



## AGENDA ITEM SUMMARY

City Council

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### STAFF

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Paul Sizemore, Director, Community Development & Neighborhood Services  
Kai Kleer, City Planner  
Brad Yatabe, Legal

### SUBJECT

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**Appeal of Planning and Zoning Commission Approval of 636 Castle Ridge Court Group Home Project Development Plan/Final Development Plan.**

### EXECUTIVE SUMMARY

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The purpose of this quasi-judicial item is to consider an appeal of the Planning and Zoning Commission's decision on December 15, 2022, approving the Castle Ridge Group Home combined Project Development Plan/Final Development Plan (#FDP220013 or "FDP") located at 636 Castle Ridge Court. Two Notices of Appeal were filed, the first on December 21, 2022, and second on December 28, 2022, alleging that the Planning and Zoning Commission failed to properly interpret and apply relevant provisions of the Land Use Code and failed to conduct a fair hearing.

### STAFF RECOMMENDATION

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Not applicable.

### BACKGROUND / DISCUSSION

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#### **Castle Ridge Group Home Project Overview:**

- The FDP proposes to convert an existing single-family detached dwelling into a 10-resident group home. Site changes include adding additional exterior windows, landscaping, and converting garage spaces into interior living space.
- The home is approximately 6,400 square feet and located on a 22,200 square foot lot within the Castle Ridge at Miramont PUD subdivision.
- A Reasonable Accommodation Request has been approved which grants relief from 3.8.6(A) to increase the maximum permissible residents from 8 to 10.
- The property is located within the Low-Density Residential (RL) zone district.

## **Project Timeline:**

The Applicant submitted its first Project Development Plan (PDP) application (PDP210012) for the subject site on July 9, 2021. The original submittal proposed a 16-resident group home with similar exterior improvements that was denied by the Planning and Zoning Commission at its March 23, 2021, hearing based on findings that the off-street parking was insufficient to adequately serve the proposal. After the commission's denial of PDP210012 the applicant submitted a new development application on September 23, 2022, for a combined Project Development Plan/Final Development Plan (FDP220013) which reduced the proposed number of residents from 16 to 10 and employees from 3 to 2.

The new application was considered and conditionally approved at the December 15, 2022, Planning and Zoning Commission hearing. The two conditions limit the hours for deliveries between 8:00 am and 6:00 pm Monday through Saturday and require the project to designate a neighborhood point of contact who can be contacted 24/7 should any unforeseen issues arise. Associated records of FDP220013 are attached with this staff report and includes a verbatim transcript, video of the hearing, the staff report with attached plans and presentation, the applicant's presentation, and public comments.

## **Notices of Appeal**

On December 21, 2022, the first notice of appeal was filed by Steve Sunderman and is attached. The appeal cites failure to properly interpret and apply relevant provisions of the Land Use Code and that the Commission failed to conduct a fair hearing in that:

- It "exceeded its authority or jurisdiction as contained in the Code."
- It "substantially ignored its previously established rules of procedure."
- It "considered evidence relevant to its findings which was substantially false or grossly misleading."
- It "improperly failed to receive all relevant evidence offered by the appellant."
- It "was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Decision Maker's independence of judgment."

A second appeal was filed on December 28, 2022, by appellant representative Kurt Johnson and is attached. It cites an allegation that the Planning and Zoning Commission failed to properly interpret and apply Land Use Code Section 3.5.1(J).

Relevant materials and files on record for the appeal from the December 15, 2022, Planning and Zoning Commission Hearing, the March 23, 2021, Planning and Zoning Commission Hearing, and for the City Council Appeal hearing are attached with this staff report and highlighted below:

## **December 15, 2022, Planning & Zoning Commission Hearing:**

- Video of hearing and verbatim transcript
- Staff report and list of attachments
  - Vicinity Map
  - Applicant Narrative
  - Plan Set
  - Traffic & Parking Operational Plan
  - Traffic Impact Study

- Castle Ridge Neighborhood Meeting Summary
- HOA Communication
- Reasonable Accommodation Decision
- Supplemental Documents
- Staff presentation
- Applicant presentation
- Other Documents Presented at Hearing
  - Time Donations for Public Comment

**March 23, 2021, Planning and Zoning Commission Hearing**

- March 23, 2021, Approved Minutes
- March 23, 2021, Main Agenda Packet
- March 23, 2021, Supplemental Materials Provided to the Planning and Zoning Commission
- Link to Video of March 23, 2021, Hearing

**March 7, 2023, City Council Appeal Hearing:**

- Notices of Appeal
- Public Hearing Notice
- Staff Report
- Staff Presentation

**The issues for Council to consider in the appeals are:**

The following seven allegations represent the questions for Council:

1. *Did the Planning and Zoning Commission fail to conduct a fair hearing in that it exceeded its authority or jurisdiction as contained in the Code?*
2. *Did the Planning and Zoning Commission fail to conduct a fair hearing by substantially ignoring its previously established rules of procedure?*
3. *Did the Planning and Zoning Commission fail to conduct a fair hearing by considering evidence relevant to its findings which was substantially false or grossly misleading?"*
4. *Did the Planning and Zoning Commission fail to conduct a fair hearing by improperly failing to receive all relevant evidence offered by the appellant?*
5. *Did the Planning and Zoning Commission fail to conduct a fair hearing because it was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Decision Maker's independence of judgment?*

6. *Did the Planning and Zoning Commission fail to properly interpret and apply the relevant provisions of the City's Land Use Code?*
7. *Did the Planning and Zoning Commission fail to properly interpret and apply Land Use Code Section 3.5.1(J) – Operational/Physical Compatibility Standards?*

The questions of whether the Commission failed to conduct a fair hearing (issues 1-5) comes first, because if Council finds that the appellant was denied a fair hearing, then it must remand the matter for rehearing, and the subsequent questions of failure to properly interpret code standards may not need to be considered.

### **First Issue on Appeal:**

*Did the Planning and Zoning Commission fail to conduct a fair hearing in that it exceeded its authority or jurisdiction as contained in the Code?*

The Sunderman Notice of Appeal pp. 5-6 *restates an assertion made under a separate ground for appeal (Sixth Issue of Appeal) which relates to the Planning and Zoning Commission failing to interpret and apply relevant provisions of the Land Use Code. This assertion does not appear to be related to a failure to conduct a fair hearing and includes the following pertinent evidence which is replicated under the Sixth Issue on Appeal:*

- *The purpose statements found under Sections 1.2.2(K) and 1.2.2(M) of the Land Use Code were not properly applied.*
- *That 1.2.5 – Minimum Standards of the Land Use Code have not been met and that the applicants are asking for deviations far and above the current standards.*
- *The proposal violates criterion 1.3.4(C)(1)(a) – (e) of Section 1.3.4 – Addition of Permitted Uses.*

Regarding the first two bullets, the Land Use Code statement of purpose under Section 1.2.2 and statement of minimum standards under Section 1.2.5 is not reviewed as a specific regulation; rather, it lays out what the Code is trying to achieve through the specific standards found in Article 3 – General Development Standards and Article 4 – Districts.

Regarding bullet 3, It should also be noted that the purpose of the Addition of Permitted Use provisions under 1.3.4, is to allow for the approval of a land use on a parcel within a zone district that otherwise prohibit such a use. Because group homes are a permitted use within the Low Density Residential (RL) zone district this Section is not an applicable section of the Land Use Code.

### **Second Issue on Appeal:**

*Did the Planning and Zoning Commission fail to conduct a fair hearing by substantially ignoring its previously established rules of procedure?*

The Sunderman Notice of Appeal p. 7 *asserts that City staff failed to follow through with required procedures and meetings and made repeated efforts to silence neighbors opposed to the development application.*

Pertinent evidence addressing the Appellants assertion may be found in the following locations in the record:

#### *Supplemental Documents*

- pp. 9-20, email string discussing a follow-up meeting with neighborhood, applicant, and city staff.

### Staff Report

- p. 4, information on how Land Use Code procedural and notice requirements were met.

### Neighborhood Meeting Summary

- pp 1-4, summary of neighborhood, city, and applicant comments/questions at neighborhood meeting.

### Verbatim Planning & Zoning Commission Hearing Transcript

- p.11, lines 28-39 and p. 12 lines 1-24. Planning and Zoning Commission allocation of pooled time to Appellant. Appellant was granted 18 minutes and used 12 of the 18.
- p.15 lines 18-24. The Commission's assigned the remaining 6 minutes to second speaker who also pooled time from other residents who were present at the hearing and received a total of 18 minutes to speak.
- p. 14, lines 31-41. The Appellant's public testimony regarding city staff's failure to follow through with required procedures and meetings.
- p. 21, line 17-27, staff response to Appellant's public testimony regarding failure to follow through with required procedures and meetings.
- p. 21, lines 42-43 and p. 22, lines 1-14, public testimony follow-up regarding Appellant's assertion of City censorship.

### Third Issue on Appeal:

*Did the Planning and Zoning Commission fail to conduct a fair hearing by considering evidence relevant to its findings which was substantially false or grossly misleading?"*

The Sunderman Notice of Appeal p. 8 *alleges character matters related to the applicant and the legality of the applicant's current operation. The appellant also alleges that the Traffic & Parking Operational Plan is a gross underestimation of traffic related to the proposed land use.*

Pertinent evidence addressing the Appellants assertion may be found in the following locations of the record:

#### Applicant Presentation

- Slide 6. The applicant's slide relating to traffic and site operations.

#### Traffic & Parking Operational Plan

- p.1-3. A document which describes the source and timing of traffic related to the proposed land use.

#### Traffic Impact Study

- p. 1-4. A study prepared by a licensed traffic engineer that describes the expected traffic generation of the proposed project.

## Staff Report

- pp. 7-8. Staff's analysis of operation and physical compatibility related to traffic.

## Verbatim Planning & Zoning Commission Hearing Transcript

- p. 4, lines 43-45 and p. 5, lines 1-42. The Applicant's presentation related to traffic and operational plan.
- p. 13, lines 33-43. Appellant's allegations regarding the applicant caring for two at-risk individuals without a license.
- p.20, lines 18-27. Applicant addresses allegations of the legality of the applicant's current operation.
- p. 13, lines 9-14. Appellant's public testimony regarding the gross underestimation of traffic.

## Fourth Issue on Appeal:

*Did the Planning and Zoning Commission fail to conduct a fair hearing by failing to receive all relevant evidence offered by the appellant?*

The Sunderman Notice of Appeal p.9 *alleges that city staff actively silenced neighbors at a neighborhood meeting and that Chairman Katz tried to censor the appellant from speaking on time that was donated by five (5) other neighbors.*

Pertinent evidence from the record may include:

### *Neighborhood Meeting Summary (7/28/2022)*

- pp 1-4, summary of neighborhood, city, and applicant comments/questions at neighborhood meeting.

### *Neighborhood Meeting Recording (7/28/2022)*

- <https://www.youtube.com/watch?v=3m3K3yAZhRo>, minutes 47:20 – 53:56. The Appellant's participation in the neighborhood meeting.

## Verbatim Planning & Zoning Commission Hearing Transcript

- p.11, lines 28-39 and p. 12 lines 1-24. Chair Katz's discussion and allocation of pooled time to the Appellant.
- p.15 lines 18-24. The Commission's assigned the unused minutes to second speaker who also pooled time to next speaker utilizing pooled time.

## Video Recording of the Planning & Zoning Commission Hearing

- Minutes 43:30 – 47:24. Chair Katz's discussion and allocation of pooled time to the Appellant.
- Minutes 1:00:00 – 1:00:50. Chair Katz's allocation or remaining time to second speaker participating on pooled time.

## Supplemental Documents

- pp. 10-23. Email string spanning from November 28, 2022, to December 4, 2023 between Em Myler, Development Review Liaison, Kai Kleer, City Planner and Steve Sunderman, Appellant.

## Time Donations for Public Comment

- pp. 1-2. Time donation allocation related to Appellants.

### **Fifth Issue on Appeal:**

*Did the Planning and Zoning Commission fail to conduct a fair hearing because it was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Decision Maker's independence of judgment?*

The Sunderman Notice of Appeal p.10 provides the following four (4) allegations:

- *Comments contained within a city staff e-mail to the Appellant clearly asserts that the decision to approve this application had been predetermined.*
- *Chairman Katz tried to prevent the appellant from speaking and was biased against the appellant and that demonstrated a clear political ideology with intense anger against the Appellant for issuing objections to the project.*
- *Commissioner Haefele, who was not present at the hearing, would have denied the project and the motion to approve the project would have failed.*
- *The decision makers decision was driven by extreme political ideology.*

Pertinent evidence from the record may include:

### Supplemental Documents

- P.15. City staff's email related to the Appellant's assertion that a decision to approve this application had been predetermined.

### Verbatim Planning & Zoning Commission Hearing Transcript

- p. 1. Record of attendance on December 15, 2022, Planning and Zoning Commission Hearing.
- p.11, lines 28-39 and p. 12 lines 1-24. Chair Katz's discussion and allocation of pooled time to the Appellant.
- pp. 23 – 30. The Commission's deliberation on the agenda item.

### Video Recording of the Planning & Zoning Commission Hearing

- Minutes 43:30 – 47:24. Chair Katz's discussion and allocation of pooled time to the Appellant.
- Minutes 1:37:06 – 2:07:03. The Commission's deliberation on the agenda item.

### **Sixth Issue on Appeal:**

*Did the Planning and Zoning Commission fail to properly interpret and apply the relevant provisions of the City's Land Use Code?*

The Sunderman Notice of Appeal pp.3-4 provides the following allegations:

- *The purpose statements found under Sections 1.2.2(K) and 1.2.2(M) of the Land Use Code were not properly applied.*
- *That 1.2.5 – Minimum Standards of the Land Use Code have not been met and that the applicants*

*are asking for deviations far and above the current standards.*

- *The proposal violates criterion 1.3.4(C)(1)(a) – (e) of Section 1.3.4 – Addition of Permitted Uses.*
- *The narrow, private street does not meet fire and safety code regulations.*

Regarding the first two bullets, the Land Use Code statement of purpose under Section 1.2.2 and statement of minimum standards under Section 1.2.5 is not reviewed as a specific regulation; rather, it lays out what the Code is trying to achieve through the specific standards found in Article 3 – General Development Standards and Article 4 – Districts.

Regarding bullet 3, It should also be noted that the purpose of the Addition of Permitted Use provisions under 1.3.4, is to allow for the approval of a land use on a parcel within a zone district that otherwise prohibit such a use. Because group homes are a permitted use within the Low Density Residential (RL) zone district this Section is not an applicable section of the Land Use Code.

Regarding the narrow private street matter, pertinent evidence from the record may include:

#### Neighbor Presentation

- Slides 1-17. Slides presented at the hearing that includes information about street conditions.

#### Record Supplement (March Hearing Material)

- 10-19-2016 Existing Pavement Evaluation (EEC)
- Castle Ridge Street Acceptance Report

#### **Seventh Issue on Appeal:**

*Did the Planning and Zoning Commission fail to properly interpret and apply Land Use Code Section 3.5.1(J) – Operational/Physical Compatibility Standards?*

The Johnson Notice of Appeal pp. 2-3 *contends that the proposal fails to meet 3.5.1(J) due to the following allegations:*

- *The private street was designed to have a reduced width based on findings that the neighborhood was low density and that every house was required to have a minimum of a 3-car garage. The proposal adds an increased amount of traffic that changes the character of the neighborhood and causes safety concerns related to accessibility by emergency services, and fire egress.*
- *The five proposed parking spaces and narrow design of the driveway require users to shuffle vehicles which subsequently make off-street parking impractical.*
- *Commission members who voted in favor of the proposal failed to cite any specific mitigation which merited approval of the new proposal. Conversely, Commission members who denied the proposal cited specific reasons for doing so. Because of this, the Code was not properly applied.*

Pertinent evidence from the record may include:

#### Site Plan

- p. 13. Proposed parking configuration to be managed by parking application in the driveway and on street.

#### Traffic & Parking Operational Plan



- p.1-3. A document which describes the source and timing of traffic related to the proposed land use.

#### Traffic Impact Study

- p. 1-4. A study prepared by a licensed traffic engineer that describes the expected traffic generation of the proposed project.

#### Record Supplement (March Hearing Material)

- 28' Street Width Variance for Castle Ridge at Miramont. Fax between traffic engineering and City of Fort Collins approving the Castle Ridge street-width variance.

#### Neighbor Presentation

- Slides 1-17. Slideshow includes video of traffic on street with vehicles parked on both sides. Slideshow also provides a summarized information regarding the city-approved street variance.

#### Verbatim Planning & Zoning Commission Hearing Transcript

- pp. 23 – 30. The Commission's deliberation and decision on the agenda item.

#### Video Recording of the Planning & Zoning Commission Hearing

- Minutes 1:37:06 – 2:07:03. The Commission's deliberation and decision on the agenda item.

#### **CITY FINANCIAL IMPACTS**

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N/A

#### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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N/A

#### **PUBLIC OUTREACH**

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A neighborhood meeting was held for the Castle Ridge Group Home proposal on July 28, 2022. More detailed information on the public process and neighborhood concerns is included in the Planning and Zoning Commission Staff Report.

## ATTACHMENTS

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1. Hearing and Site Inspection Notices, Mailing List
2. Notices of Appeal
3. Staff Report to Planning and Zoning Commission, December 15, 2022
4. Staff Presentation to Planning and Zoning Commission, December 15, 2022
5. Applicant Presentation
6. Miscellaneous Items
7. Verbatim Transcript
8. Link to December 15, 2022 Planning and Zoning Commission Meeting
9. Staff Report and Supplemental Materials to Planning and Zoning Commission, March 23, 2022
10. Planning and Zoning Commission Meeting Minutes, March 23, 2022
11. Link to March 23, 2022 Planning and Zoning Commission Meeting
12. Staff Presentation
13. Appellant Presentation Materials
14. Applicant Presentation Materials