



MINUTES OF THE BOARD OF COUNTY COMMISSIONERS

MONDAY, NOVEMBER 14, 2022

LAND USE HEARING

The Board of County Commissioners met at 3:00 p.m., with Don Threewitt, Principal Planner. Chair Stephens presided. Commissioner Shadduck-McNally and Commissioner Kefalas were present. Also, present were: Samantha Mott, Planning; Conner Sheldon, Engineering; Lea Schneider, Environmental Health; Noel Udell, Environmental Health; Michael Whitley, Planning; Matt Lafferty, Principal Planner; Lesli Ellis, Community Development Director; Amy White, Code Compliance Supervisor; Laurie Kadrich, CPIR Director, Shalana Lysaght (virtual), Administration; Frank Haug, Attorney's Office; and Kelly Bryant, Deputy Clerk.

Chair Stephens opened the hearing with the Pledge of Allegiance.

CONSENT ITEM:

1. KIEFER SUBDIVISION AND APPEALS, FILE NO. 20-LAND4051.

The owners propose to divide an existing parcel of land to create one additional lot. The existing parcel is 4.87-acres, and they propose to create one 2.57-acre lot and one 2.3-acre lot. The existing residence and outbuildings would be contained on the 2.3-acre lot with frontage on Highway 56. The property currently has a driveway with direct access onto County Road 8/State Highway 56. The existing parcel is located approximately 1/2 mile west of the intersection N. County Road 13 and E. County Road 8 just south of Bacon Lake. It is Lot 4, of the Amended Johnson Subdivision. The parcel is adjacent to the Town of Berthoud to the south and it is within the Berthoud Growth Management Area.

Because this lot is in the Berthoud Growth Management Area and adjacent to the Town of Berthoud, the request to subdivide triggers the requirement for annexation. Per the Intergovernmental Agreement between the Town of Berthoud and Larimer County, the county cannot process an application for subdivision for a parcel of land that is eligible for annexation unless the Town denies the request for annexation. In this case, the Town of Berthoud has previously (in an email dated May 13, 2020) indicated they are not interested in annexing the property for a one lot subdivision.

Although the property is located within the Berthoud Growth Management Area, it is not included in the Growth Management Overlay Zone district in the Land Use Code (Article 2.7.2). per the Town of Berthoud/Larimer County Intergovernmental Agreement.

The subject parcel, as well as the surrounding properties to the east and west are currently RR-2 Rural Residential zoning district and the proposed lots would meet the minimum lot size of 2.3- acres. Surrounding properties are developed with single-family residential and agricultural uses consistent with the existing zoning district. This area is characterized by a mix of lot sizes ranging from an approximate 1.25-acre lot to the south to a 38.75-acre lot to the southeast. The surrounding uses include residential and agricultural uses. This parcel is currently being used for residential and agricultural uses and the proposed new lot is for residential use. There is a single-family dwelling, garage, storage sheds, and greenhouses currently on the property. These would remain on the proposed 2.3-acre lot.

The existing home is served by the Berthoud Water District and an on-lot septic system. The newly proposed lot would also be served Both Berthoud Water and an on-lot septic system. Because the lot is within a Growth Management Area, any new lots should connect to public sewer. This requirement is being appealed with this request.

The property is located adjacent to Highway 56 and includes an existing access which would also be used to serve the new lot. No internal public roads are being proposed. The two lots will take access of a shared access easement along the eastern side of Lot 1. Larimer County mapping indicates it is an area of low geologic hazards, it is not in a wildfire hazard area, and there are no wildlife concerns.

Larimer County mapping does however indicate that there are wetlands on the northern portion of the property adjacent to Bacon Lake. The Land Use Code requires buffering to avoid impacting the wetlands.

This request includes multiple appeals such as Appeals to the Land Use Code: Article 4.3.5. (On-lot septic in a Growth Management Area), Article 4.5.4.B.1 (connectivity), Article 5.3.A (Public Right-of-Way), and Article 5.2.1.7 (Lot Width to Depth Ratio).

The application was sent out to both referral agencies and neighboring property owners. Comments were received from one community member in opposition to this request. Referral agencies that provided comments are listed below and their comments are attached to this report.

REVIEW CRITERIA:

Preliminary Plat

In reviewing a proposed preliminary plat application, the County Commissioners shall consider the general approval criteria in Article 6.3.6, and the following review criteria of Article 6.5.5.D.1:

- A. Complies with all applicable use, density, development, and design standards set forth in this Code that have not otherwise been modified or waived pursuant to this Code and that would affect or influence the layout of lots, blocks, and streets.** The proposed land division would create two lots intended for residential development consistent with the intent of the zoning district as well as with the

existing development in the surrounding area. The proposed residential lots would be approximately 2.3-acres and 2.6- acres in size. The proposed residential lots would meet the required minimum lot size for the RR-2 Rural Residential zone district of 2.3-acres or 100,000 square feet for lots on septic. The proposed land division complies with all applicable use, density, development, and design standards set forth by the Larimer County Land Use Code except for the appeals noted in this report.

- B. **Provides a layout of lots, roads, driveways, utilities, drainage, and other public facilities and services designed to minimize the amount of disturbance to sensitive natural areas or other community resources;** According to Larimer County GIS data, there are no specific wildlife habitats located on the subject property. The northern edge of the subject property is located along the shores of Bacon Lake. There is a potential wetland identified along the northern portion of the property. The plat should identify a no-build/wetland buffer area or a building envelope to protect the wetland area and comply with Section 4.4.2 of the Land Use Code regarding wetland buffer areas. Any future development within this area will need to meet applicable building and floodplain requirements in effect at the time of development.
- C. **Provides evidence to show that all areas of the proposed subdivision that may involve other natural hazards including flood and wildfire have been identified and mitigated to the maximum extent practicable;** According to Larimer County GIS data, the property is in a low geological hazard area, does not contain any slopes greater than 30%, and is not in a mapped wildfire hazard area, but there are potential wetlands on the property and wetland buffering will be required based on the size of the wetland area. The extreme northern portion of proposed Lot 2 is within the Bacon Lake flood-prone area. Any future development within this area will need to meet applicable building and floodplain requirements in effect at the time of development. This has been made a condition of approval
- D. **Provides evidence that provision has been made for a public sewage disposal system or, if other methods of sewage disposal are proposed, adequate evidence that such system shall comply with state and local laws and regulations;** Sewer for the existing residence is provided by an on-site wastewater treatment system (OWTS) and an OWTS is proposed for the new residential lot. The applicants have requested an appeal to allow the use of OWTS in the Growth Management Area. They have provided sufficient documentation for the Department of Health and Environment to support this appeal. See the comment letter from Lea Schneider with the Department of Health and Environment dated April 7, 2022, and follow-up email dated October 9, 2022, for more information.
- E. **As applicable, provides proposed phasing for development of the subdivision that is rational in terms of available infrastructure, capacity, and financing; and** Phasing has not been proposed for this proposed land division.
- F. **The subdivision is consistent with the subdivision sketch plan, if applicable, unless detailed engineering studies require specific changes based on site conditions.** The Kiefer Subdivision is consistent with what was originally proposed at the Sketch Plan Review phase. As noted previously, the proposed land division

would create two total residential lots which is consistent with the intent of the zoning district.

LAND DIVISIONS WITHIN A GROWTH MANAGEMENT AREA OR THE LAPORTE PLAN AREA

In addition to the review criteria of Article 6.5.5.D.1 above, in reviewing a proposed preliminary plat application, the Board of County Commissioners shall consider the following review criteria found in Article 6.5.5.D.2 and find that each criterion has been met or determined to be inapplicable:

- A. Complies with the applicable supplementary regulations of the GMA district, if any, or the LaPorte Area Plan or other adopted sub-area plan, as applicable.** Although the property is located within the Berthoud GMA, it is not subject to the GMA Overlay Zoning district in the Land Use Code per the Town of Berthoud and Larimer County Intergovernmental Agreement. This project needs to comply with the requirements within the Intergovernmental Agreement between Larimer County and the Town of Berthoud. This project was referred to the Town of Berthoud who indicated no concerns with this request. As previously discussed in this report, the density proposed would comply with the existing Larimer County RR-2 – Rural Residential zoning.
- B. Is compatible with existing and allowed land uses in the surrounding area;** The existing and proposed residential uses appear to be consistent with the existing and allowed uses of the surrounding properties. The predominant land uses in the area are single-family residential and agricultural. The applicant is proposing a 2-lot development for residential use. The surrounding properties to the east and west are zoned RR-2 Rural Residential. This zoning district generally allows single-family residential uses by right.
- C. Can and will comply with all applicable requirements of this Code;** The proposed land division will comply with the requirements of the Code except for the proposed appeals which are discussed later in this report.

Article 4.0 of the Land Use Code includes Development standards. Article 4.3 Adequate Public Facilities Sub-Article 4.3.3 Road Capacity and Access to Public Roads: The purpose of the road capacity and level of service standard is to ensure that all development will have safe and adequate access to public roads and transportation related services and to ensure that development does not create demand for public improvements and services that cannot be met with existing public resources. There are several appeals to engineering requirements discussed later in this report (connectivity and public right-of-way) as well as items that will be addressed with the next phase, the Final Plat phase. The Town of Berthoud indicated they had no comments on the proposal or the appeals.

Sub-Article 4.3.4 Drainage: The Engineering Department has indicated that a Preliminary Drainage Narrative has been provided and that they are not requesting any additional information to be provided in the narrative, however, the construction plans provided at the Final Plat phase will need to include an overall drainage and erosion

control plan for the subdivision. In addition, the applicants must adhere to any floodplain requirements and coordinate with Bacon Lakes' owner and/or operator.

Sub-Article 4.3.5 Wastewater Disposal: Sewer for the existing residence is provided by an on-site wastewater treatment system (OWTS) and a OWTS is proposed for the new residential lot. The applicants have requested an appeal to allow the use of an OWTS in the Growth Management Area. They have provided sufficient documentation for the Department of Health and Environment to support this appeal.

Sub-Article 4.3.6 Fire Protection: The Berthoud Fire Protection District has provided information regarding hydrant locations and water pressure and flows. The applicants have indicated they will either upgrade the existing water line to meet fire protection standards or install fire sprinklers to any new dwellings. This will be made a condition of approval. In addition, the applicants shall provide a turnaround with a minimum radius of 50 feet. This can be addressed at the final plat phase.

Sub-Article 4.3.7 Domestic Water: The current home on the property is served by Town of Berthoud Water District. The proposed new lot will also be served by the Town of Berthoud. A letter of commitment from the District was provided with the land division application. See the attached comments from Lea Schneider with the Health Department and the Division of Water Resources.

Article 4.4 Environmental Resource Standards Sub-Article 4.4.2 Wetlands: Larimer County GIS data indicates that wetlands may exist on the northern portion of the property adjacent to Bacon Lake. The plat should identify a no-build area or a building envelope to protect the wetland area and comply with Section 4.4.2 of the Land Use Code regarding wetland buffers areas. This application was referred to the Army Corps of Engineers, but no comments were received.

Sub-Article 4.4.3 Hazard Areas: According to Larimer County GIS data, the property is in a low geological hazard area, does not contain any slopes greater than 30%, and is not in a mapped wildfire hazard area, but the extreme northern portion of proposed Lot 2 is within the Bacon Lake flood-prone area. Any future development within this area will need to meet applicable building and floodplain requirements in effect at the time of development. This has been made a condition of approval.

Sub-Article 4.4.4 Wildlife: There are no specific wildlife concerns with the proposed land division. This request was referred to U.S. Fish and Wildlife who had no concerns and Colorado Parks and Wildlife who provided no comments on this request.

Sub-Article 4.4.5 Commercial Mineral Deposits: Larimer County's GIS database does not identify aggregate resources on the property. Notice to mineral interest holders of record has been provided in compliance with state law.

Article 4.5 Connectivity and Circulation Article 4.5.4 contains standards for street connectivity, street design, cul-de-sacs and dead-end streets. The applicant is including an appeal to the requirement for connectivity. Engineering is supporting this request which is discussed later in this report.

Article 4.6 Off-Street Parking and Loading 13 Two parking spaces are required for each single-family residential home. The proposed lots are large enough to provide an adequate number of parking spaces.

Article 4.7 Landscaping: No landscaping is required for this Subdivision.

Article 4.13 Irrigation Facilities The property abuts Bacon Lake. The Thompson River Storage and Irrigation Company is the Irrigation Company associated with Bacon Lake. They were sent a referral, but no comments were received from Thompson River. It is not anticipated that the proposed Subdivision will affect Bacon Lake.

Article 5.0 of the Land Use Code includes Subdivision standards.

Sub-Article 5.2 Lot and Block Standards: As previously discussed, the two (2) proposed residential lots would be approximately 2.3- acres and 2.58-acres in size. The proposed residential lots would meet the required minimum lot size for the RR-2 Rural Residential zone district of 2.3-acres or 100,000 square feet. The newly proposed lots do not meet the lot width-to-depth/depth-to width ratio and there is an appeal included which is discussed further in this report. Staff is supporting this request as the lot is large enough to allow the buildings to remain or future buildings to be added and meet the required setbacks for the proposed lot.

Article 5.3 Street and Access Standards Sub-Article 5.3.1.A – Public Right-of-Way Required: This Article states that “all roads within the boundary of land divisions must be a public right-of-way.” The applicants are requesting an appeal to this requirement. Steven Rothwell commented that engineering would support this appeal. No internal public roads are being proposed. The two lots will take access of a shared access easement along the eastern side of Lot 1. The connectivity appeal would also need to be approved. The Town of Berthoud did not indicate any concerns with these requests.

Sub-Article 5.3.1.C.2. Road Standards: This Article states that “the design and construction of private roads need to meet the applicable county road or street standards.” These can be addressed at the Final Plat. Article 5.4 Easement & Utility Standards The applicant will need to provide the required easements on the Final Plat.

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- D. The Board of County Commissioners have approved a rezoning of the land to PD – Planned Development;** Because this project is not subject to the GMA Overlay zoning district there is not a rezoning, and this criterion is not applicable.
- E. The recommendations of referral agencies have been considered.** The application was referred to a variety of agencies. The responses received are attached to this report.

- F. **Approval of the proposed land division will not result in a substantial adverse impact on other property in the vicinity of the proposed land division.** The application is consistent with the allowed lot sizes in the RR-2 zoning district. In addition, the proposed residential use is compatible with the uses in the surrounding area. Based on this information, the proposed subdivision should not result in a substantial adverse impact on other property in the vicinity. Staff did receive correspondence from one community member in opposition to this request. Their concerns were regarding the small lot size as well as the additional traffic. That email is attached to this report

APPEALS:

APPEAL TO DEVIATE FROM THE STANDARDS OR REQUIREMENTS

When considering whether to approve an appeal to deviate from standards or requirements of this Code, other than minimum lot size requirements, the County Commissioners may grant the appeal subject to safeguards and conditions consistent with their findings concerning the following factors. The County Commissioners will consider each of the following factors and make findings pertaining to each one, which, in their discretion, applies to the appeal:

The applicant has requested the following appeals:

APPEAL #1: Appeal to Article 4.3.5 of the Land Use Code to allow on-lot septic in a Growth Management Area.

The applicant is requesting an appeal for an on-site sewage treatment system in the Growth Management Area. The applicant submitted the following items as specified in the appeal requirements for on-site sewage treatment systems:

- A technical/economic analysis demonstrating that public wastewater treatment is not feasible.
- A letter from the applicable city utility or sanitation domestic wastewater treatment works provider indicating concurrence that it is not feasible to connect to public wastewater treatment.
- A letter from the applicable municipality indicating their concurrence that the development as proposed will achieve the land use pattern envisioned for this part of the growth management area.
- A letter from the applicable municipality that indicates their willingness to annex the property when it becomes eligible for annexation; and
- Information demonstrating that on-site wastewater treatment systems can be safely provided as anticipated as stated in this subsection (Article 4.3.5.A.4).

APPEAL #2: Appeal to Article 4.5.4.B.1 of the Land Use Code regarding connectivity.

The purpose of the connectivity requirement is to provide opportunities for the continuation of roads and pedestrian connections to adjacent properties when it makes sense to do so.

Given that the division of this property to create one additional lot, and due to the significant number of improvements required to meet this requirement Engineering can support this appeal. The

Development Services Team approval of the appeal to not require connectivity would not subvert the purpose of the requirement.

APPEAL #3: Appeal to Article 5.3.A of the Land Use Code regarding the requirement for public right-of-way.

All roads within the boundaries of land divisions, in both urban and rural areas, must be a public right-of-way.

Engineering can support this appeal if the connectivity appeal (appeal to Article 4.5.4.B.1 of the Land Use Code above) is successfully appealed and the private easement and roadway meet the appropriate roadway standards.

In order for the County Commissioners to approve an appeal to allow a private road within a land division, the County Commissioners must find that both of the following criteria are met:

1. There would be no foreseeable public purpose or benefit in having a public right-of-way.

With only one additional lot being proposed, and with the concurrent appeal to connectivity, there is no public benefit to having the access be designated as public right-of-way.

2. The County Commissioners find that road connectivity to adjacent parcels is not needed or practical and have granted an appeal to Article 5.3.4 (connectivity).

The applicants are requesting a concurrent appeal to connectivity which engineering is also supporting. While Engineering would prefer that considerations be given for connectivity to adjacent parcels because Access Management is a known issue along this stretch of CR 8/SH56, staff would prefer that access to the new lot be taken off an internal subdivision road, rather than off CR8. With that being said, the requirement of acquiring, designing, and constructing a new internal road to access the site would be a significant number of improvements for a 2-lot subdivision, so the engineering department would support this appeal.

If an appeal to this subsection is granted, the following standards shall apply to the private road:

- a. There is an easement, agreement, covenant or other appropriate document to be recorded in the county records that grants the right of access for emergency and service vehicles and that defines the persons/entities entitled to use the road easements, including the installation and maintenance of street name signs within the easement, the purpose for and way the roads may be used, any limitations on the use of the roads, the persons/entities authorized to enforce the terms of the easement and penalties for violation of the terms of the easement.

This will be addressed at the final plat phase.

- b. The design and construction of the private road will meet applicable county road or street standards.

This will be addressed as part of the final plat phase.

- c. Provisions acceptable to the County Commissioners have been made for maintenance of the private roads.

This will be addressed as needed as part of the final plat phase.

- d. County requirements for road naming, road name signs and addressing have been or will be met prior to the issuance of any building permit.

This request will have to comply with the requirements for addressing and street naming as part of the final plat phase. This was referred to the addressing coordinator and no comments were provided.

APPEAL #6: Appeal to Article 5.2.1.7 of the Land Use Code regarding Lot Width to Depth Ratio.

Lots shall not exceed a depth-to-width ratio of 3-to-1. Lots shall not exceed a width-to depth ratio of 1.5-to-1. The proposed lot shapes and sizes are more than adequate to allow development that would meet the required setbacks and would allow for future development of these lots.

REVIEW CRITERIA FOR APPEALS:

a. Approval of the appeal will not subvert the purpose of the standard or requirement.

Based on the existing conditions at the site, the creation of only one additional lot, no internal public roads being proposed, approval of the appeals does not appear to subvert the purpose of the standards or requirements.

The existing home is served by an on-lot septic. The new lot will also be served by an on-lot septic system. Supplemental documentation provided by the applicant and referral comments support this appeal. See the comment letter from Lea Schneider with the Department of Health and Environment dated April 7, 2022, and follow-up email dated October 9, 2022, for more information.

The purpose of the connectivity requirement is to provide opportunities for the continuation of roads and pedestrian connections to adjacent properties when it makes sense to do so. Although engineering would prefer that considerations be given for connectivity to adjacent parcels, Access Management is a known issue along this stretch of CR 8/SH56. Staff would prefer that access to the new lot be taken off an internal subdivision road, rather than off CR8. With that being said, the requirement of acquiring, designing, and constructing a new internal road to access the site would be a significant number of improvements for a 2-lot subdivision, so the engineering department would support this appeal.

The applicants originally proposed a second access off CR 8 but revised their proposal with both lots using the same access point and access easement along the eastern side of the Lot 1.

b. Approval of the appeal will not be detrimental to the public health, safety, or property values in the neighborhood.

Approval of all the appeals should not be detrimental to public health, safety, or property values in the neighborhood. The Engineering and Health Department did not have objections based on the technical standards they administer, and negative impacts on neighboring property values are not evident from a Planning Department perspective.

c. Approval of the appeal is the minimum action necessary.

Approvals of the appeals is the minimum action necessary to allow the applicant to move forward with this proposal. Approval of the Appeals will not require any other subsequent approvals by the county.

d. Approval of the appeal will not result in increased costs to the general public.

Approval of the appeals should not result in increased costs to the general public.

e. Approval of the appeal is consistent with the intent and purpose of the Code.

The proposed use is consistent with the zoning and uses in the area and granting these appeals should not change the character of the neighborhood. It is Staff's assessment that this request meets the intent and purpose of the Land Use Code with the conditions of approval.

Based on the analysis, the Development Services Team's assessment is that approval of the appeals is consistent with the intent and purpose of the Land Use Code which is fostering predictability in land development and establishing a process that efficiently and equitably applies the Code to individual sites while respecting property owner rights and the interests of Larimer County citizens.

OTHER MAJOR ISSUES OR CONCERNS:

This proposal is a division of a 4.87-acre parcel creating one new developable lot of 2.58-acres, with the balance of the site already developed on a 2.3-acre parcel.

Referral comments reveal no major concerns and they have been addressed or included as conditions of approval.

There was one email from a community member in opposition regarding the proposed lot size and increased traffic, among other items.

SUMMARY & CONCLUSIONS:

The Development Services Team has no items of concern and concludes the requested Subdivision and Appeals meet the requirements of the Larimer County Land Use Code for the Public Hearing Preliminary Plat application and adequately addresses the review criteria and standards for this type of development.

The Development Services Team recommends approval of the proposed Subdivision and Appeals to the following Articles of the Land Use Code: Article 4.3.5.A.2 (On-lot Septic in a Growth Management

Area), Article 4.5.4.B.1 (Connectivity), Article 5.3.1.A (Public Right-of-Way), and Article 5.2.1.A.7 (Lot Width to Depth Ratio).

The Town of Berthoud did not indicate any concerns with this request. Health and Engineering were in support of the Appeals. (See the attached referral comments which include comments from the Department of Health and Environment, Engineering, and the Town of Berthoud.)

DEVELOPMENT SERVICES TEAM RECOMMENDATIONS:

A) The Development Services Team recommends that the Planning Commission recommend to the Board of County Commissioners approval of the Kiefer Subdivision, File #20-LAND4051, subject to the following conditions:

1. The Final Plat shall be consistent with the approved preliminary plat and with the information contained in the Kiefer Subdivision, File #20-LAND4051, except as modified by the conditions of approval or agreement of the county and applicant. The applicant shall be subject to all other verbal or written representations and commitments of record for the Kiefer Subdivision.
2. The following fees shall be collected at building permit issuance for new single-family dwellings: Thompson R-2J school district fee, Larimer County fees for County and Regional Transportation Capital Expansion, Larimer County Regional Park Fees (in lieu of dedication) and drainage fees. The fee amount that is current at the time of building permit application shall apply.
3. All new residential structures will be required to have residential fire sprinkler systems unless the applicants provide documentation that adequate water supply is available.
4. All habitable structures will require an engineered foundation system. Such engineered foundation system designs shall be based upon a site-specific soils investigation. The lowest habitable floor level shall not be less than 3 feet from the seasonal high-water table. Mechanical methods proposed to reduce the ground water level, unless it is a response after construction, must be proposed on a development wide basis.
5. Passive radon mitigation measures shall be included in construction of residential structures on these lots. The results of a radon detection test conducted in new dwellings once the structure is enclosed but prior to issuance of a certificate of occupancy shall be submitted to the Building Department. As an alternative, a builder may present a prepaid receipt from a radon tester which specifies that a test will be done within 30 days. A permanent certificate of occupancy can be issued when the prepaid receipt is submitted.
6. The plat should identify a no-build/wetland buffer area or a building envelope to protect the wetland area and comply with Section 4.4.2 of the Land Use Code regarding wetland buffers areas.
7. Any future development within this area will need to meet applicable building and floodplain requirements in effect at the time of development.
8. The applicant will need to comply with the requirements for addressing and street naming with the Final Plat phase.

9. All necessary easements shall be in place and shown on the final plat according to Article 5.4 of the Land Use Code including those needed for any utility lines.

10. The applicant will need to address any unresolved engineering issues discussed in the Engineering Department's referral comments at the final plat phase. Refer to Steven Rothwell's letter dated April 4, 2022.

11. Transportation Capital Expansion Fees will be due at building permit issuance.

12. A Development Construction Permit is required prior to commencing improvements.

13. Any required onsite/offsite improvements must be constructed prior to certificate of occupancy.

14. The plat will be amended during the final plat phase to include any required ROW dedications for CR56.

15. No basements are allowed on Lot 2 due to the Lots proximity to Bacon Lake.

B) The Development Services Team recommends that the Planning Commission recommend to the Board of County Commissioners approval of the Appeals to the following Articles in the Land Use Code: Article 4.3.5.A.2 (On-lot Septic in a Growth Management Area), Article 4.5.4.B.1 (Connectivity), Article 5.3.1.A (Public Right-of-Way), and Article 5.2.1.A.7 (Lot Width to Depth Ratio).

M O T I O N

Commissioner Kefalas moved that the Board of County Commissioners approve the Consent Agenda for November 14, 2022, subject to the conditions in the staff report and further authorize the Chair to sign the Findings and Resolution.

Motion passes 3-0

DISCUSSION ITEMS:

1. ROTH APPEAL, FILE NO. 22-GNRL0534 Don Threewitt, Principal Planner, presented the case to the Board. The applicants, Clayton Roth and Daniel Roth, are requesting an appeal to the Community Development Director's determination via email regarding uses of property. The property is located at 5100 East County Road 70 Wellington CO and the property owner is Front Range Feedlots, LLC.

APPEAL OF AN ADMINISTRATIVE DECISION, APPLICABILITY:

On August 19, 2022, the Community Development Department received an application for appeal of an Administrative Determination contained within an email from Director Ellis dated July 22, 2022, that is specific to construction of an effluent pond on parcel numbers 89110-00-007 and 89110-00-009. On September 7, 2022, the applicant notified staff that they had additional information to provide as part of the application packet, which was submitted and received on September 19, 2022. At this point the application was determined complete.

This appeal application was filed on August 19, 2022, within the 30-day time limit prescribed in Section 6.7.2.B.2.a. of the Code. The explicit bases for this appeal are:

1. A Special Use Permit (sic) is required for the barrow pit and or mining currently located at 5100 East County Road 70 Wellington and hauling to 1077 North Timberline Road Fort Collins,
2. An Amended Special Use Permit (sic) is required for the addition or expansion of the effluent pond they are excavating, and
3. The facility is not using sprinklers to control dust.

The appeal shall consider the application, plans, and materials that were the subject of the decision or interpretation, the record of that decision and the issue(s) raised by the person who submitted the appeal. The County Commissioners may determine other evidence to be relevant and helpful.

This appeal is based on communications from the Community Development Director regarding parcels historically subject to land use case Z-65-78 Special Review for an Expansion of an existing feed yard from 2500 to 9500 head of cattle (11/22/1978). The appeal also mentions 20-INQ2592, an initial project inquiry regarding the hauling of fill material from the site to an I-25 project.

Findings of fact were derived from the application and supporting materials for 22-GNRL0534 (Appeal), code compliance staff site visits, community comments received to date, and analysis of documented evidence available to county staff. The appeal evaluation was conducted by staff who were not a party to the discussion. Staff review aims to provide objective findings specific to the merits of the appeal as well as the merits of the original Director's determination.

The County Commissioners may act to affirm, affirm with modifications, or deny the appeal as presented. Section 6.7.2.B.2.f of the Code states that "the decision of the administrative officer or the Director's interpretation will not be reversed unless a preponderance of evidence supports that the decision is in error or inconsistent with the intent and purpose of the Code."

BACKGROUND

On August 14, 2020, representatives from Kraemer Construction inquired about a mining operation at 5100 East County Road 70 to supply topsoil from parcel number 89110-00-012 to an I-25 construction project, approximately 14 miles south of the subject property site. Staff consulted with the customers, and communicated via letter on August 14, 2020, that this activity would fall under §4.3.11 of the Larimer County Use Code ("Code") as a "Temporary Construction Project" subject to Special Review (Note: this Code Section is now located in §3.5.3.G.6, but unchanged from previous code). No further action was taken by staff or the applicant on this project.

In February 2022, representatives from Hornton Feedlot contacted staff to inquire if any County approval was required to construct an effluent pond on the property. Internal staff in Engineering, Health, and Community Development communicated with the Colorado Department of Health and Environment. The result of this correspondence determined the proposed location was within the by-right agricultural operation parcels, and the county has no regulations associated with effluent ponds subject to CDPHE Regulation 81. On February 16, 2022, the Director communicated to the applicant via email that no county land use review was required.

On July 19, 2022, Code Compliance staff received a formal complaint that dirt was being hauled from the subject property at a rate of 20-30 truckloads per hour. Building and Code Compliance Coordinator, Chad Gray conducted a document evaluation and a physical site inspection, and Director Ellis emailed the appellant on July 22, 2022, stating that no violation had occurred.

On August 19, 2022, the appellants filed the appeal application which was determined complete on September 19, 2022, after amended.

REVIEW CRITERIA

Section 4.3.11.A of the Code describes Temporary Construction Projects:

The temporary storage of vehicles, materials, equipment, field offices and the excavation of fill material that are accessory to a construction project are a permitted temporary use with the following conditions...Borrow or fill material excavation sites shall be located within 1,320 feet of the parcel or right-of-way being improved. Excavation sites more than 1,320 feet but less than one mile from the parcel or right-of-way being improved may be approved by the County Commissioners pursuant to the appeal process in §6.7.2, Appeals. Excavation sites more than one mile from the improvement are subject to the special review process for a mining operation.

Section 20.2.1 of the Code provides a definition of Agricultural Operations:

The cultivation of agricultural or horticultural crops, composting, aquaponics, aquaculture, hydroponics, the keeping of livestock and/or poultry, or a combination of these activities. This use does not include the agricultural uses listed in §§20.2.1.B, 20.2.1.C, and 20.2.1.D [Commercial Feedlot or Dairy]. Accessory uses commonly include greenhouses and other facilities and storage necessary for the management of the agricultural operation or transport of products.

Section 20.2.1.D of the Code provides a use description for a Commercial Feedlot or Dairy:

A confined enclosure for the feeding and fattening of livestock where the average number of animals exceeds ten animals per acre of feed yard and where less than 50 percent of the roughage type feed is raised on the same premises. Accessory uses commonly include the processing and packaging of dairy products.

Section 20.2.5.A.6 of the Code defines Mining:

The act of exploring for and recovering stone, soil, peat, sand, gravel, limestone, coal, granite, or other mineral resources from the ground for sale or for use off the property where it was recovered. Mining does not include the removal of loose surface stone; excavation solely for agricultural practices; excavation for a basement or footing for a structure authorized by a valid building permit; or grading associated with residential, agricultural, or accessory uses. On-site processing of mined materials and asphalt and concrete batch plants are considered accessory to the mining activity.

APPEAL REVIEW PROCESS AND CRITERIA:

Procedure for Appeals of Administrative Determinations

A written application for appeal was submitted to the Community Development Department within 30 days of the decision, on August 19, 2022. The appeal was submitted on a form provided by the Community Development Department and included a statement of the determination being appealed, the date of the determination, and the facts and other evidence that supports the determination was in error. The appellant requested that staff hold the application until additional evidence is submitted. The submittal was subsequently found to be a complete application on September 19, 2022. A public hearing was then scheduled on the next available agenda of the County Commissioners on November 14, 2022, within 60 days after the date on which a properly completed notice of appeal was filed. Notice of the time and place of the appeal hearing was in the Coloradoan at least 10 days before the hearing date. Notice of the hearing was mailed to property owners within 500-feet of the subject property via US Mail on October 14, 2022. These actions comply with the procedure outlined in 6.7.2.B.2 of the Code.

An appeal may be granted, and the decision of the administrative officer will not be reversed unless a preponderance of the evidence supports that the decision is in error or inconsistent with the intent and purpose of this Code (6.7.2.B.2.f).

APPEAL CLAIMS, EVIDENCE, AND STAFF FINDINGS:

Claim 1: A Special Use Permit (sic) is required for the barrow pit and or mining currently located at 5100 East County Road 70 Wellington and hauling to 1077 North Timberline Road Fort Collins.

Appellants' Position and Evidence: Removal of large quantities of dirt is a mining project and is subject to the applicable Code provisions. The appropriate county review process should have occurred for this project as outlined in 4.3.11.A.

Staff finds that this Claim 1 is not supported on substantive grounds.

1. The activity in question is not a mining, borrow or fill site by definition in §20.2.5.A.6 or the rules of grammar and common usage as provided for in §20.1.1 of the Code.
2. The hauled materials were a by-product of an allowed construction activity on the agricultural operation.
3. The activity was not subject to review provisions in §4.3.11.A of Code.
4. The Colorado Water Quality Control Commission administers regulations pertinent to the activity. Regulation 81 (CRS 25-8-205) by the Colorado Department of Public Health and Environment holds regulatory authority for the subject activity.
5. Regulation 81.2 states that the regulation is not intended to address public health nuisance conditions or land use controls such as zoning requirements.

Staff Finding Discussion: County review of projects specifically excavating fill material solely for off-site construction projects is the explicit and intended application of this Code section. The code specifically addresses borrow or fill material excavated for the purposes of off-site construction. It excludes on-site construction activities and the disposal of construction by-products. The definition of mining specifically excludes excavation solely for agricultural purposes, such as the effluent pond construction activity. If a special review were required for all hauling activities, or hauling activities that were incidental to development activities, it would be unduly burdensome to homebuilders,

agricultural operators and logistics companies, and theoretically would require a review of a large portion of traffic that routinely traverses Larimer County roads and highways.

The Colorado Department of Public Health and Environment, Water Quality Control Commission Controls Animal Feeding Operations under 5 CCR 1002-81, referred to as Regulation 81 as authorized through the Water Quality Control Act, CRS 25-8-205. This regulation defers siting and review to local zoning authorities. Larimer County does not regulate by-right construction activities on agricultural operations and does not have an earth grading review process. Therefore, no local land use controls would apply to this activity.

Claim 2: An Amended Special Use Permit (sic) is required for the addition or expansion of the effluent pond they are excavating.

Appellants' Position and Evidence: An amendment to Special Review File No. Z-65-78 is required for review and approval of the pond construction.

1. Construction of the effluent pond is an allowed activity within an agricultural operation.
2. The activity occurred on a parcel that is not part of the Z-65-78 Special review
3. The parcel where the activity occurred is a by-right agricultural operation, where animals are fed over 50% by crops grown on site.
4. A Special Review applies to the specific parcels or tracts of land explicitly contained in the approval. Any amendments or conditions of approval determine the required actions and extent of applicability as written.

Staff Finding Discussion: Staff finds that Claim 2 is not supported, and that no Special Review is required per the Larimer County Land Use Code for allowed construction activities occurring on by-right agricultural operations.

Claim 3: The facility is not using sprinklers to control dust.

Appellants' Position and Evidence: Per File No. Z-65-78, sprinklers are required to control dust, and are not being utilized.

1. Condition of Approval #4 in Special Review Z-65-78 requires sprinklers to be used: "sprinklers will be used to eliminate any dust problems associated with the feed yard and to minimize the odor problem."
2. This was not a part of the complaint filed on June 19, 2022, and therefore was not inspected by staff at that time.
3. An appeal is an inappropriate reporting method for a violation of conditions of approval. Any suspected infractions of this provision should be reported as a code violation and code compliance officer would review the complaint.

Staff Finding Discussion: Staff finds that this claim is not supported on procedural grounds. The appropriate action is to file a code complaint and an officer will investigate. An appeal is not an alternative to this process.

DEVELOPMENT SERVICES TEAM FINDINGS:

Therefore, the Development Services Team finds:

The Community Development Director's determination about Claim 1 and Claim 2 is not in error or inconsistent with the intent and purpose of the Land Use Code. Claim 3 is not a valid appeal, and the appropriate action is to file a code compliance complaint.

DEVELOPMENT SERVICES TEAM RECOMMENDATION:

The Development Services Team recommends denial of the Roth Appeal, File No. 22-GNRL0534.

Commissioner Kefalas had some discussions with staff regarding the three (3) different claims. He questioned the ponds and their locations. Staff advised that the original ponds were approved under the previous, by-right code in 1978 and are not part of the current agricultural approval process. Commissioner Kefalas also questioned the amount of truck traffic and staff stated that the Land Use Code does not control this aspect. Commissioner Kefalas reaffirmed that complaints about dust from the public have been filed but the staff has not witnessed this issue as reported during daytime hours only. Chair Stephens discussed that the dirt was produced from the creation of the newer pond and is unrelated to the main purpose of the construction. Staff confirmed it is unrelated to this matter.

The owner, Mr. Clayton Roth, spoke to the Board. He reviewed the three (3) claims and disputed each claim with specific detail. These three claims are Claim 1 – Special Review amendment for mining; Claim 2 – Special Review amendment is required for the addition of or expansion of effluent pond and Claim 3 – The facility is not using sprinklers to control dust. He stated that the project was not a mining project and therefore some of the labels do not apply to the current operation. He stated that in 2020, there was a special use approval requirement however the current activity to create the effluent pond falls under a by-right, agriculture label.

Mr. Roth mentioned that there is current litigation with the county regarding the terms and conditions of special review matters that govern the use of the subject property (320 acres located to the south). He stated that the county confirmed that the 1977/78 resolutions govern the subject property. In addition, he mentioned that Pages 111 and 166 of the staff reports include incorrect maps. He stated that the 2018 Second Amended Special Review, which was vacated by the court system, is not governing the Special Review area today. He said that there are several effluent ponds on the property and, by-right, there can be multiple ponds created without special review. Lastly, he stated that the sprinkler issues have been an ongoing concern for the owners. Mr. Roth referred to a highlighted part of the 1978 Conditions of Approval stating, "A sprinkler in each pen will be used to control dust." The sprinkler system matter is the issue currently being considered in the Courts. Mr. Roth also mentions the routines of the cattle that must be considered with the control of dust concerns.

Front Range Feedlots, LLC, Trent Norton, stated that the property has been sold to Five Rivers. Mr. Travis Koch, Five Rivers legal counsel, spoke to the Board. He stated that the sprinkler system issues mentioned are currently being mitigated through District Court. Commissioner Kefalas questioned the sprinkler issues and had hoped not to involve the courts to resolve the matter. Mr. Koch stated that the sprinkler issue is at the heart of the District Court case that is currently being considered.

Chair Stephens referred to the County Attorney regarding any decisions tonight and how they may affect the current litigation. Mr. Haug mentioned that the matter before the Board of County

Commissioners tonight is the pond specifically. The sprinkler matter is what is being considered at the District Court.

Chair Stephens opened the floor to public comment. Mr. Randy Fuller spoke to the Board regarding the pond and stated that the pond was dug a year ago and questioned the mining status. He also stated that he has not witnessed sprinkler usage. Mr. Eric Young spoke to the Board regarding sprinkler usage and the availability of water in this region. Ms. Nancy Day spoke to the Board and requested that the Commissioners support the neighborhood and its inhabitants.

Chair Stephens closed public comment.

Mr. Roth emphasized the map of 1978 and that the special review was for the entire 320 acres. Staff is only referencing 180 acres. David Raw, consultant on animal feeding, disputed the attorney's claim that water is rare and not used for dust control. Mr. Daniel Roth stated that he needed the County Commissioners to advise on the sprinkler requirements.

Rebuttal from the current owners, Mr. Koch, stated that there is a special review for the current permit only. He asked that all the issues presented not apply to this current permit matter. Mr. Roth emphasized that this operation has always been in compliance.

Mr. Threewitt mentioned that the sprinklers were not involved because it was not part of the original complaint. He then read the complaint into the record and followed with the fact that the Special Review was for the pond activities only.

Commissioner Kefalas discussed with the staff regarding excavation for other purposes. Staff is unaware of the additional digging and the current code does not involve the county under an agriculture site label. Commissioner Shadduck-McNally questioned the temporary construction projects vs. the use by-right permit. Mr. Threewitt stated that the material hauled away from the site was part of the by-right, agricultural site permit. Chair Stephens questioned the ability of local land use codes to mitigate these types of ponds. He stated that the County could not regulate these types of ponds as it is a state matter. Chair Stephens also questioned the location of groundwater in a subdivision vs. well digging. She questioned the map and Mr. Threewitt confirmed that the incorrect map was included in the packet for public consideration. He confirmed that the effluent pond construction is what is being questioned in tonight's hearing. He then clarified a by-right operation versus a feedlot operation.

Mr. Haug clarified that a special review was not required as the property is considered by-right and not a feedlot. He stated that what this hearing is to determine if the interpretation of the code accurate by Larimer County staff. Mr. Haug clarified if the purpose of digging was to sell, it would be considered a mining operation and digging a hole for a pond would be considered a by-right operation.

DELIBERATION

Commissioner Shadduck-McNally stated that there is not enough evidence to support claims 1 and 2 and will uphold the current Planning recommendation. Commissioner Kefalas stated that there was not a preponderance of evidence indicating a mining operation. He also mentioned that the sprinkler system matter should have been included in this discussion without going to court and discussed the possibility of resolving this locally. Commissioner Kefalas would support the denial of this appeal.

Chair Stephens stated that there have been serious allegations brought before the Commissioners and encouraged the new owners to be good neighbors. She did say that a state permit is required but only for the lining of the said pond. She said that she will be supporting the Planning Division's recommendations.

MOTION

Commissioner Shaddock-McNally moved that the Board of County Commissioners deny the appeal thereby upholding the Community Development Director's determination via email to claims contained in the appeal application.

Motion passes 3-0

2. Lamers Short-Term Rental Administrative Special Review, File No. 22-ZONE3288 Ms. Samatha Mott made her presentation to the Board. The property owner Kristina Lamers and the applicant Mark Driskell, Mountain Time Vacation Rental hereby request an Administrative Special Review to convert an existing single-family residence into a short-term rental. The property is located at 626 Country Club Road Fort Collins CO.

BACKGROUND

The subject property is located at 626 Country Club Road, Fort Collins, CO. The property currently contains an existing single-family residence and is zoned UR1-Urban Residential. The applicant requests Administrative Special Review approval for a small Short-term Rental located in the existing 3-bedroom single-family residence with an additional sleeping area for a maximum occupancy of six total guests- two (2) guests per bedroom. No construction or modifications to the home are proposed with this request.

Administrative Special Review for an STR requires both Planning Division and Building Division approval. For this case, Planning Division review was conducted prior to Building Division review. In general terms, the Planning review process involves:

1. Staff and referral agency evaluation.
2. Community notice and comment review.
3. Review and recommendation by the Estes Valley Planning Advisory Committee, if applicable.
4. The scheduling of a public hearing, if applicable, or an administrative review and decision by the Community Development Director.

A courtesy neighbor notification about the proposed project was mailed to properties 500 feet around the subject property with 72 neighbors being notified. Staff received eight emails from neighbors voicing concerns regarding the application. The concerns ranged from traffic, noise, lack of yard maintenance, and impacts to property values. Neighbor comments are provided as Attachment E. The applicant provided a narrative responding to neighbor concerns. This document is provided as Attachment F. Due to the number of neighbor concerns received, the Community Development Director determined that the application be scheduled at a public hearing before the Board of County Commissioners per Section 6.3.6.D.3 of the Land Use Code. The proposal is scheduled for the November 14, 2022, Board of County Commissioners land use hearing.

Administrative Special Review requires General Review Criteria to be met for approval (Article 6.4.3.D in the Land Use Code), in addition to supplemental review criteria for small STRs (Article 3.3.5.B.2. in the Land Use Code).

Staff finds the application and supporting materials may not have adequately met the following Administrative Special Review General Review criteria in Article 6.4.3.D of the Land Use Code:

Criteria 1: The proposed use has minimal impacts on existing and future development of the area and

Criteria 2: Any impacts associated with the environment, wildlife, access, traffic, emergency services, utilities, parking, refuse areas, noise, glare, odor, and other adverse impacts have been adequately addressed and/or mitigated.

Staff finds the application meets all other criteria in Article 6.4.3.D and all Short-term Rental Use Regulations criteria located in Article 3.3.5.B. The following section addresses staff findings and the review criteria, including neighbor concerns and the applicant's response.

REVIEW CRITERIA

In reviewing a proposed administrative special review application, the Board of County Commissioners shall consider the general approval criteria in §6.3.8.D: General Review Criteria, and also whether:

1. The proposed use has minimal impacts on existing and future development of the area.

Community comments indicate the short-term rental would have increased impacts to both the existing and future development of the area.

Comments indicate that community members are opposed for reasons including most of the homes in the area are owner-occupied and this is not an appropriate use for the neighborhood. There are concerns due to the possible increased traffic and noise associated with a short-term rental.

2. Any impacts associated with the environment, wildlife, access, traffic, emergency services, utilities, parking, refuse areas, noise, glare, odor, and other adverse impacts have been adequately addressed and/or mitigated.

The following issues as related to this review criterion arose with community comments. Comments from community members include the following among others:

a. Noise

Neighbors noted that the property has been operating as a Short-Term Rental for a few years and there have been several instances where there have been parties and loud music late at night which disrupted the peace and neighboring properties.

b. Traffic and Access

Neighbors have concerns over increased traffic as a result of the conversion to a STR.

3. The recommendations of referral agencies have been considered and adequately addressed.

Referral agencies had no concerns with the proposed use.

4. Within a GMA district, the proposed use is consistent with the applicable supplementary regulations to the GMA district, or if none, with the Comprehensive Plan; and

Not applicable.

5. The applicant has demonstrated that this project can meet applicable additional criteria listed in Article 3.0, Use Regulations.

The STR meets the following supplemental regulations, as noted below.

Article 3.3.5.B Supplemental Regulations for Short-Term Rentals:

A. Only 1 (one) short-term rental shall be allowed on a property.

B. The short-term rental shall only be conducted in a legally constructed dwelling and shall require a change of occupancy permit prior to commencement of the short-term rental use.

C. The short-term rental shall have a property manager consisting of the owner or a responsible party representing the owner to manage the use at any time it is occupied. The property manager must be located within one (1) hour or less travel distance from the short-term rental, and their contact information shall be posted outside at the front door and in the operations manual located in the short-term rental. Changes to the contact information form for the property manager shall be provided to the Larimer County Community Development Department within five business days of the change in contact information.

D. The short-term rental owner or property manager shall at the time of application provide documentation that the short-term rental location has been registered with the local fire department or if none with the local sheriff/police.

E. The location of the property boundaries for the short-term rental shall be easily identifiable and posted to prevent trespass.

F. The short-term rental shall not be located within an established floodplain, and if located within a floodplain shall require compliance with the applicable requirements of Section 4.2.2. - Floodplain overlay zones.

G. The short-term rental shall include maps installed onto or adjacent to the doorway of each habitable room, illustrating how to exit the building. The map should include the address, GPS coordinates and the phone number of the short-term rental.

H. The short-term rental shall be equipped with an operations manual/users guide that is in a visible location (such as a kitchen counter or entry table).

I. The short-term rental shall have a plan for garbage storage and removal. The plan shall clearly illustrate the location of garbage storage areas, the method and frequency of regular garbage pick-up/disposal. There is no outdoor storage area.

J. Accessory Living Areas, Extended Family Dwellings, and Farmstead Accessory Dwellings shall not be utilized as a short-term rental.

K. Solid fuel (such as wood or coal) fire pits shall not be allowed in identified wildfire hazard areas.

L. Cooking areas within the short-term rental shall be equipped with a stove top fire stop.

M. Unless already equipped with an approved automatic fire sprinkler system, approved fire extinguishers shall be installed in a readily accessible and visible locations for immediate use in the following locations within the STR:

1. In each room with a cooking appliance, fireplace, heating appliance or water heater.
2. Inside and adjacent to the door leading to a deck, porch, or patio with such appliances.
3. At least one on each story.

OTHER REVIEW AGENCY COMMENTS:

The following Larimer County agencies have reviewed the Administrative Special Review for a proposed short-term rental use. Their comments are attached to this report.

- The Building Department indicated that the applicants need to install smoke detectors in the hallways outside each separate sleeping area, must show the additional sleeping area on the floor plan, and must pass the Life Safety Inspection before issuance of the Certificate of Occupancy.
- The Engineering Department stated that they do not expect the existing drainage patterns would be changed due to this application. If drainage patterns are going to be changed, a drainage plan will need to be submitted to the Engineering Department for review and approval. In addition, no parking is allowed in the right-of-way and the applicant has met parking requirements.
- Code Compliance noted there are no building code violations.
- Health and Environment noted that the property is served by public utilities and therefore the Health Department does not have restrictions for the occupancy. A few errors in the operations manual were also noted.
- East Larimer County Water District (ELCO) had no objections to the proposed use.
- Cherry Hills Sanitation has no concerns with the application and noted that no changes will be required regarding their sewer tap.

- Poudre Fire Authority noted several fire and life safety requirements such as CO alarms, smoke detectors, and fire extinguishers, as well as the requirements for accessing the fire hydrant, and the required address identification. The agency also noted that the nearest fire station is Station 12, which will need to be revised in the operations manual.

SUMMARY AND CONCLUSIONS:

The proposed Administrative Special Review for the Lamers STR meets all criteria in Article 3.3.5.B and meets three out of the five criteria in Article 6.3.8.D. Staff does not have a conclusive determination on Criteria 1 or 2 of Article 6.3.8.D.

DEVELOPMENT SERVICES TEAM RECOMMENDATION:

The Development Services Team is not making a specific recommendation on the Lamers Short-Term Rental, File #22-ZONE3288, and has presented all the information by which the Board of County Commissioners may base their deliberation and decision.

Commissioner Kefalas discussed the review criteria with the staff. He questioned the concerns brought by neighbors to which staff confirmed a cease-and-desist letter was delivered as the property had already been used as a short-term rental.

Josh Gail, husband of Kristina Lamers (owner) spoke to the Board. He reviewed their residential history and longevity with the community. He clarified that previous owners had used this property as a short-term rental for over 10 years. He did state that they currently reside outside of the country and wish to have the property as a short-term rental.

He then reviewed the neighbors' concerns. He stated that any issues involving fencing and conflicts with guests happened with the previous owners. He said that there were questions on safety compliance of which they have invested funds to make the property acceptable. He addressed the noise complaints as well and mentioned that there is a management company overseeing the property and had addressed complaints as they arose. Lastly, there was a complaint about the home values in the area and Mr. Gail presented details on increased home values. He did mention that their intention is to eventually return to the area and wish to maintain ownership of the property.

Commissioner Kefalas questioned the number of nights per year the property would be rented out. Mr. Gail said that it would have occupants 20 – 22 days per month. Commissioner Shadduck-McNally questioned the length of time the requestor had lived in the home before making the property a short-term rental. Mr. Gail added that the improvements were a result of receiving a cease-and-desist letter.

Chair Stephens opened the meeting to public comment: Ann Stephens spoke to the Board. She discussed concerns regarding the cleanliness of the property to include piles of wood and trash that could become a fire concern.

Chair Stephens closed the public hearing.

The owner, Mr. Gail, provided rebuttal and mentioned the weed issue that is currently being addressed.

Commissioner Shadduck-McNally had the staff confirm the number of the cease-and-desist letters sent to the applicant. Ms. Amy White, Code Compliance, confirmed that several correspondences were sent to the owners. There was a question on the number of beds being advertised but that Code Compliance case has been closed. Commissioner Kefalas questioned the number of current short-term rentals in this area. Ms. Mott mentioned that there may be several, but none are approved. Commissioner Shadduck-McNally questioned the owner of the intention of having a full-time short-term rental. Chair Stephens questioned if the property was in a Growth Management area. Staff stated that the property is in this area but that the City of Fort Collins has not responded to requests as of yet.

DELIBERATION:

Commissioner Kefalas did mention the upgrades and code compliance attempts from the owners and would be inclined to approve the short-term rental. Commissioner Shadduck-McNally stated she had reviewed the comments and considered the Fort Collins rules and regulations regarding neighborhoods. She felt that criteria 1 and 2 have not been met and would not be supporting this application. Chair Stephens stated that too many notices had to be sent to the owners as well as noise complaints that have been submitted. She said that it had also been operating without a license and would not be supporting this application.

MOTION

Commissioner Shadduck-McNally moved that the Board of County Commissioners deny the Lamers Short-Term Rental, File #22-ZONE3288.

Motion passes 2-1

Commissioner Kefalas dissented.

With no further business to come before the Board, the meeting is adjourned at 5:25 p.m.

MONDAY, NOVEMBER 14, 2022

LAND USE HEARING

The Board of County Commissioners met at 6:30 p.m., with Chair Stephens presided. Commissioner Shadduck-McNally and Commissioner Kefalas were present. Also, present were Don Threewitt, Principal Planner; Samantha Lasher, Planning; Connor Sheldon, Engineering; Lea Schneider, Environmental Health; Eric Fried, Chief Building Official; Amy White, Code Compliance Supervisor; Lesli Ellis, Community Development Director; Tony Brooks, Code Compliance, (virtual) Anna Suppes, Code Compliance; Shalana Lysaght and Christina Scrutchins, Community Development; Frank Haug, Attorney's Office; and Kelly Bryant, Deputy Clerk.

Chair Stephens opened the hearing with the Pledge of Allegiance.

DISCUSSION ITEMS:

1. PINESWOOD LAKE LODGE SHORT-TERM RENTAL WITH APPEALS, FILE NO. 22-ZONE3273 Ms. Samantha Lasher, Planner 1, presented the case to the Board. The owner Pinewood Lake Lodge LLC, 737 Hinsdale Drive, Fort Collins, CO 80526 along with the applicant Bradley and Diana Clements, 737 Hinsdale Drive, Fort Collins, CO 80526 request Administrative Special Review for a six bedroom plus three additional sleeping areas, 25 guest Short-Term Rental in an existing home with two Appeals to the Land Use Code (LUC) and one Appeal to a Director's Determination: 1) Appeal to LUC Section 3.3.5.B.1. to exceed two guests per bedroom, as permitted by the Land Use Code. 2) Appeal to LUC Section 3.3.5.B.3.b to install a fire sprinkler system in the basement and garage and install a fire alarm detection system on the main floor, second floor, and parts of the basement within the residence. 3) Appeal to a Director's Determination to allow more than one additional sleeping area and more than two guests per sleeping area. The property is located at 14757 W County Road 18E Loveland CO 80537.

BACKGROUND:

The subject property is located at 14757 W. County Road 18E. The property currently contains an existing single-family residence and is zoned O-Open. The applicant requests Administrative Special Review approval for a large Short-Term Rental (STR) located in the existing six-bedroom single-family residence with three designated additional sleeping areas for a maximum occupancy of twenty-five total guests.

Three Appeals are requested with this proposal. One is an Appeal to (LUC) Section 3.3.5.B.1. to exceed 2 guests per bedroom, as permitted by the Land Use Code.

The second is an Appeal to Section 3.3.5.B.3.b. to install a fire sprinkler system in the basement and garage and install a fire alarm detection system as an alternative on the main floor, second floor, and parts of the basement within the residence.

Third is an Appeal to a Director's Determination to allow more than one additional sleeping area and more than two guests per sleeping area. No major construction or expansion to the home is proposed with this request, apart from the installation of the fire sprinkler and fire alarm detection system.

Administrative Special Review for an STR requires both Planning Division and Building Division approval. For this case, Planning Division review and Building Division review were conducted concurrently. In general terms, the Planning review process involves:

1. Pre-application conference and application submittal.
2. Staff and referral agency evaluation and comment review.
3. Community notice and community comment review.
4. The scheduling of a public hearing, if applicable, or an administrative review and decision by the Community Development Director.

County staff mailed a courtesy community notification about the proposed project to properties within 500-feet of the subject property. Staff mailed 41 notices on May 27, 2022. Staff received community comments from thirty-seven community members noting concerns, and comments from twenty-six community member in support of or with no concerns regarding the application via email.

An application with Appeals to Land Use Code standards require a Board of County Commissioners hearing for their review and decision. Following a review of the application, including reviewing community member and referral agency comments, and because of the broad concerns about the proposal, the Community Development Director determined that the STR application, in addition to the requested Appeals, should be scheduled for a public hearing before the Board of County Commissioners for their decision, per Section 6.3.6.D.3 of the Land Use Code. The unresolved issues are described below.

Administrative Special Review requires General Review Criteria to be met for approval (Section 6.4.3.D in the Land Use Code), in addition to supplemental review criteria for small STRs (Section 3.3.5.B.2.) and large STRs (Section 3.3.5.B.3).

Staff finds the application and supporting materials may not have adequately met the following Administrative Special Review General Review criteria in Section 6.4.3.D of the Land Use Code, as described under the Review Criteria section below:

Criterion 1: The proposed use has minimal impacts on existing and future development of the area

Criterion 2: Any impacts associated with the environment, wildlife, access, traffic, emergency services, utilities, parking, refuse areas, noise, glare, odor, and other adverse impacts have been adequately addressed and/or mitigated.

Appeals to Land Use Code standards other than minimum lot size requires Section 6.7.2.B.5. Review Criteria to be met for approval.

Staff finds the application and supporting materials do not adequately meet the following Review Criteria for Appeals to Deviate from Standards or Requirements Other Than Minimum Lots Size in Section 6.7.2.B.5. for the Appeal to Section 3.3.5. B.1. to exceed two (2) guests per bedroom.

Staff finds the application and supporting materials adequately meet the following Review Criteria for Appeals to Deviate from Standards or Requirements Other Than Minimum Lots Size in Section 6.7.2.B.5. for the Appeal to Section 3.3.5.B.3.b. to install a fire alarm detection system on the main floor, second floor, and parts of the basement within the residence in place of a fire sprinkler system.

Staff finds the application and supporting materials do not adequately meet the following Review Criteria for Appeals to Deviate from Standards or Requirements Other Than Minimum Lots Size in Section 6.7.2.B.5. for the Appeal to a Director's Determination to allow more than one (1) additional sleeping area and more than two (2) guests per sleeping area.

Staff finds the application meets all other criteria in Section 6.4.3. D., and meets or will meet all Short-Term Rental Use Regulations criteria located in Sections 3.3.5.B.2 and Section 3.3.5.B.3. The following section addresses staff findings and the review criteria, including community member concerns.

REVIEW CRITERIA:

In reviewing a proposed administrative special review application, the Board of County Commissioners shall consider the general approval criteria in Section 6.3.8.D: General Review Criteria, and also whether (Section 6.4.3.D):

1. The proposed use has minimal impacts on existing and future development of the area.

Staff Response: Community comments indicate the short-term rental would have increased impacts to both the existing and future development of the area. Specific impacts associated with criterion 2 that also impact the future and existing development of the area are discussed in more detail below.

More specifically, comments indicate that community members are concerned that the approval of the short-term rental will set a negative precedent for the future of the neighborhood, property values will decrease, the short-term rental will negatively impact the existing quiet, residential community, and traffic will increase on County Road 18E as a result of the short-term rental.

Additionally, comments also indicate that other community members support the proposed short-term rental because it will increase value to the neighborhood due to improvements the property owners have made and offers families a chance to spend time together in the Colorado.

2. Any impacts associated with the environment, wildlife, access, traffic, emergency services, utilities, parking, refuse areas, noise, glare, odor, and other adverse impacts have been adequately addressed and/or mitigated.

Staff Response: The following concerns as related to this review criterion regarding the proposed short-term rental arose with community comments. Concerns include, but are not limited to:

- increased noise.
- increased traffic and impacts on County Road 18E.
- increased wildfire risk.
- decreased property values for other homes in the area.
- concerns over snow removal on the property's driveway.
- concerns regarding the requested maximum occupancy of 25 guests.
- negative impacts to wildlife due to trash being left out and increased traffic.
- concerns over a lengthened long 911-call emergency response time caused by increased traffic.
- residents will be unfairly burdened with dealing with problem situations from guests because the area is a cellular dead zone.
- approval of this request will set a precedent for other short-term rentals in the area.

Comments in support of this application were also received regarding the proposed short-term rental, which include, but are not limited to:

- increased value to the neighborhood due to the property owners making significant improvements to the home already.
- wildfire risk is high with every property, not only the subject property.
- those who commented in opposition may not be affected by STR and/or do not live full time in the community.
- one community member, who lives 6 minutes away, offered to be a quick response manager in case of an emergency.

- the property owners attempted to communicate their plans for the proposed short-term rental with due diligence and the residents who oppose the proposal did not communicate this with the owners.
- the property owners have worked to make the home safe and enjoyable for guests.
- there have been few to no problems with another short-term rental that the property owners manage in Fort Collins.
- Using the home only as a single-family residence would not be using the home to its full potential and offers a chance for other families to gather in Colorado.

The applicant has provided responses to community member comments and concerns.

3. The recommendations of referral agencies have been considered and adequately addressed.

Staff Response: This application was referred to the applicable referral agencies. The comments have been or will be adequately addressed.

4. Within a GMA district, the proposed use is consistent with the applicable supplementary regulations to the GMA district, or if none, with the Comprehensive Plan; and

Staff Response: The subject property is not located within a GMA district. The property is located within the Mountains and Foothills framework category, per the Larimer County Comprehensive Plan. This framework category does not discourage nor encourage short-term rentals specifically, therefore, this criterion is not applicable.

5. The applicant has demonstrated that this project can meet applicable additional criteria listed in Article 3.0, Use Regulations.

Staff Response: The STR meets or will meet the following supplemental regulations, as noted below. Those requirements that have not yet been met are included as conditions of approval.

Section 3.3.5.B.2 Standards for Short-Term Rentals with Ten or Fewer Occupants:

- Only 1 short-term rental shall be allowed on a property.
- The short-term rental shall only be conducted in a legally constructed dwelling and shall require a change of occupancy permit prior to commencement of the short-term rental use.
- The short-term rental shall have a property manager consisting of the owner or a responsible party representing the owner to manage the use at any time it is occupied. The property manager must be located within one hour or less travel distance from the short-term rental, and their contact information shall be posted outside at the front door and in the operations manual located in the short-term rental. Changes to the contact information form for the property manager shall be provided to the Larimer County Community Development Department within five business days of the change in contact information.
- The location of the property boundaries for the short-term rental shall be easily identifiable and posted to prevent trespass.

- e. The short-term rental shall not be located within an established floodplain, and if located within a floodplain shall require compliance with the applicable requirements of Section 2.7.1. - Floodplain Overlay (FP-O).
- f. The short-term rental shall include maps installed onto or adjacent to the doorway of each habitable room, illustrating how to exit the building. The map should include the address, GPS coordinates and the phone number of the short-term rental.
- g. The short-term rental shall be equipped with an operations manual/users guide that is in a visible location (such as a kitchen counter or entry table).
- h. The short-term rental shall have a plan for garbage storage and removal. The plan shall clearly illustrate the location of garbage storage areas, the method and frequency of regular garbage pick-up/disposal, and screening of the outdoor storage area.
- i. Accessory Living Areas, Extended Family Dwellings, and Farmstead Accessory Dwellings shall not be utilized as a short-term rental.
- j. Solid fuel (such as wood or coal) fire pits shall not be allowed in identified wildfire hazard areas.
- k. Any cooking areas within the short-term rental shall be equipped with a stove top fire stop or approved alternative.
- l. Unless already equipped with an approved automatic fire sprinkler system, approved fire extinguishers shall be installed in a readily accessible and visible locations for immediate use in the following locations within the STR:
 - i. In each room with a cooking appliance, fireplace, heating appliance or water heater.
 - ii. Inside and adjacent to the door leading to a deck, porch, or patio with such appliances.
 - iii. At least one on each story.

Section 3.3.5.B.3 Standards for Short-Term Rentals with More than Ten Occupants:

- a. All the standards required for a short-term rental identified in 3.3.5.B.2 above, excluding 3.3.5.B.2.l.
- b. The short-term rental shall be equipped with a fire sprinkler system.

Section 6.7.2.B.5. Review Criteria for Appeals to Deviate from Standards or Requirements Other Than Minimum Lots Size

When considering whether to approve an appeal to deviate from standards or requirements of the Code, other than minimum lot size requirements, the County Commissioner may grant the appeal subject to safeguards and conditions with their findings concerning the following factors. The County Commissioners will consider each of the following factors and make findings pertaining to each one which, in their discretion, applies to the appeal.

1) Appeal to LUC Section 3.3.5.B.1. to exceed 2 guests per bedroom, as permitted by the Land Use Code

- a. Approval of the appeal will not subvert the purpose of the standard or requirement.

Staff Response: The applicant is appealing to have five occupants reside in the master bedroom, one of the existing six bedrooms, as noted on the applicant's floor plans. Section 3.3.5.B.1. reads: "For purposes of determining the potential total number of occupants, the number of bedrooms is multiplied by two." The Community Development Director's interpretation of this standard is the intent to provide a maximum occupancy of two guests per bedroom for purposes of a short-term rental, regardless of the size or shape of the bedroom.

This request is subverting the purpose of the standard by appealing to have more guests reside in one of the bedrooms than is permitted by the Land Use Code. Therefore, this proposal is not supported by the Development Services Team.

b. Approval of the appeal will not be detrimental to the public health, safety, or property values in the neighborhood.

Staff Response: Approval of this appeal may be detrimental to the public health, safety, or property values in the neighborhood, based on concerns presented by community members.

c. Approval of the appeal is the minimum action necessary.

Staff Response: Approval of the appeal is not the minimum action necessary to allow for a short-term rental on the subject property. The proposed maximum occupancy in the master bedroom could be reduced to two to meet the requirements of the Land Use Code.

2) Appeal to Section 3.3.5.B.3.b. to install a fire sprinkler system in the basement and garage and install a fire alarm detection system on the main floor, second floor, and parts of the basement within the residence.

a. Approval of the appeal will not subvert the purpose of the standard or requirement.

Staff Response: Approval of this Appeal will not subvert the purpose of the standard or requirement as an alternative fire alarm detection system will be installed in place of a fire sprinkler system in parts of the residence where a fire sprinkler system is not suitable. Installing a fire sprinkler system would impact the architectural design and aesthetics and not be as effective due to the tall ceiling heights in parts of the residence. The proposed fire alarm detection system will have complete smoke detection and notification throughout the residence, will meet fire code requirements, and is supported by the Larimer County Building Division and Loveland Fire Rescue Authority

b. Approval of the appeal will not be detrimental to the public health, safety, or property values in the neighborhood.

Staff Response: Approval of the Appeal will not be detrimental to public health, safety, or property values as the residence will have proper fire protection with both the alternative fire alarm detection system and fire sprinkler system installed throughout the entire residence.

c. Approval of the appeal is the minimum action necessary.

Staff Response: Approval of the Appeal to install a fire alarm detection system in place of a fire sprinkler system in parts of the residence is the minimum action necessary to allow for total proper fire protection in the residence.

d. Approval of the appeal will not result in increased costs to the general public.

Staff Response: Approval of the Appeal will not result in increased costs to the general public.

e. Approval of the appeal is consistent with the intent and purpose of the Code.

Staff Response: Approval of the Appeal is consistent with the intent and purpose of the Code as the alternative fire alarm detection system is an adequate alternative to a fire sprinkler system due to the unique design of the residence.

3) Appeal to a Director's Determination to allow more than one additional sleeping area and more than two guests per sleeping area

a. Approval of the appeal will not subvert the purpose of the standard or requirement.

Staff Response: The applicant is appealing to have three additional sleeping areas for ten guests – two in the office, four in the flex space, and four in the family/rec room, as noted on the applicant's floor plans. The Community Development Director decided, that in addition to a maximum of two occupants per bedroom, one additional sleeping area for an additional two occupants in a short-term rental is permitted if all applicable code requirements are met, such as Building and Health Department requirements. The purpose of this determination is to provide applicants with the opportunity to gain approval for additional occupancy, on a pull-out couch in the living room, for example, if their residence has the space for it and meets all applicable code requirements.

This request is subverting the purpose of the standard by appealing to have an additional two additional sleeping areas and eight more occupants than what is permitted by the Director's Determination. Therefore, this proposal is not supported by the Development Services Team.

b. Approval of the appeal will not be detrimental to the public health, safety, or property values in the neighborhood.

Staff Response: Approval of this appeal may be detrimental to the public health, safety, or property values in the neighborhood, based on concerns presented by community members

c. Approval of the appeal is the minimum action necessary.

Staff Response: Approval of the appeal is not the minimum action necessary to allow for a short-term rental on the subject property. The proposed number of additional sleeping areas could be reduced to one to meet the requirements of the Director's Determination.

d. Approval of the appeal will not result in increased costs to the general public.

Staff Response: It is not anticipated that the proposal will result in the need for improvements to public facilities or increase costs to the general public.

e. Approval of the appeal is consistent with the intent and purpose of the Code.

Staff Response: The intent of the Director's Determination is to allow one additional sleeping area for an additional two guests in a short-term rental if the residence can accommodate additional guests and meets all applicable code requirements. Although this requirement is not explicitly stated within the Land Use Code, the Director's Determination aligns with the intent of the short-term rental standards within the Code, and this Appeal request is not consistent with the intent and purpose of the Director's Determination by requesting two more additional sleeping areas and requesting more than two guests per sleeping area.

REVIEW AGENCY COMMENTS:

The following Larimer County agencies have reviewed the Administrative Special Review for a proposed short-term rental use.

- The Building Division indicated that a building permit under the International Building Code (IBC) is required to convert a single-family residence to a large short-term rental, they support the Appeal to Section 3.3.5.B.3.b. to allow a fire alarm detection system as proposed, a permit is required for the partly as-built basement work, which is currently in process (Permit No. 22-RES0428), they support the Appeal to allow a maximum of 25 guests as part of the short-term rental based on building code standards, the applicants are in process towards meeting accessibility requirements for a large short-term rental, and the main electrical, gas and water shutoffs need to be shown on the floor plans or egress maps, which has been made a condition of approval.
- The Engineering Department indicated that a Traffic Impact Study was conducted for the proposed short-term rental use and concludes that the proposed use is appropriate from a traffic engineering perspective and that the project's peak hour site generated traffic is low and the site access will not create a negative traffic impact upon the adjacent roadway system. Engineering also indicated that a minimum of eleven on-site parking spaces are required, and the applicant indicates they can provide thirteen parking spaces, meeting this standard. A transportation capital expansion fee of \$6,427 will be collected at time of building permit issuance, if approved, and they do not expect the existing drainage patterns would be changed due to this application. If drainage patterns are going to be changed, a drainage plan will need to be submitted to the Engineering Department for review and approval.
- Code Compliance indicated that there are no known building code violations.
- Health and Environment indicated that the approved septic permit only serves the six bedroom residence for a maximum of eleven guests. The applicant must apply for a septic permit for a new septic system with the Health Department before a building permit can be approved for the short-term rental if the approved maximum guests is greater than 11. Health had concerns regarding the Recreational Vehicle (RV) hookups provided on-site and the use of the septic tanks and/or well for RVs. This has been addressed with the applicant and guests will not be allowed to occupy an RV or use the well and/or septic system to dump the contents of an RV. Only the parking of RVs is permitted as part of the short-term rental use, which has been made a condition of approval. Health also

requested a minor revision to the applicant's Operations Manual, which has been addressed.

- Wildfire indicated that a wildfire inspection is required, which the applicant has completed, as of September 13, 2022.
- Loveland Fire Rescue Authority requested minor corrections to the applicant's Egress Maps and support the applicant's Appeal to Section 3.3.5.B.3.b. to allow a fire alarm detection system as proposed and will require permit(s) for the fire sprinkler and fire alarm detection system. Otherwise, Loveland Fire had no concerns with the request.
- The Division of Water Resources indicated that the existing well may be used as a water supply for the use of the existing residence for the short-term rental purposes as proposed.

REVIEW AGENCY NOTIFIED, BUT NO COMMENTS WERE RECEIVED:

- Larimer County Assessor
- Larimer County Road and Bridge
- GIS
- U.S. Forest Service

SUMMARY AND CONCLUSIONS:

The proposed Administrative Special Review for the Pinewood Lake Lodge Short-Term Rental meets or will meet all criteria in Section 3.3.5.B.2, Section 3.3.5.B.3. and meets three out of the five criteria in Section 6.4.3.D. Staff does not have a conclusive determination on Criteria 1 and 2 of Section 6.4.3.D.

The proposed Appeal to LUC Section 3.3.5.B.1. to exceed two guests per bedroom does not meet all of the criteria in Section 6.7.2.B.5., and therefore, the Development Services Team is not supporting this request.

The proposed Appeal to LUC Section 3.3.5.B.3.b to install a fire sprinkler system in the basement and garage and install a fire alarm detection system on the main floor, second floor, and parts of the basement within the residence meets all criteria in Section 6.7.2.B.5., and therefore, the Development Services Team is supporting this request.

The proposed Appeal to a Director's Determination to allow more than one (1) additional sleeping area and more than two guests per sleeping area does not meet all the criteria in Section 6.7.2.B.5., and therefore, the Development Services Team is not supporting this request.

DEVELOPMENT SERVICES TEAM RECOMMENDATION:

The Development Services Team is not making a specific recommendation on the Pinewood Lake Lodge Short-Term Rental, File #22-ZONE3273 and has presented all the information by which the Board of County Commissioners may base their deliberation and decision.

The Development Services Team recommends Denial of the Appeal to LUC Section 3.3.5.B.1. to exceed two guests per bedroom.

The Development Services Team recommends Approval of the Appeal to LUC Section 3.3.5.B.3.b to install a fire sprinkler system in the basement and garage and install a fire alarm detection system on the main floor, second floor, and parts of the basement within the residence.

The Development Services Team recommends Denial of the Appeal to the Director's Determination to allow more than one additional sleeping area and more than two guests per sleeping area.

Commissioner Shadduck-McNally questioned the list of support and opposition and whether the respondents live in the affected community. Staff stated all comments are considered in the application process. Commissioner Shadduck-McNally also questioned the water sources and the status of the existing well. Ms. Sarah Bruckner, Colorado Division of Water Resources, spoke remote and stated that the well has not been inspected. She stated that, based on the pump rate in the well permit file, the well could support up to 25 people. Commissioner Kefalas questioned the special review of the larger short-term rental. Ms. Lasher explained in detail the additional sleeping areas/occupants that the application is requesting.

The applicant, Diana Clements, spoke to the Board. She reviewed her desire to have little to no impact to the surrounding area and community. She stated that they had reached out to the community to inform them of their interest in expanding their short-term rental. Ms. Clements reviewed the requirements and stated that she will ensure that these codes would be strictly enforced.

Commissioner Shadduck-McNally and the owner/applicant had a discussion regarding her claims and intent. The Commissioner questioned the intent of the use of the open spaces in the areas to which the owner stated fishing holes and hiking opportunities would be accessed. There were other discussions regarding the sewage systems and long-term plans.

Chair Stephens opened the floor for public comment: In person: Brendan Clements, Blake Humphrey, Rocky Clements, Jami Diewald, Dale Lindholm, Eric Richards, Cheryl Cook, George Shell, James Holloway; via remote: Laura Richens, Casey Lawrence, Andrew Geyser; In person: Elyse Diewald, Gary Diewald, Chelsea Burgos, Maurina Clements, Cameron Clements, Anthony Beltrame, Jody Brown, Richard Finke, Bruce Rhuebottom, Anne Morris, Theres Thaxton, Karen Boone, Matthew Mabey, Joshua Geyser, Sharon Finke, Kristina Huntsberger, Lisa DeForge, Judy Stencel, Renee Jarrett, John Hughes, Mike Magruder, Theresa OLeary, Jim Gale, Alice Ester, Barbara Shell, Karen Huntsberger, Justin Clements, Renee Clements, Michael Clingan, George Hayes, Rebecca Mabey, and Doug Strauss spoke to the Board. Their concerns ranged from support for the larger, short-term rentals to fears of traffic safety, fire risks, and sewer compatibility. There was also specific concerns regarding reported military night maneuvers in the area with one group that had rented the property.

Chair Stephens closed the public comment.

Ms. Clements provided a rebuttal to the comments from the public. She stated that they had not received complaint letters from the neighbors even after visiting with them personally. She then further explained the concerns about the military night maneuvers to which the local police did confirm there was activity in the area. She discussed the emergency evacuation plans in case of fire as well as the septic systems that were in use within the subdivision.

Commissioner Kefalas asked staff about the distinction between a lodge or a short-term rental and what is allowed in a rural residential area. Staff stated there is a definition of Resort Lodges that is not allowed in open zones however the applicant has applied for a short-term rental which is permitted in this area. Commissioner Kefalas also questioned the traffic impact on the area. The study stated that 31 average trips would be expected with a larger short-term rental. The study did state that there would be no impact on the area. Commissioner Kefalas questioned the study and if fire emergencies were included in the report. Commissioner Shadduck-McNally followed up about the fire emergencies and several locked gates in the alternate evacuation routes.

Commissioner Kefalas questioned Ms. Schneider, Environmental Health, on the proposed septic system for the project with proximity to Pinewood Reservoir. Staff did confirm that most systems are from the 1980's but the proposed system will be updated to include safety measures. Commissioner Kefalas asked if the well was a junior well. Ms. Bruckner stated that this term is not applicable for this application. She said that if the property had water rights, there would be a priority to access water from the well. He also asked for clarification on the septic requirements. Commissioner Shadduck-McNally questioned if Rangers are responsible to taking noise complaints. Ms. White, Code Compliance, confirmed that the Rangers station would not be responsible for nuisance calls from the public.

Commissioner Shadduck-McNally stated that the applicant has not adequately addressed the use of the open spaces as this is a fee-based access area. She continued to list out her questions and concerns. She did ask Mr. Fried, Building Code Official, to further explain the building codes and his observation of the property. He mentioned that placing a sprinkler system in the lower level versus the higher level would be the appropriate application to be made with the Building Department. Commissioner Shadduck-McNally questioned the road conditions and property emergency evacuation routes. She also asked staff about the dimension requirements of a 'bedroom' and staff mentioned those building code requirements would need to be met. Commissioner Kefalas asked about the building codes and sleeping areas that far exceed the minimums.

DELIBERATIONS:

Commissioner Shadduck-McNally said that due to the size of the short-term rental and the lack of emergency evacuation routes, she would be opposed to the approval of this larger, short-term rental. She said that it does not meet criteria 1 or 2 and will have a negative impact on the surrounding area. She further does not approve the expansion of additional occupants as well as adding the fire sprinkler in the basement and the garage. Commissioner Kefalas stated that the neighbors have made a compelling case to support the denial of the larger, short-term rental. Chair Stephens also has indicated she will not be supporting the application because of neighborhood compatibility.

MOTION

Commissioner Shadduck-McNally moved that the Board of County Commissioners deny the Pinewood Lake Lodge Short-Term Rental with Appeals, File No. 22-ZONE3273.

Motion passes 3-0

With no further matters to come before the Board, Chair Stephens adjourned the meeting at 9:45 p.m.

TUESDAY, NOVEMBER 15, 2022

ADMINISTRATIVE MATTERS MEETING

The Board of County Commissioners met at 9:00 a.m. with Lorenda Volker, County Manager. Chair Stephens presided. Commissioner Kefalas and Commissioner Shadduck-McNally were present. Also present were Sarah Martin, Commissioners' Office, Thomas Clayton, Public Relation's Office, and Kelly Bryant, Deputy Clerk.

Chair Stephens opened the meeting with the Pledge of Allegiance.

1. PUBLIC COMMENT: The following members of the public addressed the Board: Heather Lahdenpera spoke to the Board regarding the Vaccine Verify Program anniversary and pandemic effects on the citizens of Larimer County. Kerri Park spoke to the Board about keeping the Commissioners hearings open to the public, the transparency they have exhibited, and asked several questions for the Commissioners to consider in the next year.

2. APPROVAL OF THE MINUTES FOR THE WEEK OF NOVEMBER 7, 2022:

MOTION

Commissioner Shadduck-McNally moved that the Board of County Commissioners approve the minutes for the week of November 7, 2022.

Motion passes 3 - 0

3. REVIEW OF THE SCHEDULE FOR THE WEEK OF NOVEMBER 21, 2022: Ms. Martin reviewed the upcoming schedule with the Board.

4. CONSENT AGENDA:

AGREEMENTS:

- 1. BUREAU OF JUSTICE ASSISTANCE (BJA) FY 2021 STATE CRIMINAL ALIEN ASSISTANCE PROGRAM**
- 2. STATE OF COLORADO DEPARTMENT OF HUMAN SERVICES INTERGOVERNMENTAL AGREEMENT**
- 3. INTERGOVERNMENTAL AGREEMENT CONCERNING THE HEAVEN'S DOOR RANCH CONSERVATION PROJECT**
- 4. AMENDMENT TO GRANT SUBRECIPIENT AGREEMENT AMERICAN RESCUE PLAN IMMEDIATE NEEDS GRANT SUB AWARD**

5. **EMPLOYMENT AGREEMENT – FIRST AMENDMENT**
6. **CR 38E AND 73C GUARDRAIL INSTALLATION, INTERGOVERNMENTAL AGREEMENT (IGA) WITH CDOT**

APPOINTMENTS

1. **RECOMMENDED MIDTERM APPOINTMENT TO THE PARKS ADVISORY BOARD - PHIL STOUT**
2. **RECOMMENDED REAPPOINTMENT TO THE CENTRO BUSINESS PARK PID - JOE LARSON**
3. **RECOMMENDED REAPPOINTMENTS TO THE GRAYHAWK KNOLLS PID - MONTY WAGNER AND GARY EPSTEIN**
4. **RECOMMENDED REAPPOINTMENT TO THE COUNTRY MEADOWS GID - MYLES O'REILLY**
5. **RECOMMENDED REAPPOINTMENT TO THE SADDLEBACK PID - ERNIE PYLE**
6. **RECOMMENDED REAPPOINTMENTS TO THE VINE DRIVE PID - STEVEN SHAFER AND JOHN DAGGETT**
7. **RECOMMENDED APPOINTMENT TO THE NAMAQUA HILLS GID - CLINT GRASSMICK**
8. **RECOMMENDED REAPPOINTMENT TO THE NAMAQUA HILLS GID – RON WOOLWORTH**
9. **RECOMMENDED REAPPOINTMENTS TO THE SOARING PEAKS RANCH PID - MICHAEL FIFFE AND TERRY GRUBER**
10. **RECOMMENDED APPOINTMENT TO THE SOARING PEAKS RANCH PID - DAVID MEYER**
11. **RECOMMENDED REAPPOINTMENT TO THE WILLOWS PID - RYAN LIEBL**
12. **RECOMMENDED APPOINTMENT TO THE BOARD OF ADJUSTMENT - LAUREN LIGHT**

LIQUOR LICENSES: Liquor License Renewal – Ptarmigan Acquisition LLC dba Ptarmigan Country Club, Fort Collins, Hotel & Restaurant with optional premises; Ride A Kart and Cascade Creek Mini Golf, Estes Park, Beer and Wine

MISCELLANEOUS:

1. **CONSENT TO EASEMENT**
2. **APPROVED 2023 SOLID WASTE FEE SCHEDULE**

RESOLUTIONS:

1. **RESOLUTION ESTABLISHING COMPENSATION FOR DEPUTY DISTRICT ATTORNEY I**

MOTION

Commissioner Kefalas moved that the Board of County Commissioners approve the Consent Agenda for Tuesday, November 15, 2022.

Motion passes 3 - 0

5. **COMMISSIONERS GUESTS:** Angela Myers, Larimer County Clerk and Recorder, spoke to the Board. She provided an update on the recent Election and stated she was proud of the public behavior as well as the voluntary citizen judges. A record-breaking number of ballots were submitted on Election Day (66,000+). The final, unofficial count was submitted on Veterans Day. There is a cure period (signature verification) and a Risk Limited Audit (RLA) will be conducted. Nothing is final until Canvas is completed. Commissioner Kefalas thanked Clerk Myers for her work. Clerk Myers stated that election results must be certified by November 30, 2022, but she said the certification is expected November 22, 2022. Commissioner Shadduck-McNally congratulated Clerk Myers and Irene Josey, Larimer County Treasurer, on their reelection. She asked about Colorado House Minority Leader Hugh McKean who passed away during the Election period. Clerk Myers said that the Colorado Secretary of State is consulted when a death occurs. Once the ballots are counted, the total must be posted. She said that the seat that he vacates this year and into the term will be filled by Vacancy Committees by the respective Party. The Clerk and Recorder's Office is not involved in that selection process. Chair Stephens thanked Clerk Myers for her work in organizing this process. Clerk Myers thanked her staff for a great job, and she stated she was honored to have the opportunity to work with them. Commissioner Kefalas suggested a Proclamation for those volunteers, and Clerk Myers said she would consider this in the future.

Discussion Items:

1. **CELEBRATING/RECOGNIZING OUR 2022 RANGER BRENDAN UNITT COMMUNITY SERVICE AWARD RECIPIENTS: CAROLINA & TOMAS QUINONEZ OF THE HUMAN SERVICES DEPARTMENT** The chosen candidates were submitted by Jill Maasch & Gregg Turnbull who are Larimer County Guiding Principles Champions. Mr. Turnbull spoke to the Board. He said that Ms. Quinonez was chosen for this award because of her dedication,

going above and beyond, and was heavily involved in providing hygiene items to Poudre School District Spanish speaking students. He said that Mr. Quinonez is a Community Navigator and specializes in youth maltreatment detection and prevention.

Ms. Quinonez spoke to the Board. She stated that she was thankful for Ranger Unitt and his ultimate sacrifice. She said she was thankful for being a part of the community for the last 18 years. Mr. Quinonez thanked the community and for the submission of their names for this award. He was thankful to the community for embracing their family. Commissioner Shadduck-McNally thanked the couple for their service. She was thankful for Ms. Quinones and her ability to navigate the systems/resources. She thanked Mr. Quinones for his work with families that are going through so much and for being a trusted source for many. Commissioner Kefalas spoke to the couple in Spanish. He said that the couple embraces all that Ranger Unitt exhibited. He noted that each of these individuals works at both spectrums of life and has a tremendous impact on the public. Commissioner Kefalas also thanked those in Larimer County that coordinate and nominate people for this commendable award. Chair Stephens said that they were considered a “power couple” and that she was grateful for the work they do. She mentioned that placing the spotlight on those in need takes people with a special skill.

The Commissioners took a brief recess.

2. RESOLUTION EXPRESSING INTENT TO COMMIT AN IN-KIND DONATION OF A COUNTY OWNED PROPERTY TO THE CITY OF LOVELAND GREENSPIRE HOUSING DEVELOPMENT PROJECT Alea Rodriguez, Housing Stability Program Manager has made the recommendation for this project and spoke to the Board regarding the details. This resolution expresses the intent of the Board of County Commissioners to commit an in-kind donation of a County owned property to the City of Loveland Greenspire Housing Development. She said that the City of Loveland plans to construct 44 multi-family housing units on the above-named property.

Alison Hade, City of Loveland – Community Partnership Office, spoke to the Board. She said that the Department of Housing and Urban Development designated Larimer and Weld County a “Continuum of Care” region. The purpose of this Continuum of Care is to prevent and/or resolve homelessness. She reviewed the steps that must take place to make the determination of someone’s homeless journey and the scoring system that is used to determine the likeliness of death without intervention. She further mentioned that the Greenspire Housing Development project is important because it will assist people who are exiting a facility and coming into homelessness. Ms. Hade thanked the Commissioners for their partnership.

Commissioner Kefalas questioned how the public interfaces with the Continuum of Care. Ms. Hade reviewed those details and explained the importance of trust in these organizations and facilities. She agreed with Commissioner Kefalas that homelessness should only be short-lived and all should be housed – achieving “functional zero.” She mentioned affordable housing in the area and veteran services. He asked about housing vouchers that exist and Ms. Hade mentioned several resources that are available. Commissioner Shadduck-McNally congratulated Ms. Hade for being awarded Employee of the Year with the City of Loveland. She thanked Ms. Hade for the education on the homeless issue and said that it has been an honor and pleasure to work with her over the years on the Human Services Commission. She clarified that from 2016 – 2022, 340 people have been supported through the Continuum of Care program. Chair Stephens said that she appreciated the work that she has

done and for providing such detail today. She mentioned that it is unfortunate that people are living on the streets but also dying on the street as well.

MOTION

Commissioner Shadduck-McNally moved that the Board of County Commissioners approve the resolution expressing intent to commit an in-kind donation of a county owned property to the City of Loveland Greenspire Housing Development Project

Motion passes 3 - 0

The Commissioners took a brief recess.

3. RESOLUTION EXPRESSING INTENT TO PROVIDE FUNDING TO ASSIST WITH THE FISH HATCHERY WORKFORCE HOUSING PROJECT Alea Rodriguez, Housing Stability Program Manager, submitted this resolution and spoke to the Board. This resolution expresses the intent of the Board of County Commissioners to provide \$2,000,000 of American Rescue Plan Act funds to contribute to assist with the construction of a multi-building housing development complex, estimated to cost approximately \$55 million, providing the approximated 190 units to the local housing supply, with the desired goal of helping “buy down” rent to make the apartments more affordable for renters in the local workforce.

Jason Damweber, Town of Estes Park, spoke to the Board. He thanked the Commissioners and specifically Commissioner Shadduck-McNally for her dedication to the Estes Valley. He spoke of the efforts to locate the property. He said that the last Housing Assessment Need Analysis was conducted in 2016. He mentioned that this project would be the largest project in this area and looked forward to other opportunities to provide affordable housing in the region. Commissioner Shadduck-McNally thanked Mr. Damweber for his work on this project. She asked for further clarification on the types of units that will be built. He mentioned that there was also a rezoning process that needed to be completed. He further explained the criteria to qualify: they must work 30 hours within the school district boundaries. He explained that there will be three tiers of rent for these units. Commission Shadduck-McNally also asked about public transportation opportunities and Mr. Damweber said that this is a consideration in the overall project. Mr. Damweber mentioned that there will be a public meeting on November 22, 2022, to present the final report of the Housing Assessment Need Analysis.

Commissioner Kefalas thanked everyone involved in this project. He asked about the targeted jobs that would be considered in this equation. Mr. Damweber explained teachers, police officers, hospital staff, etc. who can make a living wage but cannot afford housing would be the prime beneficiaries. He said that those in the service industry will eventually be addressed. Chair Stephens thanked Mr. Damweber for his work on this project and looked forward to working together on future projects.

MOTION

Commissioner Kefalas moved that the Board of County Commissioners approve resolution expressing intent to provide funding to assist with the Fish Hatchery Workforce Housing Project.

Motion passes 3 - 0

Commissioner Kefalas gave special thanks to Ken Cooper, Director of Facilities and Jennifer Johnson, Planning and Real Estate Manager, for their work and support on this project.

The Commissioners took a brief recess.

8. **COUNTY MANAGER UPDATE:** Manager Volker updated the Board on this week's coordination meetings and upcoming projects and activities.

9. **COMMISSIONER ACTIVITY REPORTS:** The Board detailed their attendance at events during the previous week.

10. **LEGAL MATTERS:** None requested.

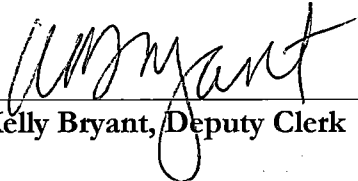
With there being no further business, the Board adjourned at 11:05 a.m.



KRISTIN STEPHENS
BOARD OF COUNTY COMMISSIONERS

ANGELA MYERS
CLERK AND RECORDER

ATTEST:



Kelly Bryant, Deputy Clerk

