

Notice of Appeal

Filed by Marcus Mims on August
20th, 2024

NOTICE OF APPEAL

Action Being Appealed: PDP220009 - College & Trilby Multifamily Community

FOR CITY CLERK'S
USE ONLY:
REC'D BY CITY CLERK
AUG 20 '24 PM 2:06
INITIALS: *LB*

Date of Action: 08/20/2024 Decision Maker: *Lori B. Strand*

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

Name: Marcus Mims Phone #: 224-0762
Address: 404 Starway Email: MarcOnSkyway@mailfence.com
Fort Collins, CO. 80525

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.

GROUND S 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:

Larimer County Urban Access Street Standards
1.4, 1.5, 1.8.1, 7.1, 7.1.1, 7.2.3
7.4 (Table 7-1, 7-2, 7-3)

Transportation Master Plan

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

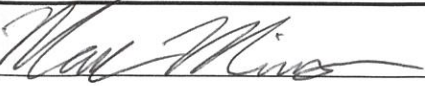
All new evidence the appellant wishes Council to consider at the hearing on the appeal must be submitted to the City Clerk within seven (7) calendar days after the deadline for filing a Notice of Appeal and must be clearly marked as new evidence. No new evidence will be received at the hearing in support 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.

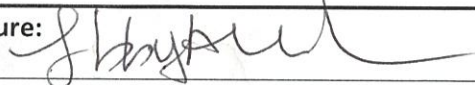
APPELLANTS

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: 19 August, 2024
Name: Marcus Mims	Email: MarcOnSkyway@mailfence.com
Address: 404 Starway	Phone #: 224-0762
Describe how you qualify as a party-in-interest: Resident of Skyview, Gave Testimony, Appeal originator	

Signature: 	Date: 19 AUG 2024
Name: Libby Abramovich	Email: Laa-13@hotmail.com
Address: 362 Aurora Way	Phone #: 970-691-7270
Describe how you qualify as a party-in-interest: Resident of area, mailed notices	

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

ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY

Relevant Code or Charter provisions were not properly interpreted and applied

Allegation 2: LCUASS is not Fungible

During the Administrative Hearing the following comments/phrases were made by either the developer or city staff. Based upon these comments, it seems as if the standards presented in Chapter 7 of the LCUASS are being interpreted as fungible.

Starting @1:42:30

“it actually functions more like a collector road.”

“functions adequately as a collector road.”

“Mars Drive and Skyway drive function adequately for a collector road intersecting a local street.”

Starting @ 2:13:45

'As far as the volume on Skyview'

'We don't really have hard and fast...'

'....there isn't a guidance for us...'

Starting @2:01:26

'it comes from Home Star', '1000-2500 cars per day', 'it comes from definitions in the land use code', 'so its not hard and fast engineering', 'I don't recall exactly how the definitions are worded in the land use code', 'but that's all we have.'

These comments stand in stark opposition of the LCUASS. Please note the bold and underlined phrases.

1.4 AUTHORITY OF THE LOCAL ENTITY ENGINEER

The Local Entity Engineer shall have the authority on behalf of the Local Entity to determine that **all design and construction is completed to a level that is equal to or exceeds the requirements set forth in these Urban Street Standards.**

1.5 ENFORCEMENT RESPONSIBILITY

It shall be the duty of the Local Entity Engineer acting on behalf of the Local Entity to enforce the provisions of these Urban Street Standards.

1.8.1 Governing Standards

Whenever a provision of these Standards or any provision in any law, ordinance, resolution, rule, or regulation of any kind contains any restrictions covering any of the same subject matter, **the standards that are more restrictive or impose higher standards or requirements shall govern.**

7.1 General

This chapter defines layout criteria and other **design criteria that shall be followed** for locating and designing all streets. The chapter provides the following information:

7.1.1 Conforming to Standards and Master Plans

The Project's street design and layout shall conform to these Standards and with the Local Entity's Transportation Master Plan (TMP) and other applicable plan documents such as Master Plans, Corridor Plans, Area Plans, codes and standards adopted by the Local Entity.

7.2.3 Local and Minor Collector Streets

Layout of new Local streets and Collector streets not covered by the Local Entity's TMP **shall meet the needs of the specific development and satisfy all other specific requirements of this chapter.**

No flexibility is given here. Chapter 4's peak hour traffic measurements is NOT an alternative to Chapter 7, but an additional burden.

Yes, the 2019 TMP stated....

Fort Collins intends to move away from MMLOS "standards" to a guideline-based system to inform City planning efforts, capital projects and the development review process.

But intend does not means has. In fact, while the TMP was enacted in 2019, the most recent version of the LCUASS was reenacted in August 2021. The city has reaffirmed the standards in Chapter 7 of the LCUASS, not negated them. The intent of the LCUASS, in the words of Chapter 7.2.3, is for roadways....

'...to limit traffic speeds and **traffic volumes** in neighborhoods and to provide for safer travel for all modes of transportation including pedestrian, bicycle, and vehicular.'

Asking children, pedestrians and dogs to share a mere 4.5 to 6 feet of road width with vehicular travel transcends any reasonable definition of flexibility.

Remedy: We ask that, concerning this development (PDP220009) the standards of the LCUASS be fully respected, not treated as some fungible notion that may be ignored. In addition, in future public hearings/meetings, city officials acknowledge the standards and that they are 'hard and fast.' And, finally, if the average daily traffic volumes of a new TIS exceed local residential road maximums, that either the development be denied or upgrades to roads be implemented prior to development build-out.

**Relevant Code or Charter provisions were not properly
interpreted and applied**

Allegation 1: Infrastructure on Skyway, Constellation, Venus and Mars

The following statements were made during the Administrative Hearing:

Starting @1:42:30

“it actually functions more like a collector road.”

“functions adequately as a collector road.”

Starting @2:02:20

“...and kinda echo what Mr Merritt said which is Skyway scales on google to be 48 feet wide. That is a very wide street.”

“Just want to let everyone know that Skyway does have sidewalks.”

Function follows form and physical design dictates functions of streets. What defines a collector road is not up to subjective debate. That is objectively defined by Chapter 7 of the LCUASS. Most of Skyway, Constellation, Mars and Venus (Chapter 7, Tables 7-1, 7-2, 7-3 of the LCUASS) do not fit Collector/Connector criteria. Examples:

- 1) Sidewalks (Missing on most of Skyway and Constellation, all of Venus and Mars)
- 2) Bike Lanes (Missing on most of Skyway and Constellation, all of Venus and Mars)
- 3) Driveway access is unlimited on all four roads.
- 4) Driveway minimum separation distances are violated.
- 5) Minimum intersection separation distances (on Skyway) are violated.
- 6) Curbs are not vertical, but drive-over.
- 7) Road widths on all four roads are too narrow for Collector/Connectors with roadside parking and buffered bike lanes (which are called for by the TMP).

Video was shown of Skyway, looking east when the '48 feet wide' observation was made. If the camera had pivoted to look east, the video would have shown Skyway narrowing to 40 feet. Furthermore Venus and Mars are also 40 feet in width. Constellation is 37 feet wide.

As per Table 7-1 of Chapter 7.4 of the LCUASS, the minimum width of a Collector road is 54 feet. And while it is true a Connector road's minimum is stated as 36 feet, this assumes no buffered bicycle lane as mandated by the City of Fort Collins Transportation Master Plan. With buffered bike lanes, the actual minimum road width is 48 feet.

Roadside parking (which exist on all these roads) and buffered bike lanes will require 28 feet of road width. This leaves only 4.5 feet per lane of traffic on Constellation and 6 feet per lane of traffic on Mars and Venus and parts of Skyway. These lanes will be 55% and 40% below the LCUASS 10 feet minimum specification for lane widths.

These under-performing/completely-failing infrastructure issues are a critical safety concern. Gateway, which serves people with disabilities, borders on both Skyway and Constellation. Venus, Skyway and Constellation have unchaperoned public school bus stops without crosswalks. People who regular walk these streets with dogs are forced to share 'asphalt' with vehicles due to a lack of sidewalks.

Remedy: We are requesting a new TIS be performed to identify all potential infrastructure shortfalls and necessary upgrades to infrastructure be a) planned, b) fully funded and c) scheduled before any daily average traffic volumes above 'local residential' be permitted.