

SUBJECT

Consideration of the Appeal by Windtrail on Spring Creek HOA, Sundering Townhomes HOA, Hill Pond on Spring Creek HOA, Hill Pond Condominium HOA and Windtrail Townhomes HOA of the June 16, 2011 Determination of the Planning and Zoning Board to approve The Grove at Fort Collins, Project Development Plan.

EXECUTIVE SUMMARY

On June 16, 2011, the Planning and Zoning Board conducted a public hearing considering the proposed The Grove at Fort Collins, Project Development Plan (PDP). The Board considered testimony from the applicant, the public and staff. The PDP was approved. Windtrail on Spring Creek HOA, Sundering Townhomes HOA, Hill Pond on Spring Creek HOA, Hill Pond Condominium HOA and Windtrail Townhomes HOA have appealed the Board's decision. The allegation is that the Planning and Zoning Board failed to properly interpret and apply relevant portions of the Code and Charter.

BACKGROUND / DISCUSSION

This is an appeal of the decision for a request for a private multi-family residential project known as **The Grove at Fort Collins, Project Development Plan**. It is a proposed student housing project containing 210 dwelling units in 11 residential buildings plus 8 dwelling units in a mixed-use dwelling (clubhouse) building. The site is located at the southwest corner of Centre Avenue and existing Rolland Moore Drive, directly south of the Gardens on Spring Creek, in the Centre for Advanced Technology. Rolland Moore Drive would be realigned onto the southerly portion of the subject property and extended east, from the existing terminus approximately 800 feet east of South Shields Street, to connect with Centre Avenue just to the north of the Larimer Canal No. 2.

There would be 403 parking spaces on-site and 96 parallel parking spaces on the proposed Public Local Street. Additionally, there would be 128 parallel parking spaces on Rolland Moore Drive and the proposed Public Commercial Street within the property. The property is 27.5 gross acres in size. It is located in the MMN, Medium Density Mixed-Use Neighborhood and E, Employment Zoning Districts.

ACTION OF THE PLANNING AND ZONING BOARD

1. At its June 16, 2011, regular meeting, the Planning and Zoning Board made the following findings of fact and conclusions as stated on pages 21, 22 and 23 of the Staff Report for The Grove at Fort Collins, Project Development Plan:
 - A. The PDP is in conformance with the Amended CSURF Centre for Advanced Technology, ODP.
 - B. The proposed land use is permitted in the MMN, Medium Density Mixed-Use Neighborhood District.
 - C. The proposed land use is permitted in the E, Employment District as a *Secondary* use.
 - D. The proposal complies with the requirement set forth in Section 3.3.3(A)(4) in that all measures proposed to eliminate, mitigate or control water hazards related to flooding or drainageways have been reviewed and approved by the Water Utilities General Manager.
 - E. The Project Development Plan complies with applicable General Development Standards, with the following exception:
 - *Section 3.6.3(F) Utilization and Provision of Sub-Arterial Street Connections to and From Adjacent Developments and Developable Parcels*. This section requires that development plans provide for future public street connections to adjacent developable or redevelopable lands at intervals not to exceed 660 feet.

The applicant submitted an Alternative Compliance Plan request that does not include street connections to adjacent properties to the north or the south due to existing wetlands and the Larimer Canal No. 2 posing obstacles to possible connections. The request is to be considered by the Planning & Zoning Board based on criteria set forth in *Section 3.6.3(H) Alternative Compliance*. Staff finds that the Alternative Development Plan accomplishes the purposes of Section 3.6.3(F) equally well or better than a plan that would meet the standard and that any reduction in access and circulation for vehicles maintains facilities for bicycle, pedestrian and transit, to the maximum extent feasible for the following reasons:

- The Alternative Development Plan will provide enhanced bicycle and pedestrian connectivity within the Amended ODP. The pedestrian and bicyclist will be able to access parks, recreational opportunities, schools, commercial uses, and employment uses within the mile section.
 - The streets that are being proposed in the Alternative Development Plan will distribute traffic without exceeding Level of Service (LOS) standards.
 - Lastly, the Alternative Development Plan eliminates negative impacts to high quality wetlands, avoids constricting an important drainage way, eliminates impacts to the FEMA floodway and avoids negative impacts to natural habitats and features associated with the designated wildlife corridor along the Larimer Canal No. 2.
- F. The Project Development Plan satisfies Section 3.8.16(E)(2) in that the applicable criteria of the Land Use Code have been satisfied and that the project provides adequate open space and recreational opportunities with a large clubhouse facility, pool complex, basketball court, volleyball court, parking areas and public facilities as necessary to support the proposed 18 4-bedroom units and protect the occupants of the development and the adjacent neighborhoods.
- G. The Project Development Plan complies with applicable district standards of Article 4, Division 4.6 MMN, Medium Density Mixed-Use Neighborhood District of the Land Use Code.
- It is infeasible for the structure of potential Blocks 1 and 3 to be defined by features set forth in Section 4.6(E)(1)(a) of the LUC because of existing development.
- H. The Project Development Plan complies with applicable district standards of Article 4, Division 4.27 E, Employment District of the Land Use Code.

ALLEGATIONS ON APPEAL

On June 30, 2011, a Notice of Appeal was received by the City Clerk's Office from the Windtrail on Spring Creek HOA, Sundering Townhomes HOA, Hill Pond on Spring Creek HOA, Hill Pond Condominium HOA and Windtrail Townhomes HOA: c/o Kevin Barrier, President of the Windtrail on Spring Creek HOA, 1999 Northerland Drive, Fort Collins, Colorado, 80526.

Allegations:

- a. **Improper interpretation of LUC Sections 4.27(D)(2) and 5.1.2 with regard to integration of secondary uses into a larger employment district development plan that emphasizes primary uses.**

The Grove PDP includes no primary uses in the Employment District, a violation of the first sentence of LUC 4.27(D)(2). When considering whether or not The Grove PDP integrated secondary uses into a larger employment district development plan (Resident Report, page II-12), the Board misinterpreted "development plan" in Section 4.27(D)(2) as applicable only to the Amended ODP, and not to The Grove PDP. A "development plan" as defined in LUC Section 5.1.2 includes an overall development plan, a project development plan and/or a final plan. When a PDP is under consideration, the "development plan" referenced in 4.27(D)(2) is the PDP.

STAFF ANALYSIS:

The first sentence in Section 4.27(D)(2) *Secondary Uses* of the E, Employment District reads as such:

"All secondary uses shall be integrated both in function and appearance into a larger employment district development plan that emphasizes primary uses".

Approximately 9 acres of the total of 27.5 gross acres on The Grove at Fort Collins PDP are in the E District. The development is almost entirely multi-family residential, with 20 – 25 of the total of 218 dwelling units being in the E District. There remains about 4 acres in Parcel C within the E District that may still be developed for primary, non-residential uses.

b. Improper interpretation of LUC Section 4.6.(D)(2)(a) with regard to mix of housing types in the MMN District.

The Grove PDP provides only one housing type in the MMN District. The Board misinterpreted Section 4.6.(D)(2)(a) by considering the swimming pool pavilion a second housing type. The pavilion is a small accessory building associated with the outdoor recreational facilities near the Clubhouse, which, as described on page 11-13 of the Resident Report, is a mixed-use residence located in the Employment District at a considerable distance (beyond 50 feet) across the boundary of the MMN District.

STAFF ANALYSIS:

As stated in the Staff Report to the Planning & Zoning Board on June 16, 2011:

“The development plan satisfies Section 4.6(D)(2)(a) *Mix of Housing Types* in that there are to be 2 housing types (multi-family dwellings and mixed-use dwellings) in The Grove at Fort Collins, PDP.”

Staff considers the clubhouse building to be a mixed-use dwelling unit, which is identified as a housing type as set forth in Section 4.6(D)(2)(c). There is no mention of the swimming pool pavilion being considered a second housing type. Common practice for City staff is to consider the entirety of a development plan in determining the mix of housing types.

c. Improper interpretation of Larimer County Urban Area Street Standards (LCUASS) for a Minor Collector.

The Board misinterpreted the LCUASS standards which would be applicable to Rolland Moore Drive as designed in The Grove PDP. Multiple instances of noncompliance with LCUASS were cited during the June 16, 2011 hearing from a letter from James R. Loonan, a qualified professional engineer, including insufficient centerline curve radii; undersized arc lengths; lack of horizontal tangent and sight distance easement at the intersection of Rolland Moore Drive and Centre Avenue; and insufficient corner sight distance at the intersection of Rolland Moore Drive and the Local Public Street. The technical details can be found in Mr. Loonan's letter which follows page 1-11 of the Resident Report. City Staff granted a variance request to use a 30 mph Connector Local design criteria for the centerline radii, minimum tangent between curves, and posted speed of 25 mph versus a 40 mph Collector design. The minimum tangent length for a 30 mph Connector street is 100 feet, but there is zero tangent at the intersection of Rolland Moore Drive and Centre Avenue. The design of Rolland Moore Drive does not meet LCUASS Section 8.2.4.A for a 30 mph Connector street nor does it meet the approved variances.

STAFF ANALYSIS:

The appellants cited a letter from James R. Loonan which was presented at the Planning and Zoning Board Hearing. The majority of Mr. Loonan's letter focuses on the design for Rolland Moore Drive and how aspects of the design Rolland Moore Drive do not meet collector standards. Variances to several Collector Street design parameters have been granted to bring the geometry of the design of Rolland Moore Drive closer to a connector than a collector.

City staff (which included staff from Traffic Operations, Transportation Planning, Engineering, and Community Development and Neighborhood Services) discussed the proposed variance requests and viewed that the roadway geometry design for Rolland Moore Drive proposed by Northern Engineering would be acceptable. This was documented in the variance request response letter from Sheri Langenberger dated January 28, 2011 to Nick Haws with Northern Engineering Services.

Beyond Mr. Loonan's letter, the appellants more specifically cite both a sight distance easement requirement and the lack of a tangent at the intersection of Rolland Moore Drive and Centre Avenue. With regards to a requirement for a sight distance easement, this reflects an evaluation as to whether a view corridor needs to be preserved when stopped on eastbound Rolland Moore Drive at the Centre Avenue intersection looking south along Centre Avenue. There is a potential that a sight distance easement would be required to preserve a view corridor, though final determination

of the amount of impact (if any) cannot be assessed until additional vertical design information is provided commensurate with a final plan submittal. As CSURF is the underlying owner of both The Grove at Fort Collins and the offsite property that would be impacted by a sight distance easement, CSURF has indicated that they would not object to a sight distance easement on the offsite property should it be determined that it is required during the course of a final plan review. CSURF's indication of no objection to the granting of a sight distance easement satisfies the "Letters of Intent" requirement as part of the City's "Submittal Requirements: Project Development Plan (PDP)", step 3 of 8 in the Development Review Guide.

The lack of a tangent at a public street intersection is not necessarily viewed as being non-compliant with LCUASS. A curve rather than a tangent can be brought to an intersection provided that the resultant angle that the curve intersects that intersection is still within 80 to 100 degrees (intersections do not necessarily need to intersect at 90 degrees or with a straight line, per 8.2.3 of LCUASS). An existing example of where a curve meets an intersection with the resultant angle still falls within the criteria of 8.2.3 of LCUASS is northbound Lady Moon Drive as it intersects with Harmony Road.

d. Further improper interpretations of Land Use Code with regard to multiple issues, as listed below. Some issues that are of lesser scope than others are easily overlooked, but when considered as a whole, the preponderance of evidence reveals a general pattern of noncompliance with the purpose and intent of the Land Use Code.

- I. LUC 3.5.1 Compatibility. with regard to (A) Purpose. (B) Architectural Character. (C) Building Size. Height. Bulk. Mass. Scale. (E) Building Materials. (F) Color. (H) Transitions and (J) Operational/Physical Compatibility)

The Board misinterpreted multiple provisions of LUC 3.5.1 with regard to compatibility of The Grove PDP with existing neighboring development. The architectural character, size, bulk and scale of the buildings bear little contextual relationship to existing adjacent neighborhoods. Structural transitions are not provided, and although they are at a modest distance across a natural area, very large three-story buildings nearly 200 feet long are situated on a hillside that rises above the neighboring one- and two-story townhouses and homes. Incompatibility of The Grove PDP with existing development is discussed pages 11-1 through 11-6 of the Resident Report and illustrated by contrasting views of the Applicant's computer model and recent photographs of the neighborhood context.

STAFF ANALYSIS:

As stated in the Staff Report to the Planning & Zoning Board on June 16, 2011, the development plan satisfies the criteria set forth in Section 3.5.1 by ensuring that the architectural character of the surrounding area is maintained by using a site and building design that is compatible with the multi-family residential developments to the west (Windtrail Park and Care Housing at Windtrail Park) and the Natural Resources Research Center to the east. The Grove at Fort Collins, PDP contains buildings of no more than 3 stories in height clustered around a common, amenity area. The proposed building materials consist of brick masonry and horizontal and vertical vinyl siding. With the exception of vinyl siding the materials can be found on existing buildings in the area.

- ii. LUC 3.8.16(E)(2) Increasing the Occupancy Limit

The Board misinterpreted the provisions that allow the occupancy limit to be increased above three unrelated occupants. As explained on page 11-7 of the Resident Report, The Grove PDP includes 18 four-bedroom apartments. The Grove PDP provides limited open space, some recreational areas, parking and public facilities for its tenants. The quantity, quality and distribution do not meet the requirement that such facilities be additional and adequate to serve the occupants and protect the adjacent neighborhoods from the impact of increased occupancy.

STAFF ANALYSIS:

The Land Use Code permits exceeding the occupancy limit if the applicant has provided additional open space, recreational areas, parking areas and public facilities as are necessary to adequately serve the occupants of the development and to protect the adjacent neighborhood.

iii. LUC 1.2.2(E) protecting life, safety and reducing flood damage, and LUC 3.3.3 regarding water hazards

The Board misinterpreted the provisions of the LUC regarding protection of life and property by avoiding inappropriate development and reducing flood damage. City goals for appropriate development of flood-prone areas are noted pages 11-10 to 11-11 of the Resident report. The Grove PDP fills in a portion of the floodplain for two buildings and a public street. The proposed fill narrows the floodplain at a critical location and will cause a rise that threatens low-lying established neighborhoods.

As discussed in the Resident Report, pages 11-15 and 16, The Grove PDP grading plan calls for deep cuts near Larimer Canal #2, increasing the potential for breach of the canal during a storm/flood event. The Board set as a Condition of Approval that the canal be relocated, but only by withholding the Final Certificate of Occupancy after construction. By allowing excavation of the hillside before relocation of the canal, the Board misinterpreted the purpose and intent of LUC 1.2.2(E) and LUC 3.3.3 to mitigate such hazards. Cutting the slope below the canal prior to relocation unnecessarily increases risk to the life, health and safety of downhill residents and properties.

STAFF ANALYSIS

Some of The Grove property is in a FEMA 100-year floodway and flood fringe. The applicant does not plan to modify the floodway. The applicant has the legal right through Chapter 10 of the Municipal Code to fill the flood fringe without analyzing how it might impact neighbors. This may push water onto existing neighbors, but is legally permissible by City Code and Federal Code as an "allowable rise." As stated by Brian Varrella, Floodplain Administrator for the City:

"Chapter 10 of City Code allows any party to develop in the Spring Creek flood fringe and create up to 6 inches of rise in the base flood elevation. The net result of this allowable rise by development is to force flood water onto adjacent and upstream properties. City Code does not require any party developing in the Spring Creek flood fringe to quantify their impact on others. "

The Spring Creek FEMA map will be revised late in the Spring of 2012. Much of the neighborhood to the south and west of The Grove will be removed from the map of the 100-year floodway and flood fringe after that time. All affected neighbors will be notified directly of changes to flood mapping on their property when FEMA gives the green light. The green light should be given 6 months before the effective date and mailers will go out to everyone. Neighbors will have 4 to 5 months to plan for new maps and benefits anticipated from the process. Fort Collins has administered a 0.5-ft rise floodway since 1979. This is a wider floodway than the current Federal minimum standard, but is the same floodway required by the State of Colorado. Fort Collins is no more restrictive than the rest of the state in how floodplain boundaries are drawn.

The developer for The Grove at Fort Collins will not be doing any cut and fill to the north-facing slope of the existing Larimer Canal No. 2 while there is water running through that ditch, which occurs 2 months of the year. This mitigates the potential for risk to life, health and safety of properties and residents downhill from the ditch.

iv. LUC 3.4.1 Natural habitats

The Board misinterpreted LUC 3.4.1(F)(2) which requires preservation of natural connections between natural habitats and LUC 3.4.1(C) requiring integration of wildlife within the developed landscape. At present, wildlife travel freely through the site between the Larimer Canal corridor and the Wetlands corridor, and through the adjacent neighborhoods to and from the Spring Creek corridor. As discussed on page 11-17 of the Resident Report, The Grove PDP includes a long iron fence to protect the wetlands from impact by the development. This fence, in addition to a high retaining wall below the Larimer Canal will disrupt these connections. No other residential development in the vicinity requires a fence to protect natural areas from the impact of intense use by residents.

The Board misinterpreted LUC 3.4.1(1)(1) and (2) requiring the design of projects in large natural habitats such as the Spring Creek natural corridor to complement the visual context of the natural habitat and minimize the degradation of the visual character of affected natural features within the site and the obstruction of scenic views to and from the natural features within the site.

STAFF ANALYSIS:**Site Context.**

The Grove project site contains an array of natural habitats and features, including the Larimer Canal No. 2 and significant trees on the south side of the parcel, 4.97 acres of wetlands on the north side of the parcel, and 14 fox dens, as of the most recent ecological survey of the parcel. According to the project's Ecological Characterization Study and staff observations, the species utilizing this corridor are predominately urbanized species (accustomed to human disturbances and including, but not limited to, fox, deer, raccoons, songbirds, etc.).

Wildlife Movement and the Fence.

In a site with abundant natural features, tradeoffs are often required to ensure sensitive habitats are protected while still allowing for urban-adapted species to move across a site. In this project, a fence has been required to protect the wetlands from human encroachment, trash blowing into the site, and from pets trampling in the wetlands. Examples of similar-scale projects where fences have been installed include North College Marketplace and Caribou Apartments; in these sites, no evidence of human traffic, e.g., social trails, can be seen in the wetland area. However, in other areas where fencing has not been required, e.g., Huntington Hills, social trails are evident adjacent to and even within wetlands in some areas. In this project, given the allowance of pets within the apartments and varying buffer distances around the wetlands, staff believes that a fence at the site will protect the wetlands from social trails, trash blowing into the site, and domesticated animal use that otherwise might occur.

However, in May, discussions among staff, the applicant, and the neighbors brought to light concerns about how the fence, while it would serve to protect the wetlands from encroachment, might also prohibit wildlife movement from the northern ends of the parcel to the southern ends (and vice versa). Thus, staff met with wildlife biologists, including representatives from the Division of Wildlife, the Natural Areas Department, and private consultants, to assess how the fence could be modified to still allow for wildlife movement across the site. While several experts believed wildlife will simply adapt to the development, e.g., go around it, others felt that some modifications to the project design would increase wildlife movement across the site. Thus, the following design modifications were requested of the applicant (and subsequently applied in the design):

- Modify the metal-picket fencing style proposed through the project by varying the height from 3' to 6' along several key locations;
- Leave a 1' gap in the pickets below the lower, horizontal cross brace approximately every 100' to allow for fox to move under the fence in compliance with Section 3.4.1(E)(1)(b) and Section 3.4.1(E)(1)(l) of the Land Use Code;
- Roughen the surface of the retaining wall on the south side of the project to allow fox to more easily scramble up the retaining wall.

Each of these adjustments is intended to balance the need for internal and external site connections for wildlife and humans, while limiting human and domesticated animal access into the Natural Habitat Buffer Zones and providing increased, functional protection for wildlife species.

Visual Character.

A total of 7.16 acres of the project site is proposed to be dedicated as a Natural Habitat Buffer Zone, including approximately 1,450 native trees, shrub, grass, and perennial species proposed. During the Planning and Zoning Board hearing, Board Members commented on the improvements in architectural styles and green standards made in the current submittal. The several design iterations that the applicant has worked with staff on has removed the need for any wetland mitigation on the project and is protecting all but three significant trees (two which are in the roadway design for Rolland Moore Drive and one of which has been deemed hazardous by the City Forester).

In regards to views, exterior, scenic views into the Spring Creek corridor are currently blocked by the site's natural topography and vegetation and the three subdivisions to the north of the project. Visibility into the Spring Creek corridor is best provided on the northeast portion of the site through the Gardens on Spring Creek. In addition, all buildings on the project are, at a minimum, over 600' from Spring Creek.

From an internal viewing perspective, the site's natural features, including the wetlands, Larimer Canal No. 2, and significant trees, will be viewable from the project's pedestrian paths and dwelling units. To protect the surrounding neighbors from headlights, the parking lots in the project are surrounded by a solid wood fence, which would be one area where the project obstructs internal views into the site's natural features. However, from concerns expressed by the neighbors and good site design principles, staff finds this is an acceptable tradeoff.

v. Municipal Code 7.5 – Fees

It is long-standing City policy that development should pay its own way. The Appellants believe the Board misinterpreted Municipal Code Chapter 7.5 with regard to development fees. Fee values for The Grove PDP that were provided by City staff upon inquiry prior to the Planning and Zoning hearing appear to be substantially underestimated compared to rates published by the City of Fort Collins. The Appellants do not understand why this should be so and appeal to Council for clarification.

STAFF ANALYSIS:

The developer / applicant has paid the required, full amount of development review fees with each submittal to the City of Fort Collins, both for ODP's and PDP's. There were no Planning or Transportation Development Review Fee reductions given for the project.

vi. LUC 1.2.2 protection of life safety (use of vinyl siding)

The Board misinterpreted the life safety provisions of the LUC with regard to vinyl siding, which can contribute to combustion and produces extremely toxic smoke in a fire event. Page 11-18 of the Resident Report notes this problem has led at least one town to ban the use of vinyl siding in multifamily housing. Fires may not be common in student-oriented housing, but they are not unlikely. The fire sprinklers in the buildings of The Grove PDP do not offer protection from this external fire hazard. Other sustainable siding products are available that do not contribute to combustion or produce smoke of such extreme toxicity.

STAFF ANALYSIS:

The Land Use Code does not expressly address or prohibit the use of vinyl siding on buildings.

vii. LUC 1.2.2(H) energy conservation

The Board misinterpreted Section 1.2.2(H) requiring reduction of energy consumption and demand. The Applicant originally intended to use air-source electric heat pumps to heat the 218 dwelling units of The Grove PDP. Air-source electric heat pumps do not perform well in Colorado and require supplemental resistance heat when temperatures drop below 32 degrees Fahrenheit. As noted on page 11-20 of the Resident Report, use of electricity for space heating in this PDP has been of long-standing concern. Although the insulation performance of its model building has apparently been improved, the Applicant did not commit to any other specific, more efficient heating system, and The Grove PDP utility plan has no gas lines.

STAFF ANALYSIS:

The Land Use Code does not expressly prohibit the use of electric heat in a project. Also, at the Planning & Zoning Board public hearing on June 16, 2011 the developers and their consultants indicated that they were still considering alternative sources of heating for the project.

viii. LUC 3.2.2(C)(5)(a) Sidewalk directness and connectivity

The Board misinterpreted this provision that requires walkways to connect areas of pedestrian origin and destination directly, rather than aligning them according to the shape of a parking lot, as specifically prohibited in 3.2.2(C)(5)(a). The logical direct paths from the entrances of Buildings 8, 10 and 11 to the clubhouse, pool and central lawn are directly across the two largest parking lots in The Grove PDP. There are no walkways through the parking lots and islands do not line up to provide direct access. (Resident Report, page 111-2)

STAFF ANALYSIS:

The Grove at Fort Collins development plan provides good pedestrian connectivity to the front and rear entries to the clubhouse, amenity area and central green on the west side of the clubhouse from Buildings 8, 10 and 11. From Buildings 8 and 11 there are direct sidewalk connections to the east side (main entry) of the clubhouse, having only to cross one driveway entry into a parking lot in each case.

ix. LUC 3.2.2(D)(3)(b) Guest parking

The Board misinterpreted this provision requiring proportional distribution of guest parking off-street and located within 200 feet of the dwelling unit. There are no off-street parking spaces, let alone guest parking spaces, within 200 feet of Buildings 4, 5 and much of Building 6. (Resident Report, page 111-2)

STAFF ANALYSIS:

The Grove at Fort Collins Project Development Plan contains 69 more parking spaces than required by the Land Use Code, not counting the 128 parallel parking spaces along Rolland Moore Drive and the Public Commercial Street. The code does not specify a maximum distance from dwelling units for off-street parking spaces intended for residents of the development. There are 4 – 6 parking spaces in the parking lot directly east of Building 6 that are within 200 feet of the 2 entries to that building. Regarding Buildings 4 and 5, there are 14 parallel parking spaces in a recessed parking area along Rolland Moore Drive, directly in front of the buildings, that could be identified and signed as guest parking.

x. LUC 3.2.5 Trash and Recycling, distance from buildings and proximity to sidewalks.

The Board misinterpreted LUC 3.2.5(B) requiring adequate capacity, number and distribution of trash collection. Some residents of The Grove will have to carry trash 300 feet to reach the nearest enclosure. The Board also misinterpreted LUC 3.2.5(I)(1) requiring trash collection areas to be no closer than twenty (20) feet from any public street or sidewalk. Two locations near Buildings 8 and 3 are closer than 20' to the sidewalk. Correction by providing additional collection sites may reduce the number of parking spaces. (Resident Report, page 111-2 through 4)

STAFF ANALYSIS:

As stated in the Staff Report to the Planning & Zoning Board on June 16, 2011, there are 6 trash collection / recycling enclosures that will be distributed throughout the development site. The proposed locations satisfy the intent of Section 3.2.5 by providing the enclosures near Buildings 1, 3, 6, 7, 8 and 10. The trash enclosures nearest Buildings 3 and 8 are set back 10 feet to 13 feet from the street right-of-way; however, they can be moved to a 20 foot setback distance with the Final Plan, prior to approval and recording, by eliminating one parking space in each case.

xi. LUC 3.S.2(C)(2) Street Facing Facades

The Board misinterpreted this provision requiring at least one building entry or doorway facing any non-arterial street with on-street parking. The east side of the Clubhouse faces the Public Commercial Street, but its elevation has no doorway. (Resident Report, page 111-4)

STAFF ANALYSIS:

Sheet 5 of the Site Plan set (dated 06.01.11) shows the main entry for the Clubhouse (w/Residential Above) building to be on the east side, facing the proposed Public Commercial Street. The entry door would be 32 feet from the public sidewalk along the street. The Front Elevation for the clubhouse, shown on Sheet 18 of the Clubhouse Elevations (dated 06.01.11), contains an Aluminum Storefront Entry System (containing doors).

xii. LUC 3.2.2(K)(S)(b) Location of parking for disabled tenants

The Board misinterpreted this provision requiring handicap parking spaces to be located as close as possible to the nearest accessible building entrance, using the shortest possible accessible route of travel. As noted in James R. Loonan's letter following page 11-23 of the Resident Report, the accessible routes to Buildings 4 and 5 from the closest dedicated parking for disabled tenants are 310 feet and 400 feet respectively.

STAFF ANALYSIS:

There are 15 identified and designed handicap parking spaces in The Grove at Fort Collins PDP. They are distributed throughout the development. Only 9 handicap spaces are required in the lots containing a total of 403 spaces. There are identified handicap parking spaces in lots that are a distance of 200 feet from Building 4 and 350 feet from Building 5.

xiii. LUC Section 3.6.3(F) Connectivity

As a practical matter, the alignment of Rolland Moore Drive in the Amended ODP precludes development of connectivity to existing services south of Parcel C. It is set so close to Larimer Canal No.2 that any street or alternative transportation way would need extensive grading and construction to cross the Canal easement, which would have a substantial impact on its function as a wildlife corridor. Other, better alignments are feasible that could reduce the disruption needed to build connections to the south. Streets, bikeways and trails coexist with canals and wildlife corridors throughout the City. The Board misinterpreted LUC Section 3.6.3(F) which requires Alternative Compliance for connectivity to be equal or better than compliance.

STAFF ANALYSIS:

The Land Use Code includes provisions for Alternative Compliance to provide connectivity to the south across Larimer Canal No. 2 due to the potential impacts to wildlife and natural corridors, existing drainage ways, wetlands, and the availability of alternative routes. City staff from Community Development and Neighborhood Services, Environmental Planning, Engineering, Traffic Operations, and Transportation Planning reviewed the Alternative Development Plan and found that it accomplishes the purposes of LUC 3.6.3{F} equally well or better than a plan that would meet the standard. The Alternative Development Plan submitted provides enhanced bicycle and pedestrian connectivity to adjacent trails, sidewalks and on-street bicycle routes, distributes vehicle traffic without exceeding level of service standards, and eliminates impacts to the designated wildlife corridor along the Larimer Canal No. 2. The Planning & Zoning Board approved this Alternative Compliance.

xiv. Deficiencies in the Traffic Impact Study (TIS)

The Board misinterpreted the LCUASS guidelines for traffic studies in accepting conclusions drawn from deficient assumptions in the TIS. Although the problematic intersection of Centre and Prospect will be the most heavily used intersection by students bicycling to and from campus, only Shields and Rolland Moore Drive was studied for bicycle level of service. The TIS also failed to examine major arterial intersections that occupants of The Grove PDP will need to use for commuting and routine errands such as grocery shopping.

STAFF ANALYSIS:

The development is proposed to be housing primarily for college students. As such, most of the trips expected to be generated during the rush hours will be to and from the CSU campus. The expectation is also that those trips will mostly be made by means other than motorized vehicles. Even with that expectation the Traffic Impact Study evaluated the project with most of the peak hour trips being performed by motor vehicles (75% motor vehicle, 25% alternative modes).

The intersection that is expected to experience the most consistent, reoccurring and measurable traffic (motor vehicle, pedestrian or bicycling) from the development is the Centre Avenue and West Prospect Road intersection. All other surrounding major arterial intersections are not expected to receive significant enough volumes of traffic from the development during the peak traffic hours to discern from the daily background traffic. That is due to being low in volume and as traffic moves further from its origin it becomes more dispersed.

The trips outside the rush hours, when more of the random travel for personal needs and services (groceries, entertainment, etc.) is conducted, are typically random and sporadic in nature and the surrounding street system and intersections have the capacity to handle those trips without measureable impact.

The City's bicycle level of service standards do not specifically require the analysis of intersections similar to the vehicular traffic study. Instead, the bicycle LOS standards require a development to directly connect to the greater Fort Collins bicycle grid and all priority locations within a quarter mile of a site. City staff reviewed the submitted bicycle LOS analysis and found that it complies with LCUASS standards.

DETERMINATION TO BE MADE BY COUNCIL

Did the Planning & Zoning Board properly interpret and apply relevant portions of the Code and Charter?

LIST OF RELEVANT CODE PROVISIONS1. Section 1.2.2 Purpose of the Land Use Code

The purpose of this Land Use Code is to improve and protect the public health, safety and welfare by:

- (A) ensuring that all growth and development which occurs is consistent with this Land Use Code, City Plan and its adopted components, including but not limited to the Structure Plan, Principles and Policies and associated sub-area plans.
- (B) encouraging innovations in land development and renewal.
- (C) fostering the safe, efficient and economic use of the land, the city's transportation infrastructure, and other public facilities and services.
- (D) facilitating and ensuring the provision of adequate public facilities and services such as transportation (streets, bicycle routes, sidewalks and mass transit), water, wastewater, storm drainage, fire and emergency services, police, electricity, open space, recreation, and public parks.
- (E) avoiding the inappropriate development of lands and providing for adequate drainage and reduction of flood damage.
- (F) encouraging patterns of land use which decrease trip length of automobile travel and encourage trip consolidation.
- (G) increasing public access to mass transit, sidewalks, trails, bicycle routes and other alternative modes of transportation.
- (H) reducing energy consumption and demand.
- (I) minimizing the adverse environmental impacts of development.
- (J) improving the design, quality and character of new development.
- (K) fostering a more rational pattern of relationship among residential, business and industrial uses for the mutual benefit of all.
- (L) encouraging the development of vacant properties within established areas.
- (M) ensuring that development proposals are sensitive to the character of existing neighborhoods.
- (N) ensuring that development proposals are sensitive to natural areas and features.

2. Section 3.2.2 Access, Circulation and Parking

(C) **Development Standards.** All developments shall meet the following standards:

(5) *Walkways.*

- (a) Directness and continuity. Walkways within the site shall be located and aligned to directly and continuously connect areas or points of pedestrian origin and destination, and shall not be located and aligned solely based on the outline of a parking lot configuration that does not provide such direct pedestrian access. Walkways shall link street sidewalks with building entries through parking lots. Such walkways shall be raised or enhanced with a paved surface not less than six (6) feet in width. Drive aisles leading to main entrances shall have walkways on both sides of the drive aisle.

(D) **Access and Parking Lot Requirements.** All vehicular use areas in any proposed development shall be designed to be safe, efficient, convenient and attractive, considering use by all modes of

transportation that will use the system, (including, without limitation, cars, trucks, buses, bicycles and emergency vehicles).

(3) *Location.* Only off-street parking areas provided to serve uses permitted in a zone district predominated by residential uses will be allowed in such district.

(b) *Guest Parking.* Off-street guest parking spaces in multi-family developments shall be distributed proportionally to the dwelling unit locations that they are intended to serve. Such parking shall not be located more than two hundred (200) feet from any dwelling unit that is intended to be served.

(K) ***Parking Lots - Required Number of Off-Street Spaces for Type of Use.***

(5) *Handicap Parking.*

(b) *Location.* Handicap parking spaces shall be located as close as possible to the nearest accessible building entrance, using the shortest possible accessible route of travel. When practical, the accessible route of travel shall not cross lanes for vehicular traffic. When crossing vehicle traffic lanes is necessary, the route of travel shall be designated and marked as a crosswalk.

3. Section 3.2.5 *Trash and Recycling Enclosures*

(A) ***Purpose.*** The purpose of this Section is to ensure the provision of areas, compatible with surrounding land uses, for the collection, separation, storage, loading and pickup of recyclable materials by requiring that adequate, convenient space is functionally located at multi-family residential, commercial and industrial land use sites.

(B) ***Regulations.*** The following regulations shall be applied to the extent reasonably feasible:

(1) All new commercial or multi-family structures and all existing commercial or multi-family structures proposed to be enlarged by more than twenty-five (25) percent, or where a change of use is proposed, shall provide adequate space for the collection and storage of refuse and recyclable materials.

(2) The amount of space provided for the collection and storage of recyclable materials shall be designed to accommodate collection and storage containers that are appropriate for the recyclable materials generated. Areas for storage of trash and recyclable materials shall be adequate in capacity, number and distribution to serve the development project.*

(3) Recyclable materials storage areas shall be located abutting refuse collection and storage areas.

(4) Each trash and recycling enclosure shall be designed to allow walk-in access without having to open the main enclosure service gates.

(5) Trash and recycling areas must be enclosed so that they are screened from public view. The enclosure shall be constructed of durable materials such as masonry and shall be compatible with the structure to which it is associated. Gates on the enclosures shall be constructed of metal or some other comparable durable material, shall be painted to match the enclosure and shall be properly maintained.

(6) Enclosure areas shall be designed to provide adequate, safe and efficient accessibility for service vehicles.

(7) Enclosure areas shall be constructed on a cement concrete pad.

(8) The property owner shall supply and maintain adequate containers for recycling and waste disposal. Containers must be clearly marked for recycling.

4. Section 3.3.3 Water Hazards

- (A) Lands which are subject to flooding or are located in a natural drainageway shall not be approved for development or redevelopment unless the following conditions are met:
- (1) the project development plan complies with the Basin Master Drainageway Plan as applicable.
 - (2) the project development plan complies with City Stormwater Design Criteria and Construction Standards.
 - (3) the project development plan complies with the floodplain regulations as established in Chapter 10 of the City Code.
 - (4) all measures proposed to eliminate, mitigate or control water hazards related to flooding or drainageways have been approved by the Water Utilities General Manager.
- (B) If a project includes a water hazard such as an irrigation canal, water body or other water channel, necessary design precautions shall be taken to minimize any hazard to life or property, and additional measures such as fencing, water depth indicators and erection of warning signs shall be taken, to the extent reasonably feasible.
- (C) Any lands that are subject to high groundwater (meaning groundwater at an elevation such that basement flooding is reasonably anticipated by the City Engineer to occur) shall not be platted for building lots with basements unless adequate provisions to prevent groundwater from entering basements have been designed and approved by the City Engineer.

5. Section 3.4.1 Natural Habitats and Features

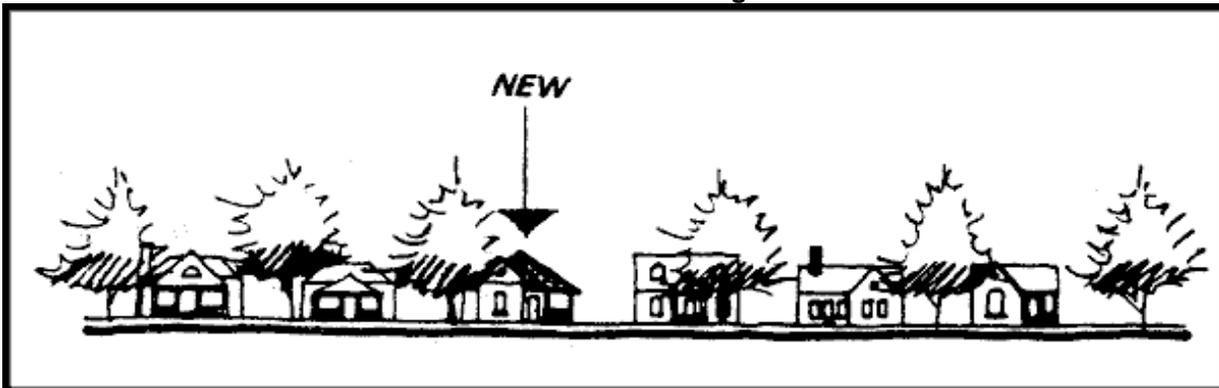
- (C) **General Standard.** To the maximum extent feasible, the development plan shall be designed and arranged to be compatible with and to protect natural habitats and features and the plants and animals that inhabit them and integrate them within the developed landscape of the community by: (1) directing development away from sensitive resources, (2) minimizing impacts and disturbance through the use of buffer zones, (3) enhancing existing conditions, or (4) restoring or replacing the resource value lost to the community (either on-site or off-site) when a development proposal will result in the disturbance of natural habitats or features.
- (F) **Protection of Wildlife Habitat and Ecological Character.**
- (2) **Connections.** If the development site contains existing natural habitats or features that connect to other off-site natural habitats or features, to the maximum extent feasible the development plan shall preserve such natural connections. If natural habitats or features lie adjacent to (meaning in the region immediately round about) the development site, but such natural habitats or features are not presently connected across the development site, then the development plan shall, to the extent reasonably feasible, provide such connection. Such connections shall be designed and constructed to allow for the continuance of existing wildlife movement between natural habitats or features and to enhance the opportunity for the establishment of new connections between areas for the movement of wildlife.
- (I) **Design and Aesthetics.**
- (1) **Project design.** Projects in the vicinity of large natural habitats and/or natural habitat corridors, including, but not limited to, the Poudre River Corridor and the Spring Creek Corridor, shall be designed to complement the visual context of the natural habitat. Techniques such as architectural design, site design, the use of native landscaping and choice of colors and building materials shall be utilized in such manner that scenic views across or through the site are protected, and manmade facilities are screened from off-site observers and blend with the natural visual character of the area. These requirements shall apply to all elements of a project, including any aboveground utility installations.

- (2) *Visual Character of Natural Features.* Projects shall be designed to minimize the degradation of the visual character of affected natural features within the site and to minimize the obstruction of scenic views to and from the natural features within the site.

6. Section 3.5.1 *Building and Project Compatibility*

- (A) ***Purpose.*** The purpose of this Section is to ensure that the physical and operational characteristics of proposed buildings and uses are compatible when considered within the context of the surrounding area. They should be read in conjunction with the more specific building standards contained in this Division 3.5 and the zone district standards contained in Article 4. All criteria and regulations contained in this Section that pertain to "developments," "the development plan," "buildings" and other similar terms shall be read to include the application of said criteria and regulations to any determination made by the Planning and Zoning Board under paragraphs 1.3.4(A)(5) and (6) for the purpose of evaluating the authorization of an additional use.
- (B) ***Architectural Character.*** New developments in or adjacent to existing developed areas shall be compatible with the established architectural character of such areas by using a design that is complementary. In areas where the existing architectural character is not definitively established, or is not consistent with the purposes of this Land Use Code, the architecture of new development shall set an enhanced standard of quality for future projects or redevelopment in the area. Compatibility shall be achieved through techniques such as the repetition of roof lines, the use of similar proportions in building mass and outdoor spaces, similar relationships to the street, similar window and door patterns, and/or the use of building materials that have color shades and textures similar to those existing in the immediate area of the proposed infill development. Brick and stone masonry shall be considered compatible with wood framing and other materials.
- (C) ***Building Size, Height, Bulk, Mass, Scale.*** Buildings shall either be similar in size and height, or, if larger, be articulated and subdivided into massing that is proportional to the mass and scale of other structures, if any, on the same block face, opposing block face or cater-corner block face at the nearest intersection. (See Figure 7.)

Figure 7
Infill Buildings



New buildings in historic districts should reflect the historic character of the neighborhood through repetition of roof lines, patterns of door and window placement, and the use of characteristic entry features.

(E) ***Building Materials.***

(1) *General.* Building materials shall either be similar to the materials already being used in the neighborhood or, if dissimilar materials are being proposed, other characteristics such as scale and proportions, form, architectural detailing, color and texture, shall be utilized to ensure that enough similarity exists for the building to be compatible, despite the differences in materials.

(2) *Glare.* Building materials shall not create excessive glare. If highly reflective building materials are proposed, such as aluminum, unpainted metal and reflective glass, the potential for glare from such materials will be evaluated to determine whether or not the glare would create a significant adverse

impact on the adjacent property owners, neighborhood or community in terms of vehicular safety, outdoor activities and enjoyment of views. If so, such materials shall not be permitted.

(3) *Windows.*

- (a) Mirror glass with a reflectivity or opacity of greater than sixty (60) percent is prohibited.
- (b) Clear glass shall be used for commercial storefront display windows and doors.
- (c) Windows shall be individually defined with detail elements such as frames, sills and lintels, and placed to visually establish and define the building stories and establish human scale and proportion.

(F) **Building Color.** Color shades shall be used to facilitate blending into the neighborhood and unifying the development. The color shades of building materials shall draw from the range of color shades that already exist on the block or in the adjacent neighborhood.

(H) **Land Use Transition.** When land uses with significantly different visual character are proposed adjacent to each other and where gradual transitions are not possible or not in the best interest of the community, the development plan shall, to the maximum extent feasible, achieve compatibility through compliance with the standards set forth in this Division regarding scale, form, materials and colors and adoption of operational standards including limits on hours of operation, lighting, placement of noise-generating activities and similar restrictions.

(J) **Operational/Physical Compatibility Standards.** Conditions may be imposed upon the approval of development applications to ensure that new development will be compatible with existing neighborhoods and uses. Such conditions may include, but need not be limited to, restrictions on:

- (1) hours of operation and deliveries;
- (2) location on a site of activities that generate potential adverse impacts on adjacent uses such as noise and glare;
- (3) placement of trash receptacles;
- (4) location of loading and delivery zones;
- (5) light intensity and hours of full illumination;
- (6) placement and illumination of outdoor vending machines;
- (7) location and number of off-street parking spaces.

7. Section 3.5.2 Residential Building Standards

(C) **Relationship of Dwellings to Streets and Parking.**

- (2) **Street-Facing Facades.** Every building containing four (4) or more dwelling units shall have at least one (1) building entry or doorway facing any adjacent street that is smaller than a full arterial or has on-street parking.

8. Section 3.6.3 Street Pattern and Connectivity Standards

(F) **Utilization and Provision of Sub-Arterial Street Connections to and From Adjacent Developments and Developable Parcels.** All development plans shall incorporate and continue all sub-arterial streets stubbed to the boundary of the development plan by previously approved development plans or existing development. All development plans shall provide for future public street connections to adjacent developable parcels by providing a local street connection spaced at intervals not to exceed six hundred

sixty (660) feet along each development plan boundary that abuts potentially developable or redevelopable land.

9. Section 3.8.16 Occupancy Limits: Increasing the Number of Persons Allowed

(E) **Increasing the Occupancy Limit.**

(2) With respect to multiple-family dwellings, the decision maker (depending on the type of review, Type 1 or Type 2) may, upon receipt of a written request from the applicant and upon a finding that all applicable criteria of this Land Use Code have been satisfied, increase the number of unrelated persons who may reside in individual dwelling units. The decision maker shall not increase said number unless satisfied that the applicant has provided such additional open space, recreational areas, parking areas and public facilities as are necessary to adequately serve the occupants of the development and to protect the adjacent neighborhood.

10. Section 4.6(D)(2) Mix of Housing Types

(D) **Land Use Standards.**

(2) *Mix of Housing Types.* A complete range of the permitted housing types is encouraged in a neighborhood and within any individual development plan, to the extent reasonably feasible, depending on the size of the parcel. The following minimum standards are intended to promote such variety:

(a) A minimum of two (2) housing types shall be required on any development parcel sixteen (16) acres or larger, including parcels part of a phased development. A minimum of three (3) housing types shall be required on any development parcels thirty (30) acres or larger.

(c) The following list of housing types shall be used to satisfy this requirement:

1. Small lot single-family detached dwellings on lots containing less than six thousand (6,000) square feet.
2. Two-family dwellings.
3. Single-family attached dwellings.
4. Mixed-use dwelling units.
5. Group homes.
6. Multifamily dwellings.

11. Section 4.27(D)(2) Secondary Uses

(D) **Land Use Standards.**

(2) *Secondary Uses.* All secondary uses shall be integrated both in function and appearance into a larger employment district development plan that emphasizes primary uses. A secondary use shall be subject to administrative review or Planning and Zoning Board review as required for such use in Section 4.27(B). The following permitted uses shall be considered secondary uses in this zone district and together shall occupy no more than twenty-five (25) percent of the total gross area of the development plan.

12. Section 5.1.2 Definitions

Development plan shall mean an application submitted to the city for approval of a permitted use which depicts the details of a proposed development. Development plan includes an overall development plan, a project development plan and/or a final plan.

COUNCIL OPTIONS

Council should consider the appeal based upon the record and relevant provisions of the Code and Charter, and after consideration, either:

1. Remand the decision if the Council finds that the Board failed to conduct a fair hearing; or
2. Uphold, overturn or modify the Board's decision; or
3. Remand the decision for further consideration of additional issues raised on appeal.

ATTACHMENT

1. City Clerk's Notice of Appeal Hearing and Notice of Site Visit
2. Notice of Appeal, Dated June 29, 2011
 - Resident Report
 - Documents submitted at Planning and Zoning Board Hearing by Citizens, June 16, 2011
3. Staff Report (with attachments) to Planning and Zoning Board, dated June 16, 2011, for The Grove at Fort Collins Project Development Plan (#16-10B)
4. Additional documentation for Staff Report, submitted by applicant to the Planning and Zoning Board at the June 16, 2011 Hearing.
5. Documents submitted by various speakers to the Planning and Zoning Board at the June 16, 2011 Hearing.
6. Verbatim transcript of June 16, 2011 Hearing
7. Miscellaneous Documents Submitted by Applicant at the Planning and Zoning Board June 16, 2011 Hearing

**City Clerk's
Notice of Appeal Hearing
and
Notice of Site Visit**



City Clerk's Office
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80522
970.221.6515
970.221.6295 - fax
fcgov.com/cityclerk

NOTICE OF PUBLIC HEARING

The City Council of the City of Fort Collins, Colorado, on Tuesday, August 16, 2011, at 6:00 p.m. or as soon thereafter as the matter may come on for hearing in the Council Chambers in City Hall at 300 LaPorte Avenue, will hold a public hearing on the two enclosed appeals from decisions (listed below) of the Planning and Zoning Board:

1. Amended CSURF Centre for Advanced Technology, Overall Development Plan #MJA 110001 made on June 16, 2011; and
2. The Grove at Fort Collins, Project Development Plan #16-10B made on June 17, 2011.

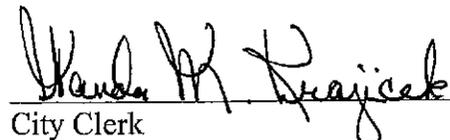
You may have received previous notice on these items in connection with hearings held by the Planning and Zoning Board.

If you wish to comment on these matters, you are strongly urged to attend the hearing on the appeals. If you have any questions or require further information please feel free to contact the City Clerk's Office (970-221-6515) or the Planning Department (970-221-6750).

Any written materials that any party-in-interest may wish the City Council to consider in deciding the appeals shall be submitted to the City Clerk no later than 12:00 p.m. on Wednesday, August 10, 2011 [Section 2-54(b) of the City Code]. Agenda materials provided to the City Council, including City staff's response to the Notice of Appeal, and any additional issues identified by any party-in-interest, will be available to the public on Thursday, August 11, after 2:00 p.m. in the City Clerk's Office and on the City's website at: <http://fcgov.com/cityclerk/agendas.php>.

The City of Fort Collins will make reasonable accommodations for access to City services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call the City Clerk's Office at 970-221-6515 (TDD 970-224-6001) for assistance.

See other side for Notice of Site Visit


City Clerk

Date Notice Mailed:
August 4, 2011

cc: City Attorney
Current Planning Department
Planning and Zoning Board Chair
Appellant/Applicant



City Clerk's Office
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80522
970.221.6515
970.221.6295 - fax
fcgov.com/cityclerk

NOTICE OF SITE VISIT

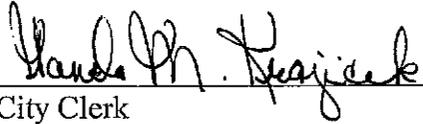
Two appeals of the Planning and Zoning Board decisions of June 16 and June 17, 2011, regarding the Amended CSURF Centre for Advanced Technology, Overall Development Plan and the Grove at Fort Collins, Project Development Plan will be heard by the Fort Collins City Council on August 16, 2011.

Pursuant to Section 2-55 of the City Code, members of the City Council will be conducting an inspection of the site of the proposed overall development plan and project development plan on **Wednesday, August 10, 2011 at 1:30 p.m.** Notice is hereby given that this inspection constitutes a meeting of the City Council that is open to the public, including the appellants and all parties-in-interest. The site is located at the southwest corner of Centre Avenue and existing Rolland Moore Drive, directly south of the Gardens on Spring Creek, in the Centre for Advanced Technology.

Councilmembers conducting a site inspection under this provision will, at the hearing on the appeals, state on the record any observations they made or conversations they had at the site which they believe may be relevant to their determination of the appeals.

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

See other side for Notice of Public Hearings


City Clerk

Date Notice Mailed:
August 4, 2011

cc: City Attorney
Current Planning Department
Planning and Zoning Board Chair
Appellant/Applicant

Notice of Appeal

RECEIVED

JUN 30 2011

CITY CLERK'S OFFICE

June 29, 2011

Windtrail on Spring Creek HOA
c/o Kevin Barrier, President
1999 Northerland Drive
Fort Collins, CO 80526

Members of the Fort Collins City Council
c/o Fort Collins City Clerk
300 LaPorte Avenue
Fort Collins, CO 80521

Via Hand Delivery to Fort Collins City Clerk

Re: Notice of Appeal
The Grove at Fort Collins, Project Development Plan #16-10B

Members of the City Council:

This Notice of Appeal is filed by the undersigned parties-in-interest regarding The Grove at Fort Collins, Project Development Plan #16-10B. In support of this appeal, the undersigned parties-in-interest submit the following:

1. Action which is the subject of this appeal: The decision of the Planning and Zoning Board to approve The Grove at Fort Collins, Project Development Plan #16-10B, herein referred to as "The Grove PDP".
2. Date of action: The meeting at which this decision was made began on June 16, 2011 and adjourned on June 17, 2011. The Board voted on the decision in the early hours of June 17, 2011.
3. Appellant information: The undersigned are parties-in-interest with standing to appeal by way of receiving notice and/or speaking at the Planning and Zoning Board meeting on June 16 – 17, 2011.
4. Grounds for Appeal: The parties-in-interest appeal the Planning and Zoning Board's approval of The Grove PDP on the basis of the Planning and Zoning Board's failure to properly interpret and apply relevant provisions of the City of Fort Collins Land Use Code. The parties-in-interest are foregoing appeal on procedural matters leading to remand of the matter to the Board. The allegations of error in this Appeal are discussed in greater detail in the "Resident Report" that was submitted to the Planning and Zoning Board on June 16, 2011, a true copy of which is attached to this Appeal. Council is urged to review the "Resident Report" before hearing this Appeal, as the parties-in-interest seek consideration of multiple substantive allegations of misinterpretation and misapplication of the Land Use Code, as follows:
 - a. **Improper interpretation of LUC Sections 4.27(D)(2) and 5.1.2 with regard to integration of secondary uses into a larger employment district development plan that emphasizes primary uses.**

The Grove PDP includes no primary uses in the Employment District, a violation of the first sentence of LUC 4.27(D)(2). When considering whether or not The Grove PDP integrated

secondary uses into a larger employment district development plan (Resident Report, page II-12), the Board misinterpreted “development plan” in Section 4.27(D)(2) as applicable only to the Amended ODP, and not to The Grove PDP. A “development plan” as defined in LUC Section 5.1.2 includes an overall development plan, a project development plan and/or a final plan. When a PDP is under consideration, the “development plan” referenced in 4.27(D)(2) is the PDP.

b. Improper interpretation of LUC Section 4.6.(D)(2)(a) with regard to mix of housing types in the MMN District.

The Grove PDP provides only one housing type in the MMN District. The Board misinterpreted Section 4.6(D)(2) by considering the swimming pool pavilion a second housing type. The pavilion is a small accessory building associated with the outdoor recreational facilities near the Clubhouse, which, as described on page II-13 of the Resident Report, is a mixed-use residence located in the Employment District at a considerable distance (beyond 50 feet) across the boundary of the MMN District.

c. Improper interpretation of Larimer County Urban Area Street Standards (LCUASS) for a Minor Collector.

The Board misinterpreted the LCUASS standards which would be applicable to Rolland Moore Drive as designed in The Grove PDP. Multiple instances of noncompliance with LCUASS were cited during the June 16, 2011 hearing from a letter from James R. Loonan, a qualified professional engineer, including insufficient centerline curve radii; undersized arc lengths; lack of horizontal tangent and sight distance easement at the intersection of Rolland Moore Drive and Centre Avenue; and insufficient corner sight distance at the intersection of Rolland Moore Drive and the Local Public Street. The technical details can be found in Mr. Loonan’s letter which follows page 1-11 of the Resident Report. City Staff granted a variance request to use a 30 mph *Connector Local* design criteria for the centerline radii, minimum tangent between curves, and posted speed of 25 mph versus a 40 mph *Collector* design. The minimum tangent length for a 30 mph *Connector* street is 100 feet, but there is zero tangent at the intersection of Rolland Moore Drive and Centre Avenue. The design of Rolland Moore Drive does not meet LCUASS Section 8.2.4.A for a 30 mph *Connector* street nor does it meet the approved variances.

d. Further improper interpretations of Land Use Code with regard to multiple issues, as listed below. Some issues that are of lesser scope than others are easily overlooked, but when considered as a whole, the preponderance of evidence reveals a general pattern of noncompliance with the purpose and intent of the Land Use Code.

i. LUC 3.5.1 Compatibility, with regard to (A) Purpose, (B) Architectural Character, (C) Building Size, Height, Bulk, Mass, Scale, (E) Building Materials, (F) Color, (H) Transitions and (J) Operational/Physical Compatibility

The Board misinterpreted multiple provisions of LUC 3.5.1 with regard to compatibility of The Grove PDP with existing neighboring development. The architectural character, size, bulk and scale of the buildings bear little contextual relationship to existing adjacent neighborhoods. Structural transitions are not provided, and although they are at a modest distance across a natural area, very large three-story buildings nearly 200 feet long are situated on a hillside that rises above the neighboring one- and two-story townhouses and

homes. Incompatibility of The Grove PDP with existing development is discussed pages II-1 through II-6 of the Resident Report and illustrated by contrasting views of the Applicant's computer model and recent photographs of the neighborhood context.

ii. LUC 3.8.16(E)(2) Increasing the Occupancy Limit

The Board misinterpreted the provisions that allow the occupancy limit to be increased above three unrelated occupants. As explained on page II-7 of the Resident Report, The Grove PDP includes 18 four-bedroom apartments. The Grove PDP provides limited open space, some recreational areas, parking and public facilities for its tenants. The quantity, quality and distribution do not meet the requirement that such facilities be additional and adequate to serve the occupants and protect the adjacent neighborhoods from the impact of increased occupancy.

iii. LUC 1.2.2(E) protecting life, safety and reducing flood damage, and LUC 3.3.3 regarding water hazards

The Board misinterpreted the provisions of the LUC regarding protection of life and property by avoiding inappropriate development and reducing flood damage. City goals for appropriate development of flood-prone areas are noted pages II-10 to II-11 of the Resident report. The Grove PDP fills in a portion of the floodplain for two buildings and a public street. The proposed fill narrows the floodplain at a critical location and will cause a rise that threatens low-lying established neighborhoods.

As discussed in the Resident Report, pages II-15 and 16, The Grove PDP grading plan calls for deep cuts near Larimer Canal #2, increasing the potential for breach of the canal during a storm/flood event. The Board set as a Condition of Approval that the canal be relocated, but only by withholding the Final Certificate of Occupancy after construction. By allowing excavation of the hillside before relocation of the canal, the Board misinterpreted the purpose and intent of LUC 1.2.2(E) and LUC 3.3.3 to mitigate such hazards. Cutting the slope below the canal prior to relocation unnecessarily increases risk to the life, health and safety of downhill residents and properties.

iv. LUC 3.4.1 Natural habitats

The Board misinterpreted LUC 3.4.1(F)(2) which requires preservation of natural connections between natural habitats and LUC 3.4.1(C) requiring integration of wildlife within the developed landscape. At present, wildlife travel freely through the site between the Larimer Canal corridor and the Wetlands corridor, and through the adjacent neighborhoods to and from the Spring Creek corridor. As discussed on page II-17 of the Resident Report, The Grove PDP includes a long iron fence to protect the wetlands from impact by the development. This fence, in addition to a high retaining wall below the Larimer Canal will disrupt these connections. No other residential development in the vicinity requires a fence to protect natural areas from the impact of intense use by residents.

The Board misinterpreted LUC 3.4.1(I)(1) and (2) requiring the design of projects in large natural habitats such as the Spring Creek natural corridor to complement the visual context of the natural habitat and minimize the degradation of the visual character of affected

natural features within the site and the obstruction of scenic views to and from the natural features within the site.

v. Municipal Code 7.5 – Fees

It is long-standing City policy that development should pay its own way. The Appellants believe the Board misinterpreted Municipal Code Chapter 7.5 with regard to development fees. Fee values for The Grove PDP that were provided by City Staff upon inquiry prior to the Planning and Zoning hearing appear to be substantially underestimated compared to rates published by the City of Fort Collins. The Appellants do not understand why this should be so and appeal to Council for clarification.

vi. LUC 1.2.2 protection of life safety (use of vinyl siding)

The Board misinterpreted the life safety provisions of the LUC with regard to vinyl siding, which can contribute to combustion and produces extremely toxic smoke in a fire event. Page II-18 of the Resident Report notes this problem has led at least one town to ban the use of vinyl siding in multifamily housing. Fires may not be common in student-oriented housing, but they are not unlikely. The fire sprinklers in the buildings of The Grove PDP do not offer protection from this external fire hazard. Other sustainable siding products are available that do not contribute to combustion or produce smoke of such extreme toxicity.

vii. LUC 1.2.2(H) energy conservation

The Board misinterpreted Section 1.2.2(H) requiring reduction of energy consumption and demand. The Applicant originally intended to use air-source electric heat pumps to heat the 218 dwelling units of The Grove PDP. Air-source electric heat pumps do not perform well in Colorado and require supplemental resistance heat when temperatures drop below 32 degrees Fahrenheit. As noted on page II-20 of the Resident Report, use of electricity for space heating in this PDP has been of long-standing concern. Although the insulation performance of its model building has apparently been improved, the Applicant did not commit to any other specific, more efficient heating system, and The Grove PDP utility plan has no gas lines.

viii. LUC 3.2.2(C)(5)(a) Sidewalk directness and connectivity

The Board misinterpreted this provision that requires walkways to connect areas of pedestrian origin and destination directly, rather than aligning them according to the shape of a parking lot, as specifically prohibited in 3.2.2(C)(5)(a). The logical direct paths from the entrances of Buildings 8, 10 and 11 to the clubhouse, pool and central lawn are directly across the two largest parking lots in The Grove PDP. There are no walkways through the parking lots and islands do not line up to provide direct access. (Resident Report, page III-2)

ix. LUC 3.2.2(D)(3)(b) Guest parking

The Board misinterpreted this provision requiring proportional distribution of guest parking off-street and located within 200 feet of the dwelling unit. There are no off-street parking spaces, let alone guest parking spaces, within 200 feet of Buildings 4, 5 and much of Building 6. (Resident Report, page III-2)

x. LUC 3.2.5 Trash and Recycling, distance from buildings and proximity to sidewalks.

The Board misinterpreted LUC 3.2.5(B) requiring adequate capacity, number and distribution of trash collection. Some residents of The Grove will have to carry trash 300 feet to reach the

nearest enclosure. The Board also misinterpreted LUC 3.2.5(1)(1) requiring trash collection areas to be no closer than twenty (20) feet from any public street or sidewalk. Two locations near Buildings 8 and 3 are closer than 20' to the sidewalk. Correction by providing additional collection sites may reduce the number of parking spaces. (Resident Report, page III-2 through 4)

xi. LUC 3.5.2(C)(2) Street Facing Facades

The Board misinterpreted this provision requiring at least one building entry or doorway facing any non-arterial street with on-street parking. The east side of the Clubhouse faces the Public Commercial Street, but its elevation has no doorway. (Resident Report, page III-4)

xii. LUC 3.2.2(K)(5)(b) Location of parking for disabled tenants

The Board misinterpreted this provision requiring handicap parking spaces to be located as close as possible to the nearest accessible building entrance, using the shortest possible accessible route of travel. As noted in James R. Loonan's letter following page II-23 of the Resident Report, the accessible routes to Buildings 4 and 5 from the closest dedicated parking for disabled tenants are 310 feet and 400 feet respectively.

xiii. LUC Section 3.6.3(F) Connectivity

As a practical matter, the alignment of Rolland Moore Drive in the Amended ODP precludes development of connectivity to existing services south of Parcel C. It is set so close to Larimer Canal No. 2 that any street or alternative transportation way would need extensive grading and construction to cross the Canal easement, which would have a substantial impact on its function as a wildlife corridor. Other, better alignments are feasible that could reduce the disruption needed to build connections to the south. Streets, bikeways and trails coexist with canals and wildlife corridors throughout the City. The Board misinterpreted LUC Section 3.6.3(F) which requires Alternative Compliance for connectivity to be equal or better than compliance.

xiv. Deficiencies in the Traffic Impact Study (TIS)

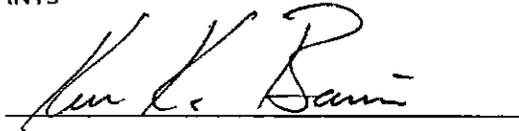
The Board misinterpreted the LCUASS guidelines for traffic studies in accepting conclusions drawn from deficient assumptions in the TIS. Although the problematic intersection of Centre and Prospect will be the most heavily used intersection by students bicycling to and from campus, only Shields and Rolland Moore Drive was studied for bicycle level of service. The TIS also failed to examine major arterial intersections that occupants of The Grove PDP will need to use for commuting and routine errands such as grocery shopping.

5. Notices: Any notice given by the City should be mailed to Windtrail at Spring Creek HOA, care of Kevin Barrier, President at the address provided above. Please also deliver any such notice by email to the Appellants at the individual email addresses provided below.

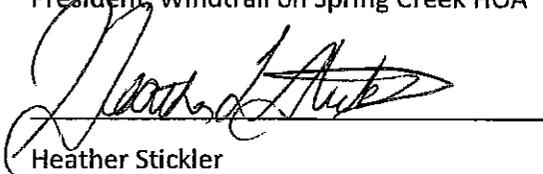
A check for \$100 as payment of the cost of the appeal is enclosed with the original of this Notice of Appeal being hand-delivered to the Fort Collins City Clerk.

Thank you for your consideration. Please contact Kevin Barrier or Heather Stickler if you have any questions.

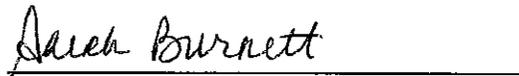
APPELLANTS



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kevin@kevinbarrier.com
President, Windtrail on Spring Creek HOA



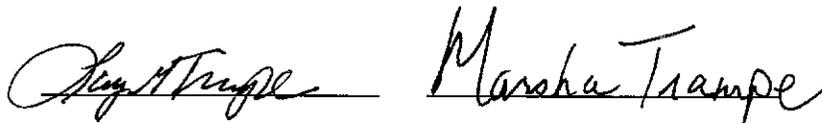
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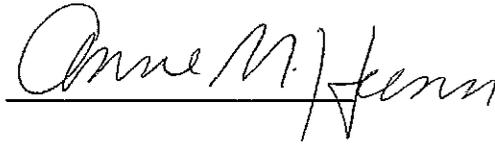
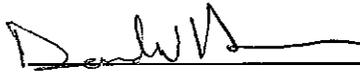


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APPELLANTS (continued)



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Elaine C. Minor
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Board Member, Windtrail Townhomes HOA

Documents Submitted at Planning and Zoning Hearing by Citizens
June 16, 2011

1. Complete City Council packet for the appeal heard at the 12/21/10 City Council Meeting. Available on City Docs. A single paper copy was submitted to provide decision makers with citizen comments for the record, as well as statements that were made by the Applicant in the prior review process. Most of these comments are still relevant in the current review cycle. Items of potential relevance include, but are not limited to:
 - 12/9/09 Neighborhood Meeting Minutes, p. 91 of .pdf, p. 60 of hand-numbered section
 - 7/20/10 Neighborhood Meeting Minutes, p. 99 of .pdf, p. 68 of hand-numbered section
 - Citizen comments, p. 133-163 of .pdf, p. 102-132 of hand-numbered section
 - TIS, May 2010, p. 164 of .pdf, p. 133 of hand-numbered section582 pages.
2. Email thread regarding Employment District Zoning (10/29/09 to 10/30/09) from Steve Olt (10/30/09), Steve Dush (10/29/09), Pete Wray (10/29/09), and Steve Olt (10/29/09).
2 pages.
3. Conceptual Site Plan for The Grove. With handwritten notes. Labeled Sheet 3 of 6 sheets. Dated 10/15/09.
2 pages.
4. Staff Project Review (first page only) for CSU Ropes Course @ C.A.T., PDP – Type I (LUC) #53-85BB. (This is a secondary use already in the C.A.T. ODP.) 1 page
5. Community Horticulture Center Responses to Staff Questions & Comments on Previous PDP Submittal, dated 4/20/10. (Another secondary use in the C.A.T. ODP.)
1 page.
6. Agenda Item Summary, related to Community Horticulture Center, 3/16/04.
2 pages.
7. Agenda Item Summary, related to CSU and Community Horticulture Center stormwater/water quality control project, 7/15/08.
1 page.
8. Agenda Item Summary, related to CSU and Community Horticulture Center stormwater/water quality control project, 7/1/08.
2 pages.
9. Ordinance No. 080, 2008 Authorizing the Conveyance of a Stormwater Filtration and Detention Easement, 7/15/08.
2 pages.
10. Project Development Plan – Community Horticulture Center – Statement of Planning Objectives, 11/9/00.
8 pages.
11. Email from Dave Stringer regarding canal relocation for City Horticulture Center, 12/21/00.
1 page.
12. Email from Gregory Byrne regarding canal relocation for City Horticulture Center, 1/2/01.
1 page.
13. Land/Building Needs Analysis for Targeted Industries, City of Fort Collins, October 2009. Cover shows photo of CSURF ODP, including Parcel C. Page 63 notes citywide FAR for all employment uses is .25. CSURF ODP of 2003 has ODP limit of .37 (approximately 48% higher than the citywide average for employment). Proposed CSURF ODP of 2011 has no FAR limit.
Cover, p 47-48, p 52-53, p 57-58, p 60-61, p 63.
10 pages.
14. Google map showing walking route to King Soopers.
2 pages.
15. Google map showing biking route to King Soopers.
1 page.
16. Google map showing driving route via Prospect to King Soopers.
2 pages.

17. Google map showing driving route via Drake to King Soopers.
2 pages.
18. Variance Request Letter and attachments from Northern Engineering, 1/6/11.
8 pages.
19. Variance Response Letter from Sheri Langenberger, 1/28/11.
3 pages.
20. Letter from Jim Loonan, 11/14/10. Comments marked on p 2 relevant to current proposals.
2 pages.
21. Neighborhood Meeting Minutes for 1/18/11 Neighborhood Meeting with additions from Sarah Burnett.
9 pages.
22. CARE Housing and Campus Crest building size comparisons (Source data from City Docs)
1 page.
23. Full page photos of The Grove at Greeley.
6 pages.
22. Email from Sarah Burnett to Steve Olt regarding 4 bedroom apartments, 9/3/10.
1 page.
23. Email from Brian Varrella regarding net result of developing in the Spring Creek flood fringe, 1/24/11.
1 page.
24. Floodplain map for vicinity, printed 3/13/09.
1 page.
25. Flood Insurance Rate Map, Panel 987 of 1420, effective 12/19/06.
1 page.
26. FEMA Floodplain Map "Project and Neighbors" from City of Fort Collins Website
1 page.
27. City of Fort Collins Floodplain Regulations Quick Guide, 03/09.
23 pages.
28. Rise in Larimer Ditch #2 and Spring Creek after 6/9/11 Rainstorm & Comments
2 pages.
29. Letter from Army Corps of Engineers to Larimer Canal No. 2 Irrigation Company, 5/11/11.
1 page.
30. Letter from Ted Shepard to Larimer Canal No. 2 Irrigating Company, 3/29/11
1 page.
31. Letter from John Moen to Paul Eckman, 3/14/11
1 page.
32. Letter from Gene R. Fischer to Paul Eckman, 3/15/11
1 page.
33. Memo from Matt Delich regarding CSURF South Campus ODP TIS Staff Comments, 10/25/02
2 pages.
34. Neighborhood Meeting Minutes, Centre for Advanced Technology, Amended ODP, 6/1/02
9 pages.
35. P&Z Board Minutes, Centre for Advanced Technology, Amended ODP, 2/20/03.
Page 1, pages 15-25 (C.A.T. ODP agenda item; approved by 4-2 vote.)
12 pages.
36. 2003 C.A.T. ODP Map with citizen annotations.
1 page.
37. 2003 C.A.T. General Notes
1 page.
37. 1999 C.A.T. ODP Map with citizen annotations. Map shows Parcel Ja – mixed residential at 6.4 DU/ac, and Parcel H as industrial/office/R&D. Ja and H are now Parcel C.
1 page.
38. 1994 C.A.T. ODP Map with citizen annotations. Map shows Parcel Ja and H with same uses as the 1999 ODP Map.
1 page.

39. 1988 C.A.T. Parcel J Master Plan. Shows retirement center (Phase 2) and elderly housing/health care/multifamily (Phase 3) on present Parcel C site.
1 page.
40. 1988 C.A.T. Master Plan.
1 page.
41. 1985 C.A.T. PUD.
1 page.
42. Memo from Prospect Shields Neighborhood Association to P&Z Board, 2/18/03 regarding concerns about proposed 2003 C.A.T. Amended ODP.
2 pages.
43. Vinyl vs. Fiber Cement Siding from Institute for the Built Environment (submitted by Applicant on 6/1/11 for PDP)
1 page.
44. Newspaper Article "Another Starkville apartment complex suffers fire", 4/19/10. Campus Trails apartments, 2 buildings.
2 pages.
45. Newspaper Article "Starkville fire chief says careless smoker caused Crossgates fire", 4/9/10. Crossgates Apartments, 3 buildings destroyed.
1 page.
46. Newspaper Article "Still no cause in Crossgates fire", 4/9/10.
1 page.
47. American Campus Communities SEC document for 12/31/10. Notes insurance settlement of \$1.6 million from a fire in April 2010.
2 pages.
48. Campus Trails website page, located in Starkville, MS. Notes Campus Trails is an American Campus Communities project.
49. Newspaper Article "Old Buckingham fire spread quickly because of vinyl siding", 1/31/11. Article mentions vinyl siding.
3 pages.
50. Newspaper Article "Vinyl Siding Concerns Block Knightdale Apartment Project", 12/27/09. Article mentions vinyl siding.
2 pages.
51. Newspaper Article "Apartment Fire: Residents sift through salvageable items", 10/12/10. Article mentions vinyl siding.
2 pages.
52. Newspaper Article "Apartment fire displaces 14 people", 7/28/09. Article mentions vinyl siding.
1 page.
53. Coloradoan Article "Are feed-in tariffs economic incentive or folly?", 6/13/11.
1 page.
54. Email thread 6/11/10 from Sandy Lindell, 6/11/10 from Doug Martine regarding electric heat and estimated electric development charges of \$550,000, 6/11/10 from Sandy Lindell regarding fees and the need for the project, 6/10/11 from Chris Russ of Campus Crest requesting meeting with Josh Birks, and 4/7/10 from Josh Birks regarding development fees.
3 pages.
55. Citizen Request for June 16, 2011 Fort Collins Planning and Zoning Hearing, 6/6/11, signed by over 70 citizens.
6 pages.
56. Email from Steve Olt regarding Citizen Request, 6/7/11.
1 page.
57. Memo from Citizens to P&Z Board, 12/19/10, signed by 38 citizens.
6 pages.
58. Email from Steve Olt to Linda Ripley regarding ODP, 12/22/10 (day after City Council overturned P&Z approval of ODP).
1 page.

59. Email thread between Sarah Burnett and Paul Eckman regarding validity of PDP submitted 12/8/10 following rejection of the ODP to which the PDP conformed on 12/21/10 by City Council, ending 4/22/11.
2 pages.
60. Staff Response – April 15, 2011 letter, from Steve Olt, 5/2/11.
1 page email plus 3 page attachment.
61. April 15, 2011 Letter from Citizens to Steve Olt, 4/15/11 regarding validity of development review process.
3 pages.
62. Emails from Steve Olt and Richard Thomas regarding review process, 3/12/11.
3 pages.
63. Email thread between Steve Olt and citizens regarding 12/8/10 PDP submission and related process issues.
2 pages.
64. Ecological Characterization Study Report, 5/6/10.
16 pages.
65. Undisturbed Wetland Monitoring Program, last revision 1/19/11.
2 pages.
66. Grove ESCR Update #2 Regarding Re-location of the Larimer No. 2 Canal, 4/4/11
2 pages.
67. Appendix J – Supplemental Subsurface Water Investigation
17 pages.
68. Staff Project Review (ODP), 4/20/11
3 pages.
69. Staff Project Review (PDP), 4/20/11
14 pages.
70. Conceptual Review Staff Comments (ODP), 1/10/11
6 pages.
71. Staff Project Review (PDP and ODP), 8/6/10
15 pages.
72. Staff Project Review – Preliminary Design Review, 11/6/09
14 pages.
73. Citizen Comment – Kevin Barrier and staff response regarding traffic concerns for Spring Creek trail, ending on 8/3/10
3 pages.
74. Citizen Comment – Mark Holmes of Care Housing regarding drainage concerns, 12/21/11
1 page.
75. Citizen Comment – Mark Holmes regarding Rolland Moore traffic concerns and traffic calming request, 12/21/11
1 page.
76. Citizen Comment – Carolyn Haynes regarding her opposition to the project, presumably 11/10.
1 page.
77. Staff email thread regarding neighborhood, 1/25/11 (last from Steve Olt)
2 pages.
78. Staff email thread regarding neighborhood, 1/25/11 (last from Glen Schleuter)
1 page.
79. Staff email thread regarding neighborhood, 1/6/11 (last from Steve Dush)
2 pages.
80. Staff email thread regarding electric heat, electrical development fees, other development fees, need for project.
2 pages.
81. P&Z Board Minutes, 11/18/10. (Comments that might be deemed “beyond the purview” of the board were omitted from this copy.)
41 pages.
82. Numerous documents submitted by individual speakers.

**All Attachments are available with the August 23,
2011 Adjourned Meeting Agenda, which can be found
at:**

<http://www.fcgov.com/cityclerk/agendas.php>