

## **AGENDA ITEM SUMMARY**

January 24, 2022

City Council

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### **STAFF**

Clark Mapes, City Planner  
Paul Sizemore, Director, Comm. Devt. & Neighborhood Serv.  
Claire Havelda, Legal

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### **SUBJECT**

Resolution 2022-025 Making Findings of Fact and Conclusion of Law Regarding Appeal of the Planning and Zoning Commission Decision Denying the Sam's Club Fuel Station MJA#200002 Addition of a Permitted Use and Major Amendment

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### **EXECUTIVE SUMMARY**

The purpose of this item is to make findings of fact and conclusions of law following the appeal of the Planning and Zoning Commission decision on May 20, 2021, denying the Addition of a Permitted Use and Major Amendment for development of a Sam's Club Fuel Station in the parking lot of the existing Sam's Club.

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### **STAFF RECOMMENDATION**

Staff recommends adoption of the Resolution.

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### **BACKGROUND / DISCUSSION**

At a public hearing on May 20, 2021, the Planning and Zoning Commission considered the Sam's Club Fuel Station, MJA#200002 and issued a decision denying the Addition of a Permitted Use ("APU") and a Major Amendment of the Harmony Market 1st Filing PUD ("Major Amendment") to add a Sam's Club Fuel Station, which was proposed in conjunction with a development plan for a gasoline station within the parking lot of the existing Sam's Club retail membership warehouse at the southeast corner of Harmony Road and Boardwalk Drive.

The Applicant, Sam's Real Estate/Sam's East, LLC, through its legal counsel, filed a Notice of Appeal on June 3, 2021, alleging the Commission failed to conduct a fair hearing and failed to properly interpret and apply all the relevant Land Use Code provisions.

After postponing the appeal hearing in response to a request by the Appellant/Applicant, on January 18, 2022, Council conducted a hearing to consider the appeal allegations, the record on appeal and testimony, evidence and argument presented at the hearing from parties in interest. After discussion, Council determined that the Planning and Zoning Commission conducted a fair hearing and upheld the decision of the Planning and Zoning Commission decision denying approval of the APU and Major Amendment, both by a vote of six to one.

RESOLUTION 2022-025  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE  
APPEAL OF THE PLANNING AND ZONING COMMISSION DECISION DENYING THE  
SAM'S CLUB FUEL STATION MJA#200002 ADDITION OF A PERMITTED USE AND  
MAJOR AMENDMENT

WHEREAS, on May 20, 2021, the Planning and Zoning Commission ("Commission") conducted a public hearing at which the Commission denied Sam's Real Estate/Sam's East, LLC's ("Sam's Club") application for Addition of a Permitted Use ("APU") and a Major Amendment of the Harmony Market 1st Filing PUD ("Major Amendment") to allow development of a Sam's Club Fuel Station in the parking lot of the existing Sam's Club retail membership warehouse located in the Harmony Market shopping center at the southeast corner of Harmony Road and Boardwalk Drive; and

WHEREAS, more specifically, in denying the APU the Commission found that the proposed project did not meet all of the Fort Collins' Land Use Code ("LUC") criteria for an addition of a permitted use set out in Section 1.3.4(C)(1) and (C)(2); and

WHEREAS, further, in denying the Major Amendment, the Commission based its decision upon the denial of the APU and did not analyze the other compliance of the Major Amendment with the other requirements of Articles 2 & 3 of the LUC; and

WHEREAS, on June 3, 2021, Sam's Club, through its legal counsel, filed a Notice of Appeal on June 3, 2021, alleging the Commission failed to: (1) conduct a fair hearing, specifically by exceeding its authority, abusing its discretion, and relying on relevant evidence that was substantially false or grossly misleading; and (2) properly interpret or apply the applicable criteria of LUC Section 1.4.3(C)(1) and (C)(2); and (3) properly interpret or apply the LUC standards applicable to the Major Amendment.; and

WHEREAS, pursuant to City Code Section 2-49, the Notice of Appeal was timely filed, and Sam's Club (or "Appellant") is a party-in-interest eligible to file an appeal; and

WHEREAS, the fair hearing allegation and the allegation that the Commission failed to properly interpret and apply the relevant LUC set forth in the Notice of Appeal conform to the requirements of Section 2-48 of the City Code; and

WHEREAS, on August 4, 2021, the City Council adopted a motion on the request of the Appellant (and applicant) to continue the originally scheduled appeal hearing to October 19, 2021, and on October 19, 2021, Council again considered a request for delay by the Appellant and voted to continue the appeal hearing to January 18, 2022; and

WHEREAS, on January 18, 2022, the City Council, after notice given in accordance with City Code Section 2-52, held a public hearing pursuant to City Code Section 2-54 to consider the allegations raised in the Notice of Appeal at which hearing the City Council considered such allegations, the record on appeal and the testimony, evidence and argument presented at the

hearing by City staff, the Appellant's representatives, and representatives of two parties-in-interest opposing the Appeal; and

WHEREAS, City Code Section 2-56(c) provides that no later than the date of its next regular meeting after the hearing of an appeal, City Council shall adopt, by resolution, findings of fact in support of its decision on such appeal.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that, pursuant to Section 2-56(c) of the City Code, the City Council hereby makes and adopts the following findings of fact and conclusions:

1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.
2. That based on the evidence in the record and presented at the January 18, 2022, Council hearing, Council finds that the Commission conducted a fair hearing in its consideration of the APU and Major Amendment for Sam's Club Fuel Station (MJA200002) and that the Commission did not substantially exceed its authority or jurisdiction or abuse its discretion, and did not consider evidence relevant to its decision that was substantially false or grossly misleading.
3. That based on the evidence in the record and presented at the January 18, 2022, City Council hearing, City Council finds that:
  - a. The Commission properly interpreted and applied LUC Section 1.3.4(C)(1) in its consideration of the APU for Sam's Club Fuel Station (MJA200002) and properly found that the following criteria set forth therein were not met because the Sam's Club fuel station:
    - i. Does not meet LUC Section 1.3.4(C)(1)(b), because the proposed gas station use does not conform to the basic characteristics of the Harmony Corridor zone district and other permitted uses in the Harmony Corridor zone district since gas station uses were purposefully excluded from regional shopping centers, like the Harmony Market shopping center in which Sam's Club is located and the other gas station uses in the vicinity predated the Harmony Corridor Plan; and
    - ii. Does not meet LUC Section 1.3.4(C)(1)(c), because the proposed gas station use is not designed and sized to be compatible with nearby properties and is located and sized in a manner, including lighting, which will have more than a minimal negative impact on the use of nearby properties; and
    - iii. Does not meet LUC Section 1.3.4(C)(1)(d), because the proposed gas station use creates more environmental impacts, noise, vibration, dust, heat, smoke, odor and traffic due to increased use expected to result from the presence of the gas station and related activities such as gas tanker truck traffic; and
  - b. The Commission properly interpreted and applied the LUC in its consideration of the Major Amendment for Sam's Club Fuel Station (MJA200002) and properly

found that the criteria for a Major Amendment were not met in light of the denial of the APU.

4. That based on the evidence in the record and presented at the January 18, 2022, hearing, the Appeal is without merit and is denied in its entirety.
5. That adoption of this Resolution shall constitute the final action of the City Council in accordance with City Code Section 2-56(c).

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins this 24th day of January A.D. 2022.

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Mayor

ATTEST:

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City Clerk