

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 16

DATE: January 20, 2009

STAFF: Jim Hibbard
Bob Smith
Marsha Hilmes-Robinson

SUBJECT

Resolution 2009-005 Making Findings of Fact and Conclusions Pertaining to the Appeal of the Water Board's August 28, 2008 Denial of the Floodplain Variance for a School in the Poudre River 500-year Floodplain.

RECOMMENDATION

Staff recommends adoption of the Resolution.

EXECUTIVE SUMMARY

On September 30, 2008, an amended Notice of Appeal was filed seeking to overturn the August 28, 2008 decision of the Water Board denying a floodplain variance for a school in the Poudre River 500-year floodplain at 720-750 East Vine Drive.

On January 6, 2009, City Council voted to remand the variance request back to the Water Board for further consideration. In order to complete the record regarding this appeal, the Council should adopt a Resolution making findings of fact and finalizing its decision on the appeal.

BACKGROUND

The Appellant's amended notice of appeal was based on the allegations that:

- The Water Board failed to conduct a fair hearing in that evidence presented by staff was substantially false and grossly misleading.
- The Water Board failed to properly interpret and apply relevant portions of the City Code as set forth in Section 2-48(b)(1).

At the December 16, 2008 hearing on this matter, Council considered the testimony of City staff and the Appellant. In subsequent discussion at this hearing, Council determined that the Water Board did hold a fair hearing and properly interpreted and applied relevant portions of the City Code. The City Council voted to uphold the decision of the Water Board. At the January 6, 2009 meeting, Council decided not to pass the findings resolution for the December 16, 2008 meeting and instead passed a motion to remand the matter to the Water Board for further consideration of all evidence

offered by the Applicant, and evaluate whether measures proposed by the Applicant in connection with the Variance to prevent and mitigate risks to life and safety and private property that may result from the proposed development. Among the items noted in the Council discussion of potential mitigation were flood proofing the existing structure, elevating and flood proofing any new structures, and examining emergency notification systems and response procedures and evacuation plans. Adoption of this Resolution will finalize Council's decision on the appeal.

The Water Board is tentatively scheduled to consider this issue at its February 26, 2009 meeting.

RESOLUTION 2009-005
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING FINDINGS OF FACT AND CONCLUSIONS PERTAINING TO
THE APPEAL OF THE WATER BOARD'S AUGUST 28, 2008,
DENIAL OF THE FLOODPLAIN VARIANCE FOR A SCHOOL IN THE
POUDRE RIVER 500-YEAR FLOODPLAIN

WHEREAS, on August 28, 2008, the City's Water Board (the "Board") denied a floodplain variance for the Nature School at 720-750 East Vine Drive, as a critical facility in the Poudre River 500-year floodplain (the "Variance"); and

WHEREAS, on September 10, 2008, a Notice of Appeal of the Board's decision was filed with the City Clerk by representatives of the applicant for the Variance (the "Appellants"); and

WHEREAS, on September 30, 2008, an Amended Notice of Appeal of the Board's decision was filed with the City Clerk by the Appellants; and

WHEREAS, on December 16, 2008, the City Council, after notice given in accordance with Chapter 2, Article II, Division 3, of the City Code, considered said appeal, reviewed the record on appeal, heard presentations from the Appellants and other parties-in-interest and, after discussion, voted to find that the Water Board had conducted a fair hearing on the matter and further voted to find that the Water Board had properly interpreted and applied the City Code, and

WHEREAS, City Code Section 2-56(e) provides that no later than the date of its next regular meeting after the hearing of an appeal, City Council shall adopt, by resolution, findings of fact in support of its decision on the appeal; and

WHEREAS, upon consideration at its January 6, 2009 regular meeting of proposed Resolution No. 2009-001, stating findings of fact in support of the Council's decision to uphold the decision of the Water Board, the City Council voted to reconsider the vote by which it had found the Water Board to have properly interpreted and applied the City Code; and

WHEREAS, upon reconsideration, the Council voted to remand the matter to the Water Board for further proceedings as more specifically described below.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that, pursuant to Section 2-56(e) of the City Code, the Council hereby makes the following findings of fact and conclusions:

1. That the grounds for appeal as stated in the Appellants' Amended Notice of Appeal conform to the requirements of Section 2-48 of the City Code.
2. That the Water Board held a fair hearing and did not fail to receive all relevant evidence that was offered by the Appellants, nor did it consider

evidence relevant to its findings which was substantially false or grossly misleading.

3. That the Water Board failed to adequately consider the potential for mitigation of risks associated with the proposed development in accordance with the provisions of Section 10-28 and 10-29 of the City Code.
4. That the Water Board, upon rehearing, should consider any new evidence offered by the Applicant, and evaluate whether measures proposed by the Applicant in connection with the Variance to prevent and mitigate risks to life and safety and private property that may result from the proposed development are sufficient to meet the requirement that the Variance not result in increased flood heights, additional threat to public safety or public or private property, extraordinary public expense, nuisance or trespass, fraud on or victimization of the public, or conflict with existing local laws or ordinances.
5. That the August 28, 2008 decision of the Water Board denying the variance is hereby remanded to the Water Board for rehearing in accordance with these facts and conclusions.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 20th day of January, A.D. 2009.

Mayor

ATTEST:

City Clerk