

Notice of Appeal

Filed by
Barbara Denny
Cheryl Distaso
Rory King
Laura Larson
Kiri Saftler
Miranda Spindel
Valerie Vogeler

Filed May 31, 2022

NOTICE OF APPEAL

Action Being Appealed: Approval of PDP #210018 Sanctuary on the Green

Date of Action: 05/16/2022 Decision Maker: Marcus McKaskin

FOR CITY CLERK'S
USE ONLY:

DATE FILED: 5/31/22

INITIALS: AKH

Appellant/Appellant Representative (if more than one appellant):

Name: Laura Larson

Phone #: (413) 320-9392

Address: 320 N. Impala, Fort Collins, CO 80521

Email: laura_larson@hotmail.com

INSTRUCTIONS

For each allegation marked below, attach a separate summary of the facts contained in the record which support the allegation of no more than two pages, Times New Roman 12-point font. Please restate allegation at top of first page of each summary.

GROUNDINGS FOR APPEAL

The Decision Maker committed one (1) or more of the following errors (check all that apply):

- Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter. List relevant Code and/or Charter provision(s) here, by specific Section and subsection/subparagraph:

Section 1.2.2 of the LUC

Section 3.5.2 (D)(1) of the LUC

Section 3.5.1 of the LUC

Section 4.5(D)(2)(a) of the LUC

Section 4.5 D.1 of the LUC

Section 3.4.7 of the LUC

Failure to conduct a fair hearing in that:

- (a) The Board, Commission, or other Decision Maker exceeded its authority or jurisdiction as contained in the Code or Charter. [New evidence not allowed]
- (b) The Board, Commission or other Decision Maker substantially ignored its previously established rules of procedure. [New evidence not allowed]
- (c) The Board, Commission or other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading. [New evidence allowed]
- (d) The Board, Commission or other Decision Maker improperly failed to receive all relevant evidence offered by the appellant. [New evidence allowed]
- (e) The Board, Commission or other Decision Maker 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. [New evidence allowed]

NEW EVIDENCE


All new evidence the appellant wishes Council to consider at the hearing on the appeal must be submitted to the City Clerk within seven (7) calendar days after the deadline for filing a Notice of Appeal and must be clearly marked as new evidence. No new evidence will be received at the hearing in support of these allegations unless it is submitted to the City Clerk by the deadline (7 days after the deadline to file appeal) or offered in response to questions posed by Councilmembers at the hearing.

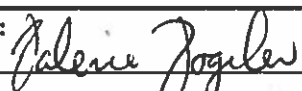
APPELLANTS

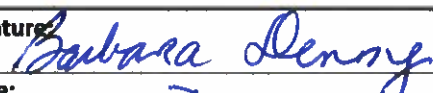
Parties-in-interest have the right to file an appeal.

A party-in-interest is a person who, or organization which, has standing to appeal the final decision of a board, commission or other decision maker. Such standing to appeal is limited to the following:

- The applicant.
- Anyone who owns or occupies the property which was the subject of the decision made by the board, commission or other decision maker.
- Anyone who received the mailed notice of, or spoke at, the hearing of the board, commission or other decision maker.
- Anyone who provided written comments to the appropriate City staff for delivery to the board, commission or other decision maker prior to or at the hearing on the matter that is being appealed.
- A City Councilmember.

Signature: 	Date: 5/27/2022
Name: Miranda Spindel	Email: allskyline524@gmail.com
Address: 330 N Taft Hill Road	Phone #: (970) 217-6088
Describe how you qualify as a party-in-interest: I received the mailed notice of decision and gave written comments	

Signature: 	Date: 5-27-2022
Name: Valerie Vogeler	Email: pv-vogeler@sbcglobal.net
Address: 520 N. Taft Hill Rd	Phone #: 314-952-2327
Describe how you qualify as a party-in-interest: I submitted written comments and was at the hearing/gave comment	

Signature: 	Date: 5/27/2022
Name: BARBARA Denny	Email: barbaravives@gmail.com
Address: 420 N. SUNSET ST. F.C. 80521	Phone #:
Describe how you qualify as a party-in-interest: I SUBMITTED WRITTEN ORAL COMMENTS -	


ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY


APPELLANTS


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- A City Councilmember.

Signature: 	Date: 5/27/22
Name: RORY KING	Email: cking7@gmail.com
Address: 510 Hana St. Fort Collins, 80521	Phone #: 785-218-4880
Describe how you qualify as a party-in-interest: I received the mailed notice and gave virtual comment during ^{type 1} hearing	

Signature: 	Date: 5/27/22
Name: Cheryl Distaso	Email: cdistaso@frii.com
Address: 135 S Sunset St Ft Collins CO 80521	Phone #: 970 310 6563
Describe how you qualify as a party-in-interest: I received the mailed notice of decision & gave ^{in person} comment during hearing	

Signature: 	Date: 5/29/22
Name: Laura M. Larson	Email: laura_larson@hotmail.com
Address: 320 N. Impala, Ft. Collins 80521	Phone #: 413-320-9392
Describe how you qualify as a party-in-interest: I spoke at the hearing & received mailed notice of decision.	

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- A City Councilmember.

Signature: <i>Kiri D. Saftler</i>	Date: <i>5/26/22</i>
Name: <i>Kiri Saftler</i>	Email: <i>Kirilynn@bajabbs.com</i>
Address: <i>230 N Sunset</i>	Phone #: <i>970-215-7581</i>
Describe how you qualify as a party-in-interest: <i>I live adjacent to the Sanctuary property + spoke + received mailing</i>	

Signature:	Date:
Name:	Email:
Address:	Phone #:
Describe how you qualify as a party-in-interest:	

Signature:	Date:
Name:	Email:
Address:	Phone #:
Describe how you qualify as a party-in-interest:	

ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY

Appeal Letter for Sanctuary Field Neighborhood Network

May 27, 2022

Fort Collins City Council Members: Jenny Arndt (Mayor), Susan Gutowsky, Julie Pignataro, Tricia Canonico, Shirley Peel, Kelly Ohlson, Emily Francis

**City Hall
300 Laporte Avenue
Fort Collins, CO 80521**

RE: Notice of Appeal for Sanctuary on the Green PDP 210018 Type 1 Administrative Hearing Decision

Dear City of Fort Collins Councilmembers,

This appeal is made by the Sanctuary Field Neighborhood Network (SFNN), an organization of over 150 neighbors that formed in 2018. SFNN members are from the Green Acres, Sunset St., Taft Hill and Laporte Ave. neighborhoods that surround the property proposed for development. The attached form contains signatures from our steering committee. This written Notice of Appeal is filed within the required 14 calendar days following the decision dated May 16, 2022, in accordance with the written notice provided to us by the City.

We are appealing the decision to approve this proposal based on the following grounds:

- 1) Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter**
- 2) Failure to conduct a fair hearing in that:**
 - The Board, Commission or other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading.**
 - The Board, Commission or other Decision Maker 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.**

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

This development proposal violates multiple sections of the LUC, as noted in the prior review of this proposal by the Planning & Zoning Commission on June 17, 2021.

Section 1.2.2 of the LUC states 15 ways that Code supports development that improves and protects the public health, safety and welfare. This proposal violates this section as follows:

- 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 sub-area plans*.
- E) avoiding the inappropriate development of lands and providing for adequate drainage and reduction of flood damage.
- I) minimizing the adverse environmental impacts of development.
- 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.

In 2006, with citizen participation from both County and City residents, and considerable expense to taxpayers, the Northwest Subarea Plan (NSP) was created. The NSP has been ignored by this developer, but the LUC makes clear that subarea plans must be considered as part of ensuring the public health, safety and welfare. This plan was specifically designed to ensure that the public good be served for County/City residents in considering development in our area. The NSP addresses the preservation of specific features and the character of our area, including wildlife corridors/habitats, historic farm sites, foothills vistas, open fields. It specifically states that the City “should protect stable neighborhoods from incompatible development” (p. 9). The plan states that its strategies are “the specific actions the City, County, and others will take to implement this Plan and its policies” (p. 2). Strategy #3 is “Make development approvals consistent with this Plan” (p. 10).

The 3-story height of the majority of the buildings, which will exceed 40 feet due to the considerable infill required for floodplain mitigation, will destroy wildlife corridors, bird flight paths, foothills vistas and historic trees – all of which are identified for protection in the NSP. This project will negatively impact both human and wildlife residents with air, light and noise pollution in one of the few dark-sky areas of Fort Collins. It will devalue our properties and degrade our quality of life. None of this promotes public health and welfare nor does it constitute serving the public good. It violates both the spirit and intent of the NSP.

Section 3.5.1 of the LUC requires that there is “compatible building massing” with surrounding neighborhoods. This proposal calls for twenty-eight 3-story attached single-family buildings (166 dwelling units) on 41 acres. Less than half of the acreage is buildable due to floodplain, wetlands and other factors. Each of these buildings is 3 times the height, and at least 5 times the overall building massing of any of the houses abutting this property. We assert that City staff did not perform due diligence in allowing the developer to use the following two comparable properties:

- **Bellwether Farms:** A total of five houses are 2-story with walk-out basements. The developer’s attorney repeatedly showed images of these houses, purporting that they were representative of all neighboring properties. These homes do not abut the development site, or represent the majority of Bellwether Farms’ houses, of which 90% are 1- and 2-story homes. The only actual abutting properties are single

story, single family detached homes, many on 1-acre plots. The project clearly does not meet the LUC's compatible building massing requirement.

- **Ramblewood Apartments:** This is a commercial leasing complex that lies to the south, across LaPorte Ave., built in 1976, 30 years prior to the creation of the NSP. Because the apartment complex is commercial (not individually owned), does not abut the developer's property, and buildings pre-date the NSP, we assert that the City should not have allowed this to be used as a comparable property.

Had these two developments been properly vetted and the HO properly informed, we believe the HO would have come to the same conclusion that P & Z Commission did when they stated that the compatible building massing requirement had not been met.

Section 4.5 D.1: LMN zoning allows for up to 9 units per gross acre. NSP density may be up to 8 units per acre overall (or up to 12 units per acre for affordable housing). This property has buildable acreage of less than 65%; with 212 dwelling units (DU), the actual net DU/acre ratio is 13 DU/acre – exceeding the max allowed. This property lies in the floodplain, has an irrigation ditch bisecting it, two wetlands, a high water table through much of it, and borders unincorporated county land.

Section 3.4.7: Proposed development is to be compatible with/protect historic resources and not adversely affect the integrity of historic resources on nearby property. [The VonLong/Slagle House \(5LR.14498\)](#), registered on the state register, borders most of the east boundary of the parcel to be developed. Staff waived a historic preservation commission review of the proposed development. This resource has been essentially ignored by the developer. Staff indicated in their report that, although the east side of the development is included in the area of adjacency, because the historic property is across an arterial (N. Taft Hill) the applicant has only to comply with minimum of two of the design compatibility requirements in Table 1, of 3.4.7 (E) per column B. The Staff Report further says that because the resource is across an arterial, building massing requirements are not applicable under 3.4.7. This contradicts the logic used in including Ramblewood Apartments as a legitimate comparison property, since it is also across a major arterial street (LaPorte Ave.).

The two modifications that the developer has requested should not be approved for the following reasons:

Section 3.5.2 (D)(1): *Orientation to a Connecting Walkway* was granted by staff "because of the combination of the unusual shape of the property, location of the New Mercer Ditch, location of the existing flood control channels, and the location of excising development are exceptional practical difficulties...." We believe this staff's argument underscores the fact that this property is simply too complicated for this development. This modification should not be granted.

Section 4.5(D)(2)(a)3: *a minimum of (4) housing types is required on any such project development plan containing (30) acres or more.* We maintain that there is not adequate variation in the housing models and that significant repetition is problematic, particularly given the mass of these buildings.

The Board, Commission or other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading.

- 1) The developer presented misleading information that we believe led to an improper decision by the Hearing Officer (HO). Specifically, his staff presented misleading statements in regard to:
 - a) Collaboration with neighbors:
 - SFNN attended community meetings in good faith, only to have our solution-oriented modification suggestions rejected. Our requests for further meetings were also rejected.
 - Because the developer had the last say in the hearing, based on the prescribed format, he was able to make substantially false statements to the HO about his efforts to collaborate with us, and we were not given any opportunity to refute.
 - b) Efforts to create open space on the property and buffers to address neighbor concerns:
 - While the City allows for buildings up to 40 feet in height, the added elevation to the existing grade will mean that our single story homes will be surrounded by structures that rise 45 feet from the existing grade of our properties. In combination with the issue of incompatible building massing addressed by the LUC, the height of these buildings will have immeasurable destructive consequences for wildlife.
 - The developer asserted that they have “created 35% open space” on their land in order to provide buffering, wildlife corridors and address neighbors’ concerns about the impact of this high-density development. The “open space” the developer is claiming to have created on this property is comprised almost entirely of unbuildable land and includes stormwater swales/channels, land with a high water table, and actual wetlands.
 - c) Presenting false comparisons of local structures by using improper comparable properties to justify how 3-story row houses could be considered “compatible” with existing homes. The City allowed them to be presented as “abutting,” which is substantially false.
 - d) Historic sites and historic natural resources on the property and within the adjacency area have been disrespected and destroyed by the developer. Requirements for preservation have been ignored and omitted by City staff.
 - Misrepresentation of the eastern bordering properties as “commercial”. [The VonLong/Slagle House \(SLR.14498\)](#), registered on the state register, borders most of the east boundary of the parcel to be developed. Until the final Staff Report, this property was never mentioned or included in site maps..
 - Table 3.4.7 Column B calls for the development to meet at least 2 of the requirements numbered 1-6. The Staff Report further says that because the resource is across an arterial, building massing requirements are not applicable under 3.4.7. Numbers 1 and 2 are massing and building articulation, so this is incorrect information to have presented to the Hearing Officer.
 - Although the developer is calling this development “farmhouse style,” the planned modern 3-story buildings look nothing like the actual historic farmhouse across the street within the adjacency area. None of the requirements in Table E Column A 1- 6 are met.
 - In May of 2018, prior to annexing the property into the City, the developer had the farmhouse on site burned down and disassembled the barns in order to avoid the City’s historic preservation

commission review. These buildings are actually pictured in the NSP as prime examples of historic sites to be preserved.

- Historic silver maple and cottonwood trees on the property meet the guidelines for preservation of natural resources in the NSP but have been ignored by the developer and City ecologists.

e) The developer's claim that density reduction from the original 371 units proposed in 2018 was in response to neighbors' requests is misleading. The property is located in the floodplain and the City Codes (as well as LMN Zoning) prohibit building Assisted Living facilities on it. The developer falsely asserted to the Hearing Officer that they had dropped this aspect of their plan as a concession to neighbors (part of their efforts at "collaboration" over the past 4 years), rather than because they are building over the floodplain and were forced to comply with City codes.

f) Assertions that they have "stepped down" their 3 stories to 2, by lowering a unit on each side of a 45-foot tall structure.

g) The developer argued in the hearing that housing is a critical need in Fort Collins, and that they are addressing it with this proposal. However, this is not an affordable housing project; in fact, the developer has not been willing to state how much these houses will cost once built, only that they will have "multiple price points."

2) City staff did not follow the development review requirements relating to providing timely and accurate information as well as public access to documents. This prevented informed public participation.

- a) The City's development review website is extremely difficult to navigate even for those experienced with technology (this has been acknowledged by City staff directly to our network). Some files are so large they cannot be viewed online.
- b) We had to request submittal documents and staff comment letters by google drive for each round of submittals because the documents were not uploaded in a timely manner. While this has been helpful and appreciated individually, it does not fix the problem that the general public lacks access that the City is obligated by its own policies to provide. The City of Fort Collins Land Use Code indicates that it is Step 5 out of 12 to issue a Staff Report and Step 6 out of 12 to notify neighbors of a hearing. Notification for this hearing was mailed with a date of April 13, 2022. One week before the scheduled hearing for this project, the Round 3 documents were still not posted on the City's development review website. The Staff Report was also not available. It is unreasonable for a development of this size/impact not to have the staff report and documents for the hearing publically available when the hearing notice is mailed...let alone one week before the hearing. This delay did not allow the public sufficient time to read through all the documents.
- c) The decision by the HO contained a dwelling unit total of 242 residential dwelling units on p. 1 first paragraph. This is contradictory to all of the City documents including the Notice of Decision which refers to 212 dwelling units in the proposal description.

Failure to conduct a fair hearing in that the Board, Commission or other Decision Maker 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.

We believe that this development proposal should not have been allowed to go through a Type 1 Hearing. The proposal was altered only very slightly after the P&Z Commission Hearing on June 17th, 2021. Two of the four seated Commissioners indicated they would reject it because it did not properly conform to the NSP or sections of the LUC. Specifically, Commissioners noted that the requirement for compatible building massing was not being met (see p. 2 of this document). Commissioners noted that Neighborhood opposition needed to be addressed, that neighbors with existing properties had rights too. The developer withdrew their proposal before a formal vote could occur, to avoid a negative ruling.

City Staff allowed the developer a Type 1 Hearing after only minor changes to their proposal. The only notable change was a substitution of row house units (considered single-family attached homes by the City) for the multi-family condominiums in the first iteration of the plan. This change did not result in a substantive change in building massing. This applicant essentially achieved a run around the P & Z Commission to get a favorable ruling from a less-informed, single decision-maker, who is paid by the City and is not from or familiar with northwest Fort Collins. We assert this is a conflict of interest and the process unethical.

City Staff told us that there is no precedent for this being done for a project this large, and were unable to provide any similar examples where a developer was allowed to avoid a negative ruling by the P & Z Commission and instead present their proposal to a single decision maker who comes from outside our area. As evidenced by the Hearing Officer's questions, he was unfamiliar with the rural nature of this area, with the subarea plans governing County and City adjoining properties, irrigation ditch ownership/ditch company authority, and other important aspects that are critical to a proper review of this proposal. The developer's attorneys and contractors were able to make misleading and factually incorrect statements because the HO lacked local reference points to identify the deceptive assertions made. We were particularly concerned and disheartened that City Staff did not correct these statements, especially when the developer's attorney asserted to the Officer that City-owned Parks property to the north of the site was their own, and that their plan to build over the floodplain was inconsequential to surrounding neighborhoods.

We also find fault with the structure of the public hearing process, in that only the applicant and City staff are allowed to answer questions from the Hearing Officer. If information is presented that is known by the public to be inaccurate, misleading, or incomplete, citizens attending the hearing have no opportunity to refute it or provide information that would correct the record as part of the actual hearing. Instead, our only recourse is to file a formal appeal (as we are doing). The onus, then, is on the public to show evidence of misleading information presented. We believe that this gives an unfair advantage to developers and does not hold City staff to the highest standard of integrity. If staff know that they cannot be challenged as part of the hearing, there is an increased likelihood that they will just accept statements made by the developer at face value, which is what occurred in the case of the May 2nd hearing, and resulted in the flawed decision that we are appealing.

This project is being built on a parcel that several City stormwater/floodplain staff members have described as an "extremely challenging piece of property". Hundreds of neighbors have advocated for modifications to the development plan for over four years. This development, as proposed, will have an irreversible destructive

effect on wildlife and historic ecosystems in our area. Given all of this, this proposal deserves the careful scrutiny of our City Council-appointed Planning and Zoning Commission.