

November 6, 2024

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Special Meeting – 6:00 PM

A) 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.

B) PLEDGE OF ALLEGIANCE

C) ROLL CALL

PRESENT

Mayor Jeni Arndt

Mayor Pro Tem Emily Francis

Councilmember Susan Gutowsky

Councilmember Kelly Ohlson

Councilmember Melanie Potyondy

Councilmember Tricia Canonico

ABSENT

Councilmember Julie Pignataro

STAFF PRESENT

City Manager Kelly DiMartino

City Attorney Carrie Daggett

City Clerk Delynn Coldiron

D) CONSIDERATION OF ITEMS IDENTIFIED IN THE CALL OF SPECIAL MEETING

1. Fort Collins Rescue Mission Development Plan Appeals.

Mayor Arndt outlined the meeting agenda noting there are two appeals that will be heard, the Bradberry/Mendoza appeal and the Jones appeal.

City Attorney Daggett outlined the appeal process.

STAFF INTRODUCTION

Kim Meyer, Interim Director of Community Development and Neighborhood Services, discussed the proposed Rescue Mission location and Service Commercial (CS) zoning, which includes a homeless shelter as a permitted use. Meyer also outlined the previously approved infrastructure plan and discussed the site plan for the proposed project.

Meyer discussed the Mendoza appeal which alleged the Planning and Zoning Commission failed to conduct a fair hearing and considered evidence which was grossly misleading or substantially false. Additionally, the appeal cites several Land Use Code sections related to applicability in terms of parking requirements, environmental impact, operational and physical compatibility standards, and the permitted use itself. Meyer stated the Jones appeal also alleges an error in a failure to properly

interpret and apply the Land Use Code related to building and project compatibility, purpose, operational and physical compatibility standards, and the definition of compatibility.

Meyer stated many of the comments that were received related to concerns about social and behavioral problems, possible expansion in the number of beds, and negative impacts to the neighborhood.

COUNCIL DISCLOSURES

Mayor Pro Tem Francis noted her previous job entailed advising her employees on how to support residents in gathering signatures for their objection to the site, which was before a developer was in place and the site was being considered before the Homeless Advisory Council; however, she did not believe that to be a conflict of interest.

Councilmember Potyondy stated she made an informal visit to the site when she was on a ride along with the HOPE team during which she noted the topography of the site.

Councilmember Gutowsky stated she visited the site and observed the perimeter of the property and surrounding buildings.

Councilmember Ohlson stated he did an informal walk of the property a couple years ago related to the stormwater issue.

Mayor Arndt stated she has driven past the site.

The following individuals identified themselves as parties in interest: Debbie Bradberry, Rebecca Mendoza, Troy Jones, Gregory Lieb, Charlie Messerlian, and Claire Havelda.

Mayor Arndt outlined the time allotments for presentations and rebuttals.

PROCEDURAL ISSUES

Mayor Arndt stated the Bradberry/Mendoza notice of appeal includes new evidence not related to the fair hearing issue: references to a Coloradoan article, a California report about homelessness, and four photos, all of which appear not to be allowable under City Code. No Councilmembers or parties in interest objected to the evidence not being admitted and it was therefore disregarded.

Claire Havelda, attorney representing the applicant, stated she only prepared one response and asked if she should bifurcate that given Council's decision to hear each appeal separately.

Councilmember Canonico asked when the parties in interest were notified of the procedural component. City Attorney Daggett replied parties have been made aware the Mayor will set allocations during the hearing and allow for a time to evaluate whether a different tactic is preferred. City Clerk Coldiron stated the Clerk's Office sent out two emails regarding the typical time allotments, but did not discuss whether the appeals would be combined. Once Council opted to hear the appeals separately, an email was sent to the parties in interest today.

Councilmembers and parties in interest discussed the best way to allot time for the hearing.

(Clerk's Note: The Council took a brief recess at this point in the meeting.)

Mayor Arndt stated the appeal presentations will be combined, and the appellants will be allowed 40 minutes total with additional time for Spanish interpretation.

APPELLANT PRESENTATION

Troy Jones, appellant, outlined the Land Use Code provisions that he stated were not properly interpreted: applicability standards, building and project compatibility purpose statement, operational and physical compatibility standards, and the definition of compatible. He provided quotes from the development team that were made at the Planning and Zoning Commission and discussed possible unintended negative consequences for the neighborhood.

Havelda objected to a slide in Jones' presentation related to the number of households and businesses within a radius of the proposed facility as being new evidence. City Attorney Daggett noted the presentation was received yesterday and posted online and stated any issues related to new evidence are subject to Council's determination tonight.

Jones withdrew the slide. He discussed living in the neighborhood as a child and commented on the North College Neighborhood Plan which cautions against the negative effects of concentrating tax exempt and social service uses in one area of the city. Jones stated the Fort Collins Rescue Mission can lessen the impact on this neighborhood by leaving its current shelters open and limiting the number of beds to 41 at the new facility in order to meet compatibility requirements. Additionally, Jones noted the federal grant application for the project stated 200 beds and the project submittal stated, 'over 200 beds,' but not 250.

Jones argued the Planning and Zoning Commission did not properly consider operational compatibility and intensity of use and stated all Land Use Code provisions must be met, including the purpose statement. Jones suggested the fact that the Rescue Mission accepts guests who are under the influence of drugs and alcohol will increase the demand for those substances just off the shelter's property.

Rebecca Mendoza expressed concern about the low number of parking spaces and traffic management plan proposed for the development. She discussed the prevalence of car camping among the unhoused population.

(Clerk's note: - Testimony by Rebecca Mendoza was received by Council through a Spanish interpreter)

Havelda objected to information about car camping as it was deemed inadmissible evidence.

Mendoza opposed the alternative compliance approach that was used to determine parking requirements and advocated for a local parking and traffic study tailored to the unique circumstances of Fort Collins. Mendoza also expressed concern that many of the shelter guests are in a state of 'fight or flight' and could have mental issues that make them unable to understand and follow rules. She also expressed concern about the number of pedestrian trips per day through the area neighborhoods and about the potential for guests to use drugs and alcohol in areas outside the shelter.

Mendoza outlined compatibility concerns related to noise and light and stated her neighborhood is already overburdened with these types of uses. She suggested compatibility could only be achieved by having the existing shelter and winter overflow shelter remain in use and having a 41-bed facility in this location. Mendoza also discussed concerns related to massing and stated there was no true community outreach.

Debbie Bradberry concurred a shelter is needed in Fort Collins but expressed concern about the proposed location. She discussed safety issues that are already occurring without the shelter, and stated there is no other location in Colorado in which a men's shelter is located this close to so many residences. Bradberry also expressed concern that any individual turned away from the shelter will go into the neighborhoods.

Bradberry asked how it can be assured that the shelter will not expand beyond 250 beds and expressed concern about the low number of parking spaces provided stating overflow parking will spill into the neighborhoods. Bradberry additionally expressed concern about the existing fencing which is planned to remain citing an incident in which an individual jumped the fence while being pursued by a police officer. Bradberry stated the neighbors have not been taken into consideration in this process and do not feel they have been considered.

APPLICANT PRESENTATION

Claire Havelda clarified this application is not for an overflow shelter and there was never an intent to have 500 beds, and there will never be more than 250 beds. She stated the appellants are asking Council to regulate future speculative behavior through the Land Use Code, and laws that are violated are regulated through police powers, not the Land Use Code. Havelda stated experiencing homelessness is not a crime, nor is dealing with mental health issues.

Havelda discussed case law that provides direction to quasi-judicial governing bodies related to interpreting statutes and codes. She stated codes must be read as a whole, giving consistent and harmonious sensible effects to all their parts. Havelda outlined the Code requirements applicable to this site and the Service Commercial zone district. She also noted that when Council adopted a zoning ordinance in 2020 which created the Mobile Home district, which includes the Hickory Mobile Home Park, it specifically found that the Mobile Home district was compatible with existing and proposed uses surrounding the subject property.

Havelda noted there is an expert report in the application materials related to traffic and parking and the expert has been clear that the increase in beds from 200 did not impact the outcome of the traffic study. In terms of parking, Havelda noted there is no Code provision that discusses the parking requirements of a shelter; therefore, alternative compliance must be used. Additionally, she noted people will not be allowed to live in their vehicles in the parking lot of the shelter.

In terms of environmental components, Havelda noted the natural habitat zone was moved to the adjacent site in large part to protect the natural habitat buffer. She stated there is evidence in the record related to how the project meets applicable environmental requirements.

Havelda discussed the project's compatibility with the North College Corridor Plan and stated any nuisance issues related to noise, or other concerns are addressed through the nuisance code, not the Land Use Code. In terms of the allegations related to trash pickup and deliveries, Havelda noted any regulation would need to apply to all commercial businesses in the area. Havelda discussed the testimony provided by Police Chief Swoboda which emphasized that Police Services is well equipped to handle any issue throughout the city and that they have a good working relationship with the Rescue Mission.

Havelda commented on the proposed condition of the Jones appeal to limit the number of beds to under 250. She stated there is no evidence that this is appropriate and stated speculation and fearmongering are not evidence. Additionally, Havelda stated there is no evidence in the record to support speculation that people experiencing homelessness commit more crimes than anyone else in any other zone district. She noted the Rescue Mission would become ineligible for over \$1.5 million in funding upon which it is relying if there is a condition imposed to reduce the number of beds below 250.

Mendoza objected to Havelda's mentioning of the 500 beds. City Attorney Daggett encouraged the appellants to bring up those types of issues during the rebuttal period.

Havelda questioned whether there is Code criteria or precedent for a condition regarding additional security patrol. She highlighted the goal of the Housing Strategic Plan that everyone be able to access safe and stable housing they can afford. She stated the Fort Collins Rescue Mission has met or

exceeded the stated Municipal Code, Land Use Code, subarea plan, Housing Advisory Committee recommendations, and policy requirements in its application. She requested the appeals be denied and the decision of the Planning and Zoning Commission be upheld.

APPELLANT REBUTTAL

Jones questioned where the 500-bed number originated and stated his appeal never included that information. He stated the applicants were utilizing a 200-bed number up until the 11th hour when the 250-bed number was presented. Additionally, he stated his appeal did not include any information as to this being an overflow shelter nor did it refer to homelessness as being a crime. Jones stated the appeal relates to the impact of 250 people being added to the area and argues that the appropriate number of beds is 41 in order to be compatible.

Charlie Messerlian stated Jones' argument is clear and questioned where guests with vehicles are going to go when they get turned away. He stated there was already a 'bait and switch' to go from 200 beds to 250 and questioned what measures are in place to ensure the count does not go higher. Messerlian discussed confrontations he has at his business and stated that is not speculative, but factual. He argued Council should not consider whether decreasing the number of beds would inhibit the project's funding and stated he will proceed to court if the appeals are denied.

Mendoza stated the 500 bed number was taken from a Coloradoan article that was not allowed to be admitted into evidence per Havelda's objection and questioned why Havelda was allowed to comment on the number several times during her presentation. Additionally, Mendoza stated evidence has not been provided to show the absence of risk of the project. She requested statistics related to the number of homeless people removed by police who are camping, and the number of police calls received related to homeless individuals.

Bradberry asked if there will be any additional officers assigned to the homeless unit and stated 500 beds were mentioned in 2022. She suggested more parking spaces should be added to accommodate guests who may have vehicles.

Mendoza questioned whether this process is fair, just, or impartial, and requested Council consider equity and transparency in its decision.

Jones noted this property, while not in a residential zone, is within a 3-minute walk of hundreds of mobile homes, and the Land Use Code applies for their protection as well.

Messerlian stated he asked a commercial insurance provider who would be liable for any incidents that may occur because of this facility and was told that any approving body would be included in those who would be liable.

Mendoza commented on a situation in which a homeless individual physically abused a child on a bus.

Quinn Haffen, Fort Collins Bike Co-op, stated this area is an already under-resourced and vulnerable neighborhood and stated the argument is not that homeless individuals should not be part of the community, but rather that more affluent neighborhoods should also be carrying some of the weight.

APPLICANT REBUTTAL

Havelda stated the appellants are presenting conflicting statements and the argument that it is only a matter of time before something terrible happens can only be believed if experiencing homelessness makes a homogenous group of individuals who are criminals who will engage in criminal behavior.

She questioned what evidence points to 41 beds being the correct number and stated the only evidence in the record supports 250 beds, which is what was approved by the Planning and Zoning Commission.

Havelda noted there is no Code requirement related to proving there would be no negative impact of the shelter use and stated the narrative of the appellants has been to hold this project to a higher standard than any other project, which does not comport with due process or equal protection.

(Secretary's Note: The Council took a brief recess at this point in the meeting.)

COUNCIL QUESTIONS

Mayor Pro Tem Francis thanked all parties involved and asked how the City interprets compatibility. Clay Frickey, Planning Manager, replied compatibility involves the list of permitted uses which implicitly suggests the uses are compatible from a use perspective. Additionally, compatibility also includes the listed items such as massing and scale, among others. Frickey noted the behavioral issues are outside the purview of the Land Use Code. He stated operational compatibility includes things such as odor and noise.

Mayor Pro Tem Francis noted this is a nearly 42,000 square foot facility which abuts mobile home parks and questioned how compatibility with bulk, height, and scale was determined. Frickey replied the staff report notes the eclectic nature of buildings within the North College corridor which includes 4-story buildings near Jerome and Suniga, strip mall buildings, grocery stores, as well as single-story, single-unit homes. He noted one of the purposes of this zone district is to provide a transition from the auto-oriented North College corridor to the abutting residential zone districts, which is why there is a height limitation of three stories. Frickey noted there are standards related to different methods of breaking down the bulk and mass of a building.

Mayor Pro Tem Francis noted the North College Corridor Plan specifically cautions against concentrating services and asked how the subarea plan is being considered in the application of the Land Use Code. Frickey replied that the subarea plan is referenced in the staff report which does include a statement regarding the concentration of services being a challenge for the corridor; however, the subarea plan provides no specific policy statements on addressing the issue. Additionally, the Land Use Code does not speak to the issue either.

Mayor Pro Tem Francis stated it would be helpful to address how the vision pieces of the subarea plan and Land Use Code were taken into consideration. Frickey replied there are different elements of the plan that meet the vision, including the architectural vision of eclectic building types; however, it is difficult to ensure a project meets every statement of a subarea plan.

Councilmember Ohlson asked how many modifications of standard were requested and how many were approved by the Planning and Zoning Commission. Frickey replied there were no requested modifications.

Mayor Pro Tem Francis asked how the 250-bed number can be guaranteed as the cap. Frickey replied those metrics are recorded on the final plan and any request for additional beds would require a development review amendment process.

Councilmember Gutowsky requested the applicant address the feasibility of keeping the existing shelter and overflow shelter in operation and having this building only house 41 beds. Seth Forwood, Fort Collins Rescue Mission, replied that the overflow facility was just approved by the Planning and Zoning Commission to exist in that capacity only for the next two years, which is one reason that idea would not be feasible. In terms of running three different shelter locations, Forwood stated there are several inefficiencies and that tactic would not be feasible with the existing budget and staffing. Additionally, Forwood stated the reason for this building is to create a shelter that adequately meets

the needs of people experiencing homelessness, and both the overflow shelter and existing shelter are grossly inadequate. The new building will also allow for rehousing services to be provided on an adequate scale.

COUNCIL DISCUSSION

Councilmember Potyondy stated this has been a difficult discussion as it centers around two vulnerable populations. She stated she would like the City to take a closer look at how the Land Use Code and subarea plans interact with one another as the North College Corridor Plan clearly elucidates there are concerns about consolidation of services in one part of town, which is a concern. Councilmember Potyondy concurred the applicant has met the Land Use Code requirements and noted the social component is not something on which guidance is provided; therefore, she stated the Planning and Zoning Commission did make a correct decision.

Councilmember Potyondy stated Council is hearing the concerns of the neighborhood and reiterated Council must consider how the Planning and Zoning Commission vetted the development plan and whether it did so correctly per the Land Use Code.

Mayor Arndt suggested Council first address the fair hearing question.

Councilmember Ohlson concurred this is a difficult situation given the vulnerable populations. He stated he frequently disagrees with the Planning and Zoning Commission's granting of multiple modifications of standard; however, he noted this project did not include any modifications and the Planning and Zoning Commission and staff found the project meets applicable Code requirements.

Councilmember Canonico concurred with the previous statements and noted Council has been tasked with ensuring compliance with the Code requirements.

Councilmember Gutowsky stated the North College business community is also a vulnerable population and stated her heart is with the populations that are going to be impacted; however, Council is charged with ensuring interpretations of the Land Use Code were accurate. She noted this is not an easy task for Council.

Mayor Pro Tem Francis stated one of the reasons she does not like appeals is because Council does not get to show up as representatives. She stated she believes this is one of the worst places for the shelter and area residents do not deserve this; however, staff and the Planning and Zoning Commission properly applied the Land Use Code.

Councilmember Ohlson made a motion, seconded by Councilmember Canonico, that Council find that the Planning and Zoning Commission conducted a fair hearing in its consideration of the Fort Collins Rescue Mission Development Plan, FDP230022, and further that the Council find the Mendoza/Bradberry appeal did establish with competent evidence in the record that the fair hearing allegation has merit and dismiss that allegation.

The motion carried, 6-0.

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

Nays: None.

Councilmember Ohlson made a motion, seconded by Councilmember Canonico, that Council find the Planning and Zoning Commission properly interpreted and applied the Land Use Code sections raised in the Mendoza/Bradberry appeal: 1.2.4 regarding applicability, 3.2.2(K) regarding parking requirements, 3.4.1 regarding environmental impact, 3.5.1(C) regarding

compatibility of building height, mass, scale, and bulk, 3.5.1(J) regarding operational and physical compatibility standards, and 4.2.2(B) regarding Service Commercial District permitted uses, in the Commission's consideration of the Rescue Mission Development Plan, and that the Commission did properly interpret and apply the Land Use Code because of the comments expressed tonight by the City Council, and further to uphold the Planning and Zoning Commission's approval of the Rescue Mission Development Plan, and that all allegations of the Mendoza/Bradberry appeal are hereby found to be without merit and dismissed.

The motion carried, 6-0.

**Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Potyondy, Canonico, Gutowsky, and Ohlson.
Nays: None.**

Councilmember Ohlson made a motion, seconded by Councilmember Canonico, that Council find the Planning and Zoning Commission properly interpreted and applied the Land Use Code sections raised in the Jones appeal: 3.5.1(A) regarding purpose, 3.5.1(J) regarding operational and physical compatibility standards, 1.2.4 regarding applicability, and 5.1.2 regarding the definition of compatibility, in the Commission's consideration of the Rescue Mission Development Plan, and that the Commission did properly interpret and apply the Land Use Code because of the comments expressed tonight by the City Council, and further to uphold the Planning and Zoning Commission's approval of the Rescue Mission Development Plan, and that all allegations of the Jones appeal are hereby found to be without merit and dismissed.

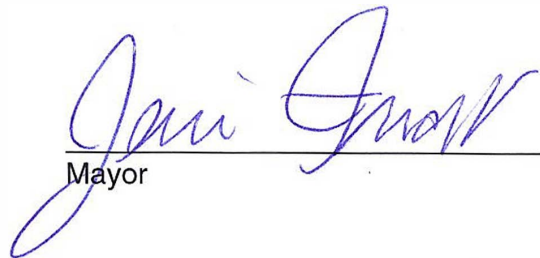
The motion carried, 6-0.

**Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Potyondy, Canonico, Gutowsky, and Ohlson.
Nays: None.**

E) ADJOURNMENT


There being no further business before the Council, the meeting was adjourned at 9:22 p.m.





Mayor

ATTEST:



City Clerk