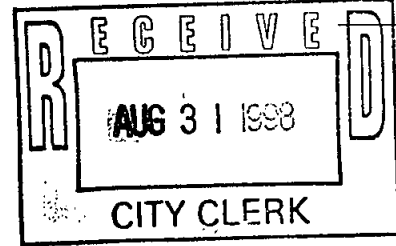


ARTHUR E. MARCH, JR.
LUCIA A. LILEY
J. BRADFORD MARCH
SUZAN D. FRITCHEL

MARCH & LILEY, P.C.
ATTORNEYS AND COUNSELORS AT LAW
110 E. OAK STREET
FORT COLLINS, COLORADO 80524-2880
(970) 482-4322
Fax (970) 482-5719

ARTHUR E. MARCH
1908-1981

August 31, 1998



Honorable Ann Azari
Mayor
City of Fort Collins
300 Laporte Avenue
Fort Collins, Colorado

VIA HAND DELIVERY

Council Members:
Bill Bertschy
Mike Byrne
Chris Kneeland
Scott Mason
Will Smith
Charles Wanner
c/o City of Fort Collins
City Clerk's Office
300 Laporte Avenue
Fort Collins, Colorado

VIA HAND DELIVERY

**Re: Amended Appeal of the Planning & Zoning Board's Denial of
Harmony Ridge PUD, Phase One, Final #49-95 B**

Dear Mayor Azari and Council Members:

This amended appeal is filed in response to the earlier City notice of deficiencies in the original appeal filed July 30, 1998.

SUBJECT OF THE APPEAL

The denial by the Planning and Zoning Board of Harmony Ridge P.U.D., Phase One, Final #4995 B.

DATE OF BOARD ACTION

July 16, 1998

APPELLANTS

The appellants are the applicant, Joe Vansant, and the two owners of the subject property, G. D. McGarvey and Lee A. Stark, whose addresses and telephone numbers are as follows:

G. D. McGarvey	Lee A. Stark	Joe Vansant
931 Poudre Canyon Hwy.	1803 N. Garfield	P. O. Box 98
Bellvue, CO 80512	Loveland, CO 80528	Fort Collins, CO 80522
(970) 484-0541	(970) 667-5491	(970) 482-6312

APPELLANT AUTHORIZED TO RECEIVE NOTICE

G. D. McGarvey is the appellant authorized to receive any notice required to be mailed by the City.

GROUND FOR THE APPEAL

The grounds for this appeal is Section 48(b)(1) Failure to properly interpret and apply relevant provisions of the Code and Charter.

ALLEGATIONS OF ERROR AND SUMMARY OF FACTS

We request that the allegations of error and summary of facts stated in the original appeal be incorporated by reference in this amended appeal. In addition, the Appellants offer the following:

Failure to Properly Interpret and Apply the Code

The Board cited three sections of the Land Development Guidance System ("LDGS"): A-2.1, A-2.4 and A-3.2. The three specific Board concerns were the safety of the private Chokecherry Drive which did not meet approach grade standards for a public street; the adequacy of the Harmony/Shields intersection to handle traffic generated by this development; and the need for a continuous bicycle/ pedestrian path to the Harmony/Shields intersection. Sections A-2.1 and A-2.4 are clearly relevant, but we question the inclusion of A-3.2 which has been cited because Chokecherry Drive did not meet City design standards for a public infrastructure. Chokecherry Drive was presented as a private street to be owned and maintained by the homeowners and was not required to meet City standards for public streets. The issue surrounding the grades proposed for this private street is evaluated under A-2.4 which specifically addresses the question of safety, without regard to whether the street is public or private.

The following is a brief summary of each of the Board's concerns and the Appellants' responses to the same.

1. Chokecherry Drive. The Board stated that Chokecherry Drive was unsafe and cited Section A-2.4 as a basis for denial of the project. The Board's denial must be based on evidence supporting that statement and not just on opinion of Board members as to safety. Here, no one gave testimony to the Board that Chokecherry Drive was unsafe at the grade proposed. It was stated that it did not meet City requirements for a public street. There was testimony from the Appellants' engineer, supported by City staff statements that, given the particular circumstances of this private drive (length of the drive; right in and out only; and low posted speed), safety issues had been addressed.¹ Moreover, the City staff, as a whole, had reviewed the final plan with the proposed private drive and made a finding that it met LDGS criteria, which includes A-2.4 addressing safe streets. Curiously, no Board member queried Fred Jones from the City's Traffic Engineering Department, who would be the City's expert regarding traffic safety, as to whether he concurred with the Board's conclusion. The facts are that the Board had a written staff finding that the final plan, as proposed, met all applicable LDGS criteria and testimony from Appellants' engineer as to factors which alleviated safety concerns. In addition, the proposed grade meets Federal ASTHE standards.

Notwithstanding that, the Appellants do not object to a condition requiring Chokecherry Drive to be a public street, meeting all City requirements, if that is truly the desire of the City. The grade problem was largely caused by the City's design of the new Harmony sweep, which drops to three feet at the project property line, and they had proposed Chokecherry Drive with a steeper grade in order to minimize disruption to the natural topography, a concern of the Natural Resources Department given the project's proximity to the Cathy Fromme Prairie. They had no idea that this would put their project at risk, since the staff concurred with this approach.

2. Harmony Bicycle/Pedestrian Path to the Harmony/Shields Intersection. The project provides a number of important bicycle/pedestrian connections, including to area schools and the Cathy Fromme Prairie. A bicycle trail connection is planned for the southwest corner of the project that will connect to the City's bicycle/pedestrian system through the Cathy Fromme Prairie that will cross the Trilby Lateral. Since the project received preliminary approval, an additional bicycle/pedestrian trail connection has been added on the east side of Morning Dove Lane and traveling down to the west end of the proposed dam that will provide access from both the South Shields Street and South Taft Hill Road trailheads. When old Harmony Road is vacated, it will act as a lane that will also serve as a bike trail. Harmony Ridge PUD will have a connection to this lane from Seneca Street and with foot path connections at Dusty Sage Drive and Morning Dove Court.

¹ Information was also presented to the Board that certain City streets had the same (or worse) grade as that proposed for Chokecherry. If that grade is, in fact, per se unsafe, would the City permit streets to remain at that grade, given potential liability?

Bicycle/pedestrian connections are also planned on Prairie Ridge Drive that connects to the trail system that runs through The Ridge and West Berry and on Chokecherry Trail to the aligned section of new Harmony Road. A future connection is also planned that will connect to a City trailhead from Prairie Ridge Drive in Phase II of the project.

The preliminary site plan which showed proposed bicycle/pedestrian path connections was approved by the Board. There were six specific conditions identified by the Board which had to be addressed before final plan approval. None of these conditions touched on any concerns related to the adequacy of bicycle/pedestrian paths. The only change from the preliminary to the final plan is the addition of another such connection.

Nonetheless, the Board cited the lack of a continuous path to the Harmony/Shields intersection, located more than ½ mile from the project, as a basis for denial of the final plan. What language in the LDGS mandates such a conclusion? Section A-2.1 asks, "Can pedestrian and bicycle needs be addressed so that opportunities for these travel modes are integrated into the overall City pedestrian and bicycle system?" (Emphasis added.) Appellants, working with City staff, addressed just that in identifying the many connections proposed by this project--which was also approved by the Board as part of the preliminary plan. Past practice and policy of the City with LDGS projects supports the position that this plan does a better than normal job of dealing with pedestrian/bicycle connections. This assertion is supported by the fact that this project scored bonus points on the Residential Uses Density Point Chart for, "providing bicycle/pedestrian connections to existing City sidewalks and providing bicycle/pedestrian connections to a City bicycle trail." These are points which are not required in order to develop a residential project but awarded because they go beyond City requirements. How then could a plan with such connections be denied because it has failed to provide adequate bicycle/pedestrian connections?

Even if this project were to be evaluated under the City's new Land Use Code, which has a much more defined emphasis on provision of alternative modes of transportation, this project would not be required to provide a bicycle/pedestrian path to the Harmony/Shields intersection. See pages 9, 16 and 19 of the Multi-Modal Transportation Level of Service Manual. Under those standards, the project would need to connect to all destination points (schools, recreational areas, adjacent residential uses, etc.) within 1,320 feet or ¼ mile of the outside boundaries of the project. This project does that.

Just as with the private drive issue, generally there are solutions to newly-identified Board concerns if the staff and the applicant can work cooperatively on them. Here the Board did not give the staff or Appellants an opportunity to try to address this new concern. Whether it can be required under the LDGS or not, there is a feasible option for the provision of a continuous path to the intersection which the Appellants are willing and able to provide. Presently, the north side of Harmony Road has an existing bicycle/pedestrian trail from Seneca Street to Shields Street with the exception of 800 feet adjacent to The Villages at Harmony West. The Owners have already

committed to acquiring right-of-way for and improving Seneca Street to its intersection with the realigned Harmony Road, including bicycle/pedestrian trails. They would be willing to improve the missing 800-foot connection on the north side of Harmony Road to provide a continuous route for bicyclists and pedestrians from the project along Harmony Road to Shields Street.

3. Harmony/Shields Intersection. One of the six conditions of preliminary approval was that Appellants submit a new traffic study, analyzing the Harmony/Shields intersection and including traffic from Registry Ridge and Front Range Community College. This traffic study was completed showing that, at present, the intersection achieves an overall acceptable level of service (D), but in the five-year future range, without any changes to the existing intersection geometry and adding overall traffic from other developments, the morning and afternoon peak hour operation would be unacceptable.

The City's traffic engineer recommended approval of the project due to the minimum number of trips this development would add (six right turns during the morning peak and three right turns during the afternoon peak) to an intersection over ½ mile away with existing geometric design problems.

Mr. Colton, in rejecting that recommendation, focused on the issue of what plans and options were available for possible improvements to the intersection in order to be able to determine if an unacceptable level of service would, in fact, occur in the five-year future range, justifying a denial of the project.

Matt Baker, the staff member who could best answer questions regarding street construction projects, was not in attendance nor was Eric Bracke, the Traffic Engineer for the City. A City staff member answered Mr. Colton's inquiry by saying:

"It would probably fall back into the overall sizing category for a capital project, and I'm not sure if oversizing has funds addressed towards this location at this time." (Page 32 of the Transcript, emphasis added).

Mr. Colton then surprisingly concludes:

"Okay, so we have an intersection that isn't-won't be at acceptable level of service within three to four years. And there is no money available...." (Page 32, Transcript).

City staff then responds that they are in the process of looking at existing deficient intersections, and this one is third on the list for new geometry. A staff member then goes on to say:

"We are follow up-following up on that study currently and doing some valued engineering, looking at potential improvements. And we may have some answers to that questions, but we sure don't have those answers this evening on when and what time frames that those improvements will be implemented." (Page 33, Transcript, emphasis added).

Although there was no further discussion with City staff on this issue, Mr. Colton, in making the motion to deny the final plan,² cited the intersection issue and conclusively stated that there were no funds or good options to deal with the issue anytime in the foreseeable future-despite the staff clearly stating that they were looking at the issue but didn't have answers that evening (presumably because of Matt Baker's absence). Mr. Gavaldon concurred, stating, "...I want to get back to, is our funding and not having the money for this."

Even if the Board were correct in ignoring the recommendation of the City's Traffic Engineer, its conclusion that the intersection would fail in the five-year future range was predicated on the fact that there would be no changes to the intersection within that period, a statement not factually supported by staff comments.³

² Mr. Colton's comments from pages 40 and 41, Transcript: "However, I do know we have a huge funding problem within the city to fix problems like this. And by not addressing these issues as they come up and saying, we just can't improve a development with these sort of conditions, we have no way of addressing those issues. And I want someone to address those issues, and this is an issue right here that needs to be addressed.

There is nothing in community choices that is going to fix any of those problems. I don't think of those areas will be addressed in street oversizing. As far as I know-and I was on the, again, transportation funding community that studies this in some detail, and since those are areas that were developed in the county, my understanding is that, well, those are things that are going to have to be fixed through other mechanisms, and we can't even charge for those things through the street oversizing fund.

So I think the community is stuck in a hard place here. The development itself is not bad, but we have got deficiencies that need to be corrected, and we have no money. In fact, we probably have a hundred and some million dollars worth of capital improvements needs over the next 15, 20 years that we don't have a clue how we're going to pay for it. That is why I'm recommending denial."

³ The entire issue has become a moot point with the recently-completed restriping of the intersection, adding another through lane and resulting in a current and future acceptable level of

Extenuating Circumstances

In considering this appeal, the Appellants ask the Council, as a matter of overall fairness, to consider two extenuating circumstances related to this project. Not only is Harmony Ridge a final planned unit development, it is caught in the City's transition between land use schemes. A denial of a final planned unit development always has serious impacts. In this case, those impacts are greatly magnified because of the transition rules. Were it not for the transition, the Appellants would not lose their preliminary plan approval and could re-file a final plan to address the Board's concerns. Instead, the Appellants have been advised that the denial of the final plan terminates their approved preliminary plan as well, meaning that they must completely start over after three years in the planning process at a cost of \$200,000 to date.

What makes this situation even more difficult is the sale by the Appellants to the City of approximately 180 acres adjacent to Harmony Ridge as part of the Cathy Fromme Prairie Natural Area. The Appellants had not offered this property for sale. The City, however, very much wanted the 180-acre parcel but believed the Harmony Ridge property better suited for development. Although the Appellants are not developers by profession—Mr. Stark is a prominent local sculptor and Mr. McGarvey is the owner of the local Charcoal Broiler—they decided that they would sell the desired property to the City with the specific condition that they first receive preliminary plan approval of the Harmony Ridge PUD so they could be certain that they would have a developable parcel of ground to offset the investment loss on the adjacent 180-acre parcel to be sold to the City.

Particularly, since the Appellants were not experienced developers, they never imagined that their project could be at total risk after receiving preliminary approval. Now they find themselves in the position of having sold the 180-acre parcel to the City, relying in good faith on the preliminary plan approval, but having lost all development approval of the project as a result of the denial of the final plan and being caught in the transition between land use systems.

Summary

The Appellants have worked hard with adjacent neighbors to satisfy all concerns; no neighbors or other parties appeared at the hearing on the final plan to oppose the project. The Appellants worked hard to satisfy Natural Resource Department concerns, creating a project with good buffers and natural topography while maintaining a higher-than-usual density under the LDGS (4.5+ dwelling units per acre). Boardmembers acknowledged the design is a, "class act".

The Appellants worked hard to satisfy all six conditions of preliminary approval, receiving

service. This fact prompted the City staff to advise Appellants of the opportunity to ask the Board to rescind its denial, which was requested on August 20, 1998. The Board, however, refused to even permit discussion and comment on the merits of the request for a rehearing.

a full recommendation of approval from the staff on the final plan. They have spent over three years and \$200,000 in the process to get to the final plan stage. And yet, when issues were identified by the Board, no opportunity was given to find solutions to those problems.

There are solutions to each identified issue and, if the City Council desires, Appellants are willing to implement those solutions.

For all of these reasons, the Appellants respectfully request that you overturn and/or modify the decision of the Board.

Sincerely,

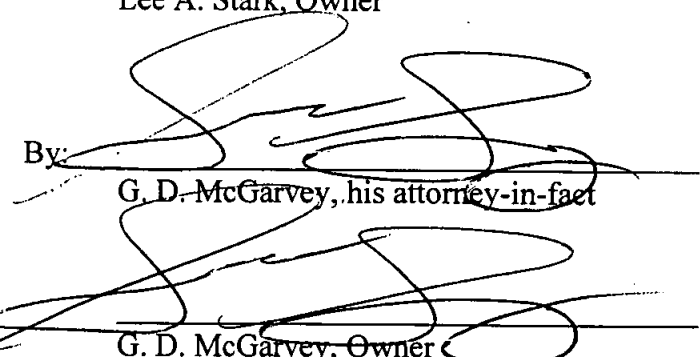
MARCH & LILEY, P.C.

By:

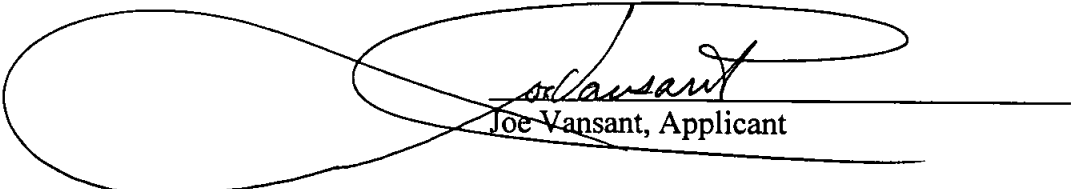

Lucia A. Liley

Lee A. Stark, Owner

By:


G. D. McGarvey, his attorney-in-fact

G. D. McGarvey, Owner

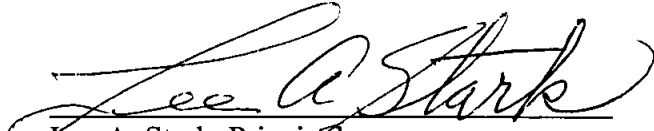

Joe Vansant, Applicant

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, Lee A. Stark, of the County of Larimer, State of Colorado, reposing special trust and confidence in G. D. McGarvey of the County of Larimer, State of Colorado, have made, constituted and appointed, and by these presents do make, constitute and appoint the said G. D. McGarvey my true and lawful Attorney for me and in my name, place and stead, for my sole use and benefit, to execute for me and on my behalf an Amended Appeal which is to be filed with the City Council of the City of Fort Collins, Colorado appealing a decision made by the Fort Collins Planning and Zoning Board on July 16, 1998 to deny the Harmony Ridge PUD, Phase One, Final - #49-95B, which real property I am a co-owner of with G. D. McGarvey. This Amended Appeal is being filed in order to amend the Appeal that was filed on July 30, 1998 with the City of Fort Collins. The power and authority granted in this Power of Attorney are limited solely to my Attorney's execution of the aforementioned Amended Appeal on my behalf.

This Power of Attorney shall not be affected by disability of the Principal.

IN WITNESS WHEREOF, I have set my hand and seal this 24th day of August, 1998.

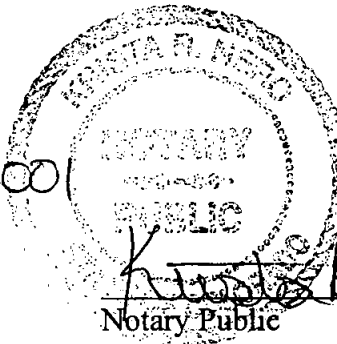

Lee A. Stark, Principal

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 24th day of August, 1998, by Lee A. Stark.

Witness my hand and official seal.

My commission expires: 11/19/2001


Krista R. New
Notary Public

F:\WPC\LAL\HARMONY\LTDP0A 8/24/98