Code, is that in
14 your slide presentation with regards to the 3.4.1(I)(1)?

15 MR. SUTHERLAND: No, no it's not. The text of paren [sic] 1 is not in there; there's only
16 reference to paren [sic] 2 in that regard.

17 MAYOR TROXELL: Okay; thank you.

18 MR. SUTHERLAND: I would like to caution Council to avoid failures of due process in this
19 situation. If you want an in-camera review of the single graphic that we presented...

20 MAYOR TROXELL: Okay, thank you, you're out of order right now, thank you. And so there's
21 one more item for the applicants, and I'm sure...well, I'll let you make this determination. Are you
22 agreeable that we follow our City Code tonight?

23 UNIDENTIFIED MEMBER OF APPLICANT'S TEAM: Absolutely.

24 MAYOR TROXELL: Okay, so we're in agreement with that. So, the...

25 CITY ATTORNEY DAGGETT: Excuse me Mayor Troxell?

26 MAYOR TROXELL: Yes?

27 CITY ATTORNEY DAGGETT: One suggestion that I might make is since the applicant hasn't
28 had an opportunity to view the slide, it may be beneficial to take a brief break and allow them to look at
29 that so that they can make a more informed response to you.

30 MAYOR TROXELL: You bet. And I will do that. And so those are the four procedural issues,
31 and I just want to give Council members a chance if you have any issues with the rulings, the four rulings,
32 that I made. If you have any objection, let me know now. Okay, Ross?

33 COUNCILMEMBER ROSS CUNNIFF: Yeah, given that we'll allow the applicants to review the
34 slide in question, I don't have any objection.

35 MAYOR TROXELL: Okay, and so, hearing no others at this point, why don't we take a ten-
36 minute recess to allow the applicant to actually review the presentation to see if there are any objections.
37 We stand adjourned; back in ten minutes.

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

2 MAYOR TROXELL: Thank you, and we're back from our recess and I'd like to invite the
3 appellant and the applicant to the podium, and the applicant had a chance to review the presentation and I
4 just want to hear if there's any consideration regarding the four items.

5 UNIDENTIFIED MEMBER OF APPLICANT'S TEAM: I think the only item we were left to
6 discuss was the add of the slide which showed the visual representation. And, while I can understand and
7 appreciate where the appellant was going with this, they also did not provide me the adequate time to
8 offer any rebuttal evidence to this to support a meaningful rebuttal to it, so I'm going to continue to
9 object.

10 MAYOR TROXELL: Okay, so with regards to that one slide and the...and the third item was the
11 misinterpretation of the Land Use Code...that those are still objections; they are sustained.

12 UNIDENTIFIED MEMBER OF APPLICANT'S TEAM: Correct.

13 MAYOR TROXELL: Okay, and the other two items were accepted. And I would like to look to
14 Council for a motion to accept the AIS and other materials? Ross, please?

15 COUNCILMEMBER CUNNIFF: Yes, Mayor, I move that Council accept the written materials,
16 including the AIS and the slide presentations by the applicant and the appellant as part of this
17 proceedings, and ask that they be part of the record of the proceedings.

18 MAYOR TROXELL: Thank you.

19 COUNCILMEMBER KEN SUMMERS: Second.

20 MAYOR TROXELL: A motion and a second, any discussion on the motion?

21 COUNCILMEMBER CUNNIFF: And, I do want to ask the City Attorney if that, do you think, is
22 adequate under...in the light of 2-55?

23 CITY ATTORNEY DAGGETT: I do think that's adequate, and just for clarification, are you
24 meaning to override and include the slide that's being offered as new evidence per the appellants...?

25 COUNCILMEMBER CUNNIFF: No, I'm not.

26 CITY ATTORNEY DAGGETT: Okay.

27 MAYOR TROXELL: Any other...Gerry?

28 MAYOR PRO TEM GERRY HORAK: Yeah, just clarifying, all we're talking about are these
29 slide presentations...that's...there's no other written material...

30 COUNCILMEMBER CUNNIFF: And the AIS that was provided to Council.

31 MAYOR PRO TEM HORAK: And the AIS, but I'm saying there's nothing...I don't...because
32 saying written materials could be additional written materials.

33 COUNCILMEMBER CUNNIFF: That's correct; that's my intent.

34 MAYOR TROXELL: Thank you. Any other clarification questions? Roll call please.

35 CITY CLERK DELYNN COLDIRON: Overbeck?

1 COUNCILMEMBER BOB OVERBECK: Yes.
2 CITY CLERK COLDIRON: Horak?
3 MAYOR PRO TEM HORAK: Yes.
4 CITY CLERK COLDIRON: Troxell?
5 MAYOR TROXELL: Yes.
6 CITY CLERK COLDIRON: Stephens?
7 COUNCILMEMBER KRISTIN STEPHENS: Yes.
8 CITY CLERK COLDIRON: Martinez?
9 COUNCILMEMBER RAY MARTINEZ: Yes.
10 CITY CLERK COLDIRON: Summers?
11 COUNCILMEMBER SUMMERS: Yes.
12 CITY CLERK COLDIRON: Cunniff?
13 COUNCILMEMBER CUNNIFF: Yes.
14 MAYOR TROXELL: Thank you...that motion passes. And with...now we come to the
15 point...yes, please, Ross?
16 COUNCILMEMBER CUNNIFF: Really quickly, it wasn't clear to me whether...it sounded like
17 you asked a question of the applicant about the motion, the objection being sustained. Was it your intent
18 to state that the objection was sustained?
19 MAYOR TROXELL: Yes.
20 COUNCILMEMBER CUNNIFF: Okay...
21 (**Secretary's Note: Unintelligible remarks made by a Council member to the Mayor at this point
22 in the meeting.)
23 MAYOR TROXELL: That's right...okay...the two that are not going to be included...one was a
24 slide of the viewshed that the appellant wanted to present and that was objected to, and that was sustained.
25 And the other item was an error in interpretation of Land Use Code Section 3.4.1(I)(2) that was in the
26 notice of appeal, and it's actually...and that was objected to, and that was sustained as well. And so those
27 two will stand as a part of the presentations. Okay...are we clear on that? Okay, and now anything else
28 Council as we finish up our procedural issues? Okay, now we come to the presentations. Now is the time
29 for the appellants and parties-of-interest supporting the appeal to present their arguments, and we agreed
30 upon 15 minutes for that, and you will have a total of 15 minutes for that and that will be combined across
31 all the parties-in-interest, and your time will begin when you begin speaking. Thank you.
32 MR. PAUL PATTERSON: Okay, so it will be parts two and four I will talk to; I will not address
33 number three. Part two, the PDP is not in compliance with the requirements of the General Commercial
34 zone accommodating pedestrians. The figure below is clipped from the figures on pages 244 and the last
35 page of the AIS...shows a plan for a bridge originating on the property and going over the Sherwood
36 Lateral. This is part of the preliminary design. This shows it is possible and should have been pursued,

1 either through the entire responsibility of the applicant, or through a public-private partnership. The
2 applicant was granted two reductions in parking mitigations strategies aimed at reducing the need for car
3 use. These are worth quite a bit of money...this should be a two-way walkway...they receive from the
4 community and they also give to the community.

5 Now, the picture that I was going to show was to illustrate the mass of the building as seen from
6 the park and from the Spring Creek corridor. So, you'll just have to image that there's a 74-foot building
7 there. It dominates the entire view scape to the south. The view scape is not just to the mountains; the
8 view scape is the entirety of the park and the Spring Creek corridor. So, I'm going to skip through the
9 next two slides...sorry...okay.

10 Part four...

11 UNIDENTIFIED MEMBER OF APPLICANT'S TEAM: Can I object...present a slide that he
12 said he was going to omit.

13 MR. PATTERSON: I tried to go as fast as possible...I don't know...

14 MAYOR TROXELL: Well, it was presented, but I'm going to overrule the objection and allow
15 you to proceed. And if there's anything related to the other exempted item then please let me know
16 before it's presented. Ross?

17 MR. PATTERSON: I'm sorry...I came with this in a total different...and I should have thought
18 of it differently and perhaps asked to be able to remove that; I apologize for that.

19 MAYOR TROXELL: Okay, Ross?

20 COUNCILMEMBER CUNNIFF: I just want to make sure that that slide is not, though, included
21 in the record of the hearing.

22 MAYOR TROXELL: That will be taken out prior to a record. Gerry?

23 MAYOR PRO TEM HORAK: Mayor, I would suggest we have it taken out now.

24 MAYOR TROXELL: Okay.

25 MAYOR PRO TEM HORAK: And time had stopped I assume when the first objection came.
26 Have that slide taken out now by whoever wants to take it out.

27 MR. PATTERSON: I can take it out; I'm sorry...

28 MAYOR PRO TEM HORAK: I'm just suggesting...I think that's the best way, then it's not part
29 of the record.

30 MR. PATTERSON: Yeah, I understand that; I was planning to take it out after.

31 COUNCILMEMBER MARTINEZ: And I'd like just a point of clarification...are there any other
32 slides that you have that have not been approved prior?

33 MR. PATTERSON: No.

34 MAYOR TROXELL: ...understanding your question...I'm not sure...

35 MAYOR PRO TEM HORAK: Well, basically, are there any other slides that apply to the two
36 parts that we said would not be included?

1 MR. PATTERSON: No, just those two slides.

2 MAYOR PRO TEM HORAK: So, could you please go over and take that out, please?

3 MAYOR TROXELL: And we'll blank the screen. Okay. So, we'll take a five-minute break;
4 we'll resume in five minutes at about 7:05.

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

6 MAYOR TROXELL: So we're resuming after a short break and, upon reflection and looking at
7 the notice of appeal, it basically says an illustration did not adequately represent the building and
8 obstruction of the view scape from the park and these will be provided, and that was part of the notice of
9 appeal, and upon reflection of that, as the presiding officer in this hearing, I'm going to overrule the
10 objection and allow for that slide to be shown. And if you have taken it out, then I will allow you to put it
11 back in. And, do you need some time to do that?

12 MR. PATTERSON: Yeah...I just erased it. I have it here, so it would take me two minutes.

13 MAYOR TROXELL: Okay, we'll take another five-minute break and you can insert it and we
14 will...and I'll ask the City Clerk at that time how much time you will have to resume your presentation.
15 So, you can include that within your presentation.

16 MR. PATTERSON: Yeah, five minutes would be good because I need to modify it slightly due to
17 your other objection.

18 MAYOR TROXELL: Okay, alright, thank you. We'll be back in five minutes.

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

20 MAYOR TROXELL: So, we're back from our recess and I'd just like to verify that Mr.
21 Patterson, your presentation is back and ready to go?

22 MR. PATTERSON: Yeah...there is no...okay, yes, it is.

23 MAYOR TROXELL: Thank you, and I just want to turn to City Clerk and verify how much time
24 we have left in the appellant's presentation?

25 CITY CLERK COLDIRON: Fourteen minutes and six seconds.

26 MAYOR TROXELL: Okay, thank you. So, Mr. Patterson, you can begin, and your time will
27 start when you begin talking. Thank you.

28 MR. PATTERSON: Thank you. So, here's the slide that I wanted to illustrate. Since the
29 applicant has asked, I will give a little bit of an explanation of how I produced this. There is a sign here,
30 right there, that is 18 feet tall. The front side of it is approximately 2 feet from the base so there's no loss
31 of perception...height due to perception. So, what I did is I used GIMP software to measure four heights
32 of the sign, which puts it at about 72 feet, and then did the perspective by going off the line here. So, I
33 think it's a fair representation; I do not say that it is exact, but I think it gives you some idea of the mass
34 of the building.

35 Part four...P and Z failed to properly apply 3.10.5(F)(3), and this deals with the setbacks. It says
36 the adequacy of the upper floor setbacks shall be determined by the extent which they advance the
37 following objectives...we are not going to contest parts A through C, we are looking at D. And given the
38 proximity to Creekside Park, it is hard to see how the upper floors could be set back far enough to

1 preserve the overall view scape from the park. So, looking from the south, that thing will dominate. As
2 you go around the park, it will totally dominate the view to the south. Thank you; I now turn it over to
3 my...

4 MAYOR TROXELL: Thank you Mr. Patterson.

5 MR. SUTHERLAND: Eric Sutherland here, and I'm going to begin my part of the presentation
6 with a discussion of what, for a practical extent...to any practical extent...is the crux of our appeal; it's
7 the anchor of our appeal, it's an argument that could be made before a Municipal Court judge who does
8 not understand the difference between an arterial and a collector street, but would still understand the
9 nature of this argument because it deals entirely with procedural issues. And the issue here is the fact that
10 the Planning and Zoning Board granted conditions that allowed for the entire procedure defined in Article
11 2 to be amended on the spot. Generally when we think about conditions being applied to a design project,
12 we think about design parameters...we want to see this over here, we'd rather this look like this, we'd
13 rather it be this tall than this tall...that sort of thing, that kind of condition that can establish compatibility
14 with existing neighborhoods, other reasons that we would want to apply conditions over and above the
15 requirements of the Land Use Code, right? And what happened in this particular situation was that, upon
16 City staff's recommendation, the Planning and Zoning Board applied conditions which changed the
17 procedure. The procedure can't be changed with conditions, and that's the basis of the entire argument
18 explained there in layman's terms.

19 I do have a number of slides; these were presented primarily for the purposes of making sure that
20 the argument is preserved into the future. What this slide communicates is basically what I just said with
21 one exception there, and that is that I just can't believe that given the argument put forward, City staff is
22 still defending the action of the Planning and Zoning Board, defending their action of recommending that
23 procedural changes be adopted with conditions. But it is not so surprising to me anymore, because quite
24 frankly, we're seeing this quite frequently in our City government...mistakes in interpreting its own laws
25 are met with strained and deceptive arguments, and that's what you're looking at here from the staff in
26 that regard.

27 Next couple slides here are really just standards for reviewing the case...this is case law. I'm just
28 going to read off a few of the more important points...the same rules of construction apply in the
29 interpretation of ordinances and statutes. In other words, under Colorado law, we look to the same means
30 of interpreting ordinances that we use for statutes and that's pretty well established in the case law.
31 Really important thing here is that we just interpret ordinances by their plain and simple meaning, and
32 that didn't happen in this situation. Also of importance here, any construction of an ordinance, or
33 interpretation of an ordinance, which leads to an absurd result will not be followed. Well, what happened
34 was patently absurd in terms of the procedural elements.

35 Next slide is just, you know, basically a restatement of the same...this is difficult...the same
36 ideas of law. Basically we get to the idea that whether or not you read in isolation or you construe the
37 provisions of 2.4.2(H) with the remainder of the Land Use Code, it means exactly what it says. It means
38 that the decision maker must make a decision that finds that a development application meets all of the
39 standards of Article 3 and Article 4 of the Land Use Code, all, not almost all...you can't defer some of the
40 decisions to somebody else at a later point in time...that is the departure from the established procedure
41 and it's unacceptable. The absurd result that follows from staff's interpretation of the whole thing is
42 somebody could show up with a PDP application with half of the requirements unmet, promise to bring it
43 into compliance at some point in time, P and Z checks off on it, nobody has any understanding whether or
44 not we're meeting the requirements of the Land Use Code or not. No, the idea is that the Planning and

1 Zoning Board must find that all the requirements were met, not almost all. And by admitting the fact that
2 there were two requirements of the Land Use Code dealing with trash and recycling facilities and
3 coloration of the materials used in the construction of the façades, they admitted that the PDP was not
4 complete. So, it's just an absurd departure from the procedure proscribed by the Land Use Code for
5 conducting these hearings, and it never should have happened.

6 Now City staff has presented two arguments to other sections of the Land Use Code to suggest
7 that perhaps this is...you know there are other parts of the Land Use Code that disturb the plain and
8 simple meaning of 2.4.2(H), and those were also included in the slides here.

9 You know, they say that, well, for example that 2.2.5 says that conditions for approval may also
10 be recommended to eliminate any areas of non-compliance. Well, these conditions that were approved
11 didn't eliminate any areas of non-compliance, they simply delayed a decision and allowed for it to be
12 made by somebody else besides that person, or that entity, in this case the Planning and Zoning Board,
13 that is supposed to be making this decision in the first place.

14 Same thing with 2.2.9, they are suggesting that this condition of the Land Use Code provides for
15 interpretation of...other than the simple meaning of 2.4.2(H), and there again, it's just completely and
16 erroneous argument that's been made by City staff in the AIS. There's absurd results. Big picture here,
17 there can be no doubt that the LUC provides that conditions be imposed exclusively as a means of
18 controlling the design of a development, not for controlling the process by which the design is approved.
19 The process is established and there's no departing from it by applying conditions.

20 I'm going to jump on here to part five, we do have some other citizens that would like to speak to
21 this, and make sure that they have time. Basic argument as far as part five is that the demand mitigation
22 strategies that were proposed to reduce the number of parking spaces required as part of the transit-
23 oriented development are unconstitutionally vague according to case law established in the Supreme
24 Court, Colorado Court of Appeals for what makes for an unconstitutionally vague law. Transit passes are
25 suggested as a demand mitigation strategy, but there's no definition of what transit passes are...transit
26 passes could include two day passes to use the MAX line, okay, and it doesn't even use the word annual
27 pass in there.

28 Car sharing...what in the world is car sharing? Does that mean two people are sharing an
29 apartment, share a car, and therefore...how are these conditions going to be enforced? They are
30 completely unenforceable outside of executing instruments that we have no guarantee will be executed, et
31 cetera. And, the long and short of it is that there's no guarantee that the parking that will be provided
32 with this...this...development will be adequate. We've had a problem in this area before in the past, big
33 problem...with another development that occurred. And so, it's reasonable to err to the side of safety and
34 just presume, you know, these demand mitigation strategies are unconstitutionally vague; they're not
35 defined well enough and their enforcement mechanism is not defined well enough to accept them. And,
36 with putting all that information into the public record this evening, um, I'm going to, uh, just take a
37 minute to make sure each slide is shown on the screen for at least a few seconds here. I will, uh, turn it
38 over to Mr. Pierce and Mr. Dwyer to complete the...our 15 minutes, thanks.

39 MAYOR TROXELL: Just to be clear, only Mr. Pierce, other than Mr. Patterson, Mr. Sutherland
40 have been identified as a party-of-interest that I'm aware of.

41 MAYOR PRO TEM HORAK: Mr. Dwyer did come up and say and...he's got notice, he has a
42 property right there.

1 MAYOR TROXELL: Okay, thank you. Go ahead, and your time will resume.

2 MR. TOM PIERCE: My name is Tom Pierce, and in reading the appeal, issue number two, I must
3 say I agree that this project should return to their original plan of providing the important connection...

4 (**Secretary's Note: The broadcasting official asked Mr. Pierce to lower his microphone at this
5 point in the meeting.)

6 MR. PIERCE: Would you like me to start over?

7 MAYOR TROXELL: Proceed.

8 MR. PIERCE: Um, the important connection, the pedestrian access to the MAX and local
9 shopping, especially since they claim less parking is needed as some of the students will use the MAX
10 and walk to the stores. I suspect they reverse course because they want to save time and money. They
11 will be extracting a large amount of rent from the residents, and since they are from out of town, it is
12 extremely doubtful the money will stay here and not enhance the community that supports it. I think it is
13 only fair that we, the citizens, get some benefit from the extraction of this money. Years and years of
14 planning and building on the bike path, as well as a lot of money, have been spent to develop this path
15 system. Why should they not have to assist in bettering the community they wish to be a part of? It
16 would be a tragedy to have the taxpayer be stuck for paying for this. They need to prove they will be a
17 good neighbor by having some skin in this game.

18 Lastly, the new path is urgently needed as the existing sidewalk is on the wrong side of the street,
19 the walk uphill on College Avenue is inches from high-speed traffic, and then there's a random walk-
20 through businesses [*sic*] to get to the MAX or whatever their goal. A wheelchair and a bike could not
21 pass on these sidewalks if going the opposite direction. This is a lawsuit waiting to happen, and if so,
22 again, the citizens will have to pay for their benefit. Please return the pedestrian access requirement to the
23 permit approval. Thank you.

24 MAYOR TROXELL: Thank you.

25 MR. DWYER: Brian Dwyer...I am one of the owners of Fort Collins Muffler and Automotive,
26 located directly east of the planned construction project. I'm here to let you know that moving forward
27 with this project could, and probably will, be a death blow to our business. Our business is down
28 considerably since opening the State [*sic*] apartments because of the reduced availability of parking spots
29 around us. I've been told we need to provide our own parking for our own business. If that is the case,
30 why is it okay for the spillover parking that is happening all around our business? It seems okay for them
31 to not have adequate parking, but our business must have our own parking?

32 A proposed solution instead of keeping us at our five permitted spots we get now is for the City to
33 maybe add an additional ten to fifteen permits made available for us to purchase. This would at least
34 allow our employees to park near their workplace instead of having to find a parking spot on the other
35 side of College Avenue. Why not turn over some of the current and some of the new parking spots that
36 will be created into permitted spots to help us alleviate the situation? The City could easily do this if it
37 chooses, and it would be beneficial. We've continually reached out to the City for a solution...

38 MAYOR TROXELL: Mr. Dwyer, the time is completed, thank you. Next, we have is time for
39 the applicant, any party-of-interest against the appeal, to present their arguments...and you will have 15
40 minutes total. And your time will begin when you begin speaking.

1 MR. RUSSELL: Uh, good evening again, I'm Craig Russell with Russell Mills Studios, and we
2 are here on behalf of Next Chapter Properties, Patrick Quinn, and Chris, out of Champaign, Illinois. So,
3 just a really quick overview on the project. It is in the General Commercial zone district, it's bounded by
4 Employment districts, and it is relatively isolated from many of the Residential zone districts to the east.
5 It's also within the TOD, overlay, zone...just want to reiterate that point. In terms of context, the
6 commercial development around this site is fairly intense. There's been a lot of infill redevelopment
7 activity here. One of the reasons why the...Next Chapter Properties chose the site, is because of the
8 connectivity presented by the Spring Creek Trail, Mason Trail, and the connectivity to campus...as it is a
9 student-oriented development...though the underpass that's been recently completed on Prospect Road.
10 So, it does have great assets in terms of a student-oriented development.

11 There were no modifications requested in our submittals...in our PDP application. There was an
12 alternative compliance request for lighting in a Natural Area buffer zone, and this basically consisted of
13 motionarea...motion-sensored pedestrian lighting, that was basically proposed to an access to the south to
14 the building.

15 Just wanted to address, first of all, the appellants' statement regarding connectivity within the
16 commercial district...Land Use Code 4.2.1, which is kind of the general Article 4, which is the zone
17 district component stating the intent of each zone district. Um...I think the important point here is that,
18 again as City staff stated, level of service requirements are also stated as a way to assess connectivity, and
19 we basically evaluated connections from the site, through the Mason Trail as well as along College
20 Avenue, which you see in the pink area, and then this additional, you know, both to this commercial area,
21 which is basically the entrance to Whole Foods, which you need to get to to walk within that commercial
22 development safely...whether you're going to King Soopers or where ever...whatever other destination
23 you may have.

24 And then, there are two MAX stops also that can be accessed safely along a pedestrian walk. As
25 the appellant mentioned, the remainder of the commercial sites in this area are basically undeveloped
26 parking and are on private land that is not owned by Next Chapter Properties.

27 So, our pedestrian level of service matrix basically shows how this connection along College is
28 compliant with the various criteria. We have Joe Delich here if you'd like to ask questions regarding
29 those criteria later...and how that potential connection is currently not...does not meet pedestrian level of
30 service standards. So, if you think...if you look at this diagram as well in plan view, what's important to
31 note, I think, here, is that there is 25 feet of grade change from the building to the top of the bank here that
32 would need to be dealt with with a ramp. So that's kind of a...that's going to take a lot of space, about
33 275 feet, which basically equates to the distance of Arthur Drive. So, you're not really saving a lot of
34 distance. And you're required to cross through a number of private properties, which are unlit, unsafe, do
35 not currently have easements associated with them, and do not currently have any pedestrian facilities
36 within them as they were developed quite a while ago.

37 So, the next item we'd like to address, 3.4.12, Visual Character Within Natural Buffer
38 Areas...Natural Areas...and this...our natural area buffer standards were met through the performance
39 zone criteria, or performance standard criteria. Essentially, this blue area represents areas of
40 encroachment into that natural area buffer zone along Sherwood Lateral. Again, it's important to mention
41 that we did have an ecological characterization study performed, and that study basically concluded that
42 this is a highly degraded resource. There's not a ton of natural habitat present here. So, there is that
43 component of the study. But, we're also preserving the...going beyond the natural habitat buffer in the
44 green areas. So, we're meeting that distance requirement through those performance standard criteria.

1 We've also worked extensively with City staff to establish planting plan components, and this is
2 from our landscape plans, that basically augment and enhance the...the natural habitat features along the
3 south side of the building. So, these consist of, kind of, multitude of under story, middle story, over story
4 plants, most of them flowering, many pollinators, a lot of perennials, a lot of shrubs get planted in there,
5 and then quite a bit of native seeding within this area. So, this is used...this is used to enhance that
6 natural habitat value of this area. It is important to note, too, that we cannot plant...within the Sherwood
7 Lateral easement, so we've got to stay out of that Sherwood Lateral zone, so we've basically restricted the
8 planting to an area that's kind of in close proximity to the building. So, it is kind of a tight site.

9 In addition to that, we're providing, in this transition zone, between the building face and the
10 right-of-way which is shown here, we're providing a number of shrub beds that are also within retaining
11 wall structures that basically bring the building into compliance with a floodplain overlap. So, we've
12 raised the finished floor of the building to basically get out of the floodplain, and to be above the base
13 flood elevation. Within those planters, we've got under story and middle story trees that also kind of help
14 mitigate the views to the building, help mitigate the overall mass effect along Johnson Drive. And a
15 number of conifers and other species along the face of the wall that's basically along the MAX corridor.

16 So, the other assertion was regarding 3.10.5(F)(3), basically building height, building character
17 items, and especially pertaining to setbacks. So, again, we've provided this transitional zone as a way to
18 help mitigate the mass from the right-of-way. You can see we've also dedicated right-of-way that's
19 beyond the dedication required at Elevations Credit Union to a commercial connector...or sorry, a local
20 connector street standard. So that includes tree lawn and a 6-foot walk. And then we've shown, also, and
21 additional 9-foot setback for the building. As well as within the right-of-way, additional provisions for
22 on-street parking that typically, if you're familiar with a lot of the residential areas with local streets, they
23 tend to get kind of clogged, the travel lanes tend to get sort of clogged as people start parking on streets
24 with that local street standard. So, that's the intent of that street standard is providing that, allowing for
25 that additional on-street parking.

26 As staff mentioned, there are a number of courtyards that face various directions. These are some
27 of the more intensively landscaped courtyards that we're showing dimensions for...within the hatched
28 areas. You can see significant step backs along Johnson Drive. This could also be considered a means of
29 articulation and step back and massing change. So, the overall concept regarding the building massing
30 was really to mitigate that massing by...through providing these courtyards that face essentially all
31 directions. So, really trying to help bring down the mass, bulk, and scale of the building. There's also
32 step backs provided along Spring Court. And you can see in this view...this is the podium of the
33 building, this is the view along Johnson Drive, and you can see, if you're standing in the park further to
34 the right, I think it's consistent with the slides that staff showed. You know, not only does the building
35 not necessarily block that western view, but it recedes substantially in perspective. And you do have this
36 wall that's part of the MAX that really essentially blocks most of the views to the mountains and to
37 anything significant within the park area. So I think that is an important point to note here.

38 Just a couple other points about the architecture...we've very intentionally shown recessed
39 windows, precast cornices, other features that kind of differentiate this structure from a lot of the student
40 housing developments that you see. The recessed windows I think will be shown in stark contrast to
41 the...what was previously The Summit where you've got kind of vinyl windows that are basically stuck
42 on to the side of the building. So, I think we're providing a fairly high quality architectural product, and
43 that's also referenced in the earth tone colors that are shown here, that's mentioned...this was part of the
44 P and Z presentation, it was a condition of approval, but it is part of the P and Z presentation.

1 Shadow analysis, I think, depicts fairly typical shading of a building of this scale during the
2 winter solstice. Other months...you know, even streetscapes are not substantially affected. And we are
3 meeting Code requirements in terms of not shading adjacent structures.

4 Parking mitigation strategies are inherently unenforceable and inconsistent with the Land Use
5 Code...we just wanted to make sure it's understood that this provision of the Land Use Code,
6 3.2.2(K)(1)(a)(1), basically provides a means of achieving a parking reduction for mixed-use or other
7 multi-family projects within the TOD zone district. So this is...this is not above and beyond the Land
8 Use Code, this is embedded in the Land Use Code, it's much like a performance standard, or any other
9 standard which has alternative means of achieving that standard. Parking is provided...for this project, is
10 provided per Land Use Code requirements, there are no deviations from the Land Use Code in the way
11 we're providing parking. So, essentially, this runs through the various mitigation components, again,
12 transit passes for each tenant and car share, 10% for the transit passes for each tenant and 30 for six car
13 share spaces. We believe that car share is very valuable, and these guys have had experience in that in
14 other student-oriented developments. In this particular instance, this car share program that they're
15 proposing allows quite a bit more flexibility than, say, a Zip Car.

16 This references that a lot of the recently approved student housing projects showing percentages
17 of parking, and we're kind of within that median. And this also references, basically, a couple of parking
18 structures, The State and The District, which, when observed, and when parking spaces...vacant parking
19 spaces are counted, show that there's basically an occupancy rate of somewhere around 70 to 75%, or
20 77% right there. So, I think that concludes our presentation.

21 MAYOR TROXELL: Thank you very much, and you're about out of time. So, with that, we're
22 going to take a ten-minute break and we'll be back about 8:00.

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

24 MAYOR TROXELL: We are back from our recess and...

25 COUNCILMEMBER MARTINEZ: Mayor, I have a point I want to bring out...

26 MAYOR TROXELL: Councilmember Martinez?

27 COUNCILMEMBER MARTINEZ: Yeah, in the presentation by the applicants, you mentioned
28 Elevations Credit Union...I wanted to fully disclose that I do sit on the Board of Directors for Elevations
29 Credit Union, but we have no vested interest or anything in the property and I don't believe you have any
30 ties with Elevations Credit Union, if I'm correct? Okay; so I just want that to be disclosed. I have to
31 reason to have any biases; we've had no discussions in Board meetings or anything about that
32 development, in fact we were there before they were. So...

33 MAYOR TROXELL: Thank you very much. And we'll proceed...now we are at appellants and
34 parties-of-interest supporting the appeal may offer any rebuttal, and you will have ten minutes when you
35 begin speaking.

36 MR. PATTERSON: Thank you; there are no slides, so this should go smoother.

37 The conditions regarding the trash and the recycling enclosure read, quote, in a manner
38 substantially compliant with the Planning and Zoning Board's approval. This is circular reasoning. The
39 Planning and Zoning Board did not approve anything other than a condition. I would like to have the
40 citizen representatives on the P and Z Board review the plan for the trash and recycling enclosure that will
41 be right next to the Spring Creek Trail.

1 In the development process, too much can be demanded of developers, and this is not correct. On
2 the other hand, in the current situation, where quoting from the verbatim transcript to the P and Z on page
3 336 of the agenda item summary, the project is, quote, meeting the bare minimums, unquote. And, quote,
4 the project is barely squeaking by, unquote. Where a board member, quote, reluctantly supports it. It is
5 not unreasonable to have an exchange for the mitigation strategies that seek to encourage pedestrian
6 traffic. A direct contribution to improving pedestrian access based on, quote, planning and design that
7 accommodate pedestrians. To also reduce the mass of the development and its impact on the view scape
8 from the park, and this is to the south, the development is huge, it's 74 feet. And finally, to submit the
9 development plans for the trash and recycling enclosure to public review by the Planning and Zoning
10 Board. We in Fort Collins can do better than bare minimums. Thank you for your time and
11 consideration.

12 MAYOR TROXELL: Thank you.

13 MR. SUTHERLAND: It's not unreasonable to expect...there was 8:26 or something, I'll keep it
14 to 8 minutes here...it's not unreasonable to expect that there will be about a thousand people living in this
15 area bounded. If the development that's been proposed for the parcel of land just to the north of Whole
16 Foods up on top of this bluff is developed, you know, it's going to be over a thousand residents living
17 there. I've lived in small towns that had far fewer people than that in there. And so, our request, our
18 desire to see a pedestrian/bicycle connection that ties the whole area together, that brings important areas
19 of commerce, important areas of residences, together...that's what's motivating this appeal right here.
20 That's the missing element. Making those connections is the essence of urban landscape architecture.
21 Giving those public spaces that allow people to flourish in their own neighborhood; that's what it's all
22 about. Without that motivation, I wouldn't be here this evening. But, let me tell you, I remember going
23 to meetings regarding the design of the MAX transit, and I don't even know how long ago, certainly
24 longer than ten years ago, where other citizens would say, gosh, it would be nice to have a trail at this
25 location that crosses that ditch, that puts people from that lower area up to the higher area besides taking
26 this, what I consider to be, unpleasant and probably a little bit dangerous, narrow sidewalk, right along
27 College Avenue, with traffic speeding right by you, no buffer, and a retaining wall on one side of you,
28 okay?

29 Certainly a circuitous route that takes you underneath the MAX and railroad, up the grade and
30 over the overpass to get to Whole Foods from that area, yeah, it's possible, but is it desirable? No. Is it
31 within the realm of possibilities to create this sort of connection, this sort of quality landscape architecture
32 that this city often says that it is trying to pursue in this situation? Absolutely. Would that require a
33 dedication of a right-of-way, at the minimum? Yes, it would, because, to me...the one and only way to
34 build that pathway would go through part of the subject parcel's property. And so, at minimum, we need
35 a dedication of a right-of-way as part of the PDP approval in this situation.

36 I just don't...you know...I'm sorry it's such a time-consuming process, I'm sorry that it takes so
37 much of everybody's time to throw these design details into the mix and get them considered, but they're
38 crucially important to the quality of our community going forward, and particularly to the thousands of
39 people that will come and go from a residence inside this area. We've got a...hundred-million-dollar
40 investment in the MAX transit system; this will make it work better because hundreds of people will be
41 able to get there quickly. You know, that's the essence of what we're trying to pursue.

42 I want to reiterate, here, the fact that the argument against reducing the number of parking spaces
43 for this large of a structure is one of unconstitutional vagueness, unenforceability; that was not addressed
44 in the earlier...maybe it will be addressed in following up. And just, you know, to finally conclude on the

1 point that I spent the most time on...we do not want, by any stretch of the imagination, to have our
2 procedures for having property rights adjudicated be amended on the fly by imposing conditions that
3 change the procedure. Yeah, conditions that change the design, that's a great idea; we can make projects
4 better, we can make people's lives better by utilizing that technique. But, conditions that change the
5 procedure on the fly are something we cannot tolerate. And so I say pretty with certainty, this either is
6 going back to the Planning and Zoning Board, so that they may be the decision-maker on coloration, on
7 trash and recycling facilities, or its going to go to the Municipal Court. Thank you very much.

8 MAYOR TROXELL: Thank you very much, and you still have some time left, almost four
9 minutes. Do you want to use that time Mr. Sutherland?

10 MR. SUTHERLAND: No, thanks.

11 MAYOR TROXELL: Okay. Next we have, finally, the applicant and parties-of-interest against
12 the appeal may offer any rebuttal, and you'll have ten minutes total. And your time will begin whenever
13 you begin speaking.

14 UNIDENTIFIED MEMBER OF APPLICANT'S TEAM: A couple of items just to kick this off.
15 I want to reiterate the fact that Next Chapter Properties pursued this site specifically for its connectivity,
16 for its access to campus, for the fact that you can get to any service anywhere you want, either by virtue
17 of walking along an already established pedestrian path that is well-lit and serviced by a street signal by
18 going down College, or by accessing a trail which is already established and well-used by just about
19 everybody in Fort Collins. Not only that, you can access the MAX, which will get you anywhere in town.

20 As to the procedural issues, I...it's really hard to address those things when the two things we
21 were given conditions of approval on was our trash enclosure on final design and, ultimately, colors. I
22 don't believe those are modifying the procedure.

23 Our parking is written in the TOD Code. Just to throw up the rebuttal here, to the bare minimums
24 comment came up after the discussion of our amenities package, so what we were going to be offering at
25 our property, to which I said was still in development based on what our perceived uses were going to be
26 and who our target demographic would be. I think it's unfortunate to say, somebody that went before us,
27 that person presented something very wow, rooftop pools and bars and all these other things that, frankly,
28 we weren't in agreement with. We were more in agreement with connecting our residents to nature by
29 having lots of open spaces, and being adjacent to a park, and having the access to the trails and the
30 services.

31 As to the photo which was allowed...was allowed...I completely understand you allowing it. I
32 would...had I been prepared for it, I would have prepared something significantly more detailed that
33 would have shown size, scale, scope, massing, opposed to a photo that appeared from my perspective to
34 be cropped, and to have shown the blocking of the building stretching. And the photo...I would also call
35 into question the height, which seems like by building would be higher than the microwave tower sitting
36 25 plus feet up, plus another 75, which is not an accurate representation of the building height and scope
37 and massing. Thank you.

38 UNIDENTIFIED MEMBER OF APPLICANT'S TEAM: Would it be okay if we pulled up our
39 presentation again?

40 MAYOR TROXELL: Yes.

1 UNIDENTIFIED MEMBER OF APPLICANT'S TEAM: Okay. Just want to reiterate, regarding
2 connectivity, again, pedestrian level of service standards are met in this chart. I think there's continued
3 mention of dedication of a right-of-way in order to establish this pedestrian connection. In this case, I
4 think as we showed in this diagram, the property line for this project end before the Sherwood Lateral, so
5 dedication of a right-of-way from here to here...we've already dedicated along Johnson Drive...that
6 could be provided as a means to pursue that connection in the future. I think we do not have the ability to
7 dedicate right-of-way or easements on other people's property. So, this...there are a number of, again,
8 privately owned parcels, one owned by the former Peleton Cycles, one owned by this existing storage
9 facility, and one owned by this commercial area. The applicant...or the appellant showed a diagram of a
10 pedestrian kind of connection up this hillside that had been contemplated during the PDR, initial, early
11 stages of the project. We analyzed the ramp configuration again, 275 feet...it almost becomes as
12 circuitous as the ramp system up the overpass. And that 275 feet is the same distance as Arthur Drive, so
13 you're saving by doing this connection 300 feet in distance. It's a lot of money, a lot of time, a lot of
14 agreements to obtain, a lot of intrusiveness into the Sherwood Lateral natural area buffer, and this...there
15 is no guarantee that you can obtain easements from these private property owners.

16 So, I think the final thing with that is, are pedestrian level of service...the pedestrian level of
17 service standards for this connection largely weren't met in part by the safety criteria presented in
18 the...which...that constitute safe lighting of that passageway. And we think this is really important for a
19 student-oriented development where you're encouraging students to walk towards this commercial area
20 and towards the MAX stop. If you don't have lighting, it gets really difficult to, you know, expect your
21 18-year-old daughter to walk out there at night. I think it's just...it's just, um, it becomes very difficult
22 then to run conduit up here, put lighting on this within parking lots and circulation drives of privately-
23 owned properties.

24 So, I think what we're trying to say is, when you really factor in all of the analysis of that
25 connection, it's all off-site, there's the Sherwood Lateral Ditch crossing and permits required as such,
26 there's the easements that need to be acquired, there's the lighting that needs to be installed, there's the
27 ramp system that needs to be installed within the Sherwood Lateral, which would either take out a number
28 of existing trees or require three...three easements within private land. So, it's an incredibly complex
29 task to achieve this kind of...this kind of a connection. When we had analyzed the steps, there was a
30 development proposal called Spring Station that could have potentially been a workable solution. We
31 were also...there was also some indication, that was later not confirmed, that there was some kind of an
32 easement established through here already. So, those two factors out of the equation, it becomes, you
33 know, we're back to square one, I think. So, that's...that's kind of the back story on that.

34 And, I think in terms of views to the south that were stated by the appellant, this is an important
35 thing to remember, is that we really do have this substantial embankment. You can't see much over that
36 embankment if you're standing in the park. You can't see much over the MAX wall. So, it really
37 becomes, you know, the views...the view sheds become somewhat questionable from that Creekside
38 Park. I'm not sure what the significant view sheds are to.

39 And, I think in terms of enforceability of the car share, in terms of enforceability of the transit
40 passes, the development agreement that will be signed by Next Chapter Properties and the City is an
41 agreement that establishes those enforcement mechanisms, it's an agreement as to the specifics of how
42 those car share...or car share...how that car share component and transit passes all work together to
43 provide those amenities. I think that concludes everything.

1 MAYOR TROXELL: Thank you very much. And, any...you have roughly about a
2 minute...you're good? Okay. Okay...now, does Council have any questions of the City staff or the
3 parties-in-interest? Bob?

4 COUNCILMEMBER OVERBECK: Thank you Mayor. I have a question about the ride sharing.
5 Is this based upon people using the fixed space to ride share or car share?

6 MR. LEESON: By fixed space, do you mean there's an identified, designated space within the
7 parking garage?

8 COUNCILMEMBER OVERBECK: Yes.

9 MR. LEESON: Yes, so there could be. We have not identified specific parking spaces within the
10 parking garage on the plans at this time, but we certainly could designate, you know, exactly where the
11 six car share spaces would go within the parking garage, but I don't believe that they've been specifically
12 identified.

13 COUNCILMEMBER OVERBECK: So, you're...you're looking at the car share in terms of the
14 Uber, Lyft phenomenon? Is that it as well? Or Zip Car; I guess it's Zip Car...but are you also looking at
15 the Uber, Lyft dynamic as well?

16 MR. LEESON: This would be not through Uber, it would be through a car share service that the
17 developer is required to provide. So, that type of car share service could change in the future...so what
18 we require is that they provide the car share spaces, and then we note on the site plan, along with other
19 conditions, that the developer would be responsible for providing those shared cars, and then we enforce
20 from there. But we don't...we don't specify a specific service provider or how they do that in case that
21 service might change in the future.

22 COUNCILMEMBER OVERBECK: Okay, thank you for that response. Also, want to ask you
23 about the spillover parking. I know the then Summit had issues; I believe it has been fixed, but how are
24 you looking forward that we won't see spillover parking in adjacent neighborhoods.

25 MR. LEESON: Well, that's...that's a tough issue that the City faces. And the main thing I
26 believe that we're doing when we're talking with Parking Services is we're establishing the RP3 zones,
27 and we're enforcing on-street parking around the perimeter of campus. So there is an RP3 zone that
28 incorporates Spring Court and Johnson Drive. There is also an RP3 zone directly across to the east of the
29 State on campus, The Summit. So, it's primarily through enforcement. You know, there is a recognition
30 that, as development intensifies, and we do see additional infill projects, that there is going to be
31 more...just naturally more demand for on-street parking. So, the main things that we're doing is
32 enforcement through the RP3 program, and then making certain that the new student housing
33 developments that come on-line provide...meet the Code and provide sufficient off-street parking.

34 COUNCILMEMBER OVERBECK: Okay, thank you. No other questions.

35 MAYOR TROXELL: Thank you Bob. Questions? Kristin, please.

36 COUNCILMEMBER STEPHENS: I have a question about transit passes. So, I know that all
37 CSU students have annual passes, and is that...I mean, that's what mostly we're looking at when
38 people...so, the apartments aren't necessarily providing transit passes too, they're assuming that the
39 students will be getting them as part of their student fees. I mean...they say they're free, but I mean,
40 students actually pay for them. So, is that how they're meeting that requirement? Is that how most places
41 meet that requirement?

1 MR. LEESON: You know, it really depends. We do have some projects that are coming on-line
2 in the TOD zone that aren't as student-oriented, and they are providing transit passes. So, again, we note
3 these requirements on the site plan, and then we enforce from there. But, it is fair to say that, because this
4 is a student-oriented project, and the students do receive transit passes, then that just naturally occurs. But
5 it doesn't necessarily mean that they...they're not allowed to have that requirement per Code. I think
6 what we would say is that they...we need to note on the site plan and make certain that they are
7 providing...that they are advertising and openly providing transit passes for residents who might not have
8 transit passes.

9 COUNCILMEMBER STEPHENS: And would those always be annual passes, because it seems
10 like there was some confusion about whether...what kind of pass that meant. Do we need to specify more
11 that that's an annual pass, or...is that what we're always looking at when we look at that?

12 MR. LEESON: We could provide more specific notations on the site plan; we have been talking
13 about crafting detailed notes related to these enforcement items, but honestly, we haven't gotten to the
14 point to say how we would do that specifically.

15 MAYOR TROXELL: Any other questions of staff? Ross, please.

16 COUNCILMEMBER CUNNIFF: Yes, real quickly...on the view shed...3.4.1...paren [sic] 2,
17 Visual Character of Natural Features, the appellant's were referring repeatedly to the Spring Creek buffer
18 zone, I believe...is that what your understanding of where they were trying to assert the visual
19 degradation was occurring?

20 MR. LEESON: Well, the appeal assertion stated 3.4...was, I believe I(2)...

21 COUNCILMEMBER CUNNIFF: Yes, that's what I'm talking about.

22 MR. LEESON: Which is the natural buffer zone that is on the site, so the natural buffer zone that
23 is...or the natural feature that is on the site is the Sherwood Lateral. The Spring Creek natural area to the
24 north is not on the site, so that was a different Code provision.

25 COUNCILMEMBER CUNNIFF: I see. So, okay...um...so, given the Sherwood Lateral view
26 shed, I believe there was some analysis made of what views, if any, there were from the vicinity of the
27 Sherwood Lateral, is that correct?

28 MR. LEESON: There was...that was part of the analysis in terms of the view of that natural area
29 from the site.

30 COUNCILMEMBER CUNNIFF: And the natural features that you were trying to see if were
31 visible included things like Horsetooth Mountain and other typical standards?

32 MR. LEESON: I believe the Code provision is specifically of that particular natural feature.

33 COUNCILMEMBER CUNNIFF: Yeah...

34 MR. LEESON: Not of the surrounding area.

35 COUNCILMEMBER CUNNIFF: Right.

36 MR. LEESON: Right.

37 COUNCILMEMBER CUNNIFF: Um...okay...and then, on the question of the modification of
38 standard, would you say that this was a substantial in character or size of modification relative to the size

1 of the project? Adding the trash enclosures...I'm forgetting now what the other one was...would you say
2 that that was a major, kind of, modification?

3 MR. LEESON: They weren't actually modifications of standard, they were just conditions of
4 approval.

5 COUNCILMEMBER CUNNIFF: That's what I meant, I'm sorry, thank you.

6 MR. LEESON: No problem...but, so...yeah, we would consider those pretty minor. They were
7 discussed at the hearing. One of the...the condition related to color, that was actually incorporated into
8 the presentation, so the staff presentation had the old colors, and there was one that we were still working
9 on that was a little bit of a darker tone, so you could see a little bit of a difference between the staff
10 presentation and the applicant's presentation. So they actually presented the new color to the Board.

11 COUNCILMEMBER CUNNIFF: Okay, so comparing those conditions to our typical process for
12 projects that are approved...frequently adjustments have to be made as projects are constructed, right?
13 Such that you find that the retaining wall needs to be two feet further this way, or...what's the process
14 that we have for that kind of event? Does staff evaluate it at final occupancy permit, or...?

15 MR. LEESON: That's right, so after the Planning and Zoning Board hearing, there's the final
16 plan review step, and at that point, we further review the plans. And we have specific standards in the
17 Land Use Code that talk about trash enclosures and trash enclosure design, so we would continue to
18 implement those standards.

19 COUNCILMEMBER CUNNIFF: Right, well, I guess what I'm asking is, is the scope of this
20 comparable to the scope of adjustments that might have to be made in the construction of any typical
21 project.

22 MR. LEESON: These...yes...it's pretty typical in these conditions of approval and the subject
23 matter of the conditions. They're not unusual.

24 COUNCILMEMBER CUNNIFF: Okay, and then...um...the...I guess the final question for me
25 has to do with, um...just the assertion that the Planning and Zoning Board approved it with some
26 concerns. And I've read the minutes, and it seems to me that the concerns weren't about these
27 modifications, but were rather about the constraints of the site, but that the Planning and Zoning Board
28 felt that their concerns were more about their personal preferences, but that the Land Use Code dictated
29 that this project should be allowable. Is that interpretation...I'm interpreting what I read. Is that your
30 interpretation of what happened at the P and Z meeting?

31 MR. LEESON: Yes.

32 COUNCILMEMBER CUNNIFF: Okay, thank you.

33 MAYOR TROXELL: Thank you Ross. Ray?

34 COUNCILMEMBER MARTINEZ: Yeah, just to...one statement that bothered me by the...the
35 appellant referred to that...made a statement about the P and Z applied conditions that changed the
36 procedure and noted that the staff has deceptive arguments. What are those deceptive arguments that
37 you're talking about? Could I ask if he could...?

38 MAYOR TROXELL: Mr. Sutherland, do you want to address that?

1 COUNCILMEMBER MARTINEZ: And just be brief; I want to know what you mean by that.
2 What are the deceptive arguments?

3 MR. SUTHERLAND: The deceptive arguments come...stem precisely from the idea that the
4 conditions were not conditions applied to the design parameters of the project. The conditions were
5 applied to the procedure by which the project was approved. Suddenly, there's somebody else making
6 decisions that can't be appealed by the citizens because it's outside the quasi-judicial process.

7 COUNCILMEMBER MARTINEZ: Okay.

8 MR. SUTHERLAND: And that...and to defend that departure from process is deceptive.

9 COUNCILMEMBER MARTINEZ: Okay...may I ask for a staff response...how you interpret
10 that, or what he's trying to say?

11 MR. LEESON: I am a little bit confused by that statement...

12 COUNCILMEMBER MARTINEZ: So am I.

13 MR. LEESON: To be honest. The conditions of approval on this case are similar to conditions of
14 approval as far as the level of the condition...similar to other past projects. Conditions of approval have
15 been introduced and carried forward on other projects. Again, it's not unusual, and these particular
16 conditions were related to design.

17 COUNCILMEMBER MARTINEZ: Okay...now these sidewalks on College Avenue...

18 MAYOR PRO TEM HORAK: Mr. Martinez...I was just going to ask if I could then follow-up
19 that same question, but to the City Attorney or the attorneys for Planning and Zoning? So, what sort of
20 comment would you have on that...how do you look at this allegation and what would be your response,
21 or what would you like in the record relating to it?

22 CITY ATTORNEY DAGGETT: I might offer Assistant City Attorney Brad Yatabe a chance to
23 respond to this as well, but my, sort of, introductory comment is that it's certainly clear in the Land Use
24 Code that the decision maker under the Land Use Code is authorized to impose conditions as part of the
25 approval, and that in some cases, those conditions relate to assuring that the project is in compliance with
26 the Land Use Code. And maybe I should turn it over to Brad...to give him a chance to add to that.

27 MAYOR TROXELL: Brad, please?

28 ASSISTANT CITY ATTORNEY BRAD YATABE: Good evening, Brad Yatabe, Assistant City
29 Attorney. I would agree with what the City Attorney has said. I think it's interesting that the question
30 before you is whether the Land Use Code provides for the imposition of conditions of approval. At least
31 in my reading, the Land Use Code does provide for that. It provides that staff may propose conditions of
32 approval that, if accepted by the decision maker, those conditions of approval can be used to essentially, if
33 satisfied, satisfy the conditions of the Land Use Code, and the conditions of approval are certainly
34 inherent in the process and explicitly listed in the process as an ability of a decision maker to impose. So,
35 I think, under that reading...I guess I don't read that...see that as a deception or some kind of slight of
36 hand. That is explicitly authorized under the Land Use Code, and certainly the Land Use Code is duly
37 adopted by ordinance by the City Council, so I think that there is the ability to do that as written.

38 COUNCILMEMBER MARTINEZ: So, that's in essence following the rule of law then, right?

1 ASSISTANT CITY ATTORNEY YATABE: That's correct in the sense that the Land Use Code
2 is adopted law.

3 COUNCILMEMBER MARTINEZ: That's what we wanted right? I think that's what everyone
4 asked for is to follow the rule of law, and I think that's what's been done there. Let me ask another
5 question...the AIS on packet page number ten...I think about the third paragraph down...the appellant
6 states the grounds for the appeal and asserts that these provisions of the LUC are the equivalent of an
7 unconstitutional law and must be deemed...when considering sufficiency of the PDP. Is there any
8 constitutional issue here I would ask the attorneys?

9 ASSISTANT CITY ATTORNEY YATABE: If I could just take...locate that language.

10 COUNCILMEMBER MARTINEZ: Okay.

11 ASSISTANT CITY ATTORNEY YATABE: I'm sorry, you were saying that was on page ten?

12 COUNCILMEMBER MARTINEZ: Page ten of the packet...packet page ten...or the AIS page
13 nine.

14 ASSISTANT CITY ATTORNEY YATABE: Thank you.

15 COUNCILMEMBER MARTINEZ: It would be under where it says the appellant states, right
16 under letter E. You with me? Okay.

17 ASSISTANT CITY ATTORNEY YATABE: Well, I think the appellant may be the best party to
18 shed light on the meaning of that argument. As I understand the argument, essentially saying that it's
19 unconstitutional because, as he reads the Land Use Code, or the appellants read the Land Use Code, it
20 requires all of the standards be satisfied in order for the decision maker to approve it. My reading of the
21 Code is that there is the ability for conditions of approval to be put into place in order to meet those
22 standards. So, as I read the argument, the assertion is that all of those need to be satisfied and you can't
23 do that with a condition of approval; therefore, that is unconstitutional or unlawful. Potentially, I
24 suppose, if you trace it back to a constitutional issue, there could be something there. But, again, I point
25 back to the Land Use Code and the authority in there to impose conditions of approval.

26 COUNCILMEMBER MARTINEZ: Okay, alright, that's fine. Thank you. One more question.

27 MAYOR TROXELL: Gerry, you want to follow up on that?

28 MAYOR PRO TEM HORAK: Yeah, I just want to follow up and let Mr. Sutherland respond
29 because he was shaking his head, so obviously he has...that's not what his interpretation was.

30 MR. SUTHERLAND: Well, thank you Mayor Pro Tem. Very briefly, Councilmember Martinez,
31 the question of constitutional dimension is the specificity under which the demand mitigation strategies
32 are detailed in the Land Use Code. Reasonable people could not agree upon what those meant,
33 reasonable people could not conclude that they are enforceable, and reasonable people could not conclude
34 that there will be a commensurate reduction in spillover parking by virtue of the application of those
35 demand mitigation strategies. Under Article 2, Section 25 of the Colorado constitution, which is our due
36 process clause, laws that cannot be reasonably construed by reasonable people are unconstitutionally
37 vague, and that is the argument in that regard. So, it doesn't really go to the Land Use Code.

38 I believe that Mr. Yatabe just sort of answered your question without referencing the fact that
39 that's the question of constitutional dimension, not the nature of what soft of conditions can be applied.

1 And in that regard, there's absolutely no doubt that conditions can be applied by the decision maker, and
2 that's a great thing. Conditions go above and beyond the requirements of the Land Use Code to ensure
3 we're getting the quality development that the citizens of Fort Collins should be expecting in one of the
4 greatest places to live, no doubt about it. But still, in any condition of approval, the decision maker
5 decides what's right and what's wrong. In this particular case, the Planning and Zoning Board has
6 deferred that decision of what's right and what's wrong to somebody else at some later time that cannot
7 be reached by citizen...appeal of the decision.

8 And to take to an extreme degree, maybe the issue that was left to be resolved at some later point
9 in time by some unspecified person was the height of the building...that's extreme.

10 MAYOR TROXELL: Thank you...

11 MAYOR PRO TEM HORAK: Mr. Sutherland, you answered my question...

12 COUNCILMEMBER MARTINEZ: Yeah...any response to that?

13 ASSISTANT CITY ATTORNEY YATABE: I will clarify that. My response was in relation to a
14 discussion of whether conditions of approval could be imposed by the decision maker. I think the
15 response from Mr. Sutherland is on the separate topic, which is whether the mitigation with regards to
16 parking, is constitutional and unconstitutionally vague, but those are very different arguments. And so
17 that...just to be clear, that was what...I was not addressing the second argument as to unconstitutional
18 vagueness, I was really addressing the issue as to the conditions of approval.

19 COUNCILMEMBER MARTINEZ: Can you address what he was arguing though?

20 ASSISTANT CITY ATTORNEY YATABE: Well...I think to paraphrase what I understand is
21 the argument to be as to vagueness, I think he is saying that the definition...or the terms that are used in
22 terms of the mitigation measures, for example car share, he believes are unconstitutionally vague, and so
23 vague that they can't be enforced. I will say, I haven't sat down...since this a relatively new argument as
24 part of this appeal, not necessarily stated as part of the underlying notice of appeal, but more related to the
25 presentation tonight and that argument. But, I think, in my understanding at this point, that
26 unconstitutional vagueness really means that reasonable persons can't agree to what that means. To me,
27 the term car share or transit passes, I think are subject to a reasonable interpretation. So I think that that
28 is, at this point in my understanding, that is defensible, that reasonable people could understand what
29 those terms mean...it's not so vague that people will have absolutely no idea where is unreasonable.

30 COUNCILMEMBER MARTINEZ: Okay...I think that...but the procedural-wise, everything is
31 in step, is that correct?

32 ASSISTANT CITY ATTORNEY YATABE: As I understand it; it is procedurally according to
33 what is laid out in the Land Use Code, yes.

34 COUNCILMEMBER MARTINEZ: But who wants to define what they understand or not can be
35 later determined maybe at the United States Supreme Court or something then...so...

36 ASSISTANT CITY ATTORNEY YATABE: I suppose so.

37 COUNCILMEMBER MARTINEZ: Yeah...okay, let me...I've got one more question. I'll make
38 this one simple. On the sidewalk on College Avenue from Johnson Drive going south...I mean, that
39 really is a very narrow sidewalk. I doubt if you could get a wheelchair down it. I mean, the appellants
40 have brought up a good point. But what does that have anything to do with what their...the scope of what

1 they're building and developing? Is that their problem or is that something for the City to deal with later
2 on, or how does that work? Because that is a horrible sidewalk, it really is.

3 MR. LEESON: Councilmember Martinez, the sidewalk along College Avenue was part of the
4 evaluation for the level of service standards for the pedestrians that would be leaving the site or going to
5 that site. So, the level of service standards for pedestrian connections is based on 5 different criteria and
6 they range from directness, continuity, street crossing, visual interest and amenity and security. So we do
7 establish standards for all five of those. And we evaluated both the College Avenue connection as well as
8 the Mason Street connection. They met the level of service standards.

9 Now, we agree that the College Avenue sidewalk is not ideal, and it's certainly not an A in terms
10 of the level of service standards, but it did meet the level of service standards as required by the Code.

11 COUNCILMEMBER MARTINEZ: Have you been on that sidewalk...do you know what I'm
12 talking about?

13 MR. LEESON: Yes, it is...and it's an attached sidewalk, and the speeds in that area are fast. And
14 we do agree that some future improvements should be made along that stretch and along a lot of stretch of
15 the sidewalk along College Avenue.

16 COUNCILMEMBER MARTINEZ: Who does that; who is responsible for that? Will we
17 eventually do that, or how does that get done?

18 MR. LEESON: Most likely it would be a capital project of the City at some point in the future,
19 yes. You know, it's difficult, there's private property, there's topography, significant topography change
20 in that area, so we have no identified that as a future capital project at this point. But, it's not...it would
21 not be the responsibility of this particular developer...

22 COUNCILMEMBER MARTINEZ: That's what I'm concerned about, yeah...

23 MR. LEESON: To fix that portion of the sidewalk.

24 COUNCILMEMBER MARTINEZ: Okay, that clears the air for me. But, I agree, somewhere in
25 the future we've got to deal with it.

26 MAYOR TROXELL: Any other questions? Ross, please.

27 COUNCILMEMBER CUNNIFF: Yeah, thanks, after listening to Mr. Sutherland's discussion, I
28 think I now understand better why he asserts that there is a process issue here. I'm not sure yet that I
29 agree though, but the...reading the staff report, staff found that it was compliant and then subject to two
30 conditions of approval. I'm trying to understand if staff found it compliant and then wanted to add these
31 other conditions of approval on top of it? That's not quite what it says...can you describe that?

32 MR. LEESON: Well, you know, we have lots of different aspects of a site plan and other
33 documents that are submitted, and our process has, you know, the PDP, that has a certain level of design
34 that's shown. So, with some items, we want to make sure that we have the framework there, but...so that
35 we're certain that the project can continue forward through to the final plan phase and they can continue
36 to work out some of the details of the project to ensure that they are designed properly. But, it's not
37 unusual to have projects at the PDP phase that still need design work and details to be refined with the
38 final plan phase. And that's what we're looking at here. They submitted at the Planning and Zoning
39 Board hearing, a trash enclosure design, and they showed that design to the Planning and Zoning Board

1 and it was discussed. And we felt that we still wanted to have the conditions of approval in place so that
2 we could continue to refine and work on the trash enclosure design at final plan phase.

3 COUNCILMEMBER CUNNIFF: But would the trash enclosure...and I know this is
4 hypothetical, but as presented, been compliant, in your opinion...with the Land Use Code?

5 MR. LEESON: Yes.

6 COUNCILMEMBER CUNNIFF: And then what about the colors and materials...I see some
7 conflicting information in the way I read the staff presentation. It talks about the materials are used...the
8 brick and others are compatible with the LUC, but then we've got this modification. Why that second
9 modification on the colors? I don't understand.

10 MR. LEESON: So, that particular condition related to one building color that was shown with the
11 plans that they submitted to the Planning and Zoning Board. And then we felt that that color needed to be
12 lighter...especially considering nearby adjacent natural features. We wanted to make sure that it was a
13 little bit...in looking at our Land Use Code criteria, we felt that there needed to be some adjustments to
14 that color, and then they conveyed that color change to the Planning and Zoning Board at the hearing.
15 But we felt that it was still okay...that there wasn't any harm in keeping that condition of approval
16 in...along with the approved project.

17 COUNCILMEMBER CUNNIFF: The reason I probe on this is because the way the motion was
18 made, and the discussion around the motion, on the Board, does...could lead one to believe that the
19 project was not compliant with the Land Use Code unless these two modifications were made that would
20 then not be reviewed by anybody. In other words...let me read the quote...based on the finding facts, two
21 following conditions of approval...I guess my feedback would be, having this discussion, and I think we
22 can...I believe we can find that the intent...and the belief was that it was compliant, but I think that
23 there's some process improvements that are needed here, because it leaves it vague whether you're saying
24 that it meets the Land Use Code and here's some additional conditions of approval that would made it
25 better, or there's more design work to be done, that design work needs to be complete, and I can't tell you
26 yet whether it's compatible with the Land Use Code until the design work is complete. The latter I think,
27 in my opinion, would be unacceptable for the P and Z to make that determination. I would find that they
28 failed to conduct a fair hearing in that case.

29 I don't...you know, reading between the lines, hearing your discussion, it doesn't sound like, at
30 least, what the intent was, but it's less than clear reading the materials. So, that's...that's my concern.

31 MR. LEESON: So, I guess if I could just maybe help provide a little bit of clarification if you
32 could bear with me. Typically what we do, and on page two of the staff report in the Executive
33 Summary, essentially what we say is that the PDP complies with all standards located in Article 3,
34 General Development Standards, with two conditions of approval recommended. So, there is an entire
35 final plan...the review just doesn't stop at the Planning and Zoning...after the Planning and Zoning...

36 COUNCILMEMBER CUNNIFF: And I do understand that, it's just that the way the final part of
37 the AIS was written followed by the way the motion was made, without all the context, could lead
38 one...so that's my suggestion for a future process improvement, just to make it clearer that these
39 conditioned approvals are either improvements or they are essentially remanding the project back into the
40 process because it does not comply with the Land Use Code because of deficiencies. Am I making
41 myself clear...?

42 MR. LEESON: Yes...I understand.

1 COUNCILMEMBER CUNNIFF: But, that wasn't the intent, though, of what the conditions of
2 approval were in this case, is my understanding.

3 MR. LEESON: That's correct.

4 COUNCILMEMBER CUNNIFF: Okay...and I think we can clarify that intent with Council
5 action tonight.

6 MAYOR TROXELL: Thank you. Any other questions? So now I will close the hearing and the
7 Council will move into discussion. Who would like to begin the discussion on this particular item? Ray?

8 COUNCILMEMBER MARTINEZ: No...I think I got all my questions answered.

9 MAYOR TROXELL: Ross?

10 COUNCILMEMBER CUNNIFF: Yeah, just in general, I think a fair hearing was conducted, and
11 I think it was a hearing compatible with our usual and customary practices, but as I said, with some
12 process improvements, that would be helpful for increasing transparency and understanding among the
13 general public about what's going on.

14 Additionally, on the merits of the Land Use Code allegations...the specific allegations that the
15 appellant raises, I don't find compelling evidence that the Land Use Code was improperly interpreted.
16 The TOD requirements are clear, the pedestrian traffic impact requirements are clear and were found to
17 have been met, the view shed is very much unlike what we faced with The Summit where the structure
18 itself was actually in the buffer zone, and that was a very significant difference with what we're talking
19 about here where the structure is not in the buffer zone, and in fact the property doesn't even, I believe,
20 impact...touch the Spring Creek buffer zone, although it does touch this other view shed.

21 I guess one other question I had...this might be more of an environmental question. One of the
22 key section...discussions around the section of view sheds and compatibility has to do with how well
23 used by wildlife this particular corridor is, and I assume we have some understanding...my expectation is
24 it's not heavily used at this location because of the proximity of the railroad embankment and the tunnel,
25 but I'd be interested to know what we know.

26 MS. REBECCA EVERETTE: Rebecca Everette, Senior Environmental Planner. That is a correct
27 characterization of the wildlife movement on the site. An ecological characterization study was prepared
28 for this project, and the findings in that report were that the Sherwood Lateral is used as a movement
29 corridor by urban-adapted songbirds, small terrestrial wildlife, and aquatic organisms, but only on a very
30 limited scale because there is the railroad embankment, College Avenue, culverts with grates over them,
31 and other obstructions that prevent larger wildlife to move through the corridor.

32 COUNCILMEMBER CUNNIFF: Okay, so based on that, the rest of the standard, to me, is less
33 applicable. And so, I don't find that the buffer zone Land Use Code has been violated, I find that it is
34 compliant.

35 MAYOR TROXELL: Thank you. Any other discussion? Kristin, please.

36 COUNCILMEMBER STEPHENS: Yeah, thank you Mayor. With regards to the
37 unconstitutionally vague mitigation strategies for the transit-oriented development, I think there is some
38 vagueness. I wouldn't say it's unconstitutionally vague, I think we all generally agree what car share and
39 transit pass is, but I think it couldn't hurt, really, in the future for us to define those better. Especially
40 with transit passes, if we're not talking about, you know, apartments that are geared toward students, I

1 think it, you know, I mean it...I just think that that would be helpful to add. As far as the connectivity, I
2 think connectivity is very important, and I'm glad we have a discussion about connectivity, because I
3 think it does build neighborhoods and it makes people far more comfortable and able to access food and
4 recreation and that, but the idea of something over the Sherwood Lateral, as I understand it, is sort of a
5 bridge to nowhere, it's kind of putting people out, then, into some dark parking lots. That doesn't seem to
6 make very much sense. So, I guess my hope is that at some point, you know, we're looking at kind of the
7 sidewalk connections along that...along that stretch of College; I think that that would be good. In the
8 meantime, I think that there are...that the sidewalk there, and the access to the bike path, make it so that
9 there are connections. I wouldn't say they are ideal, but I don't see that any connection...pedestrian
10 connection...over the Sherwood Lateral actually improves the connections in that area. So, yeah, that's
11 all I have.

12 MAYOR TROXELL: Thank you. Ray?

13 COUNCILMEMBER MARTINEZ: Yeah, just a couple comments because I want to clear the air.
14 And there's a couple points here that I just want to make sure we stress, and that is that the Land Use
15 Code, as the allegation was made, was not improperly interpreted, and there's no evidence of it, nothing
16 that I've heard, for me. And there was nothing deceptive by staff or during the P and Z hearing,
17 absolutely nothing that I see that at all...I think they follow the rule of law that they were supposed to.
18 And there was not any false or grossly misleading evidence...I didn't see any evidence of that
19 whatsoever, not even a hint of it. And there's no departure of legislative intent by the development in the
20 review process whatsoever. So, I'm not sure...sometimes I wonder why it's here.

21 MAYOR TROXELL: Thank you...looking for a motion? Gerry?

22 MAYOR PRO TEM HORAK: Yes, Mayor, I move that the Council finds the Planning and
23 Zoning Board conducted a fair hearing in its consideration of the Johnson Drive Apartments Project
24 Development Plan PDP170034, and did not consider evidence relevant to its decision that was
25 substantially false or grossly misleading. And I further move that based on the evidence in the record and
26 presented at this hearing, the appeal alleging the Planning and Zoning Board did not conduct a fair
27 hearing is hereby found to be without merit and is denied.

28 COUNCILMEMBER STEPHENS: Second that.

29 MAYOR TROXELL: There is a motion and a second. Any discussion regarding the motion
30 regarding the fair hearing? Gerry?

31 MAYOR PRO TEM HORAK: Yeah, I would just like to add on that I think the motion that
32 Board member Hansen made...I know Councilmember Cunniff referred to it, but if you read the entire
33 text there, and I'm referring to page 20, lines 23 through 37, it was very apparent that he knew exactly
34 what he was doing. He was saying that the project is compliant with the PDP as appeared in the staff
35 record, and said, based on that, he's also recommending what the staff said as the conditions added on to
36 it. He did not say that it is not compliant and you need to do conditions. And I think...I don't have...I
37 could read the text, but I'm just referring to it because there's no need to have to read it, and actually went
38 into some detail on it.

39 MAYOR TROXELL: Thank you. Any other comments? Ken, please.

40 COUNCILMEMBER SUMMERS: Yeah, thank you Mr. Mayor, and I'll just chime in a little bit
41 and somewhat echo the Mayor Pro Tem's comments from...you know, from my reading of the minutes of
42 the P and Z Board meeting, they actually felt very constrained by the Land Use Code. You know, I

1 noticed comments almost from every...you know...every member, you know, in that regard. In other
2 words, it seemed like it was a challenge...as a matter of fact, you know the comments by one of the
3 members says I'll be supporting this project too because I can't think of a reason not to...he goes, that's
4 not a great...that's really a great recommendation, but there are a lot of challenges on this site, there are a
5 lot of challenges in this area, and I think they are meeting them the best they can.

6 And so, you know, while the individual members, like us, maybe would say, yeah, I'd like some
7 things to be different, or you know, there's some things that, you know...made reference to meeting
8 minimum requirements, I mean...you know, we do have requirements, and we have minimum
9 requirements, and yeah, it's nice when you go over and above the minimum, so to speak, but I guess we
10 have minimum requirements for a reason. And I think the P and Z Board was wrestling with that in the
11 fact that they are meeting the requirements, and so we are compelled to, you know, approve the project
12 based on the Land Use Code, and to address some of the issues of concern the best we can. When you get
13 down to...and I agree with Councilmember Stephens in terms of it'd be nice moving forward to, you
14 know, understand the need for, you know, defining terms and so forth...like that...but, man, when you
15 get down to trash enclosures and colors of a building, I mean, that's pretty minimum when you're talking
16 about a multi-million dollar project like this. So, it looks like there was certainly a fair hearing that was
17 conducted.

18 MAYOR TROXELL: Thank you Ken. Any other comments on fair hearing? The motion that's
19 before us? Seeing none, roll call please.

20 CITY CLERK COLDIRON: Horak?

21 MAYOR PRO TEM HORAK: Yes.

22 CITY CLERK COLDIRON: Troxell?

23 MAYOR TROXELL: Yes.

24 CITY CLERK COLDIRON: Stephens?

25 COUNCILMEMBER STEPHENS: Yes.

26 CITY CLERK COLDIRON: Martinez?

27 COUNCILMEMBER MARTINEZ: Yes.

28 CITY CLERK COLDIRON: Summers?

29 COUNCILMEMBER SUMMERS: Yes.

30 CITY CLERK COLDIRON: Cunniff?

31 COUNCILMEMBER CUNNIFF: Yes.

32 CITY CLERK COLDIRON: Overbeck?

33 COUNCILMEMBER OVERBECK: Yes.

34 MAYOR TROXELL: The motion passes, now I'm looking for a motion regarding the proper
35 interpretation, relevant Land Use Code sections. Gerry, please.

1 MAYOR PRO TEM HORAK: Yes, Mr. Mayor, I move to uphold the decision of the Planning
2 and Zoning Board approving the Johnson Drive Apartments Project Development Plan PDP170034
3 because the Board properly interpreted and applied the relevant provisions of the Land Use Code cited in
4 the appeal notice, and I further move that based on the evidence in the record and presented at this
5 hearing, the appeal is hereby found to be without merit and is denied.

6 COUNCILMEMBER STEPHENS: Second that.

7 MAYOR TROXELL: There's a motion and a second, any comments, final comments on this?
8 Gerry?

9 MAYOR PRO TEM HORAK: Yeah, I would just like to say...reiterate that this particular project
10 met the standards that we have, the Land...Land Use standard and Code. And whether they met it
11 above...how much above that or not, is not what the hearing was about, nor evidence was presented as to
12 how much more, how much less...the clear indication was from the staff report, and from the deliberation
13 of P and Z, they met the standard, which is what you have to do, and they did.

14 The one about...some of the other ones about concern for pedestrian access, I think, those are all
15 good comments, but I would say...I would say it would be very hard for development to have to comply
16 with something that isn't specified. So, that specified part...if we don't have a pedestrian/bicycle plan for
17 that chunk of east [*sic*] College, or anywhere else in the community, it would be hard to say that one
18 needs to give a right-of-way or do something else absence [*sic*] of a plan. So again, it's not related to this
19 hearing, but I would...my point is, I would expect to see that more if we're have...this is the issue, that
20 the planning staff would like to address, we need to have plans so then developers can connect to which
21 would make more sense...somebody has to do some hard work and work those out, but, again, that's not
22 something for this development to have to figure out, that's something for the staff and the Council to
23 figure out when we sit as the legislative body for doing that.

24 So...and I appreciate...and only one I'd add is if there's anything from our attorneys that they
25 would like to add into the record that they feel is appropriate would be appreciated.

26 MAYOR TROXELL: Thank you. Carrie, any response?

27 CITY ATTORNEY DAGGETT: I'm not aware of anything at this point that needs to be stated
28 for the record, thank you.

29 MAYOR TROXELL: Thank you. Any other comments, final comments? So basically, the
30 motion before us is of a fair hearing...I'm...proper interpretation and application of relevant land use
31 sections. Ready for roll call? Roll call please.

32 CITY CLERK COLDIRON: Troxell?

33 MAYOR TROXELL: Yes.

34 CITY CLERK COLDIRON: Stephens?

35 COUNCILMEMBER STEPHENS: Yes.

36 CITY CLERK COLDIRON: Martinez?

37 COUNCILMEMBER MARTINEZ: Yes.

38 CITY CLERK COLDIRON: Summers?

1 COUNCILMEMBER SUMMERS: Yes.

2 CITY CLERK COLDIRON: Cunniff?

3 COUNCILMEMBER CUNNIFF: Yes.

4 CITY CLERK COLDIRON: Overbeck?

5 COUNCILMEMBER OVERBECK: Yes.

6 CITY CLERK COLDIRON: Horak?

7 MAYOR PRO TEM HORAK: Yes.

8 MAYOR TROXELL: So, the motion passes, so that satisfies the items before us tonight in this
9 hearing.

I, Tara Leman, was appointed to transcribe the Johnson Apartments Appeal Hearing which took place on February 27, 2018.

I certify that the proceedings were reduced to typewritten form by computer-aided transcription consisting of 37 pages herein; that the foregoing is an accurate transcript of the proceedings.

I certify that I am not related to, employed by, of counsel to any party or attorney herein, nor interested in the outcome of this litigation.

Attested to by me this August 9, 2018


