

February 6, 2024



AGENDA ITEM SUMMARY

City Council

STAFF

Paul Sizemore, Director, Community Development & Neighborhood Services

SUBJECT

Polestar Village Project Development Plan Appeal.

EXECUTIVE SUMMARY

The purpose of this quasi-judicial item is to consider an appeal of the Planning and Zoning Commission's decision on November 17, 2023, approving the Polestar Village Project Development Plan (#PDP220010). The Appellants filed a Notice of Appeal on December 1, 2023, with supplemental new evidence filed on December 8, 2023, alleging:

- That the Planning and Zoning Commission (P&Z) failed to conduct a fair hearing in that they **considered evidence relevant to their findings which was substantially false or grossly misleading**. The Appellants assert that; 1) Polestar used persuasive language during the hearing and presented misleading information as well as non-confirmable statements; and 2) Hearing attendees and council members also did not get to hear all the details of the proposal. The Appellants offer seven points in support of their assertion.
- That P&Z failed to conduct a fair hearing in that two members were **biased against the appellant by reason of a conflict of interest** or close relationship that interfered with their independence of judgement.
- That P&Z **failed to properly interpret and apply relevant provisions of the Land Use Code** including subsections:
 - 3.6.2 (A) and (I) regarding layout and design of streets and drives;
 - 4.5(A), the Purpose statement of the Low Density Mixed Use Neighborhood (LMN) zone district; and
 - 4.(B) and (C), permitted and prohibited uses in the Low Density Residential zone district.

BACKGROUND / DISCUSSION

At the November 16, 2023, Planning and Zoning Commission hearing, the Commission considered the application for the Polestar Village Project Development Plan (PDP) and approved the PDP on a vote of 5-0 (Stackhouse and Stegner absent) with one condition. The decision is dated November 17 because the vote concluded at 12:46 a.m.

Polestar Village Development Plan Overview:

The property is a 20-acre infill property located at the current western dead end of both Orchard Place and Plum Street, within the half-mile between West Elizabeth and West Mulberry Streets, about 1/4 mile east of Overland Trail.

The development plan proposes mixed neighborhood development with three existing local streets stubbed to its boundary – West Plum Street, Orchard Street, and Locust Grove Drive. The plan extends those streets into and through the plan. The plan includes:

- a wide variety of housing types
- a neighborhood center with various supporting nonresidential uses
- extensive community gardens and landscaping
- a large stormwater detention facility in coordination with a larger regional City system
- a natural area buffer along an irrigation canal that forms the angled southwestern property boundary

First Issue on Appeal:

The first question for Council is: Did the Hearing Officer fail to conduct a fair hearing by considering evidence presented by the Applicant and staff, that was substantially false or grossly misleading?

The Appellants assert that (1) Polestar used persuasive language during the hearing and presented misleading information as well as non-confirmable statements; and (2) Hearing attendees and council members also did not get to hear all the details of the proposal. The Appellants offer seven points in support of their assertion.

1. Traffic Data.

The appeal states that traffic data was only collected for 24 hours and did not include all impacted streets nor take into account actual traffic patterns; streets in the study were selected in order to support the development vs. understanding safety impacts to the neighborhood; and the traffic study misled P&Z members by not being conducted in a thorough manner.

A Traffic Impact Study (TIS) was conducted by licensed professional traffic engineer using industry standards which are used in all such studies for land development. The scope of the study was established by City Traffic Operations staff, based on the context. The completed 143-page study was reviewed and accepted by staff.

Overall, the TIS finds that levels of service and ADTs remain within standard thresholds for all streets.

Pertinent evidence from the record includes:

- Transcript p. 6, lines 35-45 and p. 7, lines 1-9 for applicant explanation of additional local traffic that the development would add to existing local streets within the threshold allowed for local street traffic.
- Transcript p. 20, lines 20-31 for applicant explanation regarding the pertinent ADT threshold.
- Transcript p. 24, lines 18-39 & page 25, lines 1-6 for discussion of ADT numbers being within acceptable thresholds, and related discussion of possible traffic patterns.
- Transcript p. 27, 13-34 for discussion of the increase in ADTs.
- The TIS p. 17 for a map of the streets included in the study.
- The TIS pp. 140 and 141 for base assumptions and the scope of the study.

2. Outreach to Neighbors.

The appeal states that not all neighbors were aware of the P&Z hearing; an alarming number of neighbors were unaware of the development; and most neighbors were unaware of the neighborhood meeting held in 2022.

The standard notification of the hearing was mailed to 797 property owners within about 1,000 feet, rounded up, in accordance with code requirements and standard practice.

Likewise, notification of the neighborhood meeting in 2022 was mailed following the same protocols.

Pertinent evidence from the record includes:

- Staff Report p. 4 for documentation of the neighborhood meeting and the hearing notices.

3. Welcoming Community; Integrated With Existing Community.

The appeal states that Polestar's description as a warm, welcoming intentional community that aims to seamlessly integrate into the Rogers Park neighborhood is misleading. The appeal interprets the presentation to mean that only Polestar residents would be allowed to access the common areas.

The record reflects that all of the common areas in the plan have public access easements, which allow public access.

Pertinent evidence from the record includes:

- The Plat, which shows the easements.

4. Key Details Missed or Passed Over.

The appeal states that the applicants' presentation ran over the allotted time and was not allowed to finish, so that details of the buildings and outdoor space amenities were not presented.

The applicant presentation lasted over 40 minutes, about 10 minutes beyond the 30 minutes they were asked to speak. The Chair ended the presentation at about 10:40 p.m. The applicant's presentation was originally intended to include several more slide images and explanations of building architecture and design of outdoor space amenities. The applicants presentation was included in the hearing packet and is a part of the record.

Pertinent evidence from the record includes:

- Transcript p. 10, lines 14-41 for the Chair's discussion with the applicant about wrapping up.
- Applicants Presentation, slides 12-20 for imagery that was not explained or shown due to exceeding the allotted time frame for the presentation.

5. Extending Orchard Place to Overland Trail Across Intervening Property.

The appeal states that discussion was convoluted and misleading regarding whether or not Orchard Place would be extended west to Overland Trail across intervening property.

There were several comments at the hearing about the lack of direct access to an arterial street without use of the existing local street network. The discussion included the idea of extending Orchard to Overland Trail, noting an apparent possible opportunity because there is no existing development on the intervening property, and its owner was involved in Polestar's land assembly. Staff stated that if development occurs in the future on the intervening property, the extension of Orchard would be required.

Pertinent evidence from the record includes:

- Transcript p. 2, lines 38-42 for staff clarification that a potential future connection to Overland Trail would be a function of a future development plan but is not required as part of the Polestar plan.

- Transcript p. 12, lines 3-8 for another staff clarification that a potential future connection to Overland Trail would be a function of a future development plan but is not required in the Polestar plan.

6. Fatigue Due To Late Hour.

The appeal cites a number of effects of fatigue, and states that P&Z members expressed feeling fatigue and therefore did not thoroughly request additional details that could be pertinent.

The plan was approved at about 12:46 a.m., having extended into November 17. Staff does not find specific comments about fatigue in the record.

7. Misleading Illusion Of Support In Existing Neighborhood.

The appeal states that the support expressed in the meeting did not come from residents of the existing neighborhood, and that not all residents were able to attend given the late hour. There would have been more opposition if the neighborhood was properly notified, and the hearing was held at a reasonable hour. The appeal includes about 12 messages from neighbors to this effect, and also states that the 19 people who spoke in support at the hearing are not residents of the existing neighborhood or are otherwise not impacted by the residential traffic.

Pertinent evidence from the record includes:

- Transcript pp. 12-19 for all public comments.

Second Issue on Appeal:

The second question for City Council is: Did the Commission fail to conduct a fair hearing in that members were biased against the appellant by reason of a conflict of interest or other close personal or social relationship that interfered with independence of judgement?

The appeal states that two Commission members shared that they had a conflict of interest, and that one member remained seemingly unbiased and considered the concerns of neighbors while another member remained openly biased for the development and did not show empathy to neighbors' concerns. Their comments likely influenced other members.

Two members shared that they know the previous owners of a part of the property. One of these members also knows several neighbors in the area, but has not discussed this with them.

Both members stated that this would not impact their decision or impartiality.

Pertinent evidence includes:

- Transcript p. 2, lines 3-10 for the two members' statements.

Third Issue on Appeal:

The third question for City Council is: Did the Planning and Zoning Commission (P&Z) fail to properly interpret and apply relevant provisions of the Land Use Code subsections listed in the Notice of Appeal?

The appeal does not cite evidence or examples regarding these code subsections. These subsections are:

3.6.2(A) and (I):

Section 3.6.2 contains standards for layout and design of streets and drives. Subsection (A) is the Purpose statement which describes the general intent of the more-specific standards which then follow.

Purpose statements inform findings about compliance with the standards which follow—that is, staff typically evaluates compliance with the Purpose statements through compliance with the specific standards that pertain to the given development plan.

The Purpose of Section 3.6.2 states: “This Section is intended to ensure that the various components of the transportation network are designed and implemented in a manner that promotes the health, safety and welfare of the City.”

At the hearing, the lack of a street access connection to Elizabeth Street through an existing intervening residential farmhouse property was mentioned several times in a manner that alludes to the subject of subsection (I), although the subsection was not specifically mentioned. It states that “an applicant shall not be permitted to reserve a strip of land between a street and adjacent property for the purpose of controlling access to such street”. The applicant did not reserve a strip of land, however the owner of the farmhouse property previously split the farmhouse property from acreage behind it, which used to be part of the same unified property; and sold the acreage to Polestar as part of Polestar’s land assembly.

Pertinent evidence includes:

- The Staff Report p. 16, for staff’s finding of compliance with Section 3.6.2.
- The site plan and the applicant’s presentation slides 3,5, and 6 for illustration of the streets and drives.
- Transcript p.6, lines 16-24 for the applicant’s explanation of a walkway easement connection across the farmhouse property to West Elizabeth, to accommodate future pedestrian and bicycle access if and when the City completes a future capital project to build a sidewalk along West Elizabeth.
- Transcript p. 12, lines 26-27; Transcript p. 14, lines 24-26; Transcript p. 22, lines 37-39; Transcript p. 23, lines 34-36; and Transcript p. 28, lines 39-40, for several instances of citizens and Commission members mentioning the lack of a connection to Elizabeth in a manner that alludes to the topic of 3.6.2(I).
- Transcript p. 20, lines 32-38 for the applicant’s explanation about the farmhouse property fronting on West Elizabeth.

4.5(A):

Subsection (A) is the Purpose statement of the Low Density Mixed Use Neighborhood (LMN) zone district. Purpose statements describe the general intent for standards which then follow and compliance with Purpose statements is found through review under standards for specific aspects of the plan that achieve the general purpose.

The P&Z staff report stated this intent, and then explained compliance with the more specific standards which are pertinent to this PDP.

Pertinent evidence includes:

- The Staff Report pp. 19 and 20, for staff’s findings of compliance pertinent to the purpose of the LMN zone.

4.4(B) and (C).

Subsection (B) is the list of permitted uses in the Low Density Residential (RL) zone district; and subsection (C) simply states that uses not listed in (B) are prohibited. The zone emphasizes single-family detached houses as the predominate use.

A small portion of the Polestar Village plan, along Orchard Place, is in the RL zone and comprises single-family residential lots consistent with the zoning.

Pertinent evidence includes:

- The Staff Report pp. 19, for staff's findings of compliance.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Hearing Notice, Notice of Appeal, Mailing List
2. Staff Report to Planning and Zoning Commission, November 16, 2023
3. Staff Presentation, November 16, 2023
4. Applicant Presentation, November 16, 2023
5. Public Participation and Sign In Sheet
6. Verbatim Transcript
7. Video Link
8. New Evidence by Appellants
9. Applicant Appeal Presentation Materials
10. Staff Presentation to Council