

November 6, 2024

Fort Collins Rescue Mission

City Council Appellate Hearing

Present by:

Claire Havelda

**FORT
COLLINS
RESCUE
MISSION**

 **ripleydesign**
LANDSCAPE ARCHITECTURE, LAND PLANNING

 **EPS
GROUP**

NE
NORTHERN
ENGINEERING

SW
SHOP WORKS
architecture

Brownstein

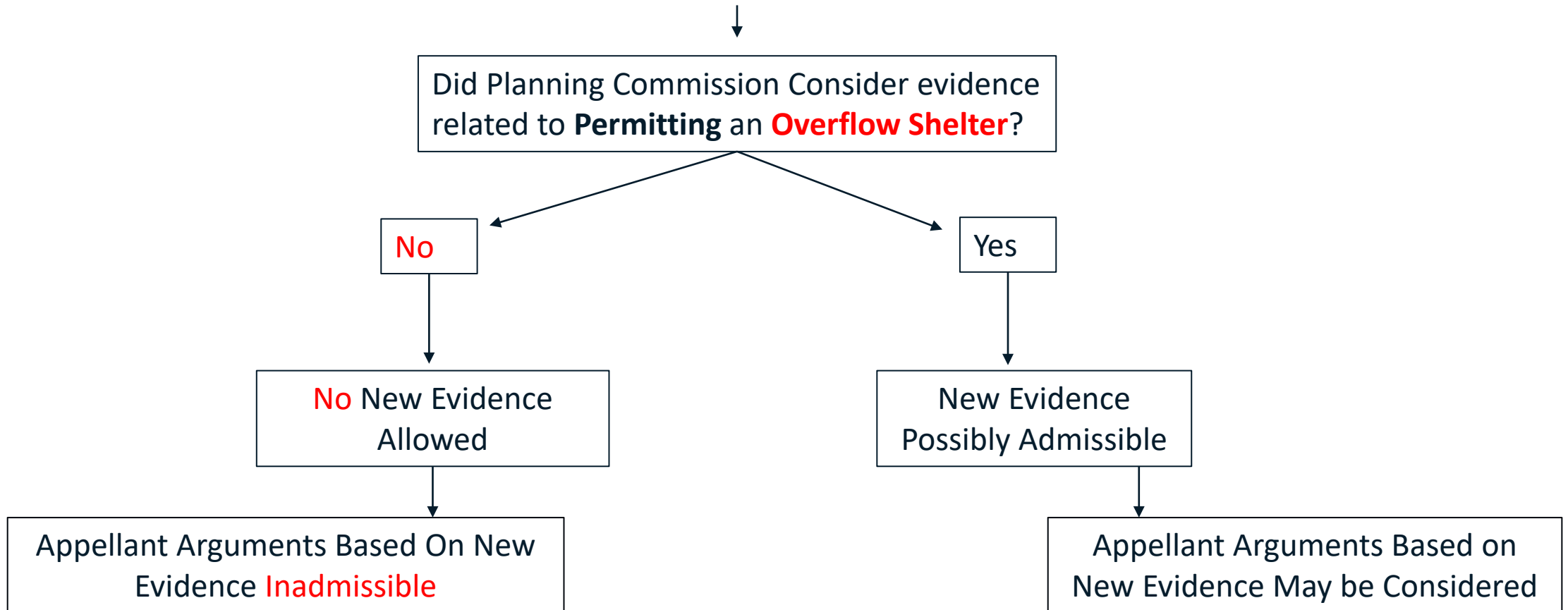


Procedural Matters

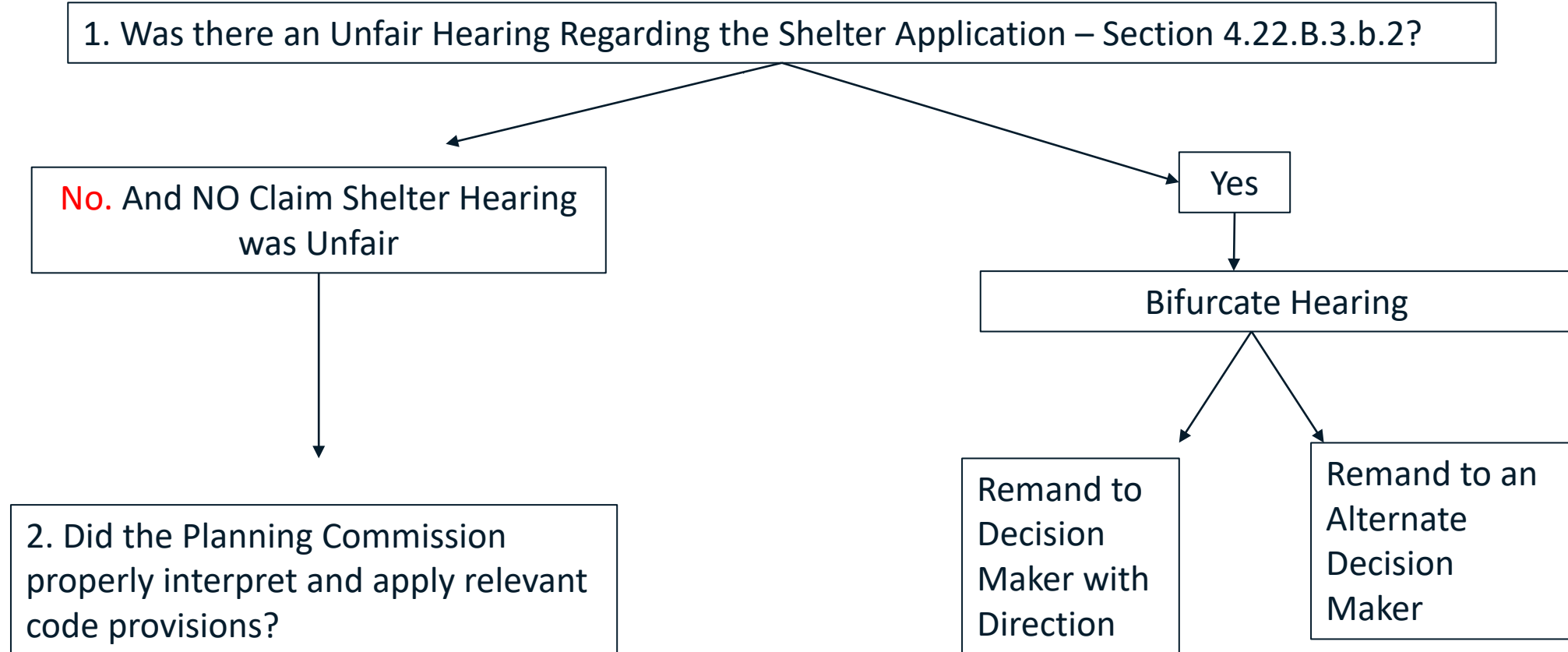
- **Objection to New Evidence.** Interjects False and Misleading Information.
 - **Coloradoan Article. Only relevant to an Application for an “Overflow” shelter.** **No such application was before the PC.**
 - 4.22.B.3.b.2 for a Shelter. Definition – specifically excludes “overflow shelters.”
 - 500 beds – never part of the application, never part of funding, never part of staffing. Shelter relieves need overflow.
 - This is **not** an application for an Overflow Shelter under 4.22.B.1.d.2 – BDR.
 - **THEREFORE: New Evidence Inadmissible.**
 - **California “studies.”** Not applicable and not part of record below.
 - **Pictures.** No way to verify – no reason could not have been submitted during prior hearing.
 - **Coloradoan Article 2021.** CC Denied Coloradoan Article previously that spoke directly to motive for bringing appeals was to derail Shelter at all costs.
 - **All of the above are grossly misleading when applied to the application at hand.**

New “Evidence” IS False & Misleading

To Admit New Evidence, Council must find that Planning Commission considered evidence relevant to its findings which was **substantially false** or **grossly misleading**.



Appropriate Procedural Process



Procedural Matters Continued

- No New Evidence Allowed – then no consideration of Mendoza Arguments related to LUC:
 - 3.2.2.K. Access, Circulation and Parking.
 - 3.4.1 Environmental Impacts.
 - 3.5.1 J- Operational/Physical Compatibility Standards.
 - 4.22.B – Service Commercial District Permitted Uses.
- Unfair Hearing – Need Not be Considered or Found Meritless
 - Basis for “Unfair Hearing” was grossly misleading inapplicable evidence.
 - If that “new evidence” is not allowed to be introduced, no need to consider unfair hearing argument and the misinterpretation of the Code arguments based on this evidence.

Time Allotment & Additional Procedural Matters

- Ask that Council Clarify Time Allotment and provide FCRM equal time to respond.
- Ask that all slides and legal authority be accepted into the record at the conclusion of the hearing.
- Finally, reminder that City Council is reviewing this under the Transitional Land Use Code.

Regulation of Future Behavior - Not Land Use

- Appellants are asking you to do is regulate future speculative behavior through Land Use.
 - Asking you to penalizing people experiencing homelessness as if they were a homogenous group of criminals.
 - Multi-unit apartment building would we be having this conversation?
 - When, and if, people violate our laws - Police Powers to regulate NOT Land Use.
 - Remind you people experiencing homelessness largely members of protected classes within the American with Disabilities Act and experiencing homelessness is NOT A CRIME.
 - Remind you in this country we are innocent until proven guilty. You cannot interpret your land use code to say differently.
 - So, if experiencing homelessness is not a crime, why would you regulate a homeless shelter as if it where?

Law Related to Code Interpretation

- **GUIDANCE FROM COURTS REGARDING: LEGAL RULES OF STATUTORY/CODE CONSTRUCTION:**
 - Review the Legislative Declaration and Purpose.
 - Codes must be read “**as a whole, giving consistent, harmonious and sensible effect to all of its parts.**”
 - City Council **must avoid** constructions that lead to “**illogical or absurd results.**”
 - If you read the Code as a whole and in harmony, you will agree it was appropriately interpreted.

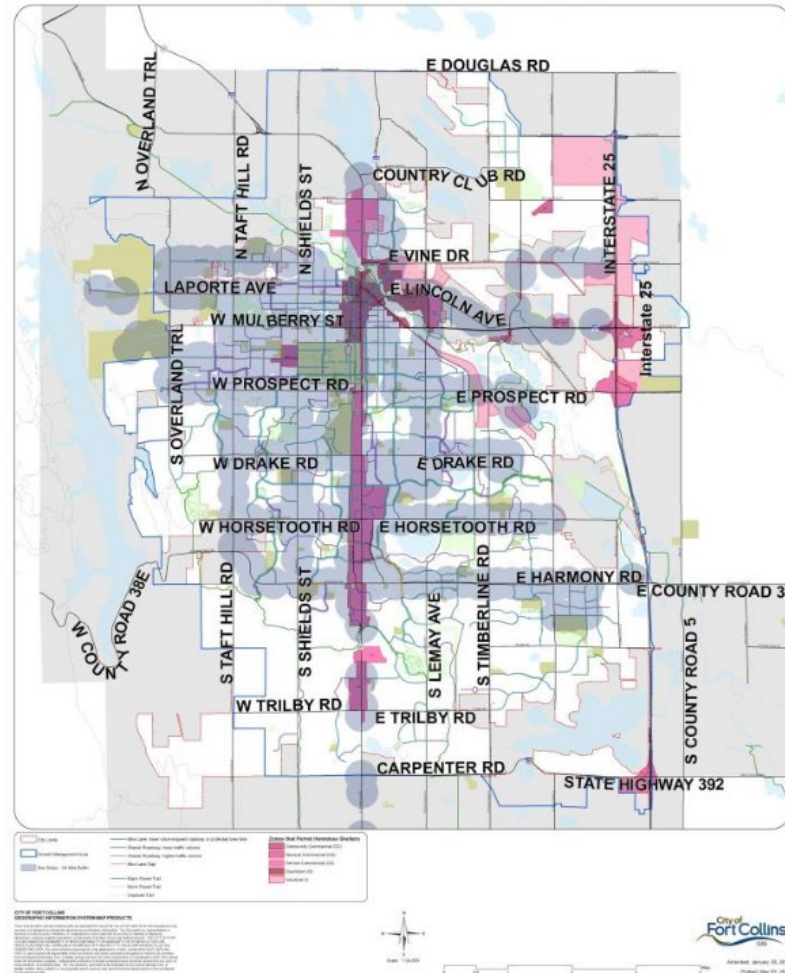


LUC 1.2.4: Applicability of the LUC

Appellant's Argument Leads to an Illogical and Absurd Result

- **Purpose: Appellant's Argument *partial* quote of LUC 1.2.4 Applicability - ignores LUC 1.3.1: Establishment of Zone Districts.**
 - 1.2.4 LUC Applicability:
 - "The provisions of this Code shall apply to any and all development of land within the municipal boundaries of the City."
 - "Except as hereinafter provided, no building, structure or land shall be used and no building or structure . . . shall be erected, constructed, . . . except in conformance with the regulations herein specified **for the district in which it is located.**"
 - 1.3.1 Districts: "**In order to carry out the purposes of this Code**, the City is hereby divided into the following zone districts."
 - Zone District at issue: 4.22: Service Commercial (C-S).
- 4.22 - Actual Zone District **Service Commercial**: Stated Purpose:
 - The Service Commercial District is intended **for high traffic commercial corridors** where a **range of uses is encouraged** to create a **transition from commercial operations** on a highway, arterial street or rail spur, **to less intensive use areas or residential neighborhoods**.
 - This is not a "residential neighborhood" zone district as Appellants repeatedly misstate.

Zones That Permit Homeless Shelters



Shelters permitted per zone district

4.22 Service Commercial Zone District Uses Allowed by Right

- ❑ **Bars, taverns nightclubs**

- ❑ Outdoor Vendor

- ❑ Urban Agriculture

- ❑ **Medical and Retail Marijuana Centers**

- ❑ Marijuana cultivation operations

- ❑ Places of worship

- ❑ **Childcare Centers**

- ❑ **Grocery stores/Supermarkets**

- ❑ Music Studios

- ❑ Wholesale Distribution Facilities

- ❑ Recycling Facilities

- ❑ **Veterinary Clinics**

- ❑ **Hospitals**

- ❑ Transit Facilities

- ❑ **Fast Food Restaurants**

- ❑ Gas Stations

- ❑ Retail establishments

- ❑ **Major vehicle repair service station**

Biggest Problem with Appellant's Compatibility Argument

- CS District allows for Residential, Commercial and Shelters to co-exist in the same district.
- Reviewed, vetted at public hearing, and adopted by CC – therefore, by definition, uses listed are found to be compatible as they are incorporated into the same zone district.
 - CS – LUC adopted 1997, readopted in 2023, and the new LUC adopted 2024 made no changes to C-S District
 - The 2020 rezoning Ordinance No. 159 passed to create the Mobile Home District, in which the Hickory Mobile Home Park is included, specifically found that the MH District was “compatible with existing and **proposed uses surrounding the subject property.**”
- Compatible within the zone district to have residential and the Shelter, how can it be incompatible to have a Shelter near an adjacent wholly separate zone district?
 - Appellant's Argument = Illogical and Absurd Results.
 - Appellant's argument = entire CS District is incompatible with itself.
 - To agree with the Appellant – means you have to repeal and rewrite the entire CS zone district.

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Division 3.2

Site Planning and Design Standards

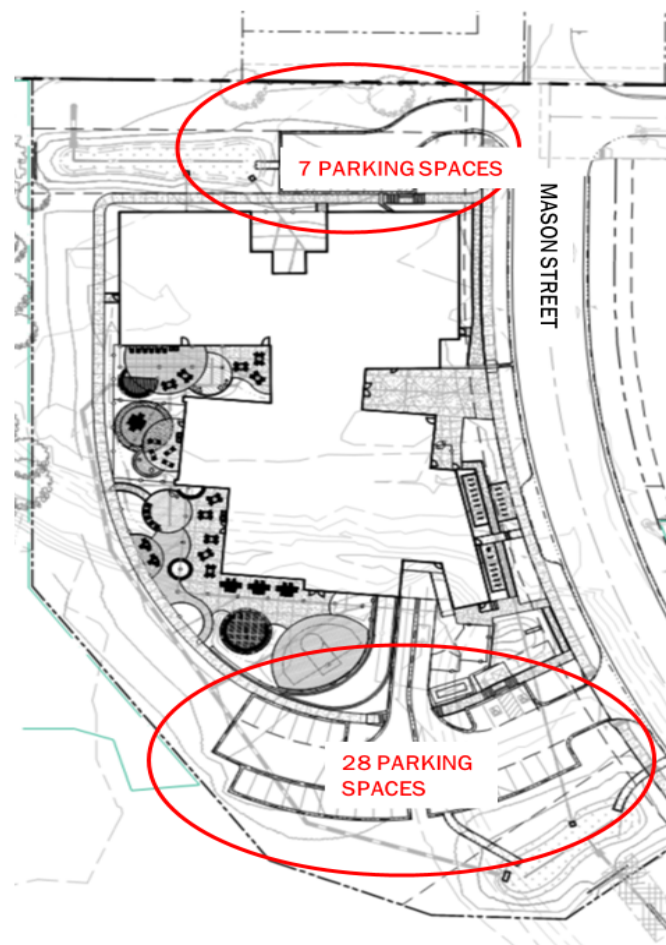
Alternative Compliance Request

DIVISION 3.2 SITE PLANNING AND DESIGN STANDARDS

ALTERNATIVE COMPLIANCE REQUEST

- Based on:
 - 34 on-site employees
 - 22 interns/volunteers
 - 3 separate shifts
 - Highest demand will be 49 employees
 - Clientele to arrive on foot
 - Denver ratio of 0.61 spaces at peak utilization

Fort Collins Rescue Mission
is provided 0.8 ratio per
employee



3.2.2.K Access, Circulation and Parking

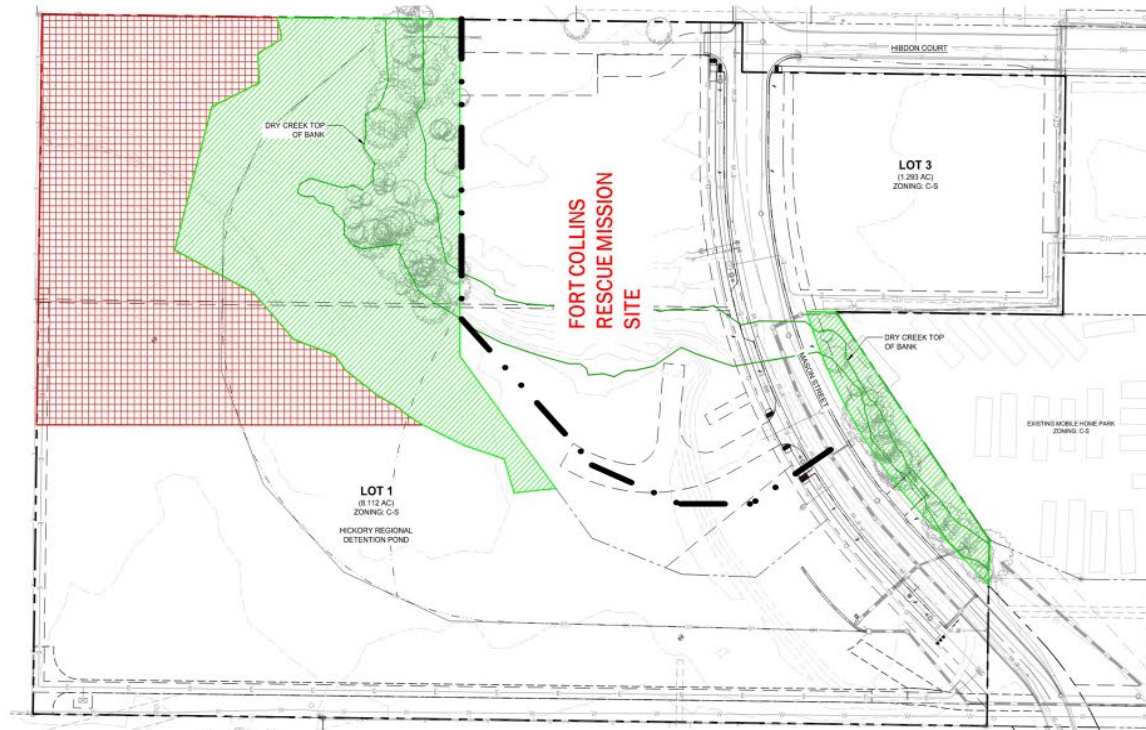
- No existing code regulations for parking requirements for a Homeless Shelter.
 - Thus, Mr. Mapes statement of “no particular basis” in the Code is an accurate reflection of your code as drafted. Not the same as saying there was “no” basis.
 - Does not mean no analysis went into Parking Requirements.
- Alternative Compliance had to be used.
 - Information PC received was for 200-250 beds and the Traffic Study Reflected that.
 - Increased the amount of covered bicycle parking per Staff Request.
 - Stated in the record that people will not be allowed to live in their vehicles on the Shelter site.
 - Considering all of this = complied with the only applicable standard based on the only expert evidence in the record.
- Never About Parking
 - You can’t argue too many people sleeping in cars without shelter in one breath and that the number of shelter beds should be reduced in the other.



LUC 3.4.1 Natural Habitats and Features

Mendoza Appeal Only

LUC 3.4 Natural Area Habitat & Features



LUC 3.4.1 Natural Habitats and Features

- Again, this argument is made on the baseless assertion that there will be 500 beds. Not the case.
- Fails to specify any negative “environmental impacts.”
- Support Environmental Resources:
 - Native Plant Pallet with low water use requirements
 - Foundation plantings around the building,
 - Full tree stocking
 - 40 buffer on West side to NHBZ
 - To further protect it, the NHBZ was moved to the neighboring property
- Shelter design meets: Purpose:
 - “to ensure that when property is developed consistent with its zoning designation, the way in which the proposed physical elements of the development plan are designed and arranged on the **site will protect the natural habitats and features both on the site and in the vicinity of the site.**”



LUC 3.5.1 : Building & Project Compatibility

3.5.1 Building & Project Compatibility (A), *(C) & (J)

- 3.5: These building standards should be read in conjunction with the zone district standards contained in Article 4 of this Code. *Statutory Construction*.
 - **FIRST:** Again, Appellant only provides a partial quote of LUC 3.5.1.
 - **SECOND:** 3.5.1 (A) – Purpose: 2nd Sentence "They should be read in conjunction with the more specific building standards . . . **and the zone district standards contained in Article 4.** Within context of 4.22 CS District.
 - Won't restate my arguments regarding compatibility of 4.22, but ask that they be noted for the record.
 - 3.5.1.(C) Building size, height, mass, and scale.
 - Appellant's attack physical compatibility under false assumption this is a "neighborhood residential" district.
 - CS District - is intended for **high traffic commercial corridors** where a range of uses is encouraged to **create a transition** from commercial operations on a highway, arterial street or rail spur, to less intensive use areas or residential neighborhoods.
 - Look to compliance with the North College Corridor Plan = highly compatible.
 - No challenge to physical design under 3.5.1 B, D, E, F, G, H, I

North College Corridor Sub-Area Plan

- **Community Appearance and Design: CAD 2.2**

- “Character will be **contemporary semi-industrial**, combined with familiar, traditional Old Town . . . character. . . Architectural **design featuring exposed structural elements**, brick instead of concrete block, corrugated or ribbed metal . . . and **palette colors rather than beige**, will create urban places that complement Downtown **and offer a distinct alternative to standardized suburban development.**”

- **Land Use Activity: Goal 3.1**

- The City and URA will encourage multi-story buildings, and additional height in one-story buildings, in development projects.
- As detailed in the record, design shows a strong alignment with compatibility with the North College Corridor sub-area plan.

LUC 3.5.1 (J): Operational/Physical Compatibility Standards (Mendoza Appeal)

- Again, false narrative justifying this portion of appeal 500 beds. Should not be considered.
- FCRM provided evidence of hours of operation and strict behavioral expectations for guests.
- Concerns about “smoking” outdoors.
 - Why are people experiencing homelessness not allowed to do this?
 - This is a matter for noise and nuisance ordinance enforcement as it would be anywhere else in the City.
- Alleged Concerns regarding trash and delivery vehicles.
 - Do you have the same concerns for all the other commercial uses allowed in the service commercial area?
 - Don’t you want the Shelter to have weekly trash service? They don’t use a different truck then they do at residential homes.
 - Deliveries – are we now attempting to regulate amazon deliveries in areas that contain residences? Wouldn’t that be a detriment to all commercial businesses in the area?

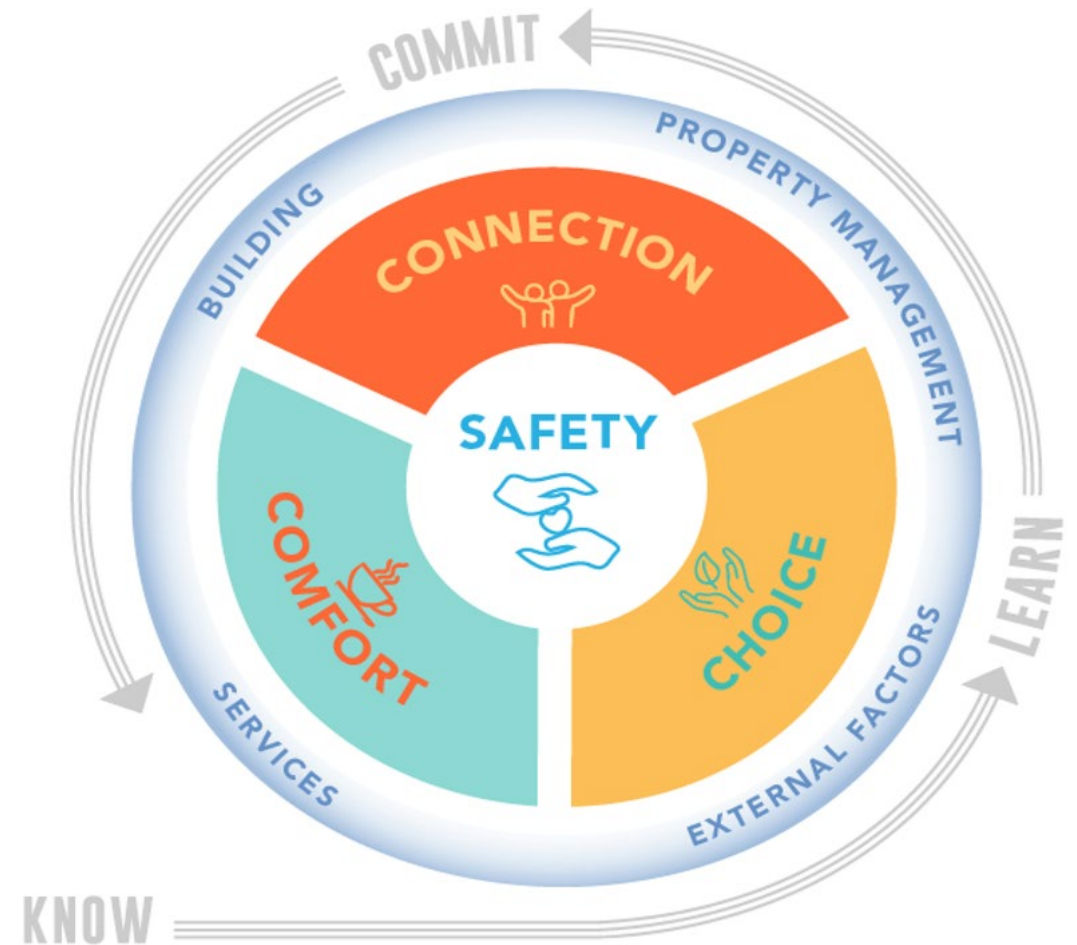
3.5.1(J) / cont. Appellant's Misrepresentation of Police & FCRM Statements (Jones Appeal)

- Ample evidence in the record regarding compatibility.
 - Mr. Forewood emphasized how having a 24/7 shelter greatly reduced interactions between guests and neighbors. Quite literally giving people a place to go during the day.
 - Discussed 9:45 pm curfew and only isolated times when working with police/hospitals person come outside of those hours.
 - Much more successful in getting people employed. 2021 – **60** men gained employment.
 - June 2023-July 2024 **70** guests existed homelessness went into stable housing.
 - Remind you hotels/supermarkets/hospitals/single/multi-family dwellings – 24/7 in and out. Argue that ambulances and people existing bars and taverns create far more noise than Shelter with a 9:45 pm curfew.
 - Ask review record = Long discussion with Chief Swoboda and his team and in no way did the Sheriff's Team indicate that the FCRM plan was simply to "call the police" when there were escalated guests. That is a deliberate misstatement in an attempt to introduce facts and not in evidence.
 - In fact, what the Police Chief said is they are well staffed and resourced to respond to any call throughout the City.
 - Police emphasized the "great" relationship the police and the FCRM have.

3.5.1(J) Compatibility /cont. - Trauma Informed Design

- TID framework outlines the FCRM approach to understanding compatibility between the uses of the building, activities surrounding the building, and the design-integration with the community (interviews). At the center of this design lies “safety.”
- TID includes a place for guests to store belongings – so they are not on streets and sidewalks. A covered and spacious lobby and intake area to allow for smooth check-in and minimal congestion.
- 70 indoor and outdoor cameras for Active security and increased staff for Passive security.
- 2 types of fences – a 6’ opaque fence along the public facing sides and a 6’ steel picket fence along southern dry creek side.

Applicant Team has gone above and beyond meeting the compatibility criteria of 3.5.1





LUC 4.22: Commercial Service

4.22 (B) Allowed Uses: Service Commercial (Mendoza)

- “Potential for Overflow Use from Denver Rescue Mission.”
 - Again – premised on false evidence of 500 beds.
- 4.22 Permitted Uses:
 - (B)(1)(d)(2): Institutional/Civic/Public Uses: Seasonal Overflow Shelters
 - (B)(3)(b)(2): Institutional/Civic/Public Uses: “Homeless shelters (excluding seasonal overflow shelters).”
 - 2 Different Things.
 - If approved under 4.22(3)(B)(2)(b), as was done by PZ, **by definition, are not allowed to function as an overflow shelter.**
 - **No need for condition.**
 - As an aside, FCRM has neither the money nor staff capacity to taken on a 500-bed facility.



Appellant's Proposed Conditions

No Legal Authority to Add Appellant's “Proposed Conditions”

- Response Mendoza Appeal – 500 irrelevant under 4.22.B.3.b.2 – conditions denied.
- Response Jones Appeal: Limiting beds to any number under 250.
 - No evidentiary basis for why this is appropriate. Speculation and fear mongering are not evidence.
 - No evidence that the need isn't present.
 - No evidence in record to support speculation that people experiencing homelessness commit more crimes than anyone else in this zone district or the ones next-door.
 - But if you limit the beds below 250 the FCRM will absolutely become ineligible for over \$1.5M of funding it is relying on. So, if you insist on this condition – you will be denying the project in its totality. Too late in funding cycles and money spent on design to accommodate this.

Requiring Funding for Additional Security Patrols

- Based on what evidence in the record?
- Where is that funding coming from?
- Do you really want to be in the business of telling the police chief how to spend his money and allocate his staffing through a land use hearing when his testimony was that he and his team could support this Project as designed?
- Based on what code criteria?
- Based on what precedent?
- Based solely on the desire to violate the equal protection and due process of people experiencing homelessness by deeming them “criminals” without any evidence?

“Other Conditions That Nearby Residential Neighbors and Business Owners May Suggest”

- In what way does slapping on any additional conditions that a person thinks of last minute comport with due process?
- In what way does this honor the dignity of the people experiencing homelessness as members of our community?
- How does occupancy limits not evidentially supported or related to life/safety comply with the prohibitions of House Bill 2024-1007 which states:
 - (3) A LOCAL GOVERNMENT SHALL NOT LIMIT THE NUMBER OF PEOPLE WHO MAY LIVE TOGETHER IN A SINGLE DWELLING BASED ON FAMILIAL RELATIONSHIP. LOCAL GOVERNMENTS RETAIN THE AUTHORITY TO IMPLEMENT RESIDENTIAL OCCUPANCY LIMITS BASED ONLY ON:
 - (a) DEMONSTRATED HEALTH AND SAFETY STANDARDS, SUCH AS INTERNATIONAL BUILDING CODE STANDARDS, FIRE CODE REGULATIONS, OR COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WASTEWATER AND WATER QUALITY STANDARDS; OR
 - (b) LOCAL, STATE, FEDERAL, OR POLITICAL SUBDIVISION AFFORDABLE HOUSING PROGRAM GUIDELINES.

Conclusion

- You have a once in a decade, possibly once in a lifetime, opportunity here where funding and land use all align with every single code criteria you have.
- Denying this project or putting arbitrary limits on it only serves to ensure that the people experiencing homelessness in your community continue to go unhoused, continue to risk death in the winter, and are purposely excluded by City Council from the Housing Strategic Plan's goal that "everyone be able to access safe and stable housing they can afford."
- The FCRM has met, and in many places exceeded, the stated Municipal Code, LUC, Subarea Plans, HAC recommendations, and policy requirements in this application.
- There was no unfair hearing here.
- There was no misinterpretation of your code.
- We ask that you deny this appeal and uphold the unanimous decision of your PC.



Thank you

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