



AGENDA ITEM SUMMARY

City Council

STAFF

Paul Sizemore, Director of Community Development & Neighborhood Services
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SUBJECT

Appeal of Planning and Zoning Commission Approval of the Ziegler-Corbett Overall Development Plan Major Amendment.

EXECUTIVE SUMMARY

The purpose of this quasi-judicial item is to consider an appeal of the Planning and Zoning Commission's decision on March 23, 2023, approving the Ziegler-Corbett Overall Development Plan Major Amendment (#MJA22004 or "Major Amendment") located on the west side of Ziegler Road between Front Range Village and The English Ranch neighborhood.

Two Notices of Appeal were filed, both on April 5, 2023, alleging that the Planning and Zoning Commission failed to properly interpret and apply relevant provisions of the Land Use Code, City Code, and/or Charter. One of the appeals also alleges the Commission failed to conduct a fair hearing by ignoring previously established rules of procedure.

BACKGROUND / DISCUSSION

Overall Development Plan Overview

An Overall Development Plan (ODP) is required by Land Use Code Section 2.1.3 when a project will be developed in multiple phases over time. Per the Land Use Code, an ODP's purpose and effect 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.

An ODP establishes high-level details that future project development plan (PDP) submittals are evaluated against, including proposed land-uses, density/intensity, stormwater drainage, and transportation access and connectivity.

Ziegler-Corbett Overall Development Plan Major Amendment (MJA220004) Project Overview

- The original Ziegler-Corbett Overall Development Plan (ODP) was approved in February 2022 with the following characteristics:

- Mixed-use development on approximately 31 acres in the Harmony Corridor (HC) zone district. The ODP proposes 400-700 dwelling units, 50,000 square feet of office or community facility space, and a childcare center.
- The residential dwellings are comprised of three housing types: single-family attached, multifamily, and mixed-use dwellings.
- Primary access to the site along Ziegler Road is located midway between Hidden Pond Drive to the north and the Front Range Village Shopping Center service access to the south using a 'Channelized T' intersection. Secondary access to the site is gained via Corbett Drive to the east.
- Two modifications of standards and one alternative compliance request were approved with the ODP:
 - Modification of standard to permit a greater percentage of secondary uses (e.g., residential dwellings) in the Harmony Corridor (HC) zone district.
 - Modification of standard to permit portions of the site to incorporate a 4th floor for residential-only buildings, primarily abutting Front Range Village.
 - Alternative compliance to require a bike/pedestrian connection from the ODP to Paddington Road in The English Ranch Neighborhood instead of a local street connection with vehicular access, which would otherwise be required by Land Use Code Section 3.6.3(E) and (F).
- The Major Amendment challenged by this appeal has the following characteristics:
 - Enlarging the size of the original ODP by incorporating one additional 1.4-acre parcel ('Young Property').
 - Reconfiguring the location and traffic control for the site's primary access from Ziegler Road.
 - Shifting primary access to the site along Ziegler Road northward to align with Hidden Pond Drive and the construction of a new privately funded traffic signal.
 - Because of spacing requirements, this new signal would prevent the installation of a signal at the nearby intersection of Ziegler Road and Paddington Road/Grand Teton Place directly to the north.
 - Current residents use the Ziegler/Paddington/Grand Teton intersection, which currently lacks a traffic signal, to access The English Ranch and Woodland Park neighborhoods, English Ranch Park, and Linton Elementary School.
 - No changes to the land uses or development intensity of the original ODP.
 - There are minor shifts in the proposed location of land uses and street network within the ODP as a result of the change in size and shape of the ODP boundary.

Policy & Project Timeline Related to Ziegler-Corbett Overall Development Plan Major Amendment:

- (1990s - 2011) – Prior versions of the Master Street Plan indicate that Corbett Drive, a collector street, should connect from Harmony Road northward to Paddington Road in The English Ranch Neighborhood. Part of this collector street alignment traverses what is now the Ziegler-Corbett Overall Development Plan site.
- (Mid-2000s) – The Harmony Corridor Plan is updated to change land use designations near Harmony and Ziegler Roads to permit the construction of Front Range Village, a lifestyle/regional shopping center. During construction, Front Range Village extends Corbett Drive northward from Harmony Road to its current terminus along the western edge of the Ziegler-Corbett Overall Development Plan site.
- (2010-2011) – During updates to City Plan and the Master Street Plan, English Ranch neighbors request removal of the Corbett Drive connection on the Master Street Plan to Paddington Road in The English Ranch neighborhood. The request relates to concerns about cut-through traffic through the neighborhood destined for Front Range Village if the street connection is made. City staff conduct

neighborhood meetings, surveys, and a work session with City Council to evaluate the request. At a 2010 work session, City Council indicates support for removing the connection and the Master Street Plan is amended in 2011 to remove the Corbett Drive collector street connection to Paddington Road.

The 2010 work session materials describe tradeoffs and potential scenarios resulting from the removal of the Corbett Drive connection, including that a local street connection from the ODP site to Paddington Road may still be required or that the location of traffic signals and access points along Ziegler Road may be affected.

- (2021-2022) The Applicant submits the Ziegler-Corbett Overall Development Plan application on October 8, 2021, for a mixed-use project as described in the project overview section above. The original ODP excludes the Young Property, which limits the location where the project may take access from Ziegler Road. The project is also approved with alternative compliance to Land Use Code Section 3.6.3(E) and (F) to provide a bicycle/pedestrian connection to the north of the ODP instead of the local street connection this Section would otherwise require. The Planning and Zoning Commission approves the original ODP on February 17, 2022.
- (2022-2023) The Applicant applies for a Major Amendment to the original ODP on November 15, 2022. The amendment proposes incorporating the Young Property into the boundaries of the original ODP and shifting the project's Ziegler Road access to align with Hidden Pond Drive and the construction of a privately funded traffic signal.
 - Like the original ODP, approved in 2022, the Major Amendment relies on alternative compliance to Land Use Code Section 3.6.3(E) and (F). This section would otherwise require a local street connection from the ODP site and the English Ranch neighborhood to the north.

The Planning and Zoning Commission approves the Major Amendment on March 23, 2023.

Notices of Appeal

On April 5, 2023, Appellants Craig Latzke, Lacey Joyal, and Tamara Burnside filed two notices of appeal. Both appeals are attached.

The first appeal, filed by Mr. Latzke, alleges that the Planning and Zoning Commission substantially ignored its previously established rules of procedure by inviting the project applicant to address the Commission on a proposed condition during deliberation.

It further alleges a failure to properly interpret and apply the following Land Use Code, City Code or Charter provisions:

- Land Use Code Section 3.6.3 (Street Pattern and Connectivity Standards)
- City of Fort Collins City Code, Policy LIV 4.2

The second appeal, filed by Ms. Joyal and Ms. Burnside, alleges a failure to properly interpret and apply the following Land Use Code, City Code or Charter provisions:

- Land Use Code Section 3.6.3 (Street Pattern and Connectivity Standards)
- Land Use Code Section 1.2.2 (Purpose)
- City of Fort Collins City Code, Policy LIV 4.2

Relevant materials and files on record for the appeal of the March 23, 2023, Planning and Zoning Commission decision are attached and highlighted below:

March 23, 2023, Planning and Zoning Commission Hearing

- Video of hearing and verbatim transcript
- Major Amendment Staff report and various attachments such as the original ODP staff report, ODP plan drawings, and traffic studies
- Staff presentation
- Applicant presentation
- Supplemental documents and other items presented at the hearing

August 15, 2023, City Council Appeal Hearing

- Public Hearing Notice
- Notices of Appeal
- Agenda Item Summary
- Staff presentation

The issues for Council to consider in the appeal are:

- 1) Did the Planning and Zoning Commission fail to conduct a fair hearing because it substantially ignored previously established rules of procedure by allowing the Applicant to address the Commission during deliberation about a proposed condition for approval?
- 2) Did the Planning and Zoning Commission fail to properly interpret and apply Land Use Code Section 3.6.3 - Street Pattern and Connectivity Standards?
- 3) Did the Planning and Zoning Commission fail to properly interpret and apply Land Use Code Section 1.2.2 – Purpose?
- 4) Did the Planning and Zoning Commission fail to properly interpret and apply City Plan Policy LIV 4.2?

First Issue on Appeal:

Did the Planning and Zoning Commission substantially ignore previously established rules of procedure by allowing the project applicant to address the Commission during deliberation?

The Latzke Notice of Appeal alleges the Planning and Zoning Commission ignored rules of procedure by allowing the Applicant to address the Commission on a proposed condition during deliberation—after the Chair had previously remarked there would be no further opportunity to engage with the Applicant. The condition proposed during deliberations would have burdened the Applicant.

Pertinent evidence in the record addressing the Appellant’s argument includes the following (please note: the parties to the appeal may cite to additional material in the record related to this issue):

Document	Page Number	Notes
Verbatim Transcript	21	Chair comments that this will be the last opportunity to engage with the Applicant prior to deliberation.
	30	Invitation from the Commission Chair during deliberations for the Applicant to address a potential condition of approval that the Commission was deliberating imposing upon the Applicant.

Second Issue on Appeal:

Did the Planning and Zoning Commission fail to properly interpret and apply Land Use Code Section 3.6.3 (Street Pattern and Connectivity Standards)?

The Latzke Notice of Appeal alleges the Planning and Zoning Commission failed to properly interpret and apply Land Use Code Section 3.6.3(E) and (F). The Notice of Appeal also references the alternative compliance to these Code sections approved with the original ODP (Land Use Code Section 3.6.3(H)). These Land Use Code Standards read as follow:

Land Use Code Section 3.6.3(E) Distribution of Local Traffic to Multiple Arterial Streets.

All development plans shall contribute to developing a local street system that will allow access to and from the proposed development, as well as access to all existing and future development within the same section mile as the proposed development, from at least three (3) arterial streets upon development of remaining parcels within the section mile, unless rendered infeasible by unusual topographic features, existing development or a natural area or feature.

The local street system shall allow multi-modal access and multiple routes from each development to existing or planned neighborhood centers, parks and schools, without requiring the use of arterial streets, unless rendered infeasible by unusual topographic features, existing development or a natural area or feature.

Land Use Code Section 3.6.3(F) Utilization and Provision of Sub-Arterial Street Connections to and From Adjacent Developments and Developable Parcels.

All development plans shall incorporate and continue all sub-arterial streets stubbed to the boundary of the development plan by previously approved development plans or existing development. All development plans shall provide for future public street connections to adjacent developable parcels by providing a local street connection spaced at intervals not to exceed six hundred sixty (660) feet along each development plan boundary that abuts potentially developable or redevelopable land.

Land Use Code Section 3.6.3(H) Alternative Compliance.

Upon request by an applicant, the decision maker may approve an alternative development plan that may be substituted in whole or in part for a plan meeting the standards of this Section.

1) *Procedure.* Alternative compliance development plans shall be prepared and submitted in accordance with submittal requirements for plans as set forth in this Section. The plan and design shall clearly identify and discuss the alternatives proposed and the ways in which the plan will better accomplish the purpose of this Section than would a plan which complies with the standards of this Section.

2) *Review Criteria.* To approve an alternative plan, the decision maker must first find that the proposed alternative plan accomplishes the purposes of this Division equally well or better than would a plan and design which complies with the standards of this Division, and that any reduction in access and circulation for vehicles maintains facilities for bicycle, pedestrian and transit, to the maximum extent feasible.

In reviewing the proposed alternative plan, the decision maker shall take into account whether the alternative design minimizes the impacts on natural areas and features, fosters nonvehicular access, provides for distribution of the development's traffic without exceeding level of service standards, enhances neighborhood continuity and connectivity and provides direct, sub-arterial street access to any parks, schools, neighborhood centers, commercial uses, employment uses

and Neighborhood Commercial Districts within or adjacent to the development from existing or future adjacent development within the same section mile.

The Lutzke Notice of Appeal alleges three errors:

- The Major Amendment changes the original ODP significantly such that the previously approved alternative compliance to 3.6.3(E) and (F) are no longer applicable.
- The alternative compliance in the Major Amendment is substantially different from the alternative compliance in the original ODP as the Major Amendment presents different considerations and tradeoffs and that alternative compliance in the Major Amendment has additional negative consequences.
- City staff and the Planning and Zoning Commission should have been aware of the prior City Council decision when removing the Corbett Drive collector street connection as a local street connection should still be made.

The Joyal Notice of Appeal alleges the original ODP’s alternative compliance request was based on the property not containing the Young Property that was added during the Major Amendment proposal. It argues that additional acreage of the Young Property opens additional traffic mobility considerations, and the original alternative compliance should not have been continued or considered.

Pertinent evidence in the record addressing the Appellant’s argument includes the following (please note: the parties to the appeal may cite to additional material in the record related to this issue):

Document	Page Number	Notes
Staff Report Attachment (Feb 2022 ODP Staff Report)	13-16	Staff evaluation of alternative compliance request to Section 3.6.3(E) and (F)
Staff Report	3-4	Overview of Major Amendment considerations and neighborhood input on a local street connection
Staff Report Attachment (Traffic Study)	17, 21-30	Operational Analysis, Level of Service, and Conclusion Recommendations from Major Amendment ODP Traffic Study
Staff Report Attachment (2010 Council Work Session Materials - Corbett Drive Connection)	9-12, 21-29	Staff overview of tradeoffs and scenarios for future development if the Corbett Drive collector street connection is removed from Master Street Plan.
Staff Report Attachment (January 2023 Neighborhood Meeting)	2, 4	Neighbor comments discussing tradeoffs / consequences of having no local street connection and no signalized intersection available for Woodland Park residents.
Staff Report Attachment (Public Comments)	1-3, 5, 9-13	Public comments referencing tradeoffs to a signal at the Ziegler/Paddington/Grand Teton or Ziegler/Hidden Pond intersections.

Document	Page Number	Notes
Supplemental Documents (Public Comments received after Final Hearing Packet Posted)	1, 5-8, 10, 12, 15, 20, 22-23, 26, 28, 30	Public comments referencing tradeoffs to a signal at the Ziegler/Paddington/Grand Teton or Ziegler/Hidden Pond intersections.
Verbatim Transcript	5-7	Staff summary of major traffic considerations and public input on street connection and signal scenarios.
	8-13	Commission questions with City and Applicant Traffic Engineers on local street connection, signal warrants, Ziegler Road traffic conditions and delays, Paddington Rd's traffic volumes and status as a collector street.
	10-11	Question and response regarding bicycle/pedestrian detection at a proposed Ziegler/Hidden Pond signalized intersection.
	13-19	Various public testimony regarding tradeoffs of the alternative compliance outcome (no local street connection) and considerations of a signal at either Ziegler/Paddington or Ziegler/Hidden Pond intersections.
	23	Commission deliberation on review of the alternative compliance request as part of the Major Amendment and references to prior Front Range Village development agreement on potential Paddington Road street connection traffic calming.
	25, 27, 31-32	Continued deliberation on alternative compliance review and meeting requirements for LUC Section 3.6.3(E) and (F)

Third Issue on Appeal:

Did the Planning and Zoning Commission fail to properly interpret and apply Land Use Code Section 1.2.2 – Purpose?

The Joyal Notice of Appeal alleges that the Commission failed to properly interpret and apply Land Use Code Section 1.2.2(K), which sets out the general purpose of the Land Use Code:

1.2.2 - Purpose

The purpose of this Code is to improve and protect the public health, safety and welfare by:

- A) ensuring that all growth and development which occurs is consistent with this Code, City Plan and its adopted components, including, but not limited to, the Structure Plan, Principles and Policies and associated sub-area plans.
- B) encouraging innovations in land development and renewal.

- C) fostering the safe, efficient and economic use of the land, the city's transportation infrastructure, and other public facilities and services.
- D) facilitating and ensuring the provision of adequate public facilities and services such as transportation (streets, bicycle routes, sidewalks and mass transit), water, wastewater, storm drainage, fire and emergency services, police, electricity, open space, recreation, and public parks.
- E) avoiding the inappropriate development of lands and providing for adequate drainage and reduction of flood damage.
- F) encouraging patterns of land use which decrease trip length of automobile travel and encourage trip consolidation.
- G) increasing public access to mass transit, sidewalks, trails, bicycle routes and other alternative modes of transportation.
- H) reducing energy consumption and demand.
- I) minimizing the adverse environmental impacts of development.
- J) improving the design, quality and character of new development.
- K) fostering a more rational pattern of relationship among residential, business and industrial uses for the mutual benefit of all.**
- L) encouraging the development of vacant properties within established areas.
- M) ensuring that development proposals are sensitive to the character of existing neighborhoods.
- N) ensuring that development proposals are sensitive to natural areas and features.
- O) encouraging a wide variety of housing opportunities at various densities that are well-served by public transportation for people of all ages and abilities.

The Notice of Appeal alleges the Commission did not properly interpret and apply subsection (K) (emphasized above) on the basis that a signalized intersection at the Ziegler and Hidden Pond does not foster a rational or common sense pattern of development. This appeal argues that nearby residents instead favor and anticipate a traffic signal at the Ziegler/Paddington/Grand Teton intersection.

The Land Use Code Purpose statements contained in Section 1.2.2 outline the broad goals and intent of the Land Use Code and what it aims to achieve in the context of development standards.

Pertinent evidence in the record addressing the Appellant's argument includes the following (please note: the parties to the appeal may cite to additional material in the record related to this issue):

Document	Page Number	Notes
Staff Report	3-4	Overview of Major Amendment considerations and neighborhood input on a local street connection
Staff Report Attachment (January 2023 Neighborhood Meeting)	All	Neighbor comments discussing desirability of a traffic signal at the Ziegler/Paddington/Grand Teton intersection and history of traffic impacts and concerns regarding the intersection.
Staff Report Attachment (Public Comments)	All	Neighbor comments discussing desirability of a traffic signal at the Ziegler/Paddington/Grand Teton intersection and history of traffic impacts and concerns regarding the intersection.

Document	Page Number	Notes
Supplemental Documents (Public Comments received after Final Hearing Packet Posted)	All	Neighbor comments discussing desirability of a traffic signal at the Ziegler/Paddington/Grand Teton intersection and history of traffic impacts and concerns regarding the intersection.
Verbatim Transcript	5-7	Staff summary of major traffic considerations and public input on street connection and signal scenarios.
	13-19	Various public testimony regarding tradeoffs of the alternative compliance outcome (no local street connection) and considerations of a signal at either Ziegler/Paddington or Ziegler/Hidden Pond intersections.

Fourth Issue on Appeal:

Did the Planning and Zoning Commission fail to properly interpret and apply City Code Policy LIV 4.2?

Both Notices of Appeal allege the Planning and Zoning Commission failed to properly interpret and apply City Plan Policy LIV 4.2. LIV 4.2 is a policy statement from City Plan, the comprehensive plan, rather than a specific Land Use Code, City Code, or Charter standard. LIV 4.2 states:

Policy LIV 4.2 - COMPATIBILITY OF ADJACENT DEVELOPMENT

Ensure that development that occurs in adjacent districts complements and enhances the positive qualities of existing neighborhoods. Developments that share a property line and/or street frontage with an existing neighborhood should promote compatibility by:

- » Continuing established block patterns and streets to improve access to services and amenities from the adjacent neighborhood;
- » Incorporating context-sensitive buildings and site features (e.g., similar size, scale and materials); and
- » Locating parking and service areas where impacts on existing neighborhoods—such as noise and traffic—will be minimized.

The Notices of Appeal allege the Major Amendment’s proposal does not include a street connection to the English Ranch neighborhood and would therefore prevent a traffic signal at Ziegler/Paddington. These appeals argue that this does not continue an established block pattern or improve access to services and amenities.

Pertinent evidence in the record addressing the Appellant’s argument includes the following (please note: the parties to the appeal may cite to additional material in the record related to this issue):

Document	Page Number	Notes
Staff Report Attachment (Feb. 2022 Staff Report)	13-16	Staff evaluation of alternative compliance request to Section 3.6.3(E) and (F)

PUBLIC OUTREACH

Three neighborhood meetings were held for the original ODP and Major Amendment on the following dates:

- September 8, 2021 – First Neighborhood Meeting: Original ODP
- February 2, 2022 – Second Neighborhood Meeting: Original ODP
- January 5, 2023 – Third Neighborhood Meeting: ODP Major Amendment

In addition, select City staff held meetings with a small group of neighbors from The English Ranch neighborhood on March 6, 2023, and a small group of neighbors from the Woodland Park Estates neighborhood on March 21, 2023.

ATTACHMENTS

1. Clerk Public Hearing Notice and Mailing List
2. Notices of Appeal
3. Staff Report to Planning and Zoning Commission, March 23, 2023 (with attachments)
4. Traffic Study
5. Drainage Report
6. Utility Plans
7. Intersection Spacing Variance
8. Staff Presentation to Planning and Zoning Commission, March 23, 2023
9. Applicant Presentation to Planning and Zoning Commission, March 23, 2023
10. Additional Documents Presented at Hearing
11. Other Materials
12. Verbatim Transcript – Planning and Zoning Commission Hearing
13. Links to Video of Planning and Zoning Commission Hearing
14. Hearing Sign In Sheet
15. Applicant Presentation to Council
16. Staff Presentation to Council