

AGENDA ITEM SUMMARY

City Council



STAFF

Paul Sizemore, Director, Community Development & Neighborhood Services

SUBJECT

Mason Street Infrastructure Overall 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 February 15, 2024, approving the Mason Street Infrastructure Overall Development Plan (ODP) #ODP230001. The ODP was approved on a vote of 5-0 (Stegner did not participate due to a conflict of interest).

The Appellant, Charles Meserlian, filed a Notice of Appeal on February 27, 2024, 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:

“During the staff presentation for the Mason Street Infrastructure Overall Development Plan (ODP), it was stated that 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 provided to reference that the ultimate regional [detention] pond is feasible with the proposed ODP improvements.”

- That the Planning and Zoning Commission (P&Z) **failed to properly interpret and apply relevant provisions of the Land Use Code and City Code** – specifically Land Use Code subsection 3.3.2(D)(5) regarding requirements for a building permit to be issued, specifically stormwater drainage facilities and appurtenances as required by Section 26-544 of the City Code. The appeal also lists City Code Section 26-543(a)(4) regarding adoption of the Dry Creek Basin Master Drainage Plan by reference.

BACKGROUND / DISCUSSION

Mason Street Infrastructure Overall Development Plan Overview:

The Land Use Code states the purpose of an overall development plan to “establish general planning and development parameters for projects that will be developed in phases with multiple submittals.” ODPs vary in their level of detail, and part of the purpose is to “provide flexibility for detailed planning in subsequent submittals.”

The approved ODP comprises three plan sheets that show parameters and alignments for infrastructure facilities on property at the west end of Hibdon Court and extending south to Hickory Street in the North College Avenue corridor area. The infrastructure comprises a stormwater detention pond, a proposed new segment of North Mason Street, and water, sewer, and electric lines.

The property in the ODP currently comprises two land parcels. The ODP outlines proposed reconfiguration of the two existing parcels into three future lots and street right-of-way, which would be implemented in a subsequent subdivision plat. The ODP does not indicate any land uses – it only shows the infrastructure parameters.

The stormwater detention pond in the ODP is an interim pond serving potential development on the subject property. It has been coordinated with City Stormwater Master Planning for a larger future regional pond that will be part of a larger system serving the west side of North College. The ultimate future pond will expand upon what is constructed at this time by the ODP applicant team, and will be designed and constructed with Stormwater Capital Improvement Project prioritization and funding.

In other words, the pond shown in the ODP represents partial, interim development toward the ultimate regional pond. The future regional pond would incorporate the work shown in the ODP while enlarging, expanding, and adjusting it as needed.

The ODP shows a new developable lot with additional street frontage which is currently proposed for a Fort Collins Rescue Mission homeless shelter in a separate development plan submittal.

First Issue on Appeal:

Fair Hearing. The first question for Council is: Did the Planning and Zoning fail to conduct a fair hearing by considering evidence relevant to its findings which was substantially false or grossly misleading? *[New evidence allowed.]*

The appeal involves a stormwater detention pond shown in the ODP.

This allegation refers to Land Use Code subsection 3.3.2(D)(5) - *Stormwater Drainage* which requires a building permit applicant to provide stormwater facilities and appurtenances as required by City Code subsection 26-544(a) for a subdivision plat.

The record does not mention these code subsections.

Neither of these subsections pertains to ODPs.

Land Use Code subsection 3.3.2(D)(5) pertains to building permits. It is under the heading “*Required Improvements Prior to Issuance of Building Permit*”. Building Permits are much later steps in the process of land development.

Similarly, City Code subsection 26-544(a) pertains to final approval of subdivision plats and construction plans, which are much later steps in the process of land development.

The bulk of the allegation’s explanations involves the text of 26-544(a) shown here with bold added to highlight applicability:

“26-544(a) - **Prior to the final approval of the plat of any subdivision, or prior to commencement of construction** upon any lot or parcel of land for which a drainage report and construction plan for the installation of stormwater facilities has not been prepared and approved by the City, the owners of the property being subdivided or upon which construction is being commenced shall, at such owners cost, prepare a detailed drainage report and construction plans for the installation of all stormwater facilities required for such subdivision or lot, including any off-site facilities required to convey stormwater to existing drains, channels, streams, detention ponds or other points, all in conformity with the master plan of the stormwater basins, the Fort Collins Stormwater Criteria Manual adopted pursuant to § 26-500, and the Water Utilities Development Construction Standards adopted pursuant to §26-29.”

The detailed drainage report and construction plans mentioned here would be part of Project Development Plans and Final Development Plans.

The allegation underlines the requirement for stormwater facilities to be installed in conformity with the master plan of the stormwater basin. The ODP is in Dry Creek Basin, and the allegation mentions master plan documents for the basin. Those are not part of the record, but they were used by staff in the review of the ODP and recommendation of approval. Staff's recommendation of approval was then part of the basis for approval by the P&Z Commission.

The allegation continues with this explanation, with bold added to highlight the allegation:

“Throughout the “Overall Drainage Report — Mason Street Infrastructure”, prepared by Northern Engineering, dated December 15th, 2023, it is stated that the “regional” pond proposed is an interim pond that will account for the existing detention volume in addition to the developments required detention volume. The drainage report acknowledges that “notable offsite-runoff passes directly through the project site. It will not be quantified with the interim drainage design...” It also states that “Fort Collins will provide analysis of the upstream basins and the design of the ultimate regional Detention Pond.” **During the Staff presentation for the Mason Street Infrastructure Overall Development Plan (ODP), it was stated that 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 provided to reference that the ultimate regional pond is feasible with the proposed ODP improvements.”**

Regarding the assertion that staff stated there is plenty of space for the ultimate pond, staff does not find that statement per se in the record.

The record includes slightly more nuanced explanations to that effect; and it is true that staff finds that the space in the ODP can work for master planned regional detention, using the level of detail in the ODP.

Specifically, staff explained that drainage in the area has been studied for approximately the past 20 years or so; the regional detention pond is identified as a need; and the ODP represents an interim, partial step which is a major advantage to the City with parameters for earthwork that would help create an initial portion of the future regional system, which will continue to be formulated by the City.

Pertinent evidence includes:

- Transcript p. 5, lines 39-41.
- Transcript p. 7, lines 11-12.
- Transcript p. 9, lines 24-36.

The Overall Drainage Report mentioned in the allegation was not included in the package for the P&Z hearing.

However, staff's evaluation of the ODP was based on the Overall Drainage Report and master planning studies mentioned in the allegation.

Staff's recommendation of approval reflects analysis which indicates that the proposed interim pond can be adapted into an ultimate regional pond. The future capital project design will include a public outreach effort to obtain input and incorporate multi-objective benefits and considerations as well as technical aspects including hydrologic and hydraulic parameters. These considerations will influence the size, shape and character of the regional pond.

Appeal allegations conclude with this further explanation (underline added for emphasis):

“An Overall Development Plan (ODP) is the groundwork or masterplan for future development. Without knowing what all entails the requirements of the regional pond, dependent on upstream analysis provided by the City of Fort Collins, this should be considered an incomplete masterplan or incomplete ODP for future developments to reference. 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.”

ODP Level Requirements – Land Use Code. For reference, pertinent Land Use Code Requirements for ODPs are:

- 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.
- 2.3.2(H) The overall development plan shall be consistent with...general development standards (Article 3) that can be applied at the level of detail required for an overall development plan submittal.
- 2.3.2H(6) The overall development plan shall be consistent with the appropriate Drainage Basin Master Plan.

ODP Level Requirements – Stormwater Criteria Manual. The Stormwater Criteria Manual also has requirements for ODPs with pertinent quotes below.

- An ODP “does not normally entail a detailed drainage analysis but does require a general presentation of the project’s features and effects on drainage and land disturbance.”

Staff did not include their calculations and analysis in the record because the level of detail in the ODP is adequate for the purposes of an ODP.

Second Issue on Appeal:

The second question for City Council is: Did the Planning and Zoning Commission fail to properly interpret and apply relevant provisions of the Land Use Code subsection 3.3.2(D)(5) and City Code Sections 26-543(a)(4) and 26-544(a)?

The appeal does not include any explanation specific to this allegation. Neither of these subsections pertains to ODPs. The explanation of the ‘fair hearing’ allegation of considering false or grossly misleading evidence addresses these code subsections.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Notice of Hearing, Site Visit Notice and Mailing List
2. Notice of Appeal
3. Staff Report to Planning and Zoning Commission
4. Staff Presentation to Planning and Zoning Commission
5. Applicant Presentation to Planning and Zoning Commission
6. Roll Call and Attendance
7. Verbatim Transcript
8. Video Link to Planning and Zoning Commission Meeting
9. Applicant Response (Subject to Review at Hearing)
10. Presentation to Council