

# AGENDA ITEM SUMMARY

July 16, 2019

City Council

## STAFF

---

Tom Leeson, Director, Comm Dev & Neighborhood Svcs  
Brad Yatabe, Legal

## SUBJECT

---

Resolution 2019-082 Making Findings of Fact and Conclusions of Law Regarding the Appeal of the Planning and Zoning Board's Decision Approving the Sunshine House at Bucking Horse Major Amendment MJA190001.

## EXECUTIVE SUMMARY

---

The purpose of this item is to make findings of fact and conclusions of law regarding the appeal of the Sunshine House at Bucking Horse Major Amendment (MJA#190001). The hearing for the appeals was held July 2, 2019.

## STAFF RECOMMENDATION

---

Staff recommends adoption of the Resolution.

## BACKGROUND / DISCUSSION

---

On March 21, 2019, and April 18, 2019, the Planning and Zoning Board considered the application for the Sunshine House at Bucking Horse Major Amendment, a proposal to replace a working farm with a childcare facility as part of the previously approved Bucking Horse Project Development Plan (2012). The Planning and Zoning Board approved the major amendment with two conditions, based on the hearing record and findings of fact and information contained in the staff report.

An appeal was filed with the City Clerk's Office on May 2, 2019, which was within the 14-day appeal period provided by the Land Use Code.

The appellant raised the following issues on appeal:

- A. Whether the Planning and Zoning Board failed to conduct a fair hearing because it:
  - 1. Considered evidence relevant to its findings that was substantially false or grossly misleading;
  - 2. Improperly failed to receive all relevant evidence offered by the appellant; and/or
  - 3. Was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Board's independence of judgment.
  
- B. Whether the Planning and Zoning Board failed to properly interpret and apply relevant provisions of the City Code, Land Use Code, and Charter, including the following Code sections:
  - 1. City Code Section 10-81-Specific standards for Poudre River five-hundred-year floodplain and zone x shaded areas;
  - 2. Land Use Code Sections 1.2.2(M)-Purpose, Character of Existing Neighborhoods, and Section 5.1.2-Definitions; and

3. Land Use Code Section 4.2.B(3)(c)1-Urban Estate Zone District Permitted Uses, 1.2.2(M) - Purpose, and 5.1.2 - Definitions

On July 2, 2019, City Council considered the record on appeal and testimony from the applicant, the appellant, and other parties-in-interest for the Sunshine House at Bucking Horse Major Amendment (MJA#190001). After the hearing, Council affirmed the Planning and Zoning Board's decision and denied the appeal in its entirety.

RESOLUTION 2019-082  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE  
APPEAL OF THE PLANNING AND ZONING BOARD'S DECISION APPROVING THE  
SUNSHINE HOUSE AT BUCKING HORSE MAJOR AMENDMENT MJA190001

WHEREAS, on March 21, 2019, and April 18, 2019, the Planning and Zoning Board (the "Board") reviewed and approved the Sunshine House at Bucking Horse Major Amendment MJA190001 (the "Amendment") with conditions; and

WHEREAS, on May 2, 2019, Arnold Robinson (the "Appellant") filed an appeal (the "Notice of Appeal") of the Board approval of the Amendment with the City Clerk; and

WHEREAS, the Notice of Appeal asserted that the Board failed to conduct a fair hearing because it: (1) considered evidence relevant to its findings which was substantially false or grossly misleading; (2) improperly failed to receive all relevant evidence offered by the Appellant; and (3) was biased against the Appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Board's independence of judgment; and

WHEREAS, the Notice of Appeal also asserted that the Board failed to properly interpret and apply Land Use Code Sections 1.2.2(M), 4.2(B)(3)(c)1, and the definition of "character" contained in Section 5.1.2, and City Code Section 10-81; and

WHEREAS, on July 2, 2019, the City Council, after notice given in accordance with Chapter 2, Article II, Division 3, of the City Code, considered the appeal, reviewed the record on appeal, received new evidence for consideration, and heard presentations from the Appellant, parties-in-interest supporting the appeal, and the Amendment applicant (the "Applicant"); and

WHEREAS, after discussion, the City Council found and concluded based on the evidence in the record and presented at the July 2, 2019, hearing that the Board did not fail to conduct a fair hearing on March 21, 2019, and April 18, 2019, because:

1. The Board did not consider evidence relevant to its findings which was substantially false or grossly misleading;
2. The Board did not improperly fail to receive all relevant evidence offered by the Appellant; and
3. The Board was not biased against the Appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Board's independence of judgment; and

WHEREAS, after discussion, the City Council found and concluded based on the evidence in the record and presented at the July 2, 2019, hearing that the Board did not fail to

properly interpret and apply Land Use Code Sections 1.2.2(M), 4.2(B)(3)(c)1, and the definition of “character” contained in Section 5.1.2, and City Code Section 10-81; and

WHEREAS, Council finds that the Appellant’s appeal is without merit in its entirety and is denied, and that the Board’s April 18, 2019, decision on the Amendment with conditions is upheld; and

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

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 and adopts the following findings of fact and conclusions:

1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.
2. That the grounds for appeal stated in the Notice of Appeal conform to the requirements of Section 2-48 of the City Code.
3. That based on the evidence in the record and presented at the July 2, 2019, Council hearing, the Appellant’s allegation that the Board failed to conduct a fair hearing is without merit and is denied in its entirety.
4. That based on the evidence in the record and presented at the July 2, 2019, the Appellant’s allegation that the Board failed to properly interpret and apply the Land Use Code is without merit and is denied in its entirety.
5. That the Board’s April 18, 2019, decision on the Amendment with conditions is upheld.
6. That adoption of this Resolution shall constitute the final action of the City Council in accordance with City Code Section 2-55(g).

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of July, A.D. 2019.

---

Mayor

ATTEST:

---

City Clerk