

October 4, 2022

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

PROCLAMATIONS & PRESENTATIONS

5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

There were no proclamations for formal presentation prior to the Council meeting.

REGULAR MEETING

6:00 PM

B) CALL MEETING TO ORDER

Mayor Jeni Arndt called the meeting to order at 6:00 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City's Zoom platform.

C) PLEDGE OF ALLEGIANCE

Mayor Jeni Arndt led the Pledge of Allegiance to the American Flag.

D) ROLL CALL

PRESENT

Mayor Jeni Arndt
Mayor Pro Tem Emily Francis
Councilmember Susan Gutowsky
Councilmember Kelly Ohlson
Councilmember Shirley Peel
Councilmember Julie Pignataro

ABSENT

Councilmember Tricia Canonico

STAFF PRESENT

Interim Deputy City Manager Tyler Marr
City Attorney Carrie Daggett
City Clerk Anissa Hollingshead

E) CITY MANAGER'S AGENDA REVIEW

Interim Deputy City Manager Tyler Marr provided an overview of the agenda, including:

- There were no changes to the published agenda.
- All items on the consent agenda were recommended for approval.

- Noting the adoption of findings of fact following the Council's decision on an appeal at the prior meeting was placed on the discussion agenda in order for a Councilmember to recuse themselves from participating in the vote.

F) COMMUNITY REPORTS

None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS

(Including requests for removal of items from Consent Calendar for individual discussion.)

Joe Rowan, Fort Collins resident, came forward to speak regarding the minimum wage discussions occurring at the city level. He spoke in opposition to the Council making compensation decisions on behalf of business owners.

Jorie Kramer, Fort Collins resident, spoke in support of funding FC Public Media's budget request, and explained the services provided through this entity for area non-profits.

Bryan McIntyre, Fort Collins resident, spoke as a volunteer in support of providing funding for Fort Collins Public Media.

Barry Carroll, Fort Collins resident, spoke online to encourage the Council to partner with Poudre School District to construct an aquatics facility in the southeast area of the city to include additional swim lanes.

David Rout, president of Homeward Alliance, spoke in support of providing funding for addressing homelessness.

Sue Waldorf, Fort Collins resident who moved back to the city in late summer, shared concerns regarding communication across the City and with residents around construction is lacking. She shared the importance of doing construction in timing that aligns with adopted City ordinances as well as ensuring there is notification to residents prior to any time driveways are going to be blocked.

Nick Armstrong, Fort Collins resident, spoke in support of funding Neighborhood Livability and Social Health offers 24.5 (Rental Licensing Program) and 24.6 (ARPA Neighborhood-Led Resilience Programs + Projects).

Kimberly Miller, Fort Collins resident, thanked the Council for its hard work on the budget and echoed the letter sent by the Fort Collins Sustainability Group regarding three offers relating to climate work. Suggested funding 1.10 relating to manufactured home efficiency, 27.11 for mobility innovation, and 27.9 relating to electric vehicles.

Rich Stave, Fort Collins resident, spoke on items 8 and 10 on the consent calendar. Alternative 4 on item 8 regarding was the one presented to the public, however alternative 1 is the one now being recommended. On item 10, relating to solar sizing, he spoke against the approach being presented, although he does like it provides better transparency. This can turn into a giveaway to those with larger lots because of increased ability to install more solar panels. This proposal puts more burden on lower income residents to enable a select group to receive the majority of incentives.

Tom Weatherly, Fort Collins resident, shared a handout and visual display about landfills for wind turbines in expressing concerns about wind and solar energy waste and encouraged nuclear energy as the cleanest energy source available.

Ann Hutchison, president and CEO of the Fort Collins Area Chamber and Fort Collins resident, and spoke on behalf of the Chamber's 1100 members, over 80% of whom are small businesses with 20

or fewer employees. She encouraged the Council to end its conversation around a \$19 an hour minimum wage as unsustainable for businesses.

Don Delaney, Fort Collins resident, spoke in support of increasing accessibility for competitive swimming in the community.

Jessie Warren, Fort Collins resident, spoke as an employee of Homeward Alliance in support of the inclusion of funding for addressing homelessness in the budget to be adopted.

Lauren Storeby spoke as a Fort Collins resident and the co-owner of Snack Attack in Midtown, an entrepreneur, a Chamber board member, and a small business development coach in opposition to the adoption of a \$19 an hour local minimum wage. She also requested a new survey be sent out to businesses for feedback on \$19 an hour, since it is a large difference from the \$15 an hour rate noted in the original survey.

Kevin Cross, Fort Collins resident not on the sign in sheet, spoke on behalf of the Fort Collins Sustainability Group in support of several budget offers, including three currently unfunded offers, 1.10 contractual project manager and manufactured home efficiency; 27.9 contractual planner and electric vehicle planning; and 27.11 mobility innovations zone plan.

Melissa Zuniga, Fort Collins resident and owner of several small businesses and board member of the Latino Chamber of Commerce, spoke against the proposed \$19 local minimum wage.

H) PUBLIC COMMENT FOLLOW-UP

Councilmember Julie Pignataro

- Thanks to everyone who came out tonight and noted the Council's third budget discussion will be next week.
- Requested an update on the Southeast Recreation Center. Interim Deputy City Manager Tyler Marr noted there will be a work session on aquatics on November 8 and will provide updated information on this topic.
- Thanked everyone who spoke regarding minimum wage as it was requested that community members shared their stories.
- Requested someone address Mr. Stave's comments regarding Solar Sizing. John Phelan, Energy Services Manager, came forward and provided information on the solar sizing and solar credit rates, noting only the solar sizing is coming forward tonight while solar credit rates will be coming forward at a future meeting.

Mayor Arndt thanked everyone for coming out and participating in public comment.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

None.

J) CONSENT CALENDAR

1. Consideration and Approval of the Minutes of the September 20, 2022 Regular Meeting.

The purpose of this item is to approve the minutes of the September 20, 2022 Regular meeting.

Approved.

2. Second Reading of Ordinance No. 097, 2022, Appropriating Unanticipated Revenue From Philanthropic Donations Received in 2022 Through City Give for Various City Programs and Services as Designated by the Donors.

This Ordinance, unanimously adopted on First Reading on September 20, 2022, appropriates \$90,234 in philanthropic revenue received through City Give. These miscellaneous gifts to various City service areas support a variety of programs and services and are aligned with both the City's strategic priorities and the respective donors' designation.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on Second Reading.

3. Second Reading of Ordinance No. 098, 2022, Appropriating Prior Year Reserves in the General Fund to Provide Financial Support to the United Neighbors/Vecinos Unidos for Nueva Vida Mobile Home Park.

This Ordinance, unanimously adopted on First Reading on September 20, 2022, provides financial support to United Neighbors/Vecinos Unidos (UN/VU), a non-profit 501(c)(3) corporation that recently acquired ownership of the Parklane Mobile Home Park. On August 1, 2022, residents of the Parklane Mobile Home Park (Parklane MHP), with the help of a newly formed nonprofit (United Neighbors/Vecinos Unidos, UN/VU), outbid a commercial owner's offer and purchased their park. With this purchase, residents of Parklane have become one of only six mobile home parks in Colorado purchased by residents. UN/VU is seeking City funding toward several urgent and necessary infrastructure repairs to the park. This item was discussed at the September 1, 2022, Council Finance Committee.

Adopted on Second Reading.

4. Second Reading of Ordinance No. 099, 2022, Annexing the Property Known as the Peakview Annexation No. 1 to the City of Fort Collins, Colorado.

This Ordinance, unanimously adopted on First Reading on September 20, 2022, annexes a 5.78-acre portion of private property that will be used for the construction of Greenfields Drive, a future arterial street within the East Mulberry Corridor. The property to be annexed is a portion of the property subject to the Peakview Planned Land Division ("PLD") development application which is currently being processed by Larimer County and is expected to be approved prior to completion of this annexation. The remaining property subject to the PLD is expected to petition for annexation as a condition of the County's approval. The Initiating Resolution for this annexation was adopted on August 16, 2022. A related item to zone the annexed property is presented as the next item on this agenda.

This Annexation request is in conformance with State of Colorado Revised Statutes as they relate to annexations, the City of Fort Collins Comprehensive Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreements.

Adopted on Second Reading.

5. **Second Reading of Ordinance No. 100, 2022, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Peakview Annexation No. 1 to the City of Fort Collins and Approving Corresponding Changes to the Residential Neighborhood Sign District Map and Lighting Context Area Map.**

This Ordinance, unanimously adopted on First Reading on September 20, 2022, zones the property included in the Peakview Annexation No. 1 Annexation into the General Commercial (C-G), Neighborhood Commercial (N-C) and Medium Density Mixed Use Neighborhood (MMN) zone districts and placement into the LC1 and LC2 Lighting Context Areas.

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 2(d) of the Council's Rules of Meeting Procedures most recently adopted in Resolution 2022-068.

Adopted on Second Reading.

6. **Second Reading of Ordinance No. 101, 2022, Authorizing the Release of a Restrictive Covenant on Property at 331 North Howes Street Owned by Villages, Ltd.**

This Ordinance, unanimously adopted on First Reading on September 20, 2022, authorizes the release of the Agreement of Restrictive Covenants Affecting Real Property for the property located at 331 North Howes Street. This property is owned by Villages, Ltd, a 501(c)(3) non-profit corporation managed by Housing Catalyst. In exchange for repaying the original \$3,000 in Community Development Block Grant (CDBG) loan funds, the City will allow early release of a restrictive covenant which would otherwise expire in 2023.

Adopted on Second Reading.

7. **Items Pertaining to the Annual Adjustment Ordinance.**

A. First Reading of Ordinance No. 102, 2022, Making Supplemental Appropriations from Various City Funds.

B. First Reading of Ordinance No. 103, 2022, Appropriating Prior Year Reserves in Various City Funds.

The purpose of these Annual Adjustment Ordinances is to appropriate dedicated and additional revenues or prior year reserves that need to be appropriated before the end of the year to cover related expenses that were not anticipated, and therefore, not included in the 2022 annual budget appropriation. The additional revenue is primarily from fees, charges for service, rents, contributions, donations, and grants that have been paid to City departments to offset specific expenses.

Adopted on First Reading.

8. **First Reading of Ordinance No. 104, 2022, Authorizing the Conveyance of a Permanent, Nonexclusive Stormwater Drainage Easement on Redtail Grove Natural Area to WWW Properties, LLC.**

The purpose of this item is to authorize conveyance of a permanent, nonexclusive drainage easement to WWW Properties, LLC (owners of Fort Collins Nissan and Fort Collins Kia) on Redtail Grove Natural Area. The proposed easement area aligns with an existing historic drainage path for stormwater. WWW Properties, LLC will construct underground water quality and detention facilities on their property to capture stormwater, decrease peak flow rates into Fossil Creek, and

decrease the amount of water overtopping the Fossil Creek Trail, as well as the time the trail is overtopped, during significant storm events.

Adopted on First Reading.

9. First Reading of Ordinance No. 105, 2022, Authorizing the Conditional Conveyance of Certain City-Owned Property Rights to Chris Vandemoer and Geo. A. Henderson Co.

The purpose of this item is to seek Council authorization for the conditional conveyance of certain City-owned real property rights to Chris Vandemoer and Geo. A. Henderson, Co. (collectively "Vandemoer"). The proposed conveyance is part of a proposed settlement agreement between the City, Vandemoer, and The Nature Conservancy ("TNC") to obtain necessary property rights on the primary private access road for all three phases of the City's Halligan Water Supply Project ("Halligan Project"), in which the City intends to replace or modify a dam and enlarge Halligan Reservoir. Vandemoer owns certain real property adjacent to the reservoir that includes a private road that serves as the primary access point to the reservoir and the dam. The property is also encumbered by two conservation easements held by TNC. Since late 2018, City representatives have negotiated with Vandemoer to obtain property rights necessary for the Halligan Project. The parties are currently in eminent domain litigation for Phase 1 of the Project and have had productive conversations regarding a global settlement for all three phases of the Halligan Project.

The conveyance of the City-owned property would only occur if: (1) the parties enter into a settlement agreement; and (2) the City completes construction of the Halligan Project. This Ordinance does not seek approval of the settlement agreement itself. The decision whether to enter into the settlement agreement would be made by the City Manager following a recommendation by City staff, in consultation with outside legal counsel and the City Attorney's Office. This Ordinance is limited only to authorizing the conditional conveyance of City-owned property. The structure of the settlement agreement is explained more fully below.

Adopted on First Reading.

10. First Reading of Ordinance No. 106, 2022, Amending Chapter 26 of the Code of the City of Fort Collins Regarding Net Metered Renewable Energy Generation System Sizing and Adopting Administrative Rules for Net Metered System Sizing.

This Ordinance amends sizing requirements in City Code that limit the generating size (i.e. production capacity) of renewable energy systems, removing reference to 120% of a customer's annual electric consumption and adopts administrative program rules to guide the Utilities' Executive Director to define allowable generation system sizing consistent with the City's 2030 energy and climate goals.

Adopted on First Reading.

11. Resolution 2022-101 Granting A Revocable Permit to Current Holders of Temporary Outdoor Expansion Permits Issued Pursuant to Emergency Rule and Regulation No. 2020-17A and Emergency Ordinance No. 124, 2020, to Temporarily Continue to Occupy Public Rights-of-Way.

The purpose of this item is to bring forth a resolution that addresses a timing gap between terminating emergency rules and regulations and consideration of code changes to allow expanded outdoor permitting on an on-going basis.

Adopted.

END OF CONSENT CALENDAR

K) ADOPTION OF CONSENT CALENDAR

Councilmember Francis moved, seconded by Councilmember Gutowsky, to approve the recommended actions on items 1-11 on the consent calendar.

The motion carried 6-0.

Absent: Councilmember Canonico.

L) CONSENT CALENDAR FOLLOW-UP

None.

M) STAFF REPORTS

None.

N) COUNCILMEMBER REPORTS

Councilmember Shirley Peel

- Attended Convening of a National Nonpartisan Conversation on Voter Rights and came away feeling very positively about the system of voting in Colorado.
- Privileged to help paint at a Habitat for Humanity home at a recent event.
- Attended 40 Days for Life kickoff event focused on prayer for women with unplanned pregnancies.
- Attended CSU President's fall address and was very encouraged about the way they are looking into the future.
- Attended CARE Housing's 30th Anniversary celebration and got to hear from CARE Housing's founder, Sister Mary Alice Murphy who helped bring about that affordable housing location off of Shields 30 years ago.
- Attended Harvest Farm dinner where a young man spoke on how his life was changed in that program for men coming out of substance addiction.
- Recognized that October is Domestic Violence Awareness Month.

Councilmember Susan Gutowsky

- Attended Behavioral Health Policy Committee meeting and heard from one of the directors of behavioral health with an update on the facility that is now up with the outer skin complete. They are anticipating finishing in August next year with 64 beds in house to start taking clients in November. They are also planning on being a training center for future mental health providers.
- Last Monday attended the Water Symposium at Colorado State University, focused on the Colorado River.
- Attended the Hero Fest, a wonderfully organized even in Council Tree to celebrate first responders and share the steel structure that is normally housed at the Poudre Fire facility west of town and that will one day be part of the memorial at Spring Creek Park.
- Friends came in from Houston the past weekend and went downtown for lunch while the corgis were out and about. They also noted the dazzling flowers downtown bursting with color.

Mayor Jeni Arndt

- 45 people participated in a Northern Colorado Trade Mission last week with Salt Lake City, which was a nice opportunity to learn from them and get some new ideas.

O) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

None.

P) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

12. Resolution 2022-102 Adopting Findings of Fact Supporting the Historic Preservation Commission's Determination That 1802 North College Avenue was Eligible for Landmark Designation and Denying the Landowner's Appeal.

The purpose of this item is to make findings of fact regarding the appeal of the Historic Preservation Commission's Decision Finding the Property at 1802 North College Avenue a Historic Resource for the Purposes of Development Review under Land Use Code 3.4.7 and therefore eligible for Landmark Designation. The appeal was heard by Council on September 20, 2022.

Mayor Pro Tem Francis noted she had watched the video of the meeting where the appeal was heard and is in agreement with the findings.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to adopt the resolution.

Councilmember Ohlson noted he also watched the meeting video of the appeal and agrees with the findings.

***The motion carried 5-0.
Recused: Councilmember Peel
Absent: Councilmember Canonico.***

13. Items Relating to the Designation of Indigenous Peoples' Day.

A. Native American Community Update.

B. Resolution 2022-103 Recognizing the Second Monday in October as "Indigenous Peoples' Day" in the City of Fort Collins, Colorado, Acknowledging and Supporting the Native and Indigenous Peoples Living in Fort Collins, and Affirming the City's Commitment to Recognize and Include the Voices and Interests of Native and Indigenous Peoples in the City's Commitment to Work Towards Equity.

Members of the Fort Collins Native American and Indigenous community collectively have created a resolution recognizing the second Monday in October as Indigenous Peoples' Day. Staff from the Equity and Inclusion Office also will share an update on the work that has been taking place with the Native American community this year.

Senior Equity Specialist Rachael Johnson led the Native American Community Update, presenting as set forth in the slide deck in the agenda packet.

Public Comment:

David Small came forward and read the first part of the resolution.

Dr. Valerie Small came forward and read the next whereas clause of the resolution.

Destinee Danks came forward and read the next whereas clause of the resolution.

Dr. Jaime Wilson (not on sign in sheet) came forward and read the next whereas clause of the resolution.

Ty Smith (not on sign in sheet) came forward and read the next whereas clause of the resolution.

Nizhoni Norwood came forward to read the next whereas clause of the resolution.

Michelle Garro (not on sign in sheet) came forward to read the next whereas clause of the resolution.

Mariah Iron came forward to read the next whereas clause of the resolution.

Dominique David Chavez came forward to read the next whereas clause of the resolution.

Mayor Jeni Arndt read the resolved clauses of the resolution to conclude the resolution.

A resident shared remarks in honor of her ancestors as an educator in the community and faculty member at CSU and the mother of three children attending PSD schools. We have a long way to go in the US regarding our acknowledgement of our shared history.

Jan Iron asked all in attendance in support to please stand. She then shared her history with 42 years in Fort Collins, from New Mexico, and now has grandchildren in the community. We are acknowledging our ancestors tonight and all their strength and perseverance. Nothing has happened in 42 years here and now finally things are happening and she wants to acknowledge that. She also spoke to the community's dream to have a cultural center and asked the Council to listen and hear the voices of community.

Council discussion

Councilmember Pignataro

- Thank you to everyone who has come out tonight. Awesome work by everyone on this and appreciate the recommendations.

Mayor Pro Tem Francis

- Thank you to everyone for coming out and for all the time and effort that has been spent on this resolution, stating she is happy to support the commitments of the resolution on behalf of the City.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to adopt the resolution.

The motion carried 6-0.

Absent: Councilmember Canonico.

14. Public Hearing #2 on the 2023-24 Recommended Budget for the City of Fort Collins.

This is the second public hearing on the City Manager's 2023-24 Recommended Budget for the City of Fort Collins. The purpose of this public hearing is to gather public input on the 2023-24 budget. Both hearings were set by Council adoption of Resolution 2022-097 at its September 6, 2022, meeting. The City Manager's 2023-24 Recommended Budget can be reviewed at the City Clerk's Office by appointment only and online at fcgov.com/budget.

Public input will also be taken during the budget adoption meetings on Tuesday, November 1 and Tuesday, November 15, 2022, at 6:00 p.m. in Council Chambers.

Rich Stave, Fort Collins resident, came forward to comment on the item that expands transportation opportunities, noting bus services stopped at 7 pm, requiring that he bring his bike to attend this meeting in order to get home. He requested seeing cost versus benefits when budget proposals relating to climate are presented.

Clerk's Note: Mayor Arndt called for a 10-minute recess at 7:47 p.m. The meeting resumed at 8:02 p.m.

15. 1306 West Mountain Avenue Landmark Design Review Appeal.

The purpose of this quasi-judicial item is to consider an appeal of the Historic Preservation Commission's (HPC) Decision on July 20, 2022, regarding proposed alterations to the City landmark at 1306 West Mountain Avenue, also known as the Jackson-Bailey House & Garage.

This appeal is regarding the final design review decision of the applicants' project by the HPC. The HPC is tasked by Municipal Code Chapter 14, Article IV, with assessing whether a proposed exterior project on a City Landmark meets the Secretary of the Interior's Standards for Rehabilitation, and to issue, with or without conditions, or to deny, a Certificate of Appropriateness. In the application that was the subject of the July 20, 2022, decision being appealed, the applicant proposed an addition onto the rear elevation of the main historic building along with related rehabilitation including the modification of windows along the north end of the west elevation. The HPC approved the addition but denied the modification of windows and the Appellant is appealing the denial of the windows both on fair hearing and interpretation and application grounds.

A previous application to make alterations to the same property was approved by the HPC on February 16, 2022, with the written decision issued on and dated February 17, 2022, and included demolition of a non-historic accessory structure, construction of a new garage building, and modification of basement windows for egress compliance under the International Existing Building Code. The previous application included an addition to the house that was denied but a modified addition was approved as part of the July 20, 2022, HPC decision.

A Notice of Appeal was filed on August 2, 2022, under the following grounds:

- 1. The HPC failed to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter, specifically City Code Sec. 14-53, the Secretary of the Interior's Standards for Rehabilitation (Standards 2 and 5), and the Secretary of the Interior's "Interpreting Standards" Bulletin #14 regarding Modifications to Windows on Secondary Elevations.*
- 2. The HPC was biased against the appellant by reason of conflict of interest or other close business, personal or social relationship that interfered with the HPC's independence of judgement.*

The HPC's sole consideration was whether the project proposed at 1306 West Mountain Avenue met the City's adopted standards for reviewing projects on historic buildings, the Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties, specifically those for adaptive reuse, or Rehabilitation.

Mayor Arndt noted she would be recusing herself from this item due to a disclosed conflict of interest and left the meeting chambers.

Mayor Pro Tem Francis introduced the item and the nature of the appeal.

City Attorney Carrie Daggett provided a brief overview of the appeal process.

STAFF EXPLANATION AND PRESENTATION

Paul Sizemore, Community Development and Neighborhood Services Director, presented on behalf of staff as set forth in the slide deck in the agenda materials to provide an explanation of the nature of the appeal.

CONFLICTS

Mayor Pro Tem Francis asked if any Councilmembers wished to disclose any potential conflict of interest issues. No conflicts were disclosed.

SITE VISIT OBSERVATIONS

Mayor Pro Tem Francis noted no organized site visit occurred for this appeal but asked if any Councilmembers visited the site in preparation for this appeal to state what they did and observed.

No Councilmembers visited the site.

PARTIES IN INTEREST PRESENT

Mayor Pro Tem Francis asked the appellant and property owner as well as any parties in interest to identify themselves.

Present in support of the appeal:

- Brian Berkhausen, property owner.
- Jeff Schneider, contractor helping with the proposed property modifications

Present and opposed to the appeal:

- Laura Bailey, spoke at the HPC hearing and is therefore a party in interest.

TIME ALLOCATIONS

Mayor Pro Tem Francis provided the time allocation, indicating each side of the appeal would be provided 20 minutes in total for each side of the appeal to make any initial presentations, and then 10 minutes for each side for rebuttals.

PROCEDURAL ISSUES

Mayor Pro Tem Francis asked if there were any general procedural issues or objections to be addressed before the Council began hearing arguments. No issues or objections were raised.

PRESENTATIONS IN SUPPORT OF THE APPEAL

Mayor Pro Tem Francis invited the appellant and other parties-in-interest in support of the appeal to make their presentation in support of the appeal.

Brian Berkhausen participated in the hearing via Zoom as the property owner and spoke to the appeal, explaining the work he and his wife have done to prepare to make modifications to their home in order to remain in the home as they age. The property is a designated landmark and requires approval by the Historic Preservation Commission to do the planned work.

Jeff Schneider also spoke to the appeal as the developer working with the property owners. He presented slides as provided as part of the public record for the item. He noted the work done by applicant has included working with the commission throughout the process to be responsive to concerns and input provided.

PRESENTATIONS IN OPPOSITION TO THE APPEAL

Laura Bailey came forward and identified herself as the daughter of Bob Bailey who worked to have this property designated as a landmark in 2014.

- She shared regarding her father's commitment to small scale living and the gift he provided the community in ensuring this property would be preserved as a designated landmark as a representation of an arts and crafts bungalow. She indicated in return for providing this gift, her father gave up the opportunity to make additional improvements to the property he may have liked to have done and was provided assurances by the City through this process the property would be protected from unnecessary exterior alterations, which is the case in this instance when changes are being proposed to allow for changes in furniture placement.
- She also spoke about the extent of her father's relationship with current HPC member Meg Bailey was limited to their time working together on the designation, which was properly disclosed by the commissioner before participating in proceedings.
- She spoke regarding the windows included in the plans, and how they differ from original elements approved by the Commission in February.
- She spoke regarding the size of the addition proposed, initially developed to more than double the size of the property.
- The commissioner who did recuse himself from the hearing was an immediate close neighbor of the property, which was fair and appropriate given the circumstances.
- It was stated the immediate neighbor would be most impacted by the development and therefore since he is fine with it, there shouldn't be an issue. She argued the entire community, and particularly those who value the ability to look back and see where we came from, would be impacted by this change.
- To her understanding, the guidelines are not loose guidelines but rather standards that must be complied with and need to be followed in order to assure meeting federal and state standards and enable the receipt of funding from those levels of government for historic preservation work.
- The process of getting a home designated is not an easy process and impacts the ability of the homeowner to make some future changes and do so in order to protect the house. She suggested future changes, including making a designation something that is noted on the deed. In this instance, the current property owners were not aware of the designation of the property when they purchased the home.
- She provided a photo, also already in the record as part of the appellant's presentation, showing the view of the windows at question in the appeal.

REBUTTAL IN SUPPORT OF THE APPEAL

Jeff Schneider again came forward to provide a rebuttal.

- Nothing in the standards and guidelines say you cannot do anything to a historic landmark.
- Ms. Dunn's personal bias came out when she commented "if your furniture can't fit into the house, you can't buy an Oldtown house."
- The comment the first design doubled the size of house and would fundamentally change the character of the house. While it would change the size of the house, it met all other land use codes and guidance for design parameters in the zone. The standards from the Secretary of the Interior do not preclude making alterations.
- Asked why the bedroom window is more historically relevant than the bathroom window also proposed for removal and approved by the HPC on February 16.

- Regarding window sizes, the proposal is to match the same size and detail of existing windows.
- Original plan was to replace all of the existing windows, but they have listened to the commission and staff to instead rehabilitate the existing windows and only replace the bathroom window.
- The adjoining neighbor is the only one who will be impacted on a day to day basis by the work to this property. From the street, this work will scarcely be evident.
- To go with the recommendation of the HPC, it would be necessary to do a casement window to comply with egress, not a double hung window.

Brian Berkhausen also followed up on the following points:

- New windows in the bedroom would match the existing windows in the house, and the replacement of one window was already approved in February. Denying this now seems incongruous.
- Making changes to allowing navigating with a walker to allow aging in place.

REBUTTAL IN OPPOSITION TO THE APPEAL

Laura Bailey came forward to provide a rebuttal.

- Objection is to someone buying a home that is a designated landmark and expecting to be able to make alterations for their own convenience.
- Stated she cannot speak for Meg Dunn, as she does not know Meg Dunn, but does know that the HPC is concerned with only the exterior of the property.

COUNCIL QUESTIONS

Councilmember Peel

- Asked if the standards are codified and what the connection is between the Secretary of Interior standards and City Code, including whether staff looks solely at those standards or if they are also looking at other code provisions. Director Sizemore spoke to the Secretary of Interior standards, noting they have been adopted by reference into the City Code. There are also other documents like the National Park Service bulletins and advisory documents that are not incorporated into our code but that do provide guidance in applying standards.
- Requested clarification on how to apply standards and whether an applicant has to meet all the standards and how firm they are as part of trying to understand how the first set of windows could be approved and the second set was not. Planner Bertolini responded with details about how the standards create a framework for decision making because they apply to such a broad array of historic resources across the country, including different landscapes, buildings and other facilities. When Standards are being used in local government, we are also looking at what local codes say. The difference between the two decisions was a judgement largely based on the degree of change to the building elevation. February's change was to a small window opening, whereas the change in July seemed more significant and involved the destruction of more historic material to make that change.
- In regards to the fairness of the hearing, asked the City Attorney what is to be considered as a conflict of interest, as the appellant also listed a couple of other things that were indicative of bias, which seems like a different thing than a conflict of interest. Requested clarification regarding what the Council can consider in evaluating this claim. City Attorney Daggett read the code language pertaining to the provisions defining the ability to be unbiased and fair in the participation in the decision, noting it is the same standard Council faces when evaluating a quasi-judicial matter. Council's evaluation in this instance is to determine whether Commission Dunn was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with her independence of judgement.

Councilmember Pignataro

- Asked whether there was a recording for the February HPC hearing. Staff confirmed there is not, however some amount of information was provided about what was approved at that meeting, including the drawings that were rejected were included in the July meeting packet.
- Assistant City Attorney Brad Yatabe responded to a question relating to consistency over the years and among different members of the Historic Preservation Commission, indicating his role in this appeal was in place of another attorney who had a conflict of interest in this matter and therefore staff may be better able to address these concerns.

Councilmember Peel asked how minute in the level of detail does staff go down to and how consistent is staff on a project regarding requirements to be historically accurate. Planner Bertolini indicated with the standards being written to cover such a broad array of things, it is dependent on the property and what makes it significant. This is something that ideally is covered in the ordinance or the landmark nomination that backs up the ordinance to help in indicating what features are most important to that property. For this property, because it was nominated under standard 3 for design and construction, we are going to look at those architectural features that make it a small-scale craftsman cottage as most significant.

Councilmember Pignataro followed up with a question after seeing the picture in the packet of the windows that were approved in February if it is accurate to say it was a matter of the attention of detail not being given to those windows given the larger scope of changes being proposed overall that were not approved. Planner Bertolini indicated in the staff analysis that modification was not recommended but was not specifically in violation of that standard. That was not a major topic of discussion in February, but it was addressed in the staff analysis.

Mayor Pro Tem Francis

- Requested clarification regarding whether these windows now proposed were also not recommended but found to not be in violation of the standard and asked for clarification in comparing the language in the staff report from the February hearing and the July hearing. Director Sizemore followed up by reading the language used in the findings at each hearing.
- Also requested clarity on the egress windows and how if there is one window and it is egress how that fits into the historical context. Planner Bertolini indicated that gets back to the issue of character defining features, and typically basement windows are not going to be a character defining feature so we typically approve those. The benefits of being able to activate basement space include avoiding adding more square footage that would impact character defining features. In the case of a single egress window, a desire to use a casement window that has a sash that visually looks similar. As part doing no harm, there would be a desire to utilize the existing opening rather than punching new holes in the wall.

Councilmember Gutowsky asked if there is a safety requirement for other egress windows in the house. Jim Bertolini indicated there is not a strict requirement for an existing building with existing that is the standard for bedrooms.

COUNCIL DISCUSSION

Mayor Pro Tem Francis closed the hearing at 9:33 p.m.

Councilmember Pignataro indicated she did believe it was a fair hearing based on the parameters that should be applied. Councilmember Peel also agreed it was a fair hearing and there was not enough evidence to provide proof it was not. Mayor Pro Tem Francis also concurred.

Councilmember Gutowsky indicated it was a fair hearing because the commission followed the Secretary of Interior Standards, and the Commission's interpretation of the Standards. The intent of the hearing was to preserve the authenticity of the property.

Councilmember Pignataro moved, seconded by Councilmember Peel, that the Council find that the Historic Preservation Commission conducted a fair hearing in their consideration of the proposed alterations to the Fort Collins landmark located at 1306 W. Mountain Avenue finding that Commissioner Meg Dunn was not biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with her independence of judgement because the appellant did not establish with competent evidence in the record that Commissioner Meg Dunn was biased against the appellant.

And further moved that, based on the evidence in the record and presented at this hearing, the appeal allegation that the HPC did not conduct a fair hearing is hereby found to be without merit and is denied.

The motion carried 5-0.

Absent: Councilmember Canonico.

Recused: Mayor Arndt.

Councilmember Ohlson indicated the fact the historic designation was in place at the time of purchase by the current owner is important. The property was designated because of its style and construction, not because of who lived there, and the City made a commitment to honor the integrity of the structure when it was designated. Fenestration is a key piece of historic preservation and historical integrity. He stated his support for the Commission's decision, and the importance of the proportion and symmetry of windows in the Craftsman style. Aging in place, while important, is not an issue before the Council in this decision.

Councilmember Pignataro noted these standards need to be complied with but are open to interpretation and none of the windows at question are examples of craftsman style. The HPC was divided in their decision, showing the importance of interpretation. Any discussion of the interior and furniture placement is a non sequitur.

Councilmember Peel noted in reading through the transcripts of the meetings, it did seem like staff was very clear about their recommendation, but the Historic Preservation Commission was inconsistent. Listening to staff's reasoning, it does appear the Commission did come to the right conclusion.

Mayor Pro Tem Francis asked if the applicant would have to come back before the commission for another application for an egress window. Planner Bertolini noted it would be an administrative approval. Francis indicated her belief the process that the applicant had to follow wasn't positive for the city, but that the right decision was made by the Commission given the magnitude of demolition proposed.

Assistant City Attorney Brad Yatabe provided a note of clarification that the notice of appeal cites code section 14-53, but the correct citation should lead to 14-54 which refers to an HPC process and not a staff process. The appellant's intent appears to be clear in the notice of appeal otherwise.

Councilmember Peel moved, seconded by Councilmember Ohlson, that the council find that the Historic Preservation Commission properly interpreted and applied City Code Section 14-54 when it denied the proposed window alterations to 1306 W. Mountain Avenue finding that the Historic Preservation Commission properly interpreted and applied Standards #2 and #5 of the Secretary of Interior Standards because the appellant did not establish with competent evidence in the record that the Historic Preservation Commission failed to properly interpret and apply standard #2 or standard #5.

And further moved that the appeal allegation that the HPC failed to properly interpret and apply City Code Section 14-54 is hereby found to be without merit and is denied and the appeal dismissed in its entirety.

The motion carried 4-1.

Ayes: Mayor Pro Tem Francis, Councilmembers Gutowsky and Ohlson.

Nay: Councilmember Pignataro.

Absent: Councilmember Canonico.

Recused: Mayor Arndt.

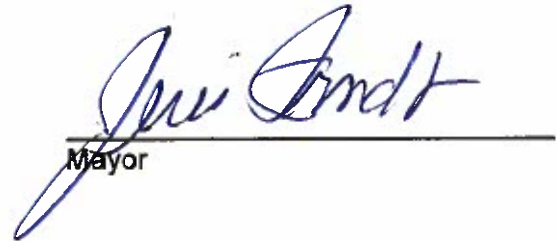
Q) OTHER BUSINESS

A. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

None.

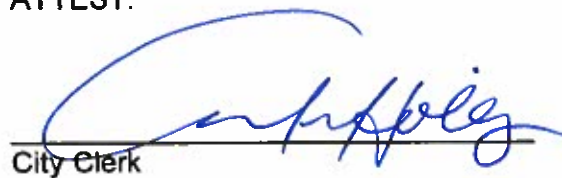
R) ADJOURNMENT

There being no further business before the Council. the meeting was adjourned at 9:51 p.m.



Mayor

ATTEST:



City Clerk

