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## MEMORANDUM

**DATE:** August 11, 2022

**TO:** Mayor and Councilmembers

**THROUGH:** Kelly DiMartino, City Manager  
Rupa Venkatesh, Assistant City Manager

**FROM:** Anissa Hollingshead, City Clerk

**RE:** **Submission of new materials for Sanctuary on the Green Appeal subject to a determination of admissibility**

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On August 9, 2022, legal counsel for the Applicant submitted the attached letter, detailing the Applicant's arguments to be presented to Council during the appeal hearing on August 16, 2022. The attached letter contains information that was not in the record before the Hearing Officer. (See pages 7-8 concerning "LUC Updates"). This information is subject to a determination of admissibility by Council.

August 9, 2022

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Fort Collins City Council  
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Re: Request to Affirm the City of Fort Collins Type 1 Administrative Hearing Findings and Decision Approving the Sanctuary on the Green Project Development Plan

Dear Mayor and Council:

We represent Solitare Homes LLC and Solitare Homes East LLC (collectively, the “**Applicant**”), the owner of the property that is the subject of this Appeal, with respect to the Sanctuary on the Green Project Development Plan (the “**PDP**”) Application (the “**Application**”). The Applicant proposes to develop a residential neighborhood and gathering place located at the northwest corner of Laporte Avenue and North Taft Hill Road (the “**Sanctuary Neighborhood**”) in the city of Fort Collins (the “**City**”). The purpose of this letter is to respond to the claims set forth by Laura Larson, serving as representative for the Sanctuary Field Neighborhood Network, (the “**Appellant**”) in the Notice of Appeal dated May 31, 2022. This letter is supported by, and should be reviewed in conjunction with, the Cover Letter to the PDP dated April 6, 2022 (the “**Cover Letter**”) and included with the Application, which is part of the official record, and which fully details how the Application meets the criteria for approval of a PDP under the Fort Collins Land Use Code (the “**LUC**”) and applicable City of Fort Collins plans (the “**City Plans**”). For the reasons set forth in the Cover Letter and herein below, we ask that you affirm the Hearing Officer Type 1 Administrative Hearing Findings and Decision, dated May 16, 2022, approving the PDP (the “**Hearing Decision**”).

## **I. BACKGROUND**

The Sanctuary Neighborhood consists of approximately 41.34 acres and is currently zoned L-M-N Low Density Mixed-Use Neighborhood (“**L-M-N**”) district. The New Mercer Ditch traverses through the Sanctuary Neighborhood where the land is currently undeveloped and vacant, previously used for farming and haying.

The proposed Sanctuary Neighborhood was originally called “Sanctuary West” and covered the 27 acres west of the New Mercer Ditch. Sanctuary West was originally planned in 2007, with Final Development Plans submitted in 2011. In 2018, 14 acres east of the New Mercer Ditch were annexed into the City and

combined with the west parcel to create the Sanctuary Neighborhood that is the subject of this Application.

The Applicant seeks PDP approval to develop a residential community and gathering place called Sanctuary on the Green, composed of alley-loaded single-family dwellings, two-family dwellings and single-family attached dwellings for a total of 212 dwellings and an overall density of 5.13 dwellings per gross acre. The Sanctuary Neighborhood will feature a public park and 24.83 acres of open space, including an eight-foot-wide Soldier Creek Neighborhood Trail that will connect with the existing trail and available for public use, and which the Applicant will construct and maintain at no cost to the City or existing residents.

The Sanctuary Neighborhood is the culmination of nearly 15 years of ongoing planning, including dialogue and engagement with the existing community, to determine the optimal development program for the vacant land. The proposed housing types will create smaller neighborhoods within the development, each of which will have its own amenities in addition to shared community gathering spaces located throughout the site, including a Neighborhood Center. The Sanctuary Neighborhood will provide 453 parking spaces, which is more than adequate to serve its needs. The project will also include a public park and 24.83 acres of open space.

Within a half mile of the Sanctuary Neighborhood is a medical clinic, laundromat, convenience store with gasoline sales, multiple churches, an elementary school, and a high school. The Sanctuary Neighborhood will add to those public amenities with its own amenities, which will include the Neighborhood Center. The Neighborhood Center will consist of a modern farmhouse mixed-use building design located on the eastern edge of the Sanctuary Neighborhood that will include leasable spaces for commercial tenants, a clubhouse for the community featuring a fitness room, a kitchen, a large gathering space, a community bulletin/informational posting area, a playground and a public park, which will connect to a trail network that winds through the development and provides more than fifteen acres of open space corridors through the Sanctuary Neighborhood. The Neighborhood Center will also incorporate a large outdoor gathering space with a plaza and a fire pit.

A Preliminary Design Review for the Application was held on June 13, 2018. On June 17, 2021, the Applicant submitted an initial application for Sanctuary on the Green (the “**Prior Application**”), which was the subject of a hearing before the Planning and Zoning Commission (the “**Commission**”) on June 17, 2021, which was continued by the Commission for further consideration. Although the Prior Application met all the criteria for approval of a PDP in the LUC, the Applicant elected to withdraw the Prior Application before a decision had been made in order to make additional changes to incorporate feedback from the neighborhood and the Commission, and to further enhance the Sanctuary Neighborhood.

The Applicant filed its revised Application, the Application before you today, on November 3, 2021. Because the Applicant modified the PDP by removing the multi-family dwellings and reducing the overall density, the revised Application was properly evaluated by a Hearing Officer in a Type 1 Administrative Hearing May 2, 2022 (the “**Hearing**”). The Hearing Officer issued the twelve-page decision approving the Application on May 16, 2022 (the “**Hearing Decision**”).

For the reasons set forth below, the Applicant respectfully requests that the Hearing Decision approving the PDP, including one Alternative Compliance Plan and two modifications of standards<sup>1</sup> be upheld.

## **II. The Appeal**

The Appellants claim that the Hearing Decision should be reversed on the following grounds: (1) the decision maker (the Hearing Officer) failed to properly interpret and apply relevant provisions of the City Code, Land Use Code, and Charter; (2) the Hearing Officer considered evidence relevant to its finding which was substantially false or grossly misleading; and (3) the Hearing Officer was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the decision maker’s independence of judgment. The Appellant elected not to file new evidence to establish that the Hearing Officer considered evidence relevant to its findings which were substantially false or grossly misleading or that bias interfered with the decision maker’s judgment.

This letter demonstrates that all of Appellants’ claims are incorrect and addresses each claim sequentially.

## **III. The Hearing Officer Properly Interpreted and Applied Relevant Provisions of the City Code, the LUC and Charter.**

### **A. The Hearing Officer Properly Interpreted and Applied Section 1.2.2 of the LUC.**

Section 1.2.2 of the LUC provides that one purpose of the LUC is to improve and protect the public health, safety and welfare by “ensuring that all growth and development which occurs is consistent with this Code, City Plan and its adopted components, but not limited to, the Structure Plan, Principles and Policies and associated sub-area plans.” The Sanctuary Neighborhood is within the Northwest Sub Area Plan (the “**NSP**”).

The Appellant argues that the Hearing Officer failed to properly interpret Section 1.2.2 of the LUC because the Project does not comply and is not consistent with the NSP. Essentially, the Appellant argues that, despite complying with all requirements of the LUC, because the Applicant believes that

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<sup>1</sup> Sections III.C. and D. of the Cover Letter describes how the request for Alternative Compliance and two modifications of standard each meet the LUC’s criteria for approval.

the Sanctuary Neighborhood is not consistent with the NSP, that it should be denied. To the contrary, the Hearing Officer's interpretation is correct; the NSP provides an overall vision and guidance for new development within its geographic area, but the LUC provides the specific, objective and regulatory standards by which it should be measured.

The Hearing Officer concluded, as evidenced by the City's Development Review Staff ("**Staff**") Report dated May 2, 2022 (the "**Staff Report**") and the evidence presented at the hearing, that the PDP satisfies all applicable requirements of the LUC. The Hearing Officer further noted that the NSP lacks sufficient guidance as to how one might alleviate negative effects of a development which otherwise complies with all of the City zoning regulations. *Hearing Decision*, at 8. As the Hearing Officer explained, "[a]bsent clear guidelines or standards set forth in the NSP against which the PDP may be judged, the NSP is insufficient to provide 'all users and potential users of land with notice of the particular standards and requirements imposed by the [City] for [development plan] approval.'" *Hearing Decision*, at 8 (*citing Cherry Hills Resort Dev. Co. v. City of Cherry Hills Village*, 790 P.2d 827, 832 (Colo. 1990)). In the absence of specific development guidelines in the NSP, the Hearing Officer determined, consistent with planning and zoning principles, that the best way to determine compliance with the NSP is to refer to the LUC requirements implementing the NSP, such as the L-M-N zone district requirements.

Thus, because the LUC provides the specific design requirements in the zoning district in which the Sanctuary Neighborhood is located and the PDP complies with those requirements, the Hearing Officer properly interpreted and applied Section 1.2.2. of the LUC.

Even so, as City Staff concluded in its Staff Report and as the Applicant further described in Section III.B.2. of the Cover Letter, the PDP does meet the objectives outlined in the NSP because, among other reasons: the Project is less than eight (8) dwellings per gross acre – the maximum density envisioned in the NSP; the Project provides for landscaped drainage and open space areas as envisioned in the NSP; and the Framework Plan within the NSP envisions the area as a visually attractive, pedestrian friendly neighborhood with nearby amenities, all of which are clearly provided by the Sanctuary Neighborhood PDP. *Staff Report*, at 7; *See also Cover Letter*, at 17-18. Moreover, as the Hearing Decision and the Staff Report concludes, the PDP meets all of the requirements of the LUC and City Plans (subject to the modifications of standards and the Alternative Compliance Request, which are discussed at length in Sections III.C. and D. of the Cover Letter).

Additionally, as the Applicant described during the Hearing, "the [LUC] itself ensures that the plans are followed by incorporating the vision of the plans into the [LUC]." *Transcript of Hearing*, at 61:38-39 [*hereinafter, Transcript*]. In terms of considering how the LUC and the NSP fit together, the NSP (and/or any other applicable City Plan), expresses the vision and then the LUC is crafted to achieve that vision, which is expressed as regulatory zoning. Here, the L-M-N district zoning applies. The Applicant meets the vision of the NSP by adhering to the L-M-N zoning requirements.

Accordingly, the Hearing Officer properly interpreted and applied Section 1.2.2. of the LUC.

**B. The Hearing Officer properly interpreted and applied Section 3.5.1 of the LUC.**

Section 3.5.1 of the LUC provides that “the physical and operational characteristics of proposed buildings and uses are compatible when considered within the context of the surrounding area” by employing a similar design that is complimentary and “either similar in size and height, or if larger, articulated into massing that is proportional to the mass and scale of other structures on the same block face, abutting or adjacent to the property or opposing block face or cater-corner block face at the nearest intersection.” [Emphasis added].

Note that this Code section clearly contemplates that new buildings which are larger than existing buildings can still be compatible and harmonious when architectural techniques such as articulation are used to divide the new structures into smaller visual units that are similar in mass and scale as those in proximity. This technique, along with expanded buffering, landscaping and screening, has been incorporated into the Sanctuary Neighborhood in order to integrate it seamlessly into the existing fabric of the community.

The Appellant argues that the Hearing Officer failed to properly interpret and apply LUC Section 3.5.1, because the Hearing Officer considered two neighboring properties – Bellwether Farm Subdivision to the north and the Ramblewood Apartments to the south – in reaching the conclusion that the Sanctuary Neighborhood provides compatible architecture and design strategies that are complimentary to the surrounding existing neighborhoods, as required by LUC Section 3.5.1.

The Applicant properly presented, and the Hearing Officer properly considered, both the Bellwether Farms Subdivision and the Ramblewood Apartments as compatible properties in the surrounding area in terms of design and massing, in accordance with LUC Section 3.5.1. As the Applicant discussed during the Hearing, and as further detailed in Section III.A.4. of the Cover Letter, compatibility does not mean “the same as.” *See Transcript, at 49:38-50:12; Cover Letter, at 10.* Compatibility means two structures that are different can coexist harmoniously. Accordingly, in this context, it does not mean that the Sanctuary Neighborhood must employ a design that is exactly the same as the design of buildings in the surrounding area. Nor must the decision maker consider only buildings immediately adjacent to the property in question; rather, 3.5.1 references “the surrounding area.” As the Staff Report concluded, the Applicant demonstrated compatibility and compliance with Section 3.5.1 of the LUC by providing the following:

- Utilizing masonry on the ground level to define the base area of the larger buildings;
- Ground level entrances on all three-story buildings include a shed or hip roof component, which further emphasizes the ground level;

- Providing secondary massing elements at the second level, including projecting covered balconies and bay window treatments;
- Large windows are provided within the majority of the building modules to further break down the scale of the buildings;
- Providing two-story massing step-down elements on the three-story buildings;
- Minimizing privacy infringement through the use of landscaped buffers, building setbacks, street right-of-way separation and tree-lined street parkways, which provide separation of new buildings from existing adjacent buildings;
- Utilizing mostly earth-tone and neutral colors that do not deviate from those normally found in any residential development; and
- Separating the three-story buildings from adjacent properties by perimeter open space, right-of-way and building setbacks and landscape improvements, which all separate the proposed buildings from all adjacent single-family properties by more than twenty-five (25) feet.

*Staff Report, at 35.*

Additionally, LUC Section 3.5.1 views compatibility as “within the context of the surrounding area.” The Bellwether Farms Subdivision, which features two-story dwellings with walk-out basements that therefore appear to be three stories in height, is adjacent to the Sanctuary Neighborhood property line to the north. The Ramblewood Apartments across Laporte Avenue to the south are three stories in height.

Thus, the Sanctuary Neighborhood meets the LUC Section 3.5.1 requirement of compatibility and the Hearing Officer did not misinterpret that section.

Lastly, the Appellants’ claim that the Commission concluded that the “compatible building massing requirements [of Section 3.5.1. of the LUC] had not been met” is incorrect and irrelevant. The application considered by the Commission in 2021 is a different Application than the one before you today, which was approved by the Hearing Officer. Further, the Commission did not take a final vote on the Prior Application, and did not make a determination regarding this or any other LUC criterion. The Commission has not made any findings or reached any conclusions regarding either this Application, or the Prior Application. The only decision ever made on the Application is the Hearing Decision, which concluded the requirements of Section 3.5.1 of the LUC are met.

Accordingly, the Hearing Officer properly interpreted and applied Section 3.5.1. of the LUC.

**C. The Hearing Officer properly interpreted and applied Section 4.5(D)(1) of the LUC.**

As mentioned above, the zoning of the Sanctuary Neighborhood is L-M-N. Section 4.5(D)(1) of the LUC provides that residential neighborhoods within the L-M-N district must have an overall minimum

density of four (4) dwelling units per net acre of residential land, with an overall maximum density of nine (9) dwelling units per gross acre of residential land.

The Appellant argues that because the buildable acreage of the Sanctuary Neighborhood is less than sixty-five percent (65%) of its total acreage, the Sanctuary Neighborhood exceeds the allowable maximum density of nine (9) dwelling units per gross acre of residential land. It is understandably confusing that the LUC measures minimum density in net acres (that is, the total acreage available for development after deducting rights of way, easements, etc.), while at the same time measuring maximum density in gross acres. However, according to the LUC, this is the correct way to measure density, and is the standard by which density should be evaluated.

The Sanctuary Neighborhood provides for 212 dwelling units; therefore, as provided on the PDP, the total density of the Sanctuary Neighborhood amounts to 5.13 dwelling units per gross acre of residential land, which is well below the maximum density of nine (9) dwelling units per acre, or even the eight (8) dwelling units per acre envisioned in the NSP. This calculation was determined in accordance with Section 3.8.18(B) of the LUC, which provides the formula for residential density calculations. The Sanctuary Neighborhood is well within the maximum density for the L-M-N district. Staff also concluded that the Sanctuary Neighborhood density is 5.13 dwellings per gross acre. *Staff Report*, at 44. Accordingly, the Hearing Officer properly interpreted and applied Section 4.5.(D)(1) of the LUC. Appellants' grievance regarding how the LUC calculates density should therefore be addressed through the legislative process, by means of a future amendment to the LUC, to align the methodologies for calculating minimum and maximum density.

Essentially, the Appellants take issue with the methods set forth in the LUC for measuring density. But these are the only standards by which it is proper to measure density for this or any other development. As such, the Hearing Officer properly interpreted and applied Section 4.5(D)(1) of the LUC.

Furthermore, it should also be noted that the Fort Collins Housing Strategic Plan Implementation LUC Phase 1 Updates: Proposed Code Changes, dated June 14, 2022 (the "LUC Updates") recommends increasing the maximum allowed density in the L-M-N district from nine (9) dwelling units per gross acre of residential land to twelve (12). *LUC Updates*, at 60. The LUC Updates also provides the following guiding principles:

- Increase overall housing capacity
- Enable more affordability
- Allow for more diverse housing choices

*LUC Updates*, at 15.

The LUC Updates note that the City's population is expected to increase from about 170,000 to about 235,000 in 2040 (an increase of 65,000 residents), and that therefore, 30,000 additional housing units



are needed to house incoming residents. *LUC Updates*, at 42. As such, the Sanctuary Neighborhood provides important housing that aligns with the City's goals, even though these goals have not yet been codified into the LUC.

**D. The Hearing Officer properly interpreted and applied Section 3.4.7 of the LUC.**

The purpose of Section 3.4.7 of the LUC is to ensure that proposed development is compatible with and protects historic resources. Section 3.4.7(E)(1) of the LUC requires that “[t]he design of development on development sites containing historic resources or with historic resources located within the area of adjacency” meet the requirements of Table 1. The “area of adjacency” includes any lot or parcel of property that is within two hundred (200) feet of the outer boundary in all directions from the perimeter of the development site. *LUC*, § 3.4.7(B). However, if a historic property is within the area of adjacency but not on or abutting the development site or across a side alley, then the Applicant must only apply at least two of the three compatibility standards set forth in Table 1. *LUC*, § 3.4.7, Table 1.

The Appellant argues that Staff improperly concluded that because the historic property with an address of 330 N. Taft Hill Avenue is across an arterial road, the Application is only required to comply with two of the design compatibility requirements of Section 3.4.7 of the LUC and the building massing requirements of Section 3.4.7 of the LUC are inapplicable. In this case, the Appellant, not Staff or the Hearing Officer, has improperly interpreted the LUC.

As the Staff Report properly indicates, the PDP meets the design compatibility requirements of Section 3.4.7 of the LUC. *Staff Report*, at 33. The Staff Report also properly concluded that the 330 N. Taft Hill property is within the area of adjacency but not on or abutting the Sanctuary Neighborhood site. Thus, Staff concluded that the Application is required to comply with a minimum of two of the design compatibility requirements in Table 1 of Section 3.4.7 of the LUC. *Staff Report*, at 33. As demonstrated by the PDP, and further detailed in the Staff Report, the PDP includes a minimum of two design compatibility requirements: façade details and building materials. *See LUC*, § 3.4.7, Table 1.

Thus, because the Sanctuary Neighborhood provides compatible façade details and building materials, the PDP meets the requirement that two of the design compatibility requirements be met, and therefore the building massing compatibility requirements cited by the Appellants do not apply. *See LUC*, § 3.4.7, Table 1. Accordingly, the Staff Report properly concluded that the Applicant was not required to meet the building massing requirements pursuant to Section 3.4.7. *Staff Report*, at 33.

Thus, the Hearing Officer properly interpreted and applied Section 3.4.7 of the LUC.

**E. The Hearing Officer properly interpreted and applied the LUC sections governing Modifications of Standards.**

The Application requests two modifications of standards to the requirements of Section 3.5.2(D) and Section 4.5(D)(2)(a)(3) of the LUC. Pursuant to LUC Section 2.8.2(H), the decision maker may grant a modification of the standards in Article 3 and Article 4 upon a finding that (1) the granting of the modification would not be detrimental to the public good, and (2) the modification meets at least one of the four criteria in LUC Section 2.8.2(H)(1)–(4).<sup>2</sup>

The Appellants argue that the Applicant's request for two modifications of standards should not be approved. The Applicant maintains that the Hearing Officer properly interpreted and applied the LUC sections governing modifications of standards for the reasons set forth below.

**1. The Hearing Officer properly interpreted and applied LUC Section 3.5.2(D)(1) in approving the request for modifications of standards.**

Section 3.5.2(D)(1) provides, in relevant part, that a primary entrance may be up to 350 feet from a street sidewalk if the primary entrance faces and opens directly onto a connecting walkway that qualifies as a "**Major Walkway Spine**". A Major Walkway Spine is defined as a tree-lined connecting walkway that is at least five (5) feet wide, with landscaping along both sides, located in an outdoor space that is at least thirty-five 35 feet wide, with all parts of such outdoor space directly visible from a public street.

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<sup>2</sup> The four criteria in Section 2.8.2(G)(1)-(4) are as follows:

"(1)the plan as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested; or (2)the granting of a modification from the strict application of any standard would, without impairing the intent and purpose of this Land Use Code, substantially alleviate an existing, defined and described problem of city-wide concern or would result in a substantial benefit to the city by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the city's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council, and the strict application of such a standard would render the project practically infeasible; or

(3) by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to install a solar energy system, the strict application of the standard sought to be modified would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the owner of such property, provided that such difficulties or hardship are not caused by the act or omission of the applicant; or

(4) the plan as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be modified except in a nominal, inconsequential way when considered from the perspective of the entire development plan, and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

The Appellants contend that the Applicant's request for a modification of standards to LUC Section 3.5.2(D)(1) should be denied because the Property is too complicated for the proposed development.

The reason for the requested modification of standards to LUC Section 3.5.2(D)(1) is because three (3) proposed Major Walkway Spines have building entrances that are further than 350 feet and one (1) Major Walkway Spine is within open space that is narrower than thirty-five (35) feet. This request permits flexibility in design to emphasize pedestrian connectivity, minimize pedestrian/vehicular conflicts and allow some dwelling units to be oriented toward green courts or along green belts instead of along streets. The front of these dwelling units will face onto green space with connecting sidewalks, and the garages will face an alley. This orientation is intended to provide a lifestyle which reduces the need for residents to interact with vehicles. Many families prefer such a lifestyle for safety reasons, and others may prefer it for a view of green space instead of concrete or asphalt, or because open space is generally quieter than streets.

As Staff concluded, the Applicant's request for modification of standards to LUC Section 3.5.2(D)(1) would not be detrimental to the public good and the request satisfies the criteria of approval pursuant to LUC Sections 2.8.2(H)(1) (4)<sup>3</sup> "because the plan with longer walkways allows more residents access to shared walkways with a pattern that provides a high level of interconnectivity throughout the development and to adjacent neighborhoods in a manner that is equal to or better than a street network." *Staff Report, at 50*. The Staff Report also concluded that the Applicant's PDP,

*continues to advance the purposes of LUC Section 1.2.2 by increasing access to sidewalks, trails, and bicycle routes and satisfies [LUC Section] 2.8.1(H)(3) because. . . the combination of the unusual shape of the property, location of the New Mercer Ditch, location of existing flood control channels, and location of existing development are exceptional practical difficulties not caused by the act or omission of the applicant, which makes providing a network of streets, shorter walkways and/or wider open space for walkway spine green courts in all portions of the site practically infeasible.*

*Staff Report, at 50.*

Thus, the Hearing Officer properly interpreted and applied LUC Section 3.5.2(D)(1) and LUC Section 2.8.2(H) in approving the request for modifications of standards.

**2. The Hearing Officer properly interpreted and applied LUC Section 4.5(D)(2)(a)(3) in approving the request for modifications of standards.**

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<sup>3</sup> A detailed and thorough analysis of how the request for modifications of standards to LUC Section 3.5.2(D)(1) meets all of the LUC Sections 2.8.2(H)(1) and 2.8.2(H)(4) criteria of approval is provided in the Cover Letter included with the Application.

LUC Section 4.5(D)(2)(a) provides that “[a] mix of permitted housing types shall be included in any individual development plan, to the extent reasonably feasible, depending on the size of the parcel.” As part of this requirement, the LUC states that “a minimum of four (4) housing types is required on any such project development plan containing thirty (30) acres or more.” *LUC, § 4.5(D)(a)(3)*.

The Appellants argue that the PDP does not provide adequate variation in the housing models and that significant repetition is problematic due to the massing of the proposed buildings.

The Application proposes three housing types instead of four. The proposed three housing types include: single-family detached dwellings with rear loaded garages; two-family dwellings; and single-family attached dwellings. Prior iterations of the Application proposed multi-family dwellings as a fourth housing type. However, one of the most common concerns voiced by members of the community was that multi-family dwellings were too dense. Even though multi-family dwellings are permitted in the L-M-N district, the Applicant removed this housing type in response to those neighborhood concerns.

The Applicant instead determined that rowhome single-family attached dwellings and townhome single-family attached dwellings—two sub-categories of the single-family attached housing type—were better suited to promote the LUC’s stated purpose of promoting variety, while still addressing the concerns of the neighboring community. The townhome single-family attached dwellings offer traditional one- and two-story dwellings with larger footprints and more private space. The rowhome single-family attached dwellings have smaller footprints and larger common space. Although the LUC does not differentiate between these two types of dwellings as a housing type, they nonetheless are two distinctly different housing types because they provide homeowners with different options for design, layout, price point and lifestyle. In keeping with the LUC’s purpose of promoting variety, each housing type also has three to four distinctly different building designs that fit within an overall coordinated theme. In accordance with the LUC, no similar buildings have been placed next to each other along a street, street-like private drive or major walkway spine.

Staff also recommended that the request for modifications of standards to LUC Section 4.5(D)(2)(a)(3) should be approved because it would not be detrimental to the public good and satisfies the LUC Section 2.8.2(H)(1) criteria for approval.<sup>4</sup> *Staff Report, at 50*. Staff stated that “the proposed plan provides enough variation between housing models to create a varied and unique streetscape without significant repetition. . .” and the PDP will continue to advance the purposes of LUC Section 1.2.2. including, but not limited to:

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<sup>4</sup> A detailed and thorough analysis of how the request for modifications of standards to LUC Section 3.5.2(D)(1) meets all of the LUC Sections 2.8.2(H)(1) and (4) criteria of approval is provided in Section III.D. of the Cover Letter.

- Increasing public access to mass transit, sidewalks, trails, bicycle routes and other alternative methods of transportation by providing sidewalk and bicycle lane improvements along Laporte Avenue, N. Taft Hill Road, and connections to local streets and trails;
- Encouraging the development of vacant properties within established areas; and
- Ensuring that development proposals are sensitive to natural areas and features by improving existing habitat features.

*Staff Report, at 50.*

Also relevant in the Staff Report and the Hearing Officer's evaluation was the fact that the Sanctuary Neighborhood includes more than 23 different architectural designs, which creates additional variety and diversity from a visual and aesthetic standpoint.

Accordingly, the Hearing Officer properly interpreted and applied Sections 4.5(D)(2)(a)(3) and 2.8.2(H) of the LUC in approving the request for modifications of standards.

#### **IV. The Evidence the Hearing Officer Considered was Proper and Relevant.**

##### **A. The Applicant presented no substantially false or grossly misleading information and therefore, the Hearing Officer's approval of the PDP was proper.**

Without providing any evidence, the Appellants assert that the following information presented by the Applicant was substantially false or grossly misleading information:

- The Applicant collaborated with the neighbors;
- The Applicant put forth efforts to create open space on the property and buffers to address neighbor concerns;
- The Applicant presented accurate comparisons of local structures by using proper comparable properties to justify that the three-story row dwellings are compatible with existing properties in the neighborhood and the Hearing Officer properly allowed them to be presented as abutting the Sanctuary Neighborhood;
- Historic sites and historic natural resources on the property and within the adjacency area were preserved;
- The Applicant reduced the density of the Sanctuary Neighborhood in response to neighborhood concerns;
- The Applicant stepped down the three-story dwellings to two-stories; and
- The Applicant argued that housing is a critical need in Fort Collins and that they are addressing this issue.

The Applicant did not present any substantially false or misleading information as to any of the Appellants claims above, and the Hearing Officer Decision should therefore be upheld, as further explained below.

**1. The Applicant collaborated with neighbors and incorporated their feedback into the PDP.**

As part of the Prior Application, an initial neighborhood meeting was held on June 27, 2018. The annexation of the 14 acres east of the New Mercer Ditch and the property within the PDP that is the subject of this Application were discussed at that meeting. In August 2018, in response to that neighborhood meeting, the Applicant published a newsletter, attached as Exhibit A to the Cover Letter, to reflect the key neighborhood concerns that had been voiced and the Applicant's responses to those concerns. Although the Applicant had originally planned to request that the newly annexed portion of the Property be zoned to Medium Density Mixed-Use Neighborhood District, the Applicant decided to request lower-density L-M-N zoning in response to neighborhood concerns. Similarly, in response to community concerns about a proposed long-term senior facility on the Property, the Applicant chose instead to pursue residential development permitted by L-M-N zoning. The concerns voiced at the meeting included:

- Wetlands preservation
- Local flooding during downpours
- Protecting wildlife habitat
- Traffic impacts at the schools
- Density not consistent with City's Northwest Sub-Area Plan
- Maintaining a rural feel
- Keeping Open Spaces
- Preserving foothill views
- Allow Walking/Biking Trails to school
- The importance of creating sidewalks
- Condos and Row Homes lacked a rural feel

In response, the Applicant proposed and incorporated into in the Application the following solutions:

- Protect & maintain the wetlands in place
- Enhance habitat with planting and adding adjacent Open Space
- Improve stormwater channels and detention ponds
- Improvements will follow traffic study recommendations.
- Changed Annexation Request to L-M-N (from M-M-N)
- Proposed Low Density L-M-N to be compatible with Area Plan

- Open Space is a priority
- Modern farmhouse architecture and craftsman designs to create consistency with surrounding house types
- Added Neighborhood Center to enhance community
- Building footprints will not exceed L-M-N regulations
- Design and install Soldier Creek Extensions, new greenway
- Adding sidewalks next to streets
- Increased diversity of housing product type to meet City needs and plan goals

In addition to that larger neighborhood meeting, the Applicant met with a small group of interested residents on September 24, 2018 and participated in several one-on-one meetings to gather feedback about the proposed development from the current residents. The initial newsletter mentioned a second newsletter to follow; the second newsletter, attached as Exhibit B to the Cover Letter, was provided to the community in February 2019, which described the PDP and shared a significantly revised draft of the proposed site plan.

A second full neighborhood meeting was held on March 7, 2019 to update the neighborhood regarding changes to the proposed PDP. In response to community concerns about local raptor nests, the Applicant performed a nesting survey, which concluded that no raptor nests were found to be located in any of the trees on the Property.

Another virtual neighborhood meeting was held on September 14, 2021 to update the neighbors on the Applicant's changes to the PDP since the last meeting. These changes included rotating buildings away from the neighbors' homes, further adjusting and reducing building heights, creating a larger open space and further decreasing the Sanctuary Neighborhood density.

The Applicant has reduced the density of the development six times since its inception, from 371 units in the initial proposal, to the 212 units proposed in the Application. Most recently, the Applicant removed the multi-family dwellings, replacing them with single-family attached dwellings.

On April 20, 2022, the Applicant sent the neighbors a newsletter informing them of the further changes to the PDP. The newsletter addressed each of the concerns raised at the previous meeting and provided a description of how the Applicant has considered the concern.

Overall, the Applicant has made every effort to engage in dialogue with the Appellants and respond to community concerns throughout the Application process. The Applicant addressed this issue in the Hearing and made the following statement:

*And one of the things that's been made very clear to us from the very beginning is that the only thing that would be acceptable to the neighbors would really be density in the [Sanctuary Neighborhood] of about 100 homes. . . and anything more dense than that,*

*they're really not supportive of. And, the other alternative would be an open space field. And so, it's really difficult to collaborate with a group that doesn't collaborate back. . . [y]ou know, trying to find common ground, and ways to collaborate, really requires both parties to do some collaboration.*

*So, I just wanted to, once again, go over some of the things that we have done to try to address the concerns that the neighbors have had. We've reduced our density from 371 units down to 212 from the beginning of the project to where we are now. We've moved the entry road north on Taft Hill Road to accommodate the neighbor who lives on the east side of Taft Hill Road, we've added additional fencing for people who are concerned about. . . being next to buildings and development and we've added trees. . . we have about 694 trees, we have 421 shrubs that we've planted to try to help buffer, we've reduced the elevations of our three-story product from three stories to two stories for 21 of the 28 buildings. . . And we've done the same with the two-story townhomes; we've reduced end units of those to one story to try to help with. . . this feeling that the buildings are too tall. We have done a lot with trying to accommodate the neighbors in terms of connectivity, and trails, and open space, and habitat, and as a result, we have a site that's 58% open space. . . 150% of the required natural habitat buffer zone, we have incredible biodiversity that we're going to be introducing to the site. So, I think all of those things are things that we have tried to do to accommodate the neighbors' concerns, and really address them. And, one things we could not do, is reduce the density down to the level that they would be happy with.*

*Hearing Transcript, at 61:1-15.*

As such, the Applicant has not presented any substantially false or grossly misleading information in regard to its efforts to collaborate with the neighbors. The Appellants clearly take issue with the use of the word "collaborate." But, as the Applicant also clearly explained at the hearing, its efforts to collaborate were largely one-sided, and perhaps more properly characterized as "listening and revising" rather than "collaborating." However, the Applicant was also very transparent and specific at the hearing about its actions to listen to feedback and revise the Application accordingly. The Appellants may believe that the Applicant has not revised the application sufficiently to accommodate their preferences, but it cannot be said that the Applicant has not listened and made revisions. In fact, to claim otherwise would indeed be false and misleading.

Thus the Applicant did not present false and misleading information and the Hearing Officer Decision should be upheld.

**2. The Applicant put forth every effort to create open space on the property and buffers to address neighbor concerns.**

As discussed above, the PDP provides for more than 58% (24.83 acres) of open space. The Applicant has continuously increased the amount of open space with each subsequent revision of the PDP, all in response to neighbor concerns. The Applicant also added a public park, fencing, additional plantings of



approximately 694 trees and 421 shrubs, stepped-down the three-story buildings, provided 150% of the required natural habitat zone, conducted raptor studies, and moved the location of the entry road on N. Taft Hill to accommodate the neighbor concerns and to provide increased open space and adequate buffering. Additionally, the Applicant will re-seed the native grasses for wildlife habitat preservation and enhancement.

Thus, the Applicant has not presented any false or grossly misleading information in regard to its efforts to create open space and buffering, and the Hearing Officer's decision is proper. The Appellant may continue to believe that these measures to accommodate its concerns are not adequate, but that is not the same as substantially false or misleading.

- 3. The Applicant presented accurate comparisons of local structures by using proper comparable properties to justify that the three-story row dwellings are compatible with existing properties in the neighborhood and the Hearing Officer properly allowed them to be presented.**

Section III.B. above sets forth the reasons why the Sanctuary Neighborhood is compatible with the neighboring properties, the Bellwether Farms Subdivision and the Ramblewood Apartments, and why the comparison to these properties was proper under the LUC. Accordingly, the Applicant did not present any substantially false or grossly misleading information, and the Hearing Officer's decision should be upheld.

- 4. The Applicant preserved the historic sites and historic natural resources on the property and within the adjacency area.**

Section III.D. above discusses how the Applicant has met the LUC's requirements for preserving historic sites, specifically in regard to the 330 N. Taft Hill property.

The Appellants also argue that the Applicant improperly stated that properties on the eastern border of the Sanctuary Neighborhood are commercial. However, Applicant made no such claims in either the Hearing or the Cover Letter. Rather, Applicant informed the Hearing Officer that the proposed Neighborhood Center, which will consist of a mixed-use building that will feature a clubhouse for the community with a fitness room, kitchen, large gathering space, outdoor space, a public playground and public park, and commercial uses leased separately to commercial tenants, will be located on the eastern edge of the Sanctuary Neighborhood. *See Cover Letter, at 2; Hearing Transcript, at 19.*

Appellants further claim that the Applicant's architectural design styles look nothing like the actual historic farmhouse across the street within the area of adjacency. LUC Section 3.4.7(E)(1) provides, in relevant part, that "[p]roposed development may represent the architecture and construction standards of its own time but must also convey a standard and protect and complement the historic character of historic resources both on the development site and within the area of adjacency." The

proposed architectural styles of the Sanctuary Neighborhood include “modern farmhouse, mid-century and craftsman,”<sup>5</sup> which are two distinct architectural styles seen throughout the surrounding neighborhoods. The Applicant has correctly and truthfully stated that it chose these architectural styles in order to be compatible with existing neighborhoods. It is not necessary that the new structures “look exactly like” existing architecture. This statement by the Applicant is not grossly false or misleading.

The Appellants also assert that prior to annexing the property into the City, the Applicant burned a farmhouse on the site and disassembled barns in order to avoid the City’s historic preservation commission review. First, this claim is irrelevant, because the Sanctuary Neighborhood was not within the City’s jurisdiction when the Applicant took certain necessary measures to ensure safety. Nonetheless, the Applicant has been aware, and the Appellants freely admit, that they have been trespassing on the Sanctuary Neighborhood site for many years. During the Hearing, one neighbor stated that she walks her dog on the “field” every single day. *Hearing Transcript, at 28:14*. Another neighbor stated, “the Sanctuary field quickly became one of my favorite places in town, and one that I would visit at least once a day, sometimes twice a day with my dog, Carl.” *Hearing Transcript, at 40:5*. Knowing that the neighbors were trespassing on the Sanctuary Neighborhood site, the Applicant took precautionary measures of removing the buildings in extreme disrepair that posed safety concerns to known trespassers, specifically to children that were known to play around these dilapidated buildings. The Applicant donated the structure to the Poudre Fire Authority, which conducted a training exercise with six different area fire departments, that included safely burning one of the existing buildings.

In any event, this issue is irrelevant because it does not relate to any of the approval criteria, and it occurred prior to the City acquiring any jurisdiction over the Property or the Application.

Lastly, the Appellants argue that the silver maple and cottonwood trees on the Sanctuary Neighborhood site are “historic” and must be preserved. However, the Applicant prepared an extensive Environmental Characterization Study, by Cedar Creek Associates, updated multiple times throughout the Application process (the “ECS”), which concluded that due to the land’s prior farming use, the Sanctuary Neighborhood features little native plant material (described in more detail in the ECS). Further, all existing trees on the Property were identified, and the tree mitigation plan included in the Application demonstrates which trees are to be removed and how they are to be mitigated. Tree groves identified as habitat by the City Forester will be mitigated within the Natural Habitat Buffer Zone (the “NHBZ”) and open space areas. Within the NHBZ zones, existing non-native

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<sup>5</sup> The modern farmhouse style home is characterized by simple, often rectangular, plans of one or two stories with end gables and large porches, and an exterior white color. The craftsman home is characterized by low pitched gabled roofs with wide overhangs - sometimes with exposed rafter tails – with decorative beams or brackets, and porches that are often full width featuring tapered columns and/or masonry pedestals. Mid-century homes often feature wide street frontages, asymmetrical one-story shapes with low-pitched roof forms, attached garages and ribbons of windows. The surrounding neighborhoods present a mix of these styles, which is the reason why the Applicant has included these same styles in the Application.

aggressive plant material will be replaced with more diverse native plants. The Application also provides for enhanced habitat pockets with shrub and tree plantings. As previously mentioned, the PDP provides for the planting of 692 trees consisting of deciduous and coniferous species, 89 of which are mitigation trees, distribution as required by the LUC. The PDP also provides 421 mitigation trees. The Application thus complies with all requirements and standards of LUC Section 3.2.1 in providing landscaping and tree preservation and does not fail to preserve any specific “historic” trees.

Therefore, the Applicant did not present any substantially false or grossly misleading information as to the preservation of resources on the land, and the Hearing Officer’s decision is therefore proper.

**5. The Applicant reduced the density of the Sanctuary Neighborhood in response to neighborhood concerns.**

The Appellants claim that the Applicant presented substantially false or grossly misleading information when the Applicant stated that the Sanctuary Neighborhood density was reduced from 371 units to 212 units in response to neighbor concerns. The Appellants further argue that because the Sanctuary Neighborhood site is located within a City floodplain, an assisted living facility is prohibited, and that therefore the Applicant’s statement that the assisted living facility was removed as a concession to the neighbors is false.

As previously discussed above in Section IV.A.1. above, the Applicant engaged in multiple conversations with the Appellants. In response to the concerns voiced in these conversations, the Applicant reduced the density of the Sanctuary Neighborhood multiple times. The Appellants have advanced no evidence supporting their claim that this is not true; nor does any such evidence exist. Furthermore, the Applicant’s reason for reducing the density is irrelevant; the fact remains that the density is well within the minimum and maximum allowed by the LUC.

Similarly, the Appellants’ argument that the Applicant mislead the Hearing Officer in stating that the assisted living facility was removed as a concession to the neighbors is also unsupported by any evidence. The Applicants have testified several times as to the reason for removal of the senior living facility, and the record contains no evidence otherwise. The Appellants are merely speculating as to the Applicant’s reason for doing so. Even if it were true that the Applicant had the devious motivation of removing the senior living facility because of floodplain concerns rather than in response to the neighbors’ concerns, it would have no bearing on the decision at hand. The Hearing Decision does not indicate any reliance on this fact in reaching its conclusion to approve the Application, nor does this allegation relate to any of the relevant criteria set forth in the LUC.

Additionally, the Applicant is working in cooperation with the City engineering staff and consultants to improve and shrink the floodplain through grading, underground water storage, rain gardens and other on-site detention which will significantly reduce any risk of downstream flooding. The City has

purchased the Puente Verde property at the southwest corner of Taft Hill and Vine Street with the intent of creating a regional detention pond and park area in the near future. When this development occurs, the remaining floodplain area will be removed from the Sanctuary Neighborhood and turned into park and open space.

The Applicant therefore did not present any substantially false or grossly misleading information in regard to the Applicant's reduction of the density, and the Hearing Officer's decision is thus proper.

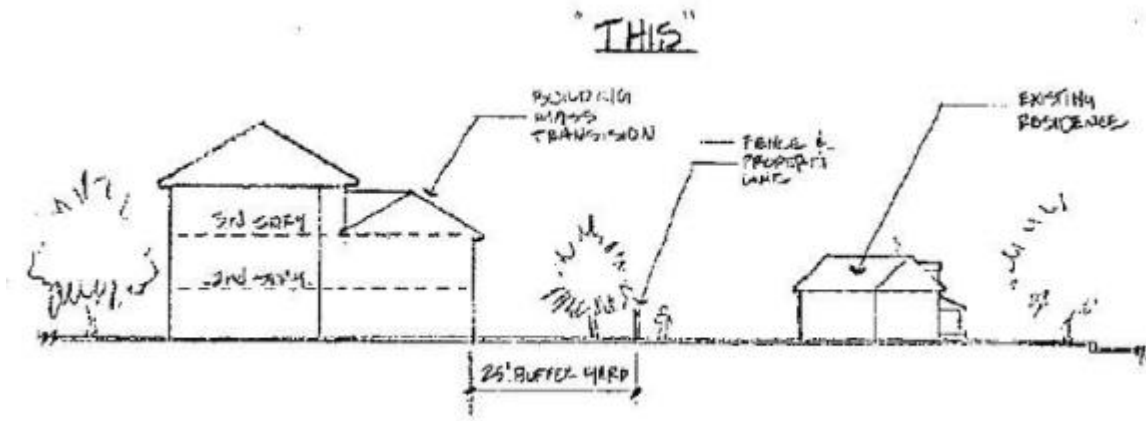
**6. The Applicant properly asserted that the three-story buildings are stepped-down to two stories on the ends.**

The Appellants argue that the Applicant presented substantially false or grossly misleading information by informing the Hearing Officer that the three-story buildings were stepped down to two stories.

Pursuant to LUC Section 3.5.1(C), "[b]uildings shall either be similar in size and height, or, if larger, be articulated and subdivided into massing that is proportional to the mass and scale of other structures, if any, on the same block face, abutting or adjacent to the subject property, opposing block face or cater-corner block face at the nearest intersection."

The PDP shows that the three-story buildings feature end units that are "stepped-down" to two stories. The Applicant accurately presented this information to the Hearing Officer. The Applicant compared the Sanctuary Neighborhood three-story buildings with stepped-down ends to the Bellwether Farms Subdivision structures that are two-stories with walk-out basements to demonstrate that the Sanctuary Neighborhood proposed dwellings are compatible, in terms of design and massing, with the existing buildings within the surrounding area. *Transcript, at 49:38-50:12.*

Further, the Applicant stated at the Hearing, "I'll leave the discussion of these buildings' architectural features to the architects, other than to mention that they are stepped down on the end, so they're not the same mass, meaning they don't all have the same height. It's not a big square block. That's exactly what this articulation and subdivision [of LUC Section 3.5.1(C)] is talking about, as well as accomplishing that in a different way through architectural features" *Transcript, at 50:6.* In fact, Figure 7b of LUC Section 3.5.1 depicts the following image of a stepped-down building to demonstrate how the LUC Section 3.5.1 requirements for articulating and subdividing buildings that are larger than neighboring residential homes may be met:



Notably, the single-family existing residence in the above image is actually much smaller than many of the homes adjacent to the Sanctuary Neighborhood. As the image shows, a three-story dwelling is appropriate next to a one-story existing residence if the three story dwelling is stepped down. The Application proposes three-story stepped-down dwellings next to two-story existing residences.

Accordingly, the Applicant did not present any substantially false or grossly misleading information in describing the three-story stepped down dwellings, and the Hearing Officer's decision is thus proper.

**7. The Applicant properly described how the Sanctuary Neighborhood is addressing critical housing needs in the City.**

The Appellants argue that the Applicant is not providing affordable housing and is also not willing to state how much the houses will cost once they are built.

The Appellants conflate the definition of "affordable housing" with housing that is affordable. The LUC defines affordable housing as housing that is "available for rent on terms that would be affordable to households earning eighty (80) percent or less of the median income of city residents, as adjusted for family size, and paying less than thirty (30) percent of their gross income for housing, including rent and utilities." *LUC*, § 5.1. The PDP does not propose "affordable housing." Rather, as stated in the Cover Letter in Section III.B.3., the Applicant proposes to build homes at price points that bridge the gap between incomes and housing prices in accordance with the City's Housing Strategic Plan, adopted in March 2021. Both the Applicant and Staff emphasized this point during the Hearing. The Applicant stated at the Hearing, "I want to be clear that the Applicant never said [that] we are proposing affordable housing here. What we said was, this housing development, this PDP, helps achieve housing goals by providing alternative price points and alternative product types compared to sort of the default in Fort Collins, which is the single-family home." *Hearing Transcript*, at 59:19-22. Staff also clarified this point by stating, "And just to note, affordable housing, per the City's definition, is not being proposed for this site." *Hearing Transcript*, at 17:27-28.

Additionally, as is the case with nearly all residential development and especially during this period of rapidly rising inflation and construction costs, exact costs for each dwelling may only be appropriately determined when construction nears completion so that the Applicant can accurately factor all of the development costs into the price.

Thus, the Applicant did not present any substantially false or grossly misleading information in describing how the Sanctuary Neighborhood provides housing that is affordable, and the Hearing Officer's decision was thus proper.

**B. The Applicant followed the development review requirements and therefore, the Hearing Officer's approval of the PDP was proper.**

Without providing any evidence, Appellants argue that Hearing Officer considered substantially false or grossly misleading information for the following reasons:

- The City's development review website is difficult to navigate, and some files cannot be viewed online;
- The Appellants had to request submittal documents and Staff comment letters by google drive for each round of submittals because the documents were not uploaded in a timely manner; and
- The Hearing Officer Decision incorrectly stated that the Sanctuary Neighborhood dwelling units totaled 242.

Although these claims are directed at Staff, the Applicant maintains that the Applicant met all of the City's requirements and deadlines in submitting its PDP. Any difficulties the Appellant experienced in accessing documents was not attributable to the Applicant nor was it a factor in the Hearing Decision.

Additionally, the Hearing Officer's reference to 242 dwelling units on page 1 of the Hearing Decision is a typo. The Application proposes 212 units, as was accurately presented in the PDP, the Cover Letter, the Staff Report and throughout the Hearing. The Prior Application proposed 242 dwelling units; however, as discussed above, the Applicant reduced the density to 212 units in the current Application that was considered by the Hearing Officer and is before the City Council today. The Hearing Officer was clearly not laboring under any misunderstanding in evaluating the Application about the total number of units.

Therefore, the Applicant did not present any substantially false or grossly misleading information throughout the submission of its Application, and the Hearing Decision may not be reversed on this basis.

**V. The Hearing Officer Conducted a Fair Hearing Because the Hearing Officer Was Not Biased Against the Appellant By Reason of a Conflict of Interest or Other Close Business, Personal, or Social Relationship that Interfered With the Decision Maker's Independence of Judgment.**

Without presenting any evidence in support of its claim, the Appellants assert that the Hearing Officer was biased because of the following:

- The revised Application should not have been evaluated in a Type I Hearing;
- The Hearing Officer is paid by the City and is not from or familiar with the northwestern area of the City;
- The project is too large;
- The hearing process gives the Applicant an unfair advantage because the Applicant is allowed a rebuttal; and
- The parcel is too challenging of a site for development.

First, Section 4.5(B)(2) of the LUC dictates the procedural guidelines for the submission of a PDP for residential uses in the L-M-N district. The Applicant proceeded with its Application in accordance with the LUC rules, which set forth that the following uses are permitted by right in the L-M-N district, subject to the LUC Section 2.2.7 Administrative Review (Type 1 hearing); single-family detached dwellings, two-family dwellings, and single-family attached dwellings. Accordingly, the appropriate forum for Appellants' grievances of the LUC process – including the complaint that the Applicant is given an unfair advantage because the Applicant is allowed a rebuttal – should be addressed through the regulatory legislative process and not this appeal. Furthermore, the Hearing Officer heard testimony from all neighbors who signed up to speak, and considered all evidence submitted by both the Appellants and the Applicant, which also included numerous emails and other information provided by the Appellants. *See Hearing Decision, at 3-5.*

Next, the essence of an unbiased Hearing Officer is that the Hearing Officer is a neutral party. An important aspect of an unbiased decision-maker is that the decision-maker has no stake in the outcome.<sup>6</sup> Contrary to what the Appellants' claim, if the Hearing Officer were a resident of the northwestern area of the City, the Hearing Officer arguably could be biased because he or she may

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<sup>6</sup> Section 9 of the City of Fort Collins Municipal Code ("**Municipal Code**") defines a "financial interest" as "any interest equated with money or its equivalent." However, financial interest shall not include: "the interest that an officer or employee has in the compensation received from the city for personal services provided to the city as an officer of employee." Additionally, "personal interest" is defined as "any interest (other than financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public. *Municipal Code, § 9.* Personal interest does not include "the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the city. *Municipal Code, § 9.* Pursuant to the City definitions of financial interest and personal interest, the Hearing Officer exhibited neither.

have a stake in the outcome. Accordingly, the fact that the Hearing Officer is not a resident of the northwestern area of the City lends to, and strengthens, his neutrality.

The only other alternative to the Hearing Officer being paid by the City is for the Hearing Officer to be paid by the Applicant, which surely would not bring about the result the Appellants are suggesting. Or perhaps the Appellants are suggesting that the Hearing Officer should not be paid? In any event, this fact is not sufficient to demonstrate bias.

Additionally, the Appellants' claim that the property is too complicated for development does not indicate that the Hearing Officer exhibited bias that impacted his independent judgment. The Applicant conducted various studies of the land to ensure that it can adequately serve the Sanctuary Neighborhood, not only as required by the LUC but also in addition to what is required by the LUC. Additionally, the Applicant is taking all recommended measures to minimize impacts on natural areas such as the wetlands. In fact, as discussed in Section III.D. of the Cover Letter, the wetlands and stormwater conveyances that dominate the site on the north and west will be enhanced through re-seeding with natural grasses and planting native trees and shrubs that will significantly enhance wildlife habitat value.

Accordingly, the record does not contain any evidence of unfair bias or conflict of interest that could have interfered with the decision maker's independence of judgement. The Hearing Decision should therefore be upheld.

## **VI. Conclusion**

In conclusion, the Appellants fail to meet their burden of proof to establish that the Hearing Officer: (1) failed to properly interpret and apply relevant provisions of the LUC and City Plans; (2) considered evidence relevant to its findings which were substantially false or grossly misleading; or (3) was biased against the Appellant by reason of a conflict of interest that interfered with his independence of judgment. Thus, the Appellants lack any grounds for which to reverse the Hearing Decision, and it should be upheld.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carolynne C. White".

Carolynne C. White