

# AGENDA ITEM SUMMARY

City Council



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## STAFF

Kim Meyer, Interim Director, Community Development and Neighborhood Services

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## SUBJECT

**Fort Collins Rescue Mission Development Plan Appeals.**

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## EXECUTIVE SUMMARY

The purpose of this quasi-judicial item is to consider two appeals of the Planning and Zoning Commission decision from August 28, 2024, approving the Fort Collins Rescue Mission Preliminary/Final Development Plan #FDP230022.

On September 6, 2024, Appellant Troy W. Jones filed a Notice of Appeal (the "Jones Appeal"); and on September 11, 2024, Appellants Rebeca Mendoza and Debbie Bradberry filed another Notice of Appeal (the "Mendoza Appeal").

The Jones Appeal alleges that the Planning and Zoning Commission failed to properly interpret and apply the following sections of the Land Use Code:

- Section 1.2.4 "Applicability" in conjunction with Section 3.5.1 on Building and Project Compatibility, Subsection (A) "Purpose" and Subsection (J) "Operational/Physical Compatibility Standards" together with the definition of "compatibility" from Section 5.1.2.

The Mendoza Appeal alleges that the Planning and Zoning Commission failed to:

- conduct a fair hearing in that the Commission considered evidence relevant to its findings that was substantially false or grossly misleading; and

- properly interpret and apply the following sections of the Land Use Code:

- 1.2.4 "Applicability" in conjunction with Section 3.2.2 on Access, Circulation, and Parking, Subsection (K) "Parking Requirements," in conjunction with Section 3.4.1 "Environmental Impact" and Section 3.5.1(J) "Operational/Physical Compatibility Standards, and Section 4.22(B) "Service Commercial District Permitted Uses".

The allegation explanations in both appeals largely center around two ideas:

- 1) men experiencing homelessness who come to the area because of the shelter will increase social and behavioral problems in the area when they are not at the shelter; and

- 2) the idea that the facility may expand its number of beds in the future beyond the stated maximum capacity of 250 beds.

## APPEAL ALLEGATION DESCRIPTIONS

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### Mendoza Appeal:

#### **Fair Hearing Issue**

The Mendoza Appeal alleges a failure to conduct a fair hearing in that the Commission considered evidence relevant to its findings that was substantially false or grossly misleading. Fair hearing allegations are usually addressed first in an appeal, because according to City Code Section 2-56(b)(1) Council must remand the matter for rehearing if Council finds that the appellant was denied a fair hearing. However, the description attached to the Mendoza Appeal does not identify any evidence that is “substantially false” or “grossly misleading.”

#### **Failure to Properly Interpret and Apply Relevant Provisions of the Land Use Code *Land Use Code Section 3.2.2(K) – Inadequate Parking and Flawed Parking Study***

The Land Use Code contains requirements for the number of parking spaces in a development plan. The requirements are listed for certain uses, and the homeless shelter use is not listed with a specified number required. In such a case, an applicant can propose “Alternative Compliance” to find an appropriate number based on a parking study (in the P&Z Packet, noted below). The applicants use the alternative compliance provision to determine the number of spaces in the plan.

The Mendoza Appeal asserts that the parking study used to justify the number of parking spaces was based on inadequate comparisons leading to inadequate parking and thus the Planning and Zoning Commission failed to ensure that parking meets the standards in the code Section. It notes that the maximum number of beds discussed during the plan review process increased from 200 to 250 and suggests that there is potential for expansion to 500 beds. It also suggests considering the parking requirement for multi-family dwellings as the basis for a different approach, which would result in a much higher need for guest parking than what is provided.

The Mendoza Appeal states an additional concern about an existing issue of illegal car camping because a portion of the unhoused population lives in vehicles, which could be exacerbated by the facility having inadequate parking provisions. The Mendoza Appellants refer to a California Homelessness Study. The California Homelessness Study is not provided and is not part of the record on appeal. Parties are not permitted to offer new evidence on appeal issues regarding interpretation and application of the Land Use Code.

Pertinent evidence from the record includes:

Transcript	Pg. 12, lines 34-41	Applicant presentation about Alternative Compliance based on a Parking Study.
P&Z Packet	Attachments 7 and 8	Parking Study and Alternative Compliance Request.
Transcript	Pg. 45, Lines 19-26	Applicant comment that the increase from 200-250 beds is not likely to increase traffic because people using the beds are not likely to bring vehicles and would not be allowed to park on site.
Transcript	Pg. 24, lines 14-16	Applicant comment that the parking lot is not safe for homeless people living in vehicles.
Transcript	Pg. 45, lines 31-35	Applicant statement that there will absolutely not be expansion to more than 250 beds.

**Land Use Code Section 3.5.1 (J) – Operational and Physical Compatibility**

The Mendoza Appeal asserts that there is potential for expansion beyond 250 beds, and that the building can accommodate 500 beds, which exacerbates general concerns about potential impacts. It alleges that the Commission failed to properly interpret and apply this LUC Section by not imposing conditions on approval to mitigate operational incompatibilities or cap the number of beds.

The Mendoza Appeal also notes concerns that relate to the 24/7 aspect of the operation and the Mendoza Appellants suggest that there will be noise, light pollution, disturbances, smoking, congregating, delivery vehicles, trash collection, and other operations at all hours. The Mendoza Appeal asserts that the wood fence along part of the property is insufficient to control such nuisances; and notes that the surrounding neighborhood includes residential areas and businesses with limited hours of operation.

Pertinent evidence from the record includes:

Staff Report	Pp 11-13	Staff evaluation of compatibility under Section 3.5.1.
Transcript	Pg. 15, lines 6-39	Staff presentation discussing compatibility standards for the facility itself, as opposed to assertions of potential behavior of guests.
Transcript	Pg. 45, Lines 31-35	Applicant statement that there will absolutely not be expansion to more than 250 beds.
Transcript	Pg. 10, lines 41-45; Pg. 11 lines 1-7	Applicant explanation about hours of operation

**Land Use Code Section 4.22(B) – Permitted Uses in the Commercial - North College (CCN) Zone District**

The Mendoza Appeal notes that the original plan for 200 beds increased to 250 beds during the review process, and suggests that the facility could expand to accommodate overflow from Denver. It states that the Planning and Zoning Commission failed to impose a cap on the number of beds or address potential for overflow use, which could lead to unauthorized expansion.

It is unclear to staff how these ideas relate to the permitted use list cited in the Mendoza Appeal.

Pertinent evidence from the record includes:

Transcript	Pg. 45, Lines 31-35	Applicant statement that there will absolutely not be expansion to more than 250 beds.
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**Land Use Code Section 3.5.1(C) – Incompatibility of Height, Mass, Scale, and Bulk**

The building comprises one- and two-story sections, and CCN zoning permits up to three stories. The standard allows for new buildings to be larger than adjacent buildings if articulated and subdivided into massing that is proportional to the mass and scale of other adjacent structures.

The Mendoza Appeal contends that the 41,644 sq. ft. building dwarfs nearby mobile homes and small businesses in the surrounding area. This appeal states that the Planning and Zoning Commission should

have imposed restrictions to reduce the scale and bulk of the facility to align better with existing residential character.

Pertinent evidence from the record includes numerous assertions and explanations:

Transcript	Pg. 13, lines 26-37	Applicant explanation of scale and character of the building.
Transcript	Pg. 46, lines 8-13	Applicant explanation of scale and character of the building.
Staff Report	Pg. 12, lines 8-13	Staff findings on architectural character and the eclectic context.
Staff Presentation	Slides 9-10	Illustrations of the building design.
Transcript	Pg. 51, lines 25-40	Commission member noting the extent of buffer space around the plan.
Transcript	Pg. 12, line 9	Applicant noting that the building is set back 89 feet from the closest (north) property line.

***Land Use Code Section 3.4.1 – Environmental Impact***

The Mendoza Appeal alleges that the Commission failed to adequately consider the environmental impacts of the facility’s increase in bed capacity during the process. It notes that when the number of beds increased from 200 to 250 during the review process, the impacts of traffic, waste production, and strain on local infrastructure were not reassessed.

The Mendoza Appeal Notice also repeats the suggestion that the facility could expand to 500 beds, which would leave the surrounding neighborhood vulnerable to increased air and noise pollution, overburdened water and sewer systems, and other environmental stresses.

Section 3.4.1 does not address those issues; it addresses natural habitats and features, and no such issues are associated with this development plan because this shelter plan follows a previously approved Mason Street Infrastructure Plan that created the site where the shelter is proposed, including mitigation and restoration measures under this Section. The proposed shelter development plan does not affect the approved measures.

Pertinent evidence from the record includes:

Transcript	Pg. 45, Lines 31-35	Applicant statement that there will absolutely not be expansion to more than 250 beds.
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**Jones Appeal:**

**Failure to Properly Interpret and Apply Relevant Provisions of the Land Use Code  
*Land Use Code Sections 1.2.4 – Applicability and 3.5.1 (A) and (J) – Operational and Physical Compatibility***

The Jones Appeal quotes the overall Applicability section of the Land Use Code to state that the LUC applies to all development of land within the municipal boundaries, and all provisions of the Code apply to land use decisions, even purpose statements.

The Jones Appeal cites the Purpose statement of this Section, 3.5.1(A), “to ensure that the physical and operational characteristics of proposed buildings and uses are compatible with the context” and then cites a selected part of the definition of Compatibility in Section 5.1.2 which mentions “characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony.”

It notes that Section 3.5.1(J) allows the decision maker to impose conditions upon a development plan.

It asserts that the compatibility standards do indeed apply to “potential social and behavioral impacts to the neighborhood”, and that it is certain that at least a small percentage of the population served by the facility will cause social and behavioral impacts to the neighborhood, such as a homeless man being turned away because he is drunk or high and then going to wander the neighborhood.

The Jones Appeal asserts that the intensity of use is too much based on the number of beds. It suggests that perhaps there are conditions that should be imposed such as limiting the number of beds to a much lower number; funding extra security patrols; and other conditions that neighbors may suggest at the appeal hearing.

Pertinent evidence from the record includes salient examples listed below. These examples are listed in a general order of significance as they relate to the appeal descriptions, with some grouped by similar topics:

Transcript	Pg 49, Lines 4-23	Staff comment about not using the Purpose statement for findings of compliance, but rather using the standards under the Purpose.
Staff Report	Pp 11-13	Staff evaluation of compatibility under Section 3.5.1.
Staff Presentation	Slides 14 and 15	Complete code text of 3.5.1(J) and definition of compatibility.
Transcript	Pg. 15, lines 6-39	Staff presentation discussing compatibility standards for the facility itself, as opposed to assertions of potential behavior of guests.
Transcript	Pg. 17, lines 1-25; p 21, Lines 7-17	City attorney statements about basing compatibility on assertions of potential offenses to be committed by people who are not on site, or on potential economic impacts on other property.
Transcript	Pg. 46, Lines 1-4	Applicant statement about presumptions that guests will engage in criminal behavior.
Transcript	Pg. 6, Lines 34-43; Pg. 7, Lines 1-5	Applicant statement about compatibility based on zoning and the built environment as opposed to potential offenses by guests.
Transcript	Pg. 7, Lines 31-35	Applicant statement about number of beds

**All Explanations in Conjunction Together – Community Member Comments**

Note that the record includes sixteen pages in the transcript with comments from community members, some of which relate to the topics in the allegation descriptions:

Transcript	Pgs. 28-44	Various comments spanning a whole range of observations about existing problems in the area and expectations about the
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		shelter, from ideas that it will exacerbate problems of disruptive and criminal behavior to ideas that it will alleviate problems.
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## **ATTACHMENTS**

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1. Appeal Overview
2. Notice of Appeal
3. Hearing Notice and Mailing List
4. Staff Report Planning and Zoning Commission with Attachments
5. Applicant Presentation to Planning and Zoning Commission
6. Public Comment + Submitted Documents to Planning and Zoning Commission
7. Link to Video of Hearing
8. Verbatim Transcript
9. Staff Presentation to Council