



TORBET TUFT & McCONKIE

ATTORNEYS AT LAW

July 17, 2023

Via Email

Messrs. William Gray and Ben Bolinger
City of Colorado Springs Land Use Review Division
30 S. Nevada Avenue, Suite 105
Colorado Springs, CO 80903
william.gray@coloradosprings.gov
ben.bolinger@coloradosprings.gov

RE: Opposition to Request to Postpone July 25, 2023 Hearing on Appeal
Project Name: Launchpad Apartments Project (DEPN-23-0001)
Related Appeal: APPL-23-0002

Dear Messrs. Gray and Bolinger:

This firm represents the Cohen Esrey Development Group in connection with the above-referenced affordable housing project. The purpose of this letter is to urge denial of Appellants' request to postpone the hearing scheduled for July 25, 2023 regarding the appeal filed by Ms. Tracey Bradford on June 26, 2023. For the following reasons, appellants' postponement request should be denied, just as its similar postponement request was previously denied by the Planning Commission.

I. Appellants incorrectly claim entitlement to postponement of the July 25, 2023 hearing

On June 29, 2023, in her request to postpone the City Council's hearing on the Appeal, Appellant Bradford wrote:

Per City Code 7.5.906 B.3 we are invoking our right to a 'Postponement Of Items On Appeal To the City Council' for the hearing scheduled for July 25th, 2023. Per 7.5.906B.3. the [sic] scheduled hearing is to now be scheduled for the 'next following regular Council meeting'. Please let us know when this is scheduled...

Appellant Request for Postponement at 1.

On July 7, 2023, appellant Scott Hiller provided three additional arguments in support of Ms. Bradford's postponement request, including (1) a family emergency of Spokeswoman Bradford, (2) alleged inadequate time to prepare for the July 25, 2023 hearing, and (3) the alleged addition of "20 new appellants," not parties to the appeal, who 'need adequate time to prepare.'

Appellants' original justification for postponement cites an obsolete and deleted City Code provision which formerly provided, on request, a postponement "[a]s a matter of course." *See the*

2 N. Cascade Avenue, Suite 320, COLORADO SPRINGS, CO 80903
TELEPHONE: (719) 475-9300 FAX: (719) 475-9311
www.torbetlaw.com

former City Code at 7.5.906.B.3 (superseded on June 5, 2023). This “automatic continuance” was deleted from the City Code when, per the City Council’s March 28, 2023 approval of Ordinance 23-03, the Uniform Development Code (“UDC”) took effect. *See* City Code Section 7.1.110 (“**The effective date of this UDC shall be Monday, June 5, 2023**”) (replacing Chapter 7 of the previous City Code with the UDC effective June 5, 2023). Thus Appellants incorrectly claim entitlement to “invoke” a right that was obsolete as a matter of law by the time she filed the appeal on June 26, 2023.

In their Addendum to the postponement request, Appellants argue that because the Launchpad Apartments project application was submitted prior to the June 5, 2023 effective date of the UDC, and thus reviewed under and approved under the City’s previous Chapter 7 standards (“Old Code”), the postponement entitlement provision from the Old Code applies even after June 5, 2023. This argument has two problems. First, as a matter of law, the UDC, which deletes the postponement entitlement, took effect on June 5, 2023. City Code Section 7.1.110. Appellants do not point to any code-based justification for their attempt to shoehorn the postponement entitlement from the Old Code into the UDC, which intentionally deleted that entitlement. And they cannot, because that postponement entitlement became obsolete on June 5, 2023. Second, the logic that the automatic postponement provision from the Old Code should apply, despite the interim adoption of a new and superseding code, does not hold. When the application was originally submitted in May of 2022, the Planning Commission had no alternative but to review the project under the Old Code, because that was the law in place when the application was filed. That review process took place from May of 2022 through May of 2023, so it makes sense why the Planning Commission’s Staff relied upon the substantive review criteria of the Old Code (which substantive provisions are substantially identical to the review criteria under the UDC). But the appeal was filed on June 26, 2023—some three weeks after the UDC took effect. Applicants are prepared to demonstrate, in any event, that the development plan meets the review criteria under the UDC as well.

II. Appellants have not met their burden to show good cause to postpone the hearing

The applicable rules governing postponement under the UDC, codified at 7.5.415.C.3 of the current City Code, provide that postponements of scheduled hearings are not automatic. Rather, they are granted only when the requesting party carries its burden to show good cause to the City Council, and where City Council makes a finding that good cause is indeed shown.

Here, none of the three additional reasons provided in Appellant Hiller’s Addendum to the postponement request meet appellants’ burden to show good cause.

First, the Addendum email itself resolves the concern regarding the potential participation of Spokeswoman Bradford. In an email to the City’s designated Senior Land Planner, William Gray, Ms. Bradford herself confirmed, on July 6, that she plans to attend the City Council’s July 25, 2023 meeting virtually. *See* Exhibit 1 (Appellant Request for Postponement and Addendum). The Applicant extends sympathies to Ms. Bradford in relation to the unidentified family emergency, but in view of the fact that the emergency was known by July 7, 2023 and has no

known end date, it is evident by Ms. Bradford's own admission that, with planning, she can participate in the scheduled hearing remotely.

Second, appellants suggest that they require additional time to prepare for the hearing based on the fact that the full video of the Planning Commission hearing on June 14 was not available until July 6, 2023. It rings hollow for Appellants, who initiated the appeal and participated themselves in the June 14, 2023 hearing, to now argue that they lack adequate notice to prepare for the July 25, 2023 hearing. The full video, by their own admission, will have been publicly available for nearly three weeks ahead of the hearing. Moreover, the Appeal Statement attached to the original appeal application is substantially identical to the issues raised by the Appellants in the May 22, 2023 Appeal Statement, which Appellants attached to their appeal to the Planning Commission following administrative approval of the Launchpad Apartment project. Manifestly, there is no lack of notice regarding the issues they themselves raised, and there has been ample time to prepare. Good cause to postpone the hearing is not shown on this basis.

Third, appellants attempt to bootstrap 20 new appellants into this appeal, contrary to the requirements of City Code and the Appellant Authorization signed by Ms. Bradford in the appeal application Ms. Bradford filed on June 26, 2023. There is no indication in Mr. Hiller's Addendum of the identity of the "20 new appellants," let alone their qualifications as "Affected Parties" under UDC Section 7.5.415. *See Exhibit 1*. In the Appellant Authorization filed by Ms. Bradford, she certified:

"I(we) is(are) **the authorized appellant** and that the information provided on this form is in all respects true and accurate to the best of my(our) knowledge and belief. I(we) familiarized myself(ourselves) with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal...

See Exhibit 2 (Appeal Application). Clearly, "the 20 new appellants" are not among the "authorized appellants" under the UDC or within the certification in the Appellant Authorization. *Id.* Therefore, because appellants have failed to show who these alleged "appellants" are, or whether they are Affected Parties under UDC Section 7.5.415, and because they are now time barred from joining that appeal (having failed to join the appeal within 10 days from June 14, 2023, as required), their desire to participate as appellants in the hearing does not constitute good cause to postpone the hearing.

Thus none of the three reasons put forward by appellants meet their burden to show good cause to postpone the hearing. The hearing, if not earlier dismissed, should proceed as scheduled on July 25, 2023.

III. The Applicants are prejudiced by efforts to stonewall the project

On June 28, 2023, the Applicant and its financing partners closed on significant aspects of the project, contingent on resolution of this appeal as a "post-closing" item. The investors who have pledged funds to sustain the project are expecting, as a condition of their investment, that construction commence promptly. Further, any extension to the pendency of the appeal introduces

other threats, including the prospect of future delays coincident to winter weather, and increasing interest rates, a condition that could chill investors' willingness to fund the project. These unnecessary threats ultimately jeopardize the timeliness within which the project can provide housing to those at-risk 18–24 year-old individuals in our community who may be experiencing homelessness. Postponement of the hearing prejudices the applicant in time and significant money, and it would postpone the delivery of the housing conditions this Council is charged with prioritizing.

IV. Conclusion

For the foregoing reasons, appellants have failed to meet their burden to show good cause for the postponement of the July 25, 2023 hearing on the appeal. If the appeal is not separately dismissed before then, we respectfully request that the City Council DENY appellants' request for postponement for failure to show good cause. In the alternative, if the City Council determines to postpone the appeal, the applicant requests that the rescheduled hearing take place, without those appellants who lack standing, in the City's regular August meeting, not in September, as requested by the Appellants.

Sincerely,



David G. McConkie

Enclosures:

Exhibit 1 – Applicant Request for Postponement and Addendum
Exhibit 2 – Appeal Application

cc: Emily L. Cipra (ecipra@sandbergphoenix.com)