

AGENDA ITEM SUMMARY

December 16, 2014

City Council

STAFF

Seth Lorson, City Planner
Laurie Kadrach, Community Development & Neighborhood Services Dir

SUBJECT

Resolution 2014-113 Making Findings of Fact and Conclusions of Law Regarding the Appeal of September 9, 2014, Administrative Hearing Officer Decision Regarding the May 20, 2014, City Council Remand of the Major Amendment to the Summit on College Project Development Plan.

EXECUTIVE SUMMARY

The purpose of this item is to consider the Resolution making findings of fact and conclusions regarding the two Appeals of the Administrative Hearing Officer's September 4, 2014 Remand Decision to Approve the Summit on College Parking Structure, Major Amendment.

Two separate parties filed a Notice of Appeal concerning the Hearing Officer's September 4, 2014 Remand Decision to Approve the Summit on College Parking Structure, Major Amendment.

On December 2, 2014, City Council voted 7-0 on the motion that the Hearing Officer conducted a fair hearing in approving the Major Amendment; and voted 7-0 that the Hearing Officer did not fail to properly interpret and apply relevant provisions of the Land Use Code, specifically Section 3.4.1(I)(2) and 3.5.1(J), and added conditions to the project's approval.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution

BACKGROUND / DISCUSSION

On May 20, 2014, Council provided direction regarding interpretation of the Land Use Code and remanded the project back to the Hearing Officer to consider the following issues:

1. Whether Section 3.4.1(I)(2) of the Land Use Code was properly interpreted and applied with regard to impacts on the Spring Creek viewshed; and
2. Whether Section 3.5.1(J) of the Land Use Code was properly interpreted and applied with regard to the number of off-street parking spaces.

Council remanded the decision to the Hearing Officer to consider the possible reduction of number of parking spaces to a number closer to the minimum parking requirement in the TOD Overlay Zone (358 total parking spaces), and consider the impact on the Spring Creek viewsheds and a possible reduction in the parking structure's size.

In response to the direction from City Council, the applicant submitted an alternative design for consideration at the remand hearing. The alternative design removes one story from the parking structure consisting of 345 parking spaces (442 total) reduced from 440 parking spaces (535 total). It is proposed to be built over the top of the existing surface parking lot resulting in a net gain of 251 spaces over existing conditions. The parking

structure consists of 3 levels, reduced from 4 levels, including parking on the roof, for an overall height of 2 ½ stories. Additional vertical vegetation has been proposed at the south aspect of the parking garage to help screen and soften visual impacts on the Spring Creek viewshed.

On September 4, 2014, the alternative design parking structure was reviewed by the Hearing Officer who considered additional evidence related to the two Land Use Code sections cited above. The Hearing Officer issued a decision of approval on September 9, 2014.

On September 9, 2014, two separate parties filed a Notice of Appeal; the grounds for appeal are as follows:

Appellant Councilmember Cunniff:

- Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code and Charter.

Appellant Jeffrey Leef et al.:

- Failure to conduct a fair hearing in that:
 - The board, commission or other decision maker exceeded its authority or jurisdiction as contained in the Code or Charter;
 - The board, commission or other decision maker considered evidence relevant to its findings which was substantially false or grossly misleading.
- Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code and Charter.

RESOLUTION 2014-113
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING THE APPEAL OF SEPTEMBER 9, 2014, ADMINISTRATIVE
HEARING OFFICER DECISION REGARDING THE MAY 20, 2014, CITY COUNCIL
REMAND OF THE MAJOR AMENDMENT TO THE SUMMIT ON COLLEGE
PROJECT DEVELOPMENT PLAN

WHEREAS, on March 19, 2014, Administrative Hearing Officer, Marcus McAskin (the “Hearing Officer”) approved a major amendment to the Summit on College Project Development Plan #130056 (the “Project”) located west of the intersection of College Avenue and Stuart Street (the “Decision”); and

WHEREAS, the Decision was subsequently appealed to the City Council which, on May 20, 2014, heard the appeals and remanded the Project to the Hearing Officer to consider the following issues on remand: (1) whether Section 3.4.1(I)(2) of the Land Use Code was properly interpreted and applied; and (2) whether Section 3.5.1(J) of the Land Use Code was properly interpreted and applied; and

WHEREAS, on September 4, 2014, the Hearing Officer held a hearing to consider the matters remanded by the City Council and, on September 9, 2014, rendered his decision that the alternative design of the Project, which was offered in response to the concerns expressed by the City Council in the remanding resolution, satisfied the requirements of the Land Use Code contained in Section 3.4.1(I)(2) and Section 3.5.1(J) and also satisfied all Article 3 general development standards and Article 4 standards and approved the alternative design, with conditions; and

WHEREAS, on September 22, 2014, a Notice of Appeal of the Decision was filed by Jeffrey Leef, et. al, on behalf of the owners of a restaurant known as “The Laboratory” as well as the owner of the building in which the restaurant is located (collectively, “Appellant Leef”); and

WHEREAS, on September 23, 2014, a Notice of Appeal of the Decision was filed with the City Clerk by Councilmember Ross Cunniff (“Appellant Cunniff”); and

WHEREAS, Appellant Leef and Appellant Cunniff will hereafter be referred to jointly as the “Appellants”; and

WHEREAS, on December 2, 2014, the City Council, after notice given in accordance with Chapter 2, Article II, Division 3, of the City Code considered said appeals, reviewed the record on appeal, heard presentations from the Appellants and other parties-in-interest and, after discussion modified the decision of the Hearing Officer and imposed conditions; and

WHEREAS, City Code Section 2-55(g) provides that no later than the date of its regular meeting after the hearing of an appeal, City Council shall adopt, by resolution, findings of fact in support of its decision on the appeal.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that, pursuant to Section 2-55(g) of the City Code, the City Council hereby makes the following findings of fact and conclusions:

1. That the grounds for appeal as stated in the Appellants' Notices of Appeal conform to the requirements of Section 2-48 of the City Code.

2. That the Hearing Officer did not fail to conduct a fair hearing by exceeding his authority or jurisdiction or by considering evidence relevant to his findings that was substantially false or grossly misleading, and in connection therewith, the City Council adopts as its findings of fact herein all of the findings of fact made by the Hearing Officer in his September 9, 2014, decision together with the recitals set forth above in this Resolution and, with respect to the fair hearing grounds for appeal, bases its decision on the law and on those findings and determinations.

3. That, with respect to whether the Hearing Officer properly interpreted Sections 3.4.1(I)(2) and 3.5.1(J) as well as the other relevant sections of the Land Use Code as contained in Articles 3 and 4 thereof, the City Council adopts as its findings of fact herein all the findings of fact made by the Hearing Officer in his September 9, 2014, decision together with the recitals set forth above in this Resolution, except that the Council also modifies the Hearing Officer's approval of the remanded major amendment to the Summit on College PDP by adding the following conditions set forth below, and the Project, as modified by the City Council herein, complies with all relevant provisions of the Land Use Code and is approved.

a. In order to ensure that the Project complies with the compatibility criteria contained in Section 3.5.1(J) of the Land Use Code, the maximum number of parking spaces for the Summit on College Project, including both parking spaces on the site of the Project as well as in the parking structure which is the subject of the major amendment, shall not exceed 499 parking spaces, and that parking requirements for the Project may be met using Alternative Compliance as set forth in the currently adopted Transit-Oriented Development parking provisions of the Land Use Code.

b. In order to ensure compliance with Section 3.4.1(I)(2), for the protection of viewsheds along Spring Creek, the southernmost edge of the parking structure shall not be located further south than the existing southern boundary of the parking lot, which, for the purposes of this condition, does not include the landscaped strip to the south of the existing parking lot.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of December, A.D. 2014.

Mayor

ATTEST:

City Clerk