

9 October 2023

Mayor Jacki Marsh
Mayor Pro Tem Don Overcash
Councilor Richard Ball
Councilor John Fogle
Councilor Dana Foley
Councilor Jon Mallo
Councilor Patrick McFall
Councilor Steven Olson
Councilor Andrea Samson

RE: Request for Council-Directed Cessation of 6th & Douglas Matter and Withdrawal of West End Project online Survey

Dear Mayor Marsh, Mayor Pro Tem Overcash, and members of City Council:

As you know, in July, after nine months of shifting efforts from Development Services and overwhelming opposition from West End property owners, the City withdrew its application (PZ#22-154) to inject an island of high-density into the midst of a solidly low-density sea of homes.

On April 24, the Planning Commission rejected the proposal 5-2 in favor of the neighborhood. At least 650 residents in the signed No Rezone petitions.

Later, during an hours-long [first reading at City Council June 20th](#), the Council engaged the planners and neighbors in a back and forth to find an equitable solution that would avoid rezoning to high-density R3e but fulfill the wish of property owner Barry Floyd to convert his vacant medical building to a memory care facility. Floyd reiterated what planners had earlier said at Planning Commission April 24 that he had a letter of intent to sell his property if it could be used as memory care. Councilor Steve Olson quizzed neighbors who spoke and received positive reactions to the building's use as memory care.

Councilor Dana Foley deftly led a line of questioning to suss out options. [2:39:26] He asked Senior Planner Kerri Burchett if Council could have a more direct role in deciding use issues.

Foley: "Can Council direct special use and zones and change the U.D.C. for those specific reasons?I think Council can pretty much make up how they feel it needs to be set. Am I correct with that?"

Burchett: "So, yes, as a code amendment, Council could look at any zone district and allow uses to occur; they could change standards of the uses, for sure, you could look at some of the R1 zone districts for instance, and say that, well we think that memory care should be allowed in R1 districts and that can be a change that Council does."

The 6th & Douglas rezone proposal never made it to a second Council reading. The first reading ran out of time with public comment still not finished, and it was expected to continue in July. But before that could happen, Development Services withdrew the rezone application. Based upon the Planning Commission’s decision, the considerable discussion at the June Council hearing, and Senior Planner Burchett’s testimony, it was the reasonable assumption that Development Services was taking a step back to resolve the problem with tools already available to them:

- Amending the UDC to allow memory care as a conditional use in R1 zoning districts; or
- Granting a variance specifically to allow memory care for Mr. Floyd’s property.¹

On Oct. 2, however, neighbors received an email from the City, not to announce that a happy solution for Mr. Floyd had been finalized, but rather to direct us to a webpage dedicated to something called the “West End Neighborhood Project”. The site informed us that this “project” involves deploying “overlays” in the West End. Neighbors were asked to take an online Survey that Development Services Director Brett Limbaugh the next day told Council would serve as “an in-depth look at not just the memory care, but is there something else we’re missing.”

In June, the mandate seemed to be memory care for Mr. Floyd’s property, not expanding the mission for uses and acreage.

Nonetheless, Planning has rolled out this “project” with a website and a Survey that raises major concerns about its integrity and methodology. Specifically:

This issue only affects the West End, but anyone can take the Survey, not just our neighborhood. While respondents are asked to provide an address, how can Planning certify that the anonymous person online taking the Survey actually lives at the West End address supplied?

The Survey asks age, years of residence, and ownership status, which suggests built-in bias. Protecting the overall quality of life for the West End applies to all who live here, whether owners or renters, young or old, long-time residents or those recent to the City.

The Survey is a push-poll that skews in favor of R3e high-density uses that go well beyond what was ever considered during the year-long effort to rezone at 6th & Douglas. It starts from the assumption of deploying high-density overlays.

¹ Letter dated June 15, 2023 from legal counsel, Mike Foote, to the Mayor and City Council Members: “A review of applicable Loveland Unified Development Codes indicates there is no legal impediment preventing the owner of the vacant medical building from applying for a variance. Under UDC § 18.17.15.07, “[t]he Zoning Board of Adjustment may grant a variance only when the applicant demonstrates that there are unusual and exceptional circumstances creating an undue hardship, applicable only to the property involved, which do not generally apply to the other land areas within the same zone.”

When attempting to change the use of a property in a well-established, historical neighborhood like the West End, it is much more appropriate to address the issue narrowly in ways that will still preserve the property rights of everyone.

If a respondent says “No” to overlays in the neighborhood, then the Survey does not allow them to finish the Survey or submit it, preventing a true and accurate reflection of neighborhood opinion.

Only those who agree to overlays can proceed with the Survey. And when they do, they are presented with questions exclusively focused on high-density. Choices offered include every single high-density R3e use possible – and even some commercial and retail uses that have never been contemplated for 6th & Douglas.

The Survey even reintroduces the original seven acres of the rezoning map from a year ago. Strong opposition -- including from properties and single-family homes within the seven acres – forced that map down to 1.6 acres last January. But now this new project puts all the acreage back into play once again. Why is the City doing this?

As of today, Oct. 9, all elements of our concern detailed above still exist with the Survey online, despite our mention of them at Council a week ago.

This new initiative from Planning appears to be an attempt at an end run around the West End residents, the Comprehensive Plan, the UDC, Colorado Supreme Court law, the Planning Commission, and City Council. It also hints at a strategy to frustrate, wear down, and exhaust property owners just trying to uphold their fundamental rights. This is alarming.

When neighbors brought up this new development at Council on Oct. 3, Councilor Olson showed the same surprise as the neighbors when he said, “I understood that staff was working with Barry to accomplish the memory care unit, and so it sounds like there’s some confusion.”

Development Services Director Limbaugh assured Councilor Olson that Planning had “heard memory care loud and clear.” But, he added, “there’s still some other items on the table to explore.” He then mentioned a possible PUD for Mr. Floyd.

How can a neighborhood negotiate in good faith if the City will not take yes for an answer? Memory care is what Planning and Mr. Floyd told the Planning Commission and the City Council that they wanted. They have the tools available right now to make that happen without rezoning to high-density. Yet instead of following through as everyone expected, Planning simply doubled down on its efforts to inject high-density that the neighborhood and the Planning Commission have already resoundingly rejected.

This latest development continues a pattern over the past year of moving the goal posts and keeping neighbors in a constant state of uncertainty and anxiety. All the winning arguments that sunk the 6th & Douglas rezone apply to a PUD and high-density overlays.

Many appealing uses for that vacant medical building have always existed under current R1e zoning. But the City and Mr. Floyd have, throughout this process, only focused on high-density options that simply are not allowed in an R1e residential neighborhood. It is fair for the neighbors to ask why.

The City of Loveland has never before allowed upzoning within a solidly low-density R1e residential neighborhood. Nor has the City ever before permitted an overlay in a solidly low-density R1e residential neighborhood. But it now seeks to break those long precedents through either a 6th & Douglas rezone or this West End Project of high-density overlays.

As has been previously pointed out to Council by neighbors' legal counsel², it is unlawful for the City to engage in contract zoning for a property owner against the wider public interest. We believe the West End Neighborhood Project is simply a rebranding of the 6th & Douglas Rezone ambitions. Rezoning by any other name is still rezoning.

At the first reading on June 20, Councilor Olson judiciously found a path of consensus that would give Mr. Floyd what he asked for, memory care. Councilor Foley perceptively found the path to a swift solution.

Therefore, we respectfully request that the Council exercise its prerogative, as confirmed by Senior Planner Burchett, and direct the City Manager to direct Development Services to either:

- **Amend the UDC to allow memory care as a conditional use in R1 districts; or**
- **Grant a variance specifically to allow memory care on Mr. Floyd's property.³**

Such action would bring this matter to a close, respecting the owner's request for memory care and freeing up valuable City resources and tax dollars for other matters. The UDC amendment approach would, as well, offer flexibility for other areas that might want memory care.

We also ask that the City immediately withdraw the Survey. It is causing great confusion and anxiety in a neighborhood that has already been put through enough.

As you saw and heard last June, neighbors are eager for the owner to find new life for his vacant medical building and for the neighborhood to be able to move on. Fortunately, Council has the tools in hand to bring this to a conclusion now.

Sincerely,

Cindy and Doug Van Slambrouck & Gail Randall and Bill Aspinwall

cc: City Manager Steve Adams
Development Services Director Brett Limbaugh
Current Planning Manager Robert Paulsen
Senior Planner Kerri Burchett

² Letter to the Mayor and City Council Members from Mike Foote dated June 15, 2023.

³ Refer to footnote 1.