

**August 16, 2022**

**COUNCIL OF THE CITY OF FORT COLLINS, COLORADO**

**Council-Manager Form of Government**

**Regular Meeting – 6:00 PM**

**A) PROCLAMATIONS AND PRESENTATIONS**

**1. 2022 Friend of Preservation Awards**

Beginning at 5 p.m., Mayor Jeni Arndt and Kurt Knierim, Chair of the Historic Preservation Commissions, presented awards to the following recipients:

- John Albright, receiving a Lifetime Achievement Award.
- Brian Carrol, for accomplishments in local history.
- The Fort Collins Municipal Railway Society, for the restoration of car no. 25.
- Wayne Sundberg, receiving a Lifetime Achievement Award.

**B) CALL MEETING TO ORDER**

Mayor Jeni Arndt called the meeting to order at 6:00 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City's Zoom platform.

**C) PLEDGE OF ALLEGIANCE**

Mayor Jeni Arndt led the Pledge of Allegiance to the American Flag.

**D) ROLL CALL**

**PRESENT**

Mayor Jeni Arndt  
Mayor Pro Tem Emily Francis  
Councilmember Susan Gutowsky  
Councilmember Julie Pignataro  
Councilmember Tricia Canonico  
Councilmember Shirley Peel  
Councilmember Kelly Ohlson

**STAFF PRESENT**

City Manager Kelly DiMartino  
City Attorney Carrie Daggett  
City Clerk Anissa Hollingshead

## **E) CITY MANAGER'S AGENDA REVIEW**

City Manager Kelly DiMartino provided an overview of the agenda for the night. There were no changes to the published agenda and all items on the consent agenda were recommended for approval.

## **F) COMMUNITY REPORTS**

None.

## **G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS**

*(Including requests for removal of items from Consent Calendar for individual discussion.)*

John McDonough, Fort Collins resident, spoke on behalf of the Sierra Club Poudre Canyon Group in support of Item 15 and the adoption of the resolution setting interim greenhouse gas reduction goals.

Sarah Manno, Fort Collins resident, spoke in support of Item 15 and the adoption of the resolution setting interim greenhouse gas reduction goals with a 56% emissions goal by 2026.

Susan Hughes, Fort Collins resident, spoke in support of Item 15 establishing adequate greenhouse gas reduction interim goals.

Joyce Butcher, Fort Collins resident, spoke in support of Item 15 and the adoption of a new interim greenhouse gas reduction goal for 2025.

Bobbi Wells Hargleroad, Fort Collins resident, spoke as the chair of the Climate Action Ministry at Plymouth Congregational Church in support of Item 15 because of concerns with the impacts of greenhouse gas emissions.

Audrey Welsh, founder of ReKaivery, a local food access organization, spoke to bring awareness of the lack of alignment in City departments with the City's goals following the experience she has had with her business trying to follow existing City processes resulting in a notice that her business must close within 48 hours.

(inaudible), Fort Collins resident, spoke as a teacher and advisor of several start up enterprises focused on solving community issues, noting his satisfaction overall with the work of the City in creating a positive environment. He shared concerns he has with some specific instances, including regarding ReKaivery, and the observation that City staff is providing interpretations of City code that are not favorable for innovative businesses.

Austin Lammers, co-owner of ReKaivery, noted tomorrow marks one month of operations, during which time the business has obtained \$22,000 in local sales. He requested any assistance the Council is able to provide in this situation.

Rich Stave, Fort Collins resident, spoke about the challenges in negotiating the new online format of the agenda due to the size of the PDF packet. He also spoke regarding Item 14 and the appearance the Air Quality Advisory Board will include additional appointees with similar mindsets and backgrounds.

Reiner Lomb, Fort Collins resident participating online, spoke in support of Item 15 from his perspective as someone who has been involved in environmentally-focused boards in the community. He listed additional benefits of moving forward with action now, including the recent adoption of the Inflation Reduction Bill that includes climate mitigation actions.

Karen Artell, Fort Collins resident participating online, spoke as a member of the Air Quality Advisory Board but not on behalf of the board regarding Item 7. She noted her appreciation of these efforts to improve air quality.

## **H) PUBLIC COMMENT FOLLOW-UP**

Councilmember Julie Pignataro

- Thanked everyone who came out to speak.
- Requested clarification from the City Clerk regarding whether information will be provided to the public about the new agenda system. City Clerk Hollingshead indicated additional public communication, including guidance on accessing agenda materials in different formats, is planned as part of the full implementation of the new agenda system, with more details for the public expected prior to the next Council meeting.
- Encouraged residents to apply for boards and commissions when applications next open again.

Councilmember Kelly Ohlson

- Requested details on whether the new agenda format is easier for the public to access or not. Clerk Hollingshead responded the new presentation of agenda materials is overall seen as an enhancement to how the public can access these items. As part of the ongoing implementation, which has been on a rapid timeline due to a number of factors, there will be a full communications plan to ensure the public is aware of these advantages and how to take advantage of the multiple ways to now access agenda materials.

## **I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION**

Councilmember Ohlson requested to remove Item 9 from the Consent Calendar.

## **J) CONSENT CALENDAR**

### **1. Consideration and Approval of the Minutes of the June 21, July 5, and July 19, 2022 Regular Meetings and the July 12, 2022 Special Meeting.**

*The purpose of this item is to approve the minutes of the June 21, July 5, and July 19, 2022, Regular Meetings and the July 12, 2022, Special Meeting.*

***Approved.***

### **2. Second Reading of Ordinance No. 086, 2022, Amending Section 2-596 of the Code of the City of Fort Collins and Setting the Salary of the City Manager.**

*This Ordinance, unanimously adopted on First Reading on July 12, 2022, sets the salary of the City Manager effective July 1, 2022.*

***Adopted on Second Reading.***

### **3. Second Reading of Ordinance No. 087, 2022, Authorizing the Exchange of Stormwater Easements Between the City of Fort Collins and Sun Foothills Fort Collins, LLC.**

*This Ordinance, unanimously adopted on First Reading on July 19, 2022, authorizes the conveyance of a stormwater drainage easement to Sun Foothills Fort Collins, LLC ("Sun") on undeveloped City-owned real property located south of Trilby Road and east of South College Avenue (Assessor's Parcel No. 9613200927). This easement is necessary for Sun to develop its*

property adjacent and to the north of the City's property. In exchange, Sun will convey to the City a stormwater drainage easement on its property that will allow the City, or future owner, to use Sun's property for stormwater drainage from the City's property when developed. The execution of the Reciprocal Stormwater Drainage Easement Agreement will effectuate the reciprocal conveyances.

***Adopted on Second Reading.***

- 4. First Reading of Ordinance No. 090, 2022, Authorizing the Conveyance of an Emergency Access Easement to Poudre Fire Authority on City-owned Real Property Located at 430 N. College Avenue.**

*The purpose of this item is to authorize the conveyance of an Emergency Access Easement (EAE) to Poudre Fire Authority (PFA) on City-owned real property located at 430 N. College Avenue. The City leases this property, which is the location of the Powerhouse Energy Campus, to the Colorado State University Research Foundation (CSURF). CSURF has submitted plans to the City to make improvements to the property to support a hydrogen fueling station and turbine generator. As a condition of approval, the City, as property owner, is required to convey an EAE to PFA to support fire truck and emergency equipment access, which is a common requirement for new development and improvements on certain properties. Conveyance of the EAE is the final action needed for the City's Planning, Development, and Transportation Department to approve the project and issue construction permits as CSURF has met all other lease and development review requirements.*

***Adopted on First Reading.***

- 5. First Reading of Ordinance No. 091, 2022, Authorizing the Execution of a First Amendment to Lease with New Cingular Wireless PCS, LLC of City-Owned Property at City Park Ballfields.**

*The purpose of this item is to authorize the City Manager to execute an amendment extending the existing New Cingular cell site lease at the ball fields at City Park. The amendment would extend the end of the current lease terms from March 8, 2023, to October 20, 2023, and allow an additional 5-year term from October 21, 2023, to October 20, 2028. New Cingular has leased the site from the City since 2005. Annual rent received by the City will increase from \$20,736 to \$24,000 for the first year of the 5-year term with 3% increases every year afterwards.*

***Adopted on First Reading.***

- 6. First Reading of Ordinance No. 092, 2022, Dissolving the Parking Advisory Board and Amending the Code of the City of Fort Collins by Repealing Section 2-110 Relating to the Parking Advisory Board.**

*The purpose of this item is to dissolve the Parking Advisory Board.*

***Adopted on First Reading.***

- 7. First Reading of Ordinance No. 093, 2022, Making Supplemental Appropriations in the General Fund for the Environmental Services Air Quality Program from the US Environmental Protection Agency Grant.**

*The purpose of this item is to appropriate unanticipated grant revenue in the General Fund for the Environmental Services Air Quality Program. This grant directly supports Council Priority #17, Improved Air Quality, and includes \$108,200 of grant funding provided by the U.S. Environmental*

*Protection Agency (EPA) and associated with the American Rescue Plan Act to support local monitoring of National Ambient Air Quality Standard (NAAQS) pollutants in and near communities with environmental justice concerns who face disproportionate exposure to these pollutants and health risks and are also associated with increased vulnerability to COVID-19.*

***Adopted on First Reading.***

**8. First Reading of Ordinance No. 094, 2022, Adopting a Graywater Ordinance, to Allow Voluntary Graywater System Installations.**

*The purpose of this item is to propose a graywater ordinance for Council's consideration, which is necessary to allow graywater systems to be installed in the City. The proposed graywater ordinance would enact a voluntary program for graywater use for toilet flushing in Fort Collins Utilities' water and wastewater service areas, as well as the service areas of consenting water and wastewater districts in the Growth Management Area (GMA). The proposed graywater ordinance would be consistent with State regulatory requirements and local water right limitations.*

***Adopted on First Reading.***

**9. Resolution 2022-081 Authorizing the City Manager to Execute an Intergovernmental Agreement with Larimer County for the Northern Big Game Critical Winter Range Restoration Project at Coyote Ridge and Bobcat Ridge Natural Areas.**

*The purpose of this item is to adopt a resolution supporting the RESTORE Big Game Critical Winter Range Habitat project and the City and Larimer County's related intergovernmental agreement. The Larimer County Department of Natural Resources was recently awarded \$328,900 by the National Fish and Wildlife Foundation RESTORE Program. Larimer County is the prime recipient, together with subrecipients Colorado Parks & Wildlife (CPW), City of Fort Collins Natural Areas Department (FCNAD), Boulder County Parks & Open Space, and Jefferson County Open Space.*

*Funds from the award will be used to control and eradicate invasive annual grasses across 4,385 acres of Northern Colorado foothills open spaces to improve critical winter habitat for elk and mule deer. As a partnering agency, FCNAD will receive \$58,500 to treat 780 acres across Coyote Ridge and Bobcat Ridge Natural Areas. To share the funding, Larimer County has requested that the City of Fort Collins enter into an Intergovernmental Agreement (IGA), a draft of which is attached to the Resolution as Exhibit "A".*

***This item was pulled from the Consent Calendar to allow for discussion.***

**10. Resolution 2022-082 Setting Forth Findings of Fact and Determinations Regarding the Peakview Annexation No. 1.**

*The purpose of this item is to determine substantial compliance and initiate annexation proceedings for the Peakview Annexation No. 1. The Applicant has submitted a written petition requesting the annexation and proposed zoning. The Peakview Annexation No. 1 totals 5.7-acres and is located generally northeast of the East Mulberry Street and Greenfields Court intersection.*

*The requested zoning for this annexation is General Commercial (C-G), Neighborhood Commercial (N-C), and Medium Density Mixed-Use Neighborhood (M-M-N), in compliance with the City of Fort Collins Structure Plan and the East Mulberry Corridor Plan. No project development plan proposal was submitted in conjunction with the annexation application.*

*This annexation request is in conformance with the State of Colorado Revised Statutes as they relate to annexations, the City of Fort Collins City Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Growth Management.*

**Adopted.**

**11. Resolution 2022-083 Approving the Acceptance of the Proposed Donation of a Sculpture to be Placed at Veterans Plaza in Spring Canyon Community Park.**

*This Resolution accepts the donation from Diggs Brown for a bronze sculpture entitled, Arthur-My Hero, My Friend, that will be placed at the Veterans Plaza located in Spring Canyon Community Park.*

**Adopted.**

**12. Resolution 2022-084 Approving an Art Project for the Glenmoor Pond Enhancement Project and Approving Expenditures from the Art in Public Places Stormwater Utility Account to Commission an Artist to Create the Art Project Pursuant to the Art in Public Places Program.**

*The purpose of this item is it to approve expenditures from the Art in Public Places (APP) Reserve Account to commission an artist to create art for the Glenmoor Pond Enhancement Project. The expenditures of \$55,000 will be for design, materials, signage, fabrication, delivery, installation, and contingency for APP artist Lisa Cameron Russell to create the art for the Glenmoor Pond Project.*

**Adopted.**

**13. Resolution 2022-085 Approving an Art Project for the Bucking Horse Park Project and Approving Expenditures from the Art in Public Places Reserve Account in the Cultural Services and Facilities Fund to Create the Art Project Pursuant to the Art in Public Places Program.**

*The purpose of this item is to approve expenditures from the Art in Public Places (APP) Reserve Account to commission an artist to create art for the Bucking Horse Park Project. The expenditures of \$67,000 will be for design, materials, signage, fabrication, delivery, installation, and contingency for APP artist Joshua Wiener to create the art for the Bucking Horse Park Project.*

**Adopted.**

**14. Items Relating to Appointments to Various Boards and Commissions:**

- A. Resolution2022-086 Making Appointments to the Air Quality Advisory Board.**
- B. Resolution2022-087 Making an Appointment to the Art in Public Places Board.**
- C. Resolution2022-088 Making an Appointment to the Citizen Review Board.**
- D. Resolution2022-089 Making Appointments to the Historic Preservation Commission.**
- E. Resolution2022-090 Making Appointments to the Human Services and Housing Funding Board.**
- F. Resolution2022-091 Making Appointments to the Natural Resources Advisory Board.**
- G. Resolution2022-092 Making an Appointment to the Senior Advisory Board.**

*The purpose of this item is to fill vacancies on various boards and commissions.*

**Adopted.**

## END OF CONSENT CALENDAR

### K) ADOPTION OF CONSENT CALENDAR

*Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to approve the recommended actions on Items 1-8 and 10-14.  
The motion carried 7-0.*

### L) CONSENT CALENDAR FOLLOW-UP *(This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)*

Councilmember Shirley Peel

- Offered congratulations to everyone being appointed to a board tonight. She noted in many instances there were several applicants, all with outstanding qualifications.

Councilmember Kelly Ohlson

- Asked about people being appointed until the end of the year, and would they be allowed to still serve two full terms. It was noted that there are multiple different term lengths, and those terms can be served in different combinations.

Councilmember Julie Pignataro

- Asked about the next work session regarding boards and commissions. City Clerk Hollingshead noted the next step with Council on boards and commission is the convening of an ad hoc Council committee to explore further adjustments to the program. That committee will begin its work once a new team member is on board in the Clerk's Office to support that work.

Mayor Jeni Arndt

- Commented regarding Item 8 and the excellent work that has been done on the topic of graywater to bring this forward.

### M) COUNCILMEMBER REPORTS

Councilmember Gutowsky

- Provided a shout out for the Fort Collins Symphony and all the options they have offered the community this summer, including backyard concerts, a Beethoven celebration, and numerous other activities.
- Shared about National Night Out and the numerous activities underway that evening.
- Provided information about a fieldtrip to visit the Hoffman crushing site off of Lemay to allow reuse of concrete and wood products to divert materials from the landfill.
- Noted Traverse Park had its grand opening on the northeast side of the City off of Vine Drive.
- Attended a BizWest event honoring City Manager Kelly DiMartino who received an award as a woman of distinction.

Councilmember Shirley Peel

- Noted she also attended the BizWest event, where Councilmember Canonico was also a nominee for the woman of distinction award.
- Shared about a listening session she will be hosting on August 27 at Deli Works centered around the neighborhoods in the South College corridor.

Mayor Jeni Arndt

- Noted sometimes we feel disconnected and therefore she wanted to highlight some feel good things.
- Shared about a letter from a resident regarding help he received from Nick Heimann, a City employee, when falling.
- Shared about losing her bike chain while riding to work a couple weeks ago, where someone offered her help in getting it put back on.
- Highlighted the Historic Preservation awards presented earlier tonight, including feedback provided by an attendee about the excellent work of City staff in helping to make the City a great place to live and work.

## **N) STAFF REPORTS**

None.

## **O) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION**

### **9. Resolution 2022-081 Authorizing the City Manager to Execute an Intergovernmental Agreement with Larimer County for the Northern Big Game Critical Winter Range Restoration Project at Coyote Ridge and Bobcat Ridge Natural Areas.**

*The purpose of this item is to adopt a resolution supporting the RESTORE Big Game Critical Winter Range Habitat project and the City and Larimer County's related intergovernmental agreement. The Larimer County Department of Natural Resources was recently awarded \$328,900 by the National Fish and Wildlife Foundation RESTORE Program. Larimer County is the prime recipient, together with subrecipients Colorado Parks & Wildlife (CPW), City of Fort Collins Natural Areas Department (FCNAD), Boulder County Parks & Open Space, and Jefferson County Open Space.*

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*This item was pulled from the Consent Calendar to allow for discussion.*

There was no public comment.

Councilmember Kelly Ohlson asked the following questions:

- Asked about when we are aerial spraying pesticides, expressing concern he didn't see a lot of information about impact on other species, and noted more in depth follow up after the meeting would be appreciated.

- Also asked whether the item included a recommendation from the Land Conservation and Stewardship Board.

Katie Donahue, Natural Areas Director, was available online but had technical difficulties. Follow up will be provided in writing.

***Mayor Pro Tem Francis moved, seconded by Councilmember Peel, to adopt the resolution. The motion carried 7-0.***

## **P) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION**

### **15. Resolution 2022-094 Adopting an Interim Greenhouse Gas Reduction Goal.**

*The purpose of this item is to consider adoption of a Resolution setting an interim target for community greenhouse gas (GHG) reductions between now and the 2030 goal of 80% below 2005 levels. The specific date and reduction target in the Resolution may be determined by City Council during discussion.*

In support of Council's discussion regarding the establishment of an additional interim goal between now and 2030, staff have projected the community GHG inventory for 2026. The expected range, based on currently planned projects and known variability factors is between 28% and 48% below 2005 baseline. If a Resolution is adopted, staff recommends choosing 2026 as the target year for an interim goal because it falls halfway between the current year and 2030, allowing for two full City budget cycles before and after the interim goal year.

City Manager Kelly DiMartino introduced this item, and turned the presentation over to Utilities Executive Director Kendall Minor.

Director Minor provided an overview of the topic. Honore Depew, Climate Program Manager, presented as set forth in the slide deck in the agenda packet. Also available for questions as part of the presentation was John Phelan, Energy Services Manager and Policy Advisor.

#### *Public comment:*

Kevin Cross spoke on behalf of the Fort Collins Sustainability Group. He thanked Council for requesting this item come forward, and thanked staff for their work on this. He expressed support for establishing an interim goal for 2026 rather than 2025, and a goal of at least a 56% reduction in gases by that time.

Scott Denny, professor of atmospheric science at Colorado State University, spoke in support of this action and its importance. He highlighted what he identified as fairly new climate science that is coming out regarding how the total amount of historic greenhouse gas emissions over time impacts the future climate.

Rich Stave, Fort Collins resident, shared his lack of agreement with most of the conclusions presented tonight, with the belief they constitute hypotheses not fact. He expressed concern about awareness of a balanced approach and asked if it is realistic to set goals based on the last two years when there was not the same type of normal activity due to COVID.

There being no further comments from the public, Councilmembers began their discussion.

Councilmember Kelly Ohlson stated support for an ambitious goal in the neighborhood of 56% for 2026.

Mayor Arndt asked staff regarding the suggestion for a linear goal. She noted she has not seen a linear chart that reflects linear progress towards these goals, and the variability in the clean transition. The potential loss of hydro power from Lake Mead could impact this as well. John Phelan responded, providing information about the variability of progress for individual adoption of things like electric vehicles somewhat steadily over time, versus a lumpier path for utility related shifts that occur typically in chunks at a time.

Mayor Pro Tem Francis asked about the staff recommendation of 20-48%, and what the impact would be to budget and personnel work plans if a 56% goal were adopted. Manager Phelan provided information about the budgetary options that will be presented at the October 11 work session. Mayor Pro Tem expressed her support for interim goals while stating her support for postponing this action until additional data can be provided at the work session to enable a more data driven decision that can be truly impactful.

Councilmember Canonico stated support for setting interim goals following the October work session.

Councilmember Gutowsky requested clarification on the negative impact of setting a goal before October 11, indicating she views this as a necessary statement of commitment. Manager Depew noted the impacts on what staff would be bringing forward would include weaving that into the pathways to meeting those goals, and that it is a Council decision on the timing. Manager Phelan clarified staff is not at this time prepared to identify the impact on staffing and budget of setting any specific interim goal.

Mayor Arndt noted the question could be asked in reverse about the impacts of delaying the adoption of an interim goal, while the Council has made a clear statement of the priority of this topic. The Mayor expressed a preference for delaying the setting of a goal until the activities to obtain a specific goal are more fully scoped. Director Minor expressed staff's support for setting interim goals while acknowledging the advantages of being able to present a roadmap with activities tied to targets in October.

In response to questions from Councilmember Ohlson, City Manager DiMartino noted the 2030 goal has already impacted budget recommendations that are being developed. Further interim goals can have additional impact on the timing of additional investments.

Mayor Pro Tem Francis noted in her initial service on Council, there had been midyear appropriations that focused on Council priorities, and that a similar process could be used to allocate more dollars at that point towards this goal.

***Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to postpone this item to October 18.***

Councilmember Pignataro stated her support for this topic, and her excitement to be able to take action on this in October.

Mayor Pro Tem Francis also stated her clear support for taking action on interim goals on the October timeline.

Mayor Arndt thanked those who have been helping to push this forward and expressed her support for taking action in October.

Councilmember Gutowsky expressed thanks for the clarification provided tonight.

Councilmember Peel noted she will be cautious on actions around climate action due to concerns about the tradeoffs.

City Manager DiMartino noted the timing of bringing an item the week immediately following the work session presented challenges.

***Mayor Arndt offered an amendment to change the date in this item to October 25. The amendment was adopted by unanimous consent.***

***The motion as amended to postpone consideration of the resolution until October 25, 2022, was adopted 6-1.***

***Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmember Gutowsky, Councilmember Pignataro, Councilmember Canonico, Councilmember Peel.***

***Nays: Councilmember Ohlson.***

Following this item, Mayor Pro Tem Francis offered appreciation to Jackie Kozak-Thiel, Sustainability Officer, as this is her final meeting before transitioning to a new role.

The meeting was recessed at 7:44 p.m. to allow for set up for the next item.

The meeting resumed at 8:01 p.m.

## **16. Sanctuary on the Green Project Development Plan Appeal.**

*The purpose of this quasi-judicial item is to consider an appeal of the Administrative Hearing Officer's Decision on May 2, 2022, approving the Sanctuary on the Green Project Development Plan (#PDP210018) located near the northwest corner of N. Taft Hill Road and Laporte Avenue. A Notice of Appeal was filed on May 31, 2022, alleging that the Administrative Hearing Officer considered evidence relevant to their findings which was substantially false or grossly misleading including misrepresentations and mischaracterizations of several items from the Applicant and City staff. The Notice of Appeal further alleges that the Administrative Hearing Officer 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 because the application was allowed to go through a Type 1 hearing. The appellant also believes the public hearing structure, which does not allow rebuttal from the public to final statements made by the Applicant or staff, is unfair.*

*Lastly, the Notice of Appeal alleges the Administrative Hearing Officer failed to properly interpret and apply relevant provisions of six sections of the Land Use Code including Section 1.2.2 (Purpose), Section 3.5.1 (Building and Project Compatibility), Section 4.5.D.1 (Low Density Mixed-Use Neighborhood District Density Standard), Section 3.4.7 (Historic and Cultural Resources), Section 3.5.2(D)(1) (Orientation to a Connecting Walkway) and 4.5 (D)(2)(a) (Mix of Housing).*

Mayor Arndt introduced the item.

City Attorney Carrie Daggett introduced Assistant City Attorney Aaron Guin, seated at the staff table with Planning staff, who has been working on this item, and then provided a brief overview of the appeal process.

### **STAFF EXPLANATION AND PRESENTATION**

City Manager Kelly DiMartino introduced Paul Sizemore, Community Development & Neighborhood Services Director, to provide the staff presentation on the item. Director Sizemore presented as set forth in the slide deck in the agenda materials. Also present to assist with the staff presentation and questions was Jenny Axmacher, Senior City Planner.

## CONFLICTS

No Councilmembers disclosed any conflict of interest issues or other reasons for recusal.

## SITE VISIT OBSERVATIONS

Mayor Arndt noted an organized site visit was conducted on Monday, August 15, 2022, and invited Councilmembers who participated in that site inspection or who otherwise individually visited the site to view it to share relevant observations.

Councilmember Gutowsky shared her objective in attending the site visit was to get a sense of the physical space.

Councilmember Ohlson also shared about his experience at the site visit to gain a sense of the physical space.

Councilmember Peel noted she missed the formal site visit, but did go to the site today to get a sense of the site.

Mayor Arndt shared she lives very nearby, attended high school at the school across the street, and is familiar with the property.

## PARTIES PRESENT

Mayor Arndt asked the appellant and the property owner as well as any parties in interest to identify themselves.

Laura Larson, resident of a property immediately abutting the subject property, identified herself as the designated spokesperson for the Sanctuary Field Neighborhood Network who would be speaking for the appellant.

Carolynne White introduced herself as the attorney representing the property owner and project applicant as their land use counsel and indicated she would be speaking for the property owner in opposition to the appeal.

## TIME ALLOCATIONS

Mayor Arndt announced the allocation of time for all parties to include:

- A total of 30 minutes for the Appellant for its presentation.
- A total of 30 minutes for the property owner in its presentation.
- A total of 15 minutes rebuttal for the Appellant.
- A total of 15 minutes for rebuttal by the property owner.

## PROCEDURAL ISSUES

In response to the request of the Mayor to identify procedural issues, attorney for the applicant, Carolynne White, came forward. She requested expansion of the time allotted to 45 minutes given the breadth of issues at hand. She also noted the letter submitted by the applicant has been

considered by the City Attorney's Office to include new evidence in part. It is the applicant's contention the information contained in the letter was previously presented as part of the original hearing, although there is a portion in the letter that refers to a staff report from June that contains identical information to a report from January that had been referenced by the applicant at the May hearing.

Comments from Council regarding these procedural issues included consensus for the 30 minute time limits and to accept the letter while striking the provisions that were identified as potentially constituting new evidence. Mayor Arndt ruled to maintain the time limits as they were set forth, and to accept the letter minus the provisions in question.

On behalf of the appellants, Laura Larson objected to the submission of the letter by the applicants on the basis they were not afforded the same opportunity to provide additional materials under information it was asserted was provided to them by the City Clerk's Office. Following discussion by Council and reconsideration, Mayor Arndt ruled the letter would not be accepted.

#### APPELLANT PRESENTATION

The appellant was invited to make their presentation, with a time limit of 30 minutes. On behalf of the group appealing the matter, Laura Larson presented as set forth in the slide deck submitted into the public record outlining the basis of the appeal.

#### PROPERTY OWNER PRESENTATION

At the onset of the presentation, Attorney Carolynne White registered for the record objections regarding the letter being stricken as well as the inclusion of new evidence in the presentation provided by the appellants, including new graphics.

Attorney White then presented as set forth in the slide deck entered into the public record in opposition to the appeal.

#### APPELLANT REBUTTAL

Laura Larson provided the rebuttal. Areas addressed included:

- Disagreement with proposed density step downs and which properties are being chosen to be included for comparisons, such as Ramblewood Apartments as a comparable property while ignoring nearby farms.
- Asserted misrepresentations were included in the applicant's presentations.
- Reiterated concern with the lack of consideration for public input and engagement in the creation of subarea plans that are not being respected by this project.
- Disagreed with depiction of the hearing officer agreeing the project meets small area plans, as in his final statements he said it was unclear to him whether the project conforms to the plans.

#### PROPERTY OWNER REBUTTAL

Carolynne White provided the rebuttal on behalf of the property owner.

- Shared the developer has continued coming back to the table for 15 years, and has greatly reduced the overall density of the project. It cannot be a requirement to continue iterating the project until it meets the approval of the adjacent neighbors.
- Indicated this project does meet the parameters of the Northwest Subarea Plan, and does not disregard it.

## QUESTIONS FROM COUNCIL

Councilmember Ohlson asked what determines the type of hearing that is held on an item. Director Sizemore clarified this is based on the requirements in the Land Use Code, driven by the types of properties proposed to be constructed. He also asked about whether it is accurate the public is not allowed a rebuttal in front of the hearing officer. Planner Axmacher confirmed that is accurate under the provisions of the Land Use Code.

Wes LaMarque with Utilities provided details about plans for a regional stormwater management facility in answer to a question from Councilmember Ohlson regarding stormwater management. He also provided information on how this facility is funded through permit fees across the city.

In response to a request for more detail about lighting code requirements, Planner Axmacher clarified there is a condition in the approval requiring compliance with these standards.

Asked why there is not a requirement to preserve existing large cottonwood trees. City Forester Kendra Boot responded with details regarding why some of the existing large trees cannot be preserved, including the proposed grading of the site. Forester Boot indicated the applicant was required to obtain an assessment of some of the trees, which resulted in findings of limited structural integrity.

Councilmember Julie Pignataro asked if doing comparables is like finding comps for a home when selling. Planner Axmacher responded it is more of an art than a science in terms of what is included, although there is some guidance provided in the Code.

Councilmember Peel asked whether minutes of neighborhood meetings were included in the packet. Planner Axmacher noted that was included as attachment 27 to the staff report.

Councilmember Canonico requested more insight into how the Land Use Code and plans for the area work together. Director Sizemore provided information about how a comprehensive planning effort is undertaken in an area. In the Northwest Subarea Plan, there is identification of the types of zone districts that would align with what the neighborhood would like to see. The planning documents provide a vision for the area, but the Land Use Code provides the regulatory framework.

Councilmember Gutowsky asked for more information about concerns with stormwater management in the area, particularly given it is identified as being in a floodplain. Planner Axmacher noted the floodplain issue must be addressed for the applicant to move forward. Ted Bender with City Stormwater also responded with information about how the applicant has hired an engineering firm to review these elements, and is providing these findings to the City for review as well. It has been made clear to the applicant they must meet the standards of the City in this realm. One stipulation of any approval would be that there are no increases in the floodplain elevations.

Councilmember Gutowsky asked the appellant how many of the homes in the area have basements. Laura Larson indicated no homes in the area have basements due to water table levels.

Asked who made the determination about whether the homes qualified as historic, Director Sizemore indicated Historic Preservation made those determinations. Historic Preservation Manager Maren Bzdek provided an overview of the preliminary review of the historic resources performed.

Mayor Arndt asked for clarification on the next steps for the applicant if the appeal were to fail. Planner Axmacher indicated if this moves forward, the next step is the final development plan (FDP) which would include additional reviews of several aspects. The FDP must be approved before any building permits can be applied for and granted.

Councilmember Gutowsky stated her belief this project is not compatible with the surrounding area. She also asked about traffic and where the egresses are located for this development. Planner Axmacher noted there is a new connection proposed on Taft Hill Road near the northeast corner of the development as well as one in the southwest corner of the site onto Laporte.

Councilmember Pignataro asked about any plans to update the Northwest Subarea Plan, noting it was completed in 2006. Planner Axmacher noted it is one of the City's older plans and there is a current budget offer in proposing to update the plan.

The hearing was closed at 10:30 p.m.

## COUNCIL DISCUSSION

Councilmember Pignataro thanked everyone for coming out and for all the work that has gone into this process. She indicated she tends to avoid site visits but is very familiar with the area. She stated her biggest questions are around the comparables, while noting there is not cohesiveness in this area. She stated she did not see any issues with the actions of the hearing officer.

Councilmember Peel noted she understands when country meets city, and the desire to preserve a country atmosphere. She stated the decision at hand, however, is whether the process was followed appropriately and not opinions on the project. She stated her belief the hearing officer followed the intent of the subarea plan.

Councilmember Canonico shared her empathy with the homeowners in this area with concerns for the development around them, but that she has concluded the hearing was conducted in a fair manner.

Councilmember Ohlson stated he does believe it was a fair hearing. He indicated he was involved in the Northwest Subarea Plan, which clearly indicated a desire to keep things in the area as they are as much as possible. He shared his desire to stop doing these subarea plans because they are often not respected. He expressed appreciation to the applicant for respecting the buffers. He also indicated he does not see the Ramblewood Apartments as a reasonable comparable and noted disappointment in the trees that will be lost. He offered a suggestion for utilizing some of these trees that must be taken down somewhere else in the development. He expressed his belief the scale and mass is out of whack.

Mayor Arndt indicated she thought the hearing officer considered relevant evidence and conducted a fair hearing. She also stated the Land Use Code takes precedence and therefore she will not find in support the appeal.

Mayor Pro Tem Francis stated her finding the Land Use Code is the regulatory framework that must be followed in evaluating the project.

Councilmember Gutowsky stated she did not feel it was a fair hearing given the hearing officer's inexperience in knowledge of this area. She stated a desire to see more resources available for the appellants in appeals to provide assistance in the process. She stated her support for the appeal.

**Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, that the Council find that the Hearing Officer conducted a fair hearing in their consideration of the Project Development Plan for Sanctuary on the Green (PDP210018) and that the Hearing Officer:**

- Did not consider evidence relevant to their decision that was substantially false or grossly misleading; and**
- Was not biased against the Appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Hearing Officer's independence of judgment.**

**The motion carried 6-1.**

**Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmember Pignataro, Councilmember Canonico, Councilmember Peel, Councilmember Ohlson.**

**Nays: Councilmember Gutowsky.**

**Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, that the Council find that the Hearing Officer properly interpreted and applied relevant provisions of the Land Use Code in their consideration of the Project Development Plan for Sanctuary on the Green (PDP210018) and properly found that the following criteria set forth therein were met because the PDP and requested modifications of standards:**

- a) The PDP and requested modifications of standards satisfies the intent and purpose of Section 1.2.2 (A), (E), (I), (M), and (N) and the recommendations made by the Northwest Subarea Plan.**
- b) The PDP is compatible with historic resources located within the Area of Adjacency.**
- c) This PDP meets the standards for building and project compatibility in accordance with Section 3.5.1.**
- d) This PDP satisfies the maximum density standards for new development in the Low Density Mixed-Use Neighborhood District and the Northwest Subarea Plan.**
- e) The Applicant met applicable criteria for the approval of a modification of standard for mix of housing under Section 4.5(D)(2)(a)(3).**
- f) The Applicant met applicable criteria for the approval of a modification of standard for orientation to a connecting walkway under Section 3.5.2(D)(1).**

**and further moved that the Council deny the appeal in its entirety.**

**The motion carried 5-2.**

**Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmember Pignataro, Councilmember Canonico, Councilmember Peel.**

**Nays: Councilmember Gutowsky, Councilmember Ohlson.**

## **Q) OTHER BUSINESS**

- A. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.**

*(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)*

Councilmember Pignataro brought up the topic of bus advertising and a desire for a policy discussion on this program. She requested that this be added to the work session for September 6. There was consensus to make this scheduling addition.

**R) ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at 10:52 p.m.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

DRAFT