

**Applicant Appeal  
Presentation Materials**

**Subject to Review for  
New Evidence and Council  
Acceptance**

Received March 13, 2024

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March 12, 2024

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Re: 1311 N. College, LLC/Applicant's Response and Request for Dismissal with Prejudice of Charles Meserlian/Appellant's February 27, 2024, appeal of the February 15, 2024, Planning and Zoning Commission approval of the Applicant's Mason Street Overall Development Plan.

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### **Background & Legal Framework.**

On February 27, 2024, Appellant appealed the February 15, 2024, Planning and Zoning Commission Approval of the Applicant's Overall Development Plan. Appellant's sole intent in filing the appeal was to stop the subsequent development of the Rescue Mission from building a Shelter at the location.

An Overall Development Plan ("ODP") is utilized pursuant to Fort Collins' Land Use Code ("LUC") Section 2.1.3 to "establish general planning and development control parameters for projects that will be developed in phases with multiple submittals while allowing sufficient flexibility to permit detailed planning in subsequent submittals." Critically, the approval of an ODP does not establish any vested rights to develop the property in accordance with the plan. The Applicant submitted its final Overall Development Plan ("ODP") application to the City and the Planning and Zoning Commission ("P&Z") unanimously approved it on February 15, 2024.<sup>1</sup>

The Applicant's ODP submission was solely comprised of information regarding infrastructure for the project (the "Project"); no future uses were identified or designated for P&Z's consideration. While it is generally understood that a specific development plan that may include the Fort Collins Rescue Mission Shelter Development (the "Shelter") is likely to be proposed at a later time, such a submittal was not

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<sup>1</sup> LUC Section 2.1.3(B)-(C).

before P&Z on February 15, 2024. Rather, if and when the Shelter comes before P&Z, it will be in the form of a request for a Final Plat approval, not an infrastructure ODP.

Additionally, City Staff communicated to the P&Z Commission that separate from any future Shelter development, the approval of the Applicant's ODP had significant positive benefits for the City's future stormwater master plans for the community as a whole along the North Mason Corridor; plans that have been decades in the making. City Staff made it clear, and the Commissions acknowledged, that whether the Shelter was ultimately approved at a later date or not, was not before P&Z at the February 15, 2024 Hearing.

Appellant's true purpose in filing this appeal is his opposition to the Shelter. P&Z clearly defined the narrow scope of its review during the February 15, 2024 Planning and Zoning Commission Hearing ("P&Z Hearing"); which was review of the Applicant's ODP's compliance with the Fort Collins Municipal Code and Land Use Codes. On several occasions, P&Z and City Staff clarified that the appropriate time to raise concerns or objections to the development of the proposed Shelter project was when those specific development plans came before P&Z.

**"Meserlian . . . outspoken critic of the Fort Collins Rescue Mission's proposed shelter, said the appeal is intended to stop the Rescue Mission from building on North College Avenue." *The Coloradoan*, February 28, 2024. <sup>2</sup>**

Despite this, the Appellant blatantly chose to abuse the City's appellate process by bringing this appeal on the pretense of P&Z's failure to properly interpret certain provisions of the Fort Collins Municipal Code and LUC. **The Applicant is literally quoted in the local Fort Collins' paper as stating that the appeal is "intended to stop the Rescue Mission from building on North College Avenue."** This is an abuse of process and should be treated as such. The Applicant requests that City Council deny the Appellant's request to be heard on the appeal before the City Council as it was brought on grounds not recognized in the Fort Collins' Municipal Code, and thus City Council has no legal basis for its review. To entertain such blatant misuse of the appellate process is to encourage and condone such action in the future. To allow this appeal to go forward violates the Applicant's due process and equal protection rights by allowing the Appellant a special mechanism for appeal not adopted in any governing City Code and not afforded to any other party.

In the alternative, the Applicant requests that City Council uphold P&Z's approval of the ODP without any form of remand for the reasons discussed below.

### **Approval of the ODP.**

The Applicant met the seven criteria in the LUC for approval of its ODP. As none of the criteria of LUC Section 2.3.2(H)(1)-(7) are challenged in the Appellant's Notice of Appeal, the approval should be

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<sup>2</sup> See attached Exhibit A.

upheld. It is imperative to note that LUC Section 2.3.2(H)(6) states that “the ODP shall be consistent with the appropriate Drainage Basin Master Plan.” The only evidence in the record, provided in the Staff Report, in Staff’s presentation to P&Z, in the Applicant’s ODP submission materials (which included extensive documentation regarding drainage and utility plans) and by the Applicant during their presentation, was that the stormwater requirements for the Project (the infrastructure plan), were sufficiently met; thus, consistent with the Dry Creek Master Plan.<sup>3</sup>

**Upholding the ODP Approval.**

The Appellant’s reliance on LUC Section 3.3.2(D) as grounds for an appeal of the ODP is misplaced. LUC Article 3 governs general development standards. Section 3.3.2(A) articulates what an applicant must submit to the City Engineer before a “final plat” can be approved. An ODP, by definition, is not the same as a Final Plat; rather it is a precursor to a Final Plat which has its own review procedure. To prove this point, one has only to remember that an ODP provides the Applicant with no vested rights to develop a project, unlike a Final Plat.

Appellant’s reliance on LUC Section 3.3.2(D) is also erroneous. Section 3.3.2(D) governs “Required Improvements Prior to the Issuance of a Building Permit.” The Applicant was not seeking approval to build a regional stormwater detention pond; rather, that will be a request made by the City at a later date when it seeks approval for the phased North Mason Corridor Plan improvements. To interpret the LUC Section 3.3.2 as Appellant suggests, requires City Council to read it as directly conflicting with LUC Section 2.1.3 which states that an ODP establishes parameters for projects while allowing sufficient flexibility to permit detailed planning in subsequent submittals.<sup>4</sup> Appellant’s interpretation of the Code negates the entire purpose of an ODP, which is simply to define the parameters of later inter-related final plan submittals. To be clear, the City’s North Mason Corridor Plan, while benefiting from the ODP, is not even part of the ODP.

The Appellant’s arguments inappropriately conflate the discreet limited detention pond improvements related to the ODP and the City’s future North Mason Corridor Plan regional detention pond approvals. It is the North Mason Corridor Infrastructure Plans that will need to show conformance with the Dry Creek Master Plan and Stormwater Quality and Stream Restoration for expansion of the detention pond to a regional detention pond. To deny the Applicant’s ODP on the basis that the City has not shown conformance with future regional stormwater drainage master plans for a separate project defies logic.

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<sup>3</sup> It should also not be lost on City Council that Appellant was at the Hearing and asked questions and made comment. He did not raise this issue at the time of the hearing; lending further credence to the fact that this appeal was brought for reasons other than concerns over stormwater master plan conformance.

<sup>4</sup> *R.W. v. People In Interest of E.W.*, 523 P.3d 422, 425 (2022)(When interpretation a statute (or Municipal Code) the Court’s primary aim is to effectuate the legislative intent. A reviewing court looks first to the plain language of the statute and then evaluates the entire statutory scheme in order to give “consistent, harmonious and sensible effect to all of its parts.”).

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When the City seeks approval for its large scale phased improvements related to the North Mason Corridor Plan, (street, utility and stormwater drainage plans), then P&Z and City Council's review of the City's compliance with the Dry Creek Master Plan for the regional detention pond will be appropriate. Until then, denying the Applicant's discreet infrastructure Project, or conditioning such plans on the development of the City's regional stormwater engineering plans (as the Applicant suggests) is improper. To do so would be a violation of Colorado Revised Statute Section 29-20-203 (2023) – Conditions on land-use approvals – which prohibits local governments from requiring private property owners to provide services (i.e. – design the City's comprehensive stormwater engineering plans for the North Mason Corridor Plan regional detention pond) unless there is an essential nexus between the requirement and the project, and the request was roughly proportional in nature and extent to the impact proposed. Here, the impact proposed is a discreet infrastructure project supported by a moderate expansion of the detention pond, not a City-wide stormwater overhaul. The expansion of the detention pond as proposed by the Applicant is sufficient to support the Project and in conformance with the Dry Creek Basin Stormwater Master Plan. That the City refers to the detention pond as an "interim" design for their final buildout that would make the detention pond suitable for regional use is beyond the scope of the ODP review.

Appellant's interpretation reads conflict into the Code and LUC where none currently exists; it is nonsensical and should be dismissed as such.

**Conformance with the Dry Creek Basin Stormwater Master Plan.**

Without waiving the arguments above, Applicant would also state that the materials presented at the P&Z Hearing show conformance with the Dry Creek Basin Stormwater Master Plan as articulated in Exhibit B attached hereto.

**Conclusion.**

The Applicant respectfully requests that the Appellant's appeal be summarily dismissed without hearing as it was brought without basis in the City or Land Use Code and solely for inappropriate purposes as admitted by the Appellant in the local paper. In the alternative, the Applicant requests that City Council upholds the P&Z approval of the Project.

Respectfully Submitted,



Claire N. Havelda

# Coloradoan.

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## EXHIBIT A

### NEWS

# This appeal could delay the proposed 24/7 shelter on North College in Fort Collins



**Pat Ferrier**

Fort Collins Coloradoan

Published 1:30 p.m. MT Feb. 28, 2024 | Updated 2:38 p.m. MT Feb. 28, 2024

A north Fort Collins business owner has challenged the city planning commission's approval of a complex stormwater drainage plan on North College Avenue in an effort to stop or stall a proposed shelter for up to 200 unhoused men.

On Tuesday, Charles Meserlian, owner of Fort Collins Truck Sales, 700 N. College Ave., filed an appeal of the commission's Feb. 15 approval of the Mason Street infrastructure overall development plan including a regional detention pond on the west side of North College Avenue. Meserlian says it violates the city's 2002 stormwater master plan.

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date had been scheduled.

Meserlian, a member of the North Fort Collins Business Association and outspoken critic of Fort Collins Rescue Mission's proposed shelter, said the appeal is intended to stop the Rescue Mission from building on North College Avenue.

The west side detention pond is needed with or without the proposed shelter, but the shelter can't move forward without it, city planner Clark Mapes told business association members Wednesday. That's why approval of the infrastructure plan has preceded the shelter's development plan. Before Fort Collins Rescue Mission fully invests in development, it needs to know the infrastructure will be constructed, he said.

According to plans, the detention pond would be an interim pond dug to a depth required for that parcel. The city would later expand the detention pond as part of its capital improvement projects when it has the money to do so, Mapes said.

The Mason Street infrastructure final development plan is tentatively scheduled to be heard by a city hearing officer in May, Mapes said.

Drainage issues on North College Avenue have been a concern for decades and are the primary reason the west side has been slower to redevelop than the east. Investment on the east side of North College Avenue took off after the Northeast College Corridor Outfall opened, taking hundreds of acres of land out of the flood plain and making it ripe for new development.

Stormwater facilities along College Avenue are full, so the west side needs an outfall for water to drain into. Part of that is also figuring out regional detention that minimizes impacts on individual properties that might redevelop.

Pat Stryker's Bohemian Foundation is donating the land to Fort Collins Rescue Mission, reducing the time and money it will take to get the facility up and running.

That parcel is adjacent to city-owned land, and a land swap between the two entities is in the works to allow for a larger shelter and facilitate the on-site drainage area. City Council is expected to give final approval to the land swap next week.

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guarantee to the upstream property owners, stakeholders, that a regional benefit could be satisfied."

During city staff's presentation of the Mason Street infrastructure overall development plan to the Planning and Zoning Commission, "it was stated there is plenty of space for the ultimate regional detention pond. It is believed that this is grossly misleading since there is no evidence or analysis ... that the ultimate regional pond is feasible with the proposed ODP improvements," the appeal states.

**Previous coverage:** Neighbors want more answers about planned 24/7 homeless shelter in north Fort Collins

It is unclear what impact Meserlian's appeal will have on the mission's Planning and Zoning Commission hearing expected to take place in June.

Fort Collins Rescue Mission continues to work on fundraising and community outreach for the 40,000-square-foot project that will more than double year-round space for men experiencing homelessness. Senior Director Seth Forwood said the Rescue Mission has secured \$20 million of the \$27 million needed to build the shelter.

The proposed building has two wings around a vestibule and entry, an industrial feel with corrugated metal and a slanted roof. The southern wing will be for day use with a cafeteria, administrative offices and designated area for volunteers. The northern wing will have a second story and house the overnight shelter. The outdoor area on the west side of the building will be surrounded by a secure, 6-foot-tall fence.

The site, one of two recommended by the city's Homelessness Advisory Committee in 2021, is close to other services for unhoused people including the Murphy Center for Hope, Food Bank for Larimer County, Catholic Charities and others.

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Note: Article Copy with Photographs Included

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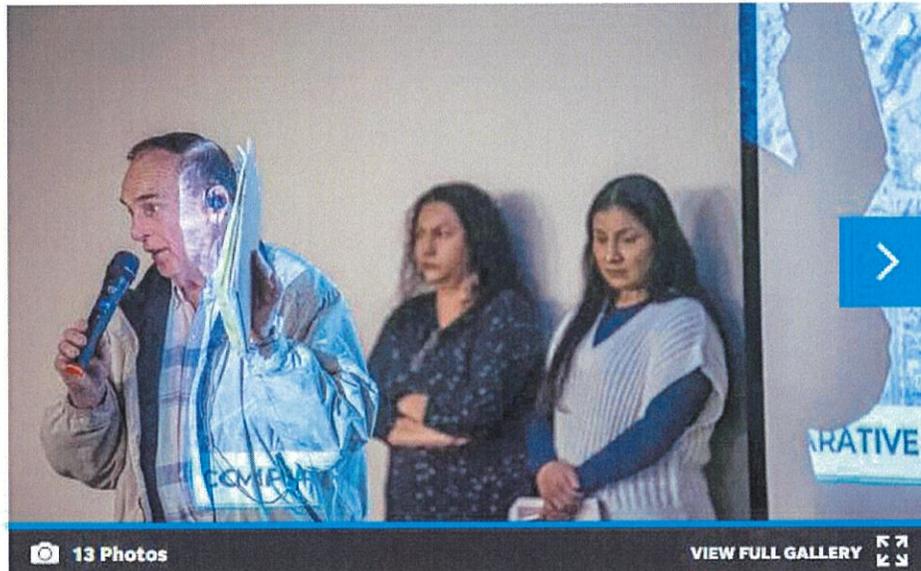
## This appeal could delay the proposed 24/7 shelter on North College in Fort Collins



Pat Ferrier

Fort Collins Coloradoan

Published 1:30 p.m. MT Feb. 28, 2024 | Updated 2:38 p.m. MT Feb. 28, 2024



13 Photos

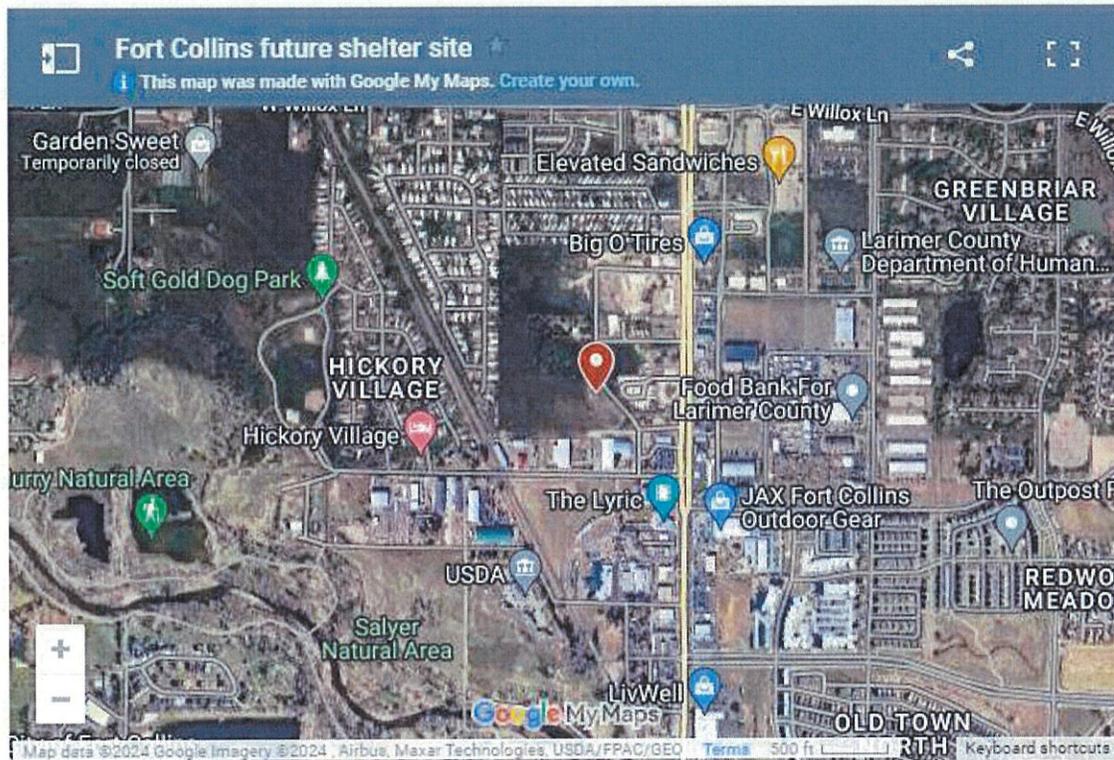
VIEW FULL GALLERY

### North Fort Collins community gathers to discuss new Fort Collins Rescue Mission shelter

Organizers aimed to bring together stakeholders and local leaders to get more answers and share their opinions about the proposed 24/7 shelter.

A north Fort Collins business owner has challenged the city planning commission's approval of a complex stormwater drainage plan on North College Avenue in an effort to stop or stall a proposed shelter for up to 200 unhoused men.

On Tuesday, Charles Meserlian, owner of Fort Collins Truck Sales, 700 N. College Ave., filed an appeal of the commission's Feb. 15 approval of the Mason Street infrastructure overall development plan including a regional detention pond on the west side of North College Avenue. Meserlian says it violates the city's 2002 stormwater master plan.



It is called the Mason Street plan because Mason Street would extend through the site.

The appeal will be heard by Fort Collins City Council. As of Wednesday morning, no hearing date had been scheduled.

Meserlian, a member of the North Fort Collins Business Association and outspoken critic of Fort Collins Rescue Mission's proposed shelter, said the appeal is intended to stop the Rescue Mission from building on North College Avenue.



Charles Meserlian adjusts an earpiece before the start of a meeting organized by Hickory Village mobile home residents to discuss Fort Collins Rescue Mission's plans to build a 24/7 shelter for men experiencing homelessness on Dec. 11, 2023, at the Northside Aztlan Community Center in Fort Collins. Organizers, who presented the meeting in Spanish, aimed to bring together stakeholders and local leaders to get more answers and share their opinions about the project. *Tanya B. Fabian / For The Coloradoan*

The west side detention pond is needed with or without the proposed shelter, but the shelter can't move forward without it, city planner Clark Mapes told business association members Wednesday. That's why approval of the infrastructure plan has preceded the shelter's development plan. Before Fort Collins Rescue Mission fully invests in development, it needs to know the infrastructure will be constructed, he said.

According to plans, the detention pond would be an interim pond dug to a depth required for that parcel. The city would later expand the detention pond as part of its capital improvement projects when it has the money to do so, Mapes said.

The Mason Street infrastructure final development plan is tentatively scheduled to be heard by a city hearing officer in May, Mapes said.

Drainage issues on North College Avenue have been a concern for decades and are the primary reason the west side has been slower to redevelop than the east. Investment on the east side of North College Avenue took off after the Northeast College Corridor Outfall opened, taking hundreds of acres of land out of the flood plain and making it ripe for new development.

Stormwater facilities along College Avenue are full, so the west side needs an outfall for water to drain into. Part of that is also figuring out regional detention that minimizes impacts on individual properties that might redevelop.

Pat Stryker's Bohemian Foundation is donating the land to Fort Collins Rescue Mission, reducing the time and money it will take to get the facility up and running.



POP NE VIEW



Rendering of proposed 24/7 shelter at 1311 N. College Ave., Fort Collins, for men experiencing homelessness *City Of Fort Collins Planning Documents*

That parcel is adjacent to city-owned land, and a land swap between the two entities is in the works to allow for a larger shelter and facilitate the on-site drainage area. City Council is expected to give final approval to the land swap next week.

According to Meserlian's appeal, the overall development plan should be considered incomplete because "there is no evidence provided that the ultimate regional pond is achievable. It is necessary to provide this analysis and evidence at the ODP level to ensure a guarantee to the upstream property owners, stakeholders, that a regional benefit could be satisfied."

## EXHIBIT B

### Applicable LUC Criteria

LUC 2.3.2(H)(6) – Overall Development Plan Review Procedures

“The overall development plan shall be consistent with the appropriate Drainage Basin Master Plan”

### Master Plan Criteria

The North Mason Street ODP is located within the Dry Creek Master Drainage Basin. All properties within this basin shall provide detention sufficient to allow a release rate of no more than 0.2 cfs/acre.

### Mason ODP Compliance

The ODP Drainage Report states in Section II.A.2 that the allowable release rate from the site is 0.2 cfs/acre, while Section II.C.1 also states the same. Both statements show that future projects within the ODP will conform with the Dry Creek Master Drainage Plan.

### Other Adopted Plans

The City has not made the *Stormwater Quality and Stream Restoration Update to the Dry Creek Basin Stormwater Master Drainage Plan*, prepared by Ayres Associates, dated October 2012, publicly available. As such, a requirement of strict conformance therewith is a violation of the Applicant’s due process rights under the ODP framework. The City itself is having trouble locating this document, but City staff have indicated they will provide this to the Applicant on Friday 3/8/’24. Should the City request further analysis regarding compliance with that plan it will be forthcoming.

# COUNCIL HEARING

Re: Applicant's Response to appeal of February 15th, 2024, Planning and Zoning Commission approval of the Mason Street Overall Development Plan

May 7, 2024



# Background

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- Mason Street Overall Development Plan was unanimously approved by the Planning and Zoning Commission on February 15th
- Appellant filed appeal February 27<sup>th</sup>



## Grounds for Appeal

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*“Meserlian... outspoken critic of the Fort Collins Rescue Mission’s proposed shelter, said the appeal is intended to stop the Rescue Mission from building on North College Avenue”*

*- The Coloradoan, February 28, 2024.*

# Appellant's Fundamental Misunderstanding of the Land Use Code & City Code

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The Appellants written arguments on appeal are premised on a fundamental misunderstanding of the Land Use Code.

- LUC 3.3.2(d)(5) – Stormwater Drainage.
  - *Not Applicable to ODP's.*
- City Code Section 26-543(a)(4) – Master Drainage Plan: Dry Creek Basin.
  - *Appellant Misinterprets Application.*
- City Code Section 26-543(a) – Conformity with master plan of the stormwater facilities.
  - *Appellant Misinterprets Application.*

# ODP Compliance: What is an Overall Development Plan?

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## LUC 2.1.3 (B)(1) Purpose and Effect

*The purpose of the overall development plan is to **establish general planning and development control parameters** for projects that will be developed in phases with multiple submittals **while allowing sufficient flexibility to permit detailed planning in subsequent submittals**. Approval of an overall development plan does not establish any vested right to develop property in accordance with the plan.*



# Proposed ODP

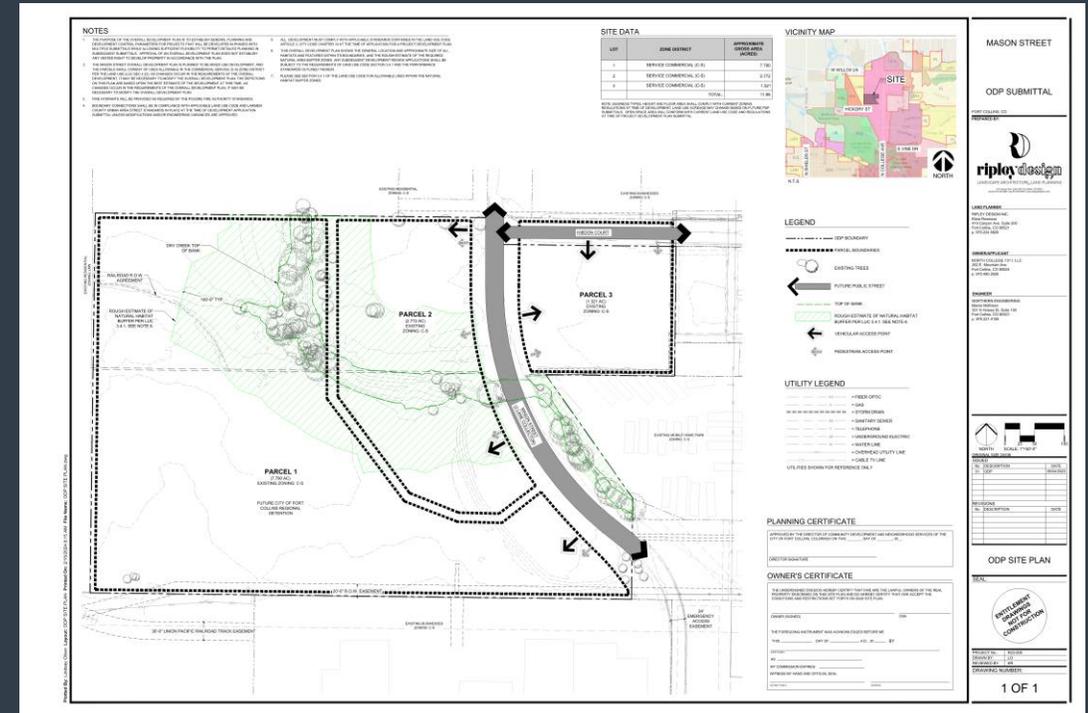
- The Mason Street ODP comprises solely of information regarding the infrastructure for the project, not any subsequent development.
- No uses are identified within the Mason Street ODP
- Fort Collins Rescue Mission is NOT part of the Overall Development Plan Application



# Approval of the ODP

LUC 2.3.2(H) An overall development plan shall comply with the following criteria:

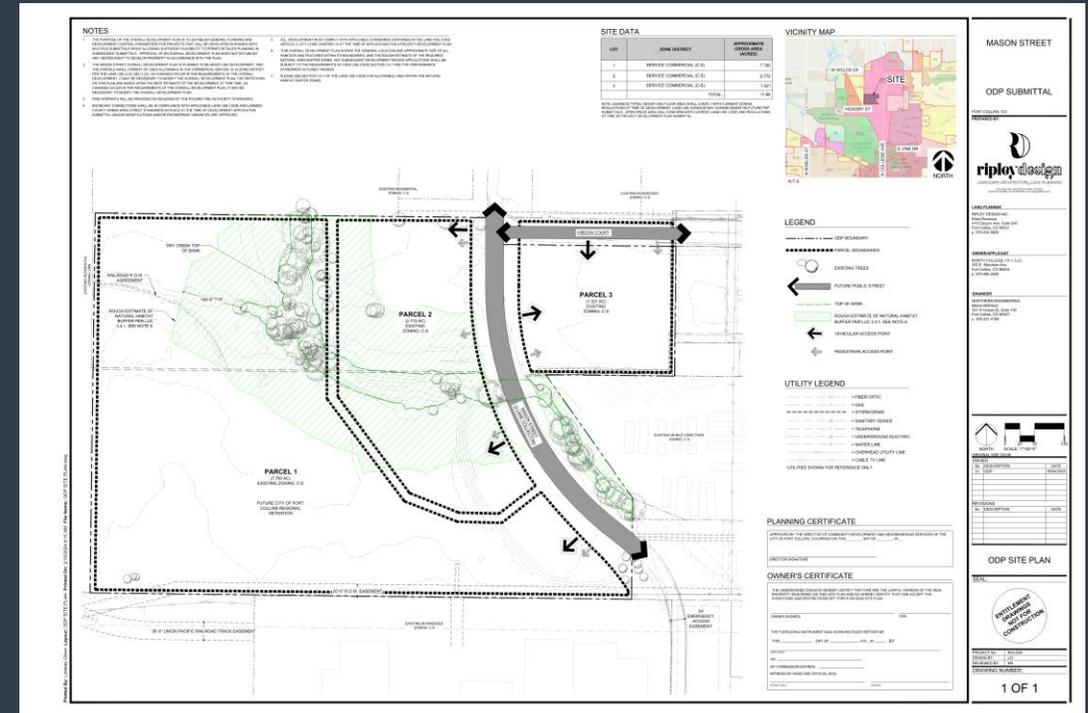
- (1) Shall be consistent with the permitted uses and applicable zoning district standards in Article 4 and general standards of Article 3.
- (2) Shall be consistent with the required density range for residential uses for the applicable zoning district.
- (3) Shall conform to the Master Streets Plan.
- (4) Shall provide transportation connections to adjoining properties to ensure connectivity.
- (5) Delineate natural features and proposed rough estimate of buffer area.
- (6) Shall be consistent with appropriate Drainage Basin Master Plan.
- (7) Standards related to housing density and mix of uses shall apply over the entire overall development plan.



# Approval of the ODP

LUC 2.3.2(H) An overall development plan shall comply with the following criteria:

- (1) Shall be consistent with the permitted uses and applicable zoning district standards in Article 4 and general standards of Article 3.
- (2) Shall be consistent with the required density range for residential uses for the applicable zoning district.
- (3) Shall conform to the Master Streets Plan.
- (4) Shall provide transportation connections to adjoining properties to ensure connectivity.
- (5) Delineate natural features and proposed rough estimate of buffer area.
- (6) Shall be consistent with appropriate Drainage Basin Master Plan.**
- (7) Standards related to housing density and mix of uses shall apply over the entire overall development plan.



## Focus on Criteria 2.3.2(H)(6)

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- The Mason Street ODP demonstrates that the project has the ability to provide facilities specified with the Drainage Master Plan.
- ODP does not require full build out of future infrastructure projects to support a finding of “consistency” with Drainage Master Plans.
- LUC 2.3.2(H)(6) requires simply that the level of design is consistent with the Drainage Master Plan for the specific project has submitted.
- All the evidence in the record shows that the project plan is in conformance with the Drainage Basin Master Plan.

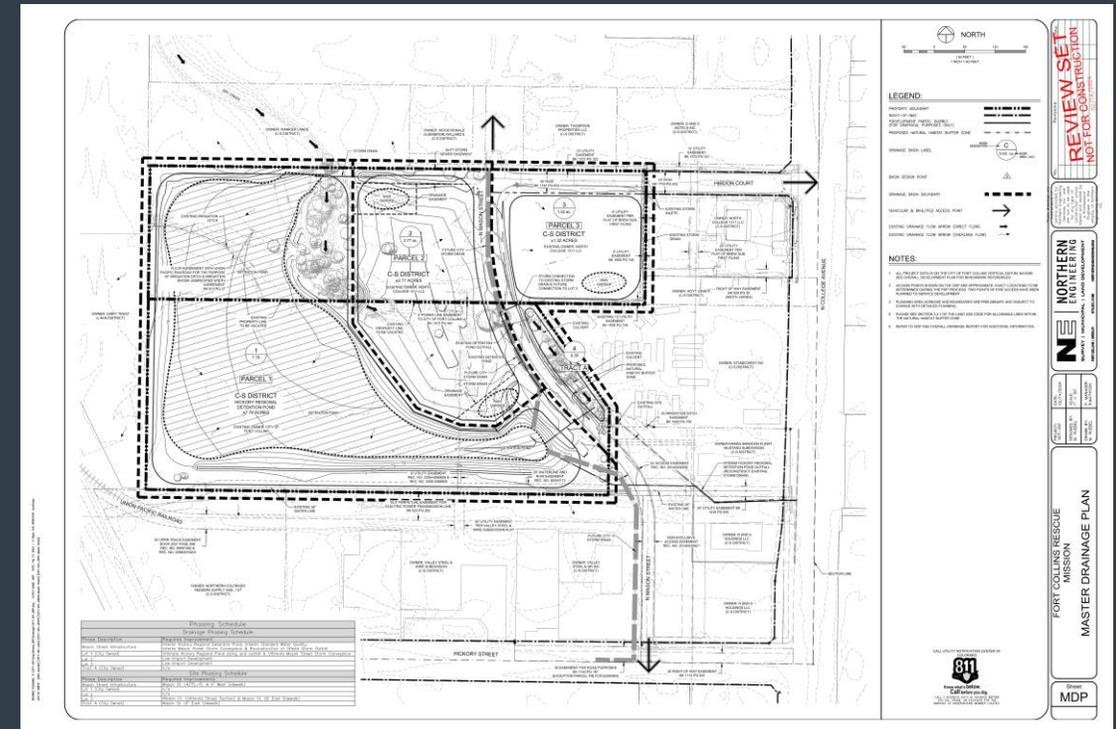
## Appeal Response: Stormwater Drainage

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- None of the seven (7) ODP approval criteria are listed in the appellants response.
- ODP Submission materials showed documentation regarding drainage and utility plans for the infrastructure plan, and thus complies with the Dry Creek Master Drainage Plan.

# Appeal Response: Drainage Basin Master Plan Conformance

- Dry Creek Master Plan
- ODP shows that all properties shall provide detention sufficient to allow a release rate of no more than 0.2 cfs/acre (rate provided by the CoFC)
- Drainage report shows compliance (Section II.A.2 and Section II.C.1)
- The ODP identifies and accommodates:
  - Provides area for the future Hickory Regional Detention Area
  - Future corridors for the future inflow and outfall pipes from the ultimate Hickory Pond



## Appeal Response: LUC Section 3.3.2(D) Not Applicable

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- Section 3.3.2(D) governs what must be submitted to the City Engineer before building permits can be issued.
- The Mason Street ODP application is not a request for a Building Permit.
- Applicable criteria for an ODP in LUC Section 2.3.2(H) have been satisfied.



## Conclusion

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We ask that you either dismiss this appeal for failure to conform with Municipal Code Requirements of Section 2-48 or uphold the PC decision based on the evidence in the record before you that the ODP met the criteria of LUC Section 2.3.2.H(1)-(7).



Thank You

