



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
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RE: Position Statement in Opposition to Appeal
Project Name: Launchpad Apartments Project (DEPN-23-0001)
Related Appeal: APPL-23-0002

Dear Messrs. Gray and Bolinger:

Our firm represents Cohen Esrey with regard to the above-referenced matter. We are aware of an appeal filed on June 26, 2023 (hereinafter the "Appeal") in response to the Planning Commission's unanimous decision on June 14, 2023 to deny the prior related appeal (APPL-23-0002) and uphold the administrative approval of the Launchpad Apartments project. The Appeal is scheduled to be heard by the City Council on July 25, 2023, but the appellants have (1) requested a postponement of the hearing until the September City Council meeting and (2) attempted to improperly join 20 new appellants to the Appeal. Simultaneously with the delivery of this letter ("Position Statement"), I have submitted my client's *Opposition to Request to Postpone July 25, 2023 Hearing on Appeal* ("Opposition to Postponement"). We thank you in advance for forwarding to the City Council this Position Statement in opposition to the Appeal, with enclosures, as well as the accompanying Opposition to Postponement for the City Council's review and consideration in advance of the July 25 hearing.

The development plan has been reviewed and determined to sufficiently address the review criteria set out in City Code Section 7.5.502(E),¹ and the project has been found to comply and conform with City adopted plans applicable to the site. In the interest of brevity, and for the convenience of you and City Council, I enclose a copy of my client's PowerPoint presentation from the June 14, 2023 Planning Commission meeting which details the specifics of the project and demonstrates the project's compliance with applicable plans and guidance. See **Exhibit 1** (Applicants' June 14 PowerPoint Presentation). This Position Statement only contains a summary description as to why the bases of the Appeal are insufficient and/or unavailing.

¹ The development plan for the project was submitted prior to the Unified Development Code (UDC) effective date of June 5, 2023. For this reason, the City processed and reviewed it under Chapter 7 standards.

As an initial matter, the Appeal contains the following procedural and/or substantive deficiencies that render it invalid and warrant denial of it or, at a minimum, warrant denial of the postponement request:

1. There are twenty-one (21) appellants identified in the Appeal, but eleven (11) of them do not qualify as an "Affected Party" under UDC Section 7.5.415 because they either do not live within 1,000 feet of the Launchpad Apartments site and/or have not preserved standing to appeal under Section 7.5.415.A(1)(b). Specifically, those eleven appellants are: Tracey Bradford, Loretta Jacobs, Lynn Lubben, Mike Pickett, Tracy Watson, Mike Richardson, Gale Richardson, Anita Fraser-Day, Todd Kearney, John Mellman, and June Mellman. Notably, Tracey Bradford, the primary named appellant who submitted the Appeal, does not qualify as an "Affected Party". Those of the 21 appellants who lack proper standing should be dismissed from the appeal.
2. Moreover, the appellants have not met the appeal criteria outlined in City Code Section 7.5.415.A.2.a.3, the newly adopted and applicable appeal criteria governing this Appeal. In particular, appellants are required to "[d]escribe how the criteria for the relevant application have or have not been met." As more fully demonstrated in the enclosed materials, the appellants have failed to sufficiently address this. They have not identified any real and existing burdens that would be placed on them by the Launchpad Apartments project, or any adverse impacts caused by the project. Further, Appellants' principal argument, i.e., that the project is violative of the Westside Plan's height and density restrictions, is unavailing because the intent of the plan is not to take or replace existing zoning standards, and the project is compliant with the existing R-5 zoning standards. This is fully detailed in the enclosed PowerPoint presentation, as well as the Planning Commission's staff report from the June 14, 2023 hearing.

Even under Chapter 7 of the previous City Code, which applied at the time when the project was originally submitted for approval, the Appeal fails to meet the appeal criteria. Former Section 7.5.906.A.4 requires Appellants to show compliance with the following:

Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

The appellants have failed to sufficiently address this. The appeal application, even if it was filed by parties with proper standing, simply does not identify any real and existing burdens that would be placed on them by the Launchpad Apartments project, or any adverse impacts caused by the project.

3. There is no indication that the \$176 fee was submitted along with the Appeal as required. Section 7.5.415.A.3 of the UDC states that "[f]ailure to pay any required

fee or to properly complete any required form within the time provided shall be deemed a waiver of the right to appeal.”

4. The appeal application form utilized by the appellants is not the current application form and, therefore, it does not conform with the requirements of the current and active appeal application process.

UDC Section 7.5.415.A(2)(c) provides that, “the body hearing the appeal may choose to vote on the sufficiency of the appeal to determine if the appeal has met the requirements of this Subsection. Upon a finding of insufficiency by a majority of the body hearing the appeal, the appeal shall be rejected, and no hearing held.” We believe rejection of the appeal in advance of the hearing is warranted by the City Council given the above-described deficiencies of the Appeal. Alternatively, and for the reasons set forth in my client’s simultaneously submitted Opposition to Postponement, and at a minimum, we ask the City Council to (a) deny the appellants’ postponement request on the grounds that the Appeal is deficient and, if the appeal is not dismissed, (b) find that the “20 new appellants” referenced in the Addendum to appellants postponement request are not proper appellants for the reasons set forth in my client’s Opposition to Postponement. A project that has already been administratively approved and unanimously upheld by the Planning Commission should not be unnecessarily delayed any further because of a deficient appeal.

In addition to the reasons set forth in the Planning Commission’s Staff Report, which demonstrates compliance with applicable code and plan guidance, we attach hereto seven additional letters of support from key community leaders and neighbors of the project. *See Exhibit 2* (Community Leader and Neighbor Support Letters). As another index of the community support this project enjoys, please also find enclosed public comments filed with the Planning Commission prior to the underlying appeal hearing. *See Exhibit 3* (Public Comment Compilation). Please note that public comments resulted in 9 letters in favor of the project and only 5 in opposition, and the majority of opposing comments came from named appellants.

On behalf of my client, we ask the City Council to deny the appellants’ postponement request, deny the Appeal, and uphold the administrative approval of the Launchpad Apartments project, which was unanimously confirmed by the Planning Commission. In the alternative, the Applicant respectfully requests that the 11 “appellants” who are not “Affected Parties,” and therefore lack standing, be dismissed as parties to this appeal as required under UDC Section 7.5.414.

Please feel free to contact me if you have any questions.

Sincerely,



David G. McConkie

Enclosures:

Exhibit 1 – Applicant’s June 14, 2023 PowerPoint Presentation

Exhibit 2 – Community Leader and Neighbor Support Letters

Exhibit 3 – Public Comment Compilation

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

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