

AGENDA ITEM SUMMARY

City Council



STAFF

Kim Meyer, Interim Director, Community Development & Neighborhood Services

SUBJECT

Sanctuary on the Green Project Development Plan Appeal.

EXECUTIVE SUMMARY

The purpose of this quasi-judicial item is to consider an appeal of the Hearing Officer's decision on July 28, 2024, approving the Sanctuary on the Green Project Development Plan, PDP210018.

The Appellants filed a Notice of Appeal on August 8, 2024, alleging:

- That the Hearing Officer failed to conduct a fair hearing in that they **substantially ignored previously established rules of procedure.**

The Appellants assert that the Applicant did not diligently pursue approval of the development application as required by Section 2.2.11 of the Land Use Code. The Appellants claim the development application for Sanctuary on the Green should have lapsed on April 17, 2024, as a result. The Appellants further argue that the City's changing interpretation of the lapse date for this development application demonstrated an improper bias benefitting the Applicant.

- That the Hearing Officer failed to conduct a fair hearing in that they **considered evidence relevant to the findings which was substantially false or grossly misleading.**

The Appellants assert that: "The Hearing Officer relied largely on the Staff Report and a letter from the Applicant's lawyer when issuing his decision. Evidence that the plan is in compliance with NSP [Northwest Subarea Plan] is cherry-picked in both of these documents."

- That the Hearing Officer failed to conduct a fair hearing in that they **failed to receive all relevant evidence offered by the Appellants.**

The Appellants assert that: "The City erred in failing to provide the Hearing Officer with 342 pages of public comment in advance of the July 15, 2024, hearing, creating an unfair hearing." The comments were received and publicly available, but city staff inadvertently did not directly forward those to the hearing officer until staff was made aware of the error.

That the Hearing Officer **failed to properly interpret and apply relevant provisions of the Land Use Code** – specifically the following Land Use Code¹ sections:

2.2.11 – Lapse

1.2.2 – Purpose

3.5.1 – Building and Project Compatibility

4.5(E) – Low Density Mixed-Use Neighborhood Development Standards

Northwest Subarea Plan

BACKGROUND / DISCUSSION

Sanctuary on the Green Project Development Plan (PDP210018) Project Overview:

- The PDP includes developing 41.34 acres for residential uses with a total of 212 dwelling units and an overall maximum density of 5.13 dwelling units per gross acre.
- The PDP proposes three housing types, including alley-loaded single family, two-family, and single-family attached with a total of 453 off-street parking spaces.
- The PDP provides outdoor amenity areas, open space, natural habitat buffering, a neighborhood center, and small neighborhood park. Bicycle and pedestrian connections are provided throughout the project to connect to existing neighborhood streets and the Soldier Creek Trail.
- The Applicant requested two Modifications of Standards to address walkway requirements and number of housing types.
- The property is zoned L-M-N, Low Density Mixed-Use Neighborhood, and is located within the Northwest Subarea Plan (referred to as "NWSAP" and "NSP" by different parties) area.

Project Timeline:

- February 15, 2019 – Applicant submits first application for Sanctuary on the Green, PDP190003. The first PDP application submitted in 2019 contained multi-family dwellings, which required a Type 2 Review before the Planning and Zoning Commission.
- June 17, 2021 - The Planning and Zoning Commission considered PDP190003. The Commission voted to continue the item to a future hearing date to allow the Applicant an opportunity to address some of their concerns.
- July 28, 2021 - The Applicant withdraws the application without a final decision from the Planning and Zoning Commission.
- November 5, 2021 – Applicant submits a substantially different application for Sanctuary on the Green, PDP210018. This proposal no longer contained multi-family dwelling units, which required a change of the applicable review process to an Administrative (Type 1) Review under section 4.5(B)(2)(a) of the Land Use Code (LUC).
- May 2, 2022 – Administrative Hearing Officer holds a public hearing for Sanctuary on the Green.

¹ Note: The Transitional Land Use Regulations apply to the project, because the project was submitted before May 17, 2024. All references in this AIS to "Land Use Code" or "LUC" refer to sections of the Transitional Land Use Regulations.

- May 16, 2022 – Hearing Officer renders a decision to approve Sanctuary on the Green, PDP210018, with two modifications of standards, alternative compliance for LUC Section 3.6.3(D) – (F), and two conditions. The Decision also urges the Applicant/Owner to voluntarily continue to engage with surrounding property owners and City staff during final development plan review to explore how the PDP/FDP may be modified to further reduce overall residential density and lower the height of some proposed three-story single-family buildings to two-stories.
- May 31, 2022 – Sanctuary Field Neighborhood Network files an appeal, alleging the Hearing Officer failed to conduct a fair hearing because he considered evidence relevant to his findings that was substantially false or grossly misleading. The Appeal also alleged the Hearing Officer failed to conduct a fair hearing because the Hearing Officer was biased against the Appellants by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Hearing Officer's independence of judgement. Lastly, the Appeal alleged that the Hearing Officer failed to properly interpret and apply six sections of the Land Use Code.
- August 16, 2022 – City Council holds a hearing on the appeal for Sanctuary on the Green. City Council upholds the decision made by the Hearing Officer on all issues raised.
- October 4, 2022 – Sanctuary Field Neighborhood Network and Miranda Spindel (Plaintiffs) file a lawsuit under Colorado Rule of Civil Procedure Rule 106(a)(4) challenging City Council's ruling on the Sanctuary on the Green appeal.
- May 18, 2023 – District Court Judge Jouard hears oral arguments for Plaintiffs' complaint for judicial review under Rule 106.
- July 24, 2023 – District Court Judge Jouard orders that the Hearing Officer's Findings and Decision approving PDP210018 and City Council's approval of the same are set aside and vacated. The Judge remands the matter to the Hearing Officer and instructs the Hearing Officer to, "...consider, evaluate the criteria of the NWSAP, and apply it within the Officer's discretion in order to review, evaluate, make findings, and render a well-founded Decision based upon the law, which may include different or new findings and conditions as warranted. The Court, however, does not seek to limit the Hearing Officer's discretion or prescribe any particular determination."
- August 14, 2023 – Applicant requests scheduling the remand hearing for Sanctuary on the Green. City schedules the hearing for September 14, 2023.
- August 25, 2023 – Applicant's legal counsel declares a conflict of interest and Applicant requests re-scheduling September 14, 2023, hearing date.
- September 11, 2023 – City re-schedules hearing to November 2, 2023.
- November 2, 2023 – Hearing Officer falls ill and requests re-scheduling the hearing. The Hearing Officer opens the hearing and continues the hearing to November 30, 2023.
- November 29, 2023 – Applicant requests postponing the hearing on November 30, 2023, indefinitely. Staff cancels November 30, 2023, hearing.
- May 6, 2024 – City re-schedules hearing for July 15, 2024.
- July 15, 2024 – Hearing Officer conducts remand hearing for Sanctuary on the Green PDP.
- July 24, 2024 – Hearing Officer renders decision approving Sanctuary on the Green. Sanctuary Fields Neighborhood Network reviews decision report and did not see PDF with written public comment as part of record. Staff sends written public comment to Hearing Officer for

consideration.

- July 28, 2024 – Hearing Officer renders *supplemental findings and decision* approving Sanctuary on the Green PDP upon consideration of additional written public comment.
- August 8, 2024 – Sanctuary Field Neighborhood Network files appeal to Hearing Officer's decision.

Notice of Appeal

On August 8, 2024, the City Clerk's Office received a Notice of Appeal by the Appellants, Sanctuary Field Neighborhood Network. The appeal is attached. The Notice of Appeal alleges the following:

- That the Hearing Officer failed to conduct a fair hearing in that they **substantially ignored previously established rules of procedure**.

The Appellants assert that the Applicant did not diligently pursue approval of the development application as required by Section 2.2.11 of the Land Use Code. The Appellants claim the development application for Sanctuary on the Green should have lapsed on April 17, 2024, as a result. The Appellants further argue that the City's changing interpretation of the lapse date for this development application demonstrated an improper bias benefitting the Applicant.

- That the Hearing Officer failed to conduct a fair hearing in that they **considered evidence relevant to the findings which was substantially false or grossly misleading**.

The Appellants assert that: "The Hearing Officer relied largely on the Staff Report and a letter from the Applicant's lawyer when issuing his decision. Evidence that the plan is in compliance with NSP [Northwest Subarea Plan] is cherry-picked in both of these documents."

- That the Hearing Officer failed to conduct a fair hearing in that they **failed to receive all relevant evidence offered by the Appellants**.

The Appellants assert that: "The City erred in failing to provide the Hearing Officer with 342 pages of public comment in advance of the July 15, 2024, hearing, creating an unfair hearing." The comments were received and publicly available, but city staff inadvertently did not directly forward those to the hearing officer until staff was made aware of the error.

- That the Hearing Officer **failed to properly interpret and apply relevant provisions of the Land Use Code** – specifically the following Land Use Code sections:
 - 1.2.2 – Purpose
 - 2.2.11 – Lapse
 - 3.5.1 – Building and Project Compatibility
 - 4.5(E) – Low Density Mixed-Use Neighborhood Development Standards
 - Northwest Subarea Plan

Record

Relevant materials and files on record for the appeal of the Hearing Officer's decision are attached and highlighted below, including materials from the **July 15, 2024, Remanded Administrative Hearing**:

- Video of hearing and verbatim transcript
- Hearing Officer Findings and Decision and Supplemental Findings and Decision
- Project Development Plan staff report and attachments including site plans, traffic studies, utility plans, etc.
- Staff presentation
- Applicant presentation

- Written comments received
- Supplemental documents including Certified Record from District Court proceedings

First Fair Hearing Issue on Appeal: Lapse

Did the Hearing Officer fail to conduct a fair hearing in that they substantially ignored previously established rules of procedure? [New evidence allowed.]

The Appellants argue that the Applicant did not diligently pursue approval of the development application as required by Section 2.2.11 of the Land Use Code. The Appellants claim the development application for Sanctuary on the Green should have lapsed on April 17, 2024, as a result. The Appellants further argue that the City’s changing interpretation of the lapse date for this development application demonstrated an improper bias benefitting the Applicant. The Appellants submitted Exhibits B, C, and D to the notice of appeal in support of their claims.

2.2.11(A) of the Land Use Code states:

Application Submittals. An application submitted to the City for the review and approval of a development plan must be diligently pursued and processed by the applicant. Accordingly, the applicant, within one hundred eighty (180) days of receipt of written comments and notice to respond from the City on any submittal (or subsequent revision to a submittal) of an application for approval of a development plan, shall file such additional or revised submittal documents as are necessary to address such comments from the City. If the additional submittal information or revised submittal is not filed within said period of time, the development application shall automatically lapse and become null and void. The Director may grant one (1) extension of the foregoing one-hundred-eighty-day requirement, which extension may not exceed one hundred twenty (120) days in length, and one (1) additional extension which may not exceed sixty (60) days in length. This subsection (A) shall apply to applications which are, or have been, filed pursuant to this Code and to applications which are, or have been, filed pursuant to the laws of the City for the development of land prior to the adoption of this Code.

There was no discussion of this matter at the hearing. Attachment 35 contains an approved extension request and Attachment 36 contains summary evidence of the extension request made by the Applicant. Notice of Appeal Exhibits B, C, and D of the Notice of Appeal contain correspondence relevant to this allegation.

Second Fair Hearing Issue on Appeal: Substantially False/Grossly Misleading Evidence

Did the Hearing Officer fail to conduct a fair hearing in that they considered evidence relevant to the findings which was substantially false or grossly misleading?

The Appellants allege the following pieces of information relevant to the findings of the Hearing Officer were substantially false or grossly misleading :

- Evidence of compliance with the Northwest Subarea Plan was “cherry-picked.”
- The Applicant’s claim that the open space as part of this site was in response to neighborhood concerns. Appellants allege less than half of the site is developable due to, “...floodplain, wetlands, and other factors.”
- Applicant’s claims that decrease in density were in direct response to neighborhood requests. Appellants argue that some decrease in density was due its non-compliance with the Land Use Code and that removing multi-family units was to change the decision maker on the project. Appellants also argue that Applicant has not met with neighborhood group since the fall of 2021.
- Hearing Officer stated that 3-story elements of the plan are largely on the interior of the site. Appellants allege 3-story elements of the project face, “...open pasture, an orchard, and a single 100-year-old one-story farmhouse...”.

Portions of the record relevant to **Land Use Code purposes and compliance with the Northwest Subarea Plan** include the following:

Document	Document Page Number	Notes
Staff report	4, 7-13, 17-20, 52	
Verbatim Transcript	3-8, 10, 11-12, 18-22, 22-32, 35-41	
Attachment 29 – Written Comments – Prior PDP (PDP190003)	All	All comments deal with topics discussed in the Northwest Sub-area Plan
Attachment 38 – Applicant’s Northwest Subarea Plan Analysis	All	
E-mailed comments	5, 7, 9-16, 20-22, 25, 51-52, 54-55, 59, 73, 78, 83-85, 87-88, 90, 94-95, 97, 99, 102-104, 106-107, 109, 111, 115, 116, 135-160, 169-174, 176, 186-187, 190, 193, 195-196, 199-201, 203-205, 209, 211-212, 220-221, 223, 225, 233-235, 237, 243, 250, 252-253, 255, 257-258, 260, 262-263, 266, 271, 273-274, 276, 278, 280, 283-285, 287-288, 290, 293, 300-302, 304, 307-309, 311, 329, 335, 337-338, 340	

Relevant portions of the record to the **amount of open space** proposed as part of Sanctuary on the Green include the following:

Document	Document Page Number	Notes
Staff report	4-6, 18-20, 32-36	
Verbatim Transcript	5-13, 18, 21, 22-32, 35-42	
Attachment 4 – Site Plan	1	
Attachment 5 – Landscape Plan	1, 21	
Attachment 9 – Environmental – Habitat Buffer Zone Exhibit	All	
Attachment 12 – Environmental – Wetland Determination	All	
Attachment 15 – ICON-PDP- Floodplain Report	All	
Attachment 16 – ICON-Pre-project Floodplain Map (Overall)	All	
Attachment 17 – ICON-Post-Project Floodplain Maps	All	

Attachment 27 – PDP Neighborhood Meeting Notes	2	
Attachment 29 – Written Comments – Prior PDP (PDP190003)	1-2, 5-6, 8, 10-12, 15, 17, 21, 23-24, 27, 31, 32, 35	
Attachment 39 – Applicant's Response to Neighborhood Comments	1-3, 7-10	
E-mailed comments	6, 10, 21, 51-52, 73, 78, 85, 91, 94, 97, 109, 115, 161, 170-171, 173, 195, 201, 206, 208, 215, 217, 224, 227, 237, 240, 243, 246, 252, 259-260, 263, 269, 290, 295, 301, 307, 309, 311, 314, 320, 339	

For the allegation related to **changes in density** of the project, the relevant portions of the record include:

Document	Document Page Number	Notes
Staff report	15	
Verbatim Transcript	3, 10, 15, 20-22, 24, 26-27, 29-31, 35-39	
Attachment 28 – Old Versus New Plan Exhibit	All	
Attachment 39 – Applicant's Response to Neighborhood Comments	All	All of the comments deal with the density of the proposal
E-mailed comments	12, 16, 26, 59-61, 63, 83-92, 106-107, 115, 159-160, 192, 196, 199-201, 203-205, 220-223, 247, 258, 274, 276-280, 293, 315	

Portions of the record relevant to the allegation related to the **location of 3-story buildings** include:

Document	Document Page Number	Notes
Staff report	38-39	
Verbatim Transcript	6, 8-10, 14, 20, 39	
Attachment 4 – Site Plan	2, 4	
Attachment 6 – Architectural Elevations	1-6	Elevations of buildings with 3-story elements
Attachment 27 – PDP Neighborhood Meeting Notes	2	
Attachment 29 – Written Comments – Prior PDP (PDP190003)	5, 6, 8, 12, 17, 19, 21, 25, 31, 36	
Attachment 39 – Applicant's	7	

Response to Neighborhood Comments		
E-mailed comments	9, 13, 21, 25, 51, 55, 60, 73, 84, 89, 97, 99, 107-108, 112, 116, 118, 135-158, 170, 172, 190, 193, 195, 200, 204, 221, 225, 229, 232-233, 240, 257, 276, 278, 280, 282-283, 295, 301, 307, 318, 337	

Third Fair Hearing Issue on Appeal: Receiving All Relevant Evidence

Did the Hearing Officer fail to conduct a fair hearing in that they failed to receive all relevant evidence offered by the appellant?

The Appellants allege that the City did not provide 342 pages of public comment in advance of the hearing and thus the Hearing Officer did not consider all relevant evidence offered by the Appellants.

The Hearing Officer rendered a decision on July 24, 2024, without including in the record a 342-page packet of public comments. The packet contained comments from the hearing on July 15, 2024, and from the previously scheduled hearing on November 30, 2023. Upon realizing the error, Staff sent the packet of comments to the Hearing Officer to consider and render an amended decision.

The Hearing Officer rendered a supplemental decision on July 28, 2024, after receiving and considering the packet of additional public comment. The Hearing Officer rendered the supplemental decision within the timeframe permitted by Land Use Code Section 2.2.7(D)(1).

Failure to Interpret/Apply Issues on Appeal

Did the Hearing Officer fail to properly interpret and apply the following relevant provisions of the Land Use Code (LUC)?

- 1.2.2 – Purpose
- 3.5.1 – Building and Project Compatibility
- 4.5(E) – Low Density Mixed-Use Neighborhood Development Standards
- Northwest Subarea Plan

The Appellants allege that Sanctuary on the Green is not compatible with the surrounding neighborhood. The Appellants argue that Sanctuary on the Green is not consistent with statements in the Northwest Subarea Plan about new development being compatible with the surrounding neighborhood. Further, the appeal references Section 3.5.1 requiring compatible building massing as well as the height standards found in Section 4.5(E) to argue that three-story single-family townhomes are not permitted in the Low Density Mixed-Use Neighborhood zone district without a modification of standards.

LUC §1.2.2 – Purpose

§1.2.2 of the Land Use Code states:

The purpose of this 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 Code, City Plan and its adopted components, including, but not limited to, the Structure Plan, Principles and Policies and associated subarea 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.

(O) encouraging a wide variety of housing opportunities at various densities that are well-served by public transportation for people of all ages and abilities.

The discussion for the Second Fair Hearing Issue on Appeal highlights the relevant portion of the record pertaining to compliance with the Northwest Subarea Plan, which is the crux of the Appellants' argument that Sanctuary on the Green does not comply with LUC Section 1.2.2.

LUC §3.5.1 – Building and Project Compatibility

The Notice of Appeal does not specify which portion of Section 3.5.1 is the subject of the Appellants' allegations. The phrase quoted in the Notice of Appeal, "compatible building massing" does not appear in the Land Use Code. The General Standard found in Section 3.5.1(B) states:

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 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. Architectural compatibility (including, without limitation, building height) shall be derived from the neighboring context.

Components of the record relevant to this allegation include:

Document	Document Page Number	Notes
Staff report	19 38-39	Staff's analysis of how Sanctuary on the Green compares to the characteristics of other surrounding subdivisions Staff's analysis of compliance with §3.5.1
Verbatim Transcript	8-11, 14	
Attachment 4 – Site Plan	2, 4, 18, 22-32, 35-41	
Attachment 6 – Architectural Elevations	1-6	Elevations of buildings with 3-story elements
Attachment 26 – Administrative Interpretation #1-18	All	
Attachment 27 – PDP Neighborhood Meeting Notes	2	
Attachment 29 – Written Comments – Prior PDP (PDP190003)	All	All of the comments deal with elements of compatibility
Attachment 37 – Building Coverage Study	All	
Attachment 39 – Applicant's Response to Neighborhood Comments	1, 4, 7, 10	
E-mailed comments	10-15, 17, 19-21, 52, 54-55, 73, 77, 84-85, 89-90, 94, 96-97, 99, 106-108, 112, 115-116, 118, 135-161, 163, 166, 171, 173, 177-178, 190-193, 195, 200-201, 204-205, 214, 221-223, 225-226, 229, 233, 237, 242-243, 250, 252, 257-258, 260, 263, 265-266, 276-278, 280, 283, 285, 290, 298, 300-301, 303, 307-311, 318, 337-338	

LUC §4.5(E)(4) - Design Standards for Multi-Family Dwellings Containing More Than Eight (8) Dwelling Units and for Multi-Family Dwellings Containing between Four (4) and Eight (8) Dwelling Units When Three (3) or More Stories in Height

The Low Density Mixed-Use Neighborhood zone districts contain specific design standards for multi-family dwellings containing at least four dwelling units and the building is three-stories in height. The Appellants allege that the building height that should apply to the proposed single-family attached buildings is two and a half stories found in Section 4.5(E)(3).

Attachment 26 of the record contains an Administrative Interpretation of this issue and clarifies that the 3-story height limit applies to single-family attached buildings with four units or more.

Northwest Subarea Plan

The Northwest Subarea Plan is a component of *CityPlan*, the City's comprehensive plan, and is referenced in the purpose statement of the Land Use Code, §1.2.2, which indicates the need to ensure that "all growth and development which occurs is consistent with this Code, City Plan and its adopted components, including, but not limited to, the Structure Plan, Principles and Policies and associated subarea plans." The code language itself is designed and specifically written to implement the City's various standards, policies, and plans. By demonstrating compliance with the specific standards and regulations of the Land Use Code through the submittal materials for the Project Development Plan, a development project demonstrates that it satisfies and aligns with the purpose and spirit of the code.

ATTACHMENTS

1. Appeal Process Overview
2. Notice of Appeal
3. Clerk Notice, Site Visit Notice, Mailing List
4. Staff Report with Attachments, July 15, 2024
5. Staff Presentation at Administrative Hearing
6. Applicant Presentation at Administrative Hearing
7. Public Comment at Administrative Hearing
8. Certified Record of August 16, 2022 Appeal
9. Verbatim Transcript, July 15, 2024
10. Link to Video, July 15, 2024
11. Hearing Officer Decision, July 28, 2024
12. Staff Presentation to Council