

NOTICE OF APPEAL

Action Being Appealed: Ziegler - Corbett Overall Development
Plan Major Amendment, Project # NJA 220004
Date of Action: 3/23/2023 Decision Maker: Planning and Zoning Commission

FOR CITY CLERK'S
USE ONLY:

DATE FILED: 4-5-2023

INITIALS:

Appellant/Appellant Representative (if more than one appellant):

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Fort Collins, CO 80525

INSTRUCTIONS

For each allegation marked below, attach a separate summary of the facts contained in the record which support the allegation of no more than two pages, Times New Roman 12-point font. Please restate allegation at top of first page of each summary.

GROUND FOR APPEAL

The Decision Maker committed one (1) or more of the following errors (check all that apply):

- Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter. List relevant Code and/or Charter provision(s) here, by specific Section and subsection/subparagraph:

City of Fort Collins Land Use Code, Section 3.6.3(E,F)
City of Fort Collins City Code, Policy LIV 4.2

Failure to conduct a fair hearing in that:

- (a) The Board, Commission, or other Decision Maker exceeded its authority or jurisdiction as contained in the Code or Charter. [New evidence not allowed]
- (b) The Board, Commission or other Decision Maker substantially ignored its previously established rules of procedure. [New evidence not allowed]
- (c) The Board, Commission or other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading. [New evidence allowed]
- (d) The Board, Commission or other Decision Maker improperly failed to receive all relevant evidence offered by the appellant. [New evidence allowed]
- (e) The Board, Commission or other Decision Maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Decision Maker's independence of judgment. [New evidence allowed]

NEW EVIDENCE

All new evidence the appellant wishes Council to consider at the hearing on the appeal must be submitted to the City Clerk within seven (7) calendar days after the deadline for filing a Notice of Appeal and must be clearly marked as new evidence. No new evidence will be received at the hearing in support of these allegations unless it is submitted to the City Clerk by the deadline (7 days after the deadline to file appeal) or offered in response to questions posed by Councilmembers at the hearing.

APPELLANTS

Parties-in-interest have the right to file an appeal.

A party-in-interest is a person who, or organization which, has standing to appeal the final decision of a board, commission or other decision maker. Such standing to appeal is limited to the following:

- The applicant.
- Anyone who owns or occupies the property which was the subject of the decision made by the board, commission or other decision maker.
- Anyone who received the mailed notice of, or spoke at, the hearing of the board, commission or other decision maker.
- Anyone who provided written comments to the appropriate City staff for delivery to the board, commission or other decision maker prior to or at the hearing on the matter that is being appealed.
- A City Councilmember.

Signature: <i>Craig Latzke</i>	Date: <i>4/5/2023</i>
Name: <i>Craig Latzke</i>	Email: <i>craig@latzke.us</i>
Address: <i>3908 Mosa Verde St Fort Collins, CO 80525</i>	Phone #: <i>970-227-7444</i>
Describe how you qualify as a party-in-interest: <i>received the mailed notice, spoke at the hearing</i>	

Signature:	Date:
Name:	Email:
Address:	Phone #:
Describe how you qualify as a party-in-interest:	

Signature:	Date:
Name:	Email:
Address:	Phone #:
Describe how you qualify as a party-in-interest:	

ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY

Statement of Facts and Evidence in Support of Appeal

At a high level, Land Use Code, City Code, and other standards exist to promote neighborhood livability, sustainable patterns of development, safety, transportation, compatibility with existing neighborhoods, and other goals. The Planning and Zoning Commission is tasked “To take final action to approve, disapprove or approve with conditions planning items in accordance with this Code and Charter.” City Charter Sec. 2-176.(a)(4)

When the Planning and Zoning Commission approved this major amendment they failed to act in accordance with Land Use Code, City Code, previous City Council policy decisions, and their own established hearing procedures. In doing so they violated both the letter and spirit of these codes and undermined the future livability, compatibility, safety, and access of this PUD, adjacent/nearby neighborhoods like Woodland Park Estates and English Ranch, and ultimately the City.

The major amendment included two main components:

- Incorporation of an additional property (“the Young property”) into the parcel/ODP.
- Alternative compliance for street connections. Where the local connection is to be restricted to pedestrians and bicycles, not a street connection, and a signal is to be installed at Hidden Pond.

The latter, the alternative compliance or lack of full compliance with Code, is the focus of our appeal.

Statements at the hearing from most P&Z members, multiple city staff, the applicant (developer), and many spoken and written public comments established a broad consensus that the most optimal solution for street connections is for there to be a local connection between this ODP and Paddington Rd (presumably at Edwards) and then possibly a traffic signal at Paddington Rd / Grand Teton PL and Ziegler Rd.

PZ Member comments, which are taken verbatim from the hearing:

David Katz @ 1:15:25

I think we can all see that when we do zoom out, like physically zoom out, it does look like Paddington makes the most sense. Logically, it's consistent with some of the comments we've seen.

David Katz @ 1:55:01

Logic rarely prevails. And I think Miss Wilson said common sense rarely prevails. When you zoom out and look at the map. Paddington does make the most sense. It does.

...

For no other reasons, but a safety for the people in Woodland Park to get across. I, I wish this light could be at Paddington.

...

Looking at it on the surface, and maybe even deeper than the surface, Paddington seems to make the most sense.

...

From a safety aspect, I really wish it was at Paddington.

Ted Shepard @ 2:16:00

So without getting into specifics, maybe just refer to a local street connection, so as to enable the warrants to be met, so a traffic signal could be constructed at Paddington and Teton where in the big picture of our community, the arterial system is where it's needed.

...

A local street connection to Paddington Road from Union Park, uh in any conceivable alignment that's practical with willing parties would be a superior overall development plan attribute than the alternative compliance that was approved in February of 2022. In February of 22 we didn't have the information that we have now and the information that we have now is critical.

Michelle Haefele @ 2:22:30

The best possible outcome is a connection from English Ranch to the new neighborhood and a light at Paddington and Grand Teton at Ziegler.

David Katz @ 2:27:35

We've heard the public if it was, if there was a clear path to putting it there I think we all agree, there being Paddington, excuse me, uh, we would all prefer that - most people, maybe not everybody.

Julie Stackhouse @ 2:30:29

The motion I'm gonna make [to approve the major amendment] I don't like, I'll be up front, because I don't think we're solving the real problem here and that, that bothers me.

...

I still think that the right outcome here is a connection from, from the O D P to Paddington. And I'd, I'd love to see that still happen and I know that's not desirable on the part of everyone. But honestly, if we step back and look at it in a holistic way for the betterment of the cities of Fort Collins. It's, it's the right thing to do, but that's not the proposal that we have in front of us tonight.

Michelle Haefele @ 2:36:23

If [the developer] come[s] back, hopefully they will come back with another proposal that is the best possible which is connecting the neighborhoods.

City Staff comments:

Steve Gilcrest, Traffic Operations @ 0:55:23

Is this hidden pond location the ideal location? No. Within our land use code, within our standards, Paddington would be typically the intersection we signalize.

...

Paddington would be, you know, our typical collector street.

...

So ultimately, yes, Zigler and Paddington would be the ideal location.

...

Our preference, you know, the city's, if we had our ultimate goal of that, that grid pattern would be, you know, that main half mile street would have that full traffic signal that just allows for good progression. That's good, good access, those types of things.

Ryan Mounce, City Planner @1:46:36

I guess kind of zooming out again from the staff perspective is, you know, we do have these connectivity standards in the land use code. We, we do want to knit neighborhoods together and that's kind of the terminology use is is knitting. Um And we certainly recognize that, you know, no one necessarily wants more traffic in, in their development or their neighborhood. Um But that is kind of the, the intent and kind of the philosophy behind the community that these, these different developments, they aren't partitioned amongst themselves, they're, they're woven together. Um And there should be multiple access point points to different arterial streets within your sort of section mile. And so, you know, of hearing a lot of, of, of support for the idea of a signal at Paddington and Grand Teton, and we've talked a little bit about how sort of under the ideal scenario, that's where it would be located and kind of, that's how, how the transportation network is kind of set up and designed.

...

If there is gonna be the work to, to look at a proposal to connect somehow between this neighborhood or the O D P site and the the neighbor to the North English Ranch, um You know, I guess the staff perspective is we would really like to see as much connectivity as possible at that point. That is sort of the base standard in the land use code and, and as mentioned, there are different amenities uh like the park and school that that would be beneficial to uh you know, get people to and from.

Ryan Mounce, City Planner @ 2:02:17

[Edmonds] was the original identified spot for a connection originally as a Collector Street. Um There, you know, if you look at the English Ranch O D P from the nineties, it identifies that as the spot for, for that connection. And so there has been, you know, thinking and planning for it.

Applicant/Developer Comments:

Jason Sherrill @ 1:44:38

I feel like with the, the, the, the way that the communities have evolved - a connection at Edmunds, you know, might be, you know, the best solution.

Public comments to similar ends can be found in the packet.

Not surprisingly, this “best possible,” “ideal,” “right thing to do,” “most sense,” “safest,” and “superior,” solution is the solution that would comply fully/normally with code and would not require alternative compliance found in the major amendment.

To understand why a major amendment was approved in this context, and why the amendment should have instead been disapproved, we will evaluate the accusations or errors indicated under “grounds for appeal” on the notice to appeal.

Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter.

City of Fort Collins Land Use Code

3.6.3 - Street Pattern and Connectivity Standards

(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.

(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.

City of Fort Collins City Code

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;*

By not having a local street connection (pedestrian / bike - only connection does not substitute), the major amendment does not comply with the above-cited Land Use Code or City Code. Instead it makes use of alternative compliance.

The ODP was approved in February 2022 using alternative compliance. There was some deliberation suggesting that because the previously-approved DOP does not achieve full/normal compliance by having a local street connection, but relies on alternative compliance instead, that this major amendment should therefore not be evaluated on whether it complies. This is an error in three ways:

1. The major amendment, with the added property/acreage, changes the ODP significantly such that the previous alternative compliance is not applicable. As amended, the ODP does not comply.
2. The alternative compliance in the major amendment is substantially different from the previous alternative compliance with different considerations and tradeoffs. Given these differences and resulting changes in character to the ODP, they are not mere substitutes. Notably, the alternative compliance in the major amendment has additional negative impacts relative to the previously-approved alternative compliance. This was the topic of many of the public comments received (written and spoken) as well as comments from staff and P&Z members:
 - “We've also heard that many feel that the signal at this particular location kind of prioritizes new development over some of those existing conditions that these [existing] neighborhoods have faced for many years.” (Ryan Mounce @ 0:50:33)
 - “And we've also heard about some concerns with the signal at this location [~400ft from Paddington/GrandTeton] if that would maybe cause backups and traffic backups during peak periods and completely block the Teton and Paddington intersection.” (Ryan Mounce @ 0:50:57)
 - **“The big implication with this [signal at Hidden Pond] is that it does preclude the future of a traffic signal at the Paddington and Grand Teton intersection along Ziegler and that's true, vice versa as well. So there's kind of a one shot, you know, one signal along the stretch of Zeigler given sort of our spacing requirements. It doesn't necessarily follow the traditional location of where a signal would be placed.”** (Ryan Mounce @ 0:49:29)

- Uncertainty around bicycle detection on the east side of the intersection. Undesirable pedestrian navigation/routes. Undesirable bicycle navigation/routes in context of the low-stress bicycle network that is on Paddington. (see York questions starting at 1:04:25)

Unfortunately, these negatives seem to have been overlooked during deliberations resulting in the Commission members forming subjective opinions that this new alternative compliance (which negatively impacts Woodland Park Estates and English Ranch neighborhoods) is preferable to the existing negative compliance (“channel-T” - which does not negatively impact these neighborhoods). Ignoring these real and objective harms to these neighborhoods is itself an example of prioritizing new development over compatibility with and livability of existing neighborhoods.

3. Unlike in February, 2022 when the ODP was approved without a local street collector: City Staff and the Planning & Zoning Commission are now (or should be) aware that City Council’s intentions when removing a collector street connection in this vicinity (Corbett-Kingsley) circa 2010 was that there would still be a local street connection from this parcel (subject of ODP) to Paddington. Evidence for this includes:

- Packet page 318 contains a portion of a document which references the development agreement for Front Range Village, a recorded document between the city and the developer, containing the text, “It is understood and agreed that future development(s) may connect the public street system in the English Ranch neighborhood with this Development, and that such connectivity has the potential to allow cut-through traffic and other perceived negative impacts to the English Ranch neighborhood.”
- Packet page 318 contains a portion of a document from 2010 related to the Master Street Plan change, which states, “...a preliminary recommendation is that the Corbett connector street connection be removed from the MSP. A local street connection from within the currently vacant property may still be necessary and required by the Land Use Code at the time the vacant property south of English Ranch develops, regardless of the removal of the collector street designation from the MSP.”
- A slide in the staff presentation includes a slide from a “2010 Master Street Plan Council Work Session” with a bullet point indicating “If Corbett Drive removed from MSP, Land Use Code may require a non Corbett street connection to the property north of Front Range Village.”

4. Unlike in February, 2022 when the ODP was approved without a local street collector: City Staff and the Planning & Zoning Commission are now (or should be) aware that they

can expect compliance with the above-mentioned sections of the Land Use Code and City Code regarding local street connection.

- “The local connection wouldn't require approval by council.” (Steve Gilcrest @ 1:00:04)

Also that public concerns regarding more traffic in neighborhoods from a local street connection (or collector street connection) is not a contraindication to enforcing Land Use and City Code requirements for these connections.

- “I guess kind of zooming out again from the staff perspective is, you know, we do have these connectivity standards in the land use code. We, we do want to knit neighborhoods together and that's kind of the terminology used is is knitting. Um And we certainly recognize that, you know, no one necessarily wants more traffic in, in their development or their neighborhood. Um But that is kind of the, the intent and kind of the philosophy behind the community that these, these different developments, they aren't partitioned amongst themselves, they're, they're woven together.” (Ryan Mounce @ 1:46:36)

In summary: Without a local street connection the major amendment does not comply with the above-cited Land Use Code or City Code. The major amendment changes the ODP significantly. My not having a local street collector as code requires and instead using alternative compliance the major amendment causes significant and permanent harm to adjacent and nearby neighborhoods (Woodland Park Estates, English Ranch) that the previous alternative compliance does not. The commission has the authority to require adherence to these portions of Code even, or especially, in context of historical decisions by Council and concerns regarding the traffic they are intended to allow.

Given these considerations and because of the failure to comply with Code, the major amendment should have been disapproved.

Instead of acting under their authority to disapprove a major amendment that failed to comply with code, they hoped and wished that the developer would make a good-faith effort.

(“hope” is found twice in the transcript in this context)

(“wish” is found twice in the transcript in this context)

(“good faith” is found three times in the transcript in this context)

That is no substitute for faithfully applying and requiring compliance with Code.

The Board, Commission or other Decision Maker substantially ignored its previously established rules of procedure.

Before deliberations the commission chairman makes this statement...

“Thank you so much. Um Ryan, um We're gonna give the commission members one last opportunity to ask clarifying questions. Uh And this will be the last opportunity that that the commission has to engage with the applicant. So before we get into uh any deliberation, do any commission members have any final clarifying questions?” (David Katz @ 1:49:33)

Later, after deliberations have started, the applicant is invited to participate which seems out of order...

(At 2:27:57 in the recording)

Julie Stackhouse: “Could we hear from the developer. Um be what uh their reaction to our discussion.”

David Katz: “If Jason would like to speak to that, I would invite him up. Um Come on up. I, I mean, I, I work with a lot of developers and uh I, I know what I'm about to hear.”

Jason Sherrill (applicant): “So yeah, uh I appreciate that...”

It may or may not be notable that a citizen was not likewise given an exception and allowed to speak during deliberations but explicitly denied...

(2:04:37 in the recording)

Citizen: May I ask a question?

David Katz: No. Sorry. Trying to follow the rules.

Conclusion and Request

We respectfully ask that the City of Fort Collins simply comply with and enforce the Land Use Code, the City Code, and Charter as written so that they may serve their intent and philosophy. Reviewing the evidence above, the ODP as amended by this major amendment does not comply. There is no legal requirement to approve an inferior alternative compliance, nor goal or purpose to doing so, and we believe approving it was inappropriate.

We request the City Council **overturn** the decision of the Planning and Zoning Commission's to approve the major amendment to this ODP, thereby disapproving the major amendment.

Alternatively, if the City Council possesses the necessary legal and procedural authority, we request that the City Council **modify** the decision of the Planning and Zoning Commission to achieve an outcome where the the addition of the Young property to the parcel/ODP (which is not contested) is approved but with a requirement that street connections be made in full compliance with Code, including a local connection to Paddington which is not limited to bike/ped, without the use of alternative compliance.

We look to the City to do the right thing, and ensure this development, along with its street connections, is a benefit to the community and surrounding neighborhoods for years to come.