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OCT 04 2007

CITY CLERK'S OFFICE

October 4, 2007



Mayor Doug Hutchinson
And Members of the City Council
City of Fort Collins
300 Laporte Avenue
Fort Collins, CO 80521

Re: Poudre Valley Hospital Parking Structure and Medical Office Building, #14-07
Notice of Appeal of Approval Condition No. 2

Mayor Hutchinson and Members of the City Council:

Poudre Valley Health Care, Inc. ("PVH") is the applicant for the Poudre Valley Hospital Parking Structure and Medical Office Building project referred to above (the "Project").

On September 20, 2007, the City of Fort Collins Planning and Zoning Board (the "Board"), after receiving lengthy public comment, unanimously approved the Project subject to four conditions, including the following (the "Second Condition"):

2. *At the time of submittal for Final Plan, the parking structure access onto Robertson Street shall be restricted for emergency access only and not open on a regular daily basis.*

PVH understands that it was the desire of the Board to help mitigate a potential increase in neighborhood traffic by restricting use of the Robertson Street access. However, PVH does not believe that the record supports the conclusion that the parking structure with two accesses will create inappropriate traffic impacts and, moreover, it is not certain that it can meet the Second Condition and still have a viable parking structure. Thus, PVH finds it necessary to appeal such condition.

in support of this Notice of Appeal and in accordance with Fort Collins Municipal Code Sec. 2-48 and Sec. 2-49, PVH submits the following information:

(1) Action Subject to Appeal. The subject of this appeal is limited to the Board's imposition of the Second Condition. PVH does not appeal the Board's imposition of the other three conditions of approval.

(2) Date of Action. The action of the Board which is the subject of this appeal was taken on September 20, 2007.

A Magnet Hospital for Nursing Excellence

1024 South Lemay Avenue • Fort Collins, Colorado 80524-3998 • Phone: (970) 495-7000 • www.pvhs.org

(3) Appellant Information.

Poudre Valley Health Care, Inc.
Attention: Kevin Unger, President
1024 South Lemay Avenue
Fort Collins, Colorado 80524
(970) 495-7141

(4) Grounds for Appeal. PVH alleges that the Board committed the following errors when imposing the Second Condition:

City Code Sec. 2-48(b)(1). The Board failed to properly interpret and apply relevant provisions of the Code or Charter:

In support of this allegation, PVH submits that there is no evidence in the record that the Second Condition is necessary to accomplish the purposes and intent of Land Use Code, or that such condition has a reasonable nexus to potential impacts of the proposed development, or that such condition is roughly proportional, both in nature and extent, to the impacts of the proposed development. The record is devoid of any evidence that demonstrates that the Robertson Street access would have a negative traffic impact on the surrounding neighborhood or that restricting such access would mitigate the perceived negative impact. The Land Use Code has specific traffic standards and requirements. Considering the substantial amount of the evidence in the record that demonstrates the Project's compliance with all applicable standards of the Land Use Code, and without any evidence to the contrary, the Board improperly interpreted and applied the Land Use Code provisions regarding its ability to impose the Second Condition as a condition of approval.

City Code Sec. 2-48(b)(2)a. The Board failed to conduct a fair hearing in that it exceeded its authority or jurisdiction as contained in the Code or Charter.

In support of this allegation, PVH submits that there is no evidence in the record that demonstrates that the Robertson Street access would have a negative traffic impact on the surrounding neighborhood nor is there any evidence in the record that restricting such access would mitigate the perceived negative impact. Furthermore, the record is devoid of any evidence that the Second Condition is based upon any requirement of the Land Use Code, Municipal Code or Charter. Considering the substantial amount of the evidence in the record that demonstrates the Project's compliance with all applicable standards of the Land Use Code, and without any evidence to the contrary, the Board's imposition of the Second Condition was in excess of its authority or jurisdiction as set forth in the Land Use Code provisions regarding its ability to impose conditions on the approval.

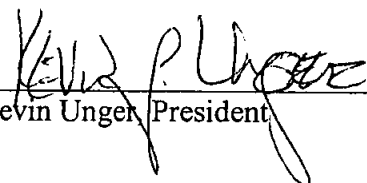
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In conclusion and based on the arguments and evidence presented herein and at the hearing on the appeal, PVH respectfully requests that the Second Condition be struck in its entirety.

Attached as payment of the cost of this appeal is a check in the amount of \$100. We appreciate your consideration of the issues raised in this appeal and look forward to their resolution.

Submitted by:

Poudre Valley Health Care, Inc.

By: 
Kevin Unger, President

Enclosure: Check for \$100

City of Fort Collins
City Hall West
300 Laporte Avenue
PO Box 580
Fort Collins, CO 80522

City Clerk
Attention: Wanda Krajicek

Submitted by: Parties-in-interest
John Knezovitch, Bill Van Eron
Jody Eidsness, Dr. Jenny Hand, Ross
Heikes
And the bulk of University Acres neighbors
against the PVH expansion West.
Their signatures will be on the amended
appeal due 14 days from receipt of this
notice.

CITY CLERK'S OFFICE

OCT 04 2007

RECEIVED

NOTICE OF APPEAL

Submitted October 4, 2007

ADMINISTRATIVE HEARING DATE:
Appeal Deadline:

September 20, 2007
October 4, 2007

PROJECT NAME:

Poudre Valley Hospital Parking Structure
and Medical Office Building,

CASE NUMBER:

#14-07

APPLICANT:

Poudre Valley Hospital

PROJECT DESCRIPTION:

The Applicant has submitted a Project Development Plan (referred to herein as the "Project" or the "PDP") requesting approval to build a 4 story parking structure and a 4 story Medical Office Building, east of the hospital on Lemay on property up-zoned from light commercial to now zoned E. Robertson Street defines the West boundary and Garfield Street splits the two properties. Both streets are in a neighborhood zoned low density residential. These two properties abut a low density residential area.

SUMMARY OF HEARING OFFICER DECISION: Conditional Approval

GROUND FOR APPEAL – Allegations of error:

1. Relevant laws were not properly interpreted and applied
2. The board failed to hold a fair hearing by:
 - A. Considering substantially false or grossly misleading evidence
 - b. Improperly failing to receive all relevant evidence offered

Explanations:

1. Relevant laws were not properly interpreted and applied

1A. This project violates Code as follows:

The Fort Collins Land Use Code, Division 4.27 Employment District, Section (A) purpose states that "...the Employment District is intended ... to continue the vitality and quality of life in adjacent residential neighborhoods." This proposed project with its quantified traffic problems violates this provision and its lack of tax base impacts the vitality and quality of life in the greater Fort Collins community.

The P&Z, entrusted to enforce the intent of the law, has yielded to the letter of the law. Their interpretations of acceptability were loose and based on site visits looking from the hospital, not from the backyard of a ranch in the adjacent subdivision and based on trees that are currently there – without factoring in their planned removal. The expected review by City Staff was flawed as was the review of the P&Z.

PURPOSE STATEMENT IS VAGUE

I. COMPATIBILITY

4.27

Further, the same code division, Section (E) states "... where an employment ... use abuts a residential area, there shall be no drastic and abrupt changes in scale and height of buildings." The parking structure holding 737 cars is drastic compared to the two-car garages in the neighborhood and its mass does not properly scale with the adjoining residences. The medical office building, its height greater than 40 feet, will be less than 100 feet from the residences on Robertson and its parking lot will directly abut these single-story ranch residences. These drastic and abrupt changes in height and mass are not compatible with the Land Use Code.

1B. Spot Zoning *NIT RELATED TO AN ALLEGATION / APPEAL CHITRAK*
Spot zoning occurs when a small area of land or section in an existing neighborhood is singled out and placed in a different zone from that of neighboring property. The decision is an example of spot zoning.

Courts have found spot zoning to be illegal on the ground that it is incompatible with the existing land use-zoning plan or in an overall zoning scheme for the community. Whether the exception carved out is reasonable and supported by the facts - often turns on public interest, - regarding the effect the spot zoning has on the current uses of neighboring properties, and any ramifications created by the zoning.

2. The board failed to hold a fair hearing by: 36.

a. Considering substantially false or grossly misleading evidence

2A. The applicant is PVHS. Yet 50,000 square feet of MOB is apparently to be leased or made into a condominium as office space. The position advanced before the P&Z was the creation of new areas for the "hospital." Apparently this is not the true intent. Traffic in the area is already overburdened and the hospital wants to bring more employees that are not part of the hospital into this area. Traffic is so limiting PVHS should not be bringing unrelated employees into this area. The parking requirement for MOB is greater than the provisions made. *THERE IS NO REQUIRED MIN.*

PARKING ←

2B. The Traffic Study is seriously flawed. It dwells on the existing hospital employee base by saying the projects will not add to the numbers. The 50,000 square feet MOB adds both employees and for each doctor, many client visits per day of which none were factored in. The traffic study was not done within the proper timeframes as required by Code? It appears the study was done during times when college students were not in town and when students were not impacting the Poudre School system?

III
PARKING
3.2.2.(K)

2C. The applicant in their presentation also sites Section (A) as an example of compliance with Code. The Board was improperly advised by not reading fully this Section.

2D. The Code provides for 4.5 parking spaces for each 1,000 square feet of construction. *MAXIMUM ALLOWED*
Because the MOB will have a constant patient impact, this Code provision should be strictly enforced as inadequate on-site parking will again adversely impact the neighborhood.

b. Improperly failing to receive all relevant evidence offered

1B. Doctors Lane/Lemay entrance. The change on Robertson came so late in the discussions that the severe impact on Doctors Lane and Lemay never received proper discussion. At least two lanes of entrance are required to accommodate the 737 parking spaces, right or south on Lemay and left or north. The adverse turning patterns impacting traffic from Lemay never received proper consideration. The signals and format at Doctors Lane and Lemay were not discussed as well as the impact of two, separate exit lanes of one north and one south never received proper consideration as to how they would interact with the city's existing traffic system.

II
TRAFFIC
3.6.4

Additional Details:

Robertson ingress and egress needs to be clarified. The two board members that spoke on to this point stressed that only emergency egress be allowed onto Robertson. Yet, the draft resolution suggests that both ingress and egress are allowed. The minutes of the meeting are incorrect with respect to the Robertson Street considerations. A review of the television tape clearly show that only emergency egress is to be allowed. Since only emergencies are the focus, egress is the only direction of concern. What is the need for emergency ingress as public safety

vehicles would automatically be permitted. The neighborhood cannot visualize anything which would constitute emergency ingress. Also, the neighborhood feels that the exit should be built so that only traffic north on Robertson is permitted which would avoid movements towards Garfield.

The Board's chairperson - David Lingle - stressed that other alternatives needed consideration. David said he thought other considerations would have been better options but they had to decide on the basis of what was before them now which they then voted to support with conditions.

NOT AN ALLEGATION

The hospital said its master plan goes to 2013 and yet repeatedly presented testimony that the site was to be greatly developed. Another alternative needs to be considered. Riverside is the proper highway for additional traffic flows. This garage properly belongs to the north and east of the existing hospital properties to open onto Riverside, Prospect, Mulberry and I-25. A responsible and cumulative impact review of the traffic should have lead to City insistence that PVH look hard at Riverside rather than set up an expedited F rating at all intersections on Lemay at taxpayer expense.

This project, in effect yields more traffic and proposes no traffic movement solutions. The current additions at the hospital and this proposal bring building so close to Lemay that the possibility of six-lanes on Lemay, as a likely solution, will be foreclosed. The parking garage provides no additional property taxes to finance any improvements. The applicant is PVHS to build the MOB. As such, any properties owned by PVHS such as the MOB may not be obligated to pay property taxes. The applicant proposes significantly greater intensities on Lemay and proposes no solutions in its application. In the back of the Traffic report, Lemay scores an F at the intersections looking out. We see this as escalating the time to F much faster.

NOT SO CLASSIFIED WHAT ABOUT CLOSING ROBERTSON?

TAXES?

SHADING & HEIGHT NOT TRUE

Shading. Both the MOB and the garage produce adverse shading. As originally submitted the projects' height was so great that shading studies were required. Some portions of the parking garage are at 46 feet. The applicant worked with staff so that the interpretation became that only an average height be used which required no shading study. This seemed to be a point where PVH was disingenuous. They referred to an agreement with an impacted owner and no such agreement had been reached - again disingenuous. The applicant won a favorable ruling because this overly massive structure only reached a height of 38 feet at its lowest point. So, the mass of the property in fact, adversely impacts the residential character of the neighborhood; but an averaging of the height prevents a shadow study.

N.A.

The parking garage is allowed shorter parking stalls because it was for long-term employee parking. At the presentation, we find that parking is allowed for doctors and all the staff occupying MOB. The neighborhood believes this parking is short-term and that longer parking stall requirements be required.

SHORT & LONG TERM

MOB - PVH use for approval and subsequent conflict of interest w/sale to Women's Clinic. the property is too small for such a large structure. It has room for only 1/2 the necessary parking. The lot, as zoned, can handle only two stories.

NOT AN ALLEGATION

The City Planning and Zoning Board exists to protect the vitality and quality of life in adjacent residential neighborhoods while encouraging and supporting business growth beneficial to the community. Criticized for losing economic development projects to surrounding areas, neither this board nor City Council wants to prevent PVH expansion. The review, stated as a quasi-judicial hearing, however, appears greatly compromised by undue pressure from PVH and disingenuous information.

We seek reasonable solutions and to mitigate the damage caused by a disregard for the rights of our community as represented by PVH and reviewing boards and city staff.

The spirit guiding our appeal:

1. The impacted community was never notified in a manner that would evoke a response on the matter of rezoning light industrial to E (Employment) or ever informed about the risks

?

involved with a loosely worded zoning "guideline". In practice, this is not working as P&Z Board Members are entrusted to protect the intent of the zoning but challenged overtly by attorneys hired by clients to push the intensity beyond intent or practical application. This has obvious implications to our neighborhood and the rest of Fort Collins.

2. The hospital, despite any value in it's offerings, has in deed acted like the big company it purports not to be as it works a system with flaws to a financial gain at the expense of University Acres.

3. The real and calculable effect on Lemay from this and an imminent PVH master plan has not been accurately represented. We clearly see a catastrophe waiting to happen at all Fort Collins taxpayers expense. There is no practical plan to mitigate the damages that will accelerate Lemay to an F rating many years before current "normal" predictions illustrate that have not factored in the PVH master plan.

4. Our primary concern is to mitigate any damages to University Acres as attributed to poor zoning application and increased traffic and traffic safety to the 2000 school aged kids that walk there twice everyday during peak hours. This has accelerated beyond PVH alone as a true solution has to involve the city, our neighborhood and PVH in a more accountable environment to work through the issues and reach satisfactory solution all around.

Parties-in-interest

This appeal will be presented by Howard & Francis, Attorneys at Law as legal representatives of the University Acres sub division.

Parties-in-interest will include the majority of University Acres residents and the following team of representatives:

John Knezovitch 1205 Green Street Ft Collins 80524 970-493-8145

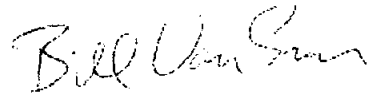
Dr. Jenny Hand and Ross Heikes 900 Garfield 80524 970-490-1899

John and Jean Yule 1109 Williams 80524 970 482-5486

Bill Van Eron - 712 Garfield Street Fort Collins, CO 80524 970 493-7749

Jody Eidsness 1108 Morgan 80524 970 482-1022

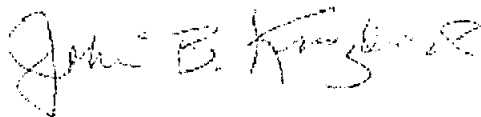
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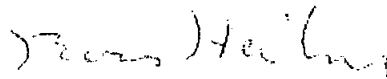
Bill Van Eron -Party-In-Interest




Dr. Jenny Hand Party-In- Interest



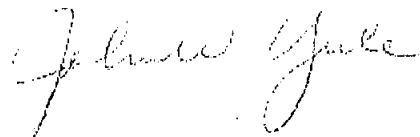
John B. Knezovitch Party-In-Interest



Ross Heikes Party-In-Interest



Jean Yule Party-In-Interest



John Yule Party-In-Interest



Jody Eidsness Party-In-Interest