



T 303-333-9810
F 303-333-9786
360 South Garfield Street
Sixth Floor
Denver, Colorado 80209

October 11, 2024

Fort Collins City Council
City Clerk
300 La Porte Avenue
PO Box 580
Fort Collins, CO 80522

RE: Request to Affirm the City of Fort Collins Type 1 Administrative Hearing Findings and Decision Approving the Sanctuary on the Green Project Development Plan

Dear Mayor and Council:

We represent Solitaire Fort Collins, LLC (the “**Applicant**”), with respect to the Sanctuary on the Green Project Development Plan application (the “**Application**”) for property owned by Solitaire Homes LLC and Solitaire Homes East LLC located at the northwest corner of Laporte Avenue and North Taft Hill Road (the “**Property**”). This letter is in response to the notice of appeal (the “**Appeal**”) filed by the Sanctuary Field Neighborhood Network (the “**Appellant**”) on August 8, 2024, appealing the approval of the Application by the hearing officer dated July 24, 2024, as supplemented and confirmed in all respects on July 28, 2024 (together, the “**Approval**”). In compliance with the City’s appeal procedures, no new evidence is presented in this letter. The record for the Approval consists of Attachment A (the July 15, 2024 Staff Report), Attachment B (Additional Findings and Analysis-NSP) as well as Documents #1 through #53 (collectively, the “**Record**”) and includes an abundance of evidence supporting the Approval and demonstrating the Appellant’s allegations are without merit.

Appellant alleges that the hearing officer failed to:

(A) interpret and apply relevant provisions of Sections 1.2.2, 2.2.11, 3.5.1, 4.5(E)(3) and (4) of the Land Use Code (the “**LUC**”) and the Northwest Subarea Plan (the “**NSP**”); and

(B) conduct a fair hearing in that previously established rules of procedure were ignored; considered evidence relevant to the Approval which was substantially false or grossly misleading; and failed to receive all relevant evidence offered by the Appellant.

A. INTERPRETATION AND APPLICATION OF THE LUC AND NSP

I. The hearing officer properly interpreted and applied Section 1.2.2 of the LUC and the NSP.

The Appellant wrongly claims that the Application does not comply with the NSP in violation of Section 1.2.2 of the LUC. As a result of the opinion of the Larimer County District Court that the Application’s consistency with the NSP should be analyzed, on July 24, 2023 an order was issued remanding the Application to the hearing officer primarily for such purpose (the “**Remand Order**”). The Remand Order specifically directed:

On remand, the Hearing Officer must consider and apply the LUC, as set forth herein, and rely upon and be guided by the proper and applicable case law as set forth herein. **Furthermore, the Officer must consider, evaluate the criteria of the NWSAP, and apply it within the Officer’s discretion in order to review evaluate, make findings, and render a well-founded decision** based upon the law, which may include different or new findings and conditions as warranted. *See Document #38 (Applicant’s NSP Analysis).*

The hearing on July 15, 2024 was held to comply with the Remand Order, and the hearing officer followed the direction given above. The extensive evidence in the Record identified below related to the Application’s consistency with the NSP was properly considered, evaluated and applied by the hearing officer in rendering his Approval, including as it relates to the compatibility with the existing neighborhood. For brevity, the detailed and thorough analyses contained in the documents below are referenced for City Council’s review rather than repeated in this letter.

Attachment A	City Staff Report (pp 4, 7-13, 17-20, 52)
Document #38	Applicant NSP Analysis
Document #44	City PowerPoint Presentation (pp 16-21, 53-55)
Document #45	Applicant PowerPoint Presentation (pp 8-21)

With regard to the Application’s consistency with the NSP, Appellant makes the false interpretation in its Appeal that the 2022 hearing officer decision “clearly indicated that the hearing officer did not believe that PDP200018 complied with the NSP.” The actual statement of the hearing officer in his 2022 decision was that the “NSP lacks sufficient guidelines or standards on which to deny the PDP for the Project.” *See page 001004 of Document #43 (Certified Record).* Accordingly, the hearing officer’s 2024 Approval is not inconsistent with his previous 2022 decision as argued by the Appellant. The statement made by the Appellant that the hearing officer “failed to make any findings regarding the NSP” is also inaccurate. As Appellant acknowledges, the hearing officer incorporated Attachment B (*Additional Findings and Analysis – NSP*) that was provided by the Applicant into the Approval findings. Using analysis provided in the Record, including from the Applicant and City staff, to support the Approval is entirely within the hearing officer’s discretion and does not equate to him failing to make findings, as the Appellant claims.

II. The hearing officer properly applied and interpreted Section 2.2.11 of the LUC.

The Appellant incorrectly asserts the Application automatically lapsed on April 16, 2024 pursuant to Section 2.2.11 of the LUC, and the following evidence in the Record substantiates the Application did not lapse.

- Appellant acknowledges repeatedly in the Record and the Appeal that the Application has not changed since the Remand Order, and the Applicant agrees.
- No new or revised Application documents were sent to the City by the Applicant.
 - This fact alone brings into question the applicability of Section 2.2.11 of the LUC, which states in relevant part that an application must be diligently pursued by an applicant and that the applicant, within 180 days of receipt of comments and notice to respond from the City on any submittal of an application (or subsequent revision to a submittal), shall file such additional revised submittal documents as are necessary to address such comments from the City. *See Document #36 (Applicant's Extension Request Summary of Evidence).*
 - The July 15, 2024 hearing was directed by the Remand Order. Although it was a new hearing, a new or revised Application was not submitted to the City that required revisions requested by the City. *See Document #36 (Applicant's Extension Request Summary of Evidence).*
- However, if Section 2.2.11 of the LUC does apply, there are several emails in the Record that show consistency with it, as provided in Document #36 referenced above, Document #42 (*Emails Related to Mercer Ditch*) and Appellant's emails submitted in Documents #50 (*Email dated July 18, 2024 after Hearing*) and #53 (*Public Comment – 342 Pages*).
 - October 19, 2023 is the original date the City used as the Applicant's last submittal, thereby triggering the 180-day clock, with a lapse date of April 16, 2023. *See below, page 45 of Document #53 (Public Comment – 342 Pages).*

RE: Re: Re: FW: Sanctuary Hearing Continuance

Inbox



Clay Frickey <cfrickey@fcgov.com> Mon, Dec 4, 2023, 10:27 AM

to me, Em, Andrew

Hey Miranda,

The applicant submitted two new documents to us on October 19. 180 days from October 19 would be April 16, 2024.

Thanks,

Clay

.....

Clay Frickey
Pronouns: he/him
Planning Manager
[City of Fort Collins](#)

- On October 19, 2023, the Applicant did not submit a revised Application or respond to City comments on the Application, but instead provided documents for the Record for the hearing to be held on November 2, 2023. These documents consisted of Document #2 (*Project Narrative*), Document #43 (*2022 Certified Record*), Document #38 (*NSP Analysis*) and Document #49 (*Response to Neighbor Comments*).
- Similarly, on November 1, 2023 in preparation for the same hearing to be held on November 2, 2023, the Applicant provided its PowerPoint presentation for the Record at the request of the City. Documentation of such email exchange was later provided by the Applicant to the City to demonstrate compliance with Section 2.2.11 of the LUC. *See below, page 35 of Document #53 (Public Comment – 342 Pages)*.

Hi Miranda,

I sent an e-mail earlier this afternoon letting the applicant know that according to our records, it has been more than 180 days and we have not received an updated submittal or request for an extension. Due to that, I informed the applicant team that the project is lapsed. I mentioned that if they think this is in error, that they can reach out to discuss with me.

Since I sent that e-mail out, the applicant sent me an e-mail dated November 1, 2023 that had their presentation for the previously scheduled hearing attached. The applicant is arguing that the presentation for the hearing demonstrates they were actively working towards seeking approval for their project and that the 180 lapse date should be calculated from November 1, 2023.

I need to discuss this all with our attorney. I will respond with a determination as soon as I am able.

Thanks,

Clay

.....
Clay Frickey
Pronouns: he/him
Planning Manager

- Contrary to what the Appellant argues in the Appeal, the City never stated that the November 1, 2023 submittal did not meet the requirements of Section 2.2.11 of the LUC.
- Before the City responded, the Applicant provided evidence of a more recent submittal, which related to the Mercer Ditch letter of intent requested by the City and provided by the Applicant via email on November 27, 2023, with receipt of a more formal letter of intent by the City acknowledged on November 29, 2023, for the rescheduled hearing on November 30, 2023. *See Document #42 (Emails Related to Mercer Ditch).*

November 27 Emails

From: Todd Sullivan <TSullivan@fcgov.com>
Sent: Monday, November 27, 2023 4:07 PM
To: David Pretzler <David@cacompanies.com>; Sam Coutts <sam.coutts@ripleydesigninc.com>; Clay Frickey <cfrickey@fcgov.com>
Subject: RE: Sanctuary Letter of Intent
Importance: High

Hi David,

It is nice that your emails save longer than 2 years! I am going to save this one to a folder outside of Outlook so I have it locked in....

I think it should work and will defer to @Clay for a confirmation.

Thanks!

.....
TODD SULLIVAN
Development Review Coordinator
[City of Fort Collins](http://CityofFortCollins.com)
970.221.6695 office
tsullivan@fcgov.com

From: David Pretzler <David@cacompanies.com>
Sent: Monday, November 27, 2023 3:28 PM
To: Todd Sullivan <TSullivan@fcgov.com>; Sam Coutts <sam.coutts@ripleydesigninc.com>
Subject: [EXTERNAL] FW: Sanctuary Letter of Intent

Todd and Sam – Please see attached email from Melissa to Todd and correspondence below. Does this give us what we need for the hearing? This was good enough for all the previous hearings so I would think so.

2

From: Clay Frickey <cfrickey@fcgov.com>
Sent: Monday, November 27, 2023 4:13 PM
To: Todd Sullivan; David Pretzler; Sam Coutts
Subject: RE: Sanctuary Letter of Intent

Oh, wow, that is very informal. I would prefer if we had something on the ditch company's letterhead that was signed. This should probably work for now.

Thanks,
Clay

November 29 Email

From: Todd Sullivan <TSullivan@fcgov.com>
Sent: Wednesday, November 29, 2023 9:22 AM
To: Sam Coutts; David Pretzler; Clay Frickey
Subject: FW: Re: Re: Re: Sanctuary on the Green Letters of Intent
Attachments: LOI to FTC re Sanctuary on the Green Project 11.29.23 - signed.pdf; LOI to FTC re Sanctuary on the Green Project 11.29.23 - signed.pdf

Good Morning All,

Please see the LOIs provided by Melissa this morning.

@Clay, I have filed these in the project folder in a couple of places, one being the Staff Report folder for quick reference.

- The submittals related to the letter of intent on November 27 and November 29 were for the same purpose as the October 19 and November 1 submittals by the

Applicant – they were submitted for inclusion in the Record for the upcoming hearing. They demonstrate that when the City requested documents for the hearing, the Applicant provided them, consistent with Section 2.2.11 of the LUC.

- Appellant’s claim in the Appeal that the document request was “spurred” by the Appellant is irrelevant since the letter of intent was provided at the City’s request.
- The City’s receipt and acceptance of the formal letter of intent on November 29, 2024, thereby created a lapse date of May 27, 2024, which was properly extended at the request of the Applicant pursuant to Section 2.2.11 of the LUC to September 24, 2024. *See Document #35 (City Approved Extension Request).*
- In conclusion, the hearing officer had jurisdiction to consider the Application on July 15, 2024.

III. The hearing officer properly interpreted and applied Sections 3.5.1, 4.5(E)(3) and 4.5(E)(4) of the LUC

The Appellant claims the 3-story buildings and small lot sizes are incompatible in violation of Section 3.5.1 of the LUC. In support of that argument, the Appellant states that the 3-story buildings are in violation of Sections 4.5(E)(3) and (4) of the LUC. Contrary to Appellant’s argument, there is substantial evidence in the Record showing that the 3-story homes are compatible in size and mass with the surrounding neighborhood, including the following:

Attachment A	City Staff Report (pp 37-39)
Document #39	Applicant Response to Neighborhood Comments
Document #44	City PowerPoint Presentation (pp 32-33, 61)
Document #45	Applicant PowerPoint Presentation (pp 23-40)

For illustrative purposes, slides from Document #45 (*Applicant PowerPoint Presentation*) are provided below to demonstrate the Application’s compatibility related to mass and scale:

Building and Project Compatibility

LUC 3.5.1(B)

- Repetition of roof lines
- Use of similar proportions in building mass and outdoor spaces
- Similar window and door pattern
- Use of building materials



Building and Project Compatibility

LUC 3.5.1(B)

- Similar relationships to the street
- Repetition of roof lines
- Use of similar proportions in building mass and outdoor spaces
- Use of building materials



Building and Project Compatibility

LUC 3.5.1(B)

- Repetition of roof lines
- Use of similar proportions in building mass and outdoor spaces



Existing



Proposed



Building and Project Compatibility

LUC 3.5.1(B)

- Repetition of roof lines
- Use of similar proportions in building mass and outdoor spaces
- Use of building materials



MODERN FARMHOUSE ELEVATION - BUILDING TYPE A



CONTEMPORARY FARMHOUSE ELEVATION - BUILDING TYPE C-2



MI-CENTURY MODERN ELEVATION - BUILDING TYPE B

Building and Project Compatibility

LUC 3.5.1(B)

- Repetition of roof lines
- Use of similar proportions in building mass and outdoor spaces
- Use of building materials



Furthermore, the Application's consistency with Sections 4.5(E)(3) and (4) of the LUC was determined in Document #26 (*Administrative Interpretation #1-18*) specifically for this Application. It states:

The request was for clarification on which building height standards in Section 4.5(E) of the LUC would be applicable to a 4-unit or larger, single-family attached building. The specific question was whether the maximum building height standards in Section 4.5(E)(3) or Section 4.5(E)(4) would apply for a building with 4 units or more where all units are located on individual, separate lots.

The administrative interpretation concluded that:

Section 4.5(E)(4) would be applicable to buildings containing 4 or more single-family attached units. The maximum building height, per Section 4.5(E)(4)(d) is 3 stories.

The Applicant relied on the administrative interpretation, and the project is based on it. The City issued the official administrative interpretation on July 26, 2018 in accordance with City procedures.

Even if it were determined that the homes proposed in the Application are significantly visually different than the homes in the surrounding area, Section 3.5.1(H) of the LUC allows the Applicant to achieve compatibility through the provision of buffer yards and passive open space to enhance the separation between the uses. The slides below from Document #45 (*Applicant PowerPoint Presentation*) show these transitional elements are incorporated in the Application despite not being required.

Compatibility and Land Use Code

LUC 1.2.2(M) - Purpose

Ensuring that development proposals are sensitive to the character of existing neighborhoods.

LUC 5.1 – Definition of Compatibility

Characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony.

Elements and characteristics affecting Compatibility

- Height, scale, mass, and bulk of structures
- Pedestrian or vehicular traffic circulation, access and parking impacts
- Landscaping, lighting, noise, odor
- Architecture

As highlighted by the Court Order dated July 24, 2023, "[f]urther, the LUC makes it clear that 'Compatibility' does not mean 'the same as.'"

Compatibility and Land Use Code

LUC 3.5.1(B) – Building and Project Compatibility

Compatibility shall be achieved through techniques such as:

- Repetition of roof lines
- Use of similar proportions in building mass and outdoor spaces
- Similar relationships to the street
- Similar window and door pattern

And/or

- Use of building materials



B. FAIR HEARING

I. The hearing officer did not substantially ignore previously established rules of procedures.

Appellant incorrectly claims that rules of procedure were not followed because in its opinion the Application lapsed. As explained above in Section A of this letter, which argument is wholly incorporated herein, it's unclear whether Section 2.2.11 of the LUC even applies since the Application was not changed and the new hearing was court-ordered. To the extent it does apply, Document #36 (*Extension Request Summary of Evidence*) and Document #42 (*Emails Related to Mercer Ditch*) submitted by the Applicant demonstrates the Applicant's compliance with it.

II. The hearing officer did not consider evidence relevant to its findings which was substantially false or grossly misleading.

Appellant alleges that substantially false or grossly misleading statements were made by the Applicant about the reasons for: providing a significant amount of open space; decreasing density; and eliminating the multi-family component of the project. There is nothing in the Record to support Appellant's claims. Document #39 (*Applicant's Response to Neighborhood Concerns*) provides a narrative of the changes made to the Application, and Document #45 (*Applicant PowerPoint Presentation*) displays the changes made to the Application, many of them to address neighbor concerns. However, the Applicant's reasons for revising the Application are immaterial, and it's not a requirement that all neighborhood concerns be addressed. The sole consideration is whether the Application complies with the LUC and the City's regulations.

Appellant also states the following was substantially false or grossly misleading evidence, but evidence in the Record indicates otherwise.

- Appellant claim: 3-story buildings are not concentrated to interior of site.
 - The Applicant did not claim that all 3-story buildings are concentrated to the interior of the site. In fact, the slide below from Document #45 (*Applicant PowerPoint Presentation*) shows some of the 3-story units on the exterior.

Ch. 6: Goals and Policies

Land Use and Neighborhoods

Goal LU-1:

The Northwest Subarea will retain its character and integrity through the **appropriate placement and density** of new housing that is compatible with existing neighborhoods.

Policy LU-1.1:

Maintain existing stable City and County subdivisions and neighborhoods

Policy LU-1.4:

Compatible Infill in Low Density Mixed-Use Residential Areas

In areas designated as LDMR, protect existing single-family neighborhoods by ensuring that infill development on parcels to be annexed is appropriate density and design.

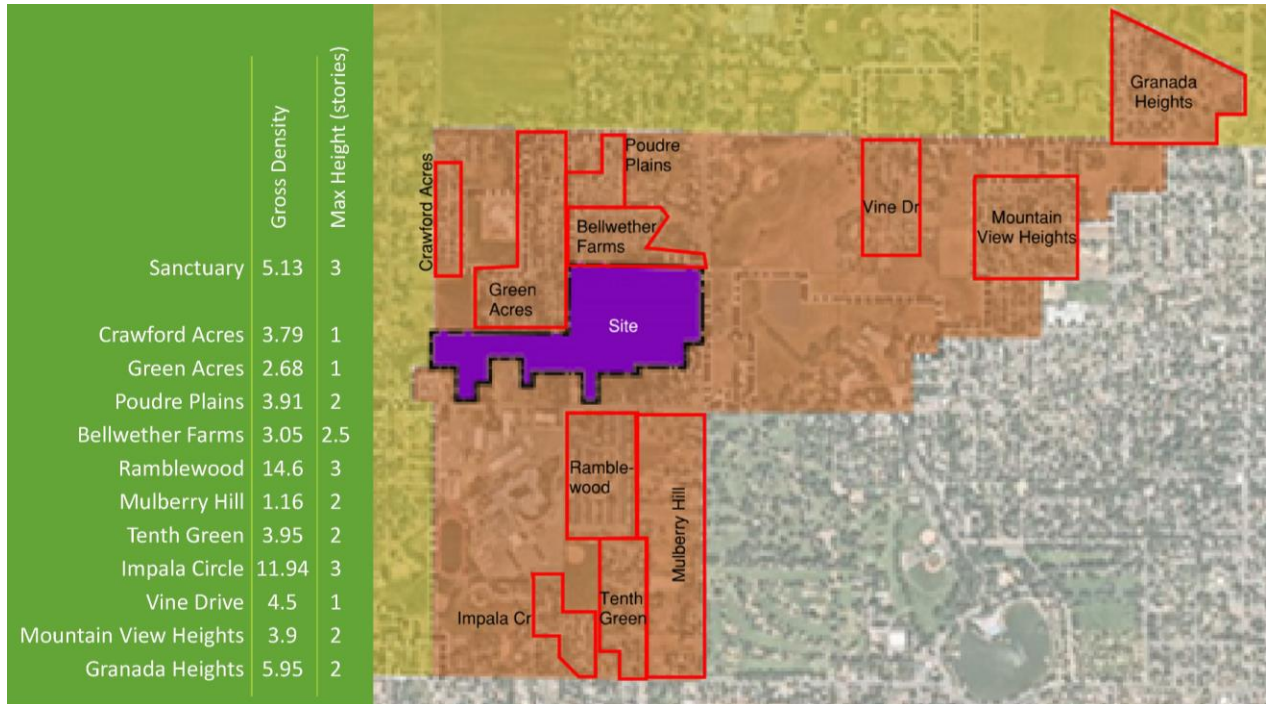


1 STORY	10 UNITS
2 STORY	61 UNITS
3 STORY	95 UNITS

Since 2019 PDP:

- Removed multifamily use
- Removed 56 units to lower density
- 30 units reduced from 3-story to 2-story
- 10 units reduced from 2-story to 1-story

- Appellant claim: Buildings are higher than 39 feet 8 inches.
 - When measured from finished grade, which is the correct methodology for measuring height, the height of the buildings are 39 feet 8 inches.
- Appellant claim: Distant 3-story properties used as comparisons were used to misrepresent the development existing in the neighborhood and were described falsely as abutting the site.
 - The Applicant did not say that all the comparison properties abut the Property. Because the Property is surrounded by open space, there are few properties that directly abut it. *See slide below from Document #45 (Applicant PowerPoint Presentation)*. The slide below shows the evidence the Applicant provided to the hearing officer and that no misrepresentations were made.



III. The hearing officer received all relevant evidence offered by the Appellant.

There is no question that the hearing officer received all relevant evidence offered by the Appellant as documented in his Approval, specifically the Supplemental Findings and Decision, dated July 28, 2024, wherein he expressly accepts Document #53 (*Public Comment – 342 Pages*) as part of the Record and confirms that he reviewed all such public comment. Receipt of all relevant evidence by the hearing officer is all that is required by Section 2-48(b)(2)(d) of the Municipal Code, and he clearly complied with it. Reviewing the 342 pages of public comment is not as daunting as it first appears. Many of the comments were repetitive and raised previously. Since there was also substantial verbal testimony both in support and opposition to the Application at the hearing, it’s not surprising that the additional written public comment did not result in a change in the hearing officer’s findings and decision. The allegations by the Appellant that the hearing officer’s decision was pre-determined and that he failed to analyze or otherwise incorporate the public comments are not supported by the Record and are baseless.

CONCLUSION

The hearing officer properly interpreted and applied the LUC and NSP and conducted a fair hearing. As a result, the Approval of the Application should be upheld by City Council.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kristin A. Decker".

Kristin A. Decker

for

Foster Graham Milstein and Calisher, LLP