



## AGENDA ITEM SUMMARY

City Council

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### STAFF

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Paul Sizemore, Director, Community Development & Neighborhood Services  
Jenny Axmacher, Senior City Planner  
Aaron Guin, Legal

### SUBJECT

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**Resolution 2022-095 Making Findings of Fact Regarding the Appeal of the Administrative Hearing Officer's Decision Approving the Sanctuary on the Green Project Development Plan #PDP210018.**

### EXECUTIVE SUMMARY

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The purpose of this item is to make findings of fact regarding the appeal of the Administrative Hearing Officer's Decision to approve the Sanctuary on the Green Project Development Plan. The appeal was heard by Council on August 16, 2022.

### STAFF RECOMMENDATION

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Staff recommends adoption of the Resolution.

### BACKGROUND / DISCUSSION

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On May 2, 2022, an Administrative Hearing was held to consider the application for the Sanctuary on the Green Project Development Plan #PDP210018. The Hearing Officer issued a Decision on May 16, 2022, to approve the PDP application with two modifications of standards, alternative compliance for LUC Section 3.6.3(D) – (F), and two conditions of approval. On May 31, 2022, a Notice of Appeal (the "Notice") was filed by the Sanctuary Field Neighborhood Network, with the following allegations:

1. The Administrative Hearing Officer failed to conduct a fair hearing because he considered evidence relevant to his findings that was substantially false or grossly misleading.
2. The Administrative Hearing Officer failed to conduct a fair hearing because the Hearing Officer was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Hearing Officer's independence of judgement.
3. The Administrative Hearing Officer failed to properly interpret and apply six sections of the Land Use Code, including Section 1.2.2 (Purpose), Section 3.5.1 (Building and Project Compatibility), Section 4.5(D)(1) (Low Density Mixed-Use Neighborhood District (L-M-N); Land Use Standards; Density), Section 3.4.7 (Historic and Cultural Resources), Section 3.5.2(D)(1) (Residential Building Standards; Relationship to Dwellings to Streets and parking; Orientation to a Connecting Walkway) and 4.5 (D)(2)(a) (Low Density Mixed-Use Neighborhood District (L-M-N); Land Use Standards Mix of Housing).

On August 16, 2022, Council conducted a hearing to consider the allegations in the appeal, the record on appeal, and presentations by City staff, the Appellant's representative and Applicant's legal counsel. After discussion, Council voted to deny the appeal, finding that the Administrative Hearing Officer conducted a fair hearing and properly interpreted applicable sections of the Land Use Code.

## **ATTACHMENTS**

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1. Resolution for Consideration

RESOLUTION 2022-095  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING FINDINGS OF FACT REGARDING THE APPEAL OF THE ADMINISTRATIVE  
HEARING OFFICER'S DECISION APPROVING THE SANCTUARY ON THE GREEN  
PROJECT DEVELOPMENT PLAN #PDP210018

WHEREAS, on May 2, 2022, an Administrative Hearing Officer (the "Hearing Officer") conducted a public hearing, after which the Hearing Officer approved the Sanctuary on the Green Project Development Plan #PDP210018 (the "PDP") on May 16, 2022, including two modifications of standards, alternative compliance, and two conditions of approval; and

WHEREAS, on May 31, 2022, the Sanctuary Field Neighborhood Network (the "Appellant"), an organization representing residents of neighborhoods surrounding the area where the PDP is located, filed a notice of appeal ("Appeal") of the Hearing Officer's decision approving the PDP; and

WHEREAS, pursuant to City Code Sections 2-46 and 2-49, the Appeal was filed timely, and the Appellant is a party-in-interest eligible to file an appeal; and

WHEREAS, the Appeal alleged that the Hearing Officer failed to conduct a fair hearing because they considered evidence relevant to their findings that was substantially false or grossly misleading; and

WHEREAS, the Appeal also alleged that the Hearing Officer failed to conduct a fair hearing because they were biased against the Appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Hearing Officer's independence of judgment; and

WHEREAS, the Appeal alleged further that the Hearing Officer failed to properly interpret and apply several provisions contained in the Land Use Code, namely Sections 1.2.2, 3.4.7, 3.5.1, 4.5(D)(1), 3.5.2(D)(1), and 4.5(D)(2)(a)3; and

WHEREAS, on August 16, 2022, the City Council, after notice given in accordance with City Code Section 2-52, held a public hearing pursuant to City Code Section 2-54 to consider the allegations raised in the Appeal at which hearing the City Council considered the record on appeal, statements concerning physical characteristics of the subject property obtained by Councilmembers during the site inspection, and testimony from City staff, the Appellant's representative, and legal counsel for Solitaire Fort Collins (the "Applicant") for the PDP, which opposed the Appeal; and

WHEREAS, after discussion, the City Council found and concluded based on the evidence in the record and presentations made at the Council hearing on August 16, 2022, that the Hearing Officer did not fail to conduct a fair hearing because they considered evidence relevant to their findings that was substantially false or grossly misleading; and

WHEREAS, after discussion, the City Council found and concluded based on the evidence in the record and presentations made at the Council hearing on August 16, 2022, that the Hearing Officer did not fail to conduct a fair hearing because of a conflict of interest or other close business, personal or social relationship that interfered with the Hearing Officer's independence of judgment; and

WHEREAS, the City Council further found and concluded based on the evidence in the record (including the Staff Report) and presentations made at the City Council hearing on August 16, 2022, that the Hearing Officer properly interpreted and applied Sections 1.2.2 (Purpose), 3.4.7 (Historic and Cultural Resources), 3.5.1 (Building and Project Compatibility), 3.5.2(D)(1) (Orientation to a Connecting Walkway), 4.5(D)(1) (Low Density Mixed-Use Neighborhood District Density Standards, and 4.5(D)(2) (Mix of Housing), and of the Land Use Code; and

WHEREAS, City Code Section 2-56(c) provides that no later than the date of its next regular meeting after the hearing of an appeal, City Council shall adopt, by resolution, findings of fact in support of its decision on the Appeal.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that, pursuant to Section 2-56(c) of the City Code, the City Council hereby makes and adopts the following findings of fact and conclusions:

1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.
2. That the Appellant's fair hearing allegations and the allegation that the Hearing Officer failed to properly interpret and apply Land Use Code Sections 1.2.2, 3.4.7, 3.5.1, 4.5(D)(1), 3.5.2(D)(1), and 4.5(D)(2)(a), as stated in the Notice of Appeal, conform to the requirements of Section 2-48 of the City Code.
3. That, based on the evidence in the record and presentations made at the City Council Hearing on August 16, 2022, the Hearing Officer did not fail to conduct a fair hearing because there was no evidence in the record that the Hearing Officer considered relevant evidence that was substantially false or grossly misleading.
4. That, based on the evidence in the record and presentations made at the City Council Hearing on August 16, 2022, the Hearing Officer did not fail to conduct a fair hearing because there was no evidence of bias against Appellant by the Hearing Officer because of a conflict of interest or other close business, personal or social relationship that interfered with the Hearing Officer's independence of judgment.
5. That, based on the evidence in the record and presented at the City Council hearing on August 16, 2022, the Council finds that the Hearing Officer properly interpreted and applied Land Use Code Section 1.2.2 because the Purpose of the Land Use Code was satisfied by the procedures followed under the Code for this PDP and, therefore, the allegation is denied.

6. That, based on the evidence in the record and presented at the City Council hearing on August 16, 2022, the Council finds that the Hearing Officer properly interpreted and applied Land Use Code Section 3.4.7 because there are no historic buildings on the development site and the PDP met at least two of the design compatibility requirements required under Section 3.4.7 and, therefore, the allegation is denied.
7. That, based on the evidence in the record and presented at the City Council hearing on August 16, 2022, the Council finds that the Hearing Officer properly interpreted and applied Land Use Code Section 3.5.1 because the physical and operational characteristics of the proposed buildings and their uses in the PDP are compatible when considered within the context of the surrounding area, and the articulation and subdivision of larger buildings within the PDP satisfy the requirements of Section 3.5.1(C) and, therefore, the allegation is denied.
8. That, based on the evidence in the record and presented at the August 16, 2022, City Council hearing, the Council finds that the Hearing Officer properly interpreted and applied Land Use Code Section 3.5.2(D)(1) concerning connecting walkways within the PDP because it was within the Hearing Officer's authority under Section 2.8 of the Code to grant a modification of standard as the requested modification would not be detrimental to the public good and because the PDP would allow more residents access to shared walkways with a pattern that provides a high level of interconnectivity throughout the development and to adjacent neighborhoods in a manner that is equal to or better than a street network by fostering a development plan that increases safety, connectivity, pedestrian interaction and quiet enjoyment without sacrificing convenience and, therefore, the allegation is denied.
9. That, based on the evidence in the record and presented at the City Council hearing on August 16, 2022, the Council finds that the Hearing Officer properly interpreted and applied Land Use Code Section 4.5(D)(1) because the PDP includes density of dwelling units of 5.13 per gross acre, which satisfies the maximum density of 9 dwelling units per gross acre for the L-M-N zoning district and complies with the maximum density recommendations of the Northwest Subarea Plan (8 dwelling units per acre overall) and, therefore, the allegation is denied.
10. That, based on the evidence in the record and presented at the August 16, 2022, City Council hearing, the Council finds that the Hearing Officer properly interpreted and applied Section 4.5(D)(2)(a) of the Land Use Code concerning mix of housing because it was within the Hearing Officer's authority under Section 2.8 of the Code to grant a modification of standard (requiring a mix of at least four housing types) because the requested modification (to provide only three housing types) would not be detrimental to the public good, the PDP invites walking to gathering places and provides trail and local street linkages, and the PDP promotes the general purpose of Section 4.5(D)(2)(a) to provide a variety of housing types equally well or better than a plan that provides a fourth housing type and, therefore, the allegation is denied.

11. That the Hearing Officer's approval of Project Development Plan PDP210018 on May 16, 2022, including two modifications of standards, alternative compliance, and two conditions of approval, is hereby upheld.
12. That, based on the evidence in the record and presented at the August 16, 2022, hearing, the Appeal is without merit and is denied in its entirety.
13. That adoption of this Resolution shall constitute the final action of the City Council in accordance with City Code Section 2-56(c).

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 6th day of September, A.D. 2022.

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Mayor

ATTEST:

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City Clerk