

**DATE:** September 20, 2011  
**STAFF:** Wanda Krajicek

**AGENDA ITEM SUMMARY**  
FORT COLLINS CITY COUNCIL

**6**

**SUBJECT**

Consideration and Approval of the Minutes of the August 23, 2011 Adjourned Meeting and the August 31, 2011 Special Meeting.

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**COUNCIL OF THE CITY OF FORT COLLINS, COLORADO**

**Council-Manager Form of Government**

**Adjourned Meeting - 5:00 p.m.**

An adjourned meeting of the Council of the City of Fort Collins was held on Tuesday, August 23, 2011, at 5:00 p.m. in the Council Chambers of the City of Fort Collins City Hall. Roll call was answered by the following Councilmembers: Weitkunat, Kottwitz, Manvel, Ohlson, Poppaw, Horak, and Troxell.

Staff Members Present: Atteberry, Krajicek, Roy.

City Attorney Roy explained that objections to statements made during the appeal hearings should be made at the time an issue arises; however, each party will have the opportunity to address its opinion with regard to objections during the 10 minute period discussing procedural issues. The types of objections allowed will have to do with whether or not the speaker is introducing new evidence.

Councilmember Troxell stated he has explored the potential for his having a conflict of interest given his employment at CSU and his relationship with petition circulators and the appellants. He stated his decisions on this matter will be impartial.

Mayor Weitkunat stated the first 10 minutes for each party will be devoted to discussing procedural issues.

Rick Zier, 322 East Oak Street, attorney representing the appellants, stated the appellants support objections occurring as issues arise. He asked if the balance of any leftover time from the initial presentation could be applied to one's rebuttal time. He asked if the PDP hearing will proceed should the ODP approval be overturned.

Lucia Liley, 300 South Howes Street, attorney representing the applicant, stated the Planning and Zoning Board, City staff, and the applicant, were deprived from any meaningful opportunity to review and consider the large number of documents, totaling nearly 1,000 pages, submitted at the Planning and Zoning Board hearing by the appellants. Because of the timing of the submittal of the documents, the applicant had no opportunity to formally respond until this appeal hearing. She stated her specific objections to the process are that the written materials came in without any opportunity for Board or applicant review, no written response to the documents was permitted, and that the only opportunity for the applicant to respond will come this evening in verbal form. Ms. Liley asked that objections be discussed following presentations rather than halting presentations.

Mayor Weitkunat suggested objections should be discussed briefly as they arise.

Councilmember Kottwitz disagreed, stating the interruptions could be disruptive.

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Councilmember Manvel agreed with Mayor Weitkunat.

Councilmember Horak asked if the objectors will be limited to one per side rather than involve the entire audience. Mr. Zier and Ms. Liley agreed to be the sole objectors for each side.

Mayor Weitkunat suggested the initially proposed timeframes will remain in place with no additional time allotted for rebuttal should the entire presentation time not be used.

City Attorney Roy suggested the PDP appeal hearing be considered, or at least introduced, following the decision on the ODP hearing.

**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 Amended CSURF Center for Advanced Technology, Overall Development Plan, Planning and Zoning Board Decision Upheld**

The following is staff's memorandum for this item.

***“EXECUTIVE SUMMARY***

*On June 16, 2011, the Planning and Zoning Board conducted a public hearing considering the proposed Amended CSURF Center for Advanced Technology, Overall Development Plan (ODP). The Board considered testimony from the applicant, the public and staff. The Amended ODP was approved. Windtrail on Spring Creek HOA and Hillpond on Spring Creek have appealed the Board's decisions. The allegations are that the Planning and Zoning Board did not properly interpret and apply relevant portions of the Code and Charter.*

***BACKGROUND / DISCUSSION***

*This is an appeal of the decision for a request for an Amended CSURF Centre for Advanced Technology, Overall Development Plan. The purpose of the Amended ODP is to realign the proposed future Rolland Moore Drive street connection through Parcel C between Centre Avenue and South Shields Street; and, to eliminate the proposed future Northerland Drive street connection from Parcel C to Gilgalad Way in the Windtrail on Spring Creek PUD to the north. The properties contained on the ODP are, cumulatively, 116.7 acres in size. They are 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 page 6 of the Staff Report for the Amended CSURF Centre for Advanced Technology, Overall Development Plan:*
  - A. *The ODP complies with the applicable standards as stated in Section 2.3.2(D)(1 - 8).*

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- B. *The re-alignment of Rolland Moore Drive is in compliance with the intent of the Master Street Plan and preserves existing wetlands.*
- C. *The elimination of the connection between Northerland Drive and Rolland Moore Drive will not impact this neighborhood in a detrimental way because ample existing pedestrian, bicycle and vehicular connections are provided via the local street network and trails in the area; and wetlands are preserved by the elimination of this connection.*

*The Board considered the testimony of the applicant, affected property owners and staff and voted to approve the Amended CSURF Centre for Advanced Technology, Overall Development Plan.*

### **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 (c/o Kevin Barrier, President of the HOA, 1999 Northerland Drive, Fort Collins, Colorado, 80526); and, Hillpond on Spring Creek (c/o Gail Dethloff, Board President of the HOA, 1937 Wallenberg Drive, Fort Collins, Colorado, 80526).*

*The Appellants allege that the Planning and Zoning Board's approval of the Amended ODP failed to properly interpret and apply relevant provisions of the City of Fort Collins Land Use Code.*

#### **Allegations:**

- a. ***Improper interpretation of LUC Sections 2.3.2(H)(7), 4.27(D)(2) and 5.1.2 in relation to allocation of allowable secondary use in the Employment District.***

*Part I-A of the Resident Report discusses how the Amended ODP provides the means for increasing the proportion of Employment District in the Centre for Advanced Technology developed for non-employment, secondary uses beyond the limits set by the Land Use Code. Section 2.3.2(H)(7) requires mix of uses to be applied to the entire overall development plan, which allows any future PDP to exceed the 25% limit on secondary use in the Employment District by borrowing secondary use acreage from other parcels. The Board misinterpreted Section 2.3.2(H)(7) in that it did not require an accounting of previous secondary uses within the Centre for Advanced Technology be included in the Amended ODP to indicate how much secondary use has been used in this manner since establishment of the Employment District zone. The 18.1 acre Horticulture Center and the 1.5 acre CSU Ropes Course used approximately 14.6 more acres of Employment District for secondary uses than would have been allowed by Section 4.27(D)(2). There may be several other instances of secondary use in the Employment District of the Centre for Advanced Technology since the establishment of zoning after the 1999 ODP.*

*The Board misinterpreted LUC 5.1.2 with regard to the status of the Ropes Course as a community facility; it is publicly owned and intended to serve recreational, educational, cultural and entertainment needs of the community as a whole. It is a secured, fee-for-use public facility. It is not open recreational space. It is an Employment District secondary use in Parcel D of the Amended ODP.*

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*The Board misinterpreted Section 4.27(D)(2) as it applies to an overall development plan by allowing Note 2 of the Amended ODP to set a condition whereby any development in Parcels D and E, which are in the Employment Zone and the FEMA floodway, will not be counted against the 25% secondary use allowance provided by their 52.3 acres (a total of 13.07 acres). Future secondary uses in Parcels D and E would never be debited against that allowance, which could result in 13.07 acres more than 25% of the Amended ODP Employment District being developed for secondary, non-employment uses. Note 2 should be struck from the Amended ODP and language from Note 2 of the 2003 ODP should not be carried forward.*

*The Board misinterpreted LUC 5.1.2 with regard to the meaning of "development plan" in Section 4.27(D)(2) by deciding that issues related to the 25% limit on secondary use in the Employment District are not applicable to an overall development plan. Section 4.27(D)(2) applies to a "development plan", which Section 5.1.2 defines as an overall development plan, a project development plan and/or a final development plan. When considering an ODP in relation to 4.27.(D)(2), the "development plan" is the ODP.*

**STAFF ANALYSIS:**

*The total amount of area on both the CSURF Centre for Advanced Technology ODP (approved by the Planning & Zoning Board on 2/20/2003 and recorded) and the Amended CSURF Centre for Advanced Technology ODP (approved by the P&Z Board on 6/16/2011) is 116.7 acres. The amount of area within the E, Employment District on both ODP's is 96.5 acres. The amount of area within the MMN, Medium Density Mixed-Use Neighborhood District on both ODP's, completely within Parcel C, is 20.2 acres. The Gardens on Spring Creek facility is not included within the boundaries of either ODP containing Parcels A thru F. Therefore, it is not counted against the allowable land uses on the ODP's. During its development review process in 2003 the CSU Ropes Course (Parcel D) was, in fact, determined to be a Community Facility in the E District. Community facilities are Secondary Uses in that district. The total amount of secondary uses in the E District currently existing or proposed is 18.5 acres (9.1 acres in Parcel C and 9.4 acres in Parcel D), which is 19.2% of the total of 96.5 acres in the E District.*

**b. Improper interpretation of LUC Section 5.1.2 regarding Floor Area Ratio.**

*The Amended ODP deletes Note 5 from the 2003 ODP which states, "Maximum Floor Area Ratio (building square footage divided by land area square footage) for all parcels not to exceed .37." LUC Section 5.1.2 defines Floor Area Ratio as the gross floor area of all principal buildings on a lot or block by the total area of such lot, or the block size. This definition does not mention parcels and is clearly intended to be applied to lots and blocks at the detailed level of a PDP. The FAR note in the 2003 ODP was intended to apply a maximum Floor Area Ratio to the lots and blocks of any future PDP that might have been proposed for any parcel within the ODP. The Board misinterpreted both Note 5 and Section 5.1.2 when it accepted the Applicant's FAR calculation using the total area of buildings in the PDP divided by the total parcel square footage.*

*(The Resident Report contains a typographical error on page 1-7, where the LUC citation is written as Section 5.2. Definitions are in Section 5.1.2.)*

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*The Board misinterpreted the general purpose and intent of the LUC when it decided that since FAR is not used as a planning tool in the LUC, it was not part of the LUC and therefore could simply be removed during amendment of the Centre of Advanced Technology ODP. The FAR note was attached to and approved with the 2003 ODP. This made it the standard for the development of the Centre for Advanced Technology in accordance with the LUC. FAR is defined in the LUC 5.1.2. and therefore is indeed part of the LUC. FAR is not regulated by LUC, but that is irrelevant to upholding this limitation that was instituted by the 2003 ODP. There should be a very compelling reason to remove prior protections that presumably were placed as an approved condition and promise to the community for how future development would take place.*

**STAFF ANALYSIS:**

*Staff's response to Planning & Zoning Board's questions at the public hearing was that Floor Area Ratio is not a criterion that must be applied or complied with for evaluation of an Overall Development Plan, per Section 2.3.2(H) of the Land Use Code. However, at the Board Public Hearing on June 16, 2011 the Applicant agreed not to remove the FAR-related note as shown on the February 20, 2003 ODP.*

**c. *Improper interpretation of LUC 1.2.2(E) regarding land uses in the Spring Creek 100-year floodplain.***

*The 2003 Centre for Advanced Technology ODP did not allow secondary uses in an Employment District in the floodplain, but the Amended ODP does allow such development. Note 3 of the 2003 ODP states: "Land uses proposed within the Spring Creek 100-year floodplain shall not be considered secondary uses." As noted on page 1-8 of the Resident Report, City Staff determined in 2009 that this note does not allow residential construction in the floodplain. The Amended ODP allows such development by the simple expedient of deleting this note. Prohibition of residential construction as a secondary use in the Employment District in the Spring Creek floodplain reduces risk to the lives and property of neighboring landowners, potential tenants and first responders. When approving the Amended ODP, the Board misinterpreted LUC 1.2.2(E) regarding the protection of life and property in the matter of floodwaters by allowing removal of the protection afforded by Note 3 of the 2003 ODP.*

**STAFF ANALYSIS:**

*At the Planning & Zoning Board Public Hearing on June 16, 2011 the Applicant agreed to retain General Notes 2 & 3 as shown on the February 20, 2003 ODP, this in lieu of the proposed new General Note 2 on the Amended ODP. This note relates to allowance or prohibition of potential Secondary Uses in the floodway or floodplain, primarily in Parcels D and E of the ODP.*

**d. *Improper interpretation of LUC 2.3.2(H)(1) regarding the basis for classification and granting of administrative variances for the design of Rolland Moore Drive as a Minor Collector.***

*When approving the ODP, the Board accepted administrative variances that downgraded the street design of Rolland Moore Drive relative to its classification. In doing so, the Board misinterpreted*

*LUC 2.3.2(H)(1) regarding the permitted uses and standards for zoned districts in overall development plans. Commercial offices and shops are permitted use in the MMN District according to LUC 4.6(B)(3)(c)(2). The June 2002 Transportation Impact Study for Parcel C of the Centre for Advanced Technology found that commercial office use of the MMN area of Parcel C, along with similar permitted uses in the Employment District would generate 5,735 daily trips, thereby causing Rolland Moore Drive to be classified as a Collector. The Board improperly assumed that since residential uses are permitted in the MMN District, residential levels of traffic could be used to calculate daily trips for the classification and design of Rolland Moore Drive. However, the Amended ODP does not rezone or limit development of any permitted use in the MMN District in Parcel C. As noted on page 1-11 of the Resident Report, the Amended ODP must be able to stand on its own merit for the maximum allowable development. Rolland Moore Drive should meet the standards for a Collector street capable of handling the number of daily trips identified for the complete complement of permitted uses.*

**STAFF ANALYSIS:**

*The basis for a street classification is determined from how the street may function, what volume of traffic is expected to use the roadway, safety considerations and context-sensitive design to support the surrounding neighborhoods. Rolland Moore Drive continues to be designated as a collector street on the Master Street Plan and staff expects it to function as a Collector street as the surrounding land is developed. The Larimer County Urban Area Street Standards (LCUASS) does allow the City Engineer to approve variances to the street design standards. Several variances have been approved related to the street geometry (i.e., centerline radii and minimum tangent between curves) and reducing the travel lane width from 11 feet to 10 feet. The variances are viewed as acceptable with the planned posted speed limit of 25 mph which is also viewed as commensurate with the developing residential land use in the area. City staff from Engineering, Traffic Operations, Transportation Planning, and Community Development and Neighborhood Services reviewed and support the variances.*

*The approved variances do not change the collector-level classification or street cross-section of Rolland Moore Drive. City staff has determined that the variances ensure that the design of Rolland Moore Drive will match the context of the surrounding land uses. Rolland Moore Drive as planned and designed is expected to accommodate existing and projected traffic volumes based on adjacent zoning, as well as provide needed connectivity for vehicles, pedestrians, and cyclists.*

- e. Improper interpretation of LUC 2.3.2(H)(1) by approval of a conceptual alignment for Rolland Moore Drive that does not comply in general with LCUASS standards for its classification.***

*The Board misinterpreted LUC 2.3.2(H){1} regarding the general development standards that can be applied at the level of detail required for an overall development plan. The conceptual alignment in the 2003 ODP was selected as the most compliant option consistent with LCUASS standards for a Collector Street. The conceptual alignment in the Amended ODP appears to be generally out of compliance with LCUASS. The alignment shows curve radii and arc lengths that would be substandard for the street classification according LCUASS for a Minor Collector Street, let alone for a Collector Street. The intersection with Centre Avenue would not comply with LCUASS even*

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*for less stringent Connector Local criteria. Previous City considerations for Rolland Moore Drive placed safety first, as quoted on page 1-10 of the Resident Report. Conceptual roadway alignments should be generally in compliance with LCUASS standards so that any future PDP roadways can be developed within the detailed traffic safety standards.*

**STAFF ANALYSIS:**

*City staff interpretation of LUC 2.3.2{H}{1} is that it would not apply to a street alignment shown on an ODP. However, LUC 2.3.2{H}{3} states that an ODP must conform to the Master Street Plan (MSP), not the Larimer County Urban Area Street Standards. Rolland Moore Drive was added to the Master Street Plan in 2000 to serve as a vehicle, bicycle, and pedestrian connection from Shields Street to Center Avenue. The goal is to provide connectivity to and from surrounding neighborhoods and employment centers. The MSP is a planning-level document and does not include engineering design.*

*In 2006, the Federal Emergency Management Agency (FEMA) updated the flood maps for this area. The 2000 alignment would now be located in a FEMA floodplain and flood fringe, as well as impact wetlands. City staff supported the request to relocate Rolland Moore Drive to the location shown on the amended ODP to remove the environmental impacts. This included removing a planned connection to Northerland Drive.*

*City staff considered possible alternative alignments, including removing the connection from the MSP. The preferred alternative will maintain Rolland Moore Drive as a collector street and utilize the existing Natural Resources Research Council (NRRC) driveway intersection with Center Avenue to avoid multiple off-set intersections along this corridor that could impact safety. Additionally, this intersection will become an important entrance to the Colorado State University Veterinary Medicine Campus in the future. The amended alignment will still conform to the MSP as it meets the original intent to provide a collector-level connection between Shields Street and Center Avenue.*

**f. Improper interpretation of LUC 3.6.2{A} regarding relationship of streets to topography**

*The general alignment of Rolland Moore Drive in the Amended ODP is shown crossing topography with a very steep cross slope. This will force any future PDP to implement unwarranted engineered cuts into the hillside below the Larimer Canal No. 2 that would otherwise not be necessary if the roadway bore a logical relationship to the existing topography.*

**STAFF ANALYSIS:**

*LUC 3.6.2{A} requires streets on a project development plan or subdivision plat to conform to the Master Street Plan, to be aligned to join with planned or existing streets, and be designed to bear a logical relationship to the topography of the land. This standard would not apply to an ODP.*

*The amended Rolland Moore Drive alignment complies with the Master Street Plan and provides connections to adjacent streets, with the exception of Northerland Drive. City staff has not supported street or trail crossings of the Larimer Canal No. 2 or the extension of Northerland Drive due to the potential impacts to wildlife and natural corridors, existing drainage ways, wetlands, and*

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*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.*

**g. LUC 1.2.2{E} protecting life, safety and reducing flood damage, and LUC 3.3.3 regarding water hazards**

*The Amended ODP shows Rolland Moore Drive in an alignment that requires deep cuts into the hillside below 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:**

*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.*

**h. Improper interpretation of LUC Section 3.6.3{F} regarding 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 feasible alignments not presented in the Amended ODP, but sketched in the illustrations following page 1-10 of the Resident Report, could reduce the disruption needed to build connections to the south. Examples of 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:**

*City staff has not supported street or trail crossings of the Larimer Canal No. 2 or the extension of Northerland Drive 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.*

***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 PROVISIONS***

***1. 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 2.3.2(H)(1) & (7) Overall Development Plan Review Procedures

*An overall development plan shall be processed according to, in compliance with and subject to the provisions contained in Division 2.1 and Steps 1 through 12 of the Common Development Review Procedures (Sections 2.2.1 through 2.2.12, inclusive) as follows:*

- (H) **Step 8 (Standards):** *Applicable. An overall development plan shall comply with the following criteria:*
  - (1) *The overall development plan shall be consistent with the permitted uses and applicable zone district standards (Article 4) of all zone districts contained within the boundaries of the overall development plan. The plan shall also be consistent with any zone district standards (Article 4) and general development standards (Article 3) that can be applied at the level of detail required for an overall development plan submittal. If the overall development plan contains any land within the M-M-N, C-C and/or N-C Districts, the plan shall be consistent with the block size requirements for those districts.*
  - (7) *Any standards relating to housing density and mix of uses will be applied over the entire overall development plan, not on each individual project development plan review.*

3. 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.*

4. Section 3.6.2(A) Streets, Streetscapes, Alleys and Easements

- (A) *Streets on a project development plan or subdivision plat shall conform to the Master Street Plan where applicable. All streets shall be aligned to join with planned or existing streets. All streets shall be designed to bear a logical relationship to the topography of the land. Intersections of streets shall be at right angles unless otherwise approved by the City Engineer.*

5. Section 3.6.3(F) 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.*

6. 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.

- (a) *Veterinary facilities and small animal clinics.*
- (b) *Clubs and lodges.*
- (c) *Child care centers.*
- (d) *Residential uses (except mixed-use dwellings when the residential units are stacked above a primary use which occupies the ground floor).*
- (e) *Standard and fast food restaurants.*
- (f) *Lodging establishments.*
- (g) *Bed and breakfast establishments.*
- (h) *Funeral homes.*
- (i) *Health and membership clubs.*
- (j) *Convenience shopping centers.*
- (k) *Convention and conference center.*
- (l) *Food catering.*
- (m) *Public facilities.*
- (n) *Community facilities.*
- (o) *Bars and taverns.*
- (p) *Plant nurseries and greenhouses.*
- (q) *Dog day-care facilities.*
- (r) *Print shops.*
- (s) *Workshops and custom small industry uses.*
- (t) *Artisan and photography studios and galleries.*
- (u) *Limited indoor recreation establishments.*
- (v) *Enclosed mini-storage facilities.*
- (w) *Places of worship or assembly.*
- (x) *Personal and business service shops.*

7. 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.*

*Floor Area Ratio (FAR) shall mean the amount of gross floor area of all principal buildings on a lot or block, as the case may be, divided by the total area of such lot, or the block size, respectively, on which such buildings are located. For mixed-use blocks, the residential square footage shall be added to the commercial development for a total block FAR.*

**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."*

Steve Olt, City Planner, gave a brief overview of the project. The amended CSURF Center for Advanced Technology Overall Development Plan was predicated in 2009 based on a development proposal to realign Rolland Moore Drive. Additionally, a ditch realignment and allocation of secondary uses in the E-Employment zone district for the 96 acres of land in that zone district will need to occur.

Mayor Weitkunat asked Councilmembers Horak and Troxell and Mayor Pro Tem Ohlson to discuss pertinent findings relating to a site visit. Councilmember Horak replied the site visit revealed various locations and relationships of features on the property.

### **Overall Development Plan Appeal Presentation – Appellants**

Mr. Zier stated he did not draft the appeal but has been asked to represent the appellants at this hearing. He stated the Overall Development Plan (ODP) establishes the maximum parameters of what can occur on the property. Changing the allowable uses in the E – Employment zone will result in the loss of the 75% minimum primary employment use. The appellants believe the applicant and staff are interpreting the ODP incorrectly. If the approved amendment to the ODP is not overturned on this basis, the appellants requests that it not be approved without a modification making clear the secondary use allotment will be with every Project Development Plan (PDP) that develops out of this ODP. The Land Use Code directs that all secondary uses shall be integrated both in function and appearance into a larger Employment district development plan that emphasizes primary uses. The Land Use Code provision that any standards relating to housing density and mix of uses will be applied over the entire Overall Development Plan, not on each individual Project Development Plan review, conflicts with the more specific requirement in the E zone. Where two Code provisions conflict, the appellant argues the more specific one should control. If one standard is found not to be more specific, then the more stringent one should control; a fact which is also supported in the Land Use Code. With regard to the Planning and Zoning Board motion and its reference to retaining the floor area ratio note, it appears staff and the applicant are going to interpret the floor area ratio as being something that is applied within the confines of the PDP. That makes a critical difference in massing, intensity, and scale of use as floor area ratio is typically used to limit number of stories or number of buildings that can have multiple stories. The Land Use Code defines floor area ratio as the amount of gross floor area of all principal buildings on a lot or block, not a parcel or PDP, divided by the total area of such lot or block on which such buildings are located. Should this ODP be approved, the appellants ask that the interpretation of floor area ratio be in accordance with the Land Use Code. The appellants argue that the proposed realignment of Rolland Moore Drive has certain safety issues relating to design standard changes. The appellants are also arguing that the Board improperly assumed that since residential uses are permitted in the MMN – Medium Density Mixed-Use Neighborhood zone district, residential levels of traffic could also be used to calculate the number of trips for the classification of Rolland Moore Drive; however, the amended ODP does not rezone or limit development of any permitted use in the MMN district in parcel C. The amended ODP must be able to stand on its own merit for the maximum allowable development and Rolland Moore Drive should meet the standards for a collector street capable of

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handling the number of daily trips identified for the complete compliment of permitted uses. Downgrading a street designation typically requires Council approval, but that did not occur in this case. The appellants would like to make clear that the interpretation of the note regarding the floodplain is that there is a limitation on residential development in the floodplain of the E zone. The ODP should be overturned because of these zoning and safety issues. If it is not overturned, the appellants would like Council to modify or clarify that secondary uses in the E zone will not be fluidly abused over the entire ODP, that the primary uses will not be lessened over time, that any PDP will be subject to the E zone limitation and not the general administrative provision, that no residential dwelling in the E zone be permitted in the floodplain, and that the alignment of Rolland Moore Drive be modified so that it complies with all of the Codes.

### **Overall Development Plan Appeal Presentation - Applicant**

Stu MacMillan, Colorado State University Research Foundation (CSURF), stated this site has been planned for multi-family development for over 25 years. Any adopted ODP will require the realignment of Rolland Moore Drive.

Linda Ripley, Ripley Design Inc., representing Campus Crest Development, stated CSURF began planning development of this property in the mid-1980s. The site where The Grove project is proposed has always been designated as a transitional area between the neighborhood to the north and west and the commercial areas located to the south and east. Ms. Ripley discussed the history of the site and reasoning for the current situation. The Land Use Code makes no distinction between multi-family housing for students or any other population group. This site does work well to provide much needed student housing as it is near campus and separated from the neighborhood by wide drainage. The applicant proposed to amend the ODP primarily due to the alignment of Rolland Moore Drive as the former alignment no longer works because the current alignment would go through existing wetlands and would impact the FEMA floodway and further constrict an already problematic drainageway. The new proposed alignment avoids the wetlands and allows for an average 100 foot buffer between the wetlands and proposed development, and is separated from the wildlife corridor associated with the Larimer Canal. The new alignment would also keep higher traffic volumes further away from the neighborhood. This project proposed to plant 55 new trees along the canal to mitigate the loss of mature trees over time and to enhance the wildlife habitat value. Ms. Ripley replied to a Council question about the difference between the ODP presented to Council last December and the one being presented this evening. The amended ODP addressed the alignment of Rolland Moore Drive and the elimination of Northerland Drive. Changing the alignment of Rolland Moore Drive would be necessary for the future of Parcel C regardless of the future of The Grove project. The only note changes that occurred were specifically requested by City staff to update the notes to reflect current City regulations.

Josie Plout, CSU Institute for the Built Environment, stated the site is located within the existing urban fabric, thus reducing the need for additional infrastructure, decreasing potential vehicle miles traveled, and helping to minimize urban sprawl. High density urban infill is a key component of sustainable site selection and smart urban growth. Its proximity to the Spring Creek Trail gives this site excellent bicycle and pedestrian access to campus. Campus Crest has agreed to provide bicycle parking in significant excess of the requirement as well as a bicycle kiosk. Additionally, this site has access to public transportation.

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Ms. Liley discussed the appeal allegations. She stated approval of The Grove project does not exceed the secondary use standard as it does not exceed 25% of the total gross area being devoted to secondary uses. The employment potential has been realized on the site. The appellants have alleged that the Board erred in removing the floor area ratio note and in its interpretation of the note. However, the Board never removed the note and it remains in its 2003 form. The Board did not make an interpretation of the note with its ODP approval. Rather, it attached a condition to be applied with the PDP so there would not be a conflict when the Board ultimately made its interpretation of that note. There is no legal floor area ratio requirement for this project. The note regarding secondary uses relates to what counts as a secondary use, not whether secondary uses are permitted in the floodplain. Rolland Moore Drive remains a collector on the Master Street Plan and on the ODP. The Board could not accept engineering variances at the ODP level because they are only granted with PDP engineering information and are not subject to Board review. There are no ODP submittal or review requirements for engineering at all. The final three appeal allegations share the assertion that the realigned Rolland Moore Drive would cause deep cuts in the hillside below the canal. The applicant and staff analyzed many alternative routes and the indicated route completely avoids the floodway and the wetlands and respects the wetland buffer. It has approval from every City reviewing department as safe and appropriate. Grading plans are not required as part of an ODP therefore cut and fill requirements cannot be determined until the PDP level. The topography shows a separation between the Rolland Moore alignment and the very steep slopes of the canal. The existing steep slopes of the canal would require the cut and fill, not the Rolland Moore alignment. Staff would not support street or trail crossings of the canal because of the potential impact to the significant wildlife corridor. The south access of Rolland Moore provides minimal benefit and is not needed for safe, efficient and convenient access. Should Council decide it is not an issue to cross the canal, a bicycle/pedestrian crossing can easily be added.

Greg McMaster, 1409 Skyline Drive, stated the Air Quality Advisory Board members were initially concerned about the potential environmental energy impacts of the project. However, the project not only provides much-needed student housing in an appropriate housing, but it does so in an environmentally-positive manner by working toward LEED certification and sustainable practices, reducing the need for car travel and promoting bicycle use, and reducing the impact on wetlands.

Paul Anderson, Fort Collins resident and Housing Committee member for the University-City Connections project, stated CSU housing is at capacity. The committee's recommended action plan is critical in that much of it has become a model for what happened with the joint CSU – Grove project to help preserve traditional neighborhoods through a collaborative effort by CSU, the City, and private sector development to fill the need for student housing. The Grove project makes sense economically, environmentally, and for the greater good of the entire City.

Donna Fairbank, Fort Collins resident and Avery Park Neighborhood Association and Neighbors and Students United member, stated Avery Park neighbors adjusted to the change of Ram Village being built and it is now time for another neighborhood to do the same.

Chase Eckert, ASCSU Director of Governmental Affairs, stated this project meets many common goals for all represented in Neighbors and Students United.

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Doug Brobst, 1625 Independence, Neighbors and Students United member, stated he and Lloyd Walker, 1756 Concord Drive, are in support of the project. He questioned whether the appellants understand the implications of The Grove project not becoming a reality.

### **Overall Development Plan Rebuttal - Appellants**

Mr. Zier stated the history of the E zoned portion of Parcel C has steadily decreased in size from 24 acres to the current 12.9 acres. Should this ODP be approved, the primary use portion of E-Employment zoning in all of Parcel C will be down to about 3.8 acres. Each PDP should be required to respect the 75%-25% Employment zoning requirement. The appellants also request that the Land Use Code definition of floor area ratio be respected and observed.

### **Overall Development Plan Rebuttal - Applicant**

Ms. Liley suggested a Land Use Code change would be needed in order to require each PDP to adhere to the 75%-25% Employment zoning requirement. The “larger Employment district development plan” referenced in the Land Use Code is the Overall Development Plan. Additionally, any standard related to mix of uses applies to the entire ODP, not to any individual PDP. There is no justification for imposing a Land Use Code definition relating to floor area ratio when floor area ratio is not a Land Use Code requirement. Not approving this ODP would result in an alignment of Rolland Moore drive which is not as safe, economical, or efficient.

Mayor Weitkunat noted Council must decide whether or not the Planning and Zoning Board properly interpreted and applied relevant portions of the Land Use Code and City Charter to the allegations of the appeal. The purpose of an Overall Development Plan is to establish general planning and development control parameters for projects that will be developed in phases with multiple submittals, while allowing sufficient flexibility to permit detailed planning in later submittals. She asked that concerns be discussed per allegation, the first of which deals with the Board improperly interpreting the allocation of allowable secondary uses in the E- Employment district as it relates to the mix of land uses in the Overall Development Plan.

Councilmember Manvel noted at least 75 acres of the parcel should be Employment uses, based on the 75%-25% rule. He asked about the fact that there are many floodplain and other uses on the site which will never be primary use acres. Olt replied there are limitations to permitted primary uses in the floodway.

Mayor Pro Tem Ohlson and Councilmember Poppaw agreed with the concern regarding the lack of primary uses in floodway acreage. Ted Shepard, Chief Planner, replied zoning does not recognize floodways, streams, buffers, or topography.

Mayor Pro Tem Ohlson asked if the 75% - 25% primary use rule should be discussed at the ODP level. Olt replied staff has historically interpreted the rule at the ODP level.

Councilmember Kottwitz asked if it would still be appropriate to add a note if the Planning and Zoning Board decision is upheld. City Attorney Roy replied Council has the ability to modify the Planning and Zoning Board decision.

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Councilmember Manvel expressed concern the employment area is being depleted. He asked why a rezoning was not considered. Shepard replied it was considered; however, the Land Use Code provides the flexibility to look at ODPs on an individual basis.

Mayor Weitkunat stated the next allegation relates to floor area ratio.

Mayor Pro Tem Ohlson noted that if floor area ratio is a lot and block issue, it will be appropriate for discussion at the PDP level. Olt replied the discussion does not apply to the ODP, and perhaps not with the PDP as there is no reference to floor area ratio in either the E or MMN zone district.

Mayor Weitkunat stated the next allegation is regarding the basis for classification and granting of administrative variances for the design of Rolland Moore Drive as a minor collector.

Mayor Pro Tem Ohlson asked if Council should be reviewing street classification changes. Matt Wempe, Transportation Planning, replied Rolland Moore Drive is still viewed as a collector as indicated on the Master Street Plan. The variances that were granted were more technical in nature. Should the street be downgraded, various boards would be consulted and Council would have the final decision.

Mayor Weitkunat stated the next allegation is regarding safety and reducing flood damage associated with water hazards with concern to the alignment of Rolland Moore Drive requiring deep cuts into the hillside below Larimer Canal No. 2 which decreases the potential for breach of the canal during flood events.

Councilmember Manvel asked if there is a commitment to relocate the ditch. Olt replied the ditch company is proposing ditch realignment regardless of the project.

(\*\*Secretary's note: The Council took a brief recess at this point in the meeting.)

Councilmember Troxell made a motion, seconded by Councilmember Kottwitz, to uphold the decision of the Planning and Zoning Board approving the amended CSURF Overall Development Plan No. MJA 110001 because the Board properly interpreted and applied the provisions of the Land Use Code.

Councilmember Kottwitz stated some issues may need to be addressed procedurally; however, most questions have been answered relating to the Board properly interpreting the Land Use Code.

Councilmember Manvel stated the floor area ratio issue presents a bit of a concern and the 75% - 25% rule is also a concern. Secondary uses are supposed to be integrated in function and appearance with primary uses; as there is no proposal for a primary use, that integration is difficult to picture.

Mayor Pro Tem Ohlson stated most issues were addressed adequately by staff and project proponents; however, he will not support the motion due to the 75% - 25% primary and secondary use issue.

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Mayor Weitkunat noted the keys for an ODP are generalization and flexibility. Judgment regarding the employment issue is not part of the ODP discussion.

Councilmember Troxell stated he would support the motion.

The vote on the motion was as follows: Yeas: Weitkunat, Horak, Kottwitz and Troxell. Nays: Manvel, Ohlson, and Poppaw.

THE MOTION CARRIED.

**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, Planning and Zoning Board Decision Upheld with two Conditions Added**

The following is staff's memorandum for this item.

***“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 184-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 11-12), 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:*

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*“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*

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*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*

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*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*

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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

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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)(I) 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

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*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 PROVISIONS**

1. 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.***

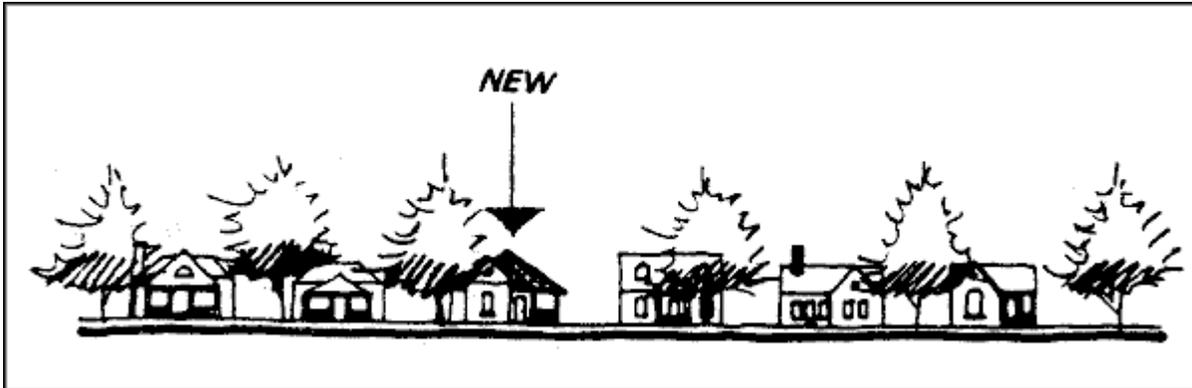
- (1) *Project design. Projects in the vicinity of large natural habitats and/or natural habitat corridors, including, but not limited to, the Poudre River Corridor and the Spring Creek Corridor, shall be designed to complement the visual context of the natural habitat. Techniques such as architectural 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

**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."*

Steve Olt, City Planner, gave a brief overview of the Project Development Plan and stated the development proposes 218 dwelling units in 12 buildings, eleven of which are residential and one of which is a multi-use building including the clubhouse and residential uses. Access to the site would be from Centre Avenue. The appeal lists concerns with primary and secondary uses within

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the development plan, housing types within the development plan, and the proposed increased occupancy in 18 of the dwelling units.

### **Project Development Plan Appeal Presentation - Appellants**

Heather Stickler, 633 Gilgalad Way, stated residents in the appellants' neighborhoods have been supportive of other development in the area; however, appellants are not supportive of this project as it is too large, presents safety issues, and is not supported by the Land Use Code.

Rick Zier, attorney representing the appellants, discussed the project's non-compliance instances including compatibility, scale, and pet issues. The appellants requested a modification of the PDP, should it be approved, that the floor area ratio will be interpreted per the Land Use Code.

Valerie Assetto, 615 Gilgalad Way, stated the neighbors are not opposed to student housing, but are opposed to the proposed scale of the project.

Sarah Burnett, 714 Gilgalad Way, stated there is no statement in the record from any CSU representative. She also noted the Land Use Code states that all secondary uses shall be integrated in function and appearance to a larger Employment district development plan that emphasizes primary uses.

Dale Grenfeld, Sunderland Townhomes resident, discouraged Council from choosing greed and profit over quality of life.

### **Project Development Plan Appeal Presentation – Applicant**

Linda Ripley, planning consultant for the applicant, discussed the changes made by the applicant from its original plan. The Planning and Zoning Board approved the project by a vote of 6-0. The distance between the proposed multi-family buildings and existing homes varies from 231 to 357 feet. The proposed project represents a transition of land use between the single-family neighborhood and the commercial buildings to the south and east.

Josie Plout, CSU Institute for the Built Environment, discussed the efforts Campus Crest has made to design its project more appropriately for Fort Collins.

Lucia Liley, attorney representing the applicants, discussed the appeal allegations. She noted the Land Use Code states that any standards relating to mix of uses will be applied over the entire Overall Development Plan, not on each individual Project Development Plan review.

Doug Brobst, 1625 Independence, Neighbors and Students United Member, discussed distances of similar projects from adjacent neighborhoods and noted the on-site management will maintain a code of conduct similar to that of CSU.

Chase Eckert, ASCSU Director of Governmental Affairs, stated this project has been opposed because it is student housing.

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### **Project Development Plan Rebuttal – Appellants**

Mr. Zier stated the appellants do not oppose student housing but do expect compatibility standards to be met. The floor area ratio standard is to apply to all parcels; those parcels are lots at the PDP level.

### **Project Development Plan Rebuttal - Applicant**

Ms. Liley stated the applicant does not object to keeping the floor area ratio note. The Planning and Zoning Board gave its unanimous approval to the project.

(\*\*Secretary’s note: The Council took a brief recess at this point in the meeting.)

Mayor Weitkunat stated the first appeal allegation to be addressed relates to the integration of secondary uses into a larger Employment district development plan that emphasizes primary uses.

Councilmember Manvel asked about the Land Use Code section which states “all secondary uses shall be integrated both in function and appearance into a larger Employment district development plan that emphasizes primary uses.” Shepard replied this parcel has been part of a master plan since 1985. Integration of the area is ongoing and the area is building out according to evolving plans.

Mayor Weitkunat asked about Section 4.27(d)(2) and its statement that secondary uses in the Employment zone shall occupy no more than 25% of the total gross area of the development plan. Olt replied Parcel C is split between MMN and E zoning and the clubhouse structure, which is considered to be a mixed-use dwelling and is not a secondary use, will be part of that area. Portions of two of the residential buildings in that area are secondary uses.

Mayor Weitkunat asked what the “development plan” references. Olt replied it is historically the ODP. The 25% is in reference to the 96 acres of Employment zoned land.

Mayor Weitkunat stated the next appeal allegation deals with a mix of housing types in the MMN district.

Mayor Pro Tem Ohlson asked if Council had adopted a requirement regarding varying the look of housing types. Shepard replied First Reading of the ordinance amending the Land Use Code and adding that requirement will be September 6th. The Planning and Zoning Board heard the item on July 21st. The LMN standards for multi-family buildings would be applied to MMN zones, with an adjustment for scale.

Mayor Pro Tem Ohlson asked if this standard would have affected the design of these buildings. Shepard replied the standard, if it were in place, would have resulted in some minor changes to the buildings.

Mayor Pro Tem Ohlson asked about the decision to consider the clubhouse building as a second building type. Olt replied there are 11 true residential buildings in the proposal; however, the clubhouse building is defined as a multi-use dwelling which is a second housing type, thereby

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allowing the Project Development Plan to satisfy the Land Use Code requirement of two housing types.

Councilmember Poppaw asked if all buildings will be LEED certified. Ms. Plout replied LEED certification will be sought for one building only, primarily due to the expense incurred in applying for the certification. However, all buildings will be built to the same standards and with the same specifications.

Mayor Pro Tem Ohlson asked what level of LEED certification would be sought. Ms. Plout replied the project will meet at least the base, or certified, level. There is a possibility of achieving silver certification. The applicant has also voluntarily agreed to meet the new Green Building Code that has been set forth by the City.

Mayor Weitkumat stated the next appeal allegation deals with the improper interpretation of compatibility with regard to various building characteristics.

Councilmember Horak asked what types of buffering make this compatible with the area. Olt replied the overall building heights have been decreased in planning and relief variation has aided in breaking up building mass. The land use transition merges from Low-Density Residential and Low Density Mixed-Use Neighborhood to this project and to Commercial.

Councilmember Horak asked why two-story buildings were not considered. Ms. Ripley replied the project cannot be changed by dropping bedrooms as the project would no longer be feasible.

Councilmember Horak asked how the three northernmost buildings are being buffered from the neighborhood. Ms. Ripley replied much foliage currently exists; additionally, a public street with street trees and native plantings around the wetland area will be part of the project as a buffer.

Mayor Pro Tem Ohlson asked what assurance exists regarding building material types. Olt replied building elevations have been reviewed with the Project Development Plan. Once recorded, those plans have to be consistent with plans submitted for building department review.

Mayor Pro Tem Ohlson asked if the number of trees shown in the site plan are the number of trees required. Olt replied the detailed landscape plan will be required to be fulfilled at build-out.

Mayor Pro Tem Ohlson asked if the City Forester is involved in determining the appropriateness of tree types for various developments. Tim Buchanan, City Forester, replies he receives and approves all landscape plans.

Mayor Pro Tem Ohlson asked approximately how many years it will take for the trees to provide significant coverage. Buchanan replied the two to three inch caliper trees will be 14 to 16 feet tall. It will likely take 10 to 15 years before a significant amount of coverage occurs.

Mayor Pro Tem Ohlson asked whether wildlife considerations are considered when looking at tree retention. Buchanan replied several considerations are examined, including wildlife.

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Councilmember Poppaw asked about the possibility of changing the architectural character of the buildings to make them visually less bold. Olt replied in the negative. Ms. Ripley replied only one story is being added from the adjacent two-story homes. Ms. Plout replied the community workshop resulted in significant changes being made to the architecture.

Mayor Weitkunat stated the next appeal allegation relates to protecting life, safety, and reducing flood hazards.

Councilmember Manvel asked about the use of fill dirt to increase the elevation of a property. Bryan Varella, Floodplain Administrator, replied Chapter 10 of the Municipal Code is written allowing any development to fill in the flood fringe without realizing the impact of that fill on adjacent neighbors. The rise cannot exceed 6 inches as determined by the edge of the floodway.

Mayor Weitkunat stated the next appeal allegation deals with the misinterpretation of a Land Use Code section requiring preservation of natural connections between natural habitats and integration of wildlife into the developed landscape.

Mayor Pro Tem Ohlson stated cats and dogs are not compatible with wildlife. Mike Hartnett, Campus Crest co-founder, replied pets are allowed at Campus Crest's other communities. Each pet has to be approved and pet owners pay a non-refundable fee as well as a monthly pet rent. Approximately 10% of the residents have pets.

Mayor Pro Tem Ohlson asked if Campus Crest would self-enforce the ban on free-roaming outdoor cats. Mr. Hartnett replied all of the communities have enforced leash laws.

Mayor Pro Tem Ohlson asked if Campus Crest would consider not allowing pets in the Fort Collins project. Mr. Hartnett replied it could be considered. Additionally, Campus Crest would consider including a pet park in the development.

Mayor Weitkunat stated the next appeal allegation relates to vinyl siding.

Mayor Pro Tem Ohlson asked about the longevity of vinyl siding and whether or not most multi-family units are being built with vinyl siding. Shepard replied two recent multi-family projects have used a masonry product from grade to the top of the first floor window. Siding, usually clapboard, or a stucco product, would be above that. Vinyl has not been a predominant material recently.

Mayor Pro Tem Ohlson noted the staff report indicates vinyl siding is not found in the adjacent neighborhoods. Ms. Plout replied vinyl siding does have a bad reputation when it comes to sustainability. The life cycle assessment of vinyl siding was found by an independent source to be comparable to a fiber cement siding.

Councilmember Poppaw asked if Poudre Fire Authority had commented on any safety issues relating to the siding. Shepard replied PFA has commented that the installation of the mandatory automatic fire sprinkler system is critical. Siding is not a consideration once the sprinkler system is installed.

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Mayor Weitkunat stated the next appeal allegation deals with the reduction of energy consumption and demand. Ms. Liley replied the applicant will guarantee there will be a source of heat other than electric heat.

Mayor Weitkunat stated the next appeal allegation relates to sidewalk directness and connectivity.

Councilmember Manvel asked for a staff perspective. Shepard replied the standards require that buildings front on streets. The parking lots behind the buildings do make for a somewhat complicated walking scenario getting to the clubhouse. The issue can be addressed further with the applicant.

Mayor Weitkunat stated the next appeal allegation deals with adequate capacity, number, and distribution of trash collection devices.

Mayor Pro Tem Ohlson asked about recycling standards for multi-family units. Olt replied the trash enclosure/recycling section of the Land Use Code clearly defines the function and operational aspects of the enclosures and receptacles. Each enclosure must include both trash and recycling receptacles and there are six enclosures within this development. Mayor Pro Tem Ohlson requested follow-up information regarding the single-stream and labeling nature of the recycling receptacles.

Councilmember Troxell made a motion, seconded by Councilmember Kottwitz, to uphold the decision of the Planning and Zoning Board approving The Grove at Fort Collins PDP No. 16-10B because the Board properly interpreted and applied the provisions of the Land Use Code.

Councilmember Troxell stated this project meets and exceeds many of the Land Use Code requirements. The buffering and transition aspects of the project represent the standards and density appropriate for an infill project.

Mayor Pro Tem Ohlson stated the note issue and bicycle parking standards need to be examined for future projects. The floor area ratio issue also needs to be examined or better explained in the future. He commended Ms. Plout and the Institute for the Built Environment for work on the project. Mass and scale issues remain a bit of a concern. He expressed concern about the lack of all buildings meeting LEED certification standards and the lack of a resolution to the pet issue.

Councilmember Kottwitz stated she would not support Council placing a pet prohibition condition on the project. Mayor Pro Tem Ohlson replied he was seeking a voluntary pet prohibition from the developer.

Councilmember Kottwitz stated she would not support Council dictating additional LEED certification requirements. Mayor Pro Tem Ohlson clarified that his condition would be what has already been proposed by the developer, that one building be at least LEED certified with all buildings being built to the same standards. Ms. Liley stated the applicant will accept that condition.

Councilmember Horak made a friendly amendment, seconded by Councilmember Manvel, to place a condition on the approval requiring one building attain LEED certification and all other buildings be built with the same standards. Councilmembers Troxell and Kottwitz accepted the amendment.

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Mayor Pro Tem Ohlson asked Councilmember Manvel if his concerns regarding employment and secondary uses have been resolved. Councilmember Manvel replied in the affirmative.

Councilmember Poppaw asked how many new trees will be planted to reconcile the two large cottonwood trees that will be lost. Ms. Ripley replied 55 new trees will be planted along the canal as well as the trees on-site meeting Land Use Code standards.

Mayor Pro Tem Ohlson stated he would not support the motion unless pets are prohibited. Ms. Liley stated the applicant will accept the pet prohibition condition.

Councilmember Horak made a friendly amendment, seconded by Councilmember Manvel, to place a condition on the approval prohibiting pets.

Councilmember Kottwitz expressed concern regarding the appropriateness of raising the pet issue at an appeal hearing.

Councilmember Horak stated one of the appeal allegations dealt with wildlife and habitat impacts. Therefore, this amendment is an appropriate modification.

City Attorney Roy stated the condition is appropriate and it is within Council's purview to modify the Planning and Zoning Board decision rather than uphold it. A Resolution making formal findings will be brought forth at the next Council meeting.

Councilmembers Horak and Manvel withdrew their motion to amend.

Councilmembers Troxell and Kottwitz withdrew their motion to uphold the Planning and Zoning Board decision.

Councilmember Troxell made a motion, seconded by Councilmember Kottwitz, to modify the decision of the Planning and Zoning Board approving The Grove at Fort Collins PDP No. 16-10B with the condition that at least one building on the project meets attains LEED certification and pets are prohibited.

Councilmember Horak stated his preference would have been for the three northernmost buildings to have been sized differently; however, adequate natural buffers and the distance between the project and neighborhood will result in his support of the motion.

Mayor Pro Tem Ohlson expressed appreciation for Council incorporating resolutions to his concerns and stated he would support the motion.

Councilmember Poppaw stated she would support the motion and commended the attention to the Green Building Codes and work with the Institute for the Built Environment. She encouraged the applicants to be good neighbors to the adjoining neighborhoods.

Mayor Weitkunat stated she would support the motion and referred to the project as a good example for the future direction of the community and Land Use Code.

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Councilmember Horak thanked the audience for its respect.

The vote on the motion was as follows: Yeas: Wetikunat, Kottwitz, Manvel, Ohlson, Poppaw, Horak and Troxell. Nays: none.

THE MOTION CARRIED.

**Adjournment**

The meeting adjourned at 12:05 a.m.

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Mayor

ATTEST:

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City Clerk

August 31, 2011

**COUNCIL OF THE CITY OF FORT COLLINS, COLORADO**

**Council-Manager Form of Government**

**Special Meeting – 6:00 p.m.**

A special meeting of the Council of the City of Fort Collins was held on Wednesday, August 31, 2011, at 6:00 p.m. in the Council Chambers of the City of Fort Collins City Hall. Roll call was answered by the following Councilmembers: Weitkunat, Manvel, Kottwitz, Poppaw, Ohlson, Poppaw and Horak.

Staff Members Present: Atteberry, Krajicek, Roy.

**Resolution 2011-071**

**Amending Resolution 2011-070 Submitting a Citizen-Initiated Ordinance to Prohibit the Operation of Medical Marijuana Centers, Optional Premises Cultivation Operations, and Medical Marijuana-Infused Product Manufacturing Within the City of Fort Collins Corporate Limits at a Special Municipal Election to Be Held on November 1, 2011, In Conjunction with the Larimer County Coordinated Election, Adopted**

The following is staff's memorandum for this item.

***“EXECUTIVE SUMMARY***

*This Resolution amends Section 2 of Resolution 2011-070, which was adopted by the City Council on August 16, 2011, and which submitted a citizen-initiated ordinance to the registered electors of the City concerning a prohibition of the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused product manufacturing within City limits. The initiated ordinance is to be considered by the City electors at a special municipal election on November 1, 2011. The proposed amendment clarifies that the reference to a regular election in Section 2 of the resolution is mistaken, and it corrects that error.*

***BACKGROUND / DISCUSSION***

*On August 16, 2011, the City Council adopted Resolution 2011-070 submitting a citizen-initiated ordinance to the registered electors of the City at a special municipal election to be held in conjunction with the Larimer County Coordinated Election on Tuesday, November 1, 2011 (the “Special Election”). The Special Election had previously been called by the City Council by adoption of Ordinance No. 82, 2011, expressly for such purpose. Section 2 of Resolution 2011-070 mistakenly refers to the Special Election as “said regular election”. The proposed resolution corrects this error by changing the reference to “said special election”.*

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City Attorney Roy stated this resolution makes a correction to Resolution 2011-070 to clarify that the citizen-initiated ordinance will be considered at a special election held in conjunction with the Larimer County Coordinated Election on November 1, 2011.

Councilmember Kottwitz asked why this correction needed to be made at a special meeting instead of waiting until the next regular meeting. City Attorney Roy stated the correction could not be delayed because the ballot language must be certified to Larimer County by September 2.

Councilmember Troxell made a motion, seconded by Councilmember Manvel, to adopt Resolution 2011-071. Yeas: Weitkunat, Manvel, Kottwitz, Poppaw, Ohlson, Poppaw and Horak. Nays: none.

**Adjournment**

The meeting adjourned at 6:05 p.m.

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Mayor

ATTEST:

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City Clerk