CITY OF FORT COLLINS TYPE 1 ADMINISTRATIVE HEARING

FINDINGS AND DECISION

HEARING DATE:	August 10, 2016	
PROJECT NAME:	6617 S. College Avenue Plat (Dings Subdivision)	
CASE NUMBER:	BDR 150011	
APPLICANT:	BJ DeForge Hauser Architects, P.C. 3780 East 15 th Street Suite 201 Loveland, CO 80538	
OWNER:	6617 South College LLCMark Dings6617 South College AvenueFort Collins, CO 80525	
HEARING OFFICER:	Marcus A. McAskin	

PROJECT DESCRIPTION: This is a request for a consolidated project development plan/final plan to subdivide a tract located at 6617 South College Avenue (parcel number 96141-00-010), consisting of 3.26 acres more or less, and generally located on the southwest corner of South College Avenue and West Trilby Road (the "Subject Property"). The Subject Property has not previously been platted. The Subject Property is located in the Limited Commercial (C-L) zone district.

As set forth in the Staff Report prepared for the August 10th hearing, the Subject Property was annexed into the City as part of the Southwest Enclave Annexation (Phase One) on October 3, 2006. The Applicant is requesting a consolidated PDP/FP approval of the Dings Subdivision Plat (the "Plat"), which proposed to subdivide the Subject Property into three (3) lots as follows:

Lot 1, Dings Subdivision (0.8241 acres +/-) Lot 2, Dings Subdivision (1.6544 acres +/-); and Lot 3, Dings Subdivision (0.6386 acres +/-).

The Plat dedicates and conveys certain rights-of-way, utility, emergency and pedestrian access easements to the City of Fort Collins for public use, as more particularly shown thereon.

The Applicant's request for approval of the Plat is concurrent with a Basic Development Review (BDR) for the existing medical marijuana sales and cultivation business to expand its operations. The marijuana sales and cultivation business will operate on Lot 1. An existing commercial and residential insulation business will continue operations on Lot 2. Lot 3 is currently vacant.

BACKGROUND: The zoning and land uses of properties in the vicinity of the Subject Property are set forth in the table below:

Direction	Zone District	Existing Land Uses
North	Limited Commercial (C-L)	Veterinary hospital, single family home
South	Limited Commercial (C-L)	Sand and gravel company
East	General Commercial (C-G)	Gas station and convenience store, vacant parcel, car wash
West	Low Density Mixed-Use Neighborhood (L-M-N)	Roofing and restoration company

SUMMARY OF DECISION: Approved.

ZONE DISTRICT: Limited Commercial District (C-L)

HEARING: The Hearing Officer opened the hearing on Wednesday, August 10, 2016, in Conference Rooms A-D, 281 North College Avenue, Fort Collins, Colorado.

EVIDENCE: Prior to or at the hearing, the Hearing Officer accepted the following documents as part of the record of this proceeding:

- 1. Project Vicinity Map.
- 2. Planning Department Staff Report prepared for 6617 S. College Avenue Plat (BDR150011). A copy of the Staff Report is attached to this decision as **ATTACHMENT A** and is incorporated herein by reference.
- 3. Dings Subdivision Plat (1 Sheet). A copy of the Plat is attached to this decision as **ATTACHMENT B** and is incorporated herein by reference.
- 4. Basic Development Review Site Plan Facility Expansion (2 Sheets).
- 5. Landscaping Plan (1 Sheet).
- 6. Exterior Elevations (2 Sheets).
- 7. Utility Plans for the Kind Care Site Improvements.
- 8. Affidavit of Publication dated August 4, 2016 evidencing proof of publication of Notice of Hearing in the Fort Collins Coloradan on August 4, 2016.
- 9. Notice of Public Hearing dated July 27, 2016.
- 10. The PowerPoint presentation prepared by City staff for the August 10, 2016 hearing.

11. The City's Comprehensive Plan, Code, and the formally promulgated polices of the City are all considered part of the record considered by the Hearing Officer.

TESTIMONY: The following persons testified at the hearing:

From the City:	Meaghan Overton, City Planner
From the Applicant:	BJ DeForge Hauser Architects, P.C. 3780 East 15 th Street, Suite 201 Loveland, CO 80538
From the Public:	Gordon Thayer, 6813 S. College Avenue, Fort Collins

FINDINGS

- 1. Evidence presented to the Hearing Officer established the fact that notice of the public hearing was properly posted, mailed and published.
- 2. Based on testimony provided at the public hearing and a review of the materials in the record of this case, the Hearing Officer concludes as follows:
 - A. The Application complies with the applicable procedural and administrative requirements of Article 2 of the Land Use Code.
 - B. The Application complies with the applicable General Development Standards contained in Article 3 of the Land Use Code. Specifically, the Hearing Officer concludes that the requirements of the plat and development plan standards set forth in Section 3.3.1 of the Land Use Code have been satisfied as follows:
 - i. There is no applicable minimum lot size requirement set forth in Division 4.24 (Limited Commercial District (C-L)) of the Code;
 - ii. In accordance with Section 3.3.1(B)(1) each of Lots 1 3 has access to a public street; and
 - iii. The applicable dedication requirements set forth in Section 3.3.1(C) have been satisfied.
 - C. the Application complies with Article 4 of the Land Use Code Division 4.24, Limited Commercial District (C-L) of the Land Use Code. Specifically, the existing uses on the Subject Property are consistent with the articulated purpose of the C-L zone district, as set forth in Section 4.24(A) of the Code: ". . . to allow small scale nonresidential uses to continue to exist of expand while still protecting surrounding residential area, provided that such areas have been designated under an adopted subarea plan as being appropriate for the C-L District."

3. The Application's satisfaction of the applicable Article 2, 3 and 4 requirements of the Land Use Code is sufficiently detailed in the Staff Report, a copy of which is attached as **ATTACHMENT A** and is incorporated herein by reference.

DECISION

Based on the findings set forth above, the Hearing Officer hereby <u>approves</u> the 6617 S. College Avenue Combined PDP/FP (Dings Subdivision Plat, Case No. BDR150011) as submitted, based on a determination that all applicable standards of the Land Use Code have been satisfied. Prior to execution and recording of the Dings Subdivision Plat mylar, the Applicant and Owner shall resolve and correct any and all technical issues as directed by City staff.

DATED this 16th day of August, 2016.

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Marcus A. McAskin Hearing Officer

ATTACHMENT A

Staff Report 6617 S College Avenue Plat (BDR #150011)



ADMINISTRATIVE HEARING OFFICER

STAFF REPORT

PROJECT:	6617 S. College Avenue Plat, BDR150011
APPLICANT:	BJ DeForge Hauser Architects, P.C. 3780 East 15 th Street Suite 201 Loveland, CO 80538
OWNERS:	6617 South College LLC Mark Dings 6617 South College Avenue Fort Collins, CO 80525

PROJECT DESCRIPTION:

This is a request for a consolidated project development plan/final plan to subdivide a tract located at 6617 South College Avenue (parcel number 96141-00-010). The property is a tract of land that has not been platted. The site contains 3.12 acres and is located on the southwest corner of South College Avenue and West Trilby Road. The project is located in the Limited Commercial (CL) zone district.

RECOMMENDATION: Staff recommends approval of 6617 S. College Avenue Plat, BDR150011.

EXECUTIVE SUMMARY:

Staff finds the proposed 6617 S. College Avenue Plat Project Development Plan/Final Plan complies with the applicable requirements of the City of Fort Collins Land Use Code (LUC), more specifically:

- The Project Development Plan/Final Plan complies with the process located in Division 2.2 Common Development Review Procedures for Development Applications of Article 2 Administration.
- The Project Development Plan/Final Plan complies with relevant standards of Article 3 General Development Standards.

• The Project Development Plan/Final Plan complies with relevant standards located in Division 4.24, Limited Commercial (CL) of Article 4 – Districts.

COMMENTS:

1. Background

The property was annexed into the City as part of the Southwest Enclave Annexation (Phase One) on October 3, 2006. The tract has not been previously platted. The applicant wishes to plat this tract, which subdivides it into three lots. The plat and subdivision of this parcel is concurrent with a Basic Development Review (BDR) for the existing medical marijuana sales and cultivation business to expand its operations. The marijuana sales and cultivation business will operate on Lot 1. An existing commercial/residential insulation business will continue operations on Lot 2. Lot 3 is currently vacant.

Direction	Zone District	Existing Land Uses
North	Limited Commercial (CL)	Veterinary hospital, single family home
South	Limited Commercial (CL)	Sand and gravel company
East	General Commercial (CG)	Gas station and convenience store, vacant parcel, car wash
West	Low Density Mixed-Use Neighborhood (LMN)	Roofing and restoration company

The surrounding zoning and land uses are as follows:

A zoning and site vicinity map is presented on the following page.





Vicinity Map



2. <u>Compliance with Article 3 of the Land Use Code – General Development</u> <u>Standards:</u>

The project complies with all applicable General Development Standards as follows:

A. Section 3.2.3 - Solar access, orientation, shading

All developments must be designed to accommodate active and/or passive solar installations and must not deny adjacent properties access to sunshine. The existing buildings are designed and located to minimize the casting of shadows on adjacent properties and could accommodate future active and/or passive solar installations.

B. Section 3.3.1(B) – Lots

No lot in a subdivision shall have less area than required under the applicable zoning requirements. Each lot must also have vehicular access to a public street. There is no minimum lot size required in the Limited Commercial (CL) zone under Section 4.24. While Lot 2 does not have direct frontage on a public street, it gains access to the street through a 20 foot-wide access easement.

3. <u>Compliance with Article 4 of the Land Use Code – Division 4.24, Limited</u> <u>Commercial (CL):</u>

The project complies with all applicable Article 4 standards as follows:

A. Section 4.24(A) – Purpose

The existing uses on the site are consistent with the district's intent to be a setting that allows small scale nonresidential uses to continue to exist or to expand while still protecting surrounding residential areas.

5. <u>Findings of Fact/Conclusion:</u>

In evaluating the request for the 6617 S. College Avenue Plat Project Development Plan/Final Plan, Staff makes the following findings of fact:

 A. The Project Development Plan/Final Plan complies with process located in Division 2.2 – Common Development Review Procedures for Development Applications of Article 2 – Administration.

- B. The Project Development Plan/Final Plan complies with relevant standards located in Article 3 General Development Standards.
- C. The Project Development Plan/Final Plan complies with relevant standards located in Division 4.24, Limited Commercial (CL) of Article 4 Districts.

RECOMMENDATION:

Staff recommends approval of 6617 S. College Avenue Plat, BDR150011.

ATTACHMENTS:

- 1. Zoning & Site Vicinity Map
- 2. 6617 S. College Avenue Plat



DINGS SUBDIVISION

CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO

STATEMENT OF OWNERSHIP AND SUBDIVISION: Know all persons by these presents, that the undersigned owner(s) of the following described land:

A tract of land located in Section 14, Township 6 North, Range 69 West of the Sixth P.M., City of Fort Collins, County of Larimer, State of Colorado, which, considering the East line of the Northeast 1/4 of said Section 14 as bearing S00°00'00"E and with all bearings contained herein relative thereto, is contained within the boundary lines which begin at a point which bears S00'00'00'E 165.00 feet, and again S89'09'41"W 49.54 feet from the Northeast Corner of said Section 14, and run thence S00°14'30"E 237.82 feet; thence N90°00'00"W 611.73 feet; thence N00°00'00"W 228.68 feet; thence N89°25'59"E 396.35 feet; thence N88°36'22"E 214.46 feet to the point of beginning (which above described tract contains 141,957 square feet, or 3.2589 acres) have caused the above described land to be surveyed and subdivided into lots as shown on this plat to be known as DINGS SUBDIVISION, subject to all easements and rights-of-way now of record or existing or indicated on this Plat. The rights and obligations of this Plat shall run with the land.

CERTIFICATE OF DEDICATION: The Owner does hereby dedicate and convey to the City of Fort Collins, Colorado (hereafter City), for public use, forever, a permanent right-of-way for street purposes and the Easements as laid out and designated on this Plat; provided, however, that (1) acceptance by the City of this dedication of Easements does not impose upon the City a duty to maintain the Easements so dedicated, and (2) acceptance by the City of this dedication of streets does not impose upon the City a duty to maintain streets so dedicated until such time as the provisions of the Maintenance Guarantee have been fully satisfied. The streets dedicated on this Plat are the fee property of the City as provided in Section 31-23-107 C.R.S. The Citys rights under the Easements include the right to install, operate, access, maintain, repair, reconstruct, remove and replace within the Easements public improvements consistent with the intended purpose of the Easements; the right to install, maintain and use gates in any fences that cross the Easements; the right to mark the location of the Easements with suitable markers; and the right to permit other public utilities to exercise these same rights. Owner reserves the right to use the Easements for purposes that do not interfere with the full enjoyment of the rights hereby granted. The City is responsible for maintenance of its own improvements and for repairing any damage caused by its activities in the Easements, but by acceptance of this dedication, the City does not accept the duty of maintenance of the Easements, or of improvements in the Easements that are not owned by the City. Owner will maintain the surface of the Easements in a sanitary condition in compliance with any applicable weed, nuisance or other legal requirements.

Except as expressly permitted in an approved plan of development or other written agreement with the City, Owner will not install on the Easements, or permit the installation on the Easements, of any building, structure, improvement, fence, retaining wall, sidewalk, tree or other landscaping (other than usual and customary grasses and other ground cover). In the event such obstacles are installed in the Easements, the City has the right to require the Owner to remove such obstacles from the Easements. If Owner does not remove such obstacles, the City may remove such obstacles without any liability or obligation for repair and replacement thereof, and charge the Owner the Citys costs for such removal. If the City chooses not to remove the obstacles, the City will not be liable for any damage to the obstacles or any other property to which they are attached.

MAINTENANCE GUARANTEE:

The Owner hereby warrants and guarantees to the City, for a period of two (2) years from the date of completion and first acceptance by the City of the improvements warranted hereunder, the full and complete maintenance and repair of the improvements to be constructed in connection with the Development which is the subject of this Plat. This warranty and guarantee is made in accordance with the City Land Use Code and/or the Transitional Land Use Regulations, as applicable. This quarantee applies to the streets and all other appurtenant structures and amenities lying within the rights-of-way, Easements and other public properties, including, without limitation, all curbing, sidewalks, bike paths, drainage pipes, culverts, catch basins, drainage ditches and landscaping. Any maintenance and/or repair required on utilities shall be coordinated with the owning utility company or department.

The Owner shall maintain said improvements in a manner that will assure compliance on a consistent basis with all construction standards, safety requirements and environmental protection requirements of the City. The Owner shall also correct and repair, or cause to be corrected and repaired, all damages to said improvements resulting from development-related or building-related activities. In the event the Owner fails to correct any damages within thirty (30) days after written notice thereof, then said damages may be corrected by the City and all costs and charges billed to and paid by the Owner. The City shall also have any other remedies available to it as authorized by law. Any damages which occurred prior to the end of said two (2) year period and which are unrepaired at the termination of said period shall remain the responsibility of the Owner.

REPAIR GUARANTEE:

In consideration of the approval of this final Plat and other valuable consideration, the Owner does hereby agree to hold the City harmless for a five (5) year period, commencing upon the date of completion and first acceptance by the City of the improvements to be constructed in connection with the development which is the subject of this Plat, from any and all claims, damages, or demands arising on account of the design and construction of public improvements of the property shown herein; and the Owner furthermore commits to make necessary repairs to said public improvements, to include, without limitation, the roads, streets, fills, embankments, ditches, cross pans, sub-drains, culverts, walls and bridges within the right-of-way, Easements and other public properties, resulting from failures caused by design and/or construction defects. This agreement to hold the City harmless includes defects in materials and workmanship, as well as defects caused by or consisting of settling trenches, fills or excavations.

Further, the Owner warrants that he/she owns fee simple title to the property shown hereon and agrees that the City shall not be liable to the Owner or his/her successors in interest during the warranty period, for any claim of damages resulting from negligence in exercising engineering techniques and due caution in the construction of cross drains, drives, structures or buildings, the changing of courses of streams and rivers, flooding from natural creeks and rivers, and any other matter whatsoever on private property. Any and all monetary liability occurring under this paragraph shall be the liability of the Owner. I further warrant that I have the right to convey said land according to this Plat.

NOTICE OF OTHER DOCUMENTS: All persons take notice that the Owner has executed certain documents pertaining to this Development which create certain rights and obligations of the Development, the Owner and/or subsequent Owners of all or portions of the Development site, many of which obligations constitute promises and covenants that, along with the obligations under this Plat, run with the land. The said documents may also be amended from time to time and may include, without limitation, the Development Agreement, Site And Landscape Covenants, Final Site Plan, Final Landscape Plan, and Architectural Elevations, which documents are on file in the office of the clerk of the City and should be closely examined by all persons interested in purchasing any portion of the Development site.

Owner: 6617 SOUTH COLLEGE LLC

MARK DINGS, Owner

State of Colorado } S.S. The foregoing dedication was acknowledged before me this _____ day of __

My notarial commission expires _____

ATTORNEY'S CERTIFICATION:

I hereby certify that this Subdivision Plat has been duly executed as required pursuant to Section 2.2.3(C)(3)(a) through (e) inclusive of the Land Use Code of the City of Fort Collins and that all persons signing this Subdivision Plat on behalf of a corporation or other entity are duly authorized signatories under the laws of the State of Colorado. This Certification is based upon the records of the Clerk and Recorder of Larimer County, Colorado as of the date of execution of the Plat and other information discovered by me through reasonable inquiry and is limited as authorized by Section 2.2.3(C)(3)(f) of the Land Use Code.

Attorney: _____

Address: _____

Registration No.: ____

NOTICE

ALL RESPONSIBILITIES AND COSTS OF OPERATION, MAINTENANCE AND RECONSTRUCTION OF THE PRIVATE STREETS AND/OR DRIVES LOCATED ON THE PRIVATE PROPERTY THAT IS THE SUBJECT OF THIS PLAT SHALL BE BORNE BY THE OWNERS OF SAID PROPERTY, EITHER INDIVIDUALLY, OR COLLECTIVELY, THROUGH A PROPERTY OWNERS' ASSOCIATION, IF APPLICABLE. THE CITY OF FORT COLLINS SHALL HAVE NO OBLIGATION OF OPERATION, MAINTENANCE OR RECONSTRUCTION OF SUCH PRIVATE STREETS AND/OR DRIVES NOR SHALL THE CITY HAVE ANY OBLIGATION TO ACCEPT SUCH STREETS AND/OR DRIVES AS PUBLIC STREETS OR DRIVES. SURVEYORS STATEMENT: l, Jay S. Robinson, a Colorado Registered Professional Land Surveyor, do hereby state that this Subdivision Plat was prepared from an actual survey under my personal supervision, that the monumentation as indicated hereon were found or set as shown, and that the forgoing Plat is an accurate representation thereof, all this to the best of my knowledge, information and belief. JAY S. ROBINSON Colorado Registered Professional Land Surveyor No. 37899 37899 APPROVED AS TO FORM. CITY ENGINEER:

City Engineer

PLANNING APPROVAL: By the Director of Community Development and Neighborhood Services of the City of Fort Collins, Colorado this _____day of ______day of ______, A.D., 20_____

Director of Community Development and Neighborhood Services

The rights granted to the City by this Plat inure to the benefit of the Citys agents, licensees, permittees and assigns.

20_____ by Mark Dings as Owner of 6617 South College LLC. NOTARY PUBLIC

By the City Engineer of the City of Fort Collins, Colorado this _____ day of ______ day of ______, A.D., 20_____,

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