



## PROCLAMATION

- WHEREAS,** Title VIII of the Civil Rights Act, which guarantees fair housing for all residents of the United States, was signed into law in April 1968; and
- WHEREAS,** the Month of April is nationally recognized as Fair Housing Month and a time to reflect on and reaffirm our national commitment to the ideal that fair housing opportunity is available to everyone in the United States without regard to race, color, religion, national origin, sex, familial status, and disability; and
- WHEREAS,** this year's theme "LIVE FREE", indicates collaborative effort of the United States Department of Housing and Urban Development and its partners in realizing increased housing opportunities for every individual; and
- WHEREAS,** the State of Colorado, which enacted prohibitions against housing discrimination in 1959, the first state in the nation to pass anti-discrimination laws pertaining to private property, recognizing and affirming that all persons in the State of Colorado are free to purchase, rent, finance, and insure their homes without regard to their race, color, religion, creed, sex, national origin, ancestry, familial status, marital status, or sexual orientation; and
- WHEREAS,** the City of Loveland, Colorado welcomes this opportunity to reaffirm our commitment to the principal of fair housing for all and are committed to all efforts that address discrimination in our communities, support all programs that will educate the public concerning their rights to equal housing opportunity and to assure every person their right to live free of the fear of housing discrimination;

Now, Therefore, we, the City Council of Loveland do hereby declare April 2011 as

## FAIR HOUSING MONTH

in the City of Loveland, Colorado.

Signed this 19th day of April, 2011

Cecil A. Gutierrez, Mayor



**PROCLAMATION**

**WHEREAS,** The George K. Kroh Charitable Remainder Trust was established in 1977; and

**WHEREAS,** The City of Loveland is a beneficiary of the Trust; and

**WHEREAS,** The City has been the recipient of an annual distribution of ten percent of the net income of the remaining Trust assets for the use and benefit of the Loveland Public Library, and ten percent of the net income of the remaining Trust assets for the use and benefit of the Loveland Museum/Gallery, until full termination of the Trust by or before 2016; and

**WHEREAS,** upon requested termination of the designated principal, the Trust will provide an asset distribution for use by the Library and the Museum/Gallery of over \$600,000 each; and

**WHEREAS,** Resolution #R-24-2011 of the Loveland City Council consenting to the termination of the designated principal of the George K. Kroh Charitable Remainder Trust and accepting a distribution of the assets from said trust to the City of Loveland for the use and benefit of the Loveland Public Library and the Loveland Museum/Gallery is proposed for the City Council's adoption; and

**WHEREAS,** This continues the Kroh Family's tradition of generosity to the community.

**NOW, THEREFORE,** we, the City Council of the City of Loveland, on behalf of a grateful community, do hereby extend our sincere thanks for this gift of over \$1.2 million for the benefit of the citizens of Loveland.

Signed this 19th day of April, 2011

Cecil A. Gutierrez  
Mayor



## CITY COUNCIL

Civic Center • 500 East Third Street • Loveland, Colorado 80537  
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620  
[www.cityofloveland.org](http://www.cityofloveland.org)

### PROCLAMATION

- WHEREAS,** libraries provide free access to all – from books and online resources for families to library business centers that help support entrepreneurship and retraining; and
- WHEREAS,** our nation’s public libraries make a difference in the lives of millions of Americans today, more than ever; and
- WHEREAS,** librarians are trained professionals, helping people of all ages and backgrounds find and interpret the information they need to live, learn and work in a challenging economy; and
- WHEREAS,** libraries are helping level the playing field for job seekers, with 88% of public libraries providing access to job databases and other online resources; and
- WHEREAS,** libraries are places of opportunity providing programs that teach all forms of literacy, promoting continuing education and encouraging lifelong learning; and
- WHEREAS,** in times of economic hardship, Americans turn to – and depend on – their libraries and librarians; and
- WHEREAS,** libraries, librarians, library workers and supporters across America are celebrating National Library Week.

**NOW, THEREFORE,** be it resolved that we, the Loveland City Council do hereby proclaim April 10-16, 2011 as

### NATIONAL LIBRARY WEEK

and encourage all residents to visit the library to take advantage of the wonderful library resources available @ your library. Create your own story @ your library.

Signed this 19th day of April, 2011

Cecil A. Gutierrez, Mayor



**PROCLAMATION**

- WHEREAS** the Vietnam War was fought in the Republic of South Vietnam from 1961 to 1975, and involved North Vietnamese regular forces and Viet Cong guerrilla forces in armed conflict with United States Armed Forces and the Army of the Republic of Vietnam; and
- WHEREAS** members of the United States Armed Forces began serving in an advisory role to the Government of the Republic of South Vietnam in 1961; and
- WHEREAS** in 1965, United States Armed Forces ground combat units arrived in Vietnam; and
- WHEREAS** by the end of 1965, there were 80,000 United States troops in Vietnam, and by 1969, a peak of approximately 543,000 troops was reached; and
- WHEREAS** on January 27, 1973, the Treaty of Paris was signed, which required the release of all United States prisoners-of-war held in North Vietnam and the withdrawal of all United States Armed Forces from South Vietnam; and
- WHEREAS** on March 30, 1973, the United States Armed Forces completed the withdrawal of combat units and combat support units from South Vietnam; and
- WHEREAS** more than 58,000 members of the United States Armed Forces lost their lives in Vietnam and more than 300,000 members of the Armed Forces were wounded; and
- WHEREAS** the Vietnam War was an extremely divisive issue among the people of the United States and a conflict that caused a generation of veterans to wait too long for the United States public to acknowledge and honor the efforts and services of such veterans; and
- WHEREAS** members of the United States Armed Forces who served bravely and faithfully for the United States during the Vietnam War were often wrongly criticized for the policy decisions made by 4 presidential administrations in the United States; and
- WHEREAS** The Loveland City Council wishes to honor and recognize the contributions of veterans who served in the United States Armed Forces in Vietnam during war and during peace; and
- WHEREAS** we encourage the citizens of Loveland to provide the appreciation Vietnam War veterans deserve, but did not receive upon returning home from the war; and
- WHEREAS** the establishment of a 'Welcome Home Vietnam Veterans' Day' would be an appropriate way to honor those members of the United States Armed Forces who served in South Vietnam and throughout Southeast Asia during the Vietnam War;

Now, therefore, be it resolved that the Loveland City Council does hereby establish March 30, 2011 as

**“WELCOME HOME VIETNAM VETERANS' DAY”**

And encourages the citizens of Loveland to demonstrate the resolve that never again shall the Nation disregard and denigrate a generation of veterans and help promote awareness of the faithful service and contributions of such veterans during their military service as well as to their communities since returning home.

Signed April 19, 2011

Cecil A. Gutierrez, Mayor





**CALL TO ORDER** Mayor Gutierrez called the Special meeting of the Loveland City Council to order on the above date at 6:10 PM.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** Roll was called and the following responded: McEwen, Solt, McKean, Johnson, Klassen, Rice and Gutierrez. Councilor Heckel was absent. Councilor Shaffer arrived at 6:31 pm.

**1. AIRPORT**

**Access Agreement with Rocky Mountain Airport Investments, LLC**

**Resolution #R-20-2011**

Administrative Action: Public Works Director Keith Reester introduced this item to Council. This is an administrative action to consider a resolution authorizing the City Manager to execute a revised Airport Access Agreement with Rocky Mountain Airport Investments, LLC (the "Developer") and one or more Metropolitan Districts to be formed to finance infrastructure improvements. Councilor Johnson made a motion to approve Resolution #R-20-2011 of the Council of the City of Loveland authorizing the City Manager to execute a long-term Airport Access Agreement with Rocky Mountain Airport Investments, LLC and related Intergovernmental Agreements with Metropolitan Districts at the Fort Collins-Loveland Municipal Airport. Councilor Klassen seconded the motion and a roll call vote was taken with all councilors present voting in favor thereof.

**RESOLUTION #R-20-2011**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF LOVELAND AUTHORIZING THE CITY MANAGER TO EXECUTE A LONG-TERM AIRPORT ACCESS AGREEMENT WITH ROCKY MOUNTAIN AIRPORT INVESTMENTS, LLC AND RELATED INTERGOVERNMENTAL AGREEMENTS WITH METROPOLITAN DISTRICTS AT THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT**

WHEREAS, the cities of Fort Collins and Loveland (jointly, "the Cities") jointly own and operate the Fort Collins-Loveland Municipal Airport ("the Airport"); and

WHEREAS, the Cities have previously entered into that certain Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Municipal Airport dated May 16, 2000; and

WHEREAS, Rocky Mountain Airport Investments, LLC, (the "Developer") is the owner and developer of certain parcels of real property which are immediately adjacent to the Airport (the "Adjacent Property"); and

WHEREAS, the Developer desires to develop the Adjacent Property as an airpark, with the platted lots within the Adjacent Property having aircraft access to the Airport; and

WHEREAS, the Developer intends to establish one or more Metropolitan Districts ("Metro Districts") within the Adjacent Property to finance construction of improvements, make assessments to pay airport access fees, and to manage the common areas and enforce covenants, conditions, and restrictions against the real property; and

WHEREAS, the Cities believe that allowing the Developer and its successors and assigns access to the Airport pursuant to certain terms and conditions, including the payment to the Cities of a fair and reasonable access fee, will increase public access to the Airport, increase revenues to the Airport, aid in making the Airport more financially self-sufficient, and contribute to improving the economic health of northern Colorado; and

WHEREAS, the staff of the Cities and the Developer have negotiated a proposed long-term airport access agreement a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference ("the Access Agreement"); and

WHEREAS, attached to the Access Agreement as Exhibit "C" is an intergovernmental agreement to be executed by the Cities with the Metro Districts to be formed by the Developer upon development of the Adjacent Property ("IGA"); and

WHEREAS, the proposed Access Agreement and IGA set forth the terms and conditions under which the Developer and its successors and assigns will be allowed access to the Airport and ensure that those terms and conditions are enforced; and

WHEREAS, the Access Agreement and IGA contain the following major provisions:

a. The Cities grant the Developer and its assignee Metro Districts a 50 year access easement ("Access Easement") onto the Airport from the specified Adjacent Property;

- b. The Developer and the Metro Districts will be responsible for the construction and maintenance costs of all improvements necessary to make the access connection, including fencing and gates;
- c. The Developer and the Metro Districts will not be permitted to have commercial aeronautical activities on the Adjacent Property, except for aircraft manufacturing and assembly, flight testing associated with assembled aircraft, painting of manufactured aircraft and parts, and air freight services;
- d. The Developer and the Metro Districts will pay the Cities a yearly access fee ("Fee") equal to 5 mills on the assessed value of the real property within the Adjacent Property, which mill rate may be adjusted yearly at the request of either party in such a way so as to ensure that the Fee amount provides the Airport with a source of revenue which is not less than the revenue that would otherwise be provided if the Adjacent Property would have been developed on the Airport;
- e. In the event that the organization of the Metro Districts does not take place as contemplated in this Agreement or the Districts otherwise fail to comply, in any way whatsoever, with the terms of the IGA, the Developer agrees to pay annually to the Cities an amount equal to the Fee at all times during the term of this Agreement until such time as the Districts come into full compliance with the Agreement.
- f. A Federal Aviation Administration ("FAA") concern with grant assurance compliance would be cause for such an adjustment of the Fee;
- g. In the event of default by either party as determined by a court, the non-defaulting party will be entitled to attorney fees from the defaulting party; and
- h. The Access Agreement, IGA and Access Easement will terminate, if:
  - (1) the Metro Districts for the entirety of the Adjacent Property (north and south parcels) are not formed and the other specified development conditions are not met as to the south parcel on or before September 30, 2012; in this case, the Agreement and the Access Easement terminate as to both parcels.
  - (2) the specified development conditions, other than creation of the Metro Districts, are not met as to the north parcel by September 30, 2019; in this case, the Agreement and the Access Easement terminates as to the north parcel only.
- i. The Cities may terminate the Access Agreement if:
  - (1) the Fee is not paid after 60 days notice.
  - (2) the FAA formally notifies the Cities of a grant assurance violation.

WHEREAS, the City Council believes that adoption of the Access Agreement and IGA and grant of the Access Easement are in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LOVELAND:

Section 1. That the Access Agreement, IGA, and grant of the Access Easement are hereby approved.

Section 2. That the City Manager is hereby authorized to execute the Access Agreement and IGA in substantially the forms which are attached hereto, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That this Resolution shall go into effect as of the date of its adoption.

ADOPTED this 22nd day of March, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

All Exhibits are available in the City Clerk's Office

## 2. CITY MANAGER

Discuss and consideration of any needed action concerning the ACE Manufacturing and Innovation Park

No discussion or consideration of action occurred.

## CITY COUNCIL NEW BUSINESS

Rice

Councilors McKean, Klassen and Johnson supported Council Rice's request to add an agenda item to the April 5th meeting to discuss the Senate HB11-1082 regarding emissions. By consensus of council the item will be added to the April 5th agenda.

Gutierrez

Mayor Gutierrez mentioned there were a number of items scheduled for Council on March 24th including: CSU Everitt Real Estate Center's "Housing Colorado's Future" at the Embassy Suites, 9:00 - 10:45 a.m.; ED Subcommittee tour of Dan Ostermiller's Studios

(100 W 1 St) and Road Narrows Robotics (125 E 5 St #102), 3 - 4:00 p.m.; Governor Hickenlooper's "Bottom Up Economic Development Initiative" for Region 2 (Larimer & Weld Counties) at The Ranch-1st National Bank Exhibit Hall; and the joint City Council - Thompson School Board of Education Annual Meeting, 7:00 - 9:00 p.m., at the District Administration Building, 800 South Taft Avenue. The City Manager will reschedule the ED Subcommittee tour of Ostermiller's studios and Road Narrows Robotics.

**City Attorney**

City Attorney John Duval informed Council that the Larimer District Court Judge ruled in the City's favor regarding the medical marijuana dispensary issue.

**ADJOURNMENT**

Having no further business to come before Council, the March 22, 2011 Special Meeting was adjourned at 7:46 p.m.

Respectfully Submitted,

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Teresa G. Andrews, City Clerk

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Cecil A. Gutierrez, Mayor

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 7:56 p.m. on the above date. Councilors present: Gutierrez, Solt, Johnson, Klassen, McEwen, Rice, McKean and Shaffer. Councilor Heckel was absent. City Manager, Bill Cahill was also present.

1. DEVELOPMENT SERVICES

Naming City Facilities

Planning Manager Bob Paulsen introduced this item to Council. Staff is proposing two items relating to the naming of City facilities:

1. An Administrative Regulation is proposed that would guide City departments in naming municipal facilities and properties. This policy would establish parameters for determining when the City Council would have final authority for naming major or high-profile facilities. While many departments have developed naming policies and procedures, no overall policy has been established for the City.

2. Amendments to the Street Naming provisions of the Municipal Code are proposed to address the naming of alleys outside of the Downtown alley naming convention area. The impetus for this amendment is a request from a citizen to name an alley after his deceased child.

Council directed staff to move forward with refining the plan while not hamstringing departments in their fundraising events. Staff will bring this topic back to Council at a future meeting.

2. FINANCE

Citizens' Finance Advisory Commission (CFAC) Report on the Financial Sustainability Public Forums

Assistant City Manager and Finance Director Renee Wheeler introduced this item to Council. CFAC hosted three public forums in February as one of the data gathering techniques for the Financial Sustainability Process. Ralph Trenary, CFAC Chairperson, will present the outcomes of the meetings.

Council directed staff to move forward with developing strategies and solutions per staff's established timeline and to keep the option for getting additional public input open. Council also directed CFAC to look at the results of Financial Sustainability survey in conjunction with the results of the broader Quality of Life survey.

The study session was adjourned at 9:43 p.m.

Respectfully Submitted,

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Jeannie M. Weaver, Deputy City Clerk

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Cecil A. Gutierrez, Mayor



**CALL TO ORDER** Mayor Gutierrez called the regular meeting of the Loveland City Council to order on the above date at 6:30 PM.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** Roll was called and the following responded: Gutierrez, McKean, Klassen, Heckel, Rice Johnson, McEwen, Shaffer and Solt.

**PROCLAMATION** Councilor Rice read a proclamation declaring April 15, 2011, as "Arbor Day". The proclamation was received by City employee Robert MacDonald.

**PROCLAMATION**

WHEREAS, in 1872 J. Sterling Morton proposed that a special day be set aside for the planting of trees; and  
WHEREAS, Arbor Day is now observed throughout the nation and the world; and  
WHEREAS, the City of Loveland has been designated as a Tree City USA by the National Arbor Day Foundation; and  
WHEREAS, trees provide numerous environmental benefits, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and  
WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal, enhancing the economic vitality of our business areas and beautifying our community;

NOW, THEREFORE, we, the City Council of the City of Loveland, proclaim April 15, 2011,

as

**ARBOR DAY**

and encourage the citizens of Loveland to support efforts to protect our trees and urban forests, to learn more about trees, and to support our City's urban forestry program.

Signed this 5th day of April, 2011

Cecil A. Gutierrez, Mayor

**PROCLAMATION** Councilor Shaffer read a proclamation declaring April 16, 2011 as "Spring Waterway Clean-up Event". The proclamation was received by City employee Joe Chaplin.

**PROCLAMATION**

WHEREAS, the 9th Annual Spring Waterway Clean-up event is one of the programs listed in the City of Loveland's General Municipal Separate Storm Sewer (MS4) Permit; and

WHEREAS, each of the Adopt-A-Waterway Groups including Bill Reed Middle School, the Loveland High River Watch Club, the Kiwanis Club of Loveland, the Namaqua Unitarian Universalist Congregation, the Loveland Open Lands Advisory Commission, Sylvan Dale Guest Ranch, Reflections for Youth, and Cub Scout Pack 184 will be cleaning their adopted sections of the Big Thompson River, the Morey Wildlife Reserve, the Reflections for Youth and Meadow Brook Natural Areas; and

WHEREAS, the Greeley-Loveland Irrigation Company, Seven Lakes Reservoir Company, Larimer County, the Big Thompson Watershed Forum, National River Clean-up 2011, the City of Greeley, the City of Loveland, along with businesses such as American Rivers, World Beverage, Quad Graphics, Orchards Ace Hardware, Walgreens, LaQuinta, Aspen Grill, WashTime Car Wash, Big T 4-Wheelers, and others will be involved to collaborate and provide materials for a successful event; and

WHEREAS, the 9th Annual Spring Waterway Clean-up event is planned to coincide with Earth Day and should attract over 250 Loveland volunteers; and

WHEREAS, the 9th Annual Spring Waterway Clean-up event will help improve the aesthetics of the community; and

WHEREAS, the purpose of the 9th Annual Spring Waterway Clean-up event is to increase the public's awareness on nonpoint source pollution, and to provide the citizens of Loveland an opportunity to remove trash and other assorted debris from the City's waterways; and

WHEREAS, these critical efforts of the City of Loveland will help protect and improve upon the water quality of the City's waterways, the riparian corridors and our environment.

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim Saturday, April 16, 2011 as

**SPRING WATERWAY CLEAN-UP EVENT**

Signed this 5th day of April, 2011  
Cecil A. Gutierrez, Mayor

**PROCLAMATION** Councilor Klassen read a proclamation declaring the week of April 10-16, 2011, as "National Crime Victims' Rights Week". The proclamation was received by Gary Sampson.

**PROCLAMATION**

WHEREAS 20 million Americans are victims of crime each year and each crime affects many more, including families, friends and communities; and,  
WHEREAS crime exacts an emotional, physical, psychological, and financial toll on victims as they have lost loved ones, life savings, physical and mental health, and often their sense of security that has the potential to irrevocably change the course of the their lives forever; and  
WHEREAS more than 30 years of progress for crime victims stands on the shoulders of dedicated advocates and brave victims who overcame shame, isolation, and indifference to gain a voice, rights, and respect; and  
WHEREAS, we applaud the progress that our nation has made in recognizing crime's impact on victims and celebrate advocates and survivors who through their determination brought rights and resources for victims and have changed the course of history; and  
WHEREAS, victim assistance programs across the country are reaching more victims and criminal justice officials are honoring victims' rights more consistently, public understanding of victims' rights remains minimal, and our nation's victim services system remains fragmented, underfunded, and uncoordinated; and  
WHEREAS, more work remains to be done to address the mental health impact of crime, and to meet the needs of victims of non-violent crime, victims of terrorism, and other underserved victims; and  
WHEREAS, National Crime Victims' Rights Week, April 10 – 16, 2011, provides an opportunity for us to reshape the future for victims by honoring the past and reflecting on hard-won victories, and to recommit to working together to insist on better treatment for victims to help them overcome the harm cause by crime; and  
WHEREAS, Loveland is joining forces with victim service programs, criminal justice officials and concerned citizens throughout the county and America to raise awareness of victims' rights and observe National Crime Victims' Rights Week;

Now, therefore, we the City Council of the City of Loveland, Colorado do hereby proclaim the week of April 10-16, 2011 as  
**NATIONAL CRIME VICTIMS' RIGHTS WEEK**

And reaffirm this county's commitment to respect and enforce victims' rights and address their needs during National Crime Victims' Rights Week and throughout the year; and express our appreciation for those victims and crime survivors who have turned personal tragedy into a motivating force to improve our response to victims of crime and build a more just community.

Signed this 5th day of April, 2011  
Cecil A. Gutierrez, Mayor

**PROCLAMATION** Councilor Solt read a proclamation declaring April, 2011 as "Month of the Young Child". The proclamation was received by Beverly Hall and Lorna Green.

**PROCLAMATION**

WHEREAS, the Larimer County District of the Colorado Association for the Education of Young Children, the Early Childhood Council of Larimer County, the Thompson School District Early Childhood Programs, United Way of Larimer County, Pathways Past Poverty Child Access Initiative, the Licensed Family Childcare Association, in conjunction with the National Association for the Education of Young Children, are celebrating the Month of the Young Child, April 2011; and  
WHEREAS, these organizations are working to improve early learning opportunities, including early literacy programs, that can provide a foundation of learning for children in Loveland and Larimer County Colorado; and  
WHEREAS, "Early Years are Learning Years"; and  
WHEREAS, by calling attention to the needs for quality early childhood care and education for all young children and families within our community we can hope to improve the quality and availability of such services, and  
WHEREAS, teachers and others who make a difference in the lives of young children deserve thanks and recognition; and  
WHEREAS, public policies that support early learning for all young children are crucial to young children's futures;

NOW THEREFORE, we the Loveland City Council do hereby proclaim April 2011, as the  
MONTH OF THE YOUNG CHILD

in Loveland, Colorado.

Signed this 5th day of April, 2011

Cecil A. Gutierrez, Mayor

**PROCLAMATION**

Mayor Gutierrez read a proclamation declaring April 28 - 30, 2011 as "Walt Clark Lego Robotics Team Days". The proclamation was received by the members of the Walt Clark Robotics Team.

**PROCLAMATION**

WHEREAS,

the Walt Clark Lego Robotics Team, The Knights of the Field Table, comprised of five young student engineers and inventors, Nick Brubaker, Patrick Canny, Cody Marvin, Daniel Probasco, and Ian Spence; and

WHEREAS,

the students on the Walt Clark Lego Robotics Team have demonstrated gracious professionalism and sacrifice in teamwork; designed and developed an innovative solution to address the needs of Long Term Oxygen Therapy users; and worked tirelessly to create and program a custom-designed robot to compete in FIRST (For Inspiration and Recognition in Science and Technology) Lego Robotic Tournaments; and the Knights of the Field Table have represented themselves with honor, integrity and dedication befitting a Knight in our local, regional, state and soon-to-be global communities; and

WHEREAS,

WHEREAS,

the Walt Clark Lego Robotics Team, has been awarded the highest FIRST Lego League honor, the Champion's Award, so as to represent the State of Colorado in the multi-cultural Worlds Robotic Event held in St. Louis on April 28 - 30, 2011.

NOW, THEREFORE, we the City Council of the City of Loveland, Colorado do hereby proclaim April 28 - 30, 2011 as  
WALT CLARK LEGO ROBOTICS (Knights of the Field Table) TEAM DAYS

in Loveland, and call upon the community and partner organizations to celebrate with appropriate ceremonies to acknowledge these efforts.

Signed this 5th day of April, 2011

Cecil A. Gutierrez, Mayor

**PROCLAMATION**

Councilor Heckel read a proclamation declaring the week of April 10 - 16, 2011 as "Loveland Public Safety Communications Week". The proclamation was received by City Communication Manager Mark Gaisford.

**PROCLAMATION**

WHEREAS,

April 10 through April 16, 2011, will be celebrated across the United States and Canada as National Dispatchers Week; and

WHEREAS,

the week shall be devoted to increasing public awareness of the outstanding job performed by City of Loveland Emergency Communications Center personnel; and

WHEREAS,

the public, police officers, medical technicians and firefighters are encouraged to acknowledge the important role Communications Specialists play in their ability to perform their services to the community.

NOW, THEREFORE, we, the Loveland City Council, do hereby proclaim April 10 through April 16, 2011 as

**LOVELAND PUBLIC SAFETY COMMUNICATIONS WEEK**

and encourage the citizens of Loveland to share in acknowledging respect for this critical position and the outstanding job the Loveland Emergency Communications Specialists perform in serving the entire community.

Signed this 5th day of April, 2011

Cecil A. Gutierrez, Mayor

**PRESENTATION**

Karlin Paige, from the Commission on Accreditation for Law Enforcement Agencies, presented Police Chief Hecker and staff, an award on the recent re-accreditation of the Communication Center as an Accredited Center of Excellence (ACE).

## PROCEDURAL INFORMATION

Mayor Gutierrez made the following procedural announcement: Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it. Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items. Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

## CONSENT AGENDA

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to speak on any of the items or public hearings listed on the Consent Agenda. Councilor Johnson moved to approve the Consent Agenda. The motion was seconded by Councilor Heckel and a roll call vote was taken with all councilors present voting in favor thereof.

### 1. MINUTES

- a) Minutes for the March 8, 2011 special meeting were approved.
- b) Minutes for the March 15, 2011 regular meeting were approved.

### 2. DEVELOPMENT SERVICES

#### Utility and Drainage Easement Vacation – Lot 2, North Lake First Subdivision

Ordinance #5567

Legislative Action: "AN ORDINANCE VACATING A PORTION OF A PUBLIC UTILITY AND DRAINAGE EASEMENT LOCATED ON LOT 2, THIRD REPLAT TO NORTH LAKE FIRST SUBDIVISION TO NORTH LAKE ADDITION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO" was approved and ordered published on second reading.

### 3. DEVELOPMENT SERVICES

#### MUNICIPAL CODE AMENDMENT – REMOVES EXCLUSION FOR PETS UNDER 4 MONTHS OF AGE

Ordinance #5568

Legislative Action: "AN ORDINANCE AMENDING CITY CODE SECTION 6.28.010 TO LIMIT THE NUMBER OF PETS ALLOWED TO BE KEPT IN RESIDENTIAL DWELLING UNITS" was approved and ordered published on second reading.

### 4. POLICE

#### Municipal Code Change – Special Event Defined

1<sup>st</sup> Rdg Ord & P.H.

Legislative Action: A public hearing was held and "AN ORDINANCE AMENDING CHAPTER 12.26 OF THE LOVELAND MUNICIPAL CODE AND OTHER RELATED CODE PROVISIONS TO REPLACE THE TERM SPECIAL EVENT WITH THE TERM LOCAL EVENT TO DISTINGUISH BETWEEN THE CITY'S EVENT PERMITTING PROCESS AND THE STATE'S LIQUOR CODE SPECIAL EVENTS PERMITTING PROCESS" was approved and ordered published on first reading.

### 5. DEVELOPMENT SERVICES

#### Drainage Easement Vacation – Peakview Commercial Park First Subdivision

1<sup>st</sup> Rdg Ord & P.H.

Legislative Action: A public hearing was held and "AN ORDINANCE VACATING A DRAINAGE EASEMENT LOCATED ON LOT 6 BLOCK 1, AMENDED PLAT OF PEAKVIEW COMMERCIAL PARK FIRST SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO" was approved and ordered published on first reading.



## **6. PUBLIC WORKS**

### **Purchase of a Cold Milling Machine**

#### **Motion**

Administrative Action: A motion authorizing the City Manager to enter into a purchase contract with Honnen Equipment Company for the replacement of one cold milling machine was approved.

## **7. PUBLIC WORKS**

### **Purchase Order Increase – Coulson Excavating Company**

#### **Motion**

Administrative Action: A motion approving an increase to Purchase Order 110356 to Coulson Excavating Company of Loveland by \$259,000 was approved.

## **END OF CONSENT AGENDA**

## **CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.**

## **CITY COUNCIL**

Anyone who wishes to speak to an item NOT on the Agenda may address the Council under Citizens' Report.

### **a) Citizens' Reports**

- John Miettters, Loveland Citizen, requested Council consider adding a warning label regarding the fluoride in city water and its impact on infants. Staff will study the matter.
- Evelyn King, Loveland Citizen, spoke about emission testing requirements in Larimer County.

### **b) City Council/City Manager Announcements**

#### **Klassen**

Councilor Klassen attended the tour of Ostermiller's Studio. The grand opening of "Orchard Place" is scheduled for Friday, April 8.

#### **McKean**

Councilor McKean attended the tour of Road Narrows Robotics.

#### **Rice**

Councilor Rice gave an update on her recent trip to the National League of Cities Conference in Washington D.C.

#### **Shaffer**

Councilor Shaffer also attended the tour of Ostermiller's Studio. Councilor Shaffer requested a future study session item to discuss concerns from local artists.

#### **Gutierrez**

Mayor Gutierrez attended the Governor's regional economic development meeting at the Ranch. A Human Trafficking Awareness Night will be held 6-8 p.m. Monday, April 11, at the Garden Room Suites, 697 Denver Ave. The free event is sponsored by United Way Global Youth Service Week. Expert speakers will discuss the social injustice issue. The Mayor attended the "Welcome Home Vietnam Veterans Day" event hosted by the VFW on March 30.

#### **Cahill**

City Manager Cahill announced the former Agilent business park in Loveland was selected as the site for the development of the Aerospace Clean Energy Manufacturing and Innovation Park.

## **PROCEDURAL INFORMATION**

Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

## **REGULAR AGENDA**

## **CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA**

## **8. CITY MANAGER**

### **Discussion and consideration of any needed action concerning the ACE Manufacturing and Innovation Park**

City Manager Cahill announced the former Agilent business park in Loveland was selected as the proposed site for the development of the Aerospace Clean Energy Manufacturing and Innovation Park.

## **9. FINANCE**

### **February 2011 Financial Report**

This is an information only item. No action is required. Assistant City Manager and Finance Director Renee Wheeler introduced this item to Council. Renee highlighted a new city service for local businesses. The City will offer on-line transaction services for sales tax licensing, tax return processing and payments. Renee thanked the team for their hard work on this project. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the two months ending February 28, 2011.

## **10. CITY MANAGER'S OFFICE**

### **Investment Report for February 2011**

This is an information only item. No Council action is required. Executive Fiscal Advisor Alan Krcmarik introduced this item to Council. The budget estimate for investment earnings for 2011 is \$3,163,130. For the year-to-date, the amount posted to the investment account is \$513,687 including realized gains. The actual year-to-date earnings are lower than the year-to-date budget projection by \$13,502. Based on February's monthly statement, the estimated annualized yield is about 2.0%, precisely on the path of the 2.0% budget estimate for earnings.

## **CITY COUNCIL NEW BUSINESS**

### **Klassen**

Councilor Klassen requested an update on the Request For Proposals (RFP) process for the Agilent property. City Manager Cahill replied that the process was put on hold until the site selection decision was made by Colorado Association of Manufacturing and Technology.

### **Shaffer**

Councilor Shaffer acknowledged Amy White, owner of downtown store Almosta was closing her doors and expressed appreciation for all of her contributions to Downtown development.

### **Special Meeting**

Councilor Johnson made a motion to call for a Special Meeting on April 12<sup>th</sup>. Councilor Shaffer seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

### **Gutierrez**

Mayor Gutierrez confirmed attendance at the following events, both scheduled for April 28<sup>th</sup>: Councilors Shaffer, Klassen and Johnson will attend the Regional joint meeting of elected officials in Larimer and Weld Counties and Mayor Gutierrez and Councilor McEwen will attend the "Heroes Among Us" event.

## **ADJOURNMENT**

Having no further business to come before Council, the April 5, 2011 Regular Meeting was adjourned at 8:49 p.m.

Respectfully Submitted,

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Teresa G. Andrews, City Clerk

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Cecil A. Gutierrez, Mayor



**CITY OF LOVELAND**  
POLICE DEPARTMENT

810 East 10<sup>th</sup> Street • Loveland, Colorado 80537  
(970) 667-2151 • FAX (970) 962-2917 • TDD (970) 962-2620

**AGENDA ITEM:** 2  
**MEETING DATE:** 4/19/2011  
**TO:** City Council  
**FROM:** Chief Luke Hecker, Police Department  
**PRESENTER:** Chief Luke Hecker

**TITLE:**

Consideration on second reading of an Ordinance amending Chapter 12.26 of the Loveland Municipal Code and other related code provisions to replace the term Special Event with the term Local Event to distinguish between the City's event permitting process and the State's liquor code special event permitting process

**DESCRIPTION:**

This is a legislative action. The proposed ordinance amending Chapter 12.26 changes the term Special Event to Local Event to distinguish between the City's event permitting process and the State's Liquor Code special event permitting process.

**BUDGET IMPACT:**

Yes  No

**SUMMARY:**

Chapter 12.6 of the Municipal Code regulates certain events that occur on property owned, leased or controlled by the City. These events have been labeled "special events". Applicants seeking to host a special event must meet certain requirements in order to obtain a special event permit. The Colorado Revised Statutes has a process to permit the temporary consumption of alcohol which it has also termed a "special event" permit.

Because both permit processes are labeled with the same name, there is significant confusion by applicants regarding which "special event" permit process must be completed and for which entity as sometimes the applicant is required to have both special event permits.

To avoid confusion and to distinguish between the City and the State's special event permitting process, we are requesting that we re-name the City's special event permit as Local Event permit.

**LIST OF ATTACHMENTS:**

Ordinance Amending Chapter 12.26

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**RECOMMENDED CITY COUNCIL ACTION:**

Move to approve the Ordinance on Second Reading

**REVIEWED BY CITY MANAGER:**



**FIRST READING:** April 5, 2011

**SECOND READING:** April 19, 2011

**ORDINANCE No.** \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 12.26 OF THE LOVELAND MUNICIPAL CODE AND OTHER RELATED CODE PROVISIONS TO REPLACE THE TERM SPECIAL EVENT WITH THE TERM LOCAL EVENT TO DISTINGUISH BETWEEN THE CITY'S EVENT PERMITTING PROCESS AND THE STATE'S LIQUOR CODE SPECIAL EVENTS PERMITTING PROCESS**

**WHEREAS**, Chapter 12.6 of the City Code regulates certain events within the City such as parades, athletic contests, street fairs, art and craft shows, carnivals, block parties, and other outdoor events (excluding demonstrations) that occur on any property owned, leased or controlled by the City and has labeled such events as "special events"; and

**WHEREAS**, an applicant seeking to host a special event must fulfill certain requirements in order to obtain a special event permit from the City; and

**WHEREAS**, pursuant to Article 48 of Title 12 of the Colorado Revised Statutes the State of Colorado has a process to permit the temporary consumption of alcohol in areas other than those traditionally serving alcohol which it has labeled as a "special event" permit; and

**WHEREAS**, there is significant confusion by applicants for City special event permits regarding which "special event" permit process must be completed and for which entity, and sometimes the applicant must have both types of special event permits; and

**WHEREAS**, the City desires to avoid confusion and to distinguish between the City's special event permitting process and the State's special event permitting process by re-naming the City's special events as local events subject to a local event permitting process.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO as follows:**

**Section 1.** That Chapter 12.26 of the City Code is hereby amended by re-titling the Chapter from Special Events to Local Events.

**Section 2.** That Section 12.26.010 of the City Code is hereby amended as follows:

**12.26.010 Intent.**

This Chapter establishes the standards for the issuance of a permit for local events and demonstrations on any property that is owned, leased or controlled by the city.

**Section 3.** That Subsections E., G. and I. of Section 12.26.020 of the City Code are hereby amended as follows:

E. “Event” means all demonstrations and local events for which permits have been applied for or given.

G. “Permit” or “event permit” means a permit issued for either a demonstration or local event.

I. “Local event” means a parade, athletic contest, street fair, art and craft show, carnival, block party, or other outdoor event which is not a demonstration as defined in this Section, that occurs on any property that is owned, leased or controlled by the city including, without limitation, streets, highway and sidewalks, and which event does not comply with traffic laws and controls or which may, in the judgment of the Coordinator or the service area director responsible for the administration of any city affairs on the property, obstruct, delay or interfere with the normal activities, operations or flow of pedestrian or vehicular traffic on the property or which may create a significant risk of injury to the public or participants in the event or other persons.

**Section 4.** That Subsection C. of Section 12.26.040 of the City Code is hereby amended as follows:

C. If the application is for a block party or other small local event, the Coordinator may consider an application that is filed after the filing deadline if there is sufficient time to process and investigate the application and obtain police services for the event.

**Section 5.** That Subsection A. of Section 12.26.140 of the City Code is hereby amended as follows:

A. The permittee shall comply with all terms and conditions of the local event permit.

**Section 6.** That Subsection 3. of Subsection B. of Section 2.60.090 of the City Code is hereby amended as follows:

3. represent the cultural services department at local events, activities, and functions in the cultural services department;

**Section 7.** That Section 12.30.040 of the City Code is hereby amended as follows:

**12.30.040 Exceptions.**

The provisions of Section 12.30.030 of this chapter shall not apply to persons permitted to display and demonstrate merchandise for sale pursuant to the provisions of Section 12.28.030 of this title, while acting in accordance with the provisions of such section, nor shall they apply to persons participating in, and under the sponsor of, any street fair, celebration, special sale days, special promotions, local events, etc., provided that a permit therefore has been obtained pursuant to the provisions of Chapter 26 of this title.

**Section 8.** That Section 12.30.100 of the City Code is hereby amended as follows:

**12.30.100 Local events.**

Whenever a permit has been issued pursuant to Chapter 26 of this title, no vendor shall operate in the area covered by such permit during the hours of such special event without also securing the written approval of the sponsor of such event.

**Section 9.** That Subsection 11. of Subsection D. of Section 18.24.050 of the City Code is hereby amended as follows:

11. Outdoor Display (all Type 2 Standards): The limited outdoor display of merchandise for retail sale is allowed, provided such display is incidental to the primary retail use or activity within an enclosed building. Merchandise on display shall be of the same type or related to merchandise for sale within the primary retail building. No such display shall be allowed in parking areas on a permanent basis, or located within any required buffer yard or setback, nor shall it impede pedestrian or vehicular circulation. Temporary displays, erected for not more than four days in duration, may be allowed within parking areas or buffer yards for local events, such as a farmers market, or a weekend or holiday sales event.

**Section 10.** That Subsection 3. of Subsection A. of Section 18.50.070 of the City Code is hereby amended as follows:

3. Large Balloons: Balloons and other types of lighter than air objects which have a dimension greater than 2 feet and are secured to the property shall only be allowed for a maximum of 7 days for local events such as circuses, carnivals, festivals, grand openings and other similar events. Large balloons for local events are allowed provided that they are used only once every six months.

**Section 11.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
Assistant City Attorney

AN ORDINANCE AMENDING CHAPTER 12.26 OF THE LOVELAND MUNICIPAL CODE AND OTHER RELATED CODE PROVISIONS TO REPLACE THE TERM SPECIAL EVENT WITH THE TERM LOCAL EVENT TO DISTINGUISH BETWEEN THE CITY'S EVENT PERMITTING PROCESS AND THE STATE'S LIQUOR CODE SPECIAL EVENTS PERMITTING PROCESS



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 3  
**MEETING DATE:** 4/19/2011  
**TO:** City Council  
**FROM:** Troy Bliss, Current Planning  
**PRESENTER:** Troy Bliss

**TITLE:**

AN ORDINANCE VACATING A DRAINAGE EASEMENT LOCATED ON LOT 6 BLOCK 1, AMENDED PLAT OF PEAKVIEW COMMERCIAL PARK FIRST SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

**DESCRIPTION:**

This is a legislative action to adopt an ordinance on second reading to vacate a drainage easement located on Lot 6, Block 1, Amended Plat of Peakview Commercial Park First Subdivision. The applicant is Galloway & Company Inc. on behalf of the owner (Murphy Oil USA).

**BUDGET IMPACT:**

Yes  No

**SUMMARY:**

The vacation request is necessary to accommodate development of a gas station on the property. Due to a recent redesign of the stormwater system for the project, the proposed stormwater facilities would no longer be within the existing easement. A new easement will be dedicated in the proper location for the stormwater facilities. City Council considered this request on April 5, 2011 and unanimously approved the ordinance on first reading.

**LIST OF ATTACHMENTS:**

A. Ordinance

**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motion for Council action:

Move to make the findings in Section V of the April 5, 2011 City Council staff memorandum and, based on these findings, adopt on second reading AN ORDINANCE VACATING A DRAINAGE

EASEMENT LOCATED ON LOT 6 BLOCK 1, AMENDED PLAT OF PEAKVIEW COMMERCIAL PARK FIRST SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

**REVIEWED BY CITY MANAGER:**

**FIRST READING: April 5, 2011**

**SECOND READING: April 19, 2011**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE VACATING A DRAINAGE EASEMENT LOCATED ON LOT 6  
BLOCK 1, AMENDED PLAT OF PEAKVIEW COMMERCIAL PARK FIRST  
SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

WHEREAS, the City Council, at a regularly scheduled meeting, considered the vacation of a drainage easement described below, located on Lot 6 Block 1, Amended Plat of Peakview Commercial Park First Subdivision, City of Loveland, Larimer County, Colorado; and

WHEREAS, the City Council finds and determines that no land adjoining any easement to be vacated is left without an established public or private easement connecting said land with another established public or private easement; and

WHEREAS, the City Council finds and determines that the drainage easement to be vacated is no longer necessary for the public use and convenience; and

WHEREAS, the City Council further finds and determines that the application filed at the Development Center was signed by the owners of more than 50% of property abutting the easement to be vacated.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

Section 1. That the following described drainage easement be and the same is hereby vacated:

A 15' WIDE DRAINAGE EASEMENT LOCATED IN LOT 6, BLOCK 1 PEAKVIEW COMMERCIAL PARK FIRST SUBDIVISION, CITY OF LOVELAND, LARIMAR COUNTY, STATE OF COLORADO AS RECORDED LOT SIX, BLOCK ONE PEAKVIEW COMMERCIAL PARK FIRST FILING AS RECORDED AT RECEPTION NO. 20080004395 AT THE LARIMER COUNTY CLERK AND REORDERS OFFICE, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 6, THENCE, S 89°49' 31"W ALONG THE SOUTH LINE OF SAID LOT 6A A DISTANCE OF 2.52 FEET TO THE POINT OF BEGINNING THENCE THE FOLLOWING 10 COURSES;

- 1) S 89°49' 31" W ALONG THE SOUTH LINE OF SAID LOT 6 A DISTANCE 15.12 FEET;
- 2) N 07°31' 20" W A DISTANCE OF 4.02 FEET;
- 3) N 46°57' 37" W A DISTANCE 53.88 FEET;
- 4) N 02°10' 37"E A DISTANCE 102.52 FEET;
- 5) N 90°00' 00" E TO A POINT ON THE EAST LINE OF SAID LOT 6 A DISTANCE OF

- 51.10 FEET;
- 6) S 0°10' 29" E ALONG THE EAST LINE OF SAID LOT 6 A DISTANCE OF 15.00 FEET;
- 7) N 90°00' 00" W A DISTANCE OF 36.71 FEET;
- 8) S 02°10' 37" W A DISTANCE OF 81.22 FEET;
- 9) S 46°57' 37" E A DISTANCE OF 52.40 FEET;
- 10) S 07°31' 20" E A DISTANCE OF 11.33 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 2949 SQ. FT. MORE OR LESS.

BASIS OF BEARINGS IS THE SOUTH LINE OF LOT 6, BLOCK 1, PEAKVIEW COMMERCIAL PARK FIRST SUBDIVISION ASSUMED TO BEAR S 89°49' 31" W.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 3. That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2011.


ATTEST:

CITY OF LOVELAND, COLORADO:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney





**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
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**AGENDA ITEM:** 4  
**MEETING DATE:** 4/19/2011  
**TO:** City Council  
**FROM:** Greg George, Development Services Department  
**PRESENTER:** Bethany Clark, Community and Strategic Planning

**TITLE:**

AN ORDINANCE OF THE CITY COUNCIL DESIGNATING AS A HISTORIC LANDMARK THE REMINGTON HOUSE LOCATED AT 1005 NORTH GARFIELD AVENUE IN LOVELAND, COLORADO

**DESCRIPTION:**

A public hearing to consider a legislative action to approve, on first reading, an ordinance to designate as a Historic Landmark the "Remington House" at 1005 North Garfield Avenue. The property would be designated a Historic Landmark under Section 15.56 of the Municipal Code. The application is owner-initiated and staff has met with the owner to review the benefits and obligations of historic designation.

**BUDGET IMPACT:**

Yes  No

**SUMMARY:**

On March 21, 2011, the Historic Preservation Commission found the Remington House to be eligible for designation as detailed in the attached staff report.

**LIST OF ATTACHMENTS:**

- Ordinance designating 1005 North Garfield Avenue to the Loveland Historic Register
- Staff Report

**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motion: move to adopt on first reading AN ORDINANCE OF THE CITY COUNCIL DESIGNATING AS A HISTORIC LANDMARK THE REMINGTON HOUSE LOCATED AT 1005 NORTH GARFIELD AVENUE IN LOVELAND, COLORADO

**REVIEWED BY CITY MANAGER:**

**FIRST READING: April 19, 2011**

**SECOND READING: \_\_\_\_\_**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL DESIGNATING AS A HISTORIC LANDMARK THE REMINGTON HOUSE LOCATED AT 1005 NORTH GARFIELD AVENUE IN LOVELAND, COLORADO**

WHEREAS, Chapter 15.56 of the Loveland Municipal Code provides that the City Council may designate as a historic landmark an individual structure, site, or other feature or an integrated group of structures and features on a single lot or site having a special historical or architectural value; and

WHEREAS, Section 15.56.090 of the Loveland Municipal Code further provides that landmarks must be at least fifty (50) years old and meet one (1) or more of the criteria for architectural, social/cultural, or geographic/environmental significance; and

WHEREAS, the City of Loveland has, through the Historic Preservation Commission, worked to evaluate the nomination for designation as a landmark of certain property located at 1005 North Garfield Avenue in Loveland, Colorado, known as the Remington House; and

WHEREAS, the Historic Preservation Commission has recommended that the City Council designate the Remington House as a landmark; and

WHEREAS, a duly noticed public hearing has been held on the proposed landmark designation.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO THAT:**

**Section 1.** The City Council finds that the Remington House, more particularly described on **Exhibit A**, attached hereto and incorporated herein, satisfies the age requirement and meets the following significant criteria for designation as a landmark to the Loveland Historic Register:

- a.) Architectural
  1. Exemplifies specific elements of an architectural style or period.
- b.) Social/Cultural
  1. Exemplifies the cultural, political, economic or social heritage of the community.
- c.) Physical Integrity
  1. Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state or nation.
  2. Retains original design features, materials, and/or character.

3. Retains its original location.

**Section 2.** The Remington House, described on **Exhibit A**, is hereby designated as a landmark to the Loveland Historic Register.

**Section 3.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

**Section 4.** That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2011

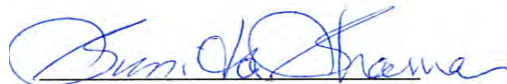
Attest:

CITY OF LOVELAND, COLORADO:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney

**Exhibit A**

LOTS 7-10, LESS THE WEST 63 FEET, BLK 8; AMENDED PLAT OF S ½ BLK 8, LAKESIDE  
AMENDED, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO



## COMMUNITY & STRATEGIC PLANNING

Civic Center • 500 East Third Street • Loveland, Colorado 80537  
 (970) 962-2577 FAX (970) 962-2945 • TDD (970) 962-2620  
[www.cityofloveland.org](http://www.cityofloveland.org)

### Loveland Historic Preservation Commission Staff Report

From: Community and Strategic Planning  
 Meeting Date: March 21, 2011  
 Re: Application for Historic Landmark Property Designation, 1005 N. Garfield Ave.

#### SITE DATA

**Address:** 1005 N Garfield Ave.  
 Loveland, CO 80537

**Request:** Application for Historic Landmark Property Designation

**Historic Name:** Remington House

**Architectural Style:** Late Victorian

**Current Building Sq. Ft.:** 1,044 square feet  
 (Source: Larimer Co. Assessor Property Information)

**Construction Date:** 1903

**Legal Description:** LOTS 7-10, LESS THE WEST 63 FEET, BLK 8; AMENDED PLAT OF S ½  
 BLK 8, LAKESIDE AMENDED  
 City of Loveland, County of Larimer, State of Colorado

**Owner(s):** Steven D. and Sharon V. Sample

**Applicant(s):** Steven D. and Sharon V. Sample

**Application Summary:**

On February 24, 2011 staff met with the property owners and outlined the obligations and benefits of designating a property on the Loveland Historic Register. On February 28, 2011 staff verified a completed nomination application for the landmark designation of the property at 1005 N. Garfield Ave. Staff mailed a notification letter announcing the date of the public hearing to the property owner of 1005 N. Garfield Ave., return receipt, as required by ordinance. The Community and Strategic Planning Division also published notice of the public hearing for designation of the landmark property in the *Loveland Reporter-Herald*.

Larimer County Assessor records identify the property by the following address: 1005 N Garfield Ave., Loveland, Colorado.

**History:**

*Source: Colorado Cultural Resource Survey Architectural Inventory Form prepared by Carl McWilliams of Cultural Resource Historians, 2010.*

This house was built in 1903, and during the early 1900s it was the home of D.D. Remington. Circa 1909, Remington was married to Melissa Lucinda Anderson, nee Kempton. Perhaps widowed, Melissa had a son named Oliver (born circa 1878), and a daughter named Ethyl who was apparently somewhat younger. Melissa had been born in Adrian, Michigan on September 6, 1853, the daughter of Joseph and Eliza Kempton. She apparently lived in Iowa for a time before coming to Loveland in the years following the turn of the twentieth century. The Remingtons lived here until the mid-1910s, and in late May of 1917, Mr. Remington passed away. Melissa then lived elsewhere in Loveland for a time before moving to Fort Collins. She passed away in her home at 1002 W. Mountain Avenue in Fort Collins in November of 1943 at the age of 89. She was survived by her son, Oliver Anderson, and her daughter who had become Mrs. Roy Albin.

Loveland city directories indicate that this property had many residents over the years, and that it was often not owner-occupied. Lyman B. Smith, a barber, and his wife, Mary G, lived in this home in the late 1910s and early 1920s, followed by Mrs. Ellen Davis (the widow of Thomas N. Davis) in the mid-1920s. In the late 1920s, Robert Riney, a plasterer, his wife Mary E., and other members of the Riney family lived at this location. Subsequent residents through the 1950s included: Reed L. and Leah Herman, John Beagle, Middleton L. and Nettie L. Wages, Charles Magruder, W.J. Dwinelle, P.A. Wicklund, and the A.D. Isbell family. In 1956, A.D. and his wife Aubrey owned the Cleveland Liquor store. They had a daughter, Kathryn, born circa 1948. Residents during the 1960s included Vernon Bustos, Thomas and Karen Mast, Monty and Diane Hamilton. Dolores R. Fisher and Shirley A. Pawlowski owned this property for a number of years, and they are listed in city directories as the home's residents in 1972.

Steven D, and Sharon V. Sample are the property's current (2010) residents. Having owned and lived here since 1972, they have apparently resided in this home longer than anyone previously.

**Architectural Description:**

*Source: Colorado Cultural Resource Survey Architectural Inventory Form prepared by Carl McWilliams of Cultural Resource Historians, 2010.*

This two-story Late Victorian era home is supported by a low unpainted coursed sandstone foundation, and its exterior walls are clad with painted yellow horizontal wood siding with painted white 1" x 4" corner boards. The house is covered by a steeply-pitched cross-gable roof with brown asphalt composition shingles and painted white box eaves. Painted green fish scale shingles appear in the upper gable ends. A large painted white single-hung sash window, with leaded glass upper sash lights, penetrates the façade wall on the east elevation. A canted hipped-roof bay, with three 1/1 double-hung sash windows with painted white wood frames and surrounds, is located on the south elevation. Two small square windows with latticed lights also penetrate the south elevation wall. Elsewhere, the home's

windows are primarily single and paired 1/1 double-hung sash with painted white wood frames and surrounds. A painted rose color wood-paneled front door, with painted white trim, and with an oval-shaped upper sash light, and covered by a transom light, enters the south end of the asymmetrical façade from an open front porch. This porch is approached by three sandstone steps, and features a tongue-in-groove wood floor, a painted white turned column, a painted white open wood balustrade with turned balusters, and a distinctive painted white curved wood frieze. The porch is covered by a truncated hipped and shed roof. A single-story gabled and hipped-roof extension on the west elevation may be an early addition. A shed-roofed dormer, with a 1/1 double-hung sash window, is located on the extension's south facing roof slope. The house's rear entry is near the north end of the west elevation.

#### Garage/Secondary Residence

A non-historic 1½-story gambrel-roofed garage and secondary residence is located north of the house. This building has a concrete foundation and its exterior walls are clad with painted yellow horizontal wood siding with painted white 1" x 4" corner boards. The gambrel roof is covered with brown asphalt composition shingles, and its flared eaves are boxed with painted white wood trim. A painted yellow wooden roll away garage door on the east elevation opens onto a concrete driveway which extends to Garfield Avenue. A stained brown wood paneled door with one upper sash light enters the south elevation. A stained brown solid wood door is located in the upper gable end also on the south elevation. The building's windows are 1/1 double-hung sash with painted green decorative wood shutters. A single-story shed-roofed extension forms the west (rear) elevation. A concrete patio and a breezeway are located between the house and this building.

#### **Significance:**

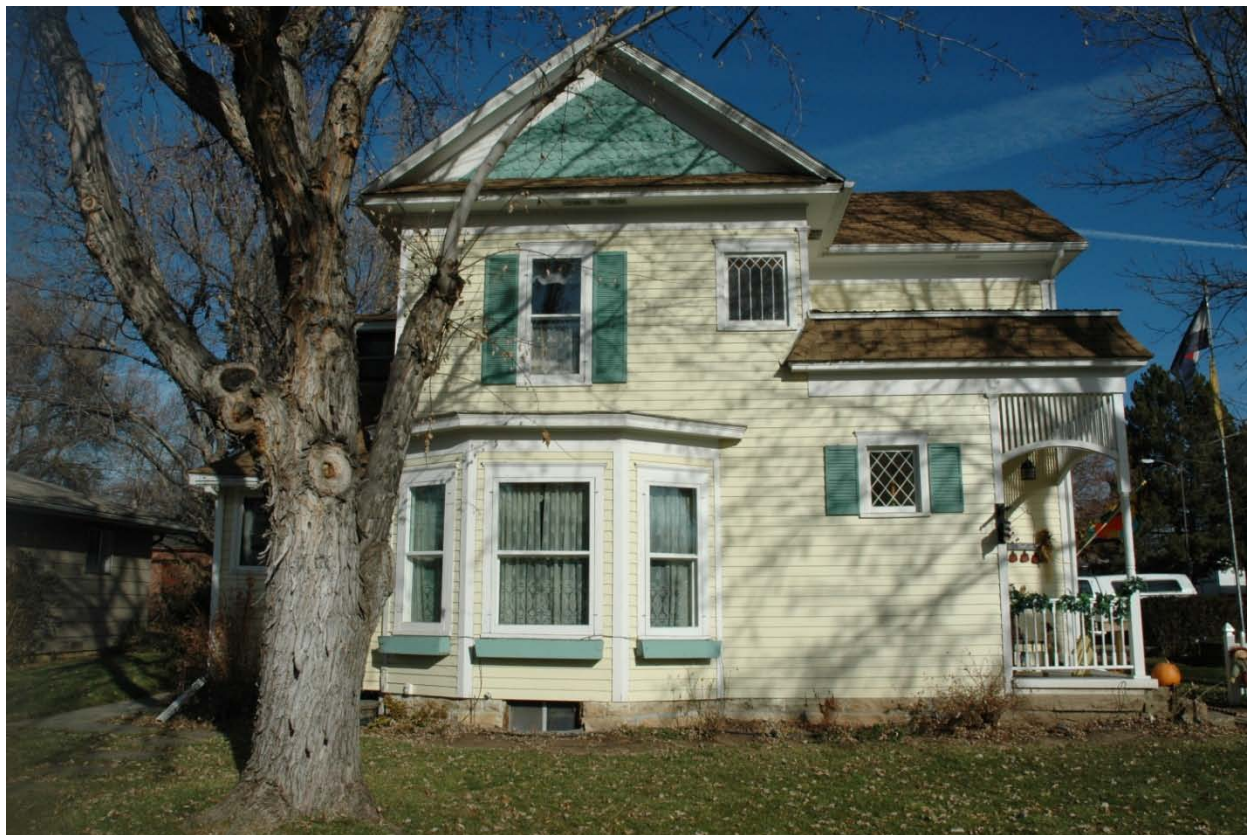
This house is historically significant for its association with residential development in Loveland dating from the time of its construction in 1903. It is also architecturally significant for its Late Victorian era architectural characteristics, including its cross gabled roof, canted bay window, and distinctive front porch. The property's combined level of integrity and significance is probably not to the extent that it would qualify for listing in the State or National Registers. It does qualify for local landmark designation, however, and it would be a contributing property within a National Register historic district.



**Photographs:**



**Figure 1: South-East Elevation**



**Figure 2: South Elevation**





**Figure 3: South-West Elevation**



**Figure 4: East Elevation**

ITEM 4C 1005 N Garfield staff report Avenue





**Figure 5: South-East Elevation of Garage/Secondary Residence Addition**



**Figure 6: North-East Elevation of Garage/Secondary Residence Addition**

## Determination of Significance and Integrity

*Significance* should be used as the starting point in determining eligibility for placement on a historic register. Significance has two distinct attributes – the “area of significance” which answers the question of context, or **what** is significant about a resource in terms of its association to agriculture, architecture, commerce and industry, education, politics and government, and transportation. The Remington House is significant for its contribution to the architectural style of the period and for representing the built environment of a group of people during that era in history. In addition, the Remington House is an established familiar visual feature of the community, exemplifying the cultural and social heritage of the community.

The second attribute of the *significance* of a structure is its “period of significance” which places the resource on a historic timeline and answers the question of **when** a resource was significant. As noted, the Remington House was built in 1903, making it greater than 50 years old.

*Integrity* refers to the ability of a structure to convey its original design or some later period of significance through the intactness of its historic form, original or historic use of materials, setting and site. Integrity has seven (7) particular aspects: location, setting, feeling, design, materials, workmanship, and association with some attribute of historic significance.

A historic building, for example, that retains its original or historically significant setting with little or no visible modifications that diminish the ability to relate its historic association demonstrates greater integrity than a building that has lost many of physical historical elements. A building with high physical integrity retains the following original or historically significant elements: massing; architectural detail; surface treatment; and windows and doors.

According to the list of features described in the owner’s application and the Cultural Resource Survey prepared by Carl McWilliams, and which is verified by current photographs, the Remington House has maintained a good amount of its integrity. The rear gable and shed-roofed portion of the house may be an early addition, but if so it is well over 50 years old. The shed-roofed portion at the west end of the south elevation was originally a screened-in porch which has been fully enclosed. The large non-historic gambrel-roofed garage/secondary residence is the only significant features that somewhat diminishes the integrity of the setting.

## Staff Recommendation

To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the criteria for architectural, social cultural, or geographic/environmental significance as identified in Loveland Municipal Code 15.56.090. The Remington House satisfies the age requirement and meets the following criteria for designation as a Loveland Historic Register landmark of property:

- a.) Architectural
  - 1. Exemplifies specific elements of an architectural style or period.
- b.) Social/Cultural
  - 1. Exemplifies the cultural, political, economic or social heritage of the community.
- c.) Physical Integrity
  - 1. Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state or nation.
  - 2. Retains original design features, materials, and/or character.
  - 3. Retains its original location.

Given available information for the property at 1005 N. Garfield Ave., staff has determined that the Remington House exhibits both adequate *integrity* and *significance* to support its eligibility for



designation as a Loveland historic landmark. This determination is based on the Colorado Historical Society's recommended framework for determining landmark eligibility. Staff recommends the Historic Preservation Commission recommend approval of this request for designation of the Remington House, located at 1005 N. Garfield Ave., as a Loveland Historic Register landmark property.

**Attachments:**

**A. Location Map**



**B. Nomination Application submitted by applicant**

ITEM 4C 1005 N Garfield staff report Avenue



**CITY OF LOVELAND**  
**WATER & POWER DEPARTMENT**  
 200 North Wilson • Loveland, Colorado 80537  
 (970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

**AGENDA ITEM:** 5

**MEETING DATE:** 4/19/2011

**TO:** City Council

**FROM:** Bob Miller, Power Operations Manager, Water and Power

**PRESENTER:** Bob Miller, Power Operations Manager, Water and Power

**TITLE:**

Resolution granting an easement to Public Service Company of Colorado for installation of facilities within a portion of the City of Loveland's Airport Substation

**DESCRIPTION:** This is an administrative action to grant an easement to the Public Service Company of Colorado ("PSCo") which will allow PSCo to extend transmission to the north of the Airport substation for PSCo's new substation.

**BUDGET IMPACT:**

Yes     No

**SUMMARY:**

PSCo currently has a wheeling agreement with the City of Loveland to sell PSCo electricity out of the Airport substation to a primary metering point just east of Larimer Parkway and East Highway 34 at the railroad tracks. PSCo is building a new substation just north of the Airport substation on County Road 3; therefore they will be able to serve the load that the City of Loveland currently wheels to them. PSCo's new substation will not be within the City limits.

The attached easement is for the transmission of electricity and for the transmission of communication signals over a portion of the Airport substation for the price of \$44,450. The price of the easement was negotiated based on the original construction price of the substation. The easement will not interfere with the City of Loveland's use of the Airport substation.

**LIST OF ATTACHMENTS:**

Location maps of Airport Substation and Aerial Photo of Airport Substation  
 Resolution  
 Public Service Company of Colorado Easement (attached to the Resolution as Exhibit A)

**RECOMMENDED CITY COUNCIL ACTION:**

Recommend that City Council adopt the Resolution

**REVIEWED BY CITY MANAGER:**



INTERSTATE 25

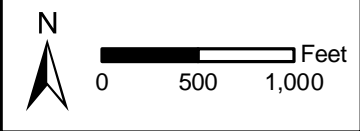
CENTERRA PKWY

Airport Substation

N COUNTY ROAD 3

E EISENHOWER BLVD

E HIGHWAY 34







 N Airport Substation - Aerial Photo



**RESOLUTION #R-22-2011**

**A RESOLUTION GRANTING AN EASEMENT TO PUBLIC SERVICE COMPANY OF COLORADO FOR INSTALLATION OF FACILITIES WITHIN A PORTION OF THE CITY OF LOVELAND’S AIRPORT SUBSTATION**

**WHEREAS**, Public Service Company of Colorado (“PSCo”) has requested that the City of Loveland grant PSCo an easement for installation of certain facilities within a portion of the City’s Airport Substation in order to provide PSCo’s customers with electricity; and

**WHEREAS**, the Power Division reviewed PSCo’s request and found that the proposed installation would not affect the City’s operations at Airport Substation; and

**WHEREAS**, City Council desires to grant the requested easement on the terms and conditions set forth in the “Public Service Company of Colorado Easement.”

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the “Public Service Company of Colorado Easement,” attached hereto as Exhibit A and incorporated herein by reference (“Easement”), is hereby approved.

**Section 2.** That the City Manager and the City Clerk are hereby authorized and directed to execute the Easement on behalf of the City of Loveland.

**Section 3.** That the City Manager is authorized, following consultation with the City Attorney, to approve changes to the form or substance of the Easement as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 4.** That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 19<sup>th</sup> day of April, 2011.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

---

Assistant City Attorney

|          |                    |                |
|----------|--------------------|----------------|
| DIVISION | ROW AGENT          | DCC. NO.       |
| LOCATION | DESCRIPTION AUTHOR | PLAT/GRID NO.  |
|          | AUTHOR ADDRESS     | WO/JO/CREG NO. |

**PUBLIC SERVICE COMPANY OF COLORADO EASEMENT**

For and in consideration of Forty Four-Thousand Four-Hundred Fifty Dollars (\$44,450.00), and other good and valuable consideration to the CITY OF LOVELAND, a Colorado municipal corporation, 500 E. Third Street, Loveland, Colorado 80537 ("Grantor"), in hand paid, by PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation, 1800 Larimer Street, Suite 400, Denver, Colorado 80202 ("Grantee"), the receipt whereof is hereby acknowledged, Grantor hereby grants, bargains, sells, conveys, and confirms unto Grantee, its successors and assigns, an easement for the transmission, distribution, or both, of electricity and for the transmission of communication signals on, over, under, and across the following described premises located in the Northwest Quarter of Section 12, Township 5 North, Range 68 West of the 6<sup>th</sup> Principal Meridian in the County of Larimer, State of Colorado, to-wit:

**See Exhibit A**

Together with the right and authority to Grantee, its successors, or assigns, and its and their agents and employees to place upon said premises electric transmission and distribution lines and communication facilities, both overhead and underground, including towers, poles, and other supports of whatever materials; together with braces, guys, anchors, cross-arms, cables, conduits, wires, conductors, manholes, transformers, and other fixtures, devices, and appurtenances used or useful in connection therewith, and full right and authority to cut, remove, trim, or otherwise control all trees, brush, and other growth on or overhanging said premises.

Grantor expressly reserves the right to make underground installations within the Easement area so long as said installations do not unreasonably interfere with Grantee's use of the Easement as permitted herein.

Grantee shall be accompanied by an employee or designated agent of Grantor, or by an employee or designated agent of Platte River Power Authority, at all times while on the premises.

Grantee shall exercise the rights granted herein within 18 months of the date of this Easement. This Easement shall continue in full force and effect so long as Grantee continues to exercise said rights. If Grantee fails to exercise the rights granted herein within 18 months, or ceases to use this Easement for more than 6 months, this Easement shall automatically terminate.

Grantee shall exercise the rights herein granted to it with due care, and all damage to the premises occurring hereunder resulting from the failure to exercise due care shall be paid for or repaired at the expense of Grantee. Grantee shall indemnify and hold harmless Grantor, its officers, employees, and agents from and against all liability, claims, and demands on account of any injury, loss, or damage arising out of or connected with Grantee's use of this Easement, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of Grantee or any subcontractor of Grantee, or any officer, employee, or agent of Grantee, or any other person for whom Grantee is responsible. Grantee shall bear all costs and expenses related to any such liability, claims, and demands, including court costs and attorneys' fees. Grantee's indemnification obligation shall not be construed to extend to any injury, loss, or damage to the extent caused by the act, omission, or other fault of Grantor. The indemnification granted herein shall survive the termination of this Easement.

Written notices shall be directed as follows and shall be deemed received when hand-delivered or three days after being sent by certified mail, return receipt requested:

|  |   |
|--|---|
| <u>To Grantor:</u><br>Power Operations Manager<br>City of Loveland<br>200 N. Wilson Avenue<br>Loveland, CO 80537 | <u>To Grantee:</u><br>Siting and Land Rights Manager<br>Xcel Energy<br>1800 Larimer Street, Suite 400<br>Denver, CO 80202 |
|--|---|

This Easement may not be assigned by Grantee without the City's prior written consent. Any assignment in violation of this requirement shall be void.

The provisions of this Easement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

Signed and delivered this \_\_\_ day of \_\_\_\_\_, 2011

**GRANTOR: CITY OF LOVELAND**  
A Colorado municipal corporation

Attest:

\_\_\_\_\_  
William D. Cahill, City Manager

\_\_\_\_\_  
City Clerk

Approved as to legal form:

\_\_\_\_\_  
Assistant City Attorney

STATE OF Colorado        )  
                                      )ss.  
COUNTY OF Larimer        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by:  
William D. Cahill as City Manager of the City of Loveland, Colorado.

\_\_\_\_\_  
Witness my hand and official seal.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public



Merrick & Company  
 2450 S. Peoria St. / Aurora, CO 80014  
 303/751-0741 / Fax 303/751-2581

Job No.: 02016325-33  
 File: I:\Survey\02016325-33\Property Descriptions\ESMT IN LOT 2-R2.doc  
 Date: May 28, 2010  
 Revised: October 15, 2010  
 Revised: November 12, 2010

### PROPERTY DESCRIPTION

#### Parcel 1

A parcel of land located in Lot 2, P.R.P.A. First M.L.D. S-46-90, Reception No. 90043792, recorded September 21, 1990, Larimer County Clerk and Recorder's Office, located in a portion of the Northwest Quarter of Section 12, Township 5 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Larimer County, Colorado, being more particularly described as follows:

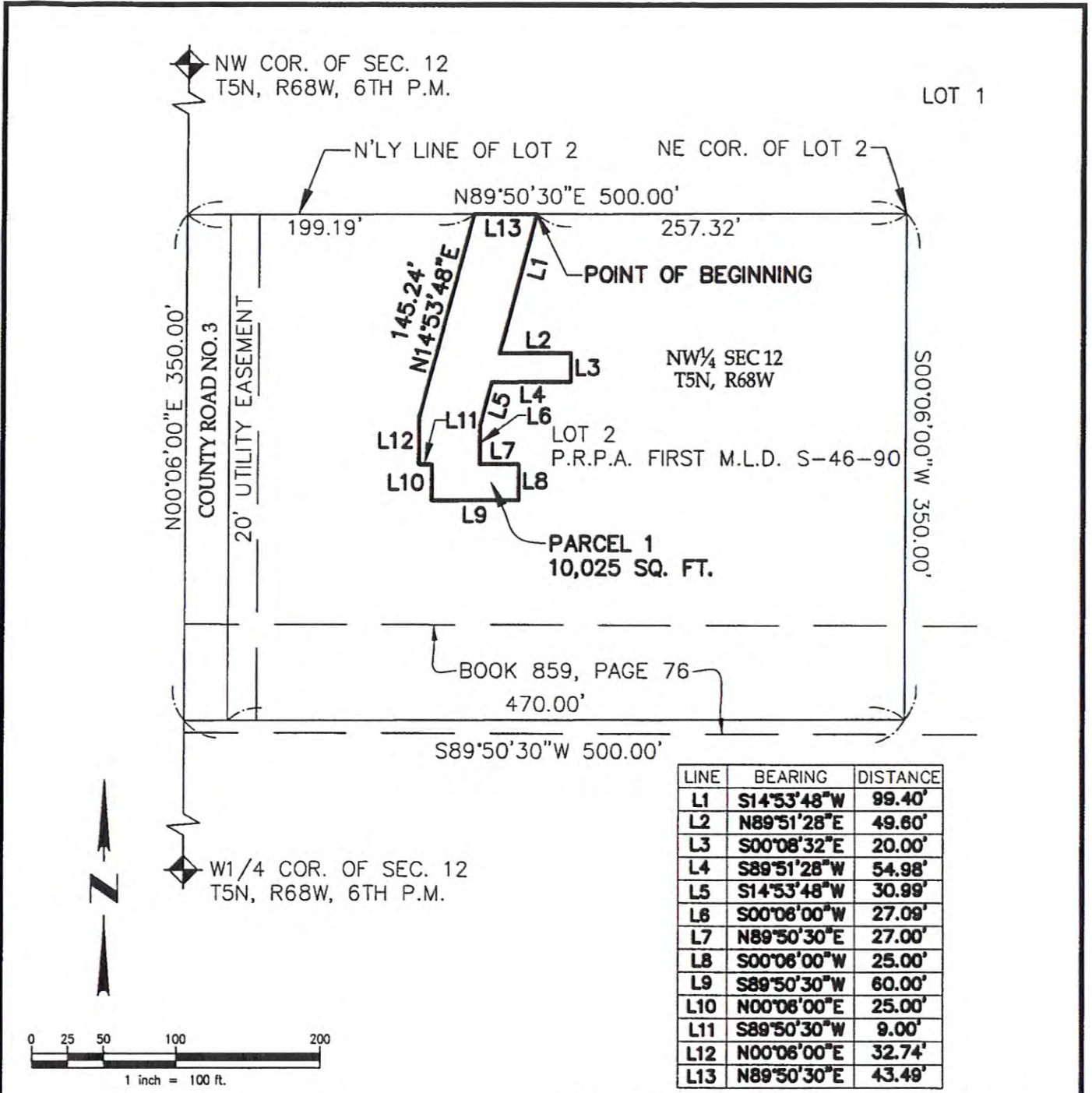
**BEGINNING** at a point on the northerly line of said Lot 2, whence the Northeast Corner of said Lot 2 bears N89°50'30"E a distance of 257.32 feet;

THENCE S14°53'48"W a distance of 99.40 feet;  
 THENCE N89°51'28"E a distance of 49.60 feet;  
 THENCE S00°08'32"E a distance of 20.00 feet;  
 THENCE S89°51'28"W a distance of 54.98 feet;  
 THENCE S14°53'48"W a distance of 30.99 feet;  
 THENCE S00°06'00"W a distance of 27.09 feet;  
 THENCE N89°50'30"E a distance of 27.00 feet;  
 THENCE S00°06'00"W a distance of 25.00 feet;  
 THENCE S89°50'30"W a distance of 60.00 feet;  
 THENCE N00°06'00"E a distance of 25.00 feet;  
 THENCE S89°50'30"W a distance of 9.00 feet;  
 THENCE N00°06'00"E a distance of 32.74 feet;  
 THENCE N14°53'48"E a distance of 145.24 feet;  
 THENCE N89°50'30"E along said northerly line of Lot 2 a distance of 43.49 feet to the  
**POINT OF BEGINNING.**

Containing 10,025 Square feet, more or less.

 A circular professional seal for Roger D. Nelson, PLS, Colorado Registered Professional Land Surveyor No. 33200. The seal contains the text "COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR" around the perimeter and "ROGER DALE NELSON" in the center. A signature is written across the seal.
 

Roger D. Nelson, PLS 33200  
 Date: May 28, 2010  
 Revised: October 15, 2010  
 Job No.: 02016325-33  
 For and on Behalf of  
 Merrick & Company



NOTE:  
This exhibit does not represent a monumented survey. It is intended only to depict the attached description.

Revised 10/15/2010 to extend esmt. to Control Bldg.  
Revised 11/12/2010 to be S'ly of Control Bldg.  
Prepared by Merrick & Company

I:\Survey\02016325-Xcel Energy Open End\33- Kelim Substation Construction Staking\DWGS\Exhibits\ESMT IN LOT 2-R2.dwg

**A PORTION OF THE NORTHWEST 1/4 OF SECTION 12,  
T5N, R68W OF THE 6TH P.M.  
LARIMER COUNTY, CO**



|                                       |                          |                  |
|---------------------------------------|--------------------------|------------------|
| SECTION NW1/4 OF SEC. 12 ,TOWNSHIP 5N | ,RANGE 68W               | SCALE: 1" = 100' |
| 6th PRINCIPAL MERIDIAN,               | Larimer COUNTY, Colorado | DRAWN BY: JBJ    |
| DOCUMENT NO.                          | AGENT:                   | DATE: 5/28/2010  |



**CITY OF LOVELAND**  
**WATER & POWER DEPARTMENT**  
 200 North Wilson • Loveland, Colorado 80537  
 (970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

**AGENDA ITEM:** 6

**MEETING DATE:** 4/19/11

**TO:** City Council

**FROM:** Bob Miller, Power Operations Manager, Water and Power

**PRESENTER:** Bob Miller, Power Operations Manager, Water and Power

**TITLE:**

A Resolution granting a Revocable License to Platte River Power Authority to construct and maintain facilities owned by Public Service Company of Colorado and installed within a portion of the City of Loveland's Airport Substation

**DESCRIPTION:** This is an administrative action to grant a revocable license to Platte River Power Authority ("PRPA") so that PRPA can perform the interconnection work in the Airport substation for Public Service Company of Colorado.

**BUDGET IMPACT:**

Yes     No

**SUMMARY:**

PRPA will be working with the Public Service Company of Colorado ("PSCo") to interconnect and make improvements at the Airport substation on County Road 3 for PSCo's new substation they are building just north of the Airport substation.

The following is a general description of the improvements PRPA will be making at no cost to the City to interconnect transmission to PSCo's substation: three (3) Gang Switches; one (1) Transmission Breaker; one (1) 115 kilovolt (115kV) Dead End Structure; 115kV Bus Work; 115kV Transmission Lines; Control and Communication Cable and Conduit.

PSCo has engaged Platte River to construct and maintain PSCo's facilities to be installed at Airport Substation. Platte River has therefore requested a license from the City for the purpose of constructing and maintaining PSCo's facilities at Airport Substation. The license is necessary because Airport Substation is owned by the City, and Platte River currently does not have permission or authority to enter the City's substations other than to perform work on *City*-owned

facilities. Attached you will find the license agreement between the City of Loveland and PRPA to complete this work.

---

**LIST OF ATTACHMENTS:**

Location maps of Airport Substation and Aerial Photo of Airport Substation  
Resolution  
License Agreement (attached to the Resolution as Exhibit A)

---

**RECOMMENDED CITY COUNCIL ACTION:**

Recommend that adopt the Resolution

**REVIEWED BY CITY MANAGER:**



INTERSTATE 25

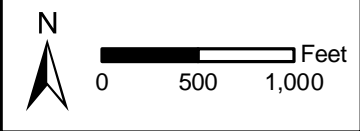
CENTERRA PKWY

Airport Substation

N COUNTY ROAD 3

E EISENHOWER BLVD

E HIGHWAY 34







 N Airport Substation - Aerial Photo



**RESOLUTION #R-23-2011**

**A RESOLUTION GRANTING A REVOCABLE LICENSE TO PLATTE RIVER POWER AUTHORITY TO CONSTRUCT AND MAINTAIN FACILITIES OWNED BY PUBLIC SERVICE COMPANY OF COLORADO AND INSTALLED WITHIN A PORTION OF THE CITY OF LOVELAND’S AIRPORT SUBSTATION**

**WHEREAS**, on April 5, 2011, the City of Loveland granted Public Service Company of Colorado (“PSCo”) an easement for installation of facilities within a portion of the City’s Airport Substation in order to serve PSCo’s customers with electricity; and

**WHEREAS**, PSCo has engaged Platte River Power Authority (“PRPA”) to construct and maintain PSCo’s facilities within Airport Substation; and

**WHEREAS**, PRPA has requested that the City grant it a revocable license to access Airport Substation for the purpose of constructing and maintaining PSCo’s facilities; and

**WHEREAS**, City Council desires to grant PRPA a revocable license on the terms and conditions set forth in the “License Agreement.”

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the “License Agreement,” attached hereto as Exhibit A and incorporated herein by reference (“License”), is hereby approved.

**Section 2.** That the Mayor and the City Clerk are hereby authorized and directed to execute the License on behalf of the City.

**Section 3.** That the Mayor is authorized, following consultation with the City Manager and the City Attorney, to approve changes to the form or substance of the License as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 4.** That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 19<sup>th</sup> day of April, 2011.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

Shawn L. Oltus  
Assistant City Attorney

**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (“Agreement”) is entered into as of this 19<sup>th</sup> day of April, 2011, by and between the CITY OF LOVELAND, a Colorado municipal corporation (hereinafter called the “City”), and PLATTE RIVER POWER AUTHORITY, a political subdivision organized and existing under and by virtue the laws of the State of Colorado (hereinafter called “Platte River”).

1. Revocable License: The City grants a non-exclusive revocable license to Platte River upon and in consideration of the agreements, covenants, terms and conditions described below.
2. Description of License Property: A portion of a parcel of land lying entirely within the City’s electric substation known as Airport Substation, legally described as Lot 2, PRPA First MLD S 46-90, Loveland, Colorado (“License Property”).
3. Use of License Property: Platte River may use the License Property to construct, install, alter, maintain, reconstruct, remove and repair improvements (hereinafter referred to as the “Improvements”) as more fully described below in paragraph 4 and in Exhibit A, attached hereto and incorporated by reference. The purpose of the Improvements is the provision of a transmission interconnection for the benefit of Public Service Company of Colorado (hereinafter referred to as “PSCo”). Platte River will cooperate with PSCo in order to allow PSCo to obtain any meter information PSCo requires. If Platte River seeks to modify or add additional equipment to the Improvements, Platte River may do so provided that the City first determines in writing that the modifications will not interfere with City operations.
4. Improvements: The following is a general description of the Improvements: three (3) Gang Switches; one (1) Transmission Breaker; one (1) 115 kilovolt (115kV) Dead End Structure; 115kV Bus Work; one (1) 115kV Transmission Line; Control and Communication Cable and Conduit. Two diagrams reflecting the intended design and configuration of the Improvements are illustrated on Exhibit A.
5. Construction and Maintenance: Platte River will, at its expense, construct the Improvements in accordance with the plans and specifications described in Exhibit A and shall be solely responsible to maintain the License Property and Improvements in a safe manner to ensure the City’s usage of the surrounding substation property and facilities for their original purpose. Platte River may temporarily utilize the northeast corner of the substation, an area not included in the License Property, to store construction-related materials during construction of the Improvements. When the Improvements are energized by PSCo, any materials stored in the corner of the substation shall be removed.

6. Commencement Date: The date that this Agreement is made and entered into by the parties.
7. Termination: This is a revocable license that may be terminated at the discretion the Loveland City Council at any time. Upon termination of the revocable license contemplated by this Agreement, Platte River shall promptly remove all Improvements and other equipment or facilities placed on the License Property and restore the License Property to its original condition, all at Platte River's sole expense.
8. License Fees: Platte River will pay Ten Dollars (\$10.00) to the City as full payment for the rights and privileges described herein.
9. Assignment: Platte River's privileges under this Agreement shall not be assignable by Platte River, in whole or in part, without obtaining the City's prior written approval.
10. Notices: Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:            Director  
    Department of Water and Power  
    City of Loveland  
    200 N. Wilson Avenue  
    Loveland, CO 80537

With a copy to:        City Attorney  
    City of Loveland  
    500 E. Third Street  
    Loveland, CO 80537

If to Platte River:    General Manager  
    Platte River Power Authority  
    2000 East Horsetooth Road  
    Fort Collins, CO 80525

11. Insurance: During the term of this Agreement, Platte River shall purchase and maintain general liability coverage in connection with the License Property, including all improvements thereon, in the amount of One Million Dollars (\$1,000,000.00). The City shall be named as an additional insured on all such policies. All insurance required hereunder shall be issued by an insurance company authorized to do business in Colorado which meets all of the requirements of the Division of Insurance for that purpose. Upon execution of this Agreement, Platte River shall provide to the City proof of the required

insurance, and thereafter at such times as the City requests proof of the required insurance. Additionally, if insurance coverage is materially changed or switched to a different carrier, Platte River shall notify the City in writing of such action as soon as practicable.

- 12. Indemnification: To the extent authorized by law, Platte River agrees to indemnify the City and its officers, employees, agents, contractors, invitees, licensees, customers, and visitors (individually and collectively, "Indemnitees") from and against all losses, liabilities, claims, demands, suits, damages, costs and expenses that are incurred by or asserted against Indemnitees arising out of or connected in any manner with the negligent acts or omissions or willful misconduct of Platte River, its officers, agents, contractors, or employees with respect to use of the License Property.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

CITY OF LOVELAND

By: \_\_\_\_\_  
Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:

*[Signature]*  
Assistant City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

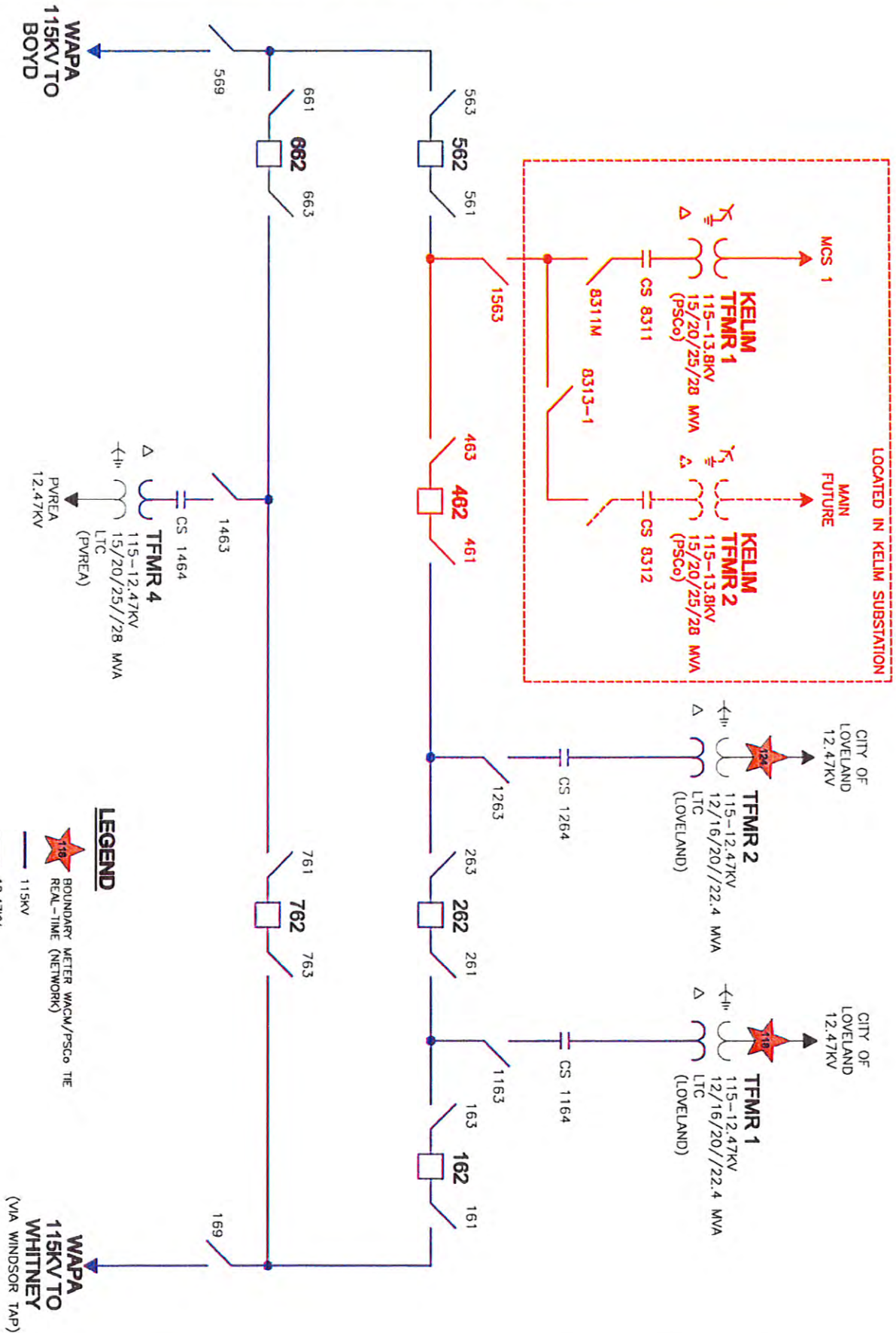


PLATTE RIVER POWER AUTHORITY

By: *[Signature]*  
Brian Moeck, General Manager

EXHIBIT A TO LICENSE

# AIRPORT 115KV SUBSTATION (LOVELAND/PRPA)

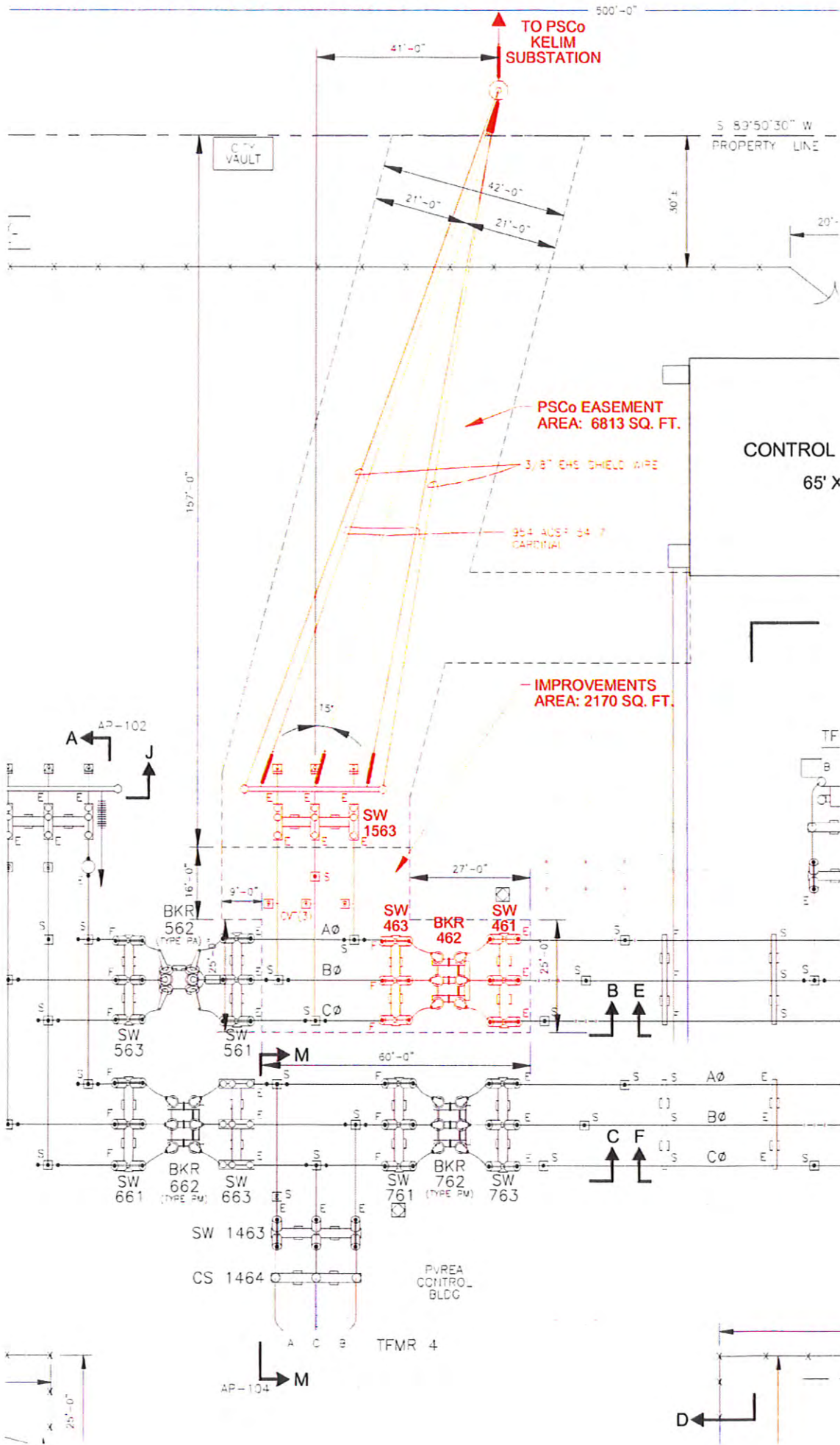


**LEGEND**

- 115 BOUNDARY METER WACM/PSCo TIE
- 115KV REAL-TIME (NETWORK)
- 12.47KV
- NEW ADDITION

7/9/10 PRS-59 AP







**CITY OF LOVELAND**  
LOVELAND PUBLIC LIBRARY

Civic Center • 300 North Adams • Loveland, Colorado 80537  
(970) 962-2665 • FAX (970) 962-2905 • TDD (970) 962-2620

**AGENDA ITEM:** 7

**MEETING DATE:** 4/19/2011

**TO:** City Council

**FROM:** Ted Schmidt, Loveland Public Library  
Susan Ison, Cultural Services Department

**PRESENTERS:** Ted Schmidt and Susan Ison

**TITLE:**

A Resolution of the Loveland City Council consenting to the termination of the designated principal of the George K. Kroh Charitable Remainder Trust and accepting a distribution of the assets from said trust to the City of Loveland for the use and benefit of the Loveland Public Library and the Loveland Museum/Gallery

**DESCRIPTION:**

This is an administrative action to consent to the termination of the designated principal of the George K. Kroh Charitable Remainder Trust and to accept a distribution of Trust assets to benefit the Library and the Museum/Gallery. The request to terminate was made by the Trustee, Home State Bank, in order to make available remaining funds to community organizations with expressed needs consistent with the purposes of the Trust. If the designated principal is terminated, the Trust would provide an asset distribution for use by the Library and the Museum/Gallery of over \$600,000 each.

**BUDGET IMPACT:**

Yes     No

**SUMMARY:**

The George K. Kroh Charitable Remainder Trust was established in 1977. The City of Loveland is both an income and principal beneficiary of the Trust. The City has received 20% of the net income of the Trust annually: 10% for the use and benefit of the Library, and 10% for the use and benefit of the Museum/Gallery. Upon termination of the Trust, the City is to receive 30% of the Trust assets: 15% for the use and benefit of the Library, and 15% for the use and benefit of the Museum/Gallery.

The Trustee, Home State Bank, has requested that the City, as well as the other principal beneficiaries of the Trust, consent to the termination of the designated principal of the Trust, as permitted by the Trust terms, and accept a distribution of their respective allocations of the Trust assets in order to make available remaining funds to community organizations with expressed needs consistent with the purposes of the Trust. The City will still be entitled to an annual distribution of ten percent of the net income of the remaining Trust assets for the use and benefit of the Loveland Public Library, and ten percent of the net income of the remaining Trust assets for the use and benefit of the Loveland Museum/Gallery, until full termination of the Trust by or before 2016.

Both the Library Director and the Cultural Services Director have considered this request and believe that termination of the designated principal of the Trust and acceptance of the asset distribution would be beneficial to their respective departments. In addition, both the Cultural Services Board and the Library Board adopted motions recommending that the City Council consent to the termination of the designated principal of the Trust and accept a distribution of the Trust assets to the City for the use and benefit of their respective departments.

The directors and the boards would like to ensure that the City uses the money generated from the Trust assets in accordance with Mr. Kroh's wishes, which were:

- That 15% of the Trust assets distributed to the City be set aside for the use and benefit of the Loveland Public Library; provided, however, that said assets shall not be used for ordinary operating expenses; and
- That 15% of the Trust assets distributed to the City be set aside for the use and benefit of the Loveland Museum/Gallery, and specifically for the support and encouragement of art exhibitions and for the acquisition of tangible permanent art objects.

Additionally, the Trustee would like to ensure that the City use the money generated from the Trust assets as a supplement to, and not as a replacement for, funds budgeted and appropriated to the Library and the Museum/Gallery from the General Fund of the City.

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**LIST OF ATTACHMENTS:**

Letter from Trustee, Home State Bank, dated April 12, 2011  
Resolution

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**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the Resolution.

**REVIEWED BY CITY MANAGER:**



April 12, 2011

City Manager  
City of Loveland  
500 E. 3<sup>rd</sup> Street  
Loveland, CO 80537

RE: George K. Kroh CRUT

Dear Sir:

I have been asked to define the circumstances surrounding the distribution of the directed principal on termination of the George K. Kroh CRUT.

The document states that termination will occur within 10 years of the death of Lois Kroh. Ms. Kroh passed away on February 4, 2006, so the trust must be terminated by 2016. The City of Loveland is directed to receive 15% of the principal of the trust for the use and benefit of the City of Loveland Library, and additionally 15% for the use and benefit of the City of Loveland Museum upon termination.

In 2009, the Trust distributed some principal. Upon review, the Trust Division of Home State Bank interpreted that as the beginning of the termination of the Trust. That decision was ratified by the Advisory Committee of the Trust, and rather than segregate the funds and hold them until the final termination (which could be any time between now and 2016), the funds were segregated into separate accounts for the City of Loveland, as well as two other principal beneficiaries. Those funds are still segregated, and being held for the City. Home State Bank, the Trustee, is prepared to take the direction of the City as to the disposition of the funds.

The only requirement of the City that the Trustee has placed is that the City receipt for the funds, and releases the Trustee and the Advisory Committee for the City's interest in the non-discretionary principal of the Trust. The remainder funds held by the Trust will be discretionary with the Advisory Committee, and subject to the 2016 termination date. The remaining funds will continue to pay to the City its share of the income generated, as directed in the document.

Very truly yours,



James H. Pilger  
Vice President and Trust Officer

CC: Mr. Hammond

**RESOLUTION #R-24-2011**

**A RESOLUTION OF THE LOVELAND CITY COUNCIL CONSENTING TO THE TERMINATION OF THE DESIGNATED PRINCIPAL OF THE GEORGE K. KROH CHARITABLE REMAINDER TRUST AND ACCEPTING A DISTRIBUTION OF THE ASSETS FROM SAID TRUST TO THE CITY OF LOVELAND FOR THE USE AND BENEFIT OF THE LOVELAND PUBLIC LIBRARY AND THE LOVELAND MUSEUM/GALLERY**

**WHEREAS**, the Trust Agreement of George K. Kroh dated November 18, 1977, as amended (the "Trust Agreement") established the George K. Kroh Charitable Remainder Trust (the "Trust"), which provides that the City of Loveland shall receive an annual distribution of ten percent of the net income of the Trust assets for the use and benefit of the Loveland Public Library, and ten percent of the net income of the Trust assets for the use and benefit of the Loveland Museum/Gallery; and

**WHEREAS**, the Trust further provides that upon termination of the Trust, the City of Loveland shall receive fifteen percent of the Trust assets for the use and benefit of the Loveland Public Library, and fifteen percent of the Trust assets for the use and benefit of the Loveland Museum/Gallery; and

**WHEREAS**, the Trustee, Home State Bank, has requested that the City of Loveland, as well as the other principal beneficiaries of the Trust, consent to the termination of the designated principal of the Trust, as permitted by the Trust Agreement, and accept a distribution of their respective allocations of the Trust assets in order to make available remaining funds to community organizations with expressed needs consistent with the purposes of the Trust; and

**WHEREAS**, even if the designated principal is terminated, the City will still be entitled to an annual distribution of ten percent of the net income of the remaining Trust assets for the use and benefit of the Loveland Public Library, and ten percent of the net income of the remaining Trust assets for the use and benefit of the Loveland Museum/Gallery, until full termination of the Trust by or before 2016; and

**WHEREAS**, on March 29, 2011, the Cultural Services Board adopted a motion recommending that the City Council consent to the termination of the designated principal of the Trust and accept a distribution of fifteen percent of the Trust assets to the City for the use and benefit of the Loveland Museum/Gallery; and

**WHEREAS**, on April 13, 2011, the Library Board adopted a motion recommending that the City Council consent to the termination of the designated principal of the Trust and accept a distribution of fifteen percent of the Trust assets to the City for the use and benefit of the Loveland Public Library; and

**WHEREAS**, the City Council desires to consent to the termination of the designated principal of the Trust and accept a distribution of the Trust assets to the City for the use and benefit of the Loveland Public Library and the Loveland Museum/Gallery as being in the best interests of the citizens of Loveland.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the City Council hereby consents to the termination of the designated principal of the Trust and accepts a distribution of fifteen percent of the Trust assets to the City for the use and benefit of the Loveland Public Library, and fifteen percent of the Trust assets to the City for the use and benefit of the Loveland Museum/Gallery.

**Section 2.** That the City Manager, in consultation with the City Attorney, is hereby authorized to execute for both distributions a Receipt and Release in the form attached hereto as Exhibits A-1 and A-2 and incorporated herein by reference, and any other documents required by the Trustee to effectuate the City's consent and acceptance as stated in Section 1 above.

**Section 3.** That, consistent with the expressed desire of the Trustor, George K. Kroh (the "Trustor"), the City Council hereby affirms the City's intention to use the Trust assets distributed to the City on behalf of the Loveland Public Library for the use and benefit of the Loveland Public Library; provided, however, that said assets shall not be used for ordinary operating expenses. The Library Board shall review any request to appropriate money from the Trust assets to be used for the benefit of the Loveland Public Library and shall advise the City Council with regard to all such requests.

**Section 4.** That, consistent with the expressed desire of the Trustor, the City Council hereby affirms the City's intention to use the Trust assets distributed to the City on behalf of the Loveland Museum/Gallery for the use and benefit of the Loveland Museum/Gallery, and specifically for the support and encouragement of art exhibitions and for the acquisition of tangible permanent art objects. The Cultural Services Board shall review any request to appropriate money from the Trust assets to be used for the benefit of the Museum/Gallery and shall advise the City Council with regard to all such requests.

**Section 5.** That, consistent with the expressed desire of the Trustee, the City Council hereby affirms the City's intention to use the Trust assets distributed to the City for the use and benefit of the Loveland Public Library and the Loveland Museum/Gallery as a supplement to, and not as a replacement for, funds budgeted and appropriated to the Loveland Public Library and the Loveland Museum/Gallery from the General Fund of the City.

**Section 6.** That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 19<sup>th</sup> day of April, 2011.

---

Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

Shawn L. Oltus  
Assistant City Attorney



**EXHIBIT**  
tabbles  
A-1

|   |   |
|---|---|
| <input checked="" type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court<br>Larimer County, Colorado<br>Court Address:<br>201 La Porte Avenue, Suite 100<br>Fort Collins, CO 80521-2761 |   |
| <input checked="" type="checkbox"/> In the Matter of the Trust created by:<br>George K. Kroh<br>George K. Kroh Charitable Remainder Trust   | ▲ <b>COURT USE ONLY</b> ▲   |
| Attorney or Party Without Attorney (Name and Address):<br><br>Phone Number:                      E-mail:<br>FAX Number:                         Atty. Reg. #  | Case Number:<br><br>Registration Number:<br><br>Division                      Courtroom |
| <b>RECEIPT AND RELEASE</b>  |   |

Received from Home State Bank, Trustee of the George K. Kroh Charitable Remainder Trust and the Advisory Committee,  Trustee  Personal Representative  Conservator  
 partial  full payment and satisfaction of the following:

- the devise to me in the Will under article(s) \_\_\_\_\_.
- my share of the estate as a devisee in the Will.
- my share of the estate as an heir.
- my distribution from the conservatorship case.
- Other: The distribution on termination to us directed in the Trust under Article(s) 6.(e)(4)c i.e.: Fifteen Percent to the City of Loveland, Loveland, Colorado, for the use and benefit of the Loveland Public Library. The expenditure of said sum to be under the direction of the Loveland Library Board or other Library Advisory Board under the control of the City of Loveland; such sum shall not be used for ordinary operating expenses.

Cash in the amount of \$ \_\_\_\_\_.

Tangible personal property described as: \* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Real property described as: \* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The following securities: \* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



Other (describe): \* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I grant a partial release and satisfaction to the estate and to the fiduciary as to the above partial distribution.  
 I grant a full and final release and satisfaction to the Trust and to the fiduciary and his or her successors and to the Kroh Charitable Trust Advisory Committee for any liability in connection with my interest in the principal of the Trust.

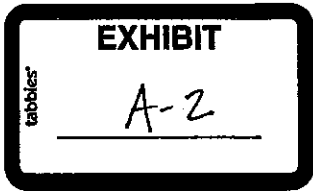
**VERIFICATION**

I, verify that the facts set forth in this document are true as far as I know or am informed. I understand that penalties for perjury follow deliberate falsification of the facts stated herein. (§15-10-310, C.R.S.)

City of Loveland

BY \_\_\_\_\_  
Signature of Person Signing Receipt and Release      Date

\* Attach additional sheets as necessary.



|   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court<br>Larimer County, Colorado<br>Court Address:<br>201 La Porte Avenue, Suite 100<br>Fort Collins, CO 80521-2761 |  | ▲    COURT USE ONLY    ▲  |
| <input checked="" type="checkbox"/> In the Matter of the Trust created by:<br>George K. Kroh<br>George K. Kroh Charitable Remainder Trust   |  |   |
| Attorney or Party Without Attorney (Name and Address):<br><br>Phone Number:                      E-mail:<br>FAX Number:                         Atty. Reg. #:   |  | Case Number:<br><br>Registration Number:<br><br>Division                      Courtroom |
| <b>RECEIPT AND RELEASE</b>  |  |   |

Received from Home State Bank, Trustee of the George K. Kroh Charitable Remainder Trust and the Advisory Committee,  Trustee  Personal Representative  Conservator  
 partial  full payment and satisfaction of the following:

- the devise to me in the Will under article(s) \_\_\_\_\_.
- my share of the estate as a devisee in the Will.
- my share of the estate as an heir.
- my distribution from the conservatorship case.
- Other: The distribution on termination to us directed in the Trust under Article(s) 6.(e)(4)d i.e.: Fifteen Percent to the City of Loveland, Loveland, Colorado, for the use and benefit of the Loveland Museum, to be expended under the direction of the Loveland Museum Board or other Advisory Board under the control of the City of Loveland. It is Trustor's desire that said sum be used for the support and encouragement of art exhibitions and for acquisition of tangible permanent art objects.

Cash in the amount of \$ \_\_\_\_\_.

Tangible personal property described as: \* \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Real property described as: \* \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

The following securities: \* \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

Other (describe): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I grant a partial release and satisfaction to the estate and to the fiduciary as to the above partial distribution.  
 I grant a full and final release and satisfaction to the Trust and to the fiduciary and his or her successors and to the Kroh Charitable Trust Advisory Committee for any liability in connection with my interest in the principal of the Trust.

---

**VERIFICATION**

I, verify that the facts set forth in this document are true as far as I know or am informed. I understand that penalties for perjury follow deliberate falsification of the facts stated herein. (§15-10-310, C.R.S.)

City of Loveland

BY \_\_\_\_\_  
Signature of Person Signing Receipt and Release      Date

**\* Attach additional sheets as necessary.**



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 8  
**MEETING DATE:** 4/19/2011  
**TO:** City Council  
**FROM:** Greg George, Development Services Director  
**PRESENTER:** Brian Burson, Current Planning Division

**TITLE:**

A public hearing to consider:

AN ORDINANCE APPROVING THE DISCONNECTION OF A CERTAIN PARCEL IN THE MYERS GROUP PARTNERSHIP # 949 ADDITION FROM THE CITY OF LOVELAND BOUNDARIES

**DESCRIPTION:**

Consideration of a legislative action to adopt an ordinance, on first reading, to temporarily disconnect Outlot B of the Myers Group Partnership # 949 Second Subdivision from the City. This will be the first step to prepare for the subsequent annexation of the Motorplex Entry Addition, of which this outlot will be a part. The applicant and sole owner is the City of Loveland.

**BUDGET IMPACT:**

Yes     No

**SUMMARY:**

The site is located at the southeast corner of Crossroads Boulevard and Byrd Drive, just west of the interchange of Crossroads Boulevard and I-25. It is currently a landscaped open space tract that is part of the Centerra Motorplex. The subsequent Motorplex Entry Addition will re-annex Outlot B into the City, as well as the existing rights-of-way for Crossroads Boulevard, portions of Byrd Drive, the interchange of Crossroads Boulevard and I-25, and I-25, extending north to Larimer County Road #30. The Motorplex Entry Addition is currently scheduled for City Council consideration in June, 2011.

The Planning Commission is not required to review annexations when the property being annexed, other than right-of-way, is owned solely by the City of Loveland. Therefore, there is no recommendation from the Planning Commission on this item.

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**LIST OF ATTACHMENTS:**

- A. Ordinance for disconnection
- B. Staff memorandum, dated April 19, 2011, with Exhibits

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**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motion for City Council action:

Move to adopt on first reading, AN ORDINANCE APPROVING THE DISCONNECTION OF A CERTAIN PARCEL IN THE MYERS GROUP PARTNERSHIP # 949 ADDITION FROM THE CITY OF LOVELAND BOUNDARIES

**REVIEWED BY CITY MANAGER:**

FIRST READING April 19, 2011

SECOND READING \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING THE DISCONNECTION OF A CERTAIN  
PARCEL IN THE MYERS GROUP PARTNERSHIP # 949 ADDITION FROM  
THE CITY OF LOVELAND BOUNDARIES**

**WHEREAS**, the City desires to annex certain portions of existing public rights-of-way dedicated for Crossroads Boulevard, Byrd Drive and Interstate 25 between Crossroads Boulevard and Larimer County Road No. 30 (the “Rights-of-Way”); and,

**WHEREAS**, annexation of the Rights-of-Way will further the purposes of the City of Loveland 2005 Comprehensive Plan, as amended, and the City’s 2030 Transportation Master Plan, as amended, and further secure financial resources for public street and road improvements within or adjacent to the Rights-of-Way; and,

**WHEREAS**, in order for the City to annex the Rights-of-Way, the City must disconnect a parcel of real property now located in the City within the Myers Group Partnership # 949 Addition, which parcel is legally described in Section 3 below (the “Parcel”); and,

**WHEREAS**, the City intends to re-annex the Parcel in conjunction with the City’s annexation of the Rights-of-Way; and,

**WHEREAS**, A Petition for Disconnection of the Parcel was filed with the City of Loveland on March 4, 2011, by Loveland City Manager William D. Cahill, on behalf of the City of Loveland, the sole owner of the Parcel.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the City Council hereby finds and determines that the City’s best interests will not be prejudiced by the requested disconnection of the Parcel, this disconnection does not conflict with any state statute, and this disconnection is authorized under Article XX of the Colorado Constitution, Section 2-4 of the Loveland City Charter and, to the extent applicable, under C.R.S. §31-12-501.

**Section 2.** That the City Council hereby further finds that it is necessary and proper to adopt this Ordinance for the public’s health, safety and welfare to facilitate the City’s annexation of the Rights-of-Way to further the purposes of the City’s 2005 Comprehensive Plan and its 2030 Transportation Plan.

**Section 3.** That the Parcel, which is hereafter legally described, is hereby disconnected from the boundaries of the City of Loveland, Colorado:

OUTLOT B, MYERS GROUP PARTNERSHIP #949 SECOND SUBDIVISION, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO,

a tract of land containing 11,141 square feet, more or less.

**Section 4.** As provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

**Section 5.** That when this Ordinance becomes law, the City Clerk shall file two certified copies of this Ordinance with the Larimer County Clerk and Recorder with directions to the Clerk and Recorder to file one of the certified copies with the Division of Local Government in the Colorado Department of Local Affairs as provided in C.R.S. Section 24-32-109.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2011.


ATTESTED:

CITY OF LOVELAND, COLORADO:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney



**DEVELOPMENT SERVICES  
ADMINISTRATION**  
500 East Third Street, Suite 210 • Loveland, CO 80537  
(970) 962-2346 • Fax (970) 962-2903 • TDD (970) 962-2620  
www.cityofloveland.org

## MEMORANDUM

**TO:** City Council

**FROM:** Brian Burson, Current Planning Division

**DATE:** April 19, 2011

**SUBJECT:** Myers Group Partnership # 949 Disconnection

### I. EXHIBITS

- A. Context Map for disconnection/annexation
- B. Sheet 2 of Myers Group Partnership # 949 2nd Subdivision (for information purposes only)
- C. 2009 aerial photo of intersection of Crossroads Drive and Byrd Drive, showing Outlot B.
- D. Draft annexation map of proposed Motorplex Entry Addition (for information purposes only)

### II. EXECUTIVE SUMMARY

#### A. Project Description

This application proposes to temporarily disconnect Outlot B, Myers Group Partnership # 949 2nd Subdivision from the City. Disconnection of this parcel will prepare for a subsequent, and more extensive, annexation to be known as Motorplex Entry Addition. The subsequent annexation will reincorporate Outlot B into the City, as well as the connecting existing rights-of-way for Crossroads Boulevard, portions of Byrd Drive, the interchange of Crossroads Boulevard and I-25, and I-25 itself extending from this intersection to Larimer County Road #30. Planning Commission and City Council action on the subsequent annexation cannot occur until Outlot B is legally disconnected by ordinance.

The Municipal Code contains no specific provisions for disconnection of land from the City, but it is provided by state statutes. State statutes allow municipalities to disconnect property from their boundary, and also allow annexation of those same properties, with no specific criteria or timing limitations for doing so. This same technique has been implemented by the City of Loveland for both the Two Leaves Addition in 2005, and the Bentley Addition in 2008.

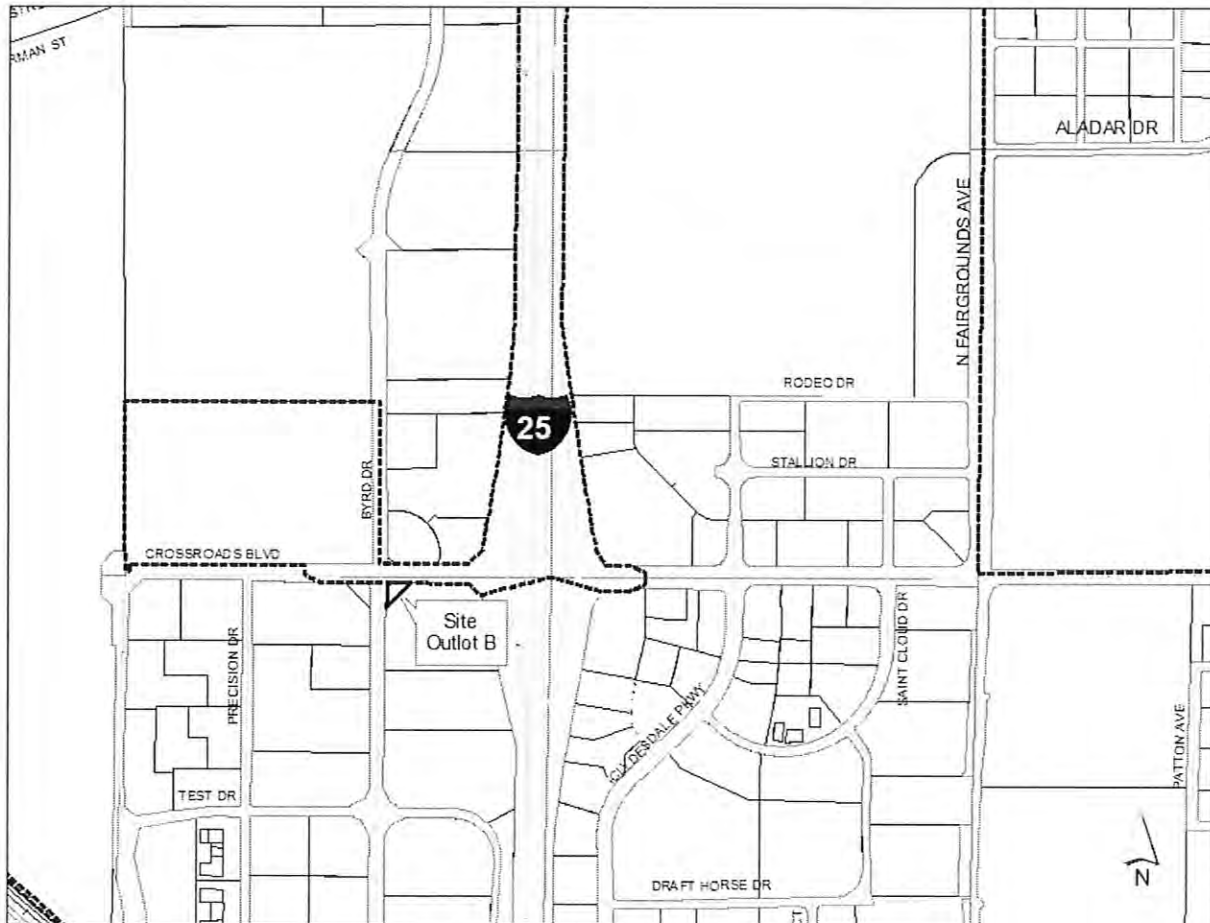
Annexation of the larger land area to be known as Motorplex Entry Addition will assure that street improvements in these rights-of-way can be accomplished under City of Loveland authority and



standards, will allow funding contributions from the Centerra Metro district No. 1, and will also bolster the Growth Management Area boundary of the City in this area. Complete analysis of the proposed annexation will be provided by the future staff reports to be provided to the Planning Commission and City Council for the public hearings that will occur.

**B. Property Location**

This parcel is located at the southeast corner of Crossroads Boulevard and Byrd Drive, just west of the interchange of Crossroads Boulevard and I-25.



**C. Key Issues**

No key issues have been identified by City staff for this disconnection action. No neighborhood meeting or Planning Commission hearing was required or held.

**III. RECOMMENDED CONDITIONS**

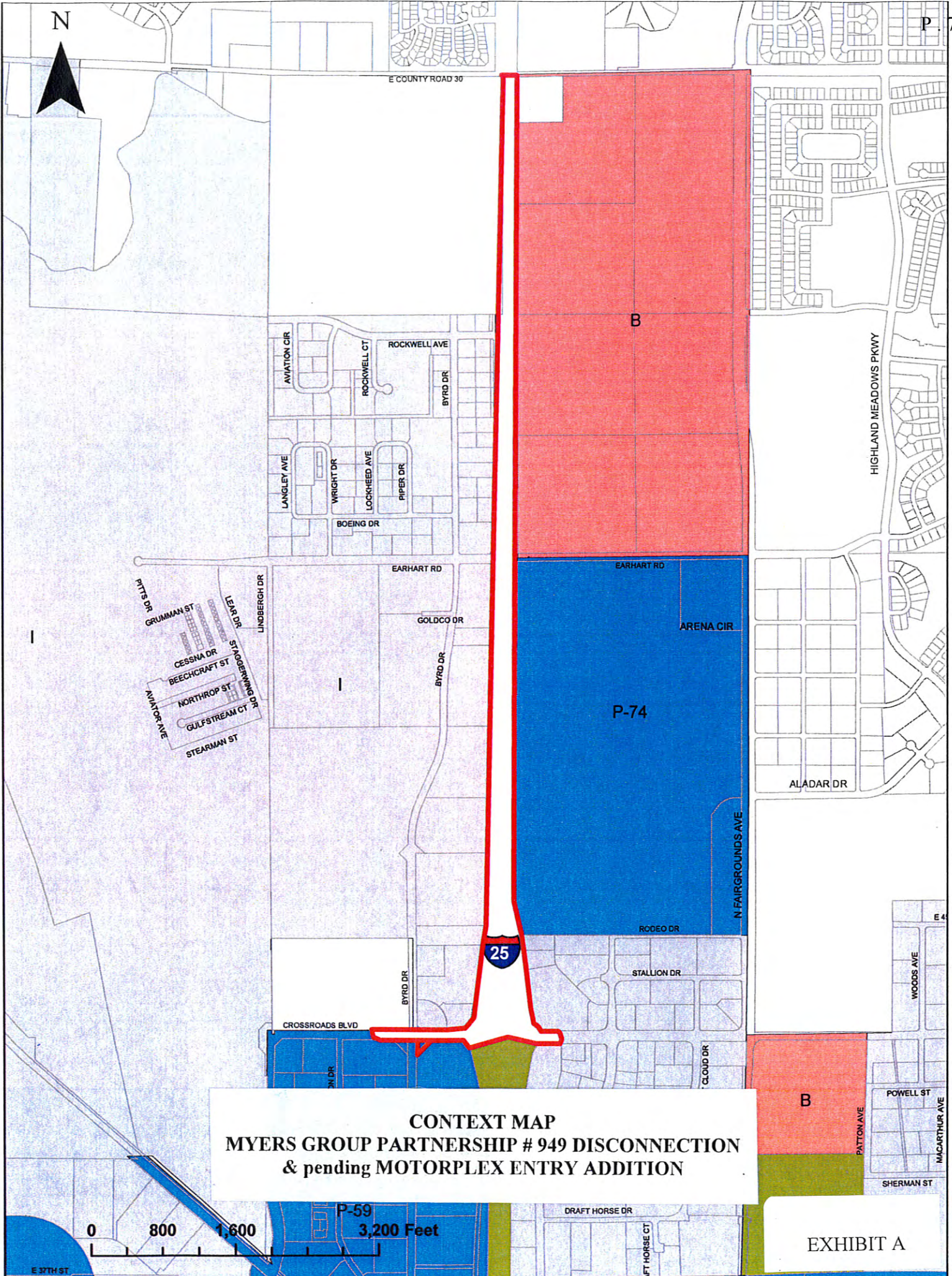
There are no staff recommended conditions.



N



E COUNTY ROAD 30



B

HIGHLAND MEADOWS PKWY

AVIATION CR  
ROCKWELL CT  
ROCKWELL AVE  
BYRD DR  
LANGLEY AVE  
WRIGHT DR  
LOCKHEED AVE  
PIPER DR  
BOEING DR

PITTS DR  
GRUMMAN ST  
LEA DR  
LINDERBERG DR  
CESSNA DR  
BEECHCRAFT ST  
NORTHROP ST  
GULFSTREAM CT  
STEARMAN ST

EARHART RD  
GOLDCO DR  
BYRD DR

EARHART RD  
ARENA CIR

P-74

ALADAR DR

N FAIRGROUNDS AVE



RODEO DR

STALLION DR

CROSSROADS BLVD

WOODS AVE

B

PATTON AVE  
POWELL ST  
MACARTHUR AVE

SHERMAN ST

**CONTEXT MAP  
MYERS GROUP PARTNERSHIP # 949 DISCONNECTION  
& pending MOTORPLEX ENTRY ADDITION**



P-59

DRAFT HORSE DR

DRAFT HORSE CT

EXHIBIT A

E 37TH ST

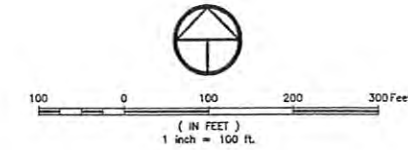


# MYERS GROUP PARTNERSHIP #949 SECOND SUBDIVISION

BEING A SUBDIVISION OF OUTLOT B, MYERS GROUP PARTNERSHIP #949 FIRST SUBDIVISION  
CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

| LINE TABLE |         |             |      |        |             |      |        |             |
|------------|---------|-------------|------|--------|-------------|------|--------|-------------|
| LINE       | LENGTH  | BEARING     | LINE | LENGTH | BEARING     | LINE | LENGTH | BEARING     |
| L100       | 28.31   | N45°00'00"W | L125 | 12.00  | S89°57'24"E | L150 | 46.50  | N00°02'36"E |
| L101       | 28.26   | N45°00'00"E | L126 | 5.00   | S89°57'24"E | L151 | 320.55 | S89°57'24"E |
| L102       | 311.76  | S89°57'25"E | L127 | 17.00  | S89°57'24"E | L152 | 66.50  | N00°00'00"W |
| L103       | 24.40   | S65°43'55"E | L128 | 19.99  | S00°00'00"E | L153 | 10.00  | S00°02'36"W |
| L104       | 821.71  | S89°57'25"E | L129 | 20.01  | S00°00'00"W | L154 | 20.51  | S89°57'24"E |
| L105       | 97.92   | N45°41'44"E | L130 | 239.89 | N00°02'36"E | L155 | 44.50  | N00°02'36"E |
| L106       | 283.00  | N01°20'52"E | L131 | 48.50  | S89°57'24"E | L156 | 299.99 | S89°57'24"E |
| L107       | 384.14  | N01°20'52"E | L132 | 20.00  | N00°02'36"E | L157 | 44.50  | S00°02'36"W |
| L108       | 42.00   | N88°39'08"W | L133 | 48.50  | N89°57'24"W | L158 | 32.00  | S89°57'24"E |
| L109       | 383.18  | N01°20'52"E | L134 | 129.62 | N00°02'36"E | L159 | 44.50  | N00°02'36"E |
| L110       | 20.01   | S89°57'24"E | L135 | 48.50  | S89°57'24"E | L160 | 233.53 | S89°57'24"E |
| L111       | 42.01   | S89°57'24"E | L136 | 20.00  | N00°02'36"E | L161 | 23.01  | S44°57'24"E |
| L112       | 20.01   | S89°57'24"E | L137 | 48.50  | N89°57'24"W | L162 | 154.49 | N41°52'53"E |
| L113       | 300.21  | S89°57'24"E | L138 | 219.88 | N00°04'51"E | L163 | 116.17 | S89°57'24"E |
| L114       | 12.00   | S00°02'36"W | L139 | 13.36  | S89°57'24"E | L164 | 20.00  | N00°02'36"E |
| L115       | 35.06   | N01°20'52"E | L140 | 20.00  | N00°02'36"E | L165 | 110.63 | N89°57'24"W |
| L116       | 382.73  | S01°20'52"W | L141 | 13.50  | N89°57'24"W | L166 | 85.50  | N00°06'20"E |
| L117       | 118.00  | N88°39'08"W | L142 | 210.50 | S43°41'06"W | L167 | 86.65  | S89°57'24"E |
| L118       | 190.47  | S00°02'36"W | L143 | 151.32 | S89°57'24"E | L168 | 20.00  | N00°02'36"E |
| L119       | 121.51  | N89°57'25"W | L144 | 22.75  | S00°02'36"W | L169 | 86.63  | N89°57'24"W |
| L120       | 103.00  | S00°02'36"W | L145 | 20.00  | S89°57'24"E | L170 | 228.01 | N00°02'36"E |
| L121       | 42.00   | S00°02'36"W | L146 | 22.75  | N00°02'36"E | L171 | 86.50  | S89°57'24"E |
| L122       | 1049.49 | N89°57'25"W | L147 | 22.04  | S89°57'24"E | L172 | 32.00  | N00°02'36"E |
| L123       | 1057.77 | S89°57'25"E | L148 | 46.50  | S00°02'36"W | L173 | 86.50  | N89°57'24"W |
| L124       | 107.73  | S45°00'00"E | L149 | 20.00  | S89°57'24"E | L174 | 227.89 | N00°02'36"E |

| CURVE TABLE |           |          |               |         |         |
|-------------|-----------|----------|---------------|---------|---------|
| CURVE       | DELTA     | RADIUS   | BEARING       | CHORD   | LENGTH  |
| C1          | 12°19'26" | 1135.00' | N 09°30'43" E | 243.66' | 244.13' |
| C2          | 6°16'45"  | 305.00'  | S 21°52'30" E | 33.41'  | 33.43'  |
| C3          | 25°03'29" | 245.00'  | S 12°29'09" E | 106.30' | 107.15' |
| C4          | 28°15'37" | 50.00'   | S 89°56'06" E | 60.00'  | 249.81' |



### LEGEND

- SET #4 REBAR W/CAP LS 14823 OR OTHERWISE NOTED
- UTILITY EASEMENT LINE
- SECTION LINE
- CENTERLINE OF RIGHT-OF-WAY
- LOT LINE
- PLATTED BOUNDARY LINE

No. \_\_\_\_\_ Date: \_\_\_\_\_

BY: \_\_\_\_\_

NORTHERN ENGINEERS, INC.  
480 South Hovea Street, Suite 302, Fort Collins, Colorado 80501  
Phone: (970) 221-1118  
Fax: (970) 221-1119  
www.northernengineering.com

PROJECT: MS# 710-015 DATE: 1/31/03 SCALE: 1" = 100' REVISION BY: L. SMITH

MYERS GROUP PARTNERSHIP #949 SECOND SUBDIVISION CITY OF LOVELAND, COLORADO

Sheet 2 / 4 Sheets

SUBDIVISION

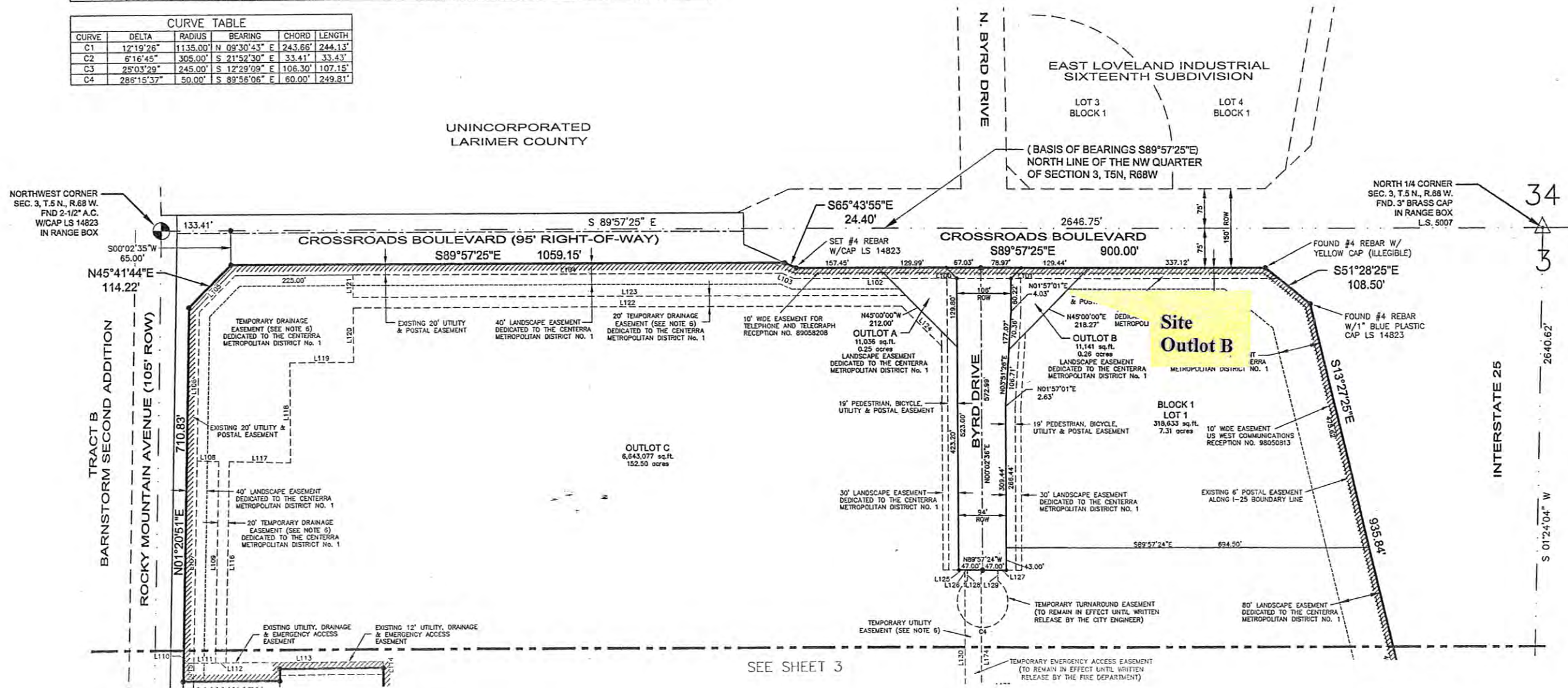
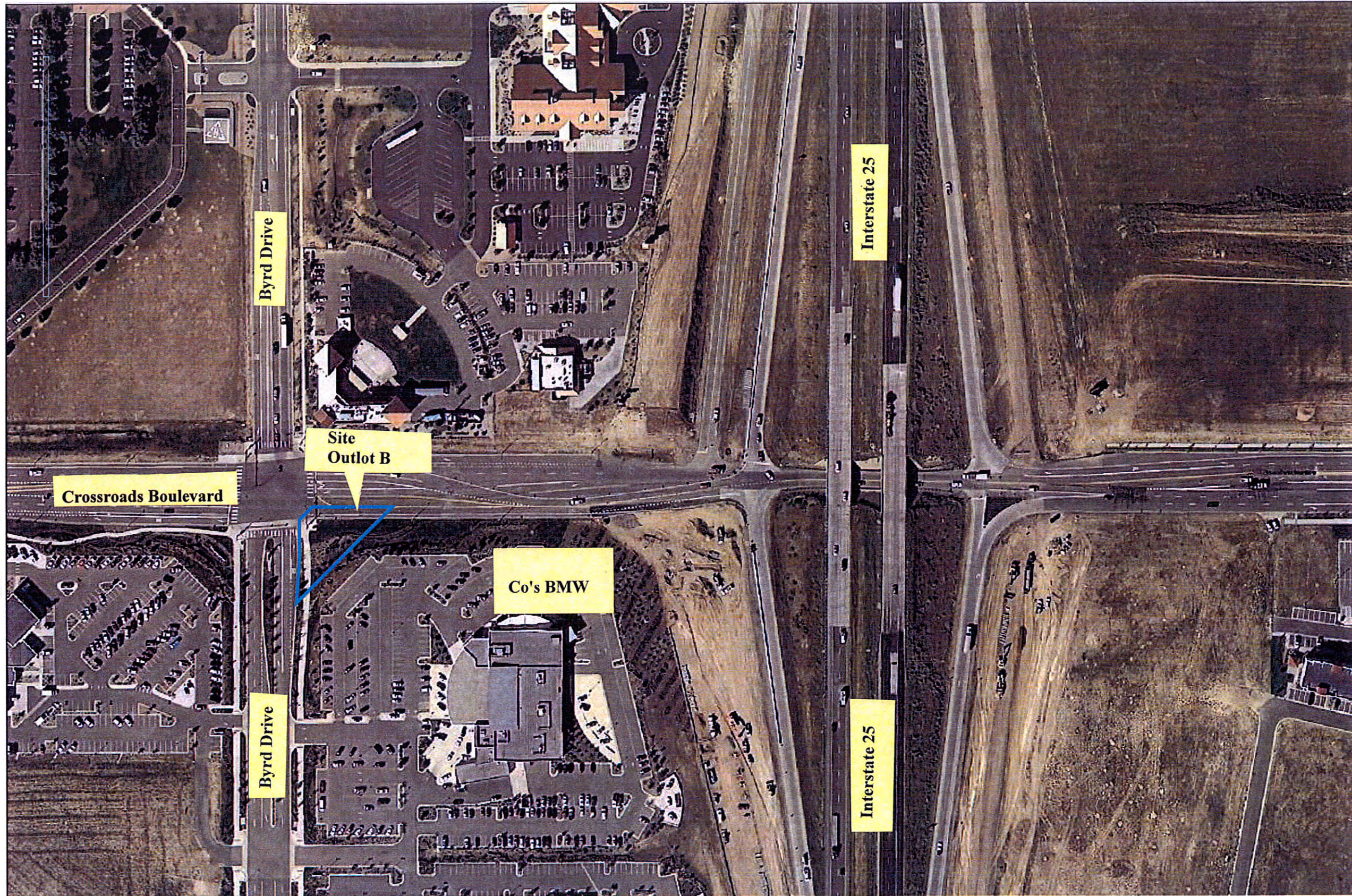


EXHIBIT B

L:\myers\949\949\_2nd\949\_2nd.dwg, 1/31/03, 10:00:00 AM, L. SMITH





MYERS GROUP PARTNERSHIP # 949 DISCONNECTION



# MOTORPLEX ENTRY ADDITION

TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING A PORTION OF SECTIONS 22, 27 AND 34, TOWNSHIP 6 NORTH, RANGE 68 WEST AND A PORTION OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN.

### Mayor Certificate:

This map is approved by the City Council of the City of Loveland, Larimer County, Colorado  
 by Ordinance No. \_\_\_\_\_, passed on second reading on  
 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for filing with the Clerk and Recorder of  
 Larimer County.  
 By: \_\_\_\_\_ Mayor  
 Attest: \_\_\_\_\_ City Clerk

### Surveyor Certificate:

I, Gerald D. Gilliland, a registered Land Surveyor in the State of Colorado, do hereby certify that the annexation map shown herein is a reasonably accurate depiction of the parcel of land legally described hereon and, to the extent described herein, is at least one sixth (1/6) of the peripheral boundary of said parcel, is contiguous to the boundary of the City of Loveland, Colorado. The map was compiled using existing plats, deeds, legal descriptions, and other documents and is not based on a field survey nor should it be construed as a boundary survey.

Gerald D. Gilliland  
 L.S. No. 14823

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by Gerald D. Gilliland.

Witness my hand and official seal.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

### DESCRIPTION:

A tract of land being a portion of Section 22, 34 and Section 27, Township 6 North, Range 68 West and a portion of Section 3, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the Center Section line of said Section 34 as bearing North 00°00'26" East and with all bearings contained herein relative thereto:

**BEGINNING** at the South Quarter corner of said Section 34; thence South 72°23'38" West, a distance of 469.20 feet to the West right-of-way line of Interstate 25; thence along said West right-of-way line, North 51°26'18" West, a distance of 108.50 feet to the South right-of-way line of Crossroads Boulevard; thence along said South right-of-way line, North 89°55'18" West, a distance of 337.12 feet to the East corner of Outlot B, Myers Group Partnership #949, 2nd Subdivision; thence along the South and West lot lines of said Outlot B the following 5 courses and distances: South 45°02'07" West, a distance of 218.27 feet; thence North 03°53'33" East, a distance of 70.36 feet; thence North 01°59'08" East, a distance of 4.03 feet; thence North 00°04'43" East, a distance of 60.22 feet; thence North 45°02'07" East, a distance of 28.26 feet to the South right-of-way line of Crossroads Boulevard; thence along said South right-of-way line, North 89°55'18" West, a distance of 433.44 feet; thence North 65°41'48" West, a distance of 109.70 feet; thence North 00°04'42" East, a distance of 60.00 feet to the North right-of-way line of Crossroads Boulevard; thence along said North right-of-way line the following 2 courses and distances: North 65°51'12" East, a distance of 109.70 feet; thence South 89°55'18" East, a distance of 326.73 feet to the West line of a right-of-way easement as described at Reception Number 2003-0098332, Larimer County Records; thence along said West and along the North and East lines of said right-of-way easement the following 3 courses and distances: North 00°37'47" West, a distance of 997.93 feet; thence South 89°55'19" East, a distance of 40.00 feet; thence South 00°37'47" East, a distance of 997.94 feet to the North right-of-way line of Crossroads Boulevard; thence along said North right-of-way line, South 89°55'19" East, a distance of 533.35 feet to the West right-of-way line of Interstate 25; thence along said West right-of-way line the following 8 courses and distances: North 46°51'41" East, a distance of 120.35 feet; thence North 10°04'11" East, a distance of 608.30 feet; thence North 06°55'11" East, a distance of 704.20 feet; thence North 00°36'41" East, a distance of 3,769.73 feet; thence North 06°55'12" East, a distance of 90.46 feet; thence North 00°00'03" West, a distance of 150.00 feet; thence North 01°23'34" East, a distance of 150.57 feet; thence North 89°26'16" East, a distance of 32.33 feet; thence North 00°00'03" West, a distance of 4,884.25 feet; thence North 89°02'06" East, a distance of 250.65 feet to the East right-of-way line of Interstate 25; thence along said East right-of-way line the following 6 courses and distances: South 00°00'59" East, a distance of 2,636.85 feet; thence South 00°00'48" East, a distance of 2,639.03 feet; thence South 00°35'54" West, a distance of 3,676.16 feet; thence South 08°09'08" East, a distance of 809.43 feet; thence South 09°46'48" East, a distance of 610.00 feet; thence South 34°30'18" East, a distance of 92.13 feet to the North right-of-way line of Crossroads Boulevard; thence along said North right-of-way line, South 89°55'18" East, a distance of 150.00 feet; thence South 65°41'31" East, a distance of 109.73 feet; thence South 00°04'41" West, a distance of 60.02 feet; thence South 65°51'11" West, a distance of 109.67 feet to the South right-of-way line of Crossroads Boulevard; thence along said South right-of-way line, North 89°55'19" West, a distance of 150.00 feet; thence North 76°38'29" West, a distance of 326.73 feet to the POINT OF BEGINNING.

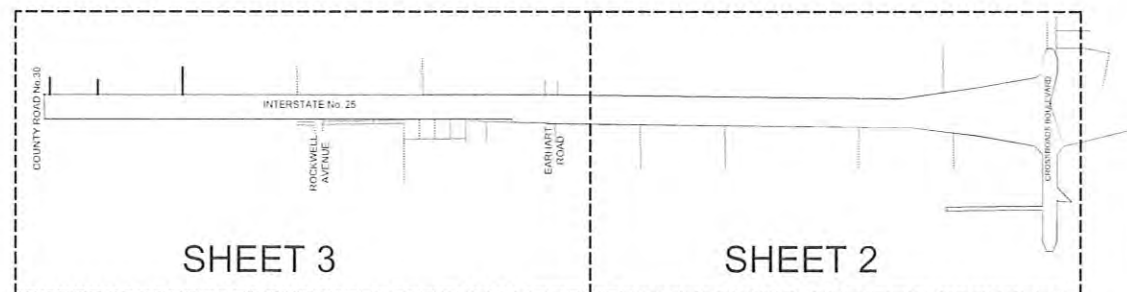
The above described tract of land contains 80.934 acres, more or less and is subject to all easements and rights-of-way now on record or existing.

TOTAL PERIMETER TO ANNEX = 27,035 FEET  
 TOTAL BOUNDARY CONTIGUOUS TO CITY = 22,216 FEET  
 MINIMUM CONTIGUOUS PERIMETER FEET REQUIRED = 27,036/6.....4,506 FEET



VICINITY MAP  
 SCALE: 1" = 2,000'

### KEY MAP



**NOTICE:**  
 According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover said defect. However, no court may award any relief in this survey if the commencement date is more than ten years after the date of the certificate shown hereon.

SECTION: 3, 22, 27 & 34  
 TOWNSHIP: 5N & 6N  
 RANGE: 68 W of the 6th PM

**NORTHERN ENGINEERING**  
 PROFESSIONAL ENGINEERS  
 1500 17th Street, Suite 100  
 Fort Collins, Colorado 80521  
 Phone: 970.221.4148 Fax: 970.221.1109  
 www.northernengineering.com



DATE: 9/13/10  
 SCALE: N/A  
 PROJECT: 750-088  
 DESIGNED BY:  
 DRAWN BY: L. Smith  
 REVIEWED BY: G. Gilliland

MOTORPLEX ENTRY ADDITION  
 TO THE CITY OF LOVELAND  
 LARIMER COUNTY, COLORADO

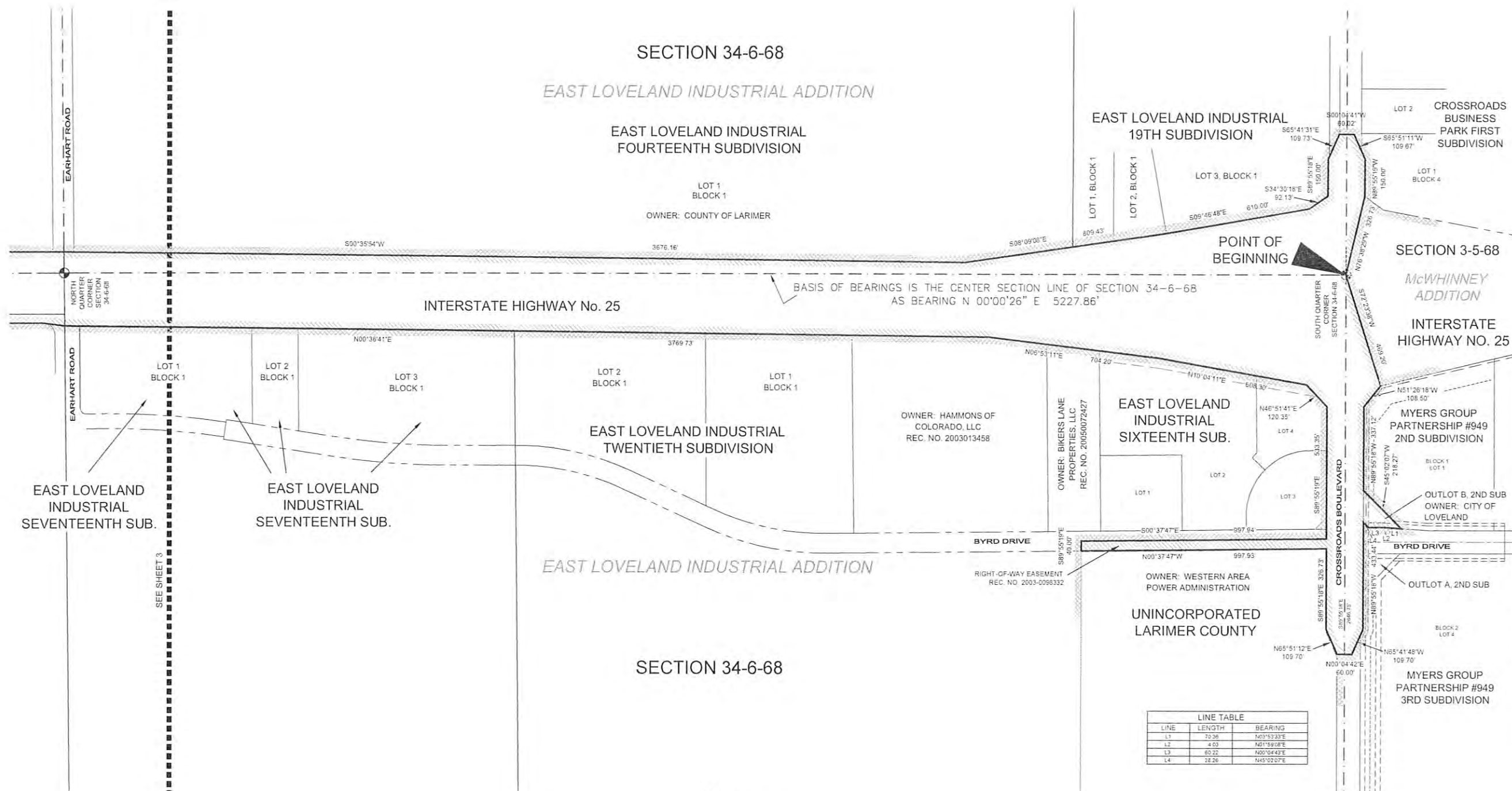
Sheet  
 1  
 Of 3 Sheets

## EXHIBIT D



# MOTORPLEX ENTRY ADDITION

TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING A PORTION OF SECTIONS 22, 27 AND 34, TOWNSHIP 6 NORTH, RANGE 68 WEST AND A PORTION OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN.



**NOTICE:**  
 According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years after the date of the certificate shown hereon.

SECTION: 3, 22, 27 & 34  
 TOWNSHIP: 5N & 6N  
 RANGE: 68 W of the 6th PM

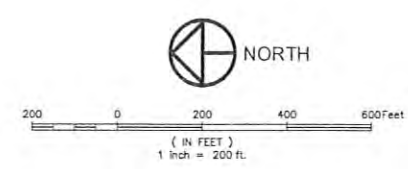
**NORTHERN ENGINEERING**  
 215 E. 10th Street, Suite 101  
 Fort Collins, Colorado, 80521  
 PHONE: 970.221.4133 FAX: 970.221.1109  
 WWW.NORTHERNENGINEERING.COM



PROJECT: 750-088  
 DATE: 9/13/10  
 DESIGNED BY: L. Smith  
 SCALE: 1"=200'  
 DRAWN BY: L. Smith  
 REVIEWED BY: G. Gilliland

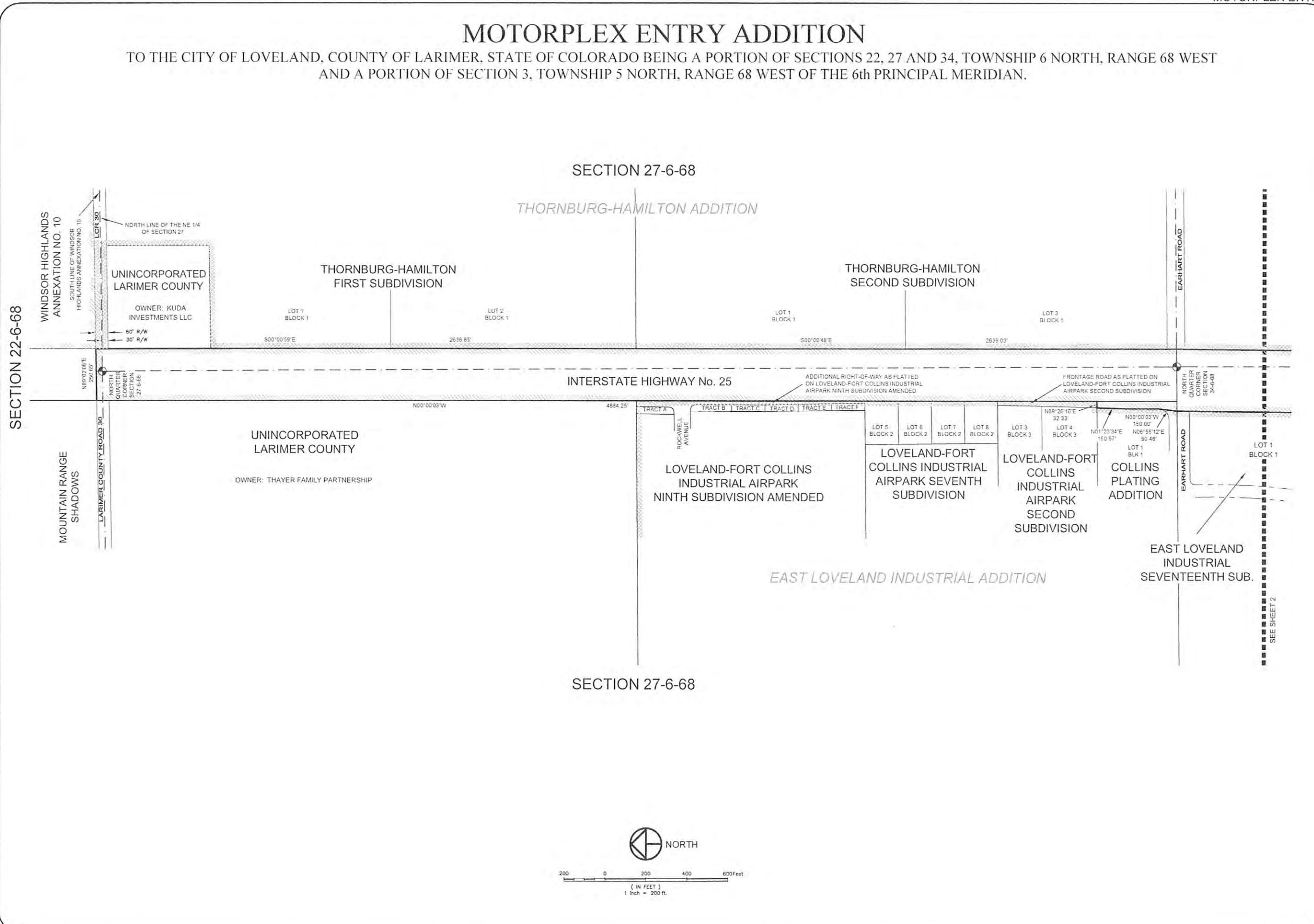
**MOTORPLEX ENTRY ADDITION**  
**TO THE CITY OF LOVELAND**  
**LARIMER COUNTY, COLORADO**

Sheet  
**2**  
 Of 3 Sheets



# MOTORPLEX ENTRY ADDITION

TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO BEING A PORTION OF SECTIONS 22, 27 AND 34, TOWNSHIP 6 NORTH, RANGE 68 WEST AND A PORTION OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN.



**NOTICE:**  
 According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years after the date of the certificate shown hereon.

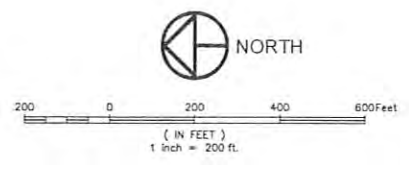
SECTION: 3, 22, 27 & 34  
 TOWNSHIP: 24 & 25 N  
 RANGE: 68 W of the 6th PM

**NORTHERN ENGINEERING**  
  
 2701 South Industrial Parkway, Suite 100  
 Fort Collins, Colorado, 80521

|              |          |              |              |
|--------------|----------|--------------|--------------|
| PROJECT:     | 750-066  | DATE:        | 9/12/10      |
| DESIGNED BY: |          | SCALE:       | 1"=200'      |
| DRAWN BY:    | L. Smith | REVIEWED BY: | C. Gilliland |

MOTORPLEX ENTRY ADDITION  
 TO THE CITY OF LOVELAND  
 LARIMER COUNTY, COLORADO

Sheet  
**3**  
 Of 3 Sheets



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**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 9

**MEETING DATE:** 4/19/2011

**TO:** City Council

**FROM:** Greg George, Development Services Director

**PRESENTER:** Brian Burson, Current Planning Division

**TITLE:**

1. A RESOLUTION CONCERNING THE ANNEXATION TO THE CITY OF LOVELAND, COLORADO, OF A CERTAIN AREA DESIGNATED AS TIMKA FIRST ADDITION MORE PARTICULARLY DESCRIBED HEREIN, AND SETTING FORTH FINDINGS OF FACT AND CONCLUSIONS BASED THEREON AS REQUIRED BY THE COLORADO CONSTITUTION AND BY STATE STATUTE;
2. AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF LOVELAND, COLORADO, TO BE KNOWN AND DESIGNATED AS "TIMKA FIRST ADDITION" TO THE CITY OF LOVELAND; and
3. AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR TIMKA FIRST ADDITION TO THE CITY OF LOVELAND.

**DESCRIPTION:**

A public hearing to consider:

1. A legislative action to adopt a resolution making findings of facts regarding certain statutory requirements for the proposed Timka First Addition;
2. A legislative action to adopt an ordinance on first reading annexing the Timka First Addition to the City of Loveland, subject to an annexation agreement; and
3. A quasi-judicial action to adopt an ordinance on first reading zoning the Timka First Addition as I-Developing Industrial District.

**BUDGET IMPACT:**

Yes     No

**SUMMARY:**

The application proposes to annex a 9.9 acre site located along the south side of 14th Street Southeast (Highway 402), approximately one-half mile east of South Boise Avenue. The property would be zoned I-Developing Industrial. The application includes a development

agreement to require development/redevelopment of the property to comply with the “campus site design provisions” established in the Loveland Comprehensive Plan for the Employment Center land uses designation.

The Planning Commission held a public hearing on January 24, 2011. Only one neighborhood property owner gave testimony. By unanimous vote, the Planning Commission recommends approval of the annexation and zoning, subject to the revised terms of annexation set forth in Section III of the April 19, 2011 staff memorandum (see Attachment D).

---

**LIST OF ATTACHMENTS:**

- A. Resolution concerning annexation of Timka First Addition, setting forth findings of fact and conclusions
- B. Ordinance approving the annexation of Timka First Addition into the City
- C. Ordinance approving a zoning of I-Developing Industrial District for the Timka First Addition
- D. Staff memorandum dated April 19, 2011, with exhibits

---

**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motions for City Council action, in the order provided:

1. Move to approve A RESOLUTION CONCERNING THE ANNEXATION TO THE CITY OF LOVELAND, COLORADO, OF A CERTAIN AREA DESIGNATED AS TIMKA FIRST ADDITION MORE PARTICULARLY DESCRIBED HEREIN, AND SETTING FORTH FINDINGS OF FACT AND CONCLUSIONS BASED THEREON AS REQUIRED BY THE COLORADO CONSTITUTION AND BY STATE STATUTE;
2. Move to make the findings set forth in Section VI of the January 24, 2011 Planning Commission staff report and approve on first reading AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF LOVELAND, COLORADO, TO BE KNOWN AND DESIGNATED AS TIMKA FIRST ADDITION TO THE CITY OF LOVELAND, subject to the terms of annexation set forth in Section III of the attached staff memorandum dated April 19, 2011.
3. Move to make the findings set forth in Section VI of the January 24, 2011 Planning Commission staff report and approve on first reading AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR TIMKA FIRST ADDITION TO THE CITY OF LOVELAND.

---

**REVIEWED BY CITY MANAGER:**

**RESOLUTION #R-25-2011****A RESOLUTION CONCERNING THE ANNEXATION TO THE CITY OF LOVELAND, COLORADO, OF A CERTAIN AREA DESIGNATED AS "TIMKA FIRST ADDITION" MORE PARTICULARLY DESCRIBED HEREIN, AND SETTING FORTH FINDINGS OF FACT AND CONCLUSIONS BASED THEREON AS REQUIRED BY THE COLORADO CONSTITUTION AND BY STATE STATUTE**

WHEREAS, on January 12, 2011, a Petition for Annexation was filed by persons comprising more than fifty percent (50%) of the landowners in the area described on **Exhibit A**, attached hereto and incorporated herein, who own more than fifty percent (50%) of said area, excluding public streets and alleys; and

WHEREAS, said petition requests the City of Loveland to annex said area to the City; and

WHEREAS, pursuant to Resolution No. **R-16-2011**, the City Council found that said petition substantially complies with and meets the requirements of Section 30(1)(b) of Article II of the Colorado Constitution and of §31-12-107(1), C.R.S.; and

WHEREAS, on April 19, 2011, commencing at 6:30 p.m., pursuant to the notice required by §31-12-108, C.R.S., the City Council held a public hearing to determine whether the area proposed to be annexed complies with the applicable requirements Section 30 of Article II of the Colorado Constitution and of §§31-12-104 and 31-12-105, C.R.S., and is eligible for annexation; whether or not an election is required under Section 30(1)(a) of Article II of the Colorado



Constitution and of §31-12-107(2), C.R.S.; and whether or not additional terms and conditions are to be imposed; now, therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND,  
COLORADO THAT:**

1. The City Council of the City of Loveland makes the following findings of fact:
  - A. The subject Petition for Annexation was signed by persons comprising more than fifty percent (50%) of the landowners in the area proposed to be annexed, who own more than fifty percent (50%) of said area, excluding public streets and alleys.
  - B. Pursuant to Resolution No. **R-16-2011**, the City Council found that said petition substantially complies with and meets the requirements of Section 30(1)(b) of Article II of the Colorado Constitution §31-12-107(1), C.R.S.
  - C. Pursuant to Resolution No. **R-16-2011**, a public hearing was held on March 15, 2011, commencing at the hour of 6:30 p.m., to determine whether the proposed annexation complies with the applicable requirements of Section 30 of Article II of the Colorado Constitution §§31-12-104 and 31-12-105, C.R.S.; whether an election is required under Section 30(1)(a) of Article II of the Colorado Constitution §31-12-107(2), C.R.S.; and whether additional terms and conditions are to be imposed.
  - D. Notice of said public hearing was published in The Loveland Reporter Herald on March 19 and 26 and April 2 and 9, 2011, in the manner prescribed by §31-12-108(2), C.R.S. The Loveland Reporter Herald is a newspaper of general circulation in the area proposed to be annexed. Copies of the published notices, together with a copy of said resolution and a copy of said petition, were sent by registered mail by the City Clerk to the Board of County Commissioners of Larimer County and to the Larimer County Attorney and to all special districts

and school districts having territory within the area proposed to be annexed at least 25 days prior to the date fixed for said hearing.

E. The land to be annexed lies entirely within the City of Loveland Growth Management Area, as depicted in the 2005 Comprehensive Plan, as amended. Therefore, pursuant to Section 3.3.1 of the Intergovernmental Agreement with Larimer County, the annexation impact report requirement of §31-12-108.5, C.R.S. has been waived.

F. The perimeter of the area proposed to be annexed within Serial Parcel 1 is 1966.50 linear feet, of which 331.17 linear feet are contiguous to the City of Loveland. Not less than one-sixth of the perimeter of said area is contiguous with the City of Loveland. The perimeter of the area proposed to be annexed within Serial Parcel 2 is 1966.15 linear feet, of which 331.00 linear feet are contiguous to the City of Loveland. Not less than one-sixth of the perimeter of said area is contiguous with the City of Loveland.

G. A community of interest exists between the area proposed to be annexed and the City of Loveland.

H. The area proposed to be annexed is urban or will be urbanized in the near future, and said area is integrated with or is capable of being integrated with the City of Loveland.

I. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, is divided into separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.

J. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising 20

acres or more and which, together with the buildings and improvements situated thereon, has a valuation for assessment in excess of \$200,000 for ad valorem tax purposes for the year next preceding the annexation, is included within the area proposed to be annexed without the written consent of the landowner or landowners.

K. No annexation proceedings have been commenced for the annexation to another municipality of part or all of the area proposed to be annexed.

L. The annexation of the area proposed to be annexed will not result in the detachment of the area from any school district and the attachment of the same to another school district.

M. The annexation of the area proposed to be annexed would not have the effect of extending the boundary of the City of Loveland more than three miles in any direction from any point of such boundary in any one year.

N. In establishing the boundaries of the area proposed to be annexed, the entire width of any platted street or alley to be annexed is included within said area.

O. The annexation of the area proposed to be annexed will not deny reasonable access to any landowner, owner of an easement or owner of a franchise adjoining a platted street or alley which is included in said area but which is not bounded on both sides by the City of Loveland.

2. The City Council reaches the following conclusions based on the above findings of fact:

A. The proposed annexation of the area described on **Exhibit A** complies with and meets the requirements of the applicable parts of Section 30 of Article II of the Colorado Constitution §§31-12-104 and 31-12-105, C.R.S.

B. No election is required under Section 30(1)(a) of Article II of the Colorado Constitution §31-12-107(2), C.R.S.

C. No additional terms and conditions are to be imposed.

3. This Resolution shall become effective on the date and at the time of its adoption.

APPROVED the \_\_\_\_ day of \_\_\_\_\_, 2011.

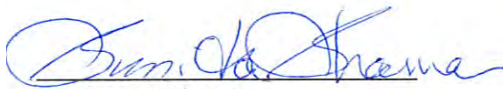
ATTEST:

CITY OF LOVELAND, COLORADO:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney

## **EXHIBIT A**

### **Serial Parcel 1**

Legal description of a parcel of land being a portion of the Northwest Quarter of the Northeast Quarter of Section 30, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, being more particularly described as follows:

Beginning at the North Quarter corner of said Section 30, thence along the North line of the Northeast Quarter of said Section 30 South 89°48'00" East 993.54 feet; thence departing said North line South 00°02'31" East 30.11 feet to the TRUE POINT OF BEGINNING; thence South 89°50'32" East 331.17 feet to a point on the East line of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said East line South 00°01'35" East 652.39 feet; thence departing said East line North 89°45'46" West 331.00 feet to a point on the West line of the East Half of the East Half of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said West line North 00°02'31" West 651.93 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 4.957 acres, more or less and is subject to all easements, agreements and rights-of-way of record.

### **Serial Parcel 2**

Legal description of a parcel of land being a portion of the Northwest Quarter of the Northeast Quarter of Section 30, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, being more particularly described as follows:

Beginning at the North Quarter corner of said Section 30, thence along the North line of the Northeast Quarter of said Section 30 South 89°48'00" East 993.54 feet; thence departing said North line South 00°02'31" East 30.11 feet; thence South 89°50'32" East 331.17 feet to a point on the East line of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said East line South 00°01'35" East 652.39 feet to the TRUE POINT OF BEGINNING; thence continuing along said East line South 00°01'35" East 652.39 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said South line North 89°41'00" West 330.83 feet to a point on the West line of the East Half of the East Half of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said West line North 00°02'31" West 651.93 feet; thence departing said West line South 89°45'46" East 331.00 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 4.954 acres, more or less and is subject to all easements, agreements and rights-of-way of record.



**FIRST READING: April 19, 2011**

**SECOND READING: \_\_\_\_\_**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF LOVELAND, COLORADO, TO BE KNOWN AND DESIGNATED AS "TIMKA FIRST ADDITION" TO THE CITY OF LOVELAND**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That a Petition for Annexation, together with four (4) copies of the map of said territory as required by law, was filed with the City on January 12, 2011, by more than fifty percent (50%) of the owners who own more than fifty percent (50%) of the area of the territory hereinafter described, exclusive of public streets and alleys. The Council, by resolution at its regular meeting on March 15, 2011, found and determined that the proposed annexation complies with and meets the requirements of the applicable parts of Section 30 of Article II of the Colorado Constitution §§31-12-104 and 31-12-105, C.R.S. and further determined that an election was not required under Section 30(1)(a) of Article II of the Colorado Constitution §31-12-107(2), C.R.S. and further found that no additional terms and conditions were to be imposed upon said annexation except those set out on said Petition.

**Section 2.** That the annexation to the City of Loveland of the following described property to be designated as "**TIMKA FIRST ADDITION**" to the City of Loveland, Larimer County, Colorado is hereby approved:

**Serial Parcel 1**

Legal description of a parcel of land being a portion of the Northwest Quarter of the Northeast Quarter of Section 30, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, being more particularly described as follows:

Beginning at the North Quarter corner of said Section 30, thence along the North line of the Northeast Quarter of said Section 30 South 89°48'00" East 993.54 feet; thence departing said North line South 00°02'31" East 30.11 feet to the TRUE POINT OF BEGINNING; thence South 89°50'32" East 331.17 feet to a point on the East line of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said East line South 00°01'35" East 652.39 feet; thence departing said East line North 89°45'46" West 331.00 feet to a point on the West line of the East Half of the East Half of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said West line North 00°02'31" West 651.93 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 4.957 acres, more or less and is subject to all easements, agreements and rights-of-way of record.

## Serial Parcel 2

Legal description of a parcel of land being a portion of the Northwest Quarter of the Northeast Quarter of Section 30, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, being more particularly described as follows:

Beginning at the North Quarter corner of said Section 30, thence along the North line of the Northeast Quarter of said Section 30 South 89°48'00" East 993.54 feet; thence departing said North line South 00°02'31" East 30.11 feet; thence South 89°50'32" East 331.17 feet to a point on the East line of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said East line South 00°01'35" East 652.39 feet to the TRUE POINT OF BEGINNING; thence continuing along said East line South 00°01'35" East 652.39 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said South line North 89°41'00" West 330.83 feet to a point on the West line of the East Half of the East Half of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said West line North 00°02'31" West 651.93 feet; thence departing said West line South 89°45'46" East 331.00 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 4.954 acres, more or less and is subject to all easements, agreements and rights-of-way of record.

**Section 3.** That the annexation of said territory is subject to the conditions set forth in Paragraph (14) of the Petition for Annexation of said territory filed with the City of Loveland.

**Section 4.** That the annexation of said territory is subject to the conditions set forth in the annexation agreement filed with the City of Loveland.

**Section 5.** That the City Council hereby consents to the inclusion of the annexed territory in the Municipal Subdistrict of the Northern Colorado Water Conservancy District pursuant to Section 37-45-136 (3.6), C.R.S.

**Section 6.** Should any court of competent jurisdiction determine that any portion of the land annexed in this ordinance was unlawfully annexed, then it is the intent of the City Council that the remaining land lawfully annexed to the City of Loveland should be so annexed and the City Council affirmatively states that it would have annexed the remaining land even though the court declares the annexation of other portions of the land to have been unlawfully annexed.

**Section 7.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

**Section 8.** That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

CITY OF LOVELAND, COLORADO:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney

**FIRST READING: April 19, 2011**

**SECOND READING: \_\_\_\_\_**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR "TIMKA FIRST ADDITION" TO THE CITY OF LOVELAND**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That Section 18.04.040 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

That the following described property recently annexed to the City of Loveland and within the area known as "TIMKA FIRST ADDITION" to the City of Loveland, Colorado, shall be included within the boundaries of the district designated as follows:

**I – DEVELOPING INDUSTRIAL DISTRICT:**

Legal description of a parcel of land being a portion of the Northwest Quarter of the Northeast Quarter of Section 30, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, being more particularly described as follows:

Beginning at the North Quarter corner of said Section 30, thence along the North line of the Northeast Quarter of said Section 30 South 89°48'00" East 993.54 feet; thence departing said North line South 00°02'31" East 30.11 feet to the TRUE POINT OF BEGINNING; thence South 89°50'32" East 331.17 feet to a point on the East line of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said East line South 00°01'35" East 1304.78 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said South line North 89°41'00" West 330.83 feet to a point on the West line of the East Half of the East Half of the Northwest Quarter of the Northeast Quarter of said Section 30; thence along said West line North 00°02'31" West 1303.87 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 9.911 acres, more or less and is subject to all easements, agreements and rights-of-way of record.

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

**Section 3.** That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

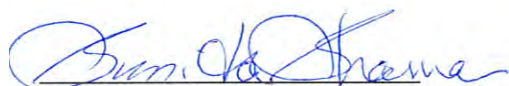
ATTEST:

CITY OF LOVELAND, COLORADO:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney





**DEVELOPMENT SERVICES  
ADMINISTRATION**  
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## MEMORANDUM

**TO:** City Council

**FROM:** Brian Burson, Current Planning Division

**DATE:** April 19, 2011

**SUBJECT:** Timka First Addition

### **I. EXHIBITS**

- A. Vicinity map.
- B. January 24, 2011 Planning Commission staff report, with Attachments.
- C. Approved January 24, 2011 Planning Commission minutes.

### **II. EXECUTIVE SUMMARY**

#### **A. Project Description**

The application proposes to annex 9.91 acres of land into the City and zone it as I-Developing Industrial District, subject to specific criteria and standards for development. The property is located along the south side of 14th Street Southeast (Highway 402) approximately 2,500 feet east of South Boise Avenue, and is currently zoned C-Commercial in Larimer County. The property has a mixture of existing uses that could best be described as light industrial. If approved, this application would allow interim continuation of the existing uses of the property, as well as future development/redevelopment of most uses permitted in the I-Developing Industrial zone district and most of the uses permitted in the E-Employment District. Certain uses that would be inconsistent with the character for Employment Center land uses will be prohibited.

The technique of serial annexation will be used to achieve the required annexation contiguity for this site. This technique is allowed by state statutes. Contiguity for the first serial is achieved from the adjacent 14th Street Southeast which was annexed as part of the Bentley Third Addition. The City annexed the Bentley Addition in order to provide the opportunity for subsequent annexations and

development of quality employment land uses in this major corridor, subject to City standards and codes rather than Larimer County codes.

The 2005 City Comprehensive Plan recommends that much of the Highway 402 corridor, including this property, be developed for E-Employment Center land uses. The Plan recognizes that a zoning of E-Employment, I-Developing Industrial, B-Developing Business, or Planned Unit Development are all appropriate for fulfilling this vision. The application proposes a zoning of I-Developing Industrial, with a set of site-specific Development Standards to augment the normal City codes and standards for the site. All subsequent development/redevelopment would be governed by all requirements of the City of Loveland Municipal Code, but augmented by these site-specific Development Standards. These standards will be an important factor to assure that future development/redevelopment on this site fulfills the vision for Employment Center in this corridor. Staff believes that the combination of normal City codes and standards, along with these special Development Standards, will result in development/redevelopment that will be consistent with the vision for Employment Center land uses, as described in the City of Loveland 2005 Comprehensive Plan. These criteria and standards would be incorporated into an annexation agreement, along with the other terms of annexation from other City departments and divisions.

(For further analysis, please see the January 24, 2011 Planning Commission staff report included with this staff memorandum as **Exhibit B.**)

## **B. Key Issues**

Staff review has given careful attention to each aspect of the proposed development that is governed by City codes, standards and policies; as well as the provisions of the 2005 Comprehensive Plan, as amended. City staff has not identified any key issues with this request that have not been addressed through the revised application and the recommended terms of annexation below.

## **C. Planning Commission Recommendation**

The Planning Commission held a public hearing on the application on January 24, 2011. Only one neighborhood property owner gave testimony. This was limited to whether future development of Timka First Addition would prompt the need for using an existing access easement on his property as a shared access for both properties. The Planning Commission discussed questions and concerns such as:

- appropriate zoning of the site;
- use of the serial annexation technique;
- expansion of existing uses and buildings;
- types of existing uses and their non-conforming status; and
- changes in property taxation resulting from annexation and industrial zoning

After receiving all testimony and information from the Applicant, City staff and the general public, the Planning Commission recommended, by unanimous vote, to recommend approval of the annexation and zoning, subject to the revised terms of annexation set forth below in **Section III** of this staff memorandum. (For further information, please see the approved January 24, 2011 Planning Commission minutes included with this staff memorandum as **Exhibit C.**)

#### **D. Subsequent to Planning Commission**

Following the Planning Commission hearing, no additional information has been submitted to amend the application, and staff has received no further inquiries or concerns from the neighborhood or general public.

### **III. RECOMMENDED TERMS OF ANNEXATION**

Planning Commission and City staff recommend the following revised terms of annexation:

1. Upon annexation of the property, all development and redevelopment of the property shall be governed by the Development Standards in Attachment #2, as well as all applicable codes, standards and policies of the City. These Development Standards shall be incorporated into the Annexation Agreement between the Owner and the City.

2. When reviewing and acting upon any application for a use permitted by special review, the City shall be authorized to consider the goals, objectives and criteria for the E-Employment Center land use category, as set forth in the 2005 Comprehensive Plan, as amended. Applications that do not meet the intent of the goals, objectives and criteria for the E-Employment Center land use category, as set forth in the 2005 Comprehensive Plan, as amended, may be disapproved by the City.

3. Upon annexation and zoning into the City, and notwithstanding the provisions of Sections 18.36.010 and 18.36.020 of the City of Loveland Municipal Code, the following uses shall not be permitted on this site:

- a. Crematorium
- b. Heavy industrial
- c. Truck stop
- d. Junkyard
- e. Packing facility
- f. Jails, detention and penal center
- g. Outdoor storage as a principle use
- h. Sexually Oriented Businesses
- i. Recycling collection facility attended
- j. Recycling collection facility unattended

4. Upon annexation and zoning into the City, and notwithstanding the provisions of Sections 18.36.010 and 18.36.020 of the City of Loveland Municipal Code, all uses normally permitted by right and all uses normally permitted by special review in the E-Employment District shall also be permitted on this property as specified in Chapter 18.30 of the City of Loveland Municipal Code. In cases where a use is allowed in the I zone by right but normally requires a special review in the E zone, the uses allowed by right in the I zone shall govern.

#### **Transportation Engineering:**

5. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS), the 2030 Transportation Plan, and any updates to either in effect at the

time of a building permit, and/or a site-specific development application. Any and all variances from these standards and plans require specific written approval by the City Engineer.

6. Notwithstanding any conceptual information presented in the Annexation/Zoning submittal; street layout, street alignments, access locations, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for a building permit, and/or a site-specific development application.

7. The owner shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, this addition that are shown on the adopted Transportation Plan prior to approval of a building permit and/or a site specific development application within this addition. Furthermore, the owner shall dedicate additional right-of-way for SH 402 on any future platting application for the property in order to achieve a 70-foot total half right-of-way on SH 402 adjacent to the property.

8. The developer agrees to acquire, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of a building permit, and/or a site specific development application within this addition, the developer shall submit documentation satisfactory to the City, establishing the Developer's unrestricted ability to acquire sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.

9. The ultimate roadway improvements, including sidewalk, adjacent to the property for SH 402 shall be designed and constructed by the developer, unless designed and constructed by others. A cash-in-lieu payment may be accepted for all or part of the improvements, if approved in writing by the City Engineer. The timing and detailed scope of these improvements will be determined through review and approval of the building permit application and/or a site-specific development application.

10. Any future proposed development within the addition shall submit a Traffic Impact Study and demonstrate compliance with current City Standards at the time of development.

11. Any future proposed development within the addition shall obtain written concurrence from CDOT for access to SH 402.

**Water/Wastewater:**

12. At the time of Development, the Developer shall, provide the City a Water and Wastewater Impact Design Analysis Report for the Development.

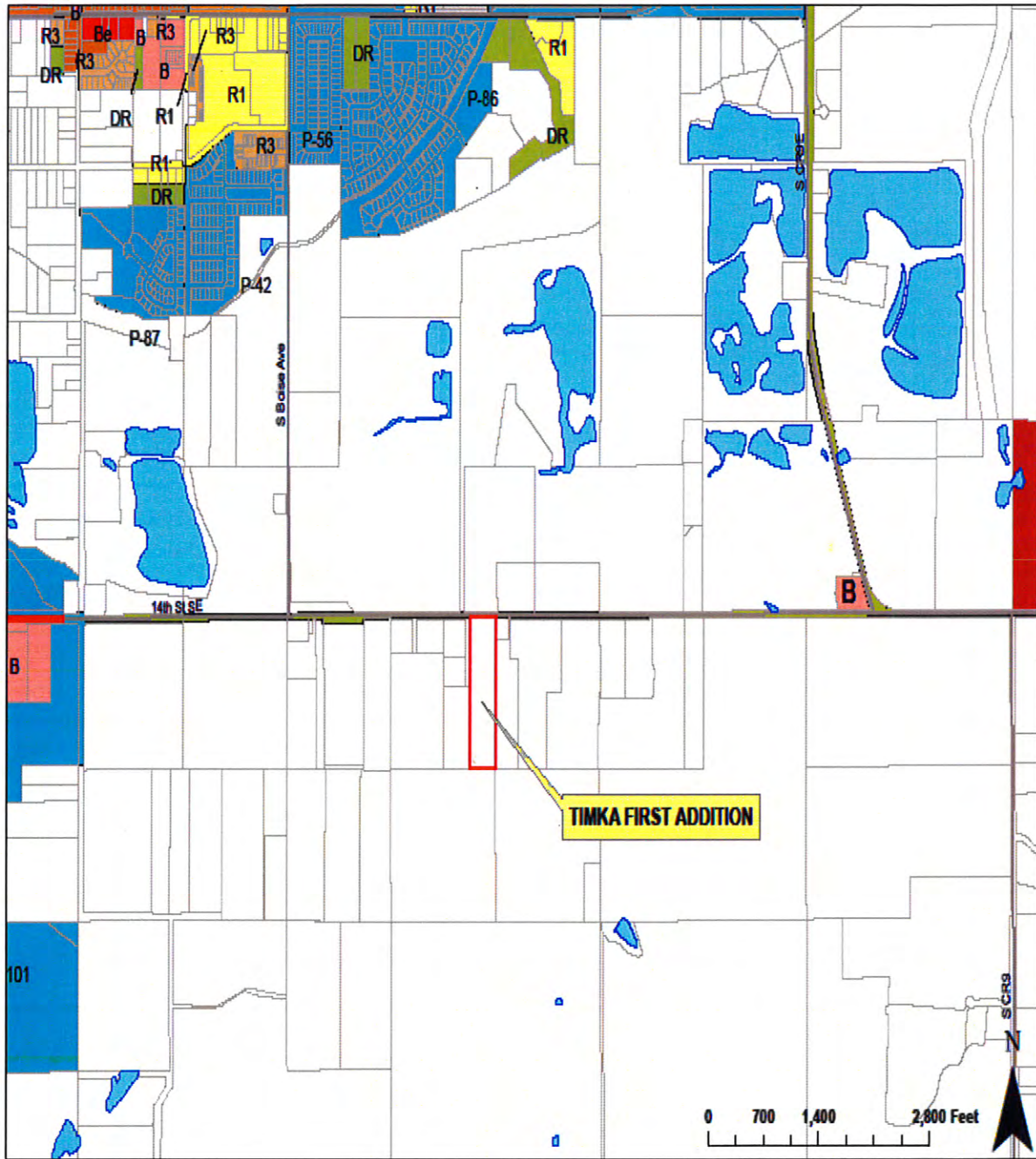
**Power:**

13. All plats of this property shall include the following note:

"When the property being annexed into the City of Loveland is currently located within the REA certified territory, this property is subject to a five percent (5%) surcharge on electrical energy as defined in 40-9.5-204, CRS, and the City of Loveland Municipal Code 13.12.180. This surcharge applies to any subsequent subdivisions of property annexed after January 31, 1987 within the REA certified service territory. A surcharge of 5% will be added to all bills for the sale of electric power to



additional services which came into the existence after January 31, 1987, within the territory herein annexed which surcharge will expire ten years after effective date of this annexation."



***VICINITY MAP  
TIMKA FIRST ADDITION***



**DEVELOPMENT SERVICES**  
**Current Planning**

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**Planning Commission Staff Report**  
**January 24, 2011**

**Agenda #:** Regular - Item #1  
**Title:** Timka First Addition  
**Applicant:** Timothy J. Pivonka  
**Request:** annexation and zoning  
**Legal Description:**  
**Location:** along the south side of 14th St SE (Hwy 402) approximately 2500 lf east of the intersection of 14th Street SE and S. Boise Avenue  
**Existing Zoning:** C-Commercial (LARCO)  
**Staff Planner:** Brian Burson

**Summary of Analysis**

This is a public hearing to consider an annexation and zoning for 9.9 acres. Planning Commission action on this application is both legislative and quasi-judicial. Planning Commission action is a recommendation to the City Council.

Staff believes that all key issues have been resolved, based on City codes and standards, and the recommended terms of annexation. No opposition has been expressed by the neighborhood or general public.

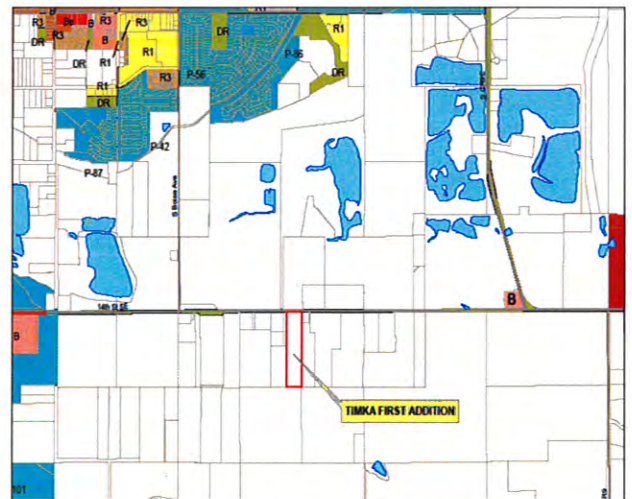
**Staff Recommendation**

**RECOMMENDATION OF APPROVAL** of the Timka Addition, with a zoning of I-Developing Industrial District, subject to the Conditions of Approval listed in Section VIII of the January 24, 2011 staff report, and subject to additional evidence presented at the public hearing.

**Recommended Motion**

*“Move to make the findings listed in Section VI of the staff report dated January 24, 2011, and recommend that City Council approve the Timka First Addition to the City of Loveland and zone the Timka First Addition as I-Developing Industrial, subject to the terms of annexation listed in Section VII of said report, as amended on the record”*

**Vicinity Map**



**EXHIBIT B**



## I. PROJECT SUMMARY

### A. Process

This is a public hearing to consider an annexation and initial City zoning. It is a serial annexation, achieving contiguity from the adjacent 14th Street Southeast. Serial annexations are expressly allowed under the provisions of the state statutes, provided each serial meets the contiguity requirements for annexation.

Planning Commission's role will be to make a recommendation to the City Council for both the annexation and zoning. Since the action is only a recommendation, no appeal of the Planning Commission's action is possible. Under applicable state statutes, municipalities are under no obligation to annex property at any time; therefore, annexation is a legislative matter for the Planning Commission. However, when a municipality has adopted a comprehensive master plan, the city is generally obligated to zone property in a manner that is reasonably consistent with that comprehensive plan. Therefore, consideration of the proposed zoning is a quasi-judicial matter for the Planning Commission. The application is currently scheduled for City Council hearing on March 15, 2011.

### B. General Description

The application proposes to annex the property into the City of Loveland and zone it as I-Developing Industrial District with specific criteria and standards for development and redevelopment to be incorporated into an annexation agreement. Contiguity for the first serial is achieved from the adjacent 14th Street Southeast which was annexed as part of the Bentley Third Addition, which was also a serial annexation.

Much of the Hwy 402 corridor, including this property, is recommended for development of E-Employment Center land uses. The City annexed the Bentley Addition in order to provide the opportunity for subsequent annexations and development of quality employment land uses in this major corridor. If approved, the application would allow interim continuation of the existing uses of the property, as well as future development/redevelopment of other uses, as allowed in the I zone district. All subsequent development/redevelopment would be governed by the requirements of the City of Loveland Municipal Code, but augmented by the site-specific Development Standards proposed by the Applicant. Staff believes that this combination will assure that all development/redevelopment will be consistent with the general criteria for Employment Center land uses, as described in the City of Loveland 2005 Comprehensive Plan.

### C. Neighborhood Response

A neighborhood meeting was held on October 21, 2010 in the City Council hearing room. Only the owner of the adjacent property to the east attended the meeting, along with City staff and the applicant. Questions from the attendee included

- type of wastewater system to be used for future development



- type of water supply for future development
- type and location of access from Hwy 402, and the street improvements that might be required for this future access
- setback and height of future buildings.

Generally, there was no opposition to the project voiced at the neighborhood meeting. Since the neighborhood meeting, staff has received no other inquiries or concerns from the neighborhood or general public concerning the application.

D. Key Issues

Staff review has given careful attention to each aspect of the proposed development that is governed by City codes and standards as well as the provisions of the 2005 Comprehensive Plan, as amended. City staff has not identified any key issues with this request that have not been addressed through the revised application and the recommended terms of annexation below.

**II. ATTACHMENTS:**

1. Vicinity Map
2. Applicant's proposed Development Standards for development/redevelopment of the site
3. I-Developing Industrial Zone District Regulations
4. E-Employment Zone District Regulations
5. Comp Plan policy summary for the E-Employment Center land use
6. Timka First Addition - annexation map
7. Timka First Addition - rezoning map
8. Timka First Addition - existing conditions/nonconforming uses map

**III. SITE DATA**

|  |   |
|--|---|
| ACREAGE OF SITE - GROSS .....                  | 9.911 ACRES                                 |
| ACREAGE OF SITE-NET .....                      | 9.911 AC                                    |
| ACREAGE OF RIGHT-OF-WAY .....                  | 0.00 AC                                     |
| EXISTING ZONING.....                           | C- COMMERCIAL (LARCO)                       |
| PROPOSED ZONING .....                          | I-DEVELOPING INDUSTRIAL                     |
| MASTER PLAN DESIGNATION.....                   | E-EMPLOYMENT CENTER                         |
| EXISTING USE.....                              | MIXED LIGHT INDUSTRIAL                      |
| PROPOSED USE .....                             | MIXED LIGHT INDUSTRIAL &<br>.....COMMERCIAL |
| ACREAGE OF OPEN SPACE PROPOSED.....            | 20%   |
| EXISTING ADJACENT ZONING AND USE - NORTH ..... | FA (LARCO); RURAL RES/AG                    |
| EXISTING ADJACENT ZONING AND USE - EAST .....  | FA(LARCO); RURAL RES/AG                     |
| EXISTING ADJACENT ZONING AND USE - SOUTH.....  | FA (LARCO) RURAL RES/AG                     |

EXISTING ADJACENT ZONING AND USE - WEST .....C-COMMERCIAL (LARCO)/MIXED LIGHT INDUSTRIAL & COMMERCIAL

UTILITY SERVICE PROVIDER - SEWER.....CITY OF LOVELAND

UTILITY SERVICE PROVIDER - ELECTRIC .....CITY OF LOVELAND

UTILITY SERVICE PROVIDER - WATER.....LITTLE THOMPSON WATER DISTRICT

WATER RIGHTS PAID.....NA

**IV. BACKGROUND**

The site is currently zoned in Larimer County as C-Commercial, and is currently used for a number of limited light/medium industrial and commercial uses on the property. Staff believes these existing uses will be consistent with the City's I zone district.

**V. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION**

- A. **Notification:** An affidavit was received from Landmark Engineering certifying that on January 7, 2011 written notice was mailed to all record owners of surrounding property within 1,000 feet of the property; and a notice was posted in a prominent location on the perimeter of the project site. In addition, a notice was published in the Reporter Herald on January 8, 2011. All notices stated that the Planning Commission would hold a public hearing on January 24, 2011.
- B. **Neighborhood Response:** A neighborhood meeting was held on October 21, 2010 in the City Council hearing room. Only the owner of the adjacent property to the east attended the meeting, along with City staff and the applicant. See information in Section I.C. above for concerns voiced at the meeting. Since the neighborhood meeting, staff has received no other inquiries or concerns from the neighborhood or general public concerning the application.

**VI. FINDINGS AND ANALYSIS**

**A. Annexation Policies and Eligibility**

- 1. **Loveland Comprehensive Master Plan, Section 4.2**
  - a. **Annexation ANX2.A:** *Whether the annexation encourages a compact pattern of urban development.*
  - b. **Annexation ANX2.B:** *Whether the annexation would result in the creation of an enclave*
  - c. **Annexation ANX5.B:** *Whether the applicant has demonstrated that reasonable efforts have been made to assemble adjoining land parcels to allow for the preparation of a master plan for a larger area, rather than submit separate individual proposals.*
  - d. **Annexation ANX1.C and 6:** *Whether the annexation encourages infill development and ensures that land is immediately contiguous to other land in the City that is already receiving City services, discouraging leapfrog and scattered site development.*

- e. **Land Use Plan LU5:** *Whether development of multi-use, high-quality employment districts, where campus-type settings are appropriate, will be located along appropriate transportation corridors such as I-25, US 34 and the south side of SH 402.*
- f. **Growth Management GM7:** *Whether the land proposed for annexation is within the City of Loveland Growth Management Area.*
- g. **Regional Cooperation IGA3:** *Whether urban development is concentrated in areas designated for such development.*

**Current Planning:** The site is within the Growth Management Area, as described and depicted in Sections 4.3 and 4.7 of the 2005 Comprehensive Plan, as amended. However, the property is in an area which is not covered by the related Inter-governmental Agreement between the City and Larimer County. This would allow the Applicant to pursue land use approvals for the proposed uses through Larimer County. However, since the City is the best source of sewer and power for the desired development, the Applicant has chosen to approach the City with the requested annexation and zoning.

Much of the Hwy 402 corridor, including this property, is recommended for development of employment land uses. Over time, the City will be working to achieve employment, along with supporting commercial and housing for this corridor. The combined recommended uses and implementation of the pertinent City standards will achieve the desired compact urban development pattern and the concentration desired and appropriate in the corridor.

This is one of the first properties in this stretch of the corridor to annex into the City; therefore no enclaves will be created by the annexation. The site is a single property, consisting of 9.911 acres, and there has been no attempt to assemble other parcels into a larger combined annexation. However, this property could form a "contiguity anchor" for future annexations of other nearby properties. Annexation of this site plays no role in encouraging infill development. Contiguity to City urban services will not come until main utility lines are installed along this corridor by the City or other developers. Installation of such utility mains are required for development of properties further east in the corridor, such as Bentley Addition, Olson Farms Addition, and Ehrlich Addition. The site is currently without contiguity to existing or imminent City urban service mains. Approvals of annexation and zoning of these other sites to the east will obligate the City to play a major role in installation of utility mains along this corridor when they are ripe for development.

Development in the corridor will be dominated by employment uses, especially along the south side of Hwy 402, and the quality of such uses is essential along this major entryway from I-25. The Comprehensive Plan recognizes the possible choices if E, I, PUD and B zone districts for properties along this corridor. In order to fulfill the vision of the Employment Center areas under I, PUD or B zoning, additional criteria and limitations will be required at the time of annexation and zoning. This application includes such additional criteria to achieve the 60/40 ratio for uses, and the campus-like setting with consistent themes for architecture, landscape, open space, and view corridor protection.

2. **Loveland Municipal Code, Section 17.04.020:** *The annexation complies with the laws of the State of Colorado regarding annexation; and the property proposed for annexation is otherwise eligible to be annexed because there is at least one-sixth contiguity between the City and the area seeking annexation and there is no evidence that two or more of the following conditions have been met:*
- a. *Less than 50% of the adult residents of the area proposed to be annexed use some of the recreation, civic, social, religious, industrial or commercial facilities of the municipality and less than 25% of its adult residents are employed in the annexing municipality.*
  - b. *One-half or more of the land proposed to be annexed is agricultural, and the landowners of such agricultural land have expressed an intention under oath to devote the land to agricultural use for at least five years.*
  - c. *It is not physically practical to extend urban service which the municipality provides normally.*
  - d. *The area proposed to be annexed is urban or will be urbanized in the near future and said area is able to be integrated with the City of Loveland.*
  - e. *No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, is divided into separate parts without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road or other public way.*
  - f. *No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising 20 acres or more and which, together with the buildings and improvements situated thereon has a valuation for assessment in excess of \$2000,000 for ad valorem tax purposes for the year next preceding the annexation, is included within the area proposed for annexation without the written consent of the landowner or landowners.*
  - g. *No annexation proceedings have been commenced for the annexation to another municipality of part or all of the area to be annexed.*
  - h. *The annexation of the area proposed to be annexed will not result in the detachment of the area from any school district and the attachment of the same area to another school district.*
  - i. *The annexation of the area proposed to be annexed would not have the effect of extending the boundary of the City of Loveland more than three miles in any direction from any point of such boundary in any one year.*
  - j. *The annexation of the area proposed for annexation will not deny reasonable access to any landowner, owner of an easement or owner of a franchise adjoining a platted street or alley which is included in said area but which is not bounded on both sides by the City of Loveland.*

**Current Planning Division:** The annexation is a serial annexation, tied to the adjacent right-of-way for 14th Street Southeast (Hwy 402) which was annexed as part of Bentley Addition. The total perimeter of Serial 1 is 1966.50 feet. A total of 331.17 feet of this perimeter is contiguous with the existing Hwy 402 right-of-way. The total perimeter of Serial 2 is 1966.15 feet. A total of 331.00 feet of this perimeter is contiguous with Serial 1. This meets the contiguity



requirements for a serial annexation. Once urban level services are available to the site, it is expected to be urbanized for the uses allowed in the I-Developing Industrial zone.

There is no indication of how many of the residents of the property use some of the recreation, civic, social, religious, industrial or commercial facilities of the City of Loveland, or if any adult residents are employed in the City. The site is not agricultural, nor is there any indication from the owners that they intend to use it for agricultural uses in the next 5 years. The site is currently used for a single-family residence, as well as a mix of light/medium industrial and commercial land uses. All providers of urban level services have reviewed the application, and there is no indication that it is not practical to provide urban level services to the site in the future.

The annexation application and petition have been signed by the owner. There is no indication that the land is being considered for annexation by any other jurisdiction. Annexation will not result in a change to the boundaries of any school district. Since the existing City limits are adjacent to the property, it will not extend the municipal boundary of Loveland by more than 3 miles in any direction. Annexation will not affect the access of any owner to any public street or alley.

**B. City Utilities and Services**

**1. Loveland Comprehensive Master Plan, Section 4.2**

**a. Annexation ANXI.B:** *Whether the annexation minimizes the short and long term costs of providing community facilities and services for the benefit of the annexed area.*

**b. Commercial and Industrial Land Use CLU1 and ILU2:** *Whether the commercial or industrial development is located where proper sizing of facilities such as water, sewer, electric, communications and transportation has occurred or can be properly planned and implemented.*

**2. Loveland Municipal Code**

**a. Section 17.04.040:**

**(i)** *Whether certain public facilities and/or community services are necessary and may be required as a part of the development of any territory annexed to the City in order that the public needs may be served by such facilities and services. Such facilities include, but are not limited to, parks and recreation areas, schools, police and fire station sites, and electric, water, wastewater and storm drainage facilities. Such services include, but are not limited to, fire and police protection, provision of water, and wastewater services.*

**(ii)** *Whether the annexation and development pursuant to the proposed zoning will create any additional cost or burden on the existing residents of the City to provide such facilities and services in the area proposed for annexation.*

**(iii)** *The annexation complies with the water rights requirements set forth in Title 19 of the Loveland Municipal Code.*

**Water/Wastewater** - The subject annexation is situated within the boundaries of, and accommodated by, the City's water master plan. It is also within the City's current service area for water. Currently the existing development is served water from the Little Thompson Water

District.

The subject annexation is situated within the boundaries of and accommodated by the City's wastewater master plans. It is also within the City's current service area for wastewater. The nearest public wastewater main is located at the intersection of CR 11H (Boise Ave) and Highway 402.

The proposed annexation and zoning is consistent with the Department's Wastewater master plan and is consistent with the 2005 Comprehensive Master Plan.

**Power** - The proposed development currently lies in the certified service territory of Poudre Valley REA. Upon completion of successful annexation, existing and future development of the proposed annexation will be serviced by the City of Loveland. When the property being annexed into the City of Loveland is currently located within the REA certified territory, this property is subject to a five percent (5%) surcharge on electrical energy as defined in 40-9.5-204, CRS, and the City of Loveland Municipal Code 13.12.180. This surcharge will expire ten years after effective date of the annexation.

Three-phase underground power is available in a vault/switchgear located on the North-west corner of Highway 402 and S. Boise Ave. Conduits have been stubbed out to the East of this vault approx. 900feet on the North side of Highway 402. Power will be extended onto the site from these conduits at the Developer's expense per City of Loveland Municipal Codes.

The existing uses, as well as any future development requirements, are current with the Power Division's existing infrastructure and system master plan.

**Stormwater** - Staff believes that this finding can be met, due to the following:

1. With the annexation and future development, the Developer will engineer certain private stormwater facilities that will adequately collect, detain, and release stormwater runoff in a manner that will eliminate off-site impacts.
2. Development of the Timka First Addition pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and service master plans.

**Fire**- Staff believes that this finding can be met, due to the following:

1. The site will comply with the interim requirements in the ACF Ordinance for response distance requirements and is approximately 2.6 miles from the first-due engine company (Station 1).

**C. Transportation**

**1. Loveland Comprehensive Master Plan, Section 4.2**

- a. Annexation ANXI.A:** *Whether the annexation of land minimizes the length of vehicle trips generated by development of the land.*

*b. Commercial CLUI and Industrial ILUI: Whether the commercial or industrial development permitted in the PDP is located near transportation facilities that offer the required access to the development and does not exceed the desired capacity of a level of service C for the existing and future transportation network of the City.*

**2. Loveland Municipal Code**

*a. Section 17.04.040: Whether all existing and proposed streets in the newly annexed property are, or will be, constructed in compliance with City street standards, unless the City determines that the existing streets will provide proper access during all seasons of the year to all lots and that curbs, gutters, sidewalks, bike lanes, and other structures in compliance with City standards are not necessary to protect public health, safety, and welfare.*

**Transportation Engineering Division:** Annexing and zoning a parcel or property does not warrant compliance with the City's Adequate Community Facilities (ACF) ordinance. A condition is recommended to clearly ensure that all future development or land application within this proposed property shall be in compliance with the City of Loveland 2030 Street Plan, the Larimer County Urban Area Street Standards and any updates to either in effect at the time of development application. Moreover, as identified in the City Municipal Code Title 16, a Traffic Impact Study shall be required with all future development or other land use applications. The annexation will also be required to dedicate, free and clear, all applicable right-of-way to the City, at no cost to the City, at the time of development. Therefore, pending future proposed development within this property, of which review and approval by the City is required, the Transportation Engineering Staff does not object to the proposed annexation and zoning.

**D. Land Use**

**1. Loveland Comprehensive Master Plan, Sections 4.3 and 4.7**

*a. Land Use Plan: Whether the proposed zoning is consistent with the Loveland Comprehensive Master Plan Land Use Plan or a "major plan amendment" request is being processed concurrently with the annexation and zoning application.*

**Current Planning Division:** Sections 4.3 and 4.7 of the 2005 Comprehensive Plan recommends much of the Hwy 402 corridor, including this property, be developed for E-Employment Center uses. The Plan recognizes that a zoning of E-Employment, I-Developing Industrial, Planned Unit Development (PUD) and B-Developing Business can all fulfill this recommendation, depending on the type of proposed development. Section 4.3 and Table LU1 of Section 4.7 of the Plan describe a number of specific policies and criteria to be achieved regarding the character of development in the Employment Center areas. This is generally described as "...a range of high-quality, well designed uses, where campus-type settings are encouraged".

The E-Employment Zone District in Title 18 of the Municipal Code contains criteria to fulfill the intent of the E land areas in the Comprehensive Plan. It specifies that sixty per cent (60%) of the land area should be devoted to "primary land uses" (uses that focus on jobs) and limits "non-primary uses" (uses that focus on providing goods and services to the general public) to forty per

cent (40 %) of the land. It also gives more specific criteria for establishing the meaning of "campus-type character", that being development that requires "strong unifying design elements". These unifying elements are further specified as "Unified Building Design", "Unified Open Space", "Viewshed Protection", and "Other Unifying Elements" such as well-defined entries, shared plazas, common open space and amenities, shared well-located parking, and quality identity signage.

Section 18.30.050 of the E zone district also sets forth specific process requirements for development under E zoning. This stipulates that when the site is to be developed in phases, a Concept Master Plan for the entire site must accompany the initial zoning to establish the site-specific criteria and standards necessary to establish the "unifying design elements" for achieving the "high quality, campus-type development". Once approved, this master plan becomes the base document for review and approval of all development and building permits in the project.

If E land areas are developed under I, PUD or B zoning, all development would comply with the normal City codes and standards, including architecture, landscape, open space, parking, and signs. However there would be no "strong unifying design elements" to assure the campus-type character desired. It would also not be governed by the 60/40 ratio for primary and non-primary uses. In that case, additional criteria and standards are needed, to be implemented in some other manner than the zoning standards or Master Plan, to truly fulfill the recommendations of the Plan.

This application began with a proposed zoning of E-Employment, and the Applicant's consultant, Landmark Engineering, presented a Concept Master Plan for staff review. However, with no true developer as part of the current process, selection of clear and specific "strong unifying design elements" was very problematic. The property is less than 10 acres in size, which increases the difficulty in establishing a campus-type character for employment uses. Following staff review, and discussions with Landmark staff, it was determined that, since I zoning is also deemed as acceptable for Employment Center areas, staff would support a proposal of I zoning if the general design standards created by Landmark were incorporated into a set of development standards for the site. This assures that the intent of the E land use category will be fulfilled but allows the more specific choice for areas "strong unifying design elements" can be made later by a future developer of the project. The proposed development standards, if approved by City Council, will be part of the terms of annexation and incorporated into the annexation agreement. (See **Attachment # 2**)

*b. Community Design Objectives, Section 5.0: Whether the proposed zoning is consistent with the design elements set forth in the City of Loveland Community Design, including creating neighborhoods, ecological responsibility, streetscape, neighborhood aesthetics, pedestrian and bike ways, open spaces, historical preservation and maintenance.*

#### **Current Planning Division:**

#### **2. Loveland Municipal Code, Section 18.04.010**



- a. *Whether the purposes set forth in Section 18.04.010 of the Loveland Municipal Code would be met if any of the uses permitted by right in the zone district were developed on the subject property.*
- b. *Whether development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in development that is compatible with existing land uses adjacent to and in close enough proximity to the subject property to be effected by development of it.*

**Current Planning Division** - The purposes set forth in Section 18.04.010 of the Loveland Municipal Code include lessening of congestion on public streets, secure safety from fire and panic, promote general health and welfare, provide adequate light and air, prevent overcrowding of land, avoid undue concentration of population, and facilitate adequate provision of public facilities and infra-structure. The application has been reviewed in light of these purposes by City staff and all utility providers. Staff believes that, based on application of all adopted City codes and standards, as well as the proposed Development Standards for the project, these purposes will be adequately met.

Compatibility with existing and future land uses is considered generally at the time of promulgation of the Comprehensive Plan. As indicated above, this proposal is consistent with the Comp Plan recommendation for land uses. The uses allowed by right in the E zone are numerous, and emphasize uses that provide jobs. By its location along a major corridor, it enhances the opportunity for employees to reach the site from a wide area both in and outside of the City. The non-employment uses that are allowed are expected to primarily support the employment uses with typical products and services needed by those who come to the site for employment, and, in limited extent, to residents in the immediate area.

The uses allowed by right in the E zone district are numerous, and focus on uses that provide jobs. The uses allowed under I zoning are similar, but not identical with those allowed under E zoning. The I zone actually allows more "employment" uses by right, but it would also allow some uses that would not be compatible with future uses developed under E zoning for other properties in the corridor. Such uses would also be difficult to incorporate into a "campus-type setting". For this reason staff recommends that some uses normally allowed under I zoning, not be allowed in the Timka First Addition. Those uses to be excluded would also be incorporated into the annexation agreement. Staff believes that the Applicant is in agreement with this limitation. (See **Term of Annexation # 3**)

#### **E. Environmental Impacts**

##### **1. Loveland Comprehensive Master Plan, Section 4.2**

- a. **Annexation ANX3.A:** *Whether the annexation and PDP comply with the recommendations contained in the adopted Open Lands Plan and preserves open space or natural areas.*
- Annexation ANX3.B:** *Annexation will be allowed for the purpose of preserving or acquiring open space or natural areas.*
- Annexation ANX4.A and B:** *If the planning staff and/or the City have determined that significant negative impacts on the environment may occur from development*

allowed under the PDP, an Environmental Impact Report, including a Wetlands Reconnaissance Report, has been prepared by a qualified specialist.

**Annexation ANX4.B:** *Whether the annexation application includes a Phase I Environmental Report, prepared by a qualified specialist, ensuring that the land to be annexed does not contain hazardous or toxic substances that may pose a danger to the City or that reasonable mitigation measures can be taken in the event that such contamination exists.*

**Annexation ANX4.D:** *All development agreements must deal satisfactorily with any environmental impacts upon the property.*

- b. **Residential RES9:** *Applicable elements of the Open Space and Natural Areas Plan and Parks Master Plan shall be considered in evaluating residential development proposals. High value habitat that allows wildlife movements shall be protected and mitigation measures, such as buffer standards, shall be designated in areas such as the Big Thompson River Corridor, designated wetlands, and identified natural areas to offset or accommodate the impacts of development.*

**Current Planning Division:** The Open Lands Plan does not identify any areas on this property or nearby properties to be set aside for public open space. There are no natural areas or natural features on the site that should be preserved or enhanced. There are not wetlands or floodplains on the site.

The application included a Phase I Environmental Site Assessment, prepared by Patrick Mestas, P.E. of Landmark Engineering. Although the site is currently used for a number of light/medium industrial uses, the report indicates that there are no Recognized Environmental Conditions on, or adjacent to, the site.

#### **F. Fiscal Impacts, Section 4.2**

- 1. **Loveland Comprehensive Master Plan, Section 4.2 Annexation ANX1.F:** *If required by the City, a cost/benefit analysis has been prepared detailing the economic impacts of the proposed development based upon a fiscal model acceptable to the City. City Council may make any appropriate findings as a result of said cost benefit analysis.*

**Current Planning Division:** No cost/benefit analysis was required for this application. Based on a previous model for such analyses, non-residential developments typically show an overall cost benefit to the City.

#### **H. Miscellaneous**

- 1. **Loveland Comprehensive Master Plan, Section 4.2 Annexation ANX5:** *The annexation is contingent upon a development agreement that clearly details the rights and obligations of the City and the land owner regarding the annexation and development of the land to be annexed.*
- 2. **Loveland Municipal Code, Section 17.04.040.F:** *Whether the annexation is in the best interest of the citizens of the City of Loveland.*

**Current Planning Division:** If annexed, all terms of annexation related to the site will be incorporated into an annexation agreement, approved by City Council and recorded along with the annexation map and ordinances.

Acquiring sites for future development of employment uses is a high value to the City, and will have the potential of providing jobs for citizens. Development under City codes, standards regulations will provide greater assurance of this than if developed under Larimer County zoning. Staff believes it is in the best interest of the citizens of Loveland to annex this property.

**I. Mineral Extraction**

*Colorado Revised Statutes: The proposed location and the use of the land, and the conditions under which it will be developed, will not interfere with the present or future extraction of a commercial mineral deposit underlying the surface of the land, as defined by CRS 34-1-3021 (1) as amended.*

**Current Planning:** A Mineral Extraction Report, prepared by Rod Harr, P.E. of Landmark Engineering, was submitted with the application. The report indicates that the site is underlain by a layer of sand and cobble approximately 6-7 feet thick, covered by 7-8 feet of overburden. Groundwater was encountered at the same depth as the sand/cobble layer, meaning that pumping would be necessary for any extraction. The report indicates that, due to the size, shape and constraints of the deposit, it is not deemed to be economically viable. The title commitment submitted with the application indicates there are no severed mineral rights for the property.

**VII. RECOMMENDED TERMS OF ANNEXATION**

The following terms of annexation are recommended by City staff.

**Current Planning:**

1. Upon annexation of the property, all development and redevelopment of the property shall be governed by the Development Standards in **Attachment #2**, as well as all applicable codes, standards and policies of the City. These Development Standards shall be incorporated into the Annexation Agreement between the Owner and the City.
2. When reviewing and acting upon any application for a use permitted by special review, the City shall be authorized to consider the goals, objectives and criteria for the E-Employment Center land use category, as set forth in the 2005 Comprehensive Plan, as amended. Applications that do not meet the intent of the goals, objectives and criteria for the E-Employment Center land use category, as set forth in the 2005 Comprehensive Plan, as amended, may be disapproved by the City.
3. Upon annexation and zoning into the City, and notwithstanding the provisions of Sections 18.36.010 and 18.36.020 of the City of Loveland Municipal Code, the following uses shall not be permitted on this site:

- a. Crematorium
- b. Heavy industrial
- c. Truck stop
- d. Junkyard
- e. Packing facility
- f. Jails, detention and penal center
- g. Outdoor storage as a principle use

**Transportation Engineering:**

4. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS), the 2030 Transportation Plan, and any updates to either in effect at the time of a building permit, and/or a site specific development application. Any and all variances from these standards and plans require specific written approval by the City Engineer.

5. Notwithstanding any conceptual information presented in the Annexation/Zoning submittal; street layout, street alignments, access locations, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for a building permit, and/or a site specific development application.

6. The owner shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, this addition that are shown on the adopted Transportation Plan prior to approval of a building permit and/or a site specific development application within this addition. Furthermore, the owner shall dedicate additional right-of-way for SH 402 on any future platting application for the property in order to achieve a 70-foot total half right-of-way on SH 402 adjacent to the property.

7. The developer agrees to acquire, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of a building permit, and/or a site specific development application within this addition, the developer shall submit documentation satisfactory to the City, establishing the Developer's unrestricted ability to acquire sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.

8. The ultimate roadway improvements, including sidewalk, adjacent to the property for SH 402 shall be designed and constructed by the developer, unless designed and constructed by others. A cash-in-lieu payment may be accepted for all or part of the improvements, if approved in writing by the City Engineer. The timing and detailed scope of these improvements will be determined through review and approval of the building permit application and/or a site specific development application.

9. Any future proposed development within the addition shall submit a Traffic Impact Study and demonstrate compliance with current City Standards at the time of development.

10. Any future proposed development within the addition shall obtain written concurrence from CDOT for access to SH 402.



**Water/Wastewater:**

11. At the time of Development, the Developer shall design and construct a wastewater main along Highway 402 to the site, if not previously constructed by others. The main shall be designed in accordance to the then current Wastewater Master Plan and Wastewater Development Standards.

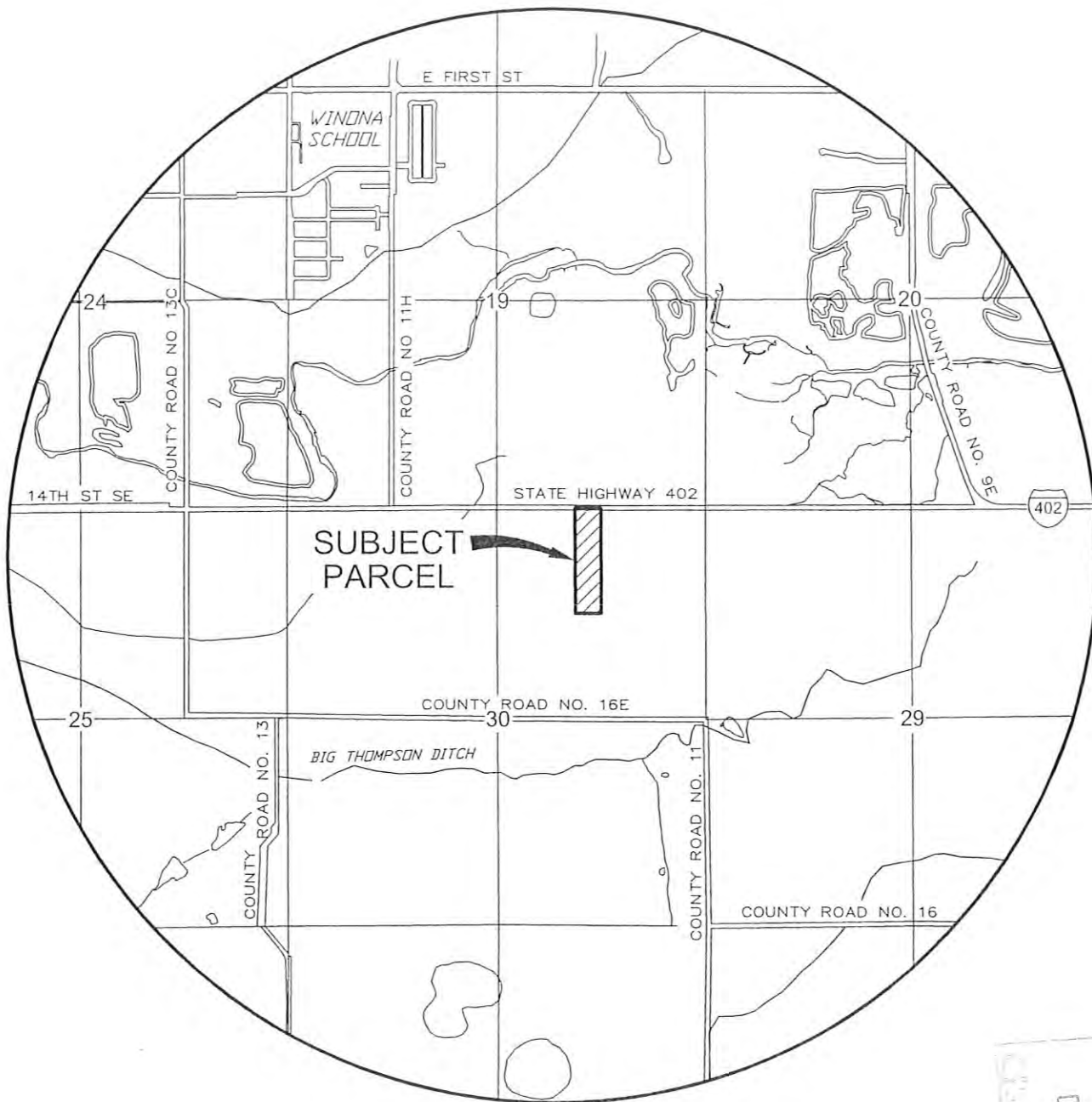
12. At the time of Development, the Developer shall, provide the City a Wastewater Impact Design Analysis Report for the Development.

**Power:**

13. All plats of this property shall include the following note:

"When the property being annexed into the City of Loveland is currently located within the REA certified territory, this property is subject to a five percent (5%) surcharge on electrical energy as defined in 40-9.5-204, CRS, and the City of Loveland Municipal Code 13.12.180. This surcharge applies to any subsequent subdivisions of property annexed after January 31, 1987 within the REA certified service territory. A surcharge of 5% will be added to all bills for the sale of electric power to additional services which came into the existence after January 31, 1987, within the territory herein annexed which surcharge will expire ten years after effective date of this annexation."





GRAPHIC SCALE



( IN FEET )  
1 inch = 2000ft.

COUNTY OF WYOMING  
 MAR 22 2010

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**Landmark**  
Engineering

Engineers Planners Surveyors Architects Geotechnical  
3521 West Eisenhower Blvd., Loveland, Colorado 80537  
(970) 667-6286 • Toll Free 1-866-379-6252 • Fax (970) 667-6298  
www.landmarkltd.com

CLIENT: TIM PIVONKA

TITLE: VICINITY MAP

SCALE: 1"=2000'

DATE:03-01-2010

JOE

ATTACHMENT 1

## **SITE DEVELOPMENT STANDARDS**

The following Site Development Standards shall be supplemental to the I-District-Developing Industrial District Development Standards by way of an approved Annexation Agreement.

## **INTRODUCTION**

It is the intent of this Timka development is to create quality development that complies at a minimum, with the standards outlined in Chapter 18.36 I-District - Developing Industrial District while meeting the goal of Employment Center Land Use Category as identified in the Comprehensive Master Plan.

The Timka Serial Annexation is approximately 9.911± acres located one-half mile east of Boise Avenue on Colorado State Highway 402 and is located in Larimer County with Commercial. The subject property is adjacent to the Loveland City Limits and falls within the Loveland Growth Management Area (GMA).

## **ZONING**

The property is designated on the City's Land Use Plan as E-Employment Center and I-District Developing Industrial zoning as defined in Chapter 18.36 is being requested in along with a provision that allow those Uses also identified under Chapter 18.30.020 and 18.30.030 E-District - Employment Center District when developed in conjunction with these Site Development Standards.

## **IMPLEMENTATION**

All development in the I- District Developing Industrial zoning district is required to process a Site Plan Review. The Site Plan Review will ensure that all development and/or redevelopment will be designed to comply with the Municipal Code including, required Public Improvement Construction Drawings necessary to support the proposed development. During the Site Plan Review process, the City may require all existing non-conforming uses and structures be removed or brought into conformance. The first approved Site Plan Review application shall dictate the design style character for all future development applications to ensure a unified development theme including building style, material, and colors throughout the 9.911± acre site.

The accompanying minor subdivision application subdivides the property into two lots just north of the existing residence allowing for new development to occur on the north lot and re-development to occur on the south lot.

New development occurring on the north lot will be subject to all applicable codes and the Site Development Standards however, development of the north lot will not trigger a requirement for any existing non-conforming uses or structures on the south lot to be brought into conformance with the City of Loveland standards.

Only upon redevelopment of the south lot, shall all existing uses and buildings conform to City of Loveland Code.

**REVISED**

ATTACHMENT 2



### **CAMPUS CHARACTER**

The architectural design is intended to reflect a "campus-type" character with strong unifying design features, elements and characteristics occurring on each of the buildings found within the development. The overall design of a campus-type development should be compatible and complementary with the existing and developing character of the neighboring area. The exterior elevation design of all buildings should be coordinated with regard to color, materials, architectural forms, significant features, and detailing to achieve design harmony, continuity, and horizontal and vertical relief and interest. They shall utilize pedestrian scale features while maintaining prominent types of features that are typically dictated by this significant location along Highway 402. The visibility of parking areas from Highway 402 should be minimized through the use of buffering, berms, walls and landscaping elements that will be found throughout the development to ensure a unified theme.

To the extent possible, '360° architecture' shall be considered when creating the Industrial District, such that all sides of a building have equally designed features, elements and characteristics, as viewed from any location in the area. Repeated use of features, elements and characteristics throughout the site shall strengthen the "campus" character.

### **BALANCE OF LAND USE**

Upon annexation to the City of Loveland, the property shall meet the goals of the Employment Land Use Category Comprehensive Plan by encouraging primary and non-primary uses. Non-Primary uses can not exceed 40% (3.84± acres) of the Site Development Area.

The intent is to provide locations for a variety of workplaces including light industrial, research and development, offices, institutions, and commercial services as primary uses. Other uses may be allowed if they are determined by the City to be primarily employment based.

Primary and Non-primary Workplace may be combined however, in no circumstance shall non-primary workplace uses account for more than 40% of the site development area. Primary use areas are intended to provide locations for a variety of workplaces including but not limited to office, light industrial, warehouse, research, public and private schools, art galley (studio and workshop including live/work studio and workshop), congregate care facilities, financial services, hospitals, health care service facilities, medical and dental laboratories, print shop etc.

Non-Primary use areas are intended as "secondary" uses and shall support the primary uses. Examples of Non-Primary uses include but are not be limited to hotels, retail convenience and service uses, restaurants, child care, or housing.

### **VIEW CORRIDOR**

View corridors along Highway 402 shall be protected with deep setbacks, bufferyards and building orientation to maintain mountain vistas to the extent possible. The property edge along Highway 402 shall consist of a 60' setback.

### **BUILDING SITING AND ORIENTATION**

It is important to locate and orient the buildings to compliment adjacent development, create positive visual experiences, and allow ease of way-finding for the user. This shall be done by emphasizing "campus type" design principles, pedestrian oriented and scaled site planning, and features; and by creating an efficient pattern of buildings relative to open spaces that will concentrate like activities (pedestrian and general vehicular traffic) and separate incompatible activities (truck traffic).

Key elements in achieving this goal are:

- Coordinate and comprehensively plan the sitting of the buildings (current and future) to provide order and compatibility, avoiding jumbled or confusing development patterns.
- To orient the buildings to frame and/or enclose pedestrian corridors, streets, parking areas, public spaces, plazas, greens, and on-site amenities.
- Buildings shall be setback a minimum of 60 feet from Highway 402 right of way
- Buildings shall maintain a minimum 50 foot setback from zoning boundaries.

### **LANDSCAPE DEVELOPMENT STANDARDS**

#### **OVERALL CONCEPT**

The site and common open space areas shall be developed to create quality views to, from and within the site; protect and enhance the environmental conditions in and around the site; create buffering opportunities where differing uses may exist; and soften the hardscape by creating interesting transitions from the buildings to streets, sidewalks, parking lots and plazas. When possible common areas should be shared between development areas to create a campus like settings. All buildings shall have safe and clear pedestrian access to common areas. Where pedestrian routes cross vehicular corridors, parking lots, or other circulation routes the pedestrian access shall have distinctive pavement treatments to ensure safe pedestrian access. If a "Highway 402 Corridor Plan" has been developed and adopted by the City of Loveland at the time of a Site Plan Review, requirements of that plan shall prevail. Landscape treatments along Highway 402 shall be characterized by a minimum 60' landscape buffer, uniformly spaced canopy trees, shrub beds and 6' wide meandering walk.

A minimum of 20% of the site area shall be devoted to common open space features including common area landscape buffers, parks, plaza spaces, entrance treatment, natural areas, or wetlands. Open space and landscape areas within setbacks or parking lots shall NOT be counted toward the required 20%.

A minimum 15' wide landscape buffer shall be designed between the property boundary and access drives and parking lots.

Additionally, landscaping and other site elements (such as berms, walls and plazas) throughout the development shall provide a unifying theme which connects the various development areas. Care should be taken to provide landscaping and site elements with a variety of sizes, scales and types which will create visual and spatially interesting elements throughout the development while considering the benefits and impacts to the adjacent property and the environment.

Planting design and materials shall be of a nature that is typically found along the front range of Colorado, and shall compliment both the site and architectural features found throughout the site. The use of water-wise plant materials and design shall be encouraged.

### **GENERAL LANDSCAPE GUIDELINES**

The landscaping is intended to soften the building architecture on all sides; create an attractive and pleasant pedestrian environment; provide shade and visual interest to sidewalks and parking lots; and to buffer/screen differing land uses/intensities.

Creating a 'layered' effect by utilizing plant materials of varying sizes, shapes and heights shall be used to create a sense of place and space. This design style shall be used to draw attention towards building entrances or other significant features, or draw attention away from undesirable (but necessary) site features such as utility boxes, trash enclosures and/or loading zones.

The following landscape features shall be implemented throughout the site in the appropriate locations to embrace a campus type character:

- Building Landscaping: To provide visual interest that compliments the structures and guides the users to the main entries and important features.
- Plant Containers and Planters: Use clay or concrete plant containers to define outdoor spaces, accent building entrances and provide visual interest along the street and pedestrian corridors.
- Other Site Amenities: Items such as way finding signs, benches, bike racks, lights and trash receptacles shall be included where appropriate, and shall be consistent with the design theme and quality of the development.

### **ENTRY SIGNAGE**

Entry signage shall incorporate the same character and materials utilized on buildings and architectural features throughout the site. Landscaping shall be include evergreen and deciduous trees, shrubs and perennials to provide interest while maintaining adequate site distance. All signs shall conform to the sign requirements identified in Section 18.50 of the Municipal Code.

## **ARCHITECTURAL DEVELOPMENT STANDARDS**

The buildings shall be developed with consistent and complimentary features, elements and details that are reflected on all sides of the building.

Mixed use buildings that may be included in this development shall be comprised of a variety of exterior elevations proportional to the number of overall units for each development area. The goal is to create an interesting mix of complementary details that will stimulate creative visual characteristics, but not to the extent that a fragmented and dis-similar character is achieved.

Development or re-development of typical industrial uses such as, but not limited to, light industrial, research and development, and office regardless of whether they are deemed primary workplace uses or non-primary uses, shall be subject to the Industrial Architectural Standards, as set forth in Section 18.53.040 of the City of Loveland Municipal Code

Development or re-development of typical commercial uses such as, but not limited to, retail, office, restaurant, or institutional, regardless of whether they are deemed primary workplace uses or non-primary uses, shall be subject to the Commercial Architectural Standards, as set forth in Section 18.53.030 of the City of Loveland Municipal Code.

## **BUILDING ELEMENTS**

Building Elements shall be defined as those parts of an overall structure that will be included on each building located in the development. These elements are secondary in nature to the overall building massing elements of base, middle and cap, and are used to create those patterns, textures, colors and materials that will form the base, middle and cap. It is important to note that while a variety of Building Elements may be used, they must be complementary in nature, and must be replicated on each building to provide visual continuity.

A particular 'style' of architecture (i.e. Mountain, Mediterranean, Tuscan, Industrial, etc.) has not been designated for this development. Rather, the creative use of the Building Elements shall create the 'character' of the development and shall be carried out throughout the project in a cohesive manner.

Different Building Elements may be used in a variety of combinations throughout the site provided they express a cohesive and complimentary sense of architecture that conveys a sense of depth and substance without creating an overly complex facade, and are replicated throughout the site.

Key components in achieving this goal are:

- Consideration of the vertical street walls. While articulation of the street walls shall be used, avoid overly complex facades that lead to confusion for the user.
- Avoid monumental, undifferentiated and scale-less building masses. Differentiate individual buildings along long streetscapes by slight variations in



height, massing and rhythm of openings, while incorporating those Building Elements in each structure.

The use of these types of architectural elements shall be consistent throughout the development and compliment the main massing of the each building. The use of identical architectural elements is not required at each building, but differing elements must be comprised of the same materials, textures or patterns in order to provide visual continuity throughout the development.

## Chapter 18.36

### I DISTRICT-DEVELOPING INDUSTRIAL DISTRICT

#### Sections:

|                  |  |
|------------------|--|
| <b>18.36.000</b> | <b>Purpose.</b>                              |
| <b>18.36.010</b> | <b>Uses permitted by right.</b>              |
| <b>18.36.020</b> | <b>Uses permitted by special review.</b>     |
| <b>18.36.025</b> | <b>Site plan review process.</b>             |
| <b>18.36.030</b> | <b>Lot area.</b>                             |
| <b>18.36.040</b> | <b>Yards.</b>                                |
| <b>18.36.045</b> | <b>Height limitations.</b>                   |
| <b>18.36.050</b> | <b>Off-street parking area.</b>              |
| <b>18.36.060</b> | <b>Special review performance standards.</b> |
| <b>18.36.070</b> | <b>Open space.</b>                           |
| <b>18.36.080</b> | <b>Applicability.</b>                        |

#### **18.36.000 Purpose.**

This district is intended to provide a location for a variety of employment opportunities such as manufacturing, warehousing and distribution, and a wide range of commercial and higher intensity industrial operations. The Industrial District (I) is intended to implement the Industrial (I) category as depicted on the Comprehensive Master Plan Land Use Plan Map. The Industrial District also accommodates complementary and supporting uses such as convenience shopping centers and appropriately located accessory commercial child day care centers. Locations for this zone require good access to major arterial streets. (Ord. 5114 § 1, 2006)

#### **18.36.010 Uses permitted by right.**

All uses permitted by right and set forth in this section shall be subject to the provisions of Chapter 18.46. The following uses are permitted by right in an I district:

- A. Administrative, insurance and research facilities;
- B. Experimental or testing laboratories;
- C. Manufacturing, assembly or packaging of products from previously prepared materials;
- D. Manufacture of electric or electronic instruments and devices;
- E. Manufacture and preparation of food products;
- F. Warehouses, distribution and wholesale uses;
- G. Any industrial or manufacturing use similar in character and external effects to above uses;
- H. Utility service facilities;
- I. Retail and wholesale sales of products produced on site or products incidental to such products, provided such use is incidental to the primary manufacturing use;
- J. Minor recycling processing facilities;
- K. Accessory uses which are reasonably required to provide necessary maintenance or security of the principal use, including, a dwelling unit for occupancy as a caretaker's quarters or for occupancy by the business or property owner;
- L. Accessory buildings and uses including commercial child day care centers when incorporated as part of a development project and compatible with surrounding uses;
- M. Antennas, as defined in Section 18.55.020(A), located on an existing tower or structure as provided in Section 18.55.030 and Section 18.55.030 and meeting all other requirements of Chapter 18.55;

- N. Art gallery, studio and workshop including live/work studio and workshop. Such facilities may include the display, sale, fabrication or production of paintings, sculptures, ceramics and other art media. Limited outdoor fabrication of art work may be permitted subject to special review as provided in Chapter 18.40.
- O. Bar or tavern;
- P. Car wash;
- Q. Clubs and lodges;
- R. Convention and Conference Center;
- S. Domestic animal day care facility;
- T. Food catering;
- U. Funeral home;
- V. Greenhouse;
- W. Health care service facility;
- X. Indoor recreation;
- Y. Light industrial;
- Z. Lodging establishments (hotel and motel);
- AA. Lumber yards with outdoor storage screened as required by Section 4.06 of Site Development Performance Standards and Guidelines;
- BB. Parking garage and parking lot;
- CC. Personal and business service shop;
- DD. Place of worship or assembly;
- EE. Special trade contractor's shop (any outdoor storage screened as required by Section 4.06 of Site Development Performance Standards and Guidelines);
- FF. Medical or professional office/clinic;
- GG. Office, general administrative;
- HH. Outdoor storage subject to Site Development Performance Standards and Guidelines, Section 4.06;
- II. Restaurant standard (indoor and outdoor);
- JJ. Retail store;
- KK. Self-service storage facility;
- LL. Vehicle minor and major repair, servicing, & maintenance;
- MM. Vehicle rentals for cars, light trucks and light equipment;
- NN. Vehicle rentals for heavy equipment, large trucks and trailers;
- OO. Vehicle sales and leasing for cars and light trucks;
- PP. Sales & leasing of farm equipment, mobile homes, recreational vehicles, large trucks & boats with outdoor storage; and
- QQ. Veterinary facility, clinic or hospital; and
- RR. Workshop and custom small industry. Limited outdoor fabrication of products may be permitted subject to special review as provided in Chapter 18.40.
- SS. Crematorium located more than 500 feet, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located more than 500 feet from any residential property within a Planned Unit Development, subject to Section 18.52.080. (Ord. 5446 § 7, 2009; Ord. 5114 § 2, 2006, Ord. 4246 § 1 (part), 1997; Ord. 4236 § 10, 1997; Ord. 4221 § 1 (part), 1996; Ord. 3648 § 4, 1990; Ord. 3630 § 4, 1990; Ord. 1934 §§ 1, 2, 1980; Ord. 1276 § 23, 1973; Ord. 1004 § 11.1, 1968)

**18.36.020 Uses permitted by special review.**

The following uses are permitted by special review in an I district subject to the provisions of Chapter 18.40:

- A. Any business, commercial, industrial or manufacturing use which by virtue of its site, location, traffic or other external impacts, as determined by the community development director, warrants exceptional review and public hearing, as set forth in Chapter 18.40;
- B. Parks and recreation areas;
- C. Community facility;
- D. Major recycling processing facilities;
- E. Personal wireless service facility as defined in Section 18.55.020(A), located on a new structure, meeting all requirements of Chapter 18.55;
- F. Sexually oriented businesses;
- G. Essential public utility uses, facilities, services, & structures (above ground)
- H. Heavy industrial use;
- I. Open-air farmers market;
- J. Plant nursery;
- K. Kennel;
- L. Truck stop;
- M. Junkyard;
- N. Packing facility;
- O. Recycling collection facility, attended;
- P. Recycling collection facility, unattended;
- Q. Resource extraction, process, and sales;
- R. Restaurant, drive-in or fast food
- S. Airport and heliport; and
- T. Jails, detention, and penal centers. (Ord. 5114 § 3, 2006)
- U. Crematorium located 500 feet or less, as measured by a straight line, from any property boundary zoned R1, R1e, R2, R3, R3e, or located 500 feet or less from any residential property within a Planned Unit Development, subject to Section 18.52.080. (Ord. 5446 § 8, 2009)

**18.36.025 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the community development director for review, recommendation and approval or disapproval. In the event of disapproval, the applicant may request that the site plan be further reviewed by the city council, and, in the event of such further review, the approval or disapproval of the city council shall be final. (Ord. 1934 § 4, 1980)

**18.36.030 Lot area.**

The minimum area of lot in an I district shall be two times the total floor area of the building. (Ord. 4246 § 1 (part), 1997; Ord. 1004 § 11.3, 1968)

**18.36.040 Yards.**

The minimum yards in an I district, being the minimum distance of any building from an alley, street or zoning district line, shall be twenty-five feet. (Ord. 4246 § 1 (part), 1997; Ord. 1004 § 11.4, 1968)

**18.36.045 Height limitations.**

Buildings and structures in this zone shall comply with Chapter 18.54 of this Code. (Ord. 4106 § 11, 1995)

**18.36.050 Off-street parking area.**

The minimum off-street parking area for all permitted uses in an I district shall be as provided in Chapter 18.42. (Ord. 4246 § 1 (part), 1997; Ord. 1628 § 1 (part), 1977; Ord. 1004 § 11.5, 1968)



**18.36.060 Special review performance standards.**

Uses permitted by special review within the I district shall be subject to the performance standards set forth in Section 18.46.020. (Ord. 4246 § 1 (part), 1997; Ord. 1934 § 5, 1980; Ord. 1628 § 1 (part), 1977; Ord. 1276 § 25, 1973; Ord. 1004 § 11.6, 1968)

**18.36.070 Open space.**

The open space in an I district, exclusive of streets and off-street parking areas, shall be not less than ten percent of the total lot area. (Ord. 4246 § 1 (part), 1997; Ord. 1745 § 3, 1979)

**18.36.080 Applicability.**

Compliance with Section 18.36.025 for a use permitted by right under Section 18.36.010 shall satisfy any requirement imposed upon the annexation of any property prior to October 1, 1980, requiring compliance with special review provisions of this code for any use thereon. (Ord. 1934 § 6, 1980)

**Chapter 18.30****E DISTRICT – EMPLOYMENT CENTER DISTRICT****Sections:**

|                  |  |
|------------------|--|
| <b>18.30.010</b> | <b>Purpose.</b>  |
| <b>18.30.020</b> | <b>Uses permitted by right.</b>                        |
| <b>18.30.030</b> | <b>Uses permitted by special review.</b>               |
| <b>18.30.040</b> | <b>Development standards and balance of land uses.</b> |
| <b>18.30.050</b> | <b>Development approval.</b>                           |
| <b>18.30.060</b> | <b>Schedule of flexible standards.</b>                 |

**18.30.010 – Purpose.**

The E - Employment Center District is a mixed-use district intended to provide locations for a variety of workplaces and commercial uses, including light industrial, research and development, offices, institutions, commercial services and housing. This district is intended to encourage the development of planned office and business parks; promote excellence in the design and construction of buildings, outdoor spaces, transportation facilities, streetscapes, lodging and other complementary uses. This district is intended to implement the E- Employment Center category set forth in the City's Comprehensive Master Plan. Uses that complement and support primary workplace uses, such as hotels, retail, restaurants, convenience shopping, child care and housing are intended to be secondary uses and not intended to be the primary or predominant uses in E districts. Such uses should be limited to guidelines set forth in this district. (Ord. 5156, § 1, 2006)

**18.30.020 Uses permitted by right.**

The following uses are permitted by right in an E district:

- A. Art gallery, studio and workshop including live/work studio and workshop. Such facilities may include the display, sale, fabrication or production of paintings, sculptures, ceramics and other art media. Limited outdoor fabrication of art work may be permitted subject to special review as provided in Chapter 18.40.
- B. Commercial child day care center licensed according to the statutes of the state;
- C. Convention and Conference Center;
- D. Entertainment Facilities and Theaters, indoor;
- E. Financial Services;
- F. Food Catering;
- G. Gas station with or without convenience goods or other services subject to Section 18.52.060 and located three hundred (300) feet or more from a residential use or zone district (measurement shall be made from the nearest site or lot line of the gas station to the nearest lot line of the residential use or zone district);
- H. Health Care Service Facility;
- I. Hospital;
- J. Indoor Recreation;
- K. Lodging Establishment (hotel and motel);
- L. Long Term Care Facility;
- M. Medical and dental laboratories;
- N. Office, general administrative;
- O. Parking Garage;
- P. Parking Lot;
- Q. Personal and Business Service Shops;

- R. Place of Worship or Assembly;
- S. Print Shop;
- T. Professional Office/Clinic;
- U. Restaurant, Standard indoor or outdoor;
- V. Retail store;
- W. Veterinary Clinic;
- X. Light Industrial;
- Y. Research Laboratory;
- Z. Public and Private Schools;
- AA. Workshop and Custom Small Industry (entirely enclosed within a building and provided there is no excessive odor, glare, smoke, heat, vibration, etc.), Limited outdoor fabrication of products may be permitted subject to special review as provided in Chapter 18.40;
- BB. Dwelling, Attached Single-Family;
- CC. Dwelling, Detached Single-Family;
- DD. Dwelling, Multi-Family;
- EE. Dwelling, Two-Family;
- FF. Elderly housing;
- GG. Dwelling, Mixed Use;
- HH. Community Facility;
- II. Park or Recreation Area;
- JJ. Congregate care facility;
- KK. Antennas, as defined in Section 18.55.020(A), co-located on an existing tower or structure as provided in Section 18.55.030 and Section 18.55.030 and meeting all other requirements of Chapter 18.55; and
- LL. Accessory buildings and uses. (Ord. 5156, § 2, 2006)

**18.30.030 Uses permitted by special review.**

The following uses are permitted by special review in an E district subject to the provisions of Chapter 18.40:

- A. Bar or tavern;
- B. Car Wash;
- C. Domestic Animal Day Care Facility;
- D. Gas station with or without convenience goods or other services subject to Section 18.52.060 and located less than 300 feet from a residential use or zone district (measurement shall be made from the nearest site or lot line of the gas station to the nearest lot line of the residential use or zone district);
- E. Nightclub;
- F. Open-Air Farmers Market;
- G. Plant Nursery and Greenhouses;
- H. Restaurant, Drive-In or Fast Food;
- I. Self-Service Storage Facility;
- J. Vehicle Minor Repair, Servicing, and Maintenance;
- K. Vehicle Rentals for Cars, Light Trucks and Light Equipment;
- L. Vehicle Rentals for Heavy Equipment, Large Trucks and Trailers;
- M. Vehicle Sales and Leasing for Cars and Light Trucks;
- N. Veterinary Hospital;
- O. Warehouse and distribution;
- P. Outdoor Storage;
- Q. Airports and Heliports;

- R. Essential Public Utility Uses, Facilities, Services, & Structures;
- S. Group Care Facility;
- T. Personal wireless service facility as defined in Section 18.55.020(A), located on a new structure, meeting all requirements of Chapter 18.55; and
- U. Public Service Facility.
- V. Crematorium subject to Section 18.52.080. (Ord. 5446 § 6, 2009)

**18.30.040 Development standards and balance of land uses.**

The following standards shall be administered as Type 2 standards in accordance with Section 18.53.020 Compliance.

- A. Balance of land Uses: Not more than 40 percent of the land area within a development plan shall be dedicated to non-primary workplace uses. Non-primary workplace uses include hotels, retail, convenience and service uses, restaurants, child care, housing or other uses intended to support and compliment primary workplace uses. For the purposes of this requirement primary workplace uses shall include but shall not be limited to office, research or light industrial. A proposed development plan that does not meet this requirement may be permitted if within two miles of the proposed development plan, primary workplace uses exist or the zoning for such uses is in place, in an amount that is sufficient to comply with the intent of this section and meet the long term need for primary employment land uses anticipated by the City's Comprehensive Master Plan.
- B. Campus-Type Character: E-Employment Center Districts are intended to have a "campus-type" character with strong unifying design elements meeting the following standards:
  1. Unified Building Design: Building design shall be coordinated with regard to color, materials, architectural form and detailing to achieve design harmony, continuity and horizontal and vertical relief and interest.
  2. Unified Open Space: Projects shall include a unifying internal system of pedestrian-oriented paths, open spaces and walkways that function to organize and connect buildings, and provide connections to common origins and destinations (such as transit stops, restaurants, child care facilities and convenience shopping centers). The development plan shall utilize open space and natural features that serve as buffers and transitions to adjacent area(s). Development plans shall include at least 20 percent of the gross site area devoted to common open space features, including features such as common area landscaped buffers, parks or plaza spaces, entrance treatments, natural areas, or wetlands, but excluding any open space or landscaped areas within required building setbacks or parking lots. Areas dedicated to storm water drainage may also be counted toward meeting the open space requirement, provided they are designed to be recreation space or as an attractive site feature incorporating a naturalistic shape and/or landscaping.
  3. Other Unifying Features: Major project entry points shall include well designed signage and entry features such as quality identity signage, sculpture, plazas, special landscape clusters, etc. The visibility of parking lots or structures shall be minimized by placement to the side or rear of buildings and/or with landscape screening. Shared vehicular and pedestrian access, shared parking, common open space and related amenities should be integrated into the project's design. The overall design and layout shall be compatible with the existing and developing character of the neighboring area.
  4. Viewshed Protection: Care shall be taken to minimize disruptions to adjacent neighborhood views of open spaces or natural features through the sensitive location and design of structures and associated improvements. Visual impacts can be reduced and better view protection provided through careful building placement and consideration of building



heights, building bulk, and separations between buildings.

5. Unified Design Agreement: In the case of multiple parcel ownerships, an applicant shall make reasonable attempts to enter into cooperative agreements with adjacent property owners to create a comprehensive development plan that establishes an integrated pattern of streets, outdoor spaces, building styles and land uses consistent with the standards in this section.

C. Other Standards:

1. Significant retail and office components shall comply with standards in Section 18.29.040 – Development Standards for MAC districts.
2. See also Chapter 18.53 Commercial and Industrial Architectural Standards and Site Development Performance Standards and Guidelines.
3. Section 18.29.040 paragraphs D. Loading Areas, E. Utility Boxes, F. Trash Enclosures, and G. Other Standards shall apply in E-Employment Center Districts. (Ord. 5156, § 3, 2006)

**18.30.050 Development approval.**

- A. Development Approval: Uses listed in Section 18.30.020 are permitted subject to the applicant obtaining a Type 1 Zoning Permit as required by Section 18.04.020 with approval of the site plan as required by Chapter 18.46 - Site Plan Review Requirements & Performance Standards excluding single and two-family residential uses and accessory buildings as excepted by Section 18.04.020. Special review uses listed in Section 18.30.030 may be permitted subject to the applicant obtaining a Type 2 or 3 Zoning Permit as required by Chapter 18.40 - Uses Permitted B Special Review.
- B. Phased Approval: For larger development sites where site development details are not known for the entire site at the time of obtaining a Type 1, Type 2 or Type 3 Zoning Permit as prescribed above, a conceptual master plan shall be provided for the entire parcel subject to phased approval of site plans to ensure the coordinated development of the entire parcel. The conceptual master plan must include the general type, intensity and location of land uses and public facilities and the overall classification and design of the primary road and pedestrian network, including all information that the planning division may require. The conceptual master plan shall also include a narrative statement, conceptual renderings, schematic designs, architectural guidelines or other information as needed to demonstrate how the proposed development plan complies with development standards in Section 18.30.040 paragraphs B. and C. Additionally, the conceptual master plan shall depict an allocation of land uses in a manner that demonstrates compliance with Section 18.30.040.A. The conceptual master plan shall be provided with an E-Employment rezoning application and the rezoning approval shall be subject to compliance with the conceptual master plan. Subsequent site plans submitted for Type 1, Type 2 or Type 3 Zoning Permit approval shall conform to the conceptual master plan.
- C. Plan Modifications: Modifications to the conceptual master plan as required to show compliance with Section 18.30.040 Development Standards, or that comply with Section 18.30.060 Schedule of Flexible Standards, may be approved administratively by the Director of Development Services. Changes to permitted uses or substantial changes to the location of land uses as depicted on the conceptual master plan shall be submitted for review and recommendation by the Planning Commission with final approval by the City Council. (Ord. 5156, § 4, 2006)

**18.30.060 Schedule of flexible standards.**

| Chapter 18.30 MAC and E Districts<br>Schedule of Flexible Standards |   |   |                         |  |           |          |          |        |
|---|---|---|-------------------------|--|-----------|----------|----------|--------|
| Non-Residential   |   |   |                         | Residential  |           |          |          |        |
| District  | Front Bldg. Setback (1)                               | Rear & Side Bldg. Setbacks (2)              | Bldg. Height (3)        | Residential Density  | Front (2) | Rear (2) | Side (2) | Height |
| MAC-Community Activity Center                                       | I-25: 80 ft<br>Arterial: 35 ft<br>Non-Arterial: 25 ft | See buffer requirements, Section 4.04 SDPSG | 50 ft (4)<br>120 ft (5) | Up to 16du/ac (6) (7)  | 20 ft     | 15 ft    | 5 ft     | 40 ft  |
| E-Employment Center   | I-25: 80 ft<br>Arterial: 35 ft<br>Non-Arterial: 25 ft | See buffer requirements, Section 4.04 SDPSG | 50 ft (4)<br>120 ft (5) | Residential up to 20% of total project area, up to 16du/ac (7) | 20 ft     | 15 ft    | 5 ft     | 40 ft  |

| Use                          | Maximum height of building or structure                                | Maximum height of accessory building or structure |
|------------------------------|--|---|
| E-Employment Center District | As provided in Chapter 18.30 E District Schedule of Flexible Standards | 50  |

**Notes to MAC and E Districts Schedule of Flexible Standards:**

- (1) Building setbacks shall be measured from the edge of the future right-of-way. Development sites within the area covered by the U.S. 34 Corridor Plan shall conform to all road setback and design requirements of that plan. Exceptions from U.S. 34 Corridor Plan standards may be permitted for development plans following guidelines for optional flexible standards in note (2) below. (Ord. 5156, § 1, 2006, Ord. 4453 § 5 (part), 1999)
- (2) **Optional Flexible Standards:** Setback required by this section and buffer standards required by Section 4.04 of the Site Development Performance Standards and Guidelines (SDPSG) may be reduced or waived for projects that orient buildings to streets to create an attractive pedestrian environment following “New Urbanism” or “Smart Code” principles (see “The Lexicon of the New Urbanism” or “Smart Code”).
  - a. Where front setbacks are reduced, a treelawn not less than four feet in width shall be provided between the outer edge of the curb and the sidewalk. Canopy trees planted not less than 30 feet on-center (Figure 18.31-1) shall be provided in the treelawn. Landscaped bulb-outs and trees planted in tree grates in the sidewalk (Figure 18.31-2), with on-street parking, may be provided instead of a treelawn. Where garages face and are accessed from the street, at least 20 feet shall be provided between the face of the garage and the back of the sidewalk so that adequate space is provided for vehicle parking in the driveway.
  - b. Residential buildings with reduced setbacks shall include features such as covered porches or front stoops and walkways between buildings and the public sidewalk. Also, garages should be placed to the rear of the lot behind the primary structure, with side driveway or alley access.
  - c. In evaluating proposals with reduced setbacks, consideration shall be given to existing setbacks in adjacent developed areas to avoid incompatible and/or inconsistent design conditions.
- (3) Subject to height restriction in Section 18.54.040, which restricts any nonresidential use or multi-family use located closer than fifty (50) feet from the property boundary of a residential use, excluding multi-family dwelling units, shall be limited to the maximum height allowed for a single family residential use.
- (4) All uses other than office, research, lodging and mixed-use (see Note (5)).
- (5) Office, research, lodging and mixed-use (mixed-use means residential located in the same building as non-residential uses).
- (6) There shall be no limit on the amount of land area within a MAC district that may be devoted to

residential use; however, for projects exceeding 50 percent residential land area, the applicant must demonstrate that sufficient land area is devoted to commercial use within the project, or within the vicinity of the project, to meet future commercial needs and demands. Such evidence may consist of a market analysis and/or an analysis of development trends and existing and proposed land uses within the vicinity of the project.

- (7) Maximum number of dwelling units permitted per acre. The density calculation shall include the gross land area dedicated to residential use, including roads, drainage areas and open space within and serving the residential component of the project. Residential units that are part of a building that includes non-residential uses (mixed-use) shall not be included in the residential density calculation.

approved on the site of the former Walgreens block utilizing TIF financing and several other historic renovation projects are underway and planned in the downtown area.

- **Historic Preservation:** In 2003 a Historic Preservation Commission was created to provide access to state and federal tax credits and state preservation grants. Numerous properties have since been designated and many have undergone renovation, taking advantage of these important incentives.
- **Downtown Zoning Update:** In 2003, the Be-Established Business District, which applies to the downtown area, was updated to include design standards intended to preserve the character of the downtown and encourage redevelopment.
- **Community Activity Centers<sup>1</sup>**  
 The Land Use Plan provides for five Community Activity Centers at key locations in the future city. One existing community activity center is located at US 287 and 29<sup>th</sup> Street. It is classified as an activity center only for its commercial function, as it serves much of the north area of Loveland. This existing “older” activity center was not designed as a unit with the mix of uses desired in a true activity center. Future Community Activity Centers are planned for US 287 and SH 402, SW 14<sup>th</sup> Street and Taft, Wilson and 43<sup>rd</sup> Street, and US 34 and County Road 9.
- **Regional Activity Center**  
 The Centerra development (Millennium GDP) is the core for this regional center. Located at the junction of I-25 and US 34, this area has matured into a true mixed-use area with regional shopping, offices, and a wide variety of residential development. Poudre Valley Hospital is currently constructing a regional hospital facility within this area and the Shoppes at Centerra, a 900,000 square foot regional lifestyle shopping center, opened in 2005.

### *Employment Land Use Category*

The Employment category provides land for a range of high-quality, well-designed uses where campus-type (see note) settings are encouraged. Uses should be a mix of office and light-industrial, together with lodging, retail, restaurants, and other non-residential

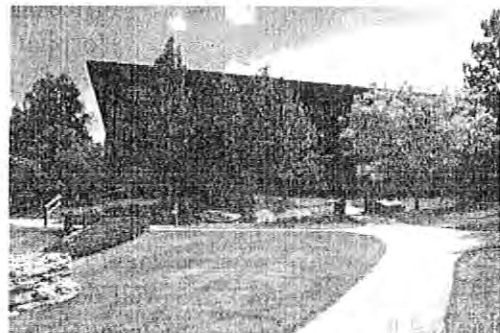
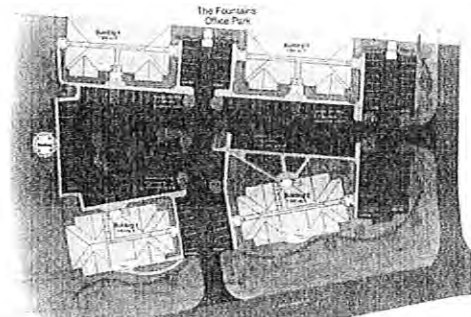
<sup>1</sup> According to the 2000 Land Use Plan, these activity centers were referred to as “Neighborhood Activity Centers.” As part of the 2006 Land Use Plan update, the “neighborhood” moniker was changed to “community” to more appropriately reflect the scale and function of these centers and the fact that they typically include a “community” shopping center. “Neighborhood” centers are placed lower in the revised hierarchy and are typically small commercial centers that serve a smaller neighborhood area.

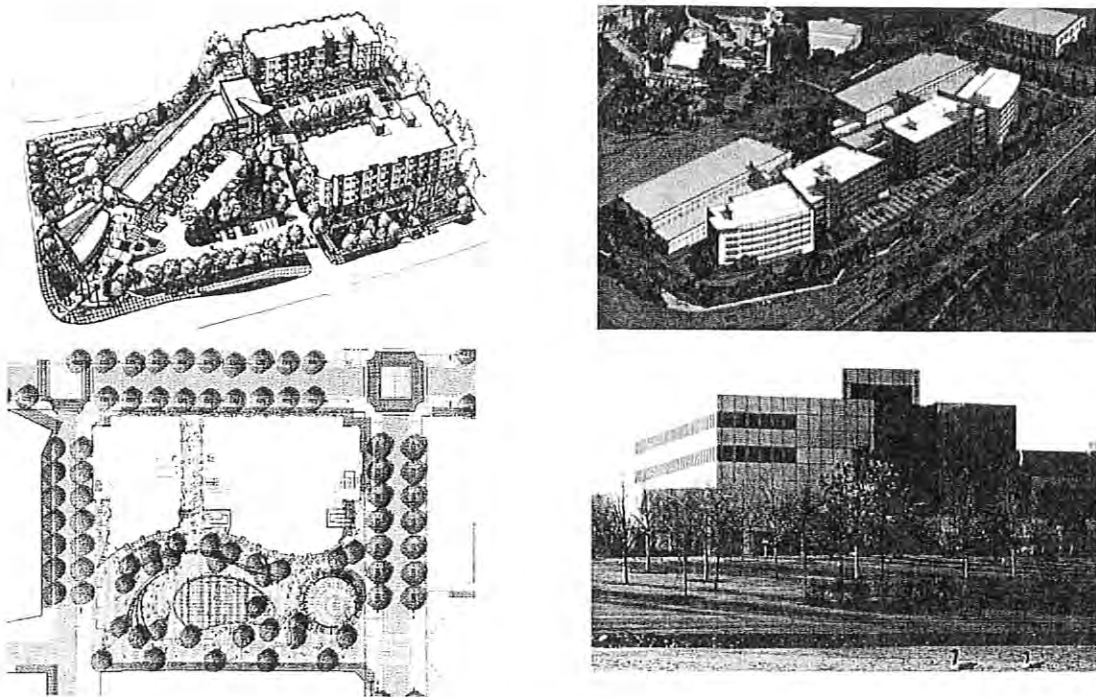


complementary uses in a planned development. A proposed development plan that does not contain office or light-industrial uses may be deemed to be consistent with the Employment Center category if, in the vicinity of the proposed development plan, a) such office or light-industrial uses exist or the appropriate zoning for such uses is in place; and b) such existing or appropriately zoned office or light-industrial uses constitute the predominant land uses.

The Employment Land Use Category allows for residential development with an emphasis on vertical mixed-use developments. Generally, residential development is limited to 20 percent of the land area of any development. However, residential mixed-use development is not limited in area. Residential mixed-use includes office or commercial uses in the same building as residences, and should be designed to create a pedestrian-friendly environment.

Most of these uses will be located along major transportation corridors such as I-25, US 34, and SH 402. There will be circumstances, such as Woodward Governor, where it is appropriate to locate high-quality employment uses adjacent to residential areas. Each case should be evaluated on its own merits.





*Note: "Campus-type" means a form of development that emphasizes open space and the preservation of natural features that may serve as buffers and transitions to adjacent area(s). Retail should be a "secondary" use to office and light industrial uses. The visibility of parking areas, whether structured or otherwise, should be minimized. The exterior elevation design of all buildings should be coordinated with regard to color, materials, architectural form and detailing to achieve design harmony, continuity and horizontal and vertical relief and interest. Shared vehicular and pedestrian access, shared parking, common open space and related amenities should be integrated into the project's design. The overall design of a campus-type development should be compatible with the existing and developing character of the neighboring area.*

### ***Estate Residential Land Use Category***

Areas designated ER are intended to provide for lower residential densities and larger lot areas than other residential land use categories. The gross density for ER neighborhoods is up to a maximum of two (2) units per acre on developable land. ER neighborhoods should consist of single family detached homes. Generous building setbacks and lot frontages result in significant space between dwellings to create an estate residential appearance within the developed area and to preserve view corridors.—Significant environmentally sensitive areas are preserved as permanent open space.

Table LU-4: Activity Center/Mixed-Use Category Descriptions

|                                     | CC- Corridor Commercial   | E-Employment   | NC-Neighborhood Center  | CAC-Community Activity Center   | DAC-Downtown Activity Center   | RAC-Regional Activity Center  |  |
|-------------------------------------|---|--|---|---|--|---|--|
| <b>Purpose</b>                      | <ul style="list-style-type: none"> <li>Wide range of commercial and office uses</li> <li>Follows linear pattern of older strip commercial</li> <li>Potential for redevelopment</li> </ul>   | <ul style="list-style-type: none"> <li>Campus-type (1) setting for employment &amp; related commercial(2)</li> </ul>   | <ul style="list-style-type: none"> <li>Serves daily convenience needs of surrounding neighborhood</li> <li>Possible social and recreational focal point</li> </ul>  | <ul style="list-style-type: none"> <li>Serves shopping needs of the community sub-area</li> <li>Typically anchored by grocery store</li> <li>Potential for employment and civic uses</li> </ul>   | <ul style="list-style-type: none"> <li>Downtown business area</li> <li>Encourage preservation of historic character, redevelopment and infill</li> <li>Encourage diverse mix of land use, including arts-related uses</li> </ul>   | <ul style="list-style-type: none"> <li>Serves regional commercial, service and employment uses</li> </ul>   |  |
| <b>Service/ Market Area</b>         | <ul style="list-style-type: none"> <li>Varies – may serve local and regional traffic</li> </ul>   | <ul style="list-style-type: none"> <li>Intended to meet both community and regional employment needs</li> </ul>  | <ul style="list-style-type: none"> <li>Primary service area is 1/2 mile walking distance</li> </ul>   | <ul style="list-style-type: none"> <li>Primary market area is 3 miles – may serve a larger area</li> </ul>  | <ul style="list-style-type: none"> <li>Serves the entire community and beyond</li> </ul>   | <ul style="list-style-type: none"> <li>Serves regional market area</li> </ul>   |  |
| <b>"Core" Non-Residential Area</b>  | <ul style="list-style-type: none"> <li>Varies - typically shallow strip along major portions of existing arterial roads</li> </ul>  | <ul style="list-style-type: none"> <li>Up to 300 acres or larger</li> </ul>  | <ul style="list-style-type: none"> <li>Up to 6 acres</li> </ul>   | <ul style="list-style-type: none"> <li>10 to 30 acres</li> </ul>  | <ul style="list-style-type: none"> <li>40 acres</li> </ul>   | <ul style="list-style-type: none"> <li>up to 300 acres or larger</li> </ul>   |  |
| <b>Access and Location</b>          | <ul style="list-style-type: none"> <li>Predominantly auto dependent</li> <li>Located along major transportation corridors</li> <li>Connections encouraged thru the use of shared/cross access</li> <li>Discouraged where it worsens traffic problems</li> </ul>                 | <ul style="list-style-type: none"> <li>Predominantly auto dependent</li> <li>Plan for multi-modal access</li> <li>Located along, or with access to, major corridors</li> <li>May be adjacent to residential neighborhoods where appropriate</li> </ul> | <ul style="list-style-type: none"> <li>Designed to encourage walking and biking access directly to and from adjacent neighborhood</li> <li>Located along and/or with access to minor arterials and/or collectors</li> </ul>       | <ul style="list-style-type: none"> <li>Primarily auto access</li> <li>Emphasis on pedestrian connections to neighborhood</li> <li>Transit and trail access</li> </ul>   | <ul style="list-style-type: none"> <li>Both auto and pedestrian-access emphasized - pedestrian circulation emphasized in "core"</li> <li>Major transit hub and accessible by community trail system</li> <li>Alleys provide alternate access points</li> </ul>                 | <ul style="list-style-type: none"> <li>Accessible by all modes of travel</li> <li>Dependant on easy highway access to serve regional market</li> <li>Potential transit stops/transit points</li> </ul>  | <ul style="list-style-type: none"> <li>Accessible by all modes of travel</li> <li>Dependant on easy highway access to serve regional market</li> <li>Potential transit stops/transit points</li> </ul> |
| <b>Typical Non-residential Uses</b> | <ul style="list-style-type: none"> <li>Retail, low-rise office, public/quasi-public uses, entertainment (e.g. restaurants, theatres), hotels/motels, medical facilities, place of worship, senior or community center, middle/high schools, park and ride facilities</li> </ul> | <ul style="list-style-type: none"> <li>Mix of low- to medium-rise office, light-industrial, retail, lodging and other complementary uses</li> </ul>  | <ul style="list-style-type: none"> <li>Convenience grocery, small drug store, insurance offices, gift shop, deli, branches of public/quasi-public uses (post office, library, etc.) day care center, elementary school</li> </ul> | <ul style="list-style-type: none"> <li>Low-rise office, public/quasi-public uses, entertainment (restaurants, theatres, etc.), hotels/motels, medical facilities, place of worship, senior or community center, middle/ high schools, park and ride facilities</li> </ul> | <ul style="list-style-type: none"> <li>Office, hotels, major cultural and entertainment uses; regional &amp; corporate offices in a urban-style setting, retail and services, technology/light manufacturing; major education facilities; major public/quasi-public</li> </ul> | <ul style="list-style-type: none"> <li>Mid &amp; high-rise office; hotels; major cultural and entertainment; regional &amp; corporate offices, retail and service; technology/light manufacturing; higher education; transit facility; major public/quasi-public</li> </ul> |  |
| <b>Development Guidelines</b>       | <ul style="list-style-type: none"> <li>Upgrade existing streetscape and building appearance,</li> <li>Screen existing parking lots</li> <li>Improve circulation and access control</li> </ul>   | <ul style="list-style-type: none"> <li>"Campus-type" setting with unified building design, open space, viewshed protection</li> <li>Encourage high-quality architecture</li> </ul>   | <ul style="list-style-type: none"> <li>Blends with surrounding context</li> <li>Dispersed parking</li> <li>Attractive pedestrian circulation</li> <li>May include place for neighborhood activities</li> </ul>                    | <ul style="list-style-type: none"> <li>Blends with surrounding context</li> <li>Dispersed parking</li> <li>Attractive pedestrian circulation</li> <li>Public plaza/open space should be provided within "core"</li> <li>Links to park/open space</li> </ul>               | <ul style="list-style-type: none"> <li>Emphasis on streetscape</li> <li>Outdoor seating encouraged in conjunction with plazas</li> <li>Preserve historic character</li> </ul>  | <ul style="list-style-type: none"> <li>Larger scale plazas and paths</li> <li>Encourage high-quality architecture</li> </ul>  | <ul style="list-style-type: none"> <li>Larger scale plazas and paths</li> <li>Encourage high-quality architecture</li> </ul>   |
| <b>Residential Component</b>        |   |  |   |   |  |   |  |
| <b>General</b>                      | <ul style="list-style-type: none"> <li>As may be permitted by underlying zoning (e.g. B-Developing Business permits single and multiple family)</li> <li>Mixed-use/residential may be most appropriate uses</li> </ul>  | <ul style="list-style-type: none"> <li>Up to 20% of total employment land area may be residential</li> <li>Mixed-use<sup>3</sup> residential within core</li> </ul>  | <ul style="list-style-type: none"> <li>N/A (These centers will typically be subcomponents of a larger residential development)</li> <li>Mixed-use<sup>3</sup> residential encouraged where appropriate</li> </ul>                 | <ul style="list-style-type: none"> <li>Single-family attached/detached and multi-family adjacent to core</li> <li>Mixed-use<sup>3</sup> residential w/in core</li> <li>See note (4) for projects exceeding 50% residential land area</li> </ul>                           | <ul style="list-style-type: none"> <li>Single-family attached/detached, multi-family and mixed-use<sup>3</sup> residential throughout</li> </ul>   | <ul style="list-style-type: none"> <li>Up to 50% of total land area may be residential</li> <li>Medium to high density residential</li> </ul>   |  |
| <b>Density</b>                      | As permitted by zoning (see below)  | Up to 16 du/acre (Plus mixed-use <sup>3</sup> residential)   | N/A (Mixed-use <sup>3</sup> residential permitted)  | Up to 16 du/acre (Plus mixed-use <sup>3</sup> residential)  | Up to 25 du/acre (Plus mixed-use <sup>3</sup> residential)   | Up to 16 du/ac (Plus mixed-use <sup>3</sup> residential)  |  |
| <b>Examples</b>                     | US 34 and US 287 corridors  | Woodward Governor, Interlocken, Centerra office  | Meadowview Village Center in Longmont   | Thompson Valley Center Center Place, Greeley  | Downtown Loveland  | Centerra (Millennium GDP)   |  |
| <b>Alignment with Zoning</b>        | <ul style="list-style-type: none"> <li>B-Developing Business</li> <li>Planned Development (PUD)</li> <li>MAC-Mixed-use Activity Center</li> </ul>   | <ul style="list-style-type: none"> <li>B-Developing Business</li> <li>I-Industrial</li> <li>Planned Development (PUD)</li> <li>E-Employment District</li> </ul>  | <ul style="list-style-type: none"> <li>B-Developing Business</li> <li>R3e-Established High Density</li> <li>MAC-Mixed-use Activity Center</li> </ul>  | <ul style="list-style-type: none"> <li>Planned Development (PUD)</li> <li>MAC-Mixed-use Activity Center</li> </ul>  | <ul style="list-style-type: none"> <li>BE-Established Business District</li> </ul>   | <ul style="list-style-type: none"> <li>MAC-Mixed-use Activity Center</li> <li>Planned Development (PUD)</li> </ul>  | <ul style="list-style-type: none"> <li>MAC-Mixed-use Activity Center</li> <li>Planned Development (PUD)</li> </ul>   |

**Notes:**  
 1.) See definition of "Campus-Type" on Page 19.  
 2.) A proposed development plan that does not contain office or light-industrial uses may be found consistent with the Employment Center category if, in the vicinity of the proposed development plan, a) office or light-industrial uses exist or the zoning for such uses is in place such that these uses or zoning constitute the predominant land uses. "Campus-type" means development that emphasizes open space and the preservation of natural features that may serve as buffers and transitions to adjacent area(s).  
 3.) Mixed-use residential means residential in the same building with non-residential uses, such as residential at ground level with non-residential or above a non-residential use. In the case of mixed-use above a ground floor non-residential use, the mixed-use residential does not count toward the area limits on residential uses within total activity center area.  
 4.) For projects exceeding 50 percent residential land area, applicant must demonstrate that sufficient land area is devoted to commercial use within the project, or within the vicinity of the project, to meet future commercial needs and demands.

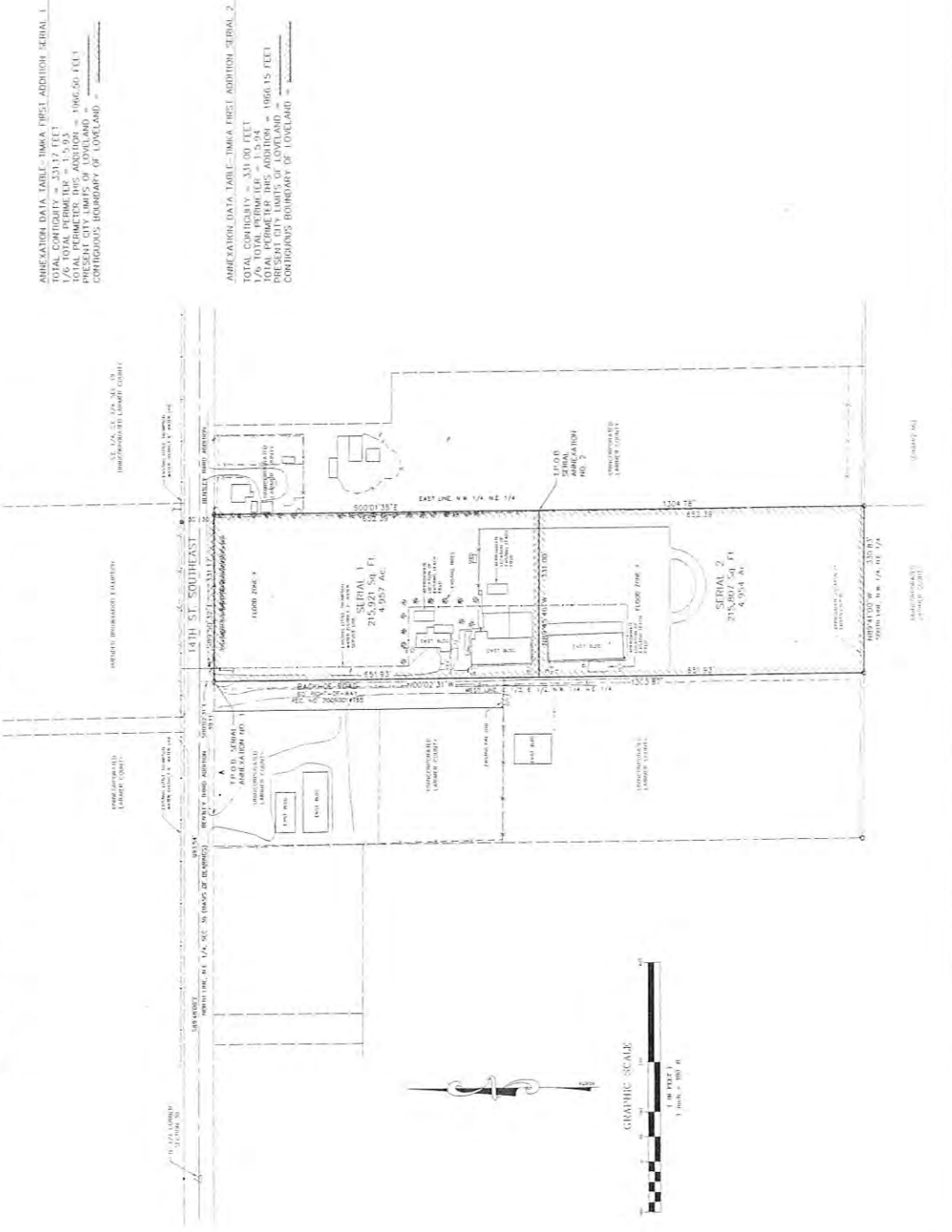




TIMKA FIRST ADDITION

# TIMKA FIRST ADDITION

BEING A SERIAL ANNEXATION OF PORTIONS OF THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 5 NORTH, RANGE 68 THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH P.M., LARIMER COUNTY, COLORADO.

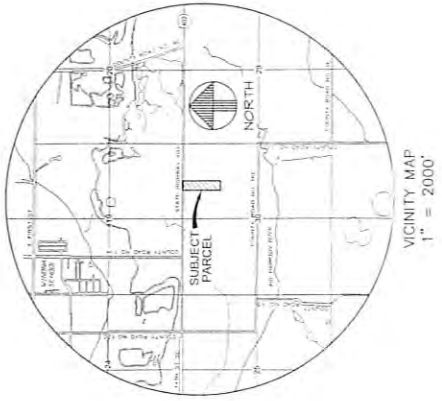
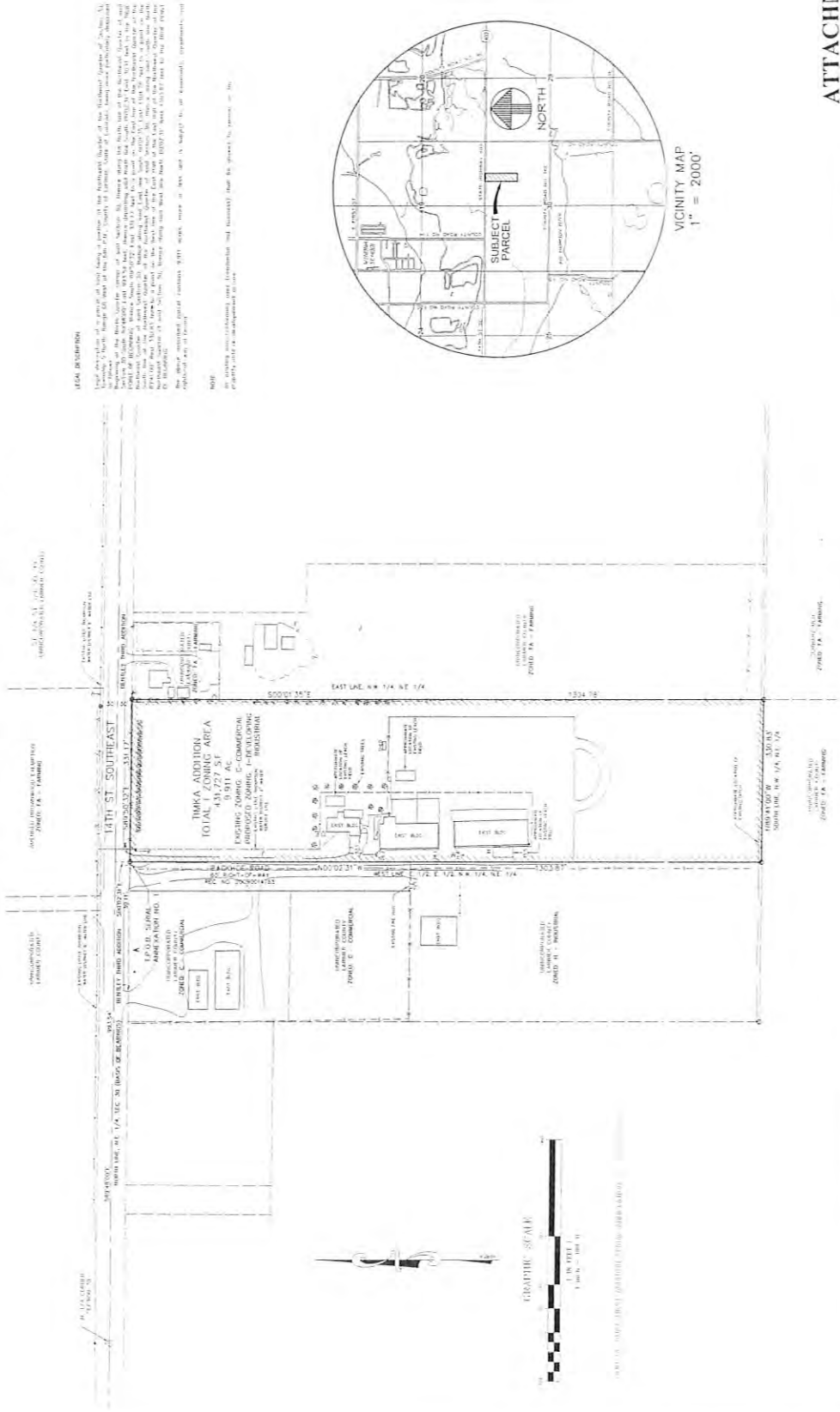


|   |                       |                      |                         |
|---|-----------------------|----------------------|-------------------------|
| <b>DATE:</b> 10.20.2010   | <b>SCALE:</b> 1"=100' | <b>DRAWN:</b> P.A.H. | <b>APPROVED:</b> P.A.H. |
| <b>Landmark Engineering</b><br>Engineers Planners Surveyors Architects Geotechnical<br>1824 West Eisenhower Blvd., Loveland, Colorado 80538<br>970.687.4244 • Fax 970.687.4239<br>www.landmarkeng.com |                       |                      |                         |
| <b>TIMKA FIRST ADDITION</b>   |                       |                      |                         |
| <b>CITY OF LOVELAND, COLO.</b>  |                       |                      |                         |
| <b>TIMKA FIRST ADDITION</b>   |                       |                      |                         |
| <b>2 of 2</b>   |                       |                      |                         |

TIMKA FIRST ADDITION

# TIMKA FIRST ADDITION SERIAL ANNEXATION REZONING MAP REZONING NO.

BEING A PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST  
QUARTER OF SECTION 30, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE  
6TH P.M., LARIMER COUNTY, COLORADO.



**LEGAL DESCRIPTION**  
 Legal description of the parcel of land being annexed to the Northwest Quarter of the Northeast Quarter of Section 30, Township 5 North, Range 68 West of the 6th P.M., Larimer County, Colorado, as shown on the attached plat, is as follows: ...

**NOTICE**  
 An existing use, structure, and/or improvement (the "existing use") shall be permitted on the property, only as an accessory use.

|                                       |                 |
|---------------------------------------|-----------------|
| DATE: 10-1-2010                       | SCALE: 1"=100'  |
| DRAWN: J.P.H.                         | CHECKED: T.J.P. |
| APPROVED: J.P.H.                      |                 |
| REVISIONS                             |                 |
| NO. DATE BY COMMENTS                  |                 |
| 1 10-1-10 J.P.H. PREPARED FOR TOWN OF |                 |
| 2 10-1-10 J.P.H. PREPARED FOR TOWN OF |                 |
| 3 10-1-10 J.P.H. PREPARED FOR TOWN OF |                 |
| 4 10-1-10 J.P.H. PREPARED FOR TOWN OF |                 |
| 5 10-1-10 J.P.H. PREPARED FOR TOWN OF |                 |

**Landmark Engineering**  
 Engineers Planners Surveyors Architects Geotechnical  
 15701 E. 4th Avenue, Suite 100, Denver, CO 80231  
 (303) 751-1111  
 www.landmarkeng.com

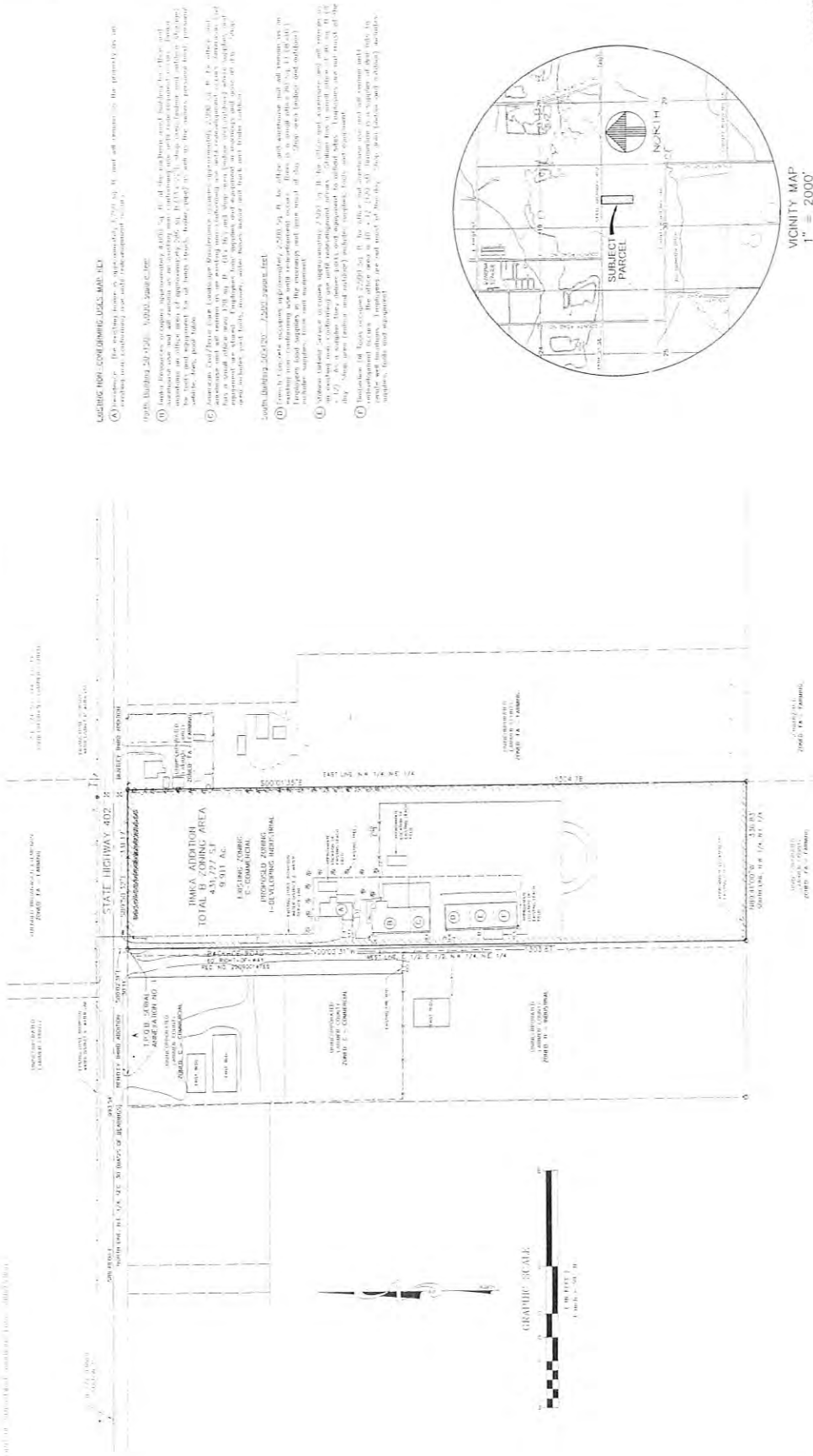
CLIENT: TIMOTHY PIVONKA  
 PROJECT: TIMKA REZONING MAP  
 CITY OF LOVELAND, COLO.  
 SHEET: 1 OF 1

ATTACHMENT 7

This document is prepared for the use of the City of Loveland. It is not to be used for any other purpose without the written consent of the City of Loveland. The City of Loveland is not responsible for the accuracy of the information provided herein.

# TIMKA FIRST ADDITION SERIAL ANNEXATION EXISTING NON-CONFORMING USE LOCATION MAP

BEING A PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST  
QUARTER OF SECTION 30, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE  
6TH P.M., LARIMER COUNTY, COLORADO.



- LEGEND FOR CONFORMING USES: MAP 101**
- (A) Existing use conforming with the zoning ordinance, 2008, 54, 10, and all other provisions of the zoning ordinance, including but not limited to the following:
    - (1) Single-family detached residential, 2008, 54, 10, 101, 101.1, 101.2, 101.3, 101.4, 101.5, 101.6, 101.7, 101.8, 101.9, 101.10, 101.11, 101.12, 101.13, 101.14, 101.15, 101.16, 101.17, 101.18, 101.19, 101.20, 101.21, 101.22, 101.23, 101.24, 101.25, 101.26, 101.27, 101.28, 101.29, 101.30, 101.31, 101.32, 101.33, 101.34, 101.35, 101.36, 101.37, 101.38, 101.39, 101.40, 101.41, 101.42, 101.43, 101.44, 101.45, 101.46, 101.47, 101.48, 101.49, 101.50, 101.51, 101.52, 101.53, 101.54, 101.55, 101.56, 101.57, 101.58, 101.59, 101.60, 101.61, 101.62, 101.63, 101.64, 101.65, 101.66, 101.67, 101.68, 101.69, 101.70, 101.71, 101.72, 101.73, 101.74, 101.75, 101.76, 101.77, 101.78, 101.79, 101.80, 101.81, 101.82, 101.83, 101.84, 101.85, 101.86, 101.87, 101.88, 101.89, 101.90, 101.91, 101.92, 101.93, 101.94, 101.95, 101.96, 101.97, 101.98, 101.99, 101.100.
  - (B) Existing use conforming with the zoning ordinance, 2008, 54, 10, and all other provisions of the zoning ordinance, including but not limited to the following:
    - (1) Single-family attached residential, 2008, 54, 10, 101, 101.1, 101.2, 101.3, 101.4, 101.5, 101.6, 101.7, 101.8, 101.9, 101.10, 101.11, 101.12, 101.13, 101.14, 101.15, 101.16, 101.17, 101.18, 101.19, 101.20, 101.21, 101.22, 101.23, 101.24, 101.25, 101.26, 101.27, 101.28, 101.29, 101.30, 101.31, 101.32, 101.33, 101.34, 101.35, 101.36, 101.37, 101.38, 101.39, 101.40, 101.41, 101.42, 101.43, 101.44, 101.45, 101.46, 101.47, 101.48, 101.49, 101.50, 101.51, 101.52, 101.53, 101.54, 101.55, 101.56, 101.57, 101.58, 101.59, 101.60, 101.61, 101.62, 101.63, 101.64, 101.65, 101.66, 101.67, 101.68, 101.69, 101.70, 101.71, 101.72, 101.73, 101.74, 101.75, 101.76, 101.77, 101.78, 101.79, 101.80, 101.81, 101.82, 101.83, 101.84, 101.85, 101.86, 101.87, 101.88, 101.89, 101.90, 101.91, 101.92, 101.93, 101.94, 101.95, 101.96, 101.97, 101.98, 101.99, 101.100.
  - (C) Existing use conforming with the zoning ordinance, 2008, 54, 10, and all other provisions of the zoning ordinance, including but not limited to the following:
    - (1) Single-family detached residential, 2008, 54, 10, 101, 101.1, 101.2, 101.3, 101.4, 101.5, 101.6, 101.7, 101.8, 101.9, 101.10, 101.11, 101.12, 101.13, 101.14, 101.15, 101.16, 101.17, 101.18, 101.19, 101.20, 101.21, 101.22, 101.23, 101.24, 101.25, 101.26, 101.27, 101.28, 101.29, 101.30, 101.31, 101.32, 101.33, 101.34, 101.35, 101.36, 101.37, 101.38, 101.39, 101.40, 101.41, 101.42, 101.43, 101.44, 101.45, 101.46, 101.47, 101.48, 101.49, 101.50, 101.51, 101.52, 101.53, 101.54, 101.55, 101.56, 101.57, 101.58, 101.59, 101.60, 101.61, 101.62, 101.63, 101.64, 101.65, 101.66, 101.67, 101.68, 101.69, 101.70, 101.71, 101.72, 101.73, 101.74, 101.75, 101.76, 101.77, 101.78, 101.79, 101.80, 101.81, 101.82, 101.83, 101.84, 101.85, 101.86, 101.87, 101.88, 101.89, 101.90, 101.91, 101.92, 101.93, 101.94, 101.95, 101.96, 101.97, 101.98, 101.99, 101.100.
  - (D) Existing use conforming with the zoning ordinance, 2008, 54, 10, and all other provisions of the zoning ordinance, including but not limited to the following:
    - (1) Single-family attached residential, 2008, 54, 10, 101, 101.1, 101.2, 101.3, 101.4, 101.5, 101.6, 101.7, 101.8, 101.9, 101.10, 101.11, 101.12, 101.13, 101.14, 101.15, 101.16, 101.17, 101.18, 101.19, 101.20, 101.21, 101.22, 101.23, 101.24, 101.25, 101.26, 101.27, 101.28, 101.29, 101.30, 101.31, 101.32, 101.33, 101.34, 101.35, 101.36, 101.37, 101.38, 101.39, 101.40, 101.41, 101.42, 101.43, 101.44, 101.45, 101.46, 101.47, 101.48, 101.49, 101.50, 101.51, 101.52, 101.53, 101.54, 101.55, 101.56, 101.57, 101.58, 101.59, 101.60, 101.61, 101.62, 101.63, 101.64, 101.65, 101.66, 101.67, 101.68, 101.69, 101.70, 101.71, 101.72, 101.73, 101.74, 101.75, 101.76, 101.77, 101.78, 101.79, 101.80, 101.81, 101.82, 101.83, 101.84, 101.85, 101.86, 101.87, 101.88, 101.89, 101.90, 101.91, 101.92, 101.93, 101.94, 101.95, 101.96, 101.97, 101.98, 101.99, 101.100.



VICINITY MAP  
1" = 2000'

**CITY OF LOVELAND**  
**PLANNING COMMISSION MINUTES**  
**January 24, 2011**

 **1. Timka First Addition**

This is a public hearing to consider an annexation and initial I-Developing Industrial District zoning for a 9.9-acre property located on 14th Street Southeast. This is a serial annexation, achieving contiguity with the City by virtue of being adjacent to 14th Street SE, which was annexed as part of the Bentley 3rd Addition. Serial annexations are expressly allowed under the provisions of the state statutes, provided each serial meets the contiguity requirements for annexation. This matter is legislative in nature.

**Brian Burson, project planner**, gave a brief background on this item. He stated the request is to annex into the city and zone it I-Developing Industrial, with special provisions and design standards to assure that the desired character of the E-Employment land areas is achieved. The county zoning is currently C-Commercial. He stated that the role of the Planning Commission is to make a recommendation to the City Council for both the annexation and zoning. He stated that when a municipality has adopted a comprehensive master plan, the city is generally obligated to zone property in a manner that is reasonably consistent with that comprehensive plan which would make this proposal a quasi-judicial matter for the Planning Commission. He further reported that the applicant and staff have been working together to develop the terms of annexation as listed in Section VII of the report. He presented the commission with revised terms of annexation (**Secretary's note**: The revisions are included in these minutes).

**Ken Merrit, Landmark Engineering** representing the applicant, briefly oriented the Commission and audience on the location of the proposed annexation, clarifying that the property is located entirely within the Growth Management Area (GMA), and is designated as E-Employment Land Use. He spoke of the potential uses as outlined in the Land Use Master Plan.

There was a lengthy discussion regarding how annexation could be achieved as a serial to assure that the 1/6 contiguity is met, and explained how the serial annexation would be accomplished. He clarified that the first serial annexation is gained by its contiguity from the adjacent city right-of-way on the southern boundary of Highway 402 and the second serial annexation would come from the southern boundary of the 1st serial annexation, which would then allow for the entire property to be annexed. He pointed out that all uses that are permitted by right in the E-Employment and I-Industrial zones would be permitted. He stated that the following uses would normally be permitted by a special review would not be allowed to occur on this property:

- a. Crematorium
- b. Heavy industrial
- c. Truck stop
- d. Junkyard
- e. Packing facility
- f. Jails, detention and penal center



- g. Outdoor storage as a principle use
- h. Sexually Oriented Businesses
- i. Recycling collection facility attended
- j. Recycling collection facility unattended

**Mr. Merrit** reported that the applicant is requesting I-Industrial zoning and stated that the annexation and development agreement should be achieved by establishing supplemental site development standards through an annexation agreement. He stated that this property had a high level of site development standards i.e., development of a unified campus character, 60% of uses would be employment, 40% support uses; protection of view corridors using setbacks using a minimum 60 ft setback along the 402 corridor, extensive set of landscape and development standards as well as extensive architectural development standards which would be added into an annexation agreement.

**Mr. Merrit** mentioned that in the future there would be a minor subdivision application on the property, which would also be dedicating additional right-of-way on Highway 402.

**Commissioner Meyers** asked if lot 2 would be accessible from lot 1.

**Mr. Merrit** clarified that there is an access easement located along western property boundary allowing access to both lots from Highway 402.

**Commissioner Dowding** spoke of the two maps, one being the contiguity map differentiating the north and south being in a different location than what is shown in the site development standards. She asked what activities would be allowed in the north and south lots.

**Mr. Merrit** clarified that minor subdivisions are approved at a staff level and that the lots would be required to comply with the conditions that are required in the I-Industrial zoning as well as the conditions in the annexation agreement. He further clarified that those uses have **not** been defined yet and stated that they will be consistent with what is allowed by the zoning.

**Commissioner Krenning** questioned why the applicant chose I-Industrial not B-Business zoning.

**Mr. Merrit** stated they struggled with that B-Business has some very specific uses, which were slightly more limiting. He stated that they also looked at using the MAC zone, which includes uses that contain a higher level of residential, and retail and stated that the E zone would require extensive conditions and since the site was so small it did not make sense and felt it was out of character. He stated that since the I zone was lacking in development standards they felt that it would be better to require the conditions that are in the staff report to make it a more quality development.

**Commissioner Krenning** asked why the applicant is not zoning the property DR and questioned if there were plans for development at this time.

There was a lengthy discussion regarding the IGA with Larimer County. The IGA requires that property owners ask the City to be annexed if they are eligible. **Mr. Merrit** stated that this property does not meet the contiguity requirement, and was not required to ask to be annexed. He stated that if the applicant were to request a DR zone then all rights that the property owner had in the County could be lost. He further commented that there is not an IGA for this part of the County.

**Mr. Merrit** assured Commissioner Dowding that the building setback minimums would be met. He stated that due to the size of the property and all the standards that have to be met in the E zone it was their opinion that the I zone was easier to write the development standards.

**Chair Molloy** stated that he did not understand why the E zone was not maintained as shown on the Comprehensive Plan.

**Mr. Burson** clarified that the Comprehensive Plan does recognize that the I-Industrial zone fulfills the E-Employment area recommendation but does not instruct on how to adapt it to the character. He stated that if the I-Industrial zoning were acceptable than staff believed it should add the additional character which is needed. He stated that the concept master plan requires specific unified development and you would have narrow choices on design and at this time there is no developer on board to say what they want with regards to design.

After discussion regarding state requirements for contiguity, **Tiffane Johnson, Landmark Planners and Engineers**, clarified that there were currently five companies located on the site: landscape maintenance; two oil and gas service companies; Timka Resources; Timberline Tools and French Concrete.

**Mr. Merrit** clarified that they are not setting boundaries for this particular annexation because it is a serial annexation.

After discussion regarding state requirements for contiguity, **Tiffane Johnson, Landmark Planners and Engineers**, clarified that there were currently five companies located on the site: landscape maintenance; two oil and gas service companies; Timka Resources; Timberline Tools and French Concrete.

**Mr. Paulsen** clarified that the provisions of the Code would allow nonconforming uses to expand to up to 25%.

**Commissioner Krenning** stated that he would be supporting the application and believed that staff does work in the best interest of the City.

**Assistant City Attorney Sunita Sharma** made the following changes to the conditions:

- 3.b. Upon annexation and zoning into the City, and notwithstanding the provisions of Sections 18.36.010 and 18.36.020 of the City of Loveland Municipal Code, all uses permitted by right and all uses permitted by special review in the E-Employment District shall also be permitted on this property **as**

**specified in the E-Employment District.** In cases where a use is allowed in the I zone by right by **but** normally requires a special review in the E zone, the uses allowed by right in the I zone shall govern.

AND

Striking the following Water/Wastewater condition:

~~11. — At the time of Development, the Developer shall design and construct a wastewater main along Highway 402 to the site, if not previously constructed by others. The main shall be designed in accordance to the then current Wastewater Master Plan and Wastewater Development Standards.~~

*Commissioner Krenning made a motion to make the findings listed in Section VI of the staff report dated January 24, 2011, and recommend that City Council approve the Timka First Addition to the City of Loveland and zone the Timka First Addition as I-Developing Industrial, subject to the terms of annexation listed in Section VII of said report, as amended on the record. Upon a second by Commissioner Middleton the motion was unanimously adopted.*

Mr. Merrit agreed to the conditions.

## RECOMMENDED TERMS OF ANNEXATION

The following terms of annexation are recommended by City staff.

### Current Planning:

1. Upon annexation of the property, all development and redevelopment of the property shall be governed by the Development Standards in **Attachment #2**, as well as all applicable codes, standards and policies of the City. These Development Standards shall be incorporated into the Annexation Agreement between the Owner and the City.
2. When reviewing and acting upon any application for a use permitted by special review, the City shall be authorized to consider the goals, objectives and criteria for the E-Employment Center land use category, as set forth in the 2005 Comprehensive Plan, as amended. Applications that do not meet the intent of the goals, objectives and criteria for the E-Employment Center land use category, as set forth in the 2005 Comprehensive Plan, as amended, may be disapproved by the City.
3. Upon annexation and zoning into the City, and notwithstanding the provisions of Sections 18.36.010 and 18.36.020 of the City of Loveland Municipal Code, the following uses shall not be permitted on this site:
  - a. Crematorium
  - b. Heavy industrial
  - c. Truck stop

- d. Junkyard
- e. Packing facility
- f. Jails, detention and penal center
- g. Outdoor storage as a principle use
- h. Sexually Oriented Businesses
- i. Recycling collection facility attended
- j. Recycling collection facility unattended

3.b. Upon annexation and zoning into the City, and notwithstanding the provisions of Sections 18.36.010 and 18.36.020 of the City of Loveland Municipal Code, all uses permitted by right and all uses permitted by special review in the E-Employment District shall also be permitted on this property as specified in the E-Employment District. In cases where a use is allowed in the I zone by right but normally requires a special review in the E zone, the uses allowed by right in the I zone shall govern.

**Transportation Engineering:**

4. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS), the 2030 Transportation Plan, and any updates to either in effect at the time of a building permit, and/or a site-specific development application. Any and all variances from these standards and plans require specific written approval by the City Engineer.

5. Notwithstanding any conceptual information presented in the Annexation/Zoning submittal; street layout, street alignments, access locations, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for a building permit, and/or a site-specific development application.

6. The owner shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, this addition that are shown on the adopted Transportation Plan prior to approval of a building permit and/or a site specific development application within this addition. Furthermore, the owner shall dedicate additional right-of-way for SH 402 on any future platting application for the property in order to achieve a 70-foot total half right-of-way on SH 402 adjacent to the property.

7. The developer agrees to acquire, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of a building permit, and/or a site specific development application within this addition, the developer shall submit documentation satisfactory to the City, establishing the Developer's unrestricted ability to acquire sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.

8. The ultimate roadway improvements, including sidewalk, adjacent to the property for SH 402 shall be designed and constructed by the developer, unless designed and constructed by others. A cash-in-lieu payment may be accepted for all or part of the improvements, if approved in writing by the City Engineer. The timing and detailed scope of these improvements will be



determined through review and approval of the building permit application and/or a site-specific development application.

9. Any future proposed development within the addition shall submit a Traffic Impact Study and demonstrate compliance with current City Standards at the time of development.

10. Any future proposed development within the addition shall obtain written concurrence from CDOT for access to SH 402.

**Water/Wastewater:**

11. At the time of Development, the Developer shall, provide the City a Wastewater Impact Design Analysis Report for the Development.

**Power:**

12. All plats of this property shall include the following note:

"When the property being annexed into the City of Loveland is currently located within the REA certified territory, this property is subject to a five percent (5%) surcharge on electrical energy as defined in 40-9.5-204, CRS, and the City of Loveland Municipal Code 13.12.180. This surcharge applies to any subsequent subdivisions of property annexed after January 31, 1987 within the REA certified service territory. A surcharge of 5% will be added to all bills for the sale of electric power to additional services which came into the existence after January 31, 1987, within the territory herein annexed which surcharge will expire ten years after effective date of this annexation."

**Larry Ryder, Larimer County resident and adjacent neighbor**, expressed concerns regarding an access easement. He stated that County required him to dedicate a 30-foot right-of-way easement.

**Mr. Merrit** stated that in the future their maybe a joint access easement, but the city is not prepared to make this a public road at this time. He stated that when development occurs then the access would be addressed.



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 10  
**MEETING DATE:** 4/19/2011  
**TO:** City Council  
**FROM:** Greg George, Development Services Director  
**PRESENTER:** Kerri Burchett, Current Planning

**TITLE:**

AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED IN THE NORTH TAFT AVENUE FIRST ADDITION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

**DESCRIPTION:**

A public hearing to consider a quasi-judicial action to adopt an ordinance on first reading to rezone a 0.50-acre property located at 1629 W. 8th Street from R2 Developing Two-Family Residential to A Muse Planned Unit Development. The PUD includes a non-phased preliminary development plan which is integral to the rezoning application. The property is located on the north side of W. 8th Street, west of N. Taft Avenue and east of Kelly Drive. The applicant is Kyle Dallabetta.

**BUDGET IMPACT:**

Yes     No

**SUMMARY:**

The preliminary development plan would allow the conversion of a residential house into a small coffee shop and art gallery. No exterior modifications to the structure or site are proposed. The property was annexed into the City as part of an enclave and zoned R2 Developing Two-Family Residential. Other uses occurring on the site, as granted in the annexation agreement, include an existing 1,740 square foot art studio. The Planning Commission unanimously recommended approval of the rezoning/preliminary development plan at a public hearing on March 28, 2011. As the item was approved on the consent agenda, minutes of the hearing have not been included in the staff memorandum.

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**LIST OF ATTACHMENTS:**

- A. Ordinance
  - B. Staff memorandum
- 

**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motion for City Council action:

Move to adopt on first reading AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED IN THE NORTH TAFT AVENUE FIRST ADDITION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO.

**REVIEWED BY CITY MANAGER:**

**FIRST READING: April 19, 2011**

**SECOND READING: \_\_\_\_\_**

**ORDINANCE NO.**

**AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED IN THE NORTH TAFT AVENUE FIRST ADDITION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That Section 18.04.040 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

That the territory located within the North Taft Avenue First Addition, City of Loveland, Larimer County, Colorado, and more particularly described as:

That portion of the North Taft Avenue First Addition, to the City of Loveland, Colorado being a portion of the Northeast Quarter of Section 15, Township 5 North, Range 69 West of the Sixth Principal Meridian, City of Loveland, County of Larimer, Colorado, more particularly described as follows:

Considering the South line of Said Northeast Quarter as bearing North 90°00'00" West, with all bearings contained herein relative thereto:

Commencing at the Southeast Corner of the Northeast Quarter of said Section 15:

thence North 90°00'00" West, a distance of 660.00 feet;

thence North 00°00'00" East, a distance of 27.41 feet to the POINT OF BEGINNING;

thence continuing North 00°00'00" East, along the East Line of the Romar Addition to the City of Loveland, a distance of 137.59 feet;

thence departing said East Line, North 90°00'00" East, a distance of 156.00 feet;

thence South 00°00'00" West, a distance of 135.20 feet, to a point on the North right-of-way line of West Eight Street;

thence South 89°07'17" West, along said North right-of-way line, a distance of 156.02 feet to the POINT OF BEGINNING.



Which territory is now included within the boundaries designated as R2 – Developing Two-Family Residential District, shall be included within the boundaries of the district designated as follows:

**"A Muse Planned Unit Development, P-104"**

The above described property contains 21,277.81 square feet or 0.4885 acres, more or less, and is further subject to all Rights-of-Way, Easements, Restrictions and Agreements, written or unwritten, now existing, or of record.

**Section 2.** That the **A Muse Planned Unit Development, P-104** shall be subject to all applicable zoning regulations for the City of Loveland except where they conflict with any Preliminary Development Plan or Final Development Plan applicable to the property.

**Section 3.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

**Section 4.** That the City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2011.


ATTEST:

CITY OF LOVELAND, COLORADO:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney



City of Loveland

**Development Services  
Current Planning**

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www.cityofloveland.org

**MEMORANDUM**

**TO:** City Council  
**FROM:** Kerri Burchett, Principal Planner  
**DATE:** April 19, 2011  
**RE:** A Muse PUD Preliminary Development Plan

**I. EXHIBITS**

- A. Planning Commission Staff Report from March 28, 2011, including:
1. Vicinity Map
  2. Traffic Impact Study Excerpt
  3. Annexation Agreement
  4. Preliminary Development Plan narrative
  5. Preliminary Development Plan

**II. SUMMARY**

**A. Project Description**

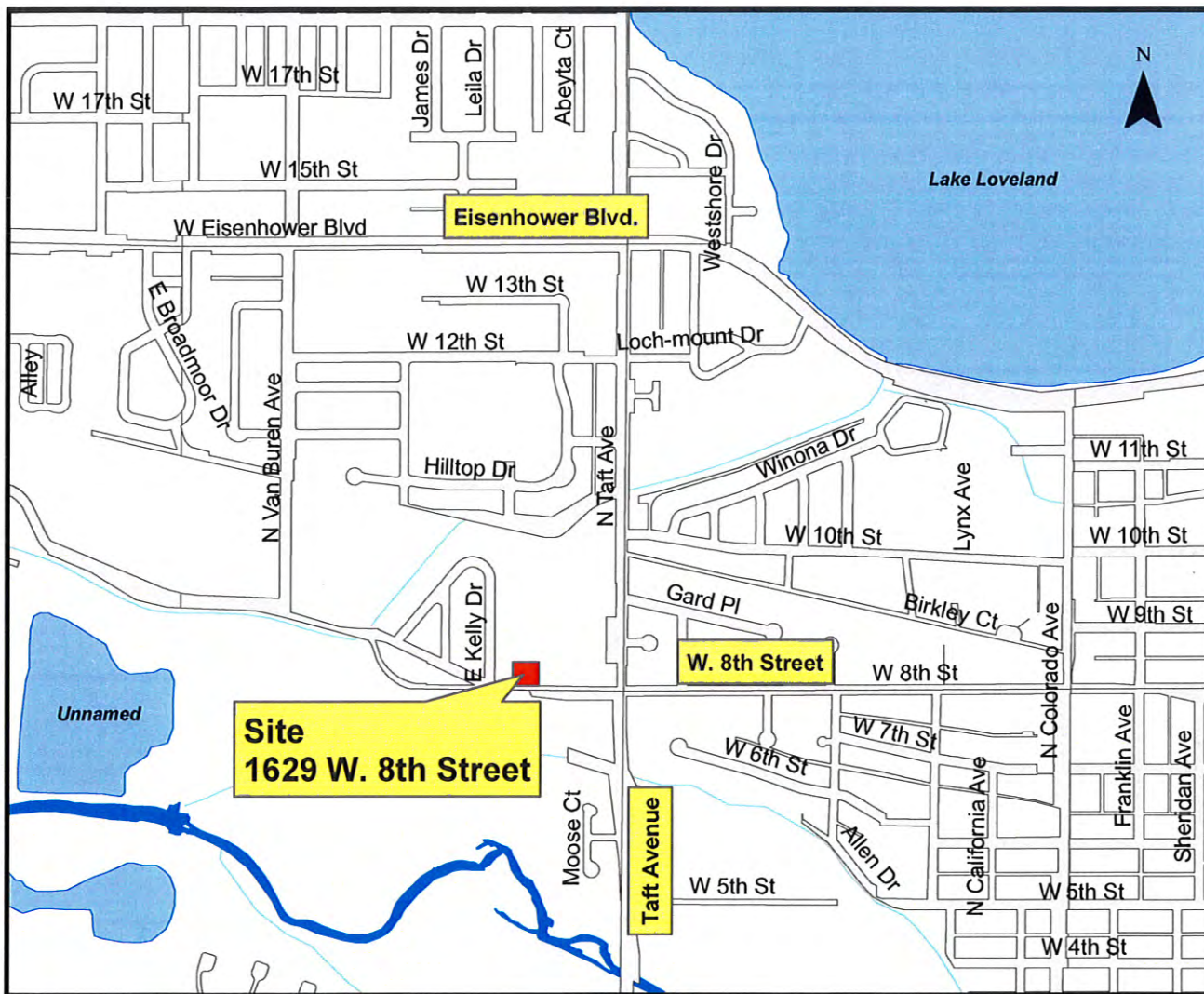
This proposal is to rezone a 0.50-acre property located at 1629 W. 8th Street from R2 Developing Two-Family Residential to A Muse Planned Unit Development. The Preliminary Development Plan, which is integral to this proposal, would allow for the conversion of an existing single family residence into a small coffee shop and art gallery. No improvements to the exterior of the structure or the site are proposed.

The property was annexed into the City as part of the North Taft Avenue enclave annexation. At the time of annexation, the property was being used as a sculpture studio, gallery and guest house for visiting artists. The annexation agreement granted approval of uses associated with the art gallery operation, including the creation and sale of sculptures and occasional promotional and social events associated with the gallery. In association with the sculpture and art gallery use, the applicant is requesting to develop a small 270 square foot coffee shop within the existing structure. The coffee shop is intended to primarily serve the neighborhood and those visiting the site, while complementing

the existing art studio use. The remainder of the interior space of the structure would be devoted to the gallery.

The change in use from the residential guest house to a commercial coffee shop has necessitated a change to the zoning of the property, as the R2 zone district does not permit commercial land uses either by right or by special review. The Planned Unit Development zone was determined to be the most logical choice to accommodate the use based on the surrounding neighborhood context. The rezoning of the property is a quasi-judicial action which requires the City Council to take action based on the applicable City codes, standards and requirements.

### B. Property Location



### C. Key Issues

No key issues have been identified by City staff with the Preliminary Development Plan. The two neighbors attending the neighborhood meeting voiced support of the project.

### D. Planning Commission Recommendation

Planning Commission unanimously recommended approved the PUD at a public hearing on March 28, 2011. The project remained on the consent agenda with no discussion occurring. As such, the minutes of the hearing have not been included with this staff memorandum.

## III. RECOMMENDATION

The following are recommended conditions of the PDP:

#### Transportation Development Review

1. All public improvements shall conform to the Larimer County Urban Area Street Standards (LCUASS) as amended.

#### Water/Wastewater

2. Prior to approval of a building permit for the change in use, the Developer shall submit payment to the City of Loveland for the difference in System Impact Fees and Raw Water Development Fees between the residential and commercial fees as well as payment for commercial water rights current at the time of payment.

#### Building

3. Prior to the establishment of the coffee shop, a building permit shall be obtained for the change in use from a Single Family Dwelling to a Commercial Use "Coffee Shop".
4. Prior to the issuance of a certificate of occupancy for the change in use, the parking lot surface for the handicap stall shall be modified in compliance with the 2003 ANSI accessibility regulations.





### Development Services Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537  
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## Planning Commission Staff Report March 28, 2011

**Agenda #:** Consent Agenda - 1  
**Title:** A Muse PUD  
**Applicant:** Kyle Dallabetta  
**Request:** Preliminary Development Plan  
**Location:** 1629 W. 8th Street, located on the north side of W. 8th Street, west of N. Taft Avenue and east of Kelly Drive  
**Existing Zoning:** R2 - Developing Two-Family Residential  
**Staff Planner:** Kerri Burchett

**Staff Recommendation**  
 Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

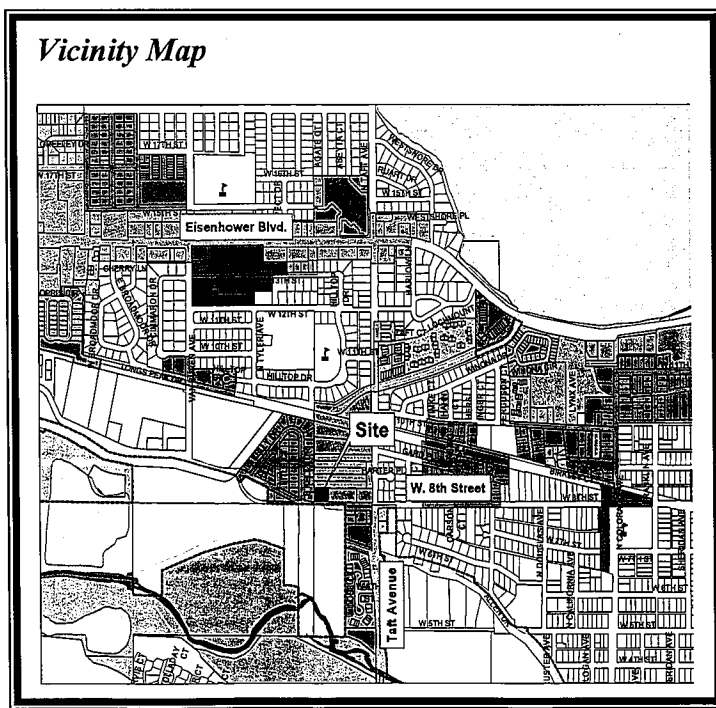
**Recommended Motions:**

1. Move to make the findings listed in Section VII of this report dated March 28, 2011 and, based on those findings recommend that City Council approve the A Muse PUD Preliminary Development Plan subject to the conditions listed in said report, as amended on the record.

**Summary of Analysis**

This is a public hearing to consider a preliminary development plan that would allow the conversion of a residential house into a small coffee shop and art gallery. No exterior modifications to the structure or site are proposed. The property was annexed into the City as part of an enclave annexation and zoned R2 Developing Two-Family Residential. Other uses occurring on the site, as granted in the annexation agreement, include an existing 1,740 square foot art studio and detached garage.

Staff believes that all key issues have been resolved based on City Code and standards. Two neighbors attended the neighborhood meeting and both voiced support of the project.



**I. SUMMARY**

This proposal is a Preliminary Development Plan to rezone property located at 1629 W. 8th Street from R2 Developing Two-Family Residential to A Muse Planned Unit Development. The PDP would allow for the conversion of an existing single family residence into a small coffee shop and art gallery. No improvements to the exterior of the structure or the site are proposed.

The property was annexed into the City as part of the North Taft Avenue enclave annexation. At the time of annexation, the property was being used as a sculpture studio, gallery and guest house for visiting artists. The annexation agreement granted approval of uses associated with the art gallery operation, including the creation of sculptures, sale of sculpture and gallery items, office support and occasional promotional and social events associated with the gallery (see **Attachment 3**). In association with the sculpture and art gallery use, the applicant is requesting to develop a small 270 square foot coffee shop within the existing structure. The coffee shop is intended to primarily serve the neighborhood and those visiting the site, while complimenting the existing art studio use. The remainder of the interior space of the structure would be devoted to the gallery.

The change in use from the residential guest house to a commercial coffee shop has necessitated a change to the zoning of the property, as the R2 zone district does not permit commercial land uses either by right or by special review. The Planned Unit Development zone was determined as the most logical choice to accommodate the use based on the surrounding neighborhood context. The rezoning of the property is a quasi-judicial action by the Planning Commission, which requires the Planning Commission to take action based on the applicable City codes, standards and requirements. Since the application is for a non-phased PUD Preliminary Development Plan, the action of the Planning Commission is a recommendation that will be forwarded to the City Council.

**II. ATTACHMENTS**

- 1. Vicinity Map
- 2. Traffic Impact Study Excerpt
- 3. Annexation Agreement
- 4. Preliminary Development Plan narrative
- 5. Preliminary Development Plan

**III. SITE DATA**

|                                      |                                |
|--------------------------------------|--------------------------------|
| ACREAGE OF PDP-GROSS .....           | 0.50 AC                        |
| MASTER PLAN DESIGNATION .....        | MEDIUM DENSITY RESIDENTIAL     |
| EXISTING ZONING .....                | R2 - DEVELOPING TWO-FAMILY RES |
| EXISTING USE .....                   | RESIDENCE & ART STUDIO         |
| PROPOSED USE.....                    | COFFEE SHOP AND ART GALLERY    |
| OFF STREET PARKING PROVIDED .....    | 6 SPACES                       |
| ACREAGE OF OPEN SPACE .....          | 12,081 SQ. FT (55% OF SITE)    |
| <br>                                 |                                |
| EXIST ADJ ZONING & USE - NORTH ..... | R2 - VACANT                    |
| EXIST ADJ ZONING & USE - SOUTH.....  | COUNTY FA FARMING - VACANT     |
| EXIST ADJ ZONING & USE - WEST.....   | R3E - SINGLE FAMILY RES        |

EXIST ADJ ZONING & USE - EAST.....R2 - ARTIST STUDIO  
 UTILITY SERVICE – WATER, SEWER & ELECTRIC .....CITY OF LOVELAND

#### IV. KEY ISSUES

City staff believes that all key issues have been addressed in the development proposal.

#### V. BACKGROUND

The property was originally part of a larger farm that included neighboring property to the north. The farm consisted of apple orchards and other agricultural uses. The house in question was built in 1905 and was occupied as the farm house for the property. The structure has since housed a variety of land uses while in unincorporated Larimer County, including a residence/studio for artists; a construction business office; a telephone repair business; and an alternative school. With these uses, the parking lot was created and was surfaced with gravel.

When the applicant purchased the property, the house was converted into partial storage for the artist studio and a hair salon. When those uses ceased, the house was returned to residential and used as a guest house for visiting artists. The property was annexed into the City on September 19, 2002 as part of the North Taft Avenue First Addition enclave annexation. The property was zoned R2 Developing Two-Family Residential, however an annexation agreement granted approval for uses associated with the art studio and gallery that were occurring on the site (see **Attachment 3**). The parking lot was improved with geoblock surfacing several years ago and sculptures were placed throughout the property.

#### VI. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

- A. **Notification:** An affidavit was received from Kyle Dallabetta certifying that written notice was mailed to all property owners within 300 feet of the property on March 2, 2011 and a notice was posted in a prominent location on the perimeter of the site at least 15 days prior to the date of the Planning Commission hearing. In addition, a notice was published in the Reporter Herald on March 12, 2011.
- B. **Neighborhood Response:** A neighborhood meeting was held at 5:30 p.m. on February 17, 2011 in the City Council Chambers at the Municipal Building. The meeting was attended by two neighbors along with City staff and the applicant. The only question raised during the meeting was regarding on-street parking on 8th Street and how parking could impede visibility with the curve of the roadway. Staff confirmed that on-street parking is not permitted on the roadway and "no parking" signs will be installed with this project. Both neighbors in attendance voiced support of the project.

## **VII. FINDINGS AND ANALYSIS**

The Chapters and sections cited below are from the Loveland Municipal Code pertaining to PUD Preliminary Development Plans.

### **A. Land Use**

#### **1. Loveland Municipal Code**

**a. Section 18.41.050.D.4:** *Whether the preliminary development plan confirms to the requirements of this Chapter 18.41, to the City's master plans and to any applicable area plan.*

Planning: Staff believes that this finding can be met, due to the following:

- The Comprehensive Master Plan designates the property and surrounding area as medium density residential (MDR). The MDR designation allows for small scale convenience commercial uses, provided that the commercial "centers" are spaced at least 3/4 of a mile apart. The PDP complies with the spacing limitation.
- The PDP is consistent with the intent of the master plan with regards to the following land use goals:
  1. RES14: Business and home occupations should be allowed in residential areas that are unobtrusive and compatible with residential uses; and
  2. CLU2A: Commercial developments including intensity of activities should be in scale with the neighborhood context.

The proposed coffee shop would be housed in the existing residential structure and would occupy approximately 27% of the interior space. The remaining area would be devoted to the art gallery, which was approved as part of the annexation agreement. Site improvements, including a parking area, fencing and landscape screening are existing with no modifications proposed. The parking lot, which accommodates 6 spaces, is constructed out of geoblock pavers. Geoblock is a porous pavement system created by interlocking paving units that are strong enough to support vehicular traffic, yet allows turf to grow through the units, softening the appearance of the parking area and aiding in stormwater runoff.

The neighbors attending the neighborhood meeting voiced support of the project and believed that the small coffee shop would be a welcomed addition to the neighborhood.

**b. Section 18.41.050.D.4(c):** *Whether development permitted under the PDP will be complementary to and in harmony with existing development and future development plans for the area in which the PDP is located by:*

- (i) *Incorporating natural physical features into the PDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.*
- (ii) *Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan.*
- (iii) *Incorporating physical design features that will provide a transition between the project and adjacent land uses through the provisions of an attractive entryway, edges along public streets, architectural design, and appropriate height and bulk restrictions on structures.*



(iv) *Incorporating an overall plan for the design of the streetscape within the project, including landscaping, auto parking, bicycle and pedestrian circulation, architecture, placement of buildings and street furniture.*

Planning: Staff believes that this finding can be met, due to the following:

- Open Space: The site is well landscaped with mature trees and shrubs dispersed around the structures and parking area. Approximately 55% of the site exists in open space with no modification or removal of landscaping proposed. There are no environmental sensitive areas existing on the site.
- Site Planning Techniques: As previously stated, there are no modifications to the exterior of the structure or site proposed with the PDP. As such, this finding is not applicable.
- Physical Design Features: The existing site provides for an attractive edge on W. 8th Street. The parking area has been created utilizing geoblock pavers, which lessens the visual impact to the neighborhood. A slight modification to the geoblock pavers for the handicap stall will be required with the building permit, based on compliance with the 2003 ANSI accessibility regulations (see Building Condition #4). Also, should the need for additional off-street parking spaces occur, potential future employee parking spaces have been designated towards the rear of the property near the existing garage. These spaces will not be visible from 8th Street.
- Streetscape: The streetscape is existing and will not be modified with the PDP. An attached sidewalk exists on 8th Street and is in good repair. The parking area is screened through the use of mature shrubs and a privacy fence, as shown on Sheet 1 of the PDP.

## B. City Utilities and Services

### 1. Loveland Municipal Code

#### a. Section 18.41.050.D.4

(i) *Development permitted under the zoning established by the PDP will not have negative impacts on City utilities. If such impacts exist, Section 18.41.050.D.4(b) of the Loveland Municipal Code requires City staff to recommend either disapproval of the GDP or reasonable conditions designed to mitigate the negative impacts.*

(ii) *Whether development permitted under the PDP will be complementary to and in harmony with existing development and future development plans for the area in which the PDP is located by incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the proposed development will not negatively impact the levels of service of the City's services and facilities.*

Transportation: Staff believes that this finding can be met due to the following:

- A Traffic Impact Study has been submitted with the A Muse PDP which demonstrates that the existing transportation system can adequately serve the land uses proposed.
- Primary access to the site will be from an existing full movement access to 8th Street.
- The applicant's traffic engineer, Matt Delich, P.E., has submitted a Traffic Impact Study (TIS) that indicates that the traffic associated with the proposed development will meet the City's standards. The proposed A Muse PDP is estimated to generate

approximately 170 daily trips, 24 weekday AM peak hour trips, and 8 weekday PM peak hour trips. Excerpts from the Traffic Impact Study are included in **Attachment 2**.

In conclusion, the development of the subject property pursuant to any of the uses identified in the PDP will not adversely impact any existing City infrastructure. A positive determination of adequacy for transportation facilities for the proposed PDP has been made under the provisions of paragraph i, above.

Fire: Staff believes that this finding can be met due to the following:

- The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 3).
- The existing geoblock paving has been deemed sufficient to accommodate emergency vehicular loads should the need arise.

Water/Wastewater: Staff believes that this finding can be met due to the following:

- This development is situated within the City's current service area for both water and wastewater. The development is currently served water from the City of Loveland and has an on-site septic system that will continue to be used for the proposed development.
- The PDP is consistent with the Department's Water and Wastewater master plan.
- The proposed development will not negatively impact City water and/or wastewater facilities.

Power: Staff believes that this finding can be met due to the following:

- The existing house is served from a power pole that is located on West 8th Street on the west side of the house.

Stormwater: Staff believes that this finding can be met due to the following:

- The change in use will not negatively affect City storm drainage utilities and will comply with the Adequate Community Services ordinance outlined in the Loveland Municipal Code, Section 16.41.140.
- No irrigation ditches or drainage courses/open channels traverse the site.

## VIII. RECOMMENDED CONDITIONS

The following conditions are recommended by City Staff.

### Transportation Development Review

1. All public improvements shall conform to the Larimer County Urban Area Street Standards (LCUASS) as amended.

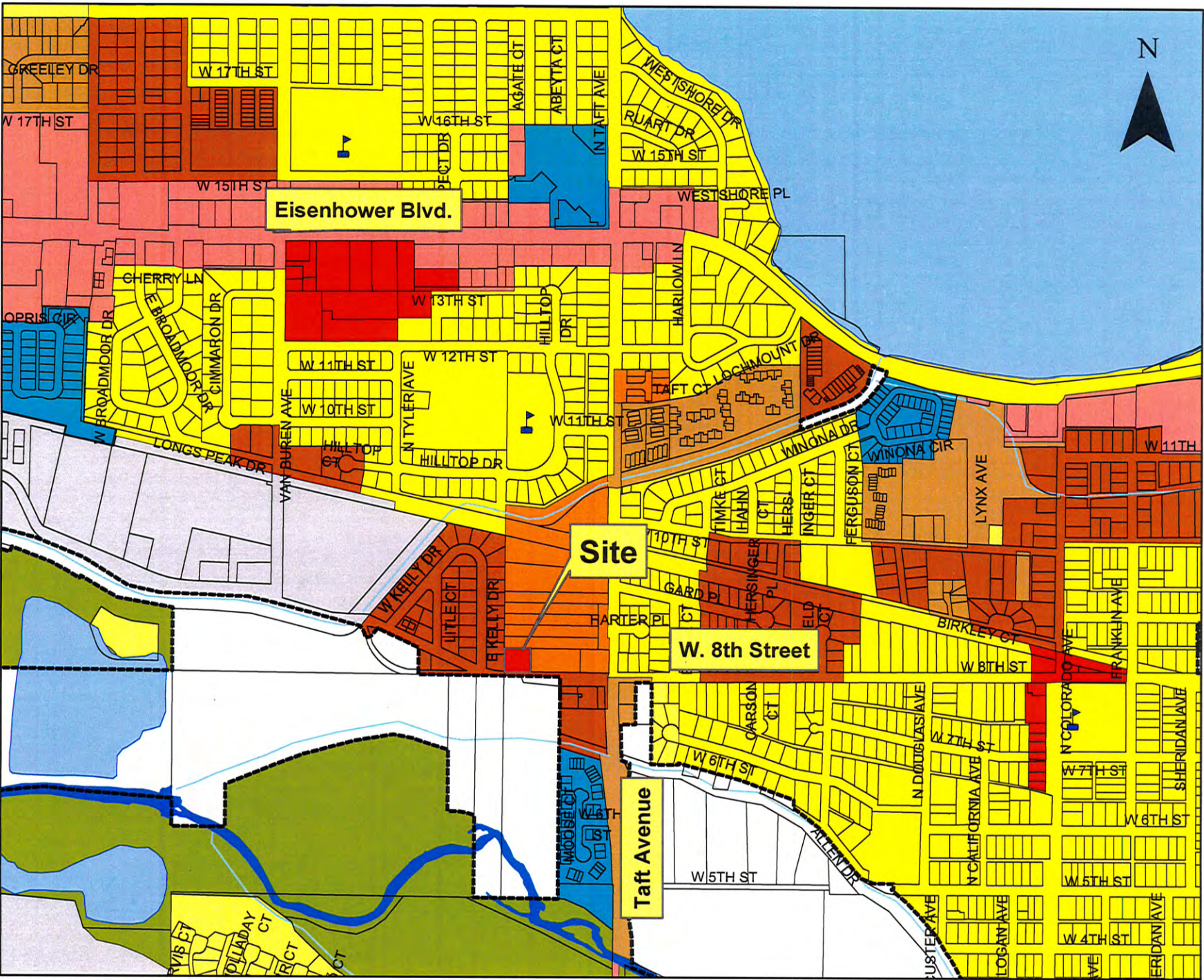
### Water/Wastewater

2. Prior to approval of a building permit for the change in use, the Developer shall submit payment to the City of Loveland for the difference in System Impact Fees and Raw Water Development Fees between the residential and commercial fees as well as payment for commercial water rights current at the time of payment.

Building

3. Prior to the establishment of the coffee shop, a building permit shall be obtained for the change in use from a Single Family Dwelling to a Commercial Use "Coffee Shop".
4. Prior to the issuance of a certificate of occupancy for the change in use, the parking lot surface for the handicap stall shall be modified in compliance with the 2003 ANSI accessibility regulations.







**DELICH ASSOCIATES** Traffic & Transportation Engineering  
2272 Glen Haven Drive Loveland, Colorado 80538  
Phone: (970) 669-2061 Fax: (970) 669-5034



MEMORANDUM

**TO:** Kyle Dallabetta  
Jane DeDecker  
Jeff Bailey, City of Loveland

**FROM:** Matt Delich

**DATE:** September 2, 2009

**SUBJECT:** A Muse Gallery/Café Traffic Impact Study  
(File: 0935ME01)



This memorandum constitutes a traffic impact study for A Muse Gallery/Café, located north of 8<sup>th</sup> Street and west of Taft Avenue in Loveland. The site location is shown in Figure 1. A Muse Gallery/Café is proposed as an 800 square foot gallery and coffee shop. The gallery portion will consist of 530 square feet and the coffee shop portion will consist of 270 square feet. The site plan for A Muse Gallery/Café is shown in Figure 2. Driveway access to the site will be to/from 8<sup>th</sup> Street. The access driveway is the second driveway to the DeDecker property. There were scoping discussions with Jeff Bailey, Loveland Transportation Engineering. A base assumptions form and related information are provided in Appendix A.

The parking lot for A Muse Gallery/Café is east of the subject building and south of the DeDecker Studio. It currently exists and cannot be changed/expanded significantly. The parking lot (Figure 2) provides six spaces. The distance from the nearest parking space to the flowline of 8<sup>th</sup> Street is 30-35 feet. According to Figure 19-6 in the "Larimer County Urban Area Street Standards," the minimum off-street parking setback distance should be 50 feet. Since this cannot be achieved, a variance request accompanies this traffic impact study.

Eighth Street is classified as a major collector street. It has a two-lane cross section with auxiliary lanes at appropriate intersections. It is posted at 30 mph.

Recent peak hour traffic counts at the various driveways intersections on 8<sup>th</sup> Street between Taft Avenue and Kelly Drive are shown in Figure 3. Raw traffic counts are provided in Appendix B. Traffic counts were obtained in August 2009. Using the peak hour traffic at the key intersections, the current operation is shown in Table 1. Calculation forms for these analyses are provided in Appendix C. The intersections were analyzed using the unsignalized intersection techniques from the 2000 Highway Capacity Manual (2000 HCM). Acceptable operation is defined by the City of Loveland as



level of service (LOS) C or better overall. At minor intersections, any leg can operate at level of service E and any movement can operate at level of service F. There is no limit on the level of service on driveways. All of the analyzed intersections on 8<sup>th</sup> Street are considered to be a driveway intersections. A description of level of service at unsignalized intersections is provided in Appendix C. The Loveland Motor Vehicle LOS Standards are also provided in Appendix C. As can be seen in Table 1, the key intersections are currently operating acceptably during the morning and afternoon peak hours with existing control and geometry.

Donut/Coffee Shop (Code 936) and Donut/Sandwich Shop (Code 936, Table 2) from Trip Generation, 8<sup>th</sup> Edition, ITE were selected to estimate the peak hour trip generation for the coffee shop portion (270 S.F.) of A Muse Gallery/Café. Since this land use will serve both coffee and food, an average of the two land use categories was used. Jane DeDecker was contacted to provide trip generation information for the gallery portion of the site. It was estimated that the gallery would generate approximately 10 trip ends per day, none of which would likely occur in the peak hours. Table 2 shows the calculated trip generation for the proposed A Muse Gallery/Café. The trip generation resulted in 170 daily trip ends, 24 morning peak hour trip ends, and 8 afternoon peak hour trip ends. The trip generation analysis indicates that the site access will not be a high volume driveway.

The previous use on this parcel was a single family house. It has not been occupied for some time as a residence. It is being renovated to house A Muse Gallery/Café. The previous use generated 10 daily trip ends, 1 morning peak hour trip end, and 1 afternoon peak hour trip end. The net change in trip generation is the difference between the proposed and the former land uses. This difference is 160 more daily trip ends, 23 more morning peak hour trip ends, and 7 more afternoon peak hour trip ends.

The trip distribution for A Muse Gallery/Café was assumed to be 90 percent to/from the east and 10 percent to/from the west. Figure 4 shows the site generated peak hour traffic assignment for A Muse Gallery/Café.

Background traffic projections for the short range (2012) future horizon were obtained by reviewing the Loveland 2030 Transportation Plan and historical counts on 8<sup>th</sup> Street. There were no known development proposals in the area that would significantly impact the traffic on 8<sup>th</sup> Street. Traffic on 8<sup>th</sup> Street was increased at a rate of 2.0 percent per year. Figure 5 shows the short range (2012) background peak hour traffic at the key intersections. The traffic volumes generated by the proposed A Muse Gallery/Café were added to the background traffic volumes to produce the total traffic volume forecasts for the short range (2012) future. Figure 6 shows the short range (2012) total peak hour traffic at the key intersections.

Table 3 shows the existing and short range (2012) link volumes for various key street segments. Table 3 also shows the ACF volume thresholds for each street segment and whether that segment meets the

Adequate Community Facilities Ordinance. The threshold volumes shown were calculated for this study. Calculations for the ACF threshold volumes are provided in Appendix D. Table 3 indicates that all links meet the requirements of the Adequate Community Facilities Ordinance.

Table 4 shows the short range (2012) background morning and afternoon peak hour operation at the key intersections. The key intersections will operate at acceptable levels of service during the morning and afternoon peak hours with existing control and geometry. Calculation forms for these analyses are provided in Appendix E.

Table 5 shows the short range (2012) total morning and afternoon peak hour operation at the key intersections. The key intersections will operate at acceptable levels of service during the morning and afternoon peak hour with existing control and geometry. Calculation forms for these analyses are provided in Appendix F.

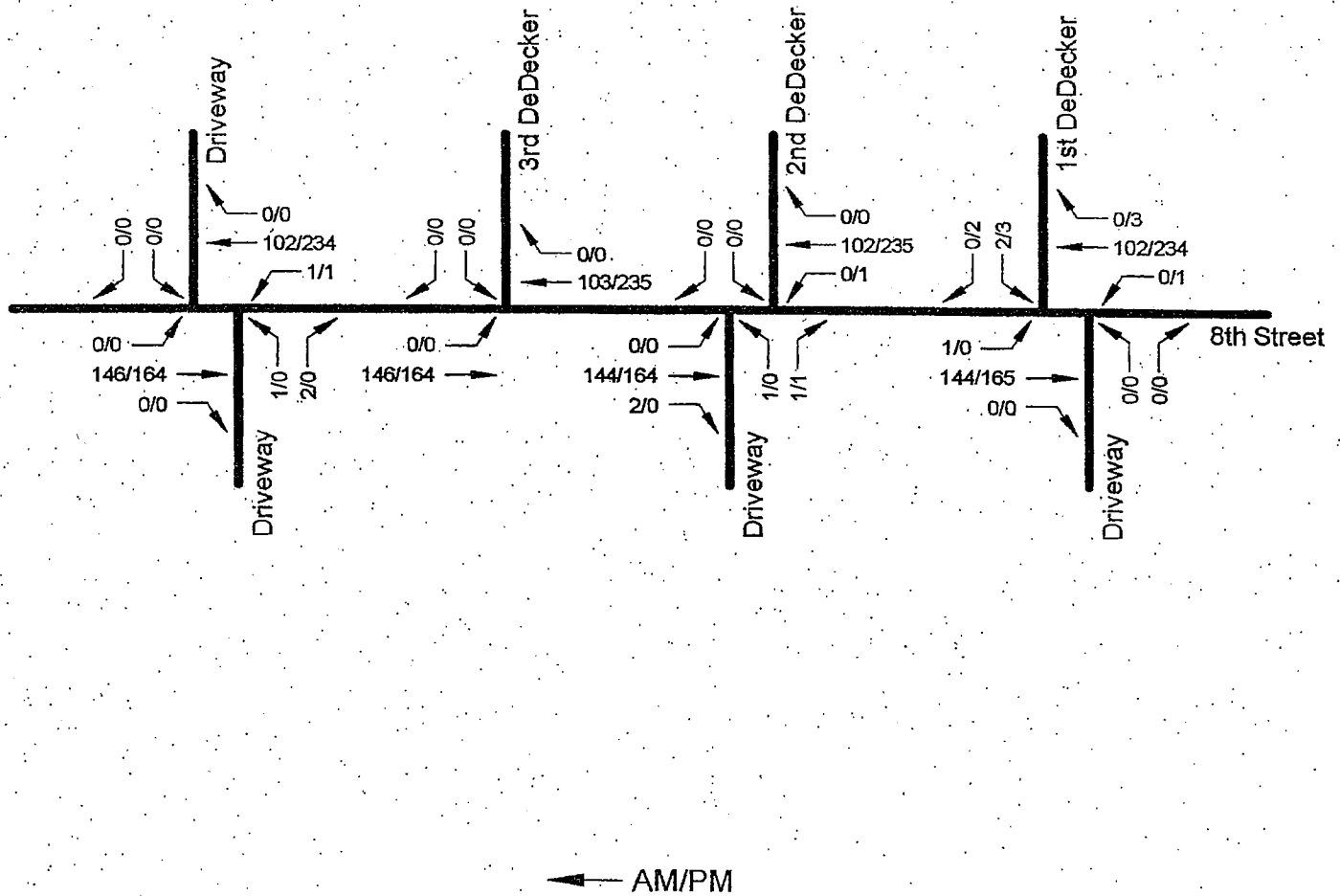
Traffic accident data (7/1/06 to 7/19/09) along 8<sup>th</sup> Street between Taft Avenue and Kelly Drive was obtained from the City of Loveland. There was one reported accident between Taft Avenue and Kelly Drive in this three year period. This area is not high accident location.

Sight distance was field checked at the 8<sup>th</sup>/2<sup>nd</sup> DeDecker Driveway intersection. At the design speed of 40 mph, the intersection sight distance should be 660 feet in both directions from the intersection. At the posted speed of 30 mph, the intersection sight distance would be 310 feet in both directions from the intersection. To the east, the sight distance is only 150 feet due to a fence near the driveway. If this section of fence were moved to the north, the sight distance would be greater than 660 feet, which would be through the Taft/8<sup>th</sup> intersection. The Taft/8<sup>th</sup> intersection is approximately 475 feet east of the 2<sup>nd</sup> DeDecker Driveway. To the west, the sight distance is approximately 280 feet due to a horizontal curve in 8<sup>th</sup> Street. This is 30 feet less than to the 310 feet of intersection sight distance at the posted speed of 30 mph. It is important to note that there is a significant amount of vegetation (rose bush) on the west side of the driveway that would need to be removed or significantly cut back. There is nothing that can be done to achieve either design speed sight distance or the posted speed sight distance. All of the DeDecker Driveways (3) were built by the City of Loveland when the Taft/8<sup>th</sup> intersection was improved. It is assumed that the design and construction was deemed to be adequate.

Bicycle lanes exist on the north side of 8<sup>th</sup> Street, but do not exist on the south side of 8<sup>th</sup> Street. Generally, there are sidewalks adjacent to all developed parcels of land. However, there are some breaks in the sidewalk system to the west. There is a sidewalk along A Muse Gallery/Café property frontage. As shown in Appendix G, three potential pedestrian destinations within 1320 feet were identified: 1) the residential neighborhood to the west, 2) the residential neighborhood to the north, and 3) the residential neighborhood to the east. Appendix G contains a graphic depicting the pedestrian influence area and these pedestrian destinations. A pedestrian level

of service worksheet is also provided in Appendix G. This worksheet shows the level of service for each quality indicator. Since the City of Loveland has no minimum level of service criteria, this could not be indicated. It is not likely that A Muse Gallery/Café will generate any significant pedestrian or bicycle traffic.

A Muse Gallery/Café development will generate 170 daily trip ends, 24 morning peak hour trip ends, and 8 afternoon peak hour trip ends on typical weekday. The key driveway intersections will operate acceptably with the existing control and geometry.



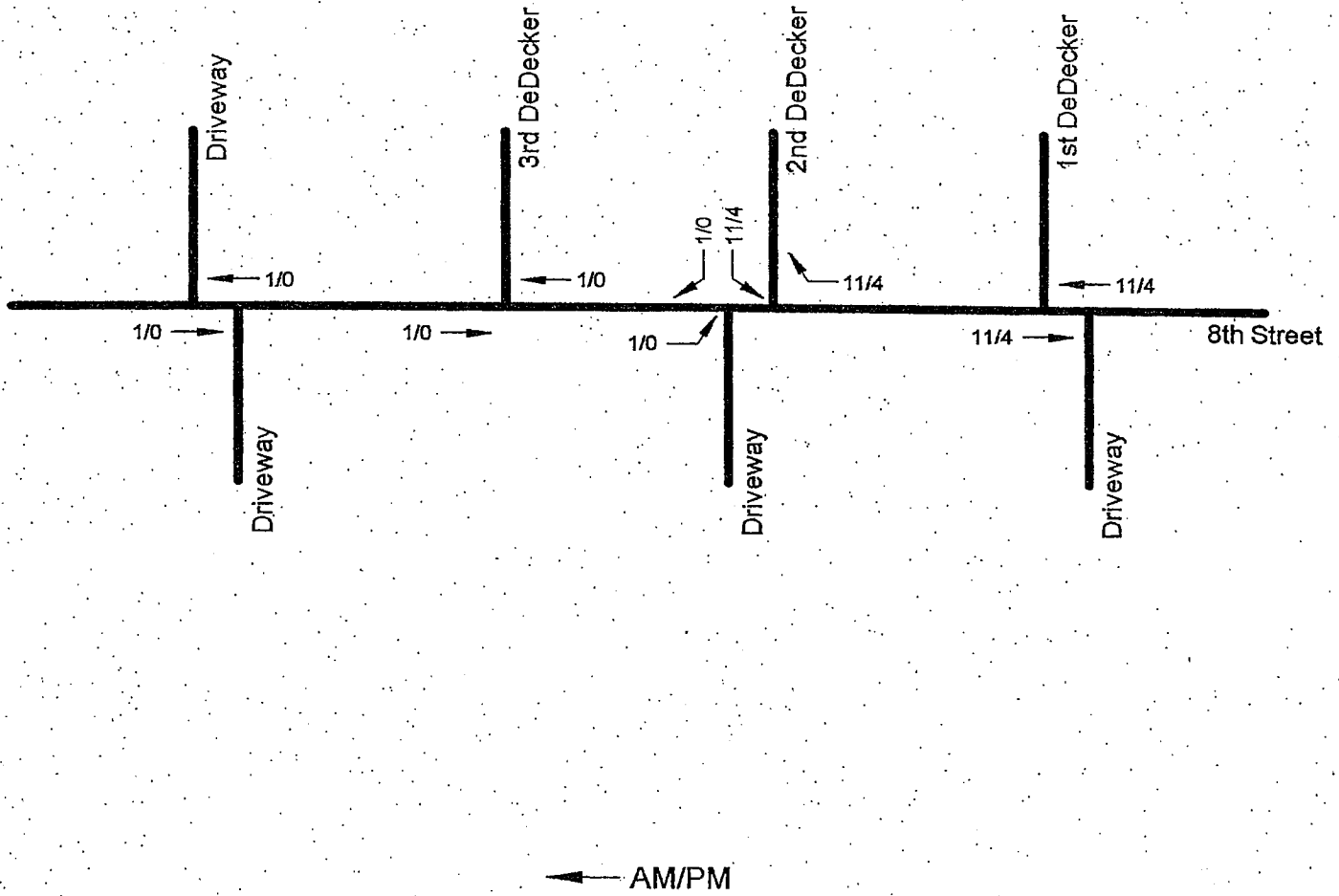
RECENT PEAK HOUR TRAFFIC

Figure 3

| Code           | Use                 | Size     | AWDTE |            | AM Peak Hour |           |       |           | PM Peak Hour |          |        |          |
|----------------|---------------------|----------|-------|------------|--------------|-----------|-------|-----------|--------------|----------|--------|----------|
|                |                     |          | Rate  | Trips      | Rate         | In        | Rate  | Out       | Rate         | In       | Rate   | Out      |
| 936            | Donut/Coffee Shop   | 0.27 KSF | -     | -          | 59.79        | 16        | 57.44 | 16        | 20.375       | 6        | 20.375 | 5        |
| 936<br>Table 2 | Donut/Sandwich Shop | 0.27 KSF | -     | -          | 29.28        | 8         | 30.47 | 8         | 6.76         | 2        | 6.76   | 2        |
| Average        |                     |          |       | 160        |              | 12        |       | 12        |              | 4        |        | 4        |
| N/A            | Gallery             | 0.53 KSF | N/A   | 10         | N/A          | 0         | N/A   | 0         | N/A          | 0        | N/A    | 0        |
| <b>Total</b>   |                     |          |       | <b>170</b> |              | <b>12</b> |       | <b>12</b> |              | <b>4</b> |        | <b>4</b> |

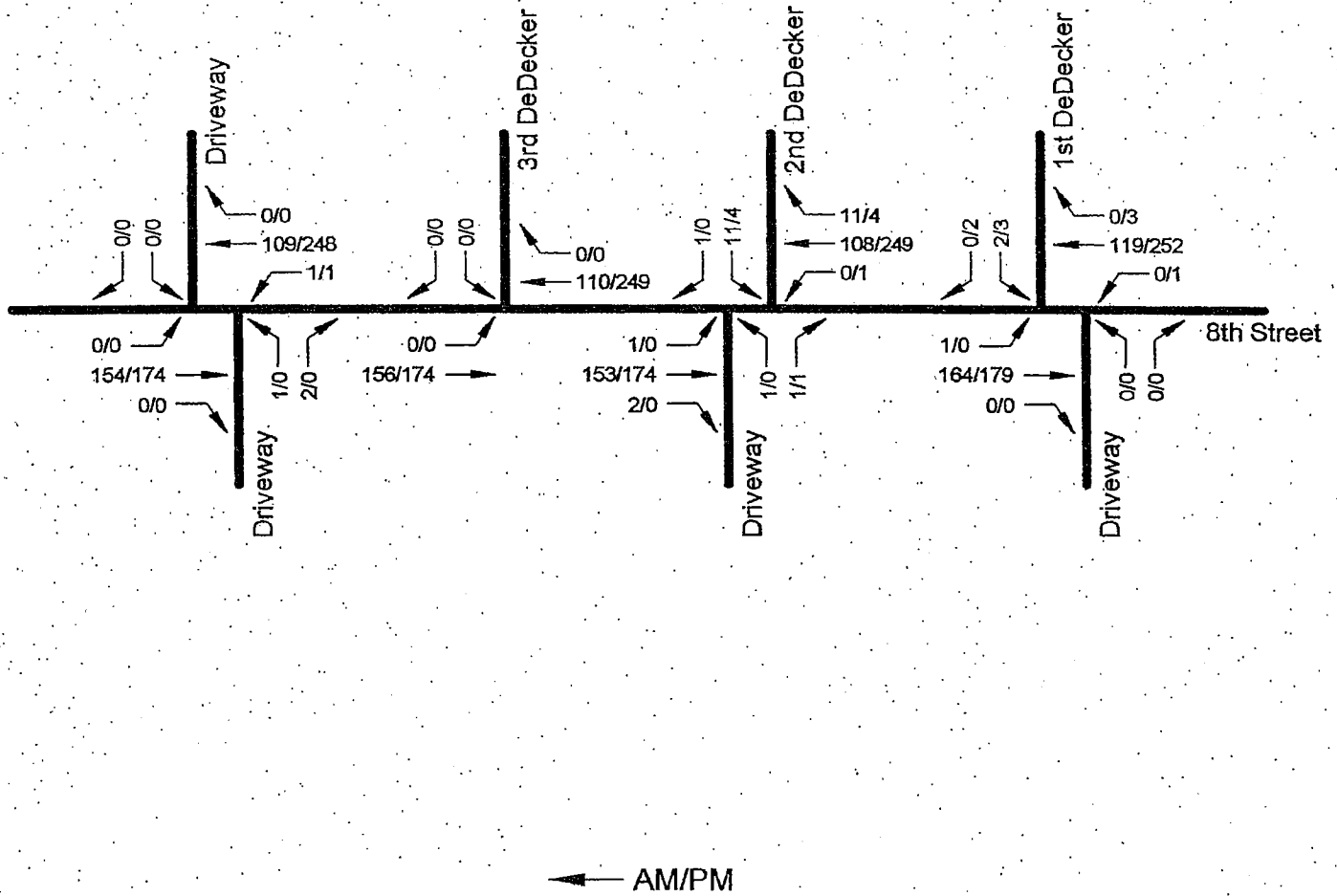
Daily traffic for the café portion was estimated by comparing this coffee shop with data (provided in 2005) for average daily front counter customers for Starbucks Coffee Stores (720 daily trip ends @ 1,200 S.F.) and factoring by the difference in square footage. Kyle Dallabetta operated a coffee shop on US34 for a number of years. The average number of customers at that location was 60 per day (120 trip ends). The location on 8<sup>th</sup> Street would likely be much less. Therefore, the 160 daily trip ends is considered to be conservatively high.





SITE GENERATED PEAK HOUR TRAFFIC

Figure 4



SHORT RANGE (2012) TOTAL PEAK HOUR TRAFFIC

Figure 6

**TABLE 5**  
**Short Range (2012) Total Peak Hour Operation**

| Intersection  | Movement | Level of Service |    |
|---|----------|------------------|----|
|   |          | AM               | PM |
| 8 <sup>th</sup> Street/1 <sup>st</sup> DeDecker Driveway<br>(stop sign) | NB LT/RT | A                | A  |
|   | SB LT/RT | B                | B  |
|   | EB LT/T  | A                | A  |
|   | WB LT/T  | A                | A  |
|   | OVERALL  | A                | A  |
| 8 <sup>th</sup> Street/2 <sup>nd</sup> DeDecker Driveway<br>(stop sign) | NB LT/RT | A                | A  |
|   | SB LT/RT | A                | A  |
|   | EB LT/T  | A                | A  |
|   | WB LT/T  | A                | A  |
|   | OVERALL  | A                | A  |
| 8 <sup>th</sup> Street/3 <sup>rd</sup> DeDecker Driveway<br>(stop sign) | SB LT/RT | A                | A  |
|   | EB LT/T  | A                | A  |
|   | OVERALL  | A                | A  |
| 8 <sup>th</sup> Street/Driveways<br>(stop sign)                         | NB LT/RT | A                | A  |
|   | SB LT/RT | A                | A  |
|   | EB LT/T  | A                | A  |
|   | WB LT/T  | A                | A  |
|   | OVERALL  | A                | A  |



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ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (the "Agreement") is entered into this 30<sup>th</sup> day of Oct., 2006, by and between Jane A Dedecker, (the "Owner") and the CITY OF LOVELAND, COLORADO (the "City"), also referred to as the "Parties."

RECITALS

WHEREAS, the Owner owns 2 acres, more or less, of real property located in Larimer County, Colorado, more particularly described in Exhibit A attached hereto, but not including any existing public streets and highways which may be included in said description, which description, by this reference, is incorporated herein and designated as "the Property";

WHEREAS, the City is unable to annex the Property under the terms and conditions of this Agreement without the consent of the Owner, except as it may be annexed under State law without conditions as an enclave; and

WHEREAS, the Owner is requesting that the City annex and zone said Property in accordance with this Agreement; and

THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **Consent to Annexation.** The Owner hereby consents to the annexation of the Property subject to the terms and conditions of this Agreement. In the event the City enters into this Agreement prior to approval by the Loveland City Council of the annexation, the parties agree that the binding effect of this Agreement and the effectiveness of the annexation and zoning of the Property in accordance with this Agreement is expressly conditioned upon such approval by the City Council and the execution and delivery of this Agreement by all parties thereto.
2. **The City's Obligations.**

A. **Annexation Fees and Costs.**

- (1) The City agrees to pay all fees and costs associated with preparation of the annexation application and petition, including the annexation map and any required boundary survey work necessary to prepare a current legal description of the Property, and title work or ownership reports to verify ownership of the Property. The City may also waive certain annexation application requirements to speed and simplify the annexation process.

CITY OF LOVELAND  
CITY CLERKS OFFICE  
300 E 3RD ST  
LOVELAND CO 80537-0000

**B. Nonconforming Uses, Structures and Conditions.**

- (1) **Nonconforming Uses.** All existing uses that were permitted in Larimer County and are determined to be legally nonconforming uses according to the City's zoning designation after annexation, may continue pursuant and subject to the provisions of Title 18 of the City's Code (Zoning Code), as now existing or hereafter amended. This shall include any existing farming operations.
- (2) **Nonconforming Buildings.** Nonconforming buildings, structures and signs may continue pursuant and subject to the nonconforming provisions of Title 18 of the City's Code, as existing or hereafter amended, except for any off-premise signs which shall be removed from the site within 180 days of annexation.
- (3) **Continuation of Existing Uses:** The property located at 1503 W 8<sup>th</sup> St., 1629 W 8<sup>th</sup> St. as shown by Exhibit B is currently used as residences and as a sculpture studio and gallery. Uses of the property that are recognized as pre-existing uses and that shall be allowed to continue include:
  - i. All processes and procedures associated with creating and finishing original sculptures, excluding any foundry work;
  - ii. Art gallery operations including the sale of sculpture and other sales commonly associated with a gallery such as books or other media or merchandise associated with finished art work;
  - iii. Delivery and storage of materials associated with the production of sculpture and storage of finished sculpture;
  - iv. Office support associated with the sculpture and gallery operation;
  - v. Occasional promotional and social events associated with the sculpture and gallery operations; and
  - vi. Short-term leasing of residences for visiting artists and guests; and
  - vii. Outdoor finishing work of sculptural shall be permitted but shall be limited to the paved surface adjacent to Building C located at 1503 W 8<sup>th</sup> St.
- (4) The above uses shall be permitted in all existing buildings and grounds illustrated by Exhibit B (Buildings A, B, and C located at 1503 W 8<sup>th</sup> St. and buildings A, B, and C at 1629 W 8<sup>th</sup> St.). No expansion of the buildings or uses shall be permitted beyond that currently illustrated by Exhibit B without approval as required by Title 18 of the City Code as.
- (5) Additionally, Building A, located at 1629 W 8<sup>th</sup> St., may be used as a personal service shop, which shall mean a shop primarily engaged in providing services generally involving the cosmetic care of a person such as, but not limited to, beauty shops and barbershops.



## (4) Livestock and Pets.

- (a) Any existing livestock as defined by Title 6 of the City's Code (horses, cattle, mules, asses, goats, sheep, swine, buffalo, and cattalo) shall be allowed to continue to be kept on the property at the current extent of use, provided such use conformed with Larimer County restrictions regarding livestock. Such keeping of livestock may be discontinued for up to two years and allowed to recommence (i.e. not subject to 12 month restriction in Title 18 regarding abandonment of nonconforming uses.)
- (b) Pets, show animals, chickens, ducks, geese and other domestic fowl are permitted subject to the limitations of Chapter 6.28 of the City's Code. In summary, the number of such animals is limited to that which can be maintained in a healthy condition without presenting a health or safety hazard.

## C. Deferral of Raw Water Fees.

- (1) Notwithstanding the requirements of Title 19 of the City's Code, raw water fees shall be deferred until the time of development or redevelopment of the Property as defined in this Agreement.
  - (a.) **Definition of redevelopment.** For the purposes of this Agreement, "redevelopment" means a cumulative increase in the gross floor area of a building or structure by more than twenty-five (25%) percent of the gross floor area (or lot area if not contained within a building) existing as of the effective date of the annexation ordinance. This provision does not apply to accessory structures or accessory buildings. This definition shall not include the enlargement of an existing single family structure on an existing lot, which shall be permitted to be enlarged within the limitation of the zoning district applicable to the property after annexation, and any other restrictions of the City's Zoning Code (Title 18 of the City's Code).
  - (b.) **Definition of development.** For the purposes of this Agreement, "development" means a change in the use of the Property as permitted by the listed categories of uses in the zoning district (Title 18 of the City's Code) subsequent to annexation, or the subdivision of the Property into one or more additional lots or parcels.
  - (c.) **Replacement of existing residence.** The demolition of an existing residence and replacement of that residence with a new residence in compliance with the City's Code shall not be

considered development or redevelopment for the purposes of this agreement.

**D. Zoning District.**

- (1) The Owner consents to annexation of the Property, provided that the Property is zoned R3e-Established High Density Residential (Chapter 18.16 of the City's Code). However, nothing in this Agreement shall be construed as a limitation or waiver of the City's right to rezone the Property to another zoning district classification in the future in accordance with the Charter, Code or ordinances of the City of Loveland.

**E. Sidewalks, Streetlights, Streets, Rights-of-way, Electric Power and General Development or Redevelopment Requirements.**

- (1) **Sidewalks:** The City will defer any requirement of the owner to install sidewalks under Section 12.20.050 of the City's Code until the time of development or redevelopment. If the owner proposes development or redevelopment, the owner shall construct any sidewalk improvements required as part of the development or redevelopment of the property, and shall thereafter be responsible for any sidewalk improvements as required by Section 12.20.050 of the City's Code.
- (2) **Streetlights.** The City shall install street lighting at its expense within the enclave in which the property is located if determined necessary by the City's Department of Water and Power.
- (3) **Street Improvements.** If the owner proposes development or redevelopment, the owner shall construct all street improvements required by the City's Code as part of the development or redevelopment.
- (4) **Water and Sewer.** The Property shall not be required to connect to City of Loveland water or sewer utilities subsequent to annexation, unless there is determined to be a public health problem associated with any existing on-site septic systems. In such cases, the City will work with the owner to resolve such problems, however, the owner shall be responsible for the cost of any required connections to the City's wastewater system. If the owner proposes development or redevelopment, the owner shall comply with all City requirements regarding wastewater systems.
- (5) **Electric Power.** If the property is not currently connected to the City of Loveland electric power system, any connection to the City's power system after annexation shall be undertaken at the City's expense. If development or redevelopment is proposed, the owner shall be

responsible for constructing any required connection to the City's electric power system as required by the City's Code.

- (6) **General Requirements for Development or Redevelopment.** If the owner proposes development or redevelopment as defined by this Agreement, the owner shall comply with any and all requirements of the City's Code, including but not limited to the requirement to pay development fees or construction of on- or off-site improvements that are normally required or assessed as part of the City's development review and permit process.

### 3. The Owner's Obligations.

- A. The Owner agrees that, effective upon execution of this Agreement, Owner shall submit a valid petition for annexation, signed by the Owner, for annexation of the Property.
- B. The Owner agrees that in the event of a sale or transfer of the Property, Owner shall, as a condition of such sale or transfer, require the purchaser, or other new owner, to sign a duplicate of this Agreement and that this Agreement, and the promises made herein, do constitute a covenant running with the Property and shall be binding Owner and his successors in interest to the Property and that this Agreement shall be recorded in the office of the Larimer County Clerk and Recorder.

### 4. General Terms and Conditions.

- A. **Ownership.** The Owner warrants that Owner is the legal and equitable owner of the Property legally described in the attached Exhibit A.
- B. **Incorporation.** The terms and conditions of this Agreement shall be deemed to be incorporated into the Owner's petition for annexation of the Property.
- C. **Integration and Amendment.** This Agreement represents the entire Agreement between the parties with respect to the Property and supersedes all prior written or oral agreements or understandings with regard to the obligations of the parties with regard to the Property. This Agreement may only be amended by written agreement signed by the Owner and the City. Only the City Council, as a representative of the City, shall have authority to agree to any amendment of this Agreement.
- D. **Remedies.** In the event that a party breaches its obligations under this Agreement, the injured party shall be entitled to monetary damages, equitable relief (including specific performance) and such other remedies at law or in equity as may be available under applicable law. In the event of litigation relating to or arising out of this Agreement, the prevailing party,

whether plaintiff or defendant, shall be entitled to recover costs and reasonable attorneys' fees.

- F. **Effective date.** This Agreement shall become effective on the date that it is executed and delivered and has been approved by the City Council. If the City Council considers but does not adopt an ordinance annexing the Property, this Agreement shall become null and void and of no force or effect whatsoever. If the City does not annex the Property, no party will be liable to any other for any costs that the other party has incurred in the negotiation of this Agreement or in any other matter related to the potential annexation of the Property.
  
- F. **Binding effect and recordation.** The promises made in this Agreement by the Owner shall be deemed to have been made by any corporation or other business affiliated with the Owner that acquires ownership or possession of all or any portion of the Property. It is the intent of the parties that their respective rights and obligations set forth in this Agreement shall constitute covenants and equitable servitudes that run with the land and shall benefit and burden any heirs, personal representatives, successors and assigns of the parties.
  
- G. **Annexation map.** The Final Annexation Map for the Property shall be recorded by the City within thirty (30) days of final adoption of the ordinance annexing the Property. The Map shall contain a note that it is subject to this Agreement and shall recite the book and page or reception number where this Agreement is recorded. The note shall recite that all lien holders, if any, agree to the terms and conditions of this Agreement and subordinate their interests to this Agreement.
  
- H. **Notices.** Whenever notice is required or permitted hereunder from one party to the other, the same shall be in writing and shall be given effect by hand delivery, or shall be effective three days after being mailed by certified mail, return receipt requested, to the party for whom it is intended. Notices to any of the parties shall be addressed as follows:

To City:                      City Clerk  
    City of Loveland  
    500 E. Third Street  
    Loveland, CO 80537

To Owner:                      Jane A. Dedecker  
    2009 Ponderosa Dr.  
    Loveland, CO 80538-8623

A party may at any time designate a different person or address for the purposes of receiving notice by so informing the other party in writing.

- I. **Waiver.** No waiver by the City or Owner of any term or condition of this Agreement shall be deemed to be or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.
- J. **Applicable law/Severability.** This Agreement shall be construed in accordance with the laws of the State of Colorado. The parties to this Agreement recognize that there are legal restraints imposed upon the City by the City Charter and Code and by the constitution, statutes and laws of the State of Colorado, and the United States of America, and that, subject to such restraints, the parties intend to carry out the terms and conditions of this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Agreement
- K. **Paragraph headings.** Paragraph headings in this Agreement are for convenience of reference only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.
- L. **No Waiver of Legislative Authority.** Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the City's Charter, Code or ordinances or as a waiver or abnegation of the City's legislative, governmental, or police powers to promote and protect the health, safety, or general welfare of the municipality or its inhabitants; nor shall this Agreement prohibit the enactment by the City of any fee permitted under the law.
- M. **Disconnection.** No right or remedy of disconnection of the Property from the City shall accrue from this Agreement, other than that provided in Section 31-12-119, C.R.S., as amended.
- N. **Term of Agreement.** The term of this Agreement shall be perpetual in duration unless terminated as follows: (1) this Agreement shall terminate upon the date of its execution if the Owner fails to submit to the City a valid petition of annexation as required above in paragraph 3.A.; or (2) this Agreement shall terminate on the date the Loveland City Council votes not to adopt an ordinance annexing the Property.
- O. **Annexation Challenged by Referendum or Judicially.** If the annexation of the Property or any portion thereof is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended pending the outcome of the referendum election. If the referendum challenge to the annexation results in



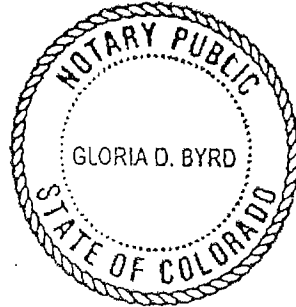


WITNESS my hand and official seal.

My commission expires July 21, 2008

SEAL

Gloria D. Byrd  
Notary Public



OWNER

By: Jane A. Dedecker  
Jane A. Dedecker

My Commission Expires \_\_\_\_\_

ATTEST:

\_\_\_\_\_

STATE OF COLORADO )

County of LaSalle )<sup>ss</sup>

The foregoing Annexation Agreement was executed and acknowledged before me this 29<sup>th</sup> day of JUNE, 2005 by JANE A. DEDECKER Owner/ Owner.

WITNESS my hand and official seal.

My commission expires 4-5-07

SEAL

Judith McKnight  
Notary Public

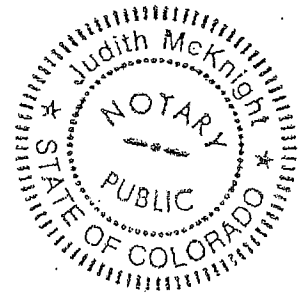


EXHIBIT A  
LEGAL DESCRIPTION

PT NE 1/4 15-5-69 DESC: BEG AT PT 289 FT W AND 25 FT N OF SE COR NE 1/4, N 140 FT, W 215 FT, S 140 FT, E 215 FT TPOB; ALSO COM AT PT 289 FT W AND 25 FT N OF SE COR SD NE 1/4, E 78 FT, N 140 FT, W 78 FT, S 140 FT TPOB

And

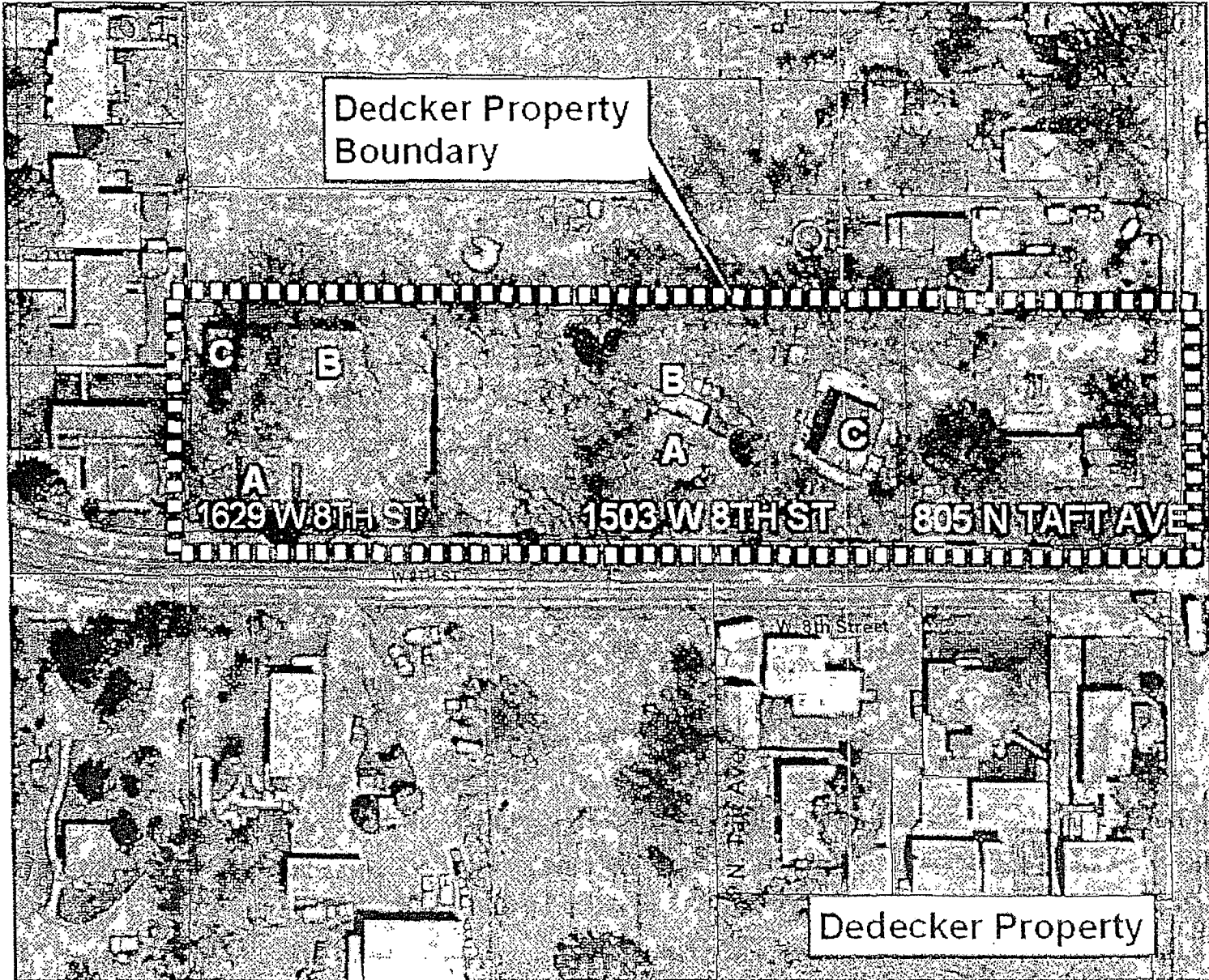
COM AT PT 504 FT W & 25 FT N OF SE COR OF NE 15-5-69, N 140 FT, W 156 FT, S 140 FT, E 156 FT TO BEG

And

COM AT PT 40 FT W & 25 FT N OF SE COR OF NE 1/4 15-5-69, TH N 140 FT, W 464 FT, S 140 FT, E 461 FT TPOB; EX BEG AT PT 289 FT W & 25 FT N OF SE COR OF NE 1/4, TH N 140 FT, W 215 FT, S 140 FT, E 215 FT TPOB, EX BEG AT PT 289 FT W & 25 FT N OF SE COR OF NE 1/4, TH E 78 FT, N 140 FT, W 78 FT, S 140 FT TPOB

54  
11

EXHIBIT B  
AERIAL PHOTOGRAPH



# PROJECT DESCRIPTION

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## Background

The subject property, located at 1629 W. 8th Street, is approximately ½-acre in size. It is currently within the city limits of Loveland and is zoned R2. The site was annexed in October, 2006, with the North Taft Ave. First Addition. At the time of Annexation, an annexation agreement (Reception No. 2006-0086354) was created that allowed the uses that occurred on the site at the time of annexation to continue, though they are considered non-conforming uses in the R2 zoning district.

The annexation agreement states that existing uses shall be permitted in all existing buildings and grounds located at the subject property located at 1629 W. 8th Street.

The current owner of the property wishes to change the zoning to PUD (Planned Unit Development) on the subject property in an effort to complement the current Art Studio uses of the property with a small coffee shop and gallery. Since uses allowed prior to the annexation and zoning of the property and certain proposed uses (as listed below) are not allowed in the R-2 zoning district a change of zoning is necessary to permit the uses as listed below.

## Proposed Use

Allowed use of the property shall include the following:

1. All processes and procedures associated with creating and finishing original sculptures, excluding any foundry work;
2. Short term leasing of residences for visiting artist.
3. Art gallery operations including the sale of sculpture and other sales commonly associated with a gallery such as books or other media or merchandise associated with finished art work;
4. Delivery and storage of materials associated with the production of sculpture and storage of finished sculpture;
5. Office support associated with the sculpture and gallery operation;
6. Occasional promotional and social events associated with the sculpture and gallery operations;
7. Coffee shop
8. Personal Service (Note: This proposal does not request a dual use of the property (Personal Service along with Gallery and Café) but would like to secure the future use as a Personal Service shop in the event that the Café and Gallery are not successful.)

The coffee shop would operate in an existing structure on the property. The total gross square footage of the building is approximately 9977 SF. The gallery will consist of 707 SF, while the coffee shop will consist of 270 SF. The hours of operation is expected to be 7:00 AM until 10:00 PM Daily.

## Traffic/Circulation/Parking

Eighth Street is classified as a major collector street. It has a two-lane cross section with auxiliary lanes at appropriate intersections. It is posted at 30 MPH.

There are two access drives to the existing property. Both accesses to the property were built by the City of Loveland when the Taft/8th intersection was improved. It is assumed that the design and construction was deemed to be adequate. A Traffic study and report were prepared by Delich and Associated in September, 2009. The report states that *"The key driveway intersections will operate acceptably with the existing control and geometry."*



The parking lot for the Gallery/Café is east of the subject building and south of the DeDecker Studio. It currently exists and cannot be changed or expanded significantly. The parking lot provides six spaces, including a single handicap space. The distance from the nearest parking space to the flow line of 8th Street is approximately 20 feet. According to figure 19-6 in the "Larimer County Urban Area Street Standards," the minimum off street parking setback distance should be 50 feet. Since this cannot be achieved, a variance request accompanies this PUD Application.

### **Landscape**

The parking lot has been recently paved using a geo-block stone and grass. The areas around the parking lot are planted with roses, evergreen shrubs and a variety of herbs and perennial plant materials. There are several very mature trees on the site that provide for a prolific shade cover throughout the site.

### **Storm Drainage**

The parking lot is approximately 3,400 SF in size and was previously unpaved. The new pavement utilizes a semi-permeable geoblock material with grass infill. Because the increase in storm water runoff from this type of pavement is so minimal it does not appear that the addition of on-site detention is warranted. There are no other additional improvements, structures or pavement planned for this property.

### **Lighting**

There are security lights mounted on the north and east sides of the building to illuminate the rear entrance and parking lot. Patio lighting on the south and south east corner will provide low level lighting for the front entrance and patio seating. Lighting consists of existing fixtures that will not glare into adjacent residential properties or onto 8th Ave.

### **Utilities**

Water: The existing facility has a  $\frac{3}{4}$ " water meter tapped off the 12" PVC water main in 8th Street. The facility, with proposed improvements will have 8.7 Fixture Units including restroom and kitchen facilities (Per project architect, John Freeman) . A  $\frac{3}{4}$ " water tap will be adequate to serve the proposed use.

Sewer: A 1000 gallon septic tank with 540 SF of standard absorption bed is currently in place and will be used for the proposed use. Continued use of the septic system is subject to approval by the Larimer County Health Department upon review of improvement plans. The location of the sptic tank and absorption field will remain in a grass-covered area and will not be impacted by contstruction or parking areas. Public improvement construction drawings shall be submitted in the event the sewer service is deemed inadequate for use for this purpose. A letter of approval from the Larimer County Department of Health and Environment may be required prior to approval of the FDP.



# A MUSE PUD

## Preliminary Development Plan

Being a portion of North Taft Avenue First Addition, located in Section 15, T5N, R69W of 6th P.M.  
Larimer County, Colorado

PREPARED BY:  
**The Frederickson Group**  
PLANNERS/LANDSCAPE ARCHITECTS  
7711 WINDSONG DR. WINDSOR, CO 80550  
dfrederick@colorado.com (970) 279-0240

CLIENT:  
DALLABETTA'S  
KYLE DALLABETTA  
2609 PONDEROSA DRIVE  
LOVELAND, CO 80538  
(970) 663-5727

**A MUSE PUD: Preliminary Development Plan**  
**1629 W. 8TH STREET, LOVELAND, CO 80537**

Title Page

|          |           |        |  |
|----------|-----------|--------|--|
| PROJECT: | 156-101LV | SCALE: |  |
|----------|-----------|--------|--|

### OWNERS CERTIFICATION

KNOW ALL MEN BY THESE PRESENTS THAT: \_\_\_\_\_  
Being all the lawful recorded owners of the property shown on this PUD Plan, except any existing public streets, roads, or highways, do hereby certify that I accept the conditions and restrictions set forth on said plan and in the conditions of approval by the City of Loveland, dated \_\_\_\_\_, and that I consent to the recordation of any information pertaining thereto.

\_\_\_\_\_  
Jane A. Dedecker, Owner

STATE OF COLORADO )  
                                  )ss  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_.

Whitness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

### APPROVALS

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the Current Planning Manager of the City of Loveland, Colorado.

\_\_\_\_\_  
Current Planning Manager

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the City Engineer of the City of Loveland, Colorado.

\_\_\_\_\_  
City Engineer

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the City Attorney of the City of Loveland, Colorado.

\_\_\_\_\_  
City Attorney

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the City Planning Commission of the City of Loveland, Colorado.

\_\_\_\_\_  
Chairperson

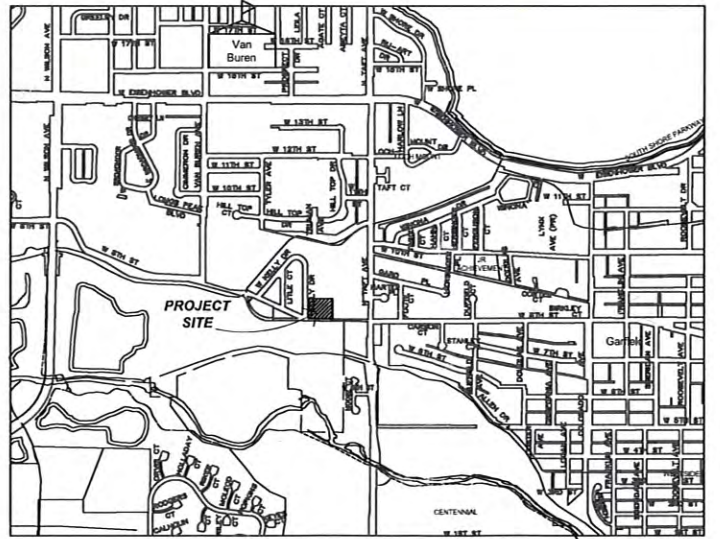
Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the City Council of the City of Loveland, Colorado.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Attest

### LAND USE INFORMATION TABLE

|  |  |                            |                                 |
|--|--|----------------------------|---------------------------------|
| Total Land Area:                       | 21,840 SF .50 Acres  | Utility Service Providers: |                                 |
| Total Building Floor Area: on the site | 3,325 SF (Including Gallery/Cafe, Detached garage and studio out building)   | Water:                     | City of Loveland                |
| Gallery / Cafe                         | 1,163 (gross floor area, including attached garage) 186 SF attached garage 977 to include: Cafe: 270 SF Gallery: 707SF | Sewer:                     | On-Site Septic                  |
| Detached Garage                        | 422 SF   | Electric:                  | City of Loveland                |
| Studio outbuilding                     | 1,740 SF   | Gas:                       | Xcel Energy                     |
| Building Height:                       | 35' Primary Structure 25' Accessory Structures   | Telephone:                 | Qwest                           |
| Parking Lot                            |  | Public Service Providers:  |                                 |
| Total Spaces:                          | 6 Spaces   | Police:                    | City of Loveland                |
| HC Spaces:                             | 1 Space  | Fire:                      | City of Loveland                |
| Total Open Space:                      | 12,081 SF (55%)  | Schools:                   | Thompson R2-J                   |
|  |  | Parks:                     | City of Loveland                |
|  |  | Parking Allocation:        |                                 |
|  |  | Use                        | Gross SF Seating/ Empl. Parking |
|  |  | Cafe                       | 270 6 seats 3                   |
|  |  | Patio                      | 270 4 seats 2                   |
|  |  | Gallery                    | 530 2 visitors 1                |

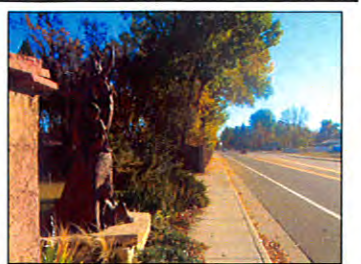


VICINITY MAP SCALE: 1"=1000'

### TYPICAL STREETSCAPE



Eighth Street West from entry gate



Eighth Street East from entry gate

### PROJECT DESCRIPTION

**Background**  
The subject property, located at 1629 W. 8th Street, is approximately 1/2-acre in size. It is currently within the city limits of Loveland and is zoned R2. The site was annexed in October, 2006, with the North Taft Ave. First Addition. At the time of Annexation, an annexation agreement (Reception No. 2006-0086354) was created that allowed the uses that occurred on the site at the time of annexation to continue, though they are considered non-conforming uses in the R2 zoning district.

The annexation agreement states that existing uses shall be permitted in all existing buildings and grounds located at the subject property located at 1629 W. 8th Street.

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3. Art gallery operations including the sale of sculpture and other sales commonly associated with a gallery such as books or other media or merchandise associated with finished art work;  
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The parking lot has been recently paved using a geo-block stone and grass. The areas around the parking lot are planted with roses, evergreen shrubs and a variety of herbs and perennial plant materials. There are several very mature trees on the site that provide for a prolific shade cover throughout the site.

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The parking lot is approximately 3,400 SF in size and was previously unpaved. The new pavement utilizes a semi-permeable geoblock material with grass infill. Because the increase in storm water runoff from this type of pavement is so minimal it does not appear that the addition of on-site detention is warranted. There are no other additional improvements, structures or pavement planned for this property.

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There are security lights mounted on the north and east sides of the building to illuminate the rear entrance and parking lot. Patio lighting on the south and south east corner will provide low level lighting for the front entrance and patio seating. Lighting consists of existing fixtures that will not glare into adjacent residential properties or onto 8th Ave.

**Utilities**  
**Water:** The existing facility has a 3/4" water meter tapped off the 12" PVC water main in 8th Street. The facility, with proposed improvements will have 8.7 Fixture Units including restroom and kitchen facilities (Per project architect, John Freeman). A 3/4" water tap will be adequate to serve the proposed use.  
**Sewer:** A 1000 gallon septic tank with 540 SF of standard absorption bed is currently in place and will be used for the proposed use. Continued use of the septic system is subject to approval by the Larimer County Health Department upon review of improvement plans. The location of the septic tank and absorption field will remain in a grass-covered area and will not be impacted by construction or parking areas. Public improvement construction drawings shall be submitted in the event the sewer service is deemed inadequate for use for this purpose. A letter of approval from the Larimer County Department of Health and Environment may be required prior to approval of the FDP.



BUILDING ELEVATIONS



West Building Elevation



South Building Elevation: Main Entry



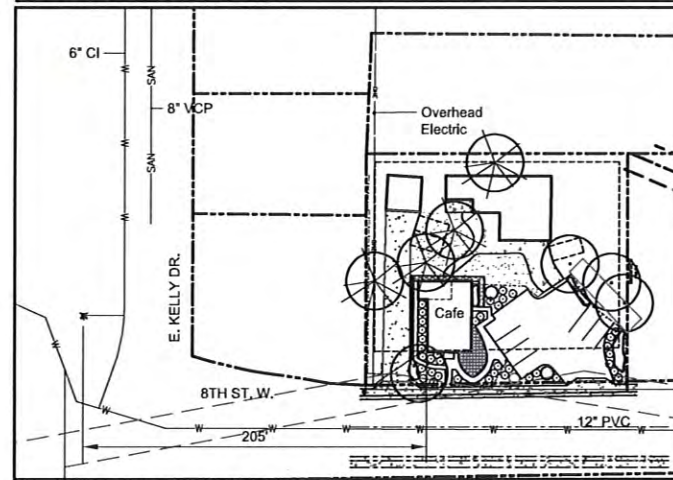
North Building Elevation



East Building Elevation

UTILITY LOCATIONS

SCALE: 1" = 50'



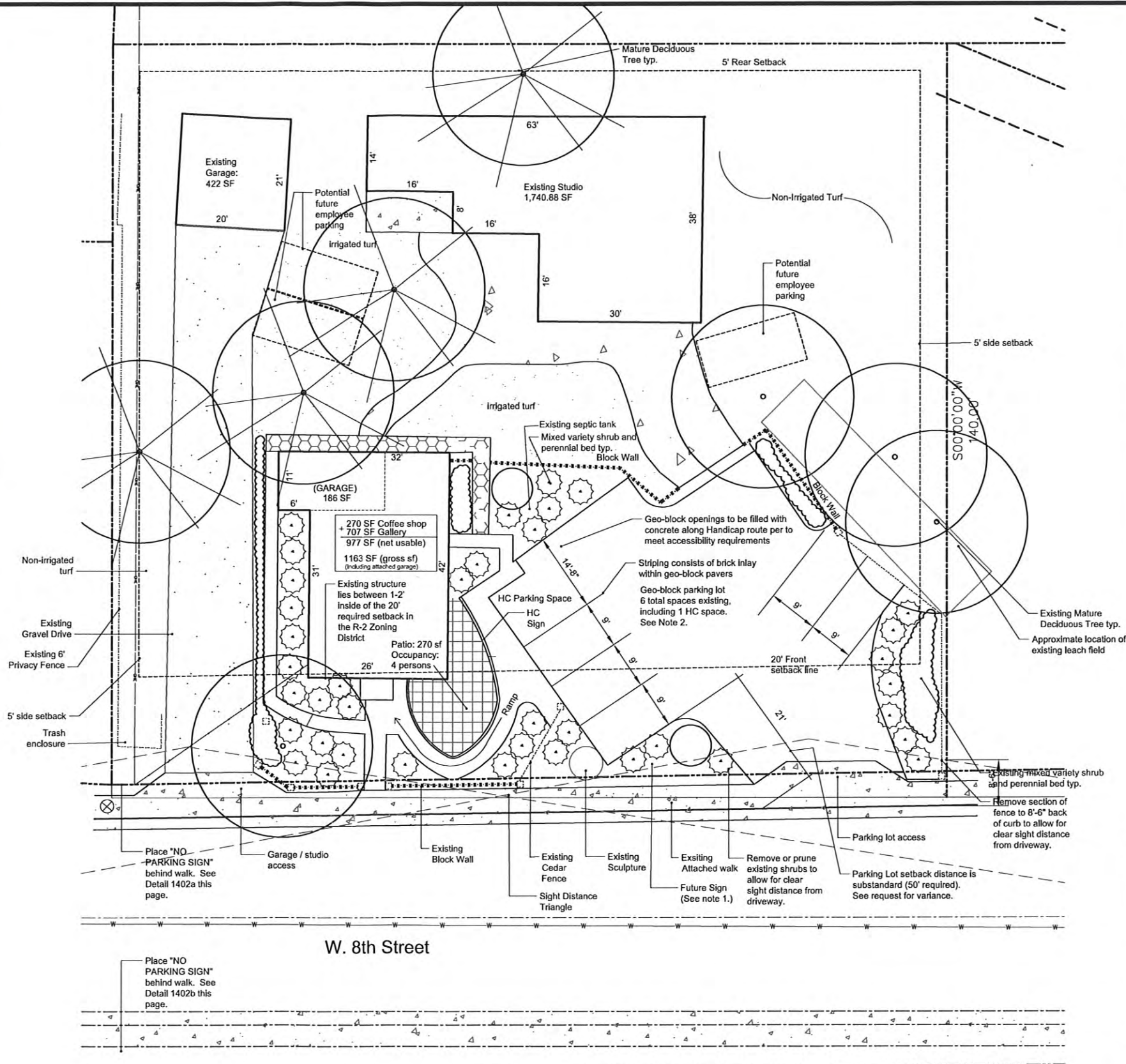
Nearest fire hydrant is approx. 205' from structure

UTILITY LOCATIONS

SCALE: 1" = 50'



Place "No Parking Signs" as shown on 2x2x10' or 12' 12 gauge telespar post behind existing walk. Sign 1402a (no parking bike lane) shall be placed on the north side of 8th street at the location shown on the plan. Sign 1402b (no parking anytime) shall be placed on the south side of 8th street at the location shown on the plan.



NOTES

1. Future Sign shall be installed at or near location shown on the plan. Signs shall be in compliance with the City of Loveland Sign Code Chapter 18.5 and shall not be installed prior to the application and issuance of an approved Sign Permit. Note: Per the Loveland Sign Code, The sign shall be indirectly or interior illuminated with Halo or equivalent lighting applications.

2. Existing Geo-block pavers are 23-5/8" x 15-3/4" x 3-1/8" in size. They meet the following Design Specifications as set forth in ASTM C 936, Standard Specification for Interlocking Concrete Paving Units:
a. Average compressive strength of 8,000 psc (55 MPa) with no individual unit under 7,200 psi (50 MPa).
b. Average absorption of 5% with no unit greater than 7% when tested in accordance with ASTM C 140.
c. Resistance to 50 freeze-thaw cycles when tested according to ASTM C67, OR
d. Minimum average cube compressive strength of 7,250 psi (50 MPa).
e. Resistance to 50 freeze-thaw cycles while immersed in a 3% saline solution.

Parking lot shall be appropriately maintained in the following manner:
a. Snow removal shall consist of brush removal rather than use of a plow.
b. Broken or damaged blocks shall be replaced.
c. Turf shall be replaced every season as needed to maintain a healthy, green appeal.
d. Turf shall be irrigated and mowed appropriately.
3. All improvements shown including walls, fences, pavement and landscape materials are existing. No new improvements are proposed with this application. All Improvements, including Geo-block parking lot shall be maintained in good condition.

Prepared by: The Fredrickson Group PLANNERS / LANDSCAPE ARCHITECTS 7711 WINDSONG DR, WINDSOR, CO 80550 (970) 278-0240

CLIENT: DALLABETTA'S KYLE DALLABETTA 2009 FONDEROSA DRIVE LOVELAND, CO 80538 (970) 665-5727

A MUSE PUD: Preliminary Development Plan 1629 W. 8TH STREET, LOVELAND, CO 80537 SITE PLAN

Table with columns for Date, By, and other project tracking information.

Project information: PROJECT: 156-1011V SCALE: DATE: Nov. 17, 2010 DRAWN BY: df SHEET: PUD-2 OF 2





**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 11  
**MEETING DATE:** 4/19/2011  
**TO:** City Council  
**FROM:** Greg George, Development Services Department  
**PRESENTER:** Mike Scholl, Senior Planner, Strategic Planning

**TITLE:**

1. A RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROJECT DEVELOPMENT AGREEMENT FOR THE RIALTO BRIDGE PROJECT
2. AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR THE COMMUNITY FOUNDATION CONTRIBUTION AND ADDITIONAL CONSTRUCTION AND CONTINGENCY FUNDING TO THE RIALTO BRIDGE PROJECT

**DESCRIPTION:**

This is an administrative action to consider a resolution and a supplemental appropriation ordinance on second reading.

1. The resolution would authorize the City Manager to sign the Project Development Agreement with the Rialto Bridge LLC. The Agreement and the Staff Report are attached.
2. The supplemental budget appropriation funds the \$700,000 contribution by the Community Foundation. The Community Foundation is funding approximately 3,500 square feet of construction on the 2<sup>nd</sup> floor. Staff is also asking for an additional \$318,780 to complete the construction and \$178,920 for the construction contingency. The funds will be drawn from the Cultural Services CEFs.

**BUDGET IMPACT:**

Yes     No

The supplemental budget appropriates the contribution for the Community Foundation and the \$497,700 from the Cultural Services CEFs.

**SUMMARY:**

On June 1, 2010, Loveland City Council approved a Project Design Agreement with the Rialto Bridge LLC and a \$145,090 appropriation for predevelopment of the Rialto Bridge. Since that

time, the City, Rialto Bridge LLC and the Community Foundation have been working closely to complete all necessary work to move to the construction phase.

Steps have been taken to resolve issues concerning the existence of windows on the second floor of the adjacent building to the west. A purchase agreement was signed on April 5 for the sale of that property (212-214 E. Fourth Street) to a private buyer. The sale is scheduled to close on May 6. An agreement has been negotiated with the new buyer to allow for the issuance of a building permit.

- The agreement removes a deed restriction recorded in 1927 that limits the height of the building on the property owned by Rialto Bridge LLC to a single story; and
- Acknowledges the need for building improvements at 212-214 E. Fourth Street if the second floor is to continue to be used as sleeping rooms.

The plan is to have the Project Development Agreement between the City and Rialto Bridge LLC, the demolition/remediation contract, and the general construction contract signed on April 20. If the sale of the adjacent building does not close as planned on May 6, the Project Development Agreement includes provisions to allow the City to terminate the agreement with Rialto Bridge LLC and pay 50% of the cost to terminate the general construction contract but not to exceed \$21,250. The City could then complete remediation/demolition of the Quality Shoe building or it could seek to negotiate a termination or modification of its remediation/demolition contract.

---

**LIST OF ATTACHMENTS:**

1. Resolution
2. Supplemental ordinance
3. Project Development Agreement
  - a. Exhibit A - Condominium Declaration
  - b. Exhibit B - Developer Deed to City
  - c. Exhibit C - Title Commitment – City and Developer Properties
  - d. Exhibit D - Project Budget
  - e. Exhibit E - Cash Flow Schedule
  - f. Exhibit F - Letter of Credit
  - g. Exhibit G - Operation & Maintenance Services
4. Staff report

---

**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motion for Council action:

1. Move to approve the resolution authorizing the City Manager to sign the Project Development Agreement
2. Move to approve the supplemental appropriation ordinance on second reading.

**REVIEWED BY CITY MANAGER:**



**RESOLUTION #R-26-2011****A RESOLUTION APPROVING AND AUTHORIZING THE CITY  
MANAGER TO EXECUTE THE PROJECT DEVELOPMENT  
AGREEMENT FOR THE RIALTO BRIDGE PROJECT**

**WHEREAS**, the City owns that certain real property known as the Rialto Theater located 228 Fourth Street, Loveland, Colorado (the “Rialto”) and the adjacent real property and building located at 224 Fourth Street, Loveland, Colorado (the “City Property”); and

**WHEREAS**, Rialto Bridge, LLC (“Developer”) owns that certain real property and building located at 218 Fourth Street, Loveland, Colorado (the “Developer Property”), which is adjacent to the City Fourth Street Property; and

**WHEREAS**, City and Developer desire to jointly develop the City Property and the Developer Property (sometimes referred to herein collectively as the “Properties”) as an integrated public-private project to complement and supplement the Rialto Theater, including public spaces suitable for utilization by the City as lobby, circulation, and concession areas, “back of house” facilities, mechanical and administrative/operational space for the Rialto Theater, and public office and meeting spaces (the “Public Spaces”), and to create complementary private spaces suitable for private restaurant, and commercial uses (“Private Spaces”). The Public Spaces and Private Spaces, as well as the common areas serving such space, will be located in a new building constructed on the Properties and physically connected to the Rialto Theater, are hereinafter referred to collectively as the “Project”; and

**WHEREAS**, on June 1, 2010, City Council adopted Resolution #R-21-2010 approving and authorizing the City Manager to execute the Project Design Agreement for the Project, which was executed and dated June 20, 2010 (the “Design Agreement”); and

**WHEREAS**, the City and Developer have completed the Project Plans under the Design Agreement and desire to enter into the Project Development Agreement attached hereto as **Exhibit A** and incorporated herein by this reference (the “Agreement”) to construct the Project; and

**WHEREAS**, the Agreement includes a limited Materials Use Tax waiver, as more fully set forth therein; and

**WHEREAS**, the Project will serve the public purposes of providing significant social, cultural, and economic benefits to the citizens of Loveland, including jobs, economic development and revitalization of the Downtown area, enhanced cultural facilities, and increased tax revenues.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the City Council hereby finds that the Project is in the best interests of the public and the City and will serve the public purposes of providing significant social and economic benefits to the citizens of Loveland, including the provision of jobs, economic development, increased tax revenues, and cultural benefits to the citizens of Loveland.

**Section 2.** That the City Manager is authorized, following consultation with the City Attorney, to modify the Agreement in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

**Section 3.** That the City Manager and the City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City of Loveland.

**Section 4.** That after execution of the Agreement and following consultation with the City Attorney, the City Manager and the City Clerk are hereby authorized and to: (i) sign the Condominium Declaration attached to the Agreement and the Condominium Map referred to therein, and the City Manager is authorized to agree on the City's behalf to such modifications in form or substance to the Condominium Declaration as the City Manager determines are necessary to effectuate the purposes of this resolution or to protect the interests of the City; and (ii) to execute and deliver such additional agreements, plats, deeds, and documentation and take such action, himself or through duly authorized designees, as may be necessary or appropriate to implement the Agreement and operate the Project within budgets approved and appropriated by Council from time to time.

**Section 5.** That this Resolution shall go into effect as of the date and time of its adoption.

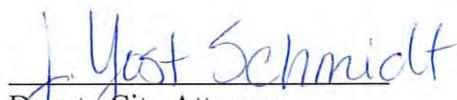
ADOPTED this 19<sup>th</sup> day of April, 2011.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney



## CITY OF LOVELAND

DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

### Memorandum

**To:** Loveland City Council  
**Through:** Bill Cahill, City Manager  
**From:** Mike Scholl, Senior Planner  
**Date:** April 19, 2011  
**RE:** Staff Report/Rialto Bridge Project Development Agreement

#### Background:

At the June 15, 2010 regular meeting, Council approved an agreement (the “Design Agreement”) with the Rialto Bridge LLC, a private developer, to complete the design phase of the Rialto Bridge, a 20,000 square foot structure on the two lots immediately west and designed as an expansion of the existing Rialto Theater (the “Project”). Over the last six months, staff and Rialto Bridge LLC have:

- Completed design of the Project under the Design Agreement, including planning, architectural, and construction drawings, plans and specifications;
- Completed a competitive pre-qualification process to select nine general contractors eligible to bid on construction of the Project;
- Completed a competitive bidding process to obtain bids confirming cost and identifying a contractor to complete environmental remediation and demolition of the existing buildings on the City’s lot (224 Fourth Street, the “Quality Shoe” building) and developer’s lot (218 Fourth Street, the “Monaco Building”);
- Completed a competitive bidding process to obtain bids confirming cost and identifying a contractor to construct the Project; and
- Negotiated an agreement (the “Project Development Agreement”) with Rialto Bridge LLC, the Developer, providing for construction of the Project by the Developer, creation of a condominium, including separate units to be owned by the City and the Developer, and allocation of costs for the Project between the City and the Developer.
- Facilitated the sale of the adjacent property (212-214 E. Fourth) to a private buyer and negotiated an agreement with the new buyer to allow for the issuance of a building permit.
  - The agreement removes a deed restriction dating to 1927 and;
  - Acknowledgement of the need for building improvements at 212-214 E. Fourth so that the space can be used as sleeping rooms.

**Purpose:**

The Council is considering a resolution approving the Development Agreement in conjunction with the second reading of the supplemental appropriation. The appropriation is subject to the approval of the Development Agreement.

Approval of the Project Development Agreement and the supplemental appropriation will allow construction to move forward.

*Current Schedule:*

|  |                |
|--|----------------|
| Appropriation 1 <sup>st</sup> Reading  | February 15    |
| Consideration of the Project Agreement | April 19       |
| Appropriation 2 <sup>nd</sup> Reading  | April 19       |
| Begin Environmental Remediation        | after April 19 |
| Groundbreaking                         | after May 1    |
| Estimated Soft Opening                 | January 2012   |
| Anticipated Grand Opening              | January 2012   |

**Project Development Agreement:**

The Project is designed to be physically and operationally connected to and integrated with the existing Rialto Theater, and will contain:

- public spaces to be owned and used by the City as lobby, circulation, and concession areas, “back of house” facilities and mechanical and administrative/operational space for the Theater, and public meeting spaces (the “City Spaces”);
- complementary private spaces to be owned and used by the Developer for private restaurant (first floor) and commercial (third floor) uses (the “Private Spaces”); and
- mechanical, electrical, fire safety and access areas for the support and functionality of the City Spaces and the Private Spaces (the Common Area”).

The Project Development Agreement includes:

- remediation and demolition by the City and the Developer of their respective buildings;
- transfer of the Developer’s lot to the City and merger of the Developer’s lot, the City’s Quality Shoe lot, and the Rialto Theater lots into a single lot for purposes of redevelopment and construction of the new structure as an extension of the Rialto Theater;
- construction of the new structure, including completion of the core and shell and the tenant finish for the City Spaces and Common Areas, by the Developer, in accordance with approved plans and specifications and with an approved contractor;
- specification that the tenant finish for the Private Space is the responsibility of the Developer and will be handled separately;
- provisions allocating the costs of construction so that each party bears costs of remediation and demolition for its own property and a proportionate share of the cost

of the core and shell (based proportion of space included in the Private Spaces and City Spaces), with the City and Developer each bearing the cost of tenant finish for their respective spaces;

- maximum contributions by both parties and payment provisions for cost contributions;
- a letter of credit to secure the Developer's share of the construction costs for the core and shell;
- a Condominium Declaration to be filed on completion of the Project, creating separate condominium units to be owned by the City and the Developer and a governance structure;
- a materials use tax waiver for the Developer's benefit; and
- acknowledgment that the Developer may request, no later than December 31, 2011, an incentive in the form of property tax increment revenues (which would require further Council approval, if requested)

Some specific issues covered by the Development Agreement are addressed below:

Why Merge the Lots? The Rialto Bridge is designed so that it is physically and operationally connected to and integrated with the historic Rialto Theater. When a building crosses lot lines, additional fire separation elements would be required between the structures. The cost of constructing fire separation between the two buildings, along with the associated deed restrictions, would have been a costly and onerous burden to the Project. Additionally, it would have limited the functionality of the design, by having large fire doors at the backstage and in the lobby. Given this design, the separate lots must be merged in order to meet existing fire codes.

Why a Condominium Declaration? The Condominium Declaration establishes the ownership and management structure for the property. It is required by state law for this type of property.

Upon substantial completion of the core and shell, the Condominium Declaration and a Condominium Map will be recorded, to create one or more condominium units to be owned by the City and one or more condominium units to be owned by the Developer. The City will own the condominium unit that consists of the Rialto Theater and one or more condominium units containing the City Spaces, including the first floor lobby and back of house space and the second floor areas and community meeting space. The Developer will own one or more condominium units containing the Private Spaces, including the first floor restaurant space and the third floor office space. The Declaration and the Map create the Rialto Bridge Condominium under Colorado condominium statutes.

How does the Condominium Work? A non-profit corporate condominium association will operate the Condominium. With the inclusion of the Theater in the condominium association, the City will retain approximately two thirds of the voting interest. (The exact voting interests will not be determined until the Condominium Map is completed.) In addition, the City will retain two seats on the association board with the Rialto Bridge LLC being assigned one seat. The maximum number of seats on the board is five, with two required for a quorum.



What is the Impact on the Rialto Theater? Under the Condominium Declaration, the Rialto Theater unit will not be subject to assessments for structural and mechanical upkeep of the new structure or maintenance of the new common areas. The Condominium Declaration permits the association to allocate the costs of maintaining structural and mechanical elements of the existing Rialto Theater solely to the Rialto Theater unit. By taking this step, the theater will continue to bear these costs, as it has in the past.

How is the Condominium Managed and Maintained? The Condominium Declarations set forth the ongoing management and legal requirements for the building for 100 years. The association will be responsible for maintaining the common elements of the new building and making assessments to allocate the costs of doing so, including setting up a reasonable replacement reserve fund to cover the mechanical systems and building structure.

The Condominium Declarations provide for the opportunity to contract with the City's Facilities Management Division for operations and maintenance services for the common areas. In addition, the Project Development Agreement calls for Facilities Management to provide operations and maintenance services to the privately owned units under a negotiated contract with Rialto Bridge, LLC.

There are associated Condominium bylaws that will be used to govern the Condominium Association. The bylaws are included in your packet.

**Construction Materials Use Tax Waiver:**

The Project Development Agreement includes a waiver of the Construction Materials Use tax for the private portion of the Project. Had we not waived the use tax, even on the private side, the amount would have been buried in the construction bid, which would have increased our overall cost.

**Project Budget:**

Under the agreement, the City will fund the majority of the financing at the front end to support construction. Rialto Bridge LLC will contribute \$150,000. By taking this step, the project will save an estimated \$37,000 on financing cost for a construction loan. To assure completion of the project, the Rialto Bridge LLC will provide the City with a \$1.225 million letter of credit from the bank should it failure to meet its obligations under the contract.

The current estimated costs to the City are as follows:

|                          | Public |             | Private     |             |
|--------------------------|--------|-------------|-------------|-------------|
|                          | %      | Amount      | %           | Amount      |
| Hard Costs               | 50%    | \$1,075,760 | 50%         | \$1,075,760 |
| Soft Costs               | 50%    | \$274,707   | 50%         | \$274,707   |
| Tenant Finish            |        |             |             |             |
| Public                   | 100%   | \$671,500   | 0%          | \$0         |
| Private                  | 0%     | \$0         | 100%        | \$748,500   |
| Remediation              | 100%   | \$41,900    | 0%          | \$0         |
| Private Other            | 0%     | \$0         | 100%        | \$58,650    |
|                          |        | \$2,063,867 |             | \$2,157,617 |
| <i>Contingency (10%)</i> |        | \$178,920   | <i>(5%)</i> | \$53,788    |

|                     |             |
|---------------------|-------------|
| Proposed Bid Award  | \$2,226,150 |
| Core & Shell        | \$1,612,000 |
| Tenant Finish       | \$614,150   |
| Accepted Alternates | \$24,870    |

|                                   |                      |
|-----------------------------------|----------------------|
| Public Cost                       | 2,063,867            |
| Design Appropriation              | (145,090)            |
| Community Foundation              | (700,000)            |
| Construction Appropriation        | 1,218,777            |
| Previously Appropriated           | (\$900,000)          |
| Additional Construction Cost      | <sup>1</sup> 318,780 |
| Contingency (10%)                 | 178,920              |
| <b>Supplemental Appropriation</b> | <b>\$497,700</b>     |

|                            |           |
|----------------------------|-----------|
| Public Share w/Contingency | 2,242,787 |
|----------------------------|-----------|

<sup>1</sup> Budget office rounds all appropriations to the nearest \$10.

**Cost Comparison:**

When the preliminary construction budget was presented to City Council on October 26, 2010, the two parties had contemplated a 53% private/47% public split based on gross square footage of the building. Since the lots will be merged, the City will have de facto control of the Condominium Association and Condominium Board with control over the common areas and any future building assessments. As such, the split was negotiated to 50% private/50% public to reflect the change in control.

In addition, there were additional items that were added into public tenant finish and the core and shell through the bid process. We were able to get competitive pricing on the items that had not been contemplated in the preliminary construction budget. This includes budget alternates for a higher quality roof materials, and cabinetry in the work shop, green room and the Walby Conference Room.

Further, based on recent history with the Library, staff believed through the hard bid process, the project would achieve some additional savings. Unfortunately, the low bid was approximately \$100,000 higher than anticipated.

**Operations and Maintenance Costs:**

As reviewed at the October 12, 2010 Council Study Session, the Operations and Maintenance of the Rialto Bridge will provide an opportunity to reduce the overall subsidy to the theater by approximately 13 percent.

|                             | Existing  |        |                  | Proposed  |           |                  |
|-----------------------------|-----------|--------|------------------|-----------|-----------|------------------|
|                             | Rialto    | Bridge | Total            | Rialto    | Bridge    | Total            |
| <b>Expense</b>              | \$350,220 | N/A    | \$350,220        | \$360,000 | \$135,382 | \$495,382        |
| <b>Revenue</b>              |           |        |                  |           |           |                  |
| <b>Rentals</b>              | \$82,516  | N/A    | \$82,516         | \$103,050 | \$77,500  | \$180,550        |
| <b>Operations</b>           | \$52,124  | N/A    | \$52,124         | \$62,000  | \$56,375  | \$118,375        |
| <b>Concession</b>           | \$21,383  | N/A    | \$21,383         | \$26,500  | \$1,500   | \$28,000         |
| <b>TOTAL</b>                | \$156,023 | N/A    | \$156,023        | \$191,550 | \$135,375 | \$326,925        |
| <b>General Fund Support</b> | \$194,197 | N/A    | <b>\$194,197</b> | \$168,450 | \$7       | <b>\$168,457</b> |

**Additional Agreements for Consideration:**

There are a number of additional agreements that may need to come before Council prior to the opening of the building. While the agreements are part of the overall building concept/vision, action prior to construction start is not critical, but in some instances will be required before the planned opening in January 2012.

*Operations and Maintenance agreement with Rialto Bridge LLC (required)* - This agreement will cover the fees that the Rialto Bridge LLC will pay the City to provide O/M of the private condominium spaces new building.

*Concessions Agreement/ Restaurant (optional)* – As part of our overall strategy to reduce the O/M cost to the City, staff is working with the restaurant to allow for enhanced concessions and liquor sales at theater events. Liquor sales currently must be done by special event permit. Staff expects this to be a significant source of revenue to offset the cost of operations.

*City Rental Policy (optional)* – The public space on the 2<sup>nd</sup> floor will be available to the public and for catered events. Staff will be developing a policy for approval by Council that will establish the fees and other operational policies for the space, which will include catering. Caterers, including the restaurant and others, will be allowed to work events at the Rialto Bridge; however, staff will propose a requirement for pre-qualification along with an annual fee and a onetime nonrefundable damage deposit. Staff believes this approach is fair, as it allows for caterers to provide services in the space, and also protects the City against misuse or damage.

**PROJECT DEVELOPMENT AGREEMENT**  
**Rialto Bridge Project**

**THIS PROJECT DEVELOPMENT AGREEMENT** (“Agreement”) is entered into as of the \_\_\_ day of April, 2011, by and between **CITY OF LOVELAND, COLORADO**, a home-rule municipality (“City”) and **RIALTO BRIDGE, LLC**, a Colorado limited liability company (“Developer”).

**RECITALS**

A. The City owns that certain real property known as the Rialto Theater located 228 Fourth Street, Loveland, Colorado, more specifically described as Lots 5 & 6, Block 18, Original Town of Loveland, Colorado (the “Rialto Property”) and the adjacent real property located at 224 Fourth Street, Loveland, Colorado, more specifically described as Lot 7, Block 18, Original Town of Loveland, Colorado (the “City Property”).

B. The Developer owns that certain real property located at 218 Fourth Street, Loveland, Colorado more specifically described as Lot 8, Block 18, Original Town of Loveland, Colorado (the “Developer Property”), which is adjacent to the City Property.

C. The City and the Developer desire to jointly re-develop the Rialto Property, the City Property and the Developer Property (sometimes referred to herein collectively as the “Properties”) as an integrated public-private project to complement and supplement the existing historic Rialto Theater located on the Rialto Property.

D. The redevelopment will include demolition of existing structures and construction of a new structure on the City Property and the Developer Property to provide public spaces to be owned and used by the City as lobby, circulation, and concession areas, “back of house” facilities, mechanical and administrative/operational space for the Rialto Theater, and public office and meeting spaces (the “City Spaces”) and complementary private spaces to be owned and used by the Developer for private restaurant and commercial uses (the “Private Spaces”), as well as such mechanical, electrical, operational, and other spaces for the support and functionality of both the City Spaces and Private Spaces (the “Common Areas”).

E. The City Spaces and Common Areas to be located in the new structure to be constructed on the City Property and the Developer Property are to be physically connected to and integrated with the existing Rialto Theater located on the Rialto Property. The City Spaces, Private Spaces, Common Areas, and the connection to and integration with the Rialto Theater located on the Rialto Property are hereinafter referred to collectively as the “Project”.



F. The Project will serve the public purposes of providing significant social, cultural, and economic benefits to the citizens of Loveland, including jobs, economic development and revitalization of the Downtown area, enhanced cultural facilities and opportunities, and increased tax revenues.

G. The City and the Developer entered into that certain Project Design Agreement dated June 20, 2010 (the "Design Agreement") to fund and obtain planning, architectural and construction drawings for the Project (the "Project Plans").

H. The Project Plans, which have been completed, approved, and are jointly owned by the parties, consist of the Rialto Bridge Construction Documents (64 pages) and the Project Manual (646 pages) prepared by RB+B Architects, both of which are dated December 29, 2010.

I. The City and the Developer desire to enter into this Agreement to provide for construction of the Project, condominiumization of the Properties, and subsequent public and private ownership of the resulting condominium units.

J. It is intended that the Developer will make the Developer Property available and the City will make the City Property available for construction of the new structure as a part of the Project, without payment by either party to the other for such properties. It is further intended that the Developer will construct the Project in accordance with this Agreement and, in consideration of their contributions of property and payment of costs as set forth herein and upon completion of the Project, the City will own one or more condominium units and the Developer will own one or more condominium units as set forth in this Agreement.

**NOW THEREFORE**, in consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Project Description.**

a. The Project Plans have been approved by the City and the Developer, served as the basis for bidding, and shall serve as the basis for construction of the Project as set forth in this Agreement. No change shall be made to the Project Plans without the prior written consent of both parties. Any additional specifications and/or further refinement, extension, or completion of the Project Plans subsequent to the execution of this Agreement shall constitute a change requiring the prior written consent of both parties.

b. The Project Plans include plans and specifications for construction of (i) the core and shell of the new structure that will contain the City Spaces, the Private Spaces and the Common Areas, (ii) all interior finishes within the City Spaces and Common Areas; and (iii) all mechanical, electrical, HVAC, utility and finish work as

appropriate to integrate the utility and operational systems of the Rialto Theater into and connect it with the new City Spaces and Common Areas.

c. The interior finishes for the Private Spaces are not included in the Project Plans and shall not be considered a part of the Project. The Developer shall contract for the design and construction of interior finishes for the Private Spaces at its sole cost and expense, provided that any construction of interior finishes in the Private Spaces by the Developer or its contractor(s) shall be coordinated so as not to cause delay or increase in cost of the Project.

d. The structure constructed pursuant to the Project Plans and the existing Rialto Theater on the Rialto Property shall be the subject of a condominium declaration initially creating condominium units including at least: (i) the existing Rialto Theater (the "Theater Unit"); (ii) the City Spaces (the "City Unit"); and (iii) the Private Spaces, which may be one or more units (hereinafter referred to as the "Commercial Units").

e. The parties have agreed upon the terms and conditions set forth in the condominium declaration attached hereto as **Exhibit "A"** and incorporated herein by this reference (the "Condominium Declaration").

**2. Demolition and Environmental Remediation.** The existing improvements located on the City Property (the "City Building") and the existing improvements located on the Developer Property (the "Developer Building") shall be demolished in accordance with the following provisions prior to commencing construction of the Project:

a. The City and Developer have jointly defined and approved the scope of services required to engage qualified contractors and consultants to remediate certain environmental conditions on the Developer Property and the City Property identified in an assessment with respect to lead paint and asbestos authored by Terracon Consultants, Inc., entitled "Asbestos Survey, Rialto Bridge Project/Former Quality Shoes, 224 East 4<sup>th</sup> Street, Loveland, Colorado" dated January 10, 2011, Terracon Project No. 20107030 (the "Terracon Report") and to demolish the City Building and the Developer Building and to prepare the City Property and the Developer Property for construction of the Project, all in compliance with all applicable laws and regulations (collectively, the "Remediation and Demolition").

b. The Remediation and Demolition shall include such work and activities as may be necessary or appropriate to: (i) maintain support of and avoid damage to adjacent buildings (including the Rialto Theater); (ii) comply with such common wall and adjacent support agreements and other obligations as may be reflected in title commitment(s) for the City Property and the Developer Property attached hereto as **Exhibit "C"** and incorporated herein by this reference; and (iii) maintain ongoing and uninterrupted operation of the Rialto Theater during the Remediation and Demolition, including preservation of safe and adequate routes of ingress and egress.

c. The City and the Developer have used the City's procurement system to issue an Invitation to Bid to engage the services of a qualified contractor to carry out the Remediation and Demolition. Bids have been requested utilizing one Invitation to Bid for Remediation and Demolition for the City Property and the Developer Property. However, the City and the Developer have requested separate bid amounts for Remediation and Demolition of the City Property and the Developer Property.

d. The City and the Developer shall each enter into separate contracts with the same qualified contractor selected pursuant to the bidding process for completion of the Remediation and Demolition for their respective properties (the "Remediation and Demolition Contracts").

e. The Remediation and Demolition Contracts shall be in the form included in the Invitation to Bid, which form has been agreed to by the City and the Developer.

f. Neither the City nor the Developer shall amend, modify, or issue any change order under its respective Remediation and Demolition Contracts except after prior written notice to the other party.

g. The City and the Developer shall each manage and oversee timely completion of Remediation and Demolition for their respective property under their respective Remediation and Demolition Contracts in accordance with all applicable laws and regulations. The City and the Developer shall work cooperatively and each party shall coordinate and provide timely access and direction as necessary to complete the Remediation and Demolition on both properties as contemplated by and consistent with the schedule set forth in their respective Remediation and Demolition Contracts.

3. **Condition Precedent.** The Developer shall deliver to the City, on or before 5:00 P.M. on May 20, 2011, an agreement by the owner of Lot 9, Block 18, City of Loveland (known as 212 and 214 East Fourth Street) to extinguish the reservation of rights to demand and receive light for the use and convenience of the second story of the building on Lot 9 appearing in the warranty deed dated January 28, 1927 and recorded on January 29, 1927 in Book 5334 at Page 266 of the records of Larimer County, State of Colorado (the "Lot 9 Agreement"). The Lot 9 Agreement shall in a form acceptable to the City, in its discretion, and shall be accompanied by evidence that it is duly executed by the then-current owner of Lot 9. If the Agreement is not so delivered by Developer, the City shall have the right to terminate this Agreement by written notice to the Developer and upon the giving of such notice this Agreement shall terminate and the parties shall have no further obligations except as set forth herein. The Developer shall, upon receipt of the City's notice of termination terminate the Construction Contract (as hereinafter defined), if entered into prior to receipt of such notice, and provide to the City written invoices and evidence of the costs incurred as a result of such termination. The City shall reimburse the Developer for 50% of the costs of terminating the Construction Contract, provided that the City's share of such costs of termination shall in no event exceed \$21,250.00 (the "City Termination Cost"). Any costs of terminating the Construction Contract in excess of the City Termination Cost as set forth herein shall be the sole responsibility of Developer. Each party shall be responsible for the costs of its own Remediation and Demolition and/or termination of its own Remediation and Demolition Contract.

4. **Developer Property.** The Developer shall transfer title to the Developer Property to City for the sole purpose of redevelopment and construction of the Project pursuant to the Project Plans and this Agreement, in accordance with the following:

a. On or before May 13, 2011, Developer shall deliver to the City a Phase I Environmental Assessment for the Developer Property meeting the EPA "all appropriate

inquiry standards”, certified to the City, and covering environmental conditions on the Developer Property other than those covered by the Terracon Report (the “Developer EAS”). Within three (3) business days after receipt of the Developer EAS, the City may elect to terminate this Agreement by written notice to the Developer if the Developer EAS identifies any recognized environmental conditions other than those previously identified in the Terracon Report.

b. Within sixty (60) days after substantial completion of the Remediation and Demolition under the Remediation and Demolition Contracts, the Developer shall execute and deliver to the City a special warranty deed in the form attached hereto as **Exhibit “B”** and incorporated herein by this reference (the “Developer Deed”) transferring title to the Developer Property to the City.

c. The Developer Deed shall be subject only to those matters affecting title as set forth on Attachment 1 to **Exhibit “B”** attached hereto and incorporated herein by this reference.

d. Except as set forth in the Terracon Report and the Developer EAS, the Developer represents and warrants to the City that it has no knowledge or information regarding any environmental condition or presence of “Hazardous Material” in, on or about the Developer Property.

e. As used herein, the term “Hazardous Material” means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Colorado, or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance that is: (i) defined as a “hazardous substance” under applicable state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1321); (v) defined as “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (vi) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); (vii) defined as “hazardous materials” by 49 CFR 171; (viii) defined as a “regulated substance” pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. Section 6991); (ix) designated as regulated chemicals for accidental release prevention pursuant to the Clean Air Act Section 112 (r); or (x) designated as extremely hazardous substances or toxic chemicals pursuant to the Emergency Planning and Community Right to Know Act Section 302 and Section 313, respectively.

f. The Developer shall indemnify, defend, and hold the City, and its officers and employees, harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise as a result of the presence of Hazardous Materials on the Developer Property other than those disclosed in the Terracon Report or the Developer EAS. This indemnification of the City by the Developer includes, without limitation, any costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials present in the soil, air, surface water, or ground water on, under, or in connection with the Developer Property other than those disclosed in the Terracon

Report or the Developer EAS. This indemnity shall survive the completion of the Project or termination of this Agreement.

5. **Lot Merger and Zoning Permit.** The City and the Developer have filed an application for lot merger pursuant to Loveland Municipal Code Chapter 16.32 to merge the lots comprising the Rialto Property, the City Property, and the Developer Property into a single lot (the "Lot Merger") for purposes of redevelopment and construction of the Project as an integrated unit. The City and the Developer have also filed a Type I Zoning Permit application pursuant to Loveland Municipal Code Section 18.04.020 (the "Type 1 Zoning Permit") for review of the Project to determine compliance with the City's Site Development Performance Standards and Guidelines and other relevant City ordinances and requirements. The Lot Merger and completion of the Type 1 Zoning Permit process are conditions to issuance of a building permit for the Project. The City and the Developer shall cooperate and take such reasonable action as may be necessary or appropriate to pursue and satisfy the requirements for the Lot Merger and Type I Zoning Permit process, and for any other development permits, building permits, and/or approvals required for construction and operation of the Project by relevant City ordinances and requirements.

6. **Construction of Project.** The Project shall be constructed in accordance with the Project Plans and the following provisions:

a. The City and the Developer have used the City's procurement system to issue an Invitation to Bid to engage the services of a qualified contractor to construct the Project in accordance with the Project Plans. Bids have been requested utilizing a single Invitation to Bid for the core and shell of the new structure that will contain the City Spaces, the Private Spaces and the Common Areas, all mechanical, electrical HVAC and utility systems or components, including a fire safety system that will also serve the Rialto Theater, and interior finish of the Common Areas (collectively hereinafter referred to as the "Core and Shell"), and for interior finish of the City Spaces (hereinafter referred to as the "City Finish").

b. Within sixty (60) days after satisfaction of the condition set forth in paragraph 3 above, the City and the Developer shall cooperate to: (i) finalize the Lot Merger and satisfy other City requirements necessary to obtain issuance of a building permit for the Project; and (ii) the Developer shall, simultaneously with or after execution of the Remediation and Demolition Contracts as set forth above, enter into the Construction Contract with a qualified contractor selected pursuant to the bidding process and approved by the City. The form of the Construction Contract shall: (i) be subject to approval by the City; (ii) contain an express provision that the City is a third party beneficiary of the Construction Contract and shall have the right to enforce the terms and conditions of the Construction Contract; and (iii) require payment and performance bonds to protect contractors and subcontractors against nonpayment (since Colorado law prohibits mechanics' or materialmen's liens against public property) and to ensure completion of the Project and performance of obligations under the Construction Contract.



c. The Developer shall not amend, modify, or issue any change order under the Construction Contract except with the prior written approval of the City.

d. The Developer shall manage and oversee timely completion of the Project under the Construction Contract, in compliance with the Project Plans and all applicable state and local laws, rules, regulations and requirements.

## **7. Cost of Remediation, Demolition, and Construction.**

a. The budget for construction of the Project is attached hereto as **Exhibit “D”** and incorporated herein by this reference (the “Budget”). Neither the City nor the Developer shall have any obligation to expend funds in excess of the amounts shown on the Budget, as allocated by this Agreement, without prior written consent. The Budget includes a contingency for the City and the Developer. Expenditure of the contingency shall require the prior written approval of both the City and the Developer. Notwithstanding the foregoing, either the City or the Developer may each utilize up to 50% of its own contingency, in its discretion and without approval of the other party, for costs of Remediation and Demolition and, in the case of the City, for the cost of the City Finish.

b. The cost of remediation, demolition, and construction of the Project shall be allocated between the City and the Developer in accordance with the following:

(i) The City shall pay the cost of Remediation and Demolition for the City Property in accordance with its Remediation and Construction Contract;

(ii) The Developer shall pay the costs of the Remediation and Demolition for the Developer Property in accordance with its Remediation and Demolition Contract;

(iii) The City shall pay 50% and the Developer shall pay 50% of the cost to construct the Core and Shell under the Construction Contract;

(iv) The City shall pay 100% of the cost of the City Finish under the Construction Contract; and

(v) The Developer shall be responsible for the cost of the interior finish of the Private Spaces. The Developer acknowledges that interior finish of the Private Spaces will not be included in the Construction Contract, and that the Developer shall contract for such work independently.

c. The City’s total obligation to pay its share of the costs of construction of the Core and Shell and the City Finish under the Construction Contract shall not exceed a cumulative maximum of \$2,055,793.00 (the “City Maximum”). The City Maximum **excludes** the cost of Remediation and Demolition for the City Property, which shall be paid by the City independently, and **includes** the \$700,000.00 contribution from the Community Foundation of Northern Colorado, and the amount of the City’s contingency.

d. The Developer’s total obligation to pay its share of the costs of construction of the Core and Shell shall not exceed a cumulative maximum of \$1,114,000.00 (the “Developer Maximum”). The Developer Maximum **excludes** the cost of Remediation and Demolition for the Developer Property and the cost of interior finish of the Private Spaces, which shall be paid by the Developer independently, and **includes** the amount of the Developer’s contingency.

e. The City shall make funds up to the City Maximum available to pay the City's allocated share of costs of constructing the Project as and when such costs become due pursuant to the Construction Contract. The Developer shall pay to the City funds up to the Developer Maximum to be utilized to pay the Developer's allocated share of the costs of constructing the Project as and when such costs become due pursuant to the Construction Contract. All such funds shall be held by the City (the "Construction Funds") and disbursed pursuant to a construction draw process approved by the City, the Developer, and the Bank (as hereinafter defined) with each disbursement requiring prior written approval by the City, the Developer and the Bank. A schedule of anticipated cash flow for payment of Construction Funds by the Developer to the City and payment of construction costs is set forth on **Exhibit "E"** attached hereto and incorporated herein by this reference (the "Cash Flow Schedule"). Construction Funds shall be: (i) made available by the City and paid by the Developer to the City at the times set forth on the Cash Flow Schedule, or earlier if required to pay amounts as they become due under the Construction Contract; and (ii) disbursed by the City as they become due and payable under the Construction Contract, with the approval of the City, Developer and the Bank.

f. The Developer shall deliver to the City, on or before May 20 ,2011 a letter of credit (the "Letter of Credit") from Home State Bank or other bank acceptable to the City (the "Bank") in the amount of the Developer Maximum for the purpose of securing the Developer's promise to pay its share of the costs of constructing the Project and other amounts as and when due to the City under this Agreement. The Letter of Credit shall be in a form that strictly complies with **Exhibit "F"** attached hereto and incorporated herein and is approved by the Loveland City Attorney. In the event that the Developer does not make any payment of Construction Funds to the City as reflected on the Cash Flow Schedule, any payment due for construction of the Project under the Construction Contract, or any other payment due to the City under this Agreement within the required time period or by the required deadline, the City shall be entitled to draw down such funds under the Letter of Credit as it may deem appropriate to pay any such amounts due. To the extent that the Developer makes any payment of Construction Funds to the City, or any payment due under the Construction Contract as and when it becomes due in accordance with the Cash Flow Schedule and/or the Construction Contract, the total amount of the Letter of Credit may be reduced by the amount of all such payments. However, nothing herein or in the Letter of Credit shall in any way limit the Developer's obligations under this Agreement, and the Developer shall, in any event, remain liable for payment its share of the costs of Remediation, Demolition, and construction of the Project and any and all amounts that may become due to the City under this Agreement.

## 8. Condominium Declaration and Units.

a. Prior to making a request for issuance of a certificate of occupancy (temporary or permanent) for the Core and Shell or any portion thereof, the parties shall cause a condominium map reflecting the Theater Unit and the "as built" spaces that constitute the City Unit(s) and the Commercial Units to be prepared as required by the Condominium Declaration and applicable law (the "Condominium Map") and the

Condominium Declaration and Condominium Map shall be executed and recorded. The City shall have no obligation to issue and may withhold a certificate of occupancy (temporary or permanent) for the Core and Shell or any portion thereof until the Condominium Declaration and Condominium Map have been approved and signed by the City and the Developer for recording.

b. Simultaneously with recording of the Condominium Declaration and the Condominium Map, the parties shall record deeds to the condominium units as follows:

- (i) Deed to City for the Theater Unit and the City Unit(s); and
- (ii) Deed to Developer for the Commercial Unit(s).

Each party shall be responsible for recording costs, closing costs and title insurance for its own condominium units and shall share all other recording and closing costs 50% to be paid by the City and 50% to be paid by the Developer.

**9. Default.** Either party shall be deemed in default under this Agreement as a result of any material breach of any term or condition of this Agreement including, without limitation, the following:

- a. The failure to timely make any deposit of Construction Funds as and when due under the Construction Contract or required by the Cash Flow Schedule, whichever is earlier, or to make any other payment or provide the Letter of Credit as required under this Agreement;
- b. The failure to perform or take any action as and when required and to diligently pursue completion of any action required by this Agreement;
- c. The sale of all or substantially all of the assets of Rialto Bridge, LLC, the sale of a controlling interest in Rialto Bridge, LLC, or the assignment by Rialto Bridge, LLC of its interest in this Agreement without the prior written consent of the City;
- d. The application for the appointment of a receiver for any of Rialto Bridge, LLC's assets;
- e. The commencement of any proceeding under any bankruptcy or insolvency laws by or against Rialto Bridge, LLC; or
- f. Any other material breach of this Agreement.

Upon the occurrence of any one or more of these above-listed events of default and the failure to cure or commence to cure such default within ten (10) days after receipt of written notice of the default from the non-defaulting party, the non-defaulting party may pursue any and all remedies available to it under the law or in equity to collect any or all of the amounts owed to it under this Agreement and/or to require specific performance, including but not limited to drawing funds under the Letter of Credit. In addition to the foregoing, in the event of any one or more of these events of default continues after thirty (30) days' notice of such default, all amounts owed under this Agreement shall be accelerated and become due and payable immediately.

**10. Indemnity.** The Developer hereby covenants and agrees to save and hold harmless the City, its officers, employees, and agents, from any and all liability,

loss, costs, charges, obligations, expenses, attorneys' fees, litigation, judgments, damages, claims and demands of any kind whatsoever arising from or out of the Developer's performance under the terms of this Agreement. This indemnity shall survive completion of the Project or termination of this Agreement.

**11. Appropriation.** To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the City payable after December 31, 2011, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

**12. Governmental Immunity.** No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the notice requirements, immunities, limitations to liability, rights, benefits, protections, or other provisions under the Colorado Governmental Immunity Act CRS §24-10-101 *et seq.* or under any other law.

**13. Force Majeure.** Notwithstanding anything contained herein to the contrary, the parties agree that to the extent that fire, flood, earthquake, natural catastrophe, explosion, accident, illegality, act of God, or any cause beyond the control of the parties, or strikes or labor trouble affecting the parties (whether or not in the power of the parties to settle the same) prevents or delays the performance under this Agreement, the impacted party shall be relieved of the consequences thereof without liability, so long as and to the extent that such party's performance is prevented by such cause; provided however, that such party shall exercise due diligence in its efforts to resume performance within a reasonable time.

**14. Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of Colorado. Venue for any dispute under this Agreement shall rest in the District Court of the County of Larimer, State of Colorado. The parties recognize that there are legal constraints imposed upon the City by constitutions, statutes, rules, and regulations of the State of Colorado and of the United States and by the City Charter and the Loveland Municipal Code, and that subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement.

**15. Assignment.** Neither party may assign this Agreement without the other party's prior written consent, which consent may be granted or denied in their sole and absolute discretion.

**16. No Waiver.** No waiver by either party of any term or condition of this Agreement shall be deemed to be or construed as a waiver of any other term or condition of this Agreement, nor shall any waiver of any breach of any provision of this Agreement be deemed to constitute a waiver of any subsequent breach of the same provision.

**17. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**18. Amendment.** This Agreement contains the entire agreement of the parties relating to the subject matter hereof, and, except as provided herein, may not be modified or amended other than by written agreement of the parties.

**19. Severability.** In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

**20. Notice.** Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

To the City:                      City Manager  
     City of Loveland  
     500 East 3<sup>rd</sup> Street  
     Loveland, Colorado 80537

With a Copy:                      City Attorney's Office  
     City of Loveland  
     Attn: City Attorney  
     500 East 3rd Street  
     Loveland, Colorado 80537

To the Developer:              Rialto Bridge, LLC  
     c/o Troy R. Peterson  
     7400 Sunrise Ridge  
     Loveland, Colorado 80538

With a Copy:                      Charles Cuypers  
     Wolfe, Van Ackern & Cuypers, LLP  
     1008 Centre Ave  
     Fort Collins, Colorado 80526-1849

**21. Interpretation.** This Agreement shall be construed according to its fair meaning as if prepared by both parties and shall be deemed to be and contain the entire understanding of the parties with respect to the subject matter hereof.

**22. Authorized Representatives.** The City and the Developer hereby appoint the following authorized representatives who shall have the authority to



represent the interest of and take action on behalf of the respective parties as contemplated by this Agreement, except as otherwise specifically provided herein:

City of Loveland

Authorized Representative: City Manager

Developer

Authorized Representative: Troy R. Peterson

The City's authorized representative shall have the authority to provide the approvals or disapprovals and make the decisions contemplated by this Agreement on behalf of the City, except that any action which may require commitment of financial resources of the City in excess of the City Maximum or may vary from any resolution, ordinance, rule or regulation of the City applicable to the Project shall require and shall only be binding upon the City when accomplished by resolution or ordinance consistent with applicable constitutional provisions, laws, and regulations and adopted by the Loveland City Council. The City Manager may designate a City staff person to act as the City's authorized representative.

**23. Materials Use Tax Waiver.** It is understood and agreed that the City use tax imposed pursuant to City Code Section 3.16.040 (the "Use Tax") upon construction and building materials for the Core and Shell portion of the Project shall be deemed to accrue to the parties 50% to the City and 50% to Developer, and each party shall be responsible for Use Tax attributable to its own tenant finish work, provided however that the City's share of the Project is exempt from the City Use Tax. The City agrees to waive the Use Tax applicable to the Developer's share of the Core and Shell and the interior finish of the Private Spaces up to a maximum amount of Thirty Two Thousand Dollars (\$32,000.00), provided that a temporary or permanent certificate of occupancy for the Core and Shell is obtained on or before December 31, 2011 and a temporary or permanent certificate of occupancy for the Private Spaces, or a portion of the private spaces for which the Use Tax waiver is sought by Developer, is obtained on or before December 31, 2012. If a temporary or permanent certificate of occupancy is not obtained for the Core and Shell on or before such date or if a temporary or permanent certificate of occupancy is not obtained for a portion of the Private Spaces for which the Use Tax waiver is sought on or before December 31, 2012, the City Use Tax waiver set forth herein shall expire and the City shall have no further obligation to waive Use Taxes attributable to the Developer's share of the Core and Shell (50%) or the Private Spaces. The Use Taxes waived pursuant to this Section 22 **do not** include any amounts for use taxes payable to Larimer County in connection with the Core and Shell or the interior finish of the Private Spaces

**24. Future Incentive Request.** The parties acknowledge that Developer may seek additional incentive in the form of property tax increment revenues ("TI Revenues") by written request to the City and the Loveland Urban Renewal Authority (LURA) on or before December 31, 2011. Any request for TI Revenues shall be subject to approval of and require further action by City Council and/or LURA, in their sole discretion and no assurance that such a request will be granted is provided by inclusion of this provision.

**25. Contract for Operation and Maintenance of Commercial Units.** The Developer shall, upon completion of tenant finish and receipt of a temporary or permanent certificate of occupancy (a "C.O.") for each Commercial Unit, contract with the City's Facilities Management Division for the operation and maintenance services described on **Exhibit G** attached hereto and incorporated herein by this reference (the "O & M Services") for a period of not less than three (3) years following the date of the C.O. The Services shall be provided at the same rate per square foot of space in the Commercial Unit(s) as is charged by the City Facilities and Management Division, from time to time, for all City facilities.

**IN WITNESS WHEREOF**, the parties have executed this agreement as of the date first written above.

**"CITY"**

**CITY OF LOVELAND, COLORADO**  
a home rule municipality

\_\_\_\_\_  
William D. Cahill, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

**“DEVELOPER”**

**RIALTO BRIDGE, LLC**

a Colorado limited liability company

By: \_\_\_\_\_  
Troy R. Peterson, Manager

**Exhibit List**

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**EXHIBIT A**

**DECLARATION FOR  
RIALTO BRIDGE CONDOMINIUM**

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## DECLARATION FOR RIALTO BRIDGE CONDOMINIUM

**THIS DECLARATION FOR RIALTO BRIDGE CONDOMINIUM** (hereinafter, “Declaration”) is effective as of \_\_\_\_\_, 2011, notwithstanding the date of actual execution by **Rialto Bridge, LLC**, a Colorado Limited Liability Company, and the **City of Loveland**, a Colorado home rule municipality, hereinafter referred to jointly as “Declarant.”

### RECITALS

A. The Declarant is the owner of that certain real property located in the City of Loveland, County of Larimer, State of Colorado, legally described on Exhibit “A” attached hereto and incorporated herein by reference (“Property”).

B. The Declarant desires to create a Condominium to be known as Rialto Bridge Condominium on the Property, pursuant to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq., as it may be amended from time to time (“Act”), in which portions of the Property will be designated for separate ownership and the remainder of which will be for common ownership solely by the Owners of the separate ownership interest.

C. The Declarant has caused to be incorporated under the laws of the State of Colorado the Rialto Bridge Condominium Association, a nonprofit corporation for the purpose of exercising the functions herein set forth pursuant to C.R.S. § 38-33.3-301.

### ARTICLE 1 DEFINITIONS

The following words when used in this Declaration or any supplemental or amended Declaration, the Articles of Incorporation or any amendments thereto, the Bylaws or any Amendments thereto, and the Condominium Map or any amendments thereto shall have the following meaning. If the following definitions conflict with the Colorado Common Interest Ownership Act, the Act shall govern. Words appearing in the Act and this Declaration that are not defined herein shall have the same meaning as in the Act.

1.1 *Act* shall mean the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq, as amended from time to time.

1.2 *Articles of Incorporation* shall mean the Articles of Incorporation of the Rialto Bridge Condominium Association, as amended from time to time.

1.3 **Assessable Unit** shall mean any Unit that is situated within the Condominium except for Unit 1 which consists of the historic Rialto Theater.

1.4 **Assessment** shall mean and refer to any Common Expense or other assessment levied, charged or assessed against an Owner in accordance with the provisions of this Declaration.

1.5 **Association** or **Condominium Association** shall mean and refer to Rialto Bridge Condominium Association, a Colorado nonprofit corporation, its successors and assigns.

1.6 **Board** shall mean the Board of Managers of the Condominium Association.

1.7 **Bylaws** shall mean and refer to the duly adopted Bylaws of the Rialto Bridge Condominium Association, as the same may from time to time be amended.

1.8 **Clerk and Recorder** shall mean the office of the Clerk and Recorder in the County of Larimer, State of Colorado.

1.9 **Condominium Documents** shall mean this Declaration and any amended or supplemental declaration, Articles of Incorporation, Bylaws, Condominium Map including any amendments, and any rules, regulations or policies adopted under such documents by the Board of Managers and any amendments to any of said documents.

1.10 **Condominium Map** or **Map** shall mean the map referenced in Section 3.6 of Article III of this Declaration and the Act and shall include all subsequent amendments and filings with respect to the Condominium.

1.11 **Common Element** shall mean and refer to the real property or the interest therein on which the Condominium is located, the foundation, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits, basement, parking areas, landscaping, storage spaces, installations of central services such as electricity, gas, plumbing, heating, refrigeration, central air conditioning, elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use in and about the building within the Condominium; such community and commercial facilities as may be provided for in this Declaration; and all other parts of the Condominium necessary or convenient to its existence, maintenance, safety, or normally in common use.

1.12 **Limited Common Element** shall mean a portion of the Common Element allocated by the Declaration or by operation of § 38-33.3-202 (1) (b) or (1) (d) for the exclusive use of one or more Units but fewer than all of the Units.

1.13 **Mortgagee** shall mean and refer only to a secured lender under a mortgage or a deed of trust or similar security instrument.

1.14 **Notice** shall mean and refer to: (i) written notice hand delivered or sent by prepaid United States mail to the mailing address of a Condominium Unit or to any other mailing address designated in writing by the Unit Owner or to the last known address of the intended recipient, or (ii) notice through an Condominium Association publication which is hand delivered or sent by prepaid United States mail to the Units; or (iii) notice delivered by electronic mail or facsimile to an Owner at the electronic mail address or facsimile number designated by the Owner.

1.15 **Person** shall mean an individual, corporation, limited liability company, partnership, association, trust, municipality, or other legal entity or any combination thereof.

1.16 **Quorum of Owners** shall mean the representation by presence or proxy of Unit Owners who hold not less than fifty percent (50.0 %) of the outstanding Voting Interests entitled to be cast on any issue.

1.17 **Rules and Regulations** shall mean those Rules and Regulations as may be adopted by the Board of Managers for the management, preservation, safety, control and orderly operation of the Condominium and governing use of the Common Element provided, however, that such Rules and Regulations shall be uniform and nondiscriminatory. Copies of all such Rules and Regulations shall be furnished to Owners prior to the time that they become effective.

1.18 **Voting Interest** shall mean the right of an Owner to vote on an issue. The Voting Interest of each Condominium Unit shall be the same percentage as said Unit's Allocation Interest as set forth on Exhibit B.

1.19 **Unit Owner** or **Owner** shall have the meaning defined by C.R.S. § 8-33.3-103 (31) as amended from time to time.

## ARTICLE 2

### NAME, ALLOCATION OF INTERESTS, MAPS, AND COMMON ELEMENT

2.1 **Name.** The Condominium is named Rialto Bridge Condominium. Rialto Bridge Condominium is a commercial condominium.

2.2 **Property.** The Property that is subject to this Declaration is located in the City of Loveland, Larimer County, Colorado, and is shown on the Condominium Map, as amended, and described on Exhibit A.

2.3 **Allocation of Interests and Formula for Allocation of Interests.** Each Unit Owner's Allocation Interest in the Common Element, each Assessable Unit's share of the Common Expenses of the Condominium, and the Voting Interest of each Unit shall be stated by means of the completed and recorded form attached as Exhibit B. The formula that was used to establish these Interests is as follows:



- a. *Interest in Common Element.* The undivided nonexclusive right to the appurtenant undivided interest in the Common Element for each Condominium Unit shall be equal to its Allocation Interest.
- b. *Formula for Establishing Allocation Interest.* Allocation Interest with respect to each Condominium Unit shall mean that percentage equal to a fraction, the numerator of which is the square footage of each Unit and the denominator of which is the total square footage of all Units in the Condominium. The square footage of each Unit and its Allocation Interest are set forth on Exhibit B. The decision of the Board of Managers shall be conclusive as to the square footage of each Unit.
- c. *Share of Common Expenses.* Each Assessable Unit shall pay a share of Common Expenses equal to its Assessable Allocation Interest.
- d. *Formula for Establishing Assessable Allocation Interest.* Assessable Allocation Interest with respect to each Assessable Unit shall mean that percentage equal to a fraction, numerator of which is the square footage of each Assessable Unit and the denominator of which is the total square footage of all Assessable Units. The square footage of each Assessable Unit and its Assessable Allocation Interest are set forth on Exhibit B. The decision of the Board of Managers shall be conclusive as to the square footage of each Assessable Unit.
- e. *Reallocation.* In the event units are added, withdrawn, subdivided or combined in the Condominium, the formulas for recalculating the Allocation Interest set forth in Subsection b. above and the Assessable Allocation Interest set forth in Subsection c. above used to allocate liability for Common Expenses shall be used to reallocate such interests and an amended allocation table shall be prepared and recorded.

2.4 ***Development.*** Declarant will construct the one building in the project and will designate the Condominium Units within the building. The maximum number of Condominium Units shall be not more than twenty (20). The location of the building and the location of the Units within such building will be shown on the Condominium Map or amended filings thereof. Upon completion, the Condominium will consist of the building to be constructed thereon, all Units within the building, and the Common Element, all as shown and depicted on the Condominium Map, including all amended filings. Prior to completion, the Condominium, from time to time, shall consist only of the completed phases of the project. A phase shall be deemed completed when the filing of the amended Condominium Map depicting that phase is recorded. Prior to completion of a phase, Declarant shall pay all costs associated with the phase and the Association shall have no responsibility for the same.

2.5 ***Maximum Area of Building.*** The maximum area of the building and Units within the Condominium shall not exceed the maximum allowed by any governmental entity

having jurisdiction over the Property pursuant to any development plan for the Condominium and the Development Agreement.

2.6 ***Condominium Map.*** A Condominium Map shall be filed for record by the Declarant. Such Map shall be prepared by a registered engineer, professional land surveyor, or licensed architect. The Map may consist of different filings, identifying the Condominium, the Units, and the Common Element as each exists from time to time. All filings collectively shall constitute the Condominium Map. No Condominium Unit may be conveyed unless it is depicted on a Condominium Map that has been filed for record

The Map shall comply with the requirements of C.R.S. § 38-33.3-209, as amended from time to time.

2.7 ***Description of Condominium Unit.*** The description of a Condominium Unit in shall conform to C.R.S § 38-33.3-204, as amended from time to time. Every deed, lease, mortgage, will or other instrument shall legally describe a Unit by its identifying Unit number followed by the name of this Condominium with further reference to the amendment number, if any, the City of Loveland, Larimer County, and State of Colorado. Any reference to the Map and Declaration in any instrument shall be deemed to include all filings, including any subsequently filed supplements and amendments to the Map or Declaration without specific reference thereto.

2.8 ***Subdivision or Combining of Units, Unit Size.*** A Condominium Unit may be subdivided or combined with another Unit or the boundaries with an adjoining Unit may be relocated with the prior written approval of the Board of Managers acting on behalf of the Association. The application for such action by the Unit Owner and procedure for approval shall conform to C.R.S. § 38-33.3-212, 38-33.3-213, and 38-33.3-217, as each may apply.

2.9 ***Separate Taxation and Assessment of Units.*** Each Condominium Unit shall be deemed to be a separate parcel and be subject to separate assessment and taxation for all types of taxes authorized by law, including ad valorem levies and special assessments. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

2.10 ***Ownership.*** The Common Element shall be appurtenant to and owned by the Unit Owners in the Condominium. No Common Element or portion thereof may be conveyed separate from the Condominium Unit to which it is appurtenant. Each such Owner shall own an undivided interest in the Common Element.

2.11 ***Use of Common Element.*** Each Unit Owner may use the Common Element in accordance with the purpose for which it is intended without hindering or encroaching upon the lawful rights of the other Owners. The Board of Managers may adopt Rules and Regulations

governing the use of the Common Element, provided that such Rules and Regulations shall be uniform and non-discriminatory and shall not conflict with this Declaration or the Act.

2.12 ***Use of Limited Common Element.*** Use of Limited Common Element shall be restricted to the Owners of the Condominium Units to which such Limited Common Element is reserved. The Association may adopt Rules and Regulations governing use of the Limited Common Element, provided such Rules and Regulations shall be uniform and non-discriminatory and shall not conflict with this Declaration or the Act.

2.13 ***Miscellaneous.*** No Common Element may be converted to a Limited Common Element except with approval by a majority of the Voting Interests of the Owners in the Condominium.

### **ARTICLE 3 MEMBERSHIP; VOTING; CONDOMINIUM ASSOCIATION OPERATIONS**

3.1 ***The Condominium Association.*** The name of the Condominium Association shall be Rialto Bridge Condominium Association. Every Owner of a Condominium Unit shall be a member of the Condominium Association. Membership shall be appurtenant to and may not be separated from ownership of a Condominium Unit.

3.2 ***Membership.*** The Condominium Association shall have one class of membership consisting of all Owners. Each Owner is subject to all the rights and duties assigned to Owners under the Condominium Documents.

3.3 ***Exemption for Historic Rialto Theater.*** Unit 1, which consists of the historic Rialto Theater, is exempt from Articles 5, 10, and 13 herein.

3.4 ***Voting.*** Each Condominium Unit shall have a Voting Interest as defined in Section 1.18 above. Except as otherwise provided in the Condominium Documents, each Unit Owner shall be entitled to vote in Condominium Association matters as set forth in this Declaration, the Bylaws, or the Act.

3.5 ***Board of Managers; Appointment; Election.*** The number of members on the Board of Managers and the means of appointment and election shall be provided in the Bylaws of the Condominium Association.

3.6 ***Books and Records.*** The Condominium Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Condominium Documents and the books, records and financial statements of the Condominium Association prepared pursuant to the Bylaws. The Condominium Association may charge a reasonable fee for copying such

materials. Books and records to be maintained by the Association include all records required by C.R.S. § 38-33.3-317, including, but not limited to:

- a. Minutes of Board and Unit Owner meetings.
- b. Records of all actions by written consent.
- c. All actions by Board committees.
- d. All waivers of required notice of meetings.
- e. Articles of Incorporation.
- f. The Declaration.
- g. Association Bylaws.
- h. Board resolutions affecting Unit Owners.
- i. Minutes of Unit Owners' meetings for the past 3 years.
- j. All Association communications with Unit Owners for the past 3 years past.
- k. Names and addresses of current Board members.
- l. Most recent annual report.
- m. All financial audits and reviews.

3.7 **Manager.** The Condominium Association may employ or contract for the services of the City of Loveland Facilities Management Division or a professional property manager to whom the Board of Managers may delegate certain powers, functions or duties of the Condominium Association, as provided in the Bylaws of the Condominium Association. The contract with any professional property manager shall be terminable for cause without penalty to the Association and shall be renegotiable at the request of the Association at any time.

3.8 **Cooperation with Other Associations.** The Condominium Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other associations or districts to share the costs and responsibility for any maintenance, repair, replacement, or other similar matters in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial for the Condominium by the Board of Managers in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Condominium Association and other associations and districts, as the Board of Managers may determine in its discretion from time to time.

3.9 **Rights of Action.** The Condominium Association on behalf of itself and any aggrieved Unit Owner, shall be granted a right of action against any or all Owners for failure to comply with the provisions of the Condominium Documents, or with decisions of the Board of Managers made pursuant to authority granted in the Condominium Documents or the Act. In any action covered by this section, the Condominium Association or any Owner shall have the right but not the obligation to enforce the Condominium Documents by any proceeding at law or in equity, or as set forth in the Condominium Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorney's, accountant's, and witness fees and expenses in connection with such

arbitration or judicial relief. Failure by the Condominium Association or by any Unit Owner to enforce compliance with any provision of the Condominium Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

3.10 ***Implied Rights and Obligations.*** The Condominium Association may exercise any right or privilege granted by or which may be reasonably inferred from the Condominium Documents, the Act, and by the Colorado Revised Nonprofit Corporation Act.

#### **ARTICLE 4 DUTIES AND POWERS OF RIALTO BRIDGE CONDOMINIUM ASSOCIATION**

4.1 ***General Duties and Powers of Condominium Association.*** The Condominium Association has been formed to further the common interests of the Unit Owners and the Condominium. The Condominium Association, acting through its Board of Managers or persons to whom the Board has delegated such powers, shall have the duties and powers enumerated in C.R.S. § 38-33.3-302, as well as such other duties and powers that may be provided elsewhere in the Condominium Documents or the Act.

4.2 ***Board of Managers.*** The Bylaws shall provide for an executive board to act on behalf of the Condominium Association which shall be known as the “Board of Managers”. The Board of Managers shall have the powers and duties enumerated in C.R.S. § 38-33.3-303, as well as such other duties and powers that may be provided elsewhere in the Condominium Documents or the Act.

4.3 ***Governance Policies.*** The Association shall comply with and adopt such governance policies as are required by C.R.S. § 38-33.3-209.5, as amended from time to time. The policies include, but are not limited to:

- a. Collections of unpaid assessments.
- b. Conflicts of interest for Board members.
- c. Conduct of meetings and hearings.
- d. Enforcement of covenants and rules.
- e. Records, inspection and copying.
- f. Investment of Association reserves.
- g. Adoption of policies.

4.4 ***Power to Enforce Declaration and Rules and Regulations.*** The Condominium Association shall have the power to enforce the provisions of the Condominium Documents and shall take such action as the Board of Managers deems necessary or desirable to cause such compliance by each member of the Condominium Association. Without limiting the generality of the foregoing, the Condominium Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations by any one or more of the following means: (i)



by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations by mandatory injunction or otherwise; (ii) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations; (iii) by levying and collecting, after Notice and an opportunity to be heard before the Board of Managers, a Default Assessment against any Owner of an Assessable Unit for breach of this Declaration or the Rules and Regulations by such Owner; and, (iv) by levying and collecting, after Notice and an opportunity to be heard before the Board of Managers, reasonable and uniformly applied fines and penalties established in advance in the Rules and Regulations from any Assessable Unit Owner for breach of or failure to comply with this Declaration or the Rules and Regulations by such Owner.

## **ARTICLE 5 ASSESSMENTS**

5.1 **Obligation.** Each Owner of an Assessable Unit is obligated to pay to the Condominium Association its share of: (i) the Common Expenses; (ii) Special Assessments; and, (iii) Default Assessments established by the Board of Managers.

5.2 **Budget.** Within ninety (90) days after the adoption of any proposed budget for the Condominium, the Board of Managers shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board of Managers shall give Notice to the Owners of the meeting as provided in the Bylaws. The budget proposed by the Board of Managers does not require approval by the Owners and shall be deemed approved by the Owners in the absence of a veto at the noticed meeting by Owners having a majority of the Voting Interest, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board of Managers and not vetoed by the Owners shall be continued until a subsequent budget proposed by the Board of Managers is not vetoed by the Owners.

5.3 **Common Expenses.** Annual assessments made for Common Expenses shall be based upon the estimated cash requirements as the Board of Managers shall from time to time determine. Estimated annual Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Element, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Condominium Association, routine repairs, replacements and renovations within any of the Common Element, utility charges for the Common Element, legal and accounting fees, management fees, expenses and liabilities incurred by the Condominium Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles, routine maintenance, repairs and replacement of improvements within the

Common Element, as needed. Common Expense Assessments shall be payable within thirty (30) days of the Board of Managers mailing Notice of said Assessment to the Owners of the Assessable Units unless the Board of Managers authorizes monthly or quarterly payments. The omission or failure of the Condominium Association to fix the annual Common Expense Assessment for any Assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Condominium Association shall have the right, but not the obligation, to make prorated refunds of any annual Common Expense Assessment in excess of the actual expenses incurred in any fiscal year and may allocate such excess funds to reserves repairs, replacements, and renovations or apply the funds to future Common Expenses.

5.4 ***Allocation of Assessments.*** The Common Expenses shall be allocated among the Assessable Units on the basis of the Assessable Allocation Interest in effect on the date of Assessment; provided, however, that the Condominium Association reserves the right to allocate expenses related to fewer than all of the Condominium Units to the Owners of those benefited Units only (“Limited Common Expenses”).

5.5 ***Special Assessments.*** In addition to the annual Common Expense Assessments, the Condominium Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Condominium Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Element, if any, or for any other expense incurred or to be incurred as provided in this Declaration. This section shall not be construed as an independent source of authority for the Condominium Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by the other sections of this Declaration. Any amounts assessed pursuant to this section shall be assessed to Owners according to their Assessable Allocation Interest for Common Expenses, subject to the right of the Condominium Association to assess only against the Owners of affected Assessable Units any extraordinary maintenance, repair or restoration work on fewer than all of the Units and any extraordinary insurance costs incurred as a result of the value of a particular Assessable Owner’s Unit or the actions of a particular Owner (or his employees, agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners of Assessable Units and no payment shall be due less than ten (10) days after such Notice shall have been given.

5.6 ***Units Added Mid-Assessment Period.*** If, during any Assessment period, the number of Assessable Units increases because of an additional Assessable Unit becoming subject to the Assessments, then each such additional Assessable Unit shall be subject to a pro rata share of the annual Common Expense Assessment and Special Assessments commencing on the first day of the month following the month in which the Assessable Units become subject to the Assessment.

5.7 ***Default Assessments.*** All monetary fines assessed against an Owner pursuant to the Condominium Documents, or any expense of the Condominium Association which is the obligation of an Owner of an Assessable Unit or which is incurred by the Condominium Association on behalf of the Owner of an Assessable Unit pursuant to the Condominium Documents, shall be a Default Assessment and shall become a lien against such Owner's Assessable Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

5.8 ***Effect of Nonpayment; Assessment Lien.*** Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid on or before its due date shall be delinquent.

a. ***Delinquent Assessment.*** If an Assessment installment becomes delinquent, the Condominium Association, in its sole discretion, may take any or all of the following actions:

(i) Assess a late charge for each delinquency in such amount as the Condominium Association deems appropriate.

(ii) Assess an interest charge from the due date at the yearly rate of twelve percent (12.0 %), or such other lawful rate as the Board of Managers may establish.

(iii) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once.

(iv) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments.

(v) Proceed with foreclosure as set forth in more detail below.

b. ***Assessment Lien.*** Assessments chargeable to any Assessable Unit shall constitute a lien on such Unit which is prior to all other liens and encumbrances except certain liens recorded before this Declaration, certain security interests, and real estate taxes and governmental assessments and charges pursuant to C.R.S. § 38-33.3-316, as amended from time to time.

c. ***Legal Proceedings.*** The Condominium Association may institute legal proceedings against the defaulting Owner of an Assessable Unit personally or Owner's Assessable Unit in any manner permitted under the laws of the State of Colorado. In the event of any such legal proceedings, the Owner of an Assessable Unit or the Owner's Assessable Unit shall be liable for the amount of unpaid

Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the Notice of the claim and lien, and all reasonable attorney fees incurred in connection with the enforcement of the lien.

5.9 ***Personal Obligation.*** Each Assessment against an Assessable Unit is the personal obligation of the person who owned the Assessable Unit at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. No Owner may exempt himself from liability for the Assessment by abandonment of his Assessable Unit or by waiver of the use or enjoyment of all or any part of the Common Element.

5.10 ***Payment by Mortgagee.*** Any Mortgagee holding a lien on a Condominium Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien.

5.11 ***Statement of Status of Assessment Payment.*** Upon payment of a reasonable fee set from time to time by the Board of Managers and upon fourteen (14) days written request to the Condominium Association's registered agent by personal delivery or certified mail, first class postage prepaid, return receipt, any Owner, designee of Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Condominium Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Condominium Association shall have no right to assert a lien upon the Condominium Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

5.12 ***Maintenance of Accounts; Accounting.*** If the Condominium Association delegates powers of the Board of Managers or its officers relating to collection, deposit, transfer or disbursement of Condominium Association funds to the City of Loveland Facilities Management Division or a professional property manager, then such delegate must: (i) maintain all funds and accounts of the Condominium Association separate from the funds and accounts of other associations managed by the said delegate; (ii) maintain all reserve and working capital accounts of the Condominium Association separate from the operational accounts of the Condominium Association; and (iii) provide to the Condominium Association an annual accounting and financial statement of the Condominium Association funds prepared by the delegate, a public accountant or a certified public accountant.

## ARTICLE 6 USE AND OTHER RESTRICTIONS

6.1 **Nuisances.** No Nuisance shall be permitted to exist or operate within or upon any Condominium Unit so as to jeopardize property values or to be detrimental to the well being of any Unit Owner of the Condominium Association. Nuisance shall mean any act or failure to act that is a violation of laws or regulations of the City of Loveland or County of Larimer or that is a violation of the Condominium Documents.

6.2 **Permitted Uses.** No Condominium Unit shall be used for any purpose other than those uses permitted for the Property in the City of Loveland Zoning Code or this Declaration. No Condominium Unit shall be used as a permanent or part-time residence or any residential purpose.

Until such time as the Unit Owners unanimously approve other uses, except for Units owned by the City of Loveland, the Unit(s) on the first floor of the Condominium shall be occupied and used primarily as a restaurant/bar. Unit(s) on the third floor shall be used primarily as offices and general light business use. In order to advance, preserve, and protect the interests of the Declarant and all Unit Owners in having only high quality, attractive businesses in the Unit(s) on the first floor of the building that are consistent with the unique nature of a building that includes an historic public theater and entertainment venue, notwithstanding that a use may be permitted by the City of Loveland Zoning Code or this Declaration, any business seeking to occupy and operate in a restaurant Unit on the first floor shall meet with the Board of Managers to review the ownership, nature, and operations of the proposed restaurant business prior to initial occupancy in the building. The Board of Managers may in its discretion approve, approve subject to conditions, or reject the proposed restaurant business seeking to operate in the first floor restaurant Unit(s). Each restaurant business approved to operate in the first floor restaurant Unit(s) shall operate in a manner consistent with its proposal to the Board of Managers and any conditions to the Board of Managers' approval.

6.3 **Common Element Restrictions.** All use and occupancy of the Common Element shall be subject to and governed by this Declaration and Rules and Regulations adopted by the Board of Managers. No damage or waste shall be committed to the Common Element or improvements located thereon.

6.4 **No Imperiling of Insurance.** Without prior written consent of the Board of Managers, nothing may be done or kept in any Condominium Unit or on any portion of the Property which might result in an increase in the premiums with respect to insurance obtained for any portion or all of the Condominium, or which may cause cancellation of such insurance.

6.5 **No Violation of Law.** Nothing shall be done, or kept in, or on any portion of the Condominium which would be in violation of any statute, rule, ordinance, regulation, permit or validly imposed requirement of any governing jurisdiction.



6.6 ***Appearance.*** All parts of the Condominium shall be kept in a clean, safe and attractive condition. No rubbish, refuse or garbage shall be allowed to accumulate within or about a Condominium Unit or the Common Element.

6.7 ***Restrictions on Signs.*** All exterior signs shall be subject to and governed by this Declaration and Rules and Regulations adopted by the Board of Managers.

6.8 ***Restrictions on Storage.*** All storage within the Condominium shall be subject to and governed by this Declaration and Rules and Regulations adopted by the Board of Managers.

6.9 ***Animals Within Condominium.*** All animals kept within the Condominium shall be subject to and governed by this Declaration and Rules and Regulations adopted by the Board of Managers.

6.10 ***Antennas.*** All antennas within the Condominium shall be subject to and governed by this Declaration and Rules and Regulations adopted by the Board of Managers.

6.11 ***Utility and Telecommunications Lines.*** All electrical, telecommunications, fiber optics, networking, data center, or any similar equipment and system (“Facilities”) within the Condominium shall be subject to and governed by this Declaration and Rules and Regulations adopted by the Board of Managers. No such Facilities may be installed unless the Board of Managers is provided with complete plans and specifications for review, comment and written approval prior to commencement of installation, which approval may be withheld by Board of Managers in their sole discretion. No such Facilities, which are fixtures as defined by the Uniform Commercial Code, C.R.S. Title 4, as amended from time to time, may be subject to a security interest, lien, mortgage, deed of trust, or otherwise encumbered without written approval of the Board of Managers prior to commencement of installation.

6.12 ***No Hazardous Activities.*** No activities shall be conducted or improvements constructed within the Condominium which are or might be unsafe or hazardous to any person or property.

6.13 ***Garbage and Refuse Disposal.*** All garbage and refuse disposal within the Condominium shall be subject to and governed by this Declaration and Rules and Regulations adopted by the Board of Managers.

6.14 ***Storage Tanks.*** All tanks for storage of gases and fluids other than water, within the Condominium shall be subject to and governed by this Declaration and Rules and Regulations adopted by the Board of Managers.

6.15 ***Incinerators and Burning.*** No incinerator may be installed and trash, leaves and other similar materials shall not be burned within the Condominium.

6.16 **Leases.** Any lease agreements between an Owner and a tenant shall provide that the tenant shall comply in all respects to the provisions of the Condominium Documents. Any failure by the tenant to comply with the terms and provisions of such documents shall be a default under the lease. After Notice and an opportunity for hearing, the Board of Managers may require an Owner to evict any tenant who has violated any provision of this Declaration, the Articles of Incorporation or the Bylaws. Except for Units owned by the City of Loveland, no short term leases (i.e., for terms less than month to month) shall be permitted. No time sharing or such other forms of interval Ownership shall be permitted.

6.17 **Covenants Run with Land.** It is expressly understood and agreed that all covenants, conditions and restrictions contained herein are intended to and shall run with the land. Declarant hereby agrees for itself and its successors and assigns that such covenants, individually and collectively, touch and concern the land and shall be binding, fully and in all respects, upon Declarant's successors in title to the land, regardless of how succession in title may be accomplished.

6.18 **Authority of Board of Managers.** The decision of the Board of Managers shall be conclusive as to whether a violation of this Article exists.

## **ARTICLE 7 INSURANCE**

7.1 **Insurance.** All insurance, other than title insurance, carried in connection with the Condominium shall be governed by the provisions of this Article.

7.2 **Insurance Requirement Generally.** The Condominium Association shall obtain and maintain in full force and effect at all times the insurance required pursuant to C.R.S. § 38-33.3-313, to the extent reasonably available, and such additional insurance as may be deemed appropriate by the Board of Managers. To the extent possible, the liability insurance shall: (i) provide for a waiver of subrogation by the insurer as to claims against the Condominium Association, its Board of Managers, officers, employees, and agents; (ii) provide the insurance cannot be canceled, invalidated or suspended on account of the conduct of the Condominium Association, its Board of Managers, officers, employees, and agents, and (iii) provide the policy of insurance shall not be terminated, canceled or substantially modified without at least thirty (30) days prior written notice to the Condominium Association.

The cost and expense of all insurance obtained by the Condominium Association shall be paid out of Condominium Association funds collected as a Common Expense.

7.3 **Insurance on Condominium Units.** Each Owner shall be responsible for maintaining general liability and property insurance for any Condominium Unit owned without participation of the Condominium Association.

7.4 ***Worker's Compensation and Employer's Liability Insurance.*** The Condominium Association may obtain and maintain workers' compensation and employer's liability insurance as may be necessary to comply with applicable laws.

7.5 ***Annual Review of Insurance Policies.*** All insurance policies carried by the Condominium Association shall be reviewed periodically by the Board of Managers of the Condominium Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Condominium Association.

7.6 ***No Waiver of Governmental Immunity.*** No term or condition of this Agreement shall be construed or interpreted as a waiver by the City of Loveland, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., or under any other laws.

## **ARTICLE 8 EASEMENTS**

8.1 ***General Provisions.*** Unless otherwise specifically provided, each easement created under this Article is for the benefit of the Declarant and all Unit Owners and their employees, agents, servants, guests, tenants or invitees. Each easement is an easement appurtenant and shall be a burden on each Condominium Unit running with the land for the benefit of each other Unit. By acceptance of the deed to a Condominium Unit, the Grantee of the deed hereby consents to, accepts, and grants the easements created under this Article.

8.2 ***Recorded Easements.*** The Condominium shall be subject to all easements as shown on any Condominium Map, Plat, those of record, and otherwise as set forth in this Article.

8.3 ***Signs.*** There is hereby created for the benefit of the Condominium Association an easement for the construction, maintenance, repair, and replacement of monument signs identifying the Condominium or business within the Condominium and for the construction, maintenance, repair and replacement of electrical lines to such monument signs in a location to be identified by Declarant or the Board of Managers prior to construction. In addition, there is hereby created on the Common Element easements for signs of sizes, shapes, heights and colors and in locations deemed desirable by the Declarant or the Board of Managers for the safe and efficient flow of vehicular and pedestrian traffic on the Property.

8.4 ***Easement for Encroachments.*** If any portion of a Unit encroaches upon a Limited Common Element or Common Element or upon any adjoining Unit, a valid easement for that encroachment and for the maintenance of the same, so long as it stands, shall and does exist. The easement does not relieve a Unit Owner of liability in case of willful misconduct nor relieve a Declarant, Unit Owner, or any other Person of liability for failure to adhere to the plats or Condominium Map. In the event one or more Units are partially or totally destroyed and then

rebuilt, minor encroachments on parts of the Common Element and facilities due to reconstruction shall be permitted and a valid easement for such encroachments and the maintenance thereof shall exist.

8.5 ***No Merger/Survival.*** Notwithstanding an Owner's Ownership of more than one Condominium Unit, the easements granted hereunder shall burden and benefit each Unit individually, without merger as a result of such common ownership, and upon conveyance of a Unit so that such Unit ceases to be under common ownership, neither the party conveying said Unit nor the party acquiring said Unit shall be required to execute additional documentation to evidence the existence of said easements. The easements created under this Article shall survive the termination of this Declaration.

8.6 ***Reservation of Easements, Exceptions and Exclusions.*** The Board of Managers is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over, under, and through the Limited Common Element and Common Element for the best interest of all the Owners.

8.7 ***Emergency Access Easement.*** A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Limited Common Element and Common Element in the proper performance of their duties.

8.8 ***Parking Areas and Access Drives.*** The Condominium shall be subject to all easements, right of way, rights, burdens, and restrictions relating to passage and parking of vehicles and passage of pedestrians as shown on the Final Plat, the Condominium Map and provided in this Declaration.

## ARTICLE 9 MAINTENANCE

9.1 ***Maintenance by Owners.*** Except for maintenance obligations specifically allocated to the Condominium Association, it shall be the duty and obligation of each Owner at such Owner's expense to maintain, repair, or replace all portions of such Owner's Unit or other improvements located therein pursuant to C.R.S. § 38-33.3-307. The Condominium Association shall determine harmonious colors and make aesthetic decisions so that the exterior of Units are uniformly maintained in appearance. The need for, time of, as well as the nature and type of any painting or refinishing of the Common Element and exterior of Units, including the color thereof, shall be within the sole discretion of the Board of Managers acting as the Design Review Committee. Except as otherwise provided therein, all repairs and maintenance performed by the Owner are subject to the "Use Restrictions" section of this Declaration.

9.2 ***Owner's Failure to Maintain or Repair.*** In the event that a Condominium Unit is not properly maintained and repaired or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to repair and reconstruct the damaged or destroyed Unit to substantially the same condition in which it existed prior to the damage or destruction, then the Condominium Association may institute legal proceedings against the defaulting Owner personally to compel such maintenance, repair, or reconstruction. In the event of any such legal proceedings, the Owner shall be liable for the cost and expenses of such proceedings and all reasonable attorney fees incurred in connection with the enforcement of this obligation.

9.3 ***Maintenance by Condominium Association.*** The Condominium Association shall be responsible for the maintenance and repair of the Common Element unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or Owner's employees, agents, servants, guests, tenants or invitees, in which case the Owner shall be responsible. All costs incurred by the Condominium Association shall be reimbursed to the Association by the offending Owner upon demand as a Default Assessment.

9.4 ***Snow Removal.*** The Condominium Association shall be responsible for snow removal from adjacent public property when required by the City of Loveland or the Association determines the snow should be removed.

9.5 ***Installation and Maintenance of Landscaping.*** The Association shall maintain all landscaping and sprinkler systems, if any, within the Condominium.

9.6 ***Maintenance Responsibility.*** The Condominium Association reserves the right to enter into an agreement for maintenance of certain areas of Limited Common Element for a particular Condominium Unit with an Owner, and the Owner is obligated to accept said maintenance responsibility, provided said agreement is uniform and non-discriminatory. Said agreement may be terminated by the Condominium Association at any time.

9.7 ***Condominium Maintenance as Common Expense.*** The cost of maintenance and repair by the Condominium Association under this Article 9 shall be a Common Expense of all of the Owners of Assessable Units, to be shared by each Owner of an Assessable Unit as provided in Section 5.4 above. Notwithstanding the foregoing, Common Expenses benefiting fewer than all of the Units may, in the discretion of the Board of Managers, be assessed exclusively against those Units benefited, including specifically Common Expenses for the structural and exterior elements and systems (walls, roof, mechanical and HVAC systems) which serve only the Unit which is the historic Rialto Theater .

## **ARTICLE 10 DESIGN REVIEW**



10.1 ***Committee and Guidelines.*** In the event the Unit Owners having a majority of the Voting Interests determine that it is desirable to establish and administer design guidelines for Rialto Bridge Condominium to facilitate and further the purposes and intent of this Declaration, the Board of Managers shall act as the Design Review Committee (“DRC”) The DRC may issue, amend, repeal, vary, augment, and enforce design guidelines applicable to Rialto Bridge Condominium. If adopted, the design guidelines shall be binding on all Owners and other Persons governed by this Declaration.

10.2 ***Expenses.*** In the event design guidelines are adopted, the DRC shall have the right to charge a fee for each application submitted for review, in an amount which may be established by the DRC from time to time. Such fees shall be collected by the DRC and remitted to the Association to help defray the expenses of the DRC's operation.

## **ARTICLE 11 CONDEMNATION, DAMAGE OR DESTRUCTION TO COMMON ELEMENT**

11.1 ***Damage or Destruction to Common Element.*** In the event of damage or destruction to all or a portion of the Common Element due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Condominium Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Element damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Element, the Condominium Association shall present to the Unit Owners of Assessable Units a Notice of special assessment for approval by the membership as provided for in this Declaration. If such assessment is approved, the Condominium Association shall levy such assessment and proceed to make such repairs or reconstruction. If such assessment is not approved, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by the written consent of sixty-seven percent (67.0 %) of the Owners, except that the proceeds shall not be distributed to the Owners, unless all debts of the Association, except routine budgeted Common Expenses have been paid in full and the proceeds are jointly payable to Owners and the Mortgagees of their respective Units, if any. Such assessment shall be due and payable as provided by resolution of the Board of Managers, but not sooner than sixty (60) days after written Notice thereof. The assessment provided for herein shall be a debt of each Owner of an Assessable Unit and a lien on the Assessable Unit, and may be enforced and collected in the same manner as any assessment lien provided for in this Declaration.

11.2 ***Owner-Caused Damage.*** If, due to an act, failure to act, or neglect of an Owner, or the Owner’s employees, agents, servants, guests, tenants or invitees, loss or damage shall be caused to any Condominium Unit or the Common Element, and, in the case of damage to property, if such Owner does not promptly repair and restore any such damaged property to the condition it was in prior to such damage at such Owner’s sole cost and expense, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is

covered by insurance obtained by the Condominium Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Condominium Association from such Owner as a Default Assessment against such Owner, by legal proceedings or otherwise and such amount shall be secured by a lien on the Assessable Unit of such Owner as provided elsewhere in this Declaration for assessments or other charges.

11.3 ***Condemnation Procedure.*** In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Element, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Common Element and improvements thereof), as reasonably determined by the Condominium Association in excess of \$10,000, the Condominium Association shall give prompt Notice thereof, including a description of the part of or interest in the Common Element or improvement thereon sought to be so condemned, to all Unit Owners and Mortgagees. The Condominium Association shall have full power and authority to defend in proceedings, pursuant to which the Common Element or any part thereof or any interest therein is relinquished without giving all Unit Owners and Mortgagees prior written Notice thereof.

## **ARTICLE 12 MORTGAGEE'S RIGHTS**

12.1 ***Notice to Mortgagee.*** Each Mortgagee on any Condominium Unit may, upon written request by such holder to the Board of Managers, receive any of the following:

- a. Copies of budgets, notices of assessments, insurance certificates, or any other notices or statements provided under this Declaration by the Condominium Association to the Owner of the property secured by the Mortgagee.
- b. Any audited or unaudited financial statements of the Condominium Association within ninety (90) days following the end of any fiscal year, which are prepared for the Condominium Association and distributed to the Owners.
- c. Copies of Notices of meetings of the Owners and the right to be represented at any such meetings by designated representative.
- d. Notice of the decision of the Owners or the Condominium Association to make any material amendment to this Declaration (as defined in Federal National Mortgage Association Lending Guide), the Bylaws, or the Articles of Incorporation of the Condominium Association.

- e. Notice of substantial damage to or destruction of the Condominium Unit secured by the Mortgagee or the building in which the Unit is located or any part of the Common Element.
- f. Notice of commencement of any condemnation or eminent domain proceedings with respect to any part of the Common Element or the Condominium Unit secured by the Mortgagee.
- g. Notice of any default of the Mortgagee's Owner which is not cured by said Owner within thirty (30) days after the giving of notice by the Condominium Association to the Owner of the existence of the default.
- h. The right to examine the books and records of the Condominium Association at any reasonable time and place.
- i. Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Condominium Association.

12.2 ***Rights of Mortgagees to Pay Assessments, etc.*** Any Mortgagee of a Condominium Unit may jointly or severally pay any assessment or other charge which is in default and which may have become a charge or a lien against any said Unit.

### **ARTICLE 13 PERIOD OF CONTROL AND RESERVED RIGHTS**

13.1 ***Period of Declarant Control.*** Because all Units shall be conveyed to Owners for purposes of implementing the intended final use simultaneously with recording of the Declaration and Condominium Map, there shall be no period of declarant control as provided in the Act. Upon conveyance of a Unit to a Declarant, the Declarant shall cease to be a Declarant and shall thereafter be a Unit Owner for all purposes except in the exercise of Development or Special Declarant Rights as described in Section 13.2 below.

13.2 ***Limited Special Declarant Rights.*** The Declarant reserves the right to perform the acts and exercise the limited rights hereinafter specified for a period of one year after recording of the Declaration and Condominium Map (the "Development and Special Declarant Rights"):

- a. ***Development Rights for Existing Units.*** The right to plan, design, construct, develop, plat, replat, subdivide, convert, or combine previously created Condominium Units into additional or fewer Units, Common Element or both in the usual manner of a commercial real estate developer.

- b. *Amendment of Declaration.* The right to amend this Declaration, including the Condominium Map, in connection with the exercise of any of Declarant's rights, including Development and Special Declarant's Rights. Declarant shall amend this Declaration, if necessary, in compliance with the requirements of C.R.S. § 38-33.3-209 and § 38-33.3-210 by preparing, executing, and recording an amendment to this Declaration reflecting the change to the real estate.
- c. *Technical Errors.* Declarant may amend this Declaration or Condominium Map to correct clerical, typographical, or technical errors.
- d. *Compliance with Financial Institutions and Governing Jurisdictions.* Declarant may amend this Declaration to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association or governing jurisdictions including, but not limited to the City of Loveland, County of Larimer, or State of Colorado.
- e. *Future Limited Common Element.* The Declarant reserves the right to allocate any area which constitutes a part of the Common Element as Limited Common Element for the exclusive use of the Owner of a Unit to which said Limited Common Element may become appurtenant, subject to such limitations and requirements that are provided in this Declaration and the Act.

13.3 ***Interpretation.*** Recording of amendments to this Declaration and Condominium Map in the office of the Clerk and Recorder of Larimer County shall automatically;

- a. Vest in existing Owners the reallocated interests appurtenant in the Common Element to each Condominium Unit.
- b. Vest in each existing Mortgagee a perfected security interest in the reallocated Allocation Interests appurtenant to the encumbered Condominium Unit.

Upon the recording of an amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Condominium, as expanded or otherwise revised. All conveyances of Condominium Units after expansion of the Condominium shall be effective to transfer rights in all Common Element, whether or not reference is made to any amendment to this Declaration or the Condominium Map. Reference to this Declaration and the Condominium Map in any instrument shall be deemed to include all amendments to this Declaration and the Condominium Map without specific reference thereto.

## **ARTICLE 14 DURATION OF COVENANTS AND AMENDMENT**

14.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the land for one hundred (100) years and shall be automatically extended for successive twenty-year periods, unless an instrument is signed revoking or terminating the Condominium pursuant to the provisions of this Declaration.

14.2 **Amendment.** Except in cases of amendments that may be executed by the Declarant, this Declaration, or any provision of it, may be amended only upon the affirmative vote or written consent of Unit Owners holding not less than sixty-seven percent (67.0%) of the Voting Interests in the Condominium Association.

14.3 **Declarant Rights.** Provisions in this Declaration reserving or creating Declarant Rights may not be amended without the consent of Declarant.

14.4 **Execution of Amendments.** Any amendment must be executed by the Board of Managers and recorded. Approval of such amendment may be shown by attaching a certificate of the Secretary of the Condominium Association to the recorded instrument certifying the approval of a sufficient Voting Interest of Unit Owners of the amendment.

14.5 **Revocation.** This Declaration shall not be revoked nor shall the regime created hereby be terminated (except as provided above regarding total destruction and/or total condemnation), without the unanimous vote or approval by written consent of the Unit Owners.

## **ARTICLE 15 GENERAL PROVISIONS**

15.1 **Enforcement.** The Condominium Association or the Owner of any Condominium Unit may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of the Condominium Documents by proceedings at law or in equity against any Person violating or attempting to violate any of the said Condominium Documents, either to recover damages for such violation, including reasonable attorneys' fees incurred in enforcing this Declaration, or to restrain such violation or attempted violation or to modify or remove structures fully or partially completed in violation hereof, or both. Failure of the Condominium Association or the Board of Managers to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Condominium Association shall not be liable to reimburse any Unit Owner or Owner for attorneys' fees or costs incurred in any suit brought by a Unit Owner or Owner to enforce or attempt to enforce any provision of the Condominium Documents.



15.2 ***Enforcement by Governmental Entity.*** The City of Loveland is intended to be a third party beneficiary of this Declaration and may, at its discretion, enforce the covenants it deems appropriate.

15.3 ***Declaration Runs with Land.*** This Declaration shall run with the land, shall be binding upon the Unit Owners in the Condominium.

15.4 ***Captions.*** The captions contained in this Declaration are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision thereof.

15.5 ***Gender.*** The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of this Declaration so require.

15.6 ***Waiver.*** No provision contained in this Declaration is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

15.7 ***Invalidity and Severability.*** The invalidity of any provision of this Declaration does not impair or affect in any manner the validity, enforceability or effect of the remainder, and if a provision is invalid, all of the other provisions of this Declaration shall continue in full force and effect.

## **ARTICLE 16 LIMITED RIGHT OF FIRST REFUSAL**

16.1 ***City of Loveland; Right of First Refusal.*** After the initial sale or transfer of each of the Units by a Declarant to a Unit Owner, the City of Loveland shall have a right of first refusal to purchase any Unit in the Condominium, which right of first refusal shall continue for so long as the City is a Unit Owner.

16.2 ***Notice of Bona Fide Offer.*** If during the time the City of Loveland holds the foregoing right of first refusal, a Unit Owner receives a bona fide offer to purchase its Unit which the Owner desires to accept, the said Owner shall deliver a written notice pursuant to Section 1.14 above to the City Manager, which notice shall set forth the specific terms and provisions of the offer received by the Owner, shall have attached to it a copy of such offer, and shall offer the Unit to the City on the same terms and conditions as are set forth in the offer.

16.3 ***Response to Offer.*** The City of Loveland shall have sixty (60) days following receipt of said notice in which to accept or reject the offer of the Unit Owner. Acceptance shall be made, if at all, by the City giving written notice of acceptance pursuant to Section 1.14 above to the Unit Owner within said sixty (60) day period. The notice of acceptance shall be

accompanied by cash or a cashier’s check in the amount of the earnest money deposit required by the terms of the offer first received by the Unit Owner. Upon acceptance offer by the City of Loveland within the time and in the manner herein prescribed, the parties shall proceed to close the sale and purchase of the Unit in accordance with the terms and conditions of the offer.

16.4 **Failure to Accept Offer.** The rejection or failure of the City of Loveland to accept the offer of the Unit Owner within the sixty (60) day period shall constitute a relinquishment and waiver by the City of all further rights under the right of first refusal; and the Unit Owner may proceed to sell the Unit on the terms contained in the offer to the original offeror; provided, however, that such sale shall be consummated only upon the same terms and at the same price as were stated in the original notice to the City; and provided further, that should the Owner desire to sell the Unit for a price or on terms different than those stated in the original notice to the City, then the Owner shall again give notice to the City and offer the Unit for sale to the City at such revised price or on such revised terms, all in accordance with the foregoing procedures.

IN WITNESS WHEREOF, Declarant has executed this Declaration on \_\_\_\_\_, 2011.

**DECLARANT:**

**Rialto Bridge, LLC,**  
A Colorado limited liability company

By: \_\_\_\_\_  
Troy R. Peterson, Manager

**City of Loveland, Colorado**  
A Colorado home rule municipality

By: \_\_\_\_\_  
William D. Cahill, City Manager

STATE OF COLORADO    )  
  ) ss  
COUNTY OF LARIMER    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2011, by Troy R. Peterson as Manager of Rialto Bridge, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires:\_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY  
SUBJECT TO THIS DECLARATION**

**RIALTO BRIDGE CONDOMINIUM**



**EXHIBIT B**  
**DEVELOPER DEED TO CITY**

**SPECIAL WARRANTY DEED**

**THIS DEED**, made this \_\_\_\_ day of \_\_\_\_\_, 2011, between **Rialto Bridge, LLC**, a Colorado limited liability company (Grantor) and the **City of Loveland, Colorado**, a political subdivision duly organized and existing under the Constitution and laws of the State of Colorado and its home rule charter, whose legal address is Civic Center, 500 East third Street, Loveland, Colorado, 80537 (Grantee):

**WITNESSETH**, that the Grantor, for and in consideration of the mutual promises and agreements contained in that certain Project Development Agreement – Rialto Bridge Project, dated \_\_\_\_\_, 2011 by and between Grantor and Grantee, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey and confirm unto the Grantee, its successors and assigns forever, all the real property, together with improvements, if any, situate, laying and being in Larimer County, Colorado, described on as follows:

**Lot 8, block 18, Original Town of Loveland, Colorado**, also known as 218 Fourth Street, Loveland, Colorado

**TOGETHER** with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title interest, claim and demand whatsoever of the Grantor, either in law or in equity, of, in and to the above bargained and described premises, with the hereditaments and appurtenances; **SUBJECT TO** the permitted exceptions set forth on **Attachment 1** attached hereto and by this reference made a part hereof.

**TO HAVE AND TO HOLD** the said premises above-bargained and described with the appurtenances, unto the Grantee, its successors and assigns forever.

The Grantor, for itself and its successors, does covenant and agree that it shall and will **WARRANT AND FOREVER DEFEND** the above-bargained premises in the quiet and



peaceable possession of the Grantee, its successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under Grantor.

**IN WITNESS WHEREOF**, the Grantor has executed this Deed on the Date set forth above.

**RIALTO BRIDGE, LLC**  
a Colorado limited liability company

By: \_\_\_\_\_  
Troy R. Peterson, Manager

STATE OF COLORADO            )  
  )ss.  
COUNTY OF LARIMER         )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2011, by Troy R. Peterson as Manager of Rialto Bridge, LLC.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## ATTACHMENT 1 TO DEVELOPER DEED

Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 1775, an Ordinance Providing for the Creation and Establishment of a Downtown Development Authority in Loveland, Colorado as set forth below:

Recording Date: April 30, 1979  
 Recording No.: [Reception No. 304230](#)

Easement or right of way as contained in Deed recorded December 14, 1981 in [Book 2145 at Page 849](#).

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Purpose: ingress and egress  
 Recording Date: October 19, 1938  
 Recording No.: [Book 680 at Page 367](#)

Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:

Recording Date: October 19, 1938  
 Recording No.: [Book 687 at Page 539](#)

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Orator B. Melia and Helen M. Melia  
 Purpose: water, gas, electric lines  
 Recording Date: February 20, 1945  
 Recording No.: [Book 784 at Page 151](#)

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Purpose: support and use of wall  
 Recording Date: May 28, 1965  
 Recording No.: [Book 1291 at Page 391](#)

Terms, conditions, provisions, agreements and obligations contained in the Resolution #R-33-95 as set forth below:

Recording Date: July 28, 1995  
 Recording No.: [Reception No. 95044828](#)

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3003 E. Harmony Rd., Ste. 100  
Fort Collins, CO 80528  
Phone: (970) 212-7750  
Fax: (970) 212-7751

**EXHIBIT C  
TITLE COMMITMENT**

DATE: January 4, 2011  
FILE NUMBER: 580-F0358952-383-JNB, Amendment No. 2  
PROPERTY ADDRESS: 218, 224 & 228 East 4th Street, Loveland, CO 80537  
OWNER/BUYER: City of Loveland, a Colorado Municipal Corporation, as to Parcel 1 and Troy R. Peterson and Melissa M. Peterson, as to Parcel 2 and City of Loveland, a Colorado Municipal Corporation, as to Parcel 3 / To Be Determined  
ASSESSOR PARCEL NUMBER: 95133-37-008/445975 95133-37-905/445959 95133-37-905

PLEASE REVIEW THE ENCLOSED MATERIAL COMPLETELY AND TAKE NOTE OF THE FOLLOWING TERMS CONTAINED THEREIN:

- Transmittal: ;
- Schedule A: AMENDED LEGAL DESCRIPTION; AMENDED ITEM 4 (OWNERS)
- Schedule B - Section 1 Requirements: ;
- Schedule B - Section 2 Exceptions:

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TO: Fidelity National Title Company  
Harmony  
3003 E. Harmony Rd.  
Ste. 100  
Fort Collins, CO 80528

ATTN: Julie Norris  
PHONE: (970) 212-7750  
FAX: (970) 212-7751  
E-MAIL: jnorris@fnf.com  
DELIVERY: E-MAIL  
NO. OF COPIES: 1

---

TO: Troy R. Peterson

PHONE:  
MOBILE:  
FAX:  
E-MAIL: troy@flagstonepartners.com  
DELIVERY: Email  
NO. OF COPIES: 1

If checked, supporting documentation enclosed

---

TO: King Surveyors

ATTN: Carol  
PHONE:  
MOBILE:  
FAX:  
E-MAIL: carolk@kingsurveyors.com  
DELIVERY: Email  
NO. OF COPIES: 1

REF NO:  
 If checked, supporting documentation enclosed

---

TO: City of Loveland

ATTN: Sunita  
PHONE:  
MOBILE:  
FAX:  
E-MAIL: sharms@ci.loveland.co.us  
DELIVERY: Email  
NO. OF COPIES: 1

REF NO:  
 If checked, supporting documentation enclosed

END OF TRANSMITTAL

**Fidelity National Title Insurance Company**  
**COMMITMENT**  
**SCHEDULE A**

Commitment No: 580-F0358952-383-JNB, Amendment No. 2

1. Effective Date: December 23, 2010 at 7:00 A.M.

2. Policy or policies to be issued:

| Proposed Insured | Policy Amount |
|------------------|---------------|
| (a) None         | \$            |
|                  | \$            |
|                  | \$            |

3. The estate or interest in the land described or referred to in this Commitment is:

A Fee Simple

4. Title to the estate or interest in the land is at the Effective Date vested in:

City of Loveland, a Colorado Municipal Corporation, as to Parcel 1; and  
Troy R. Peterson and Melissa M. Peterson, as to Parcel 2; and  
City of Loveland, a Colorado Municipal Corporation, as to Parcel 3;

5. The land referred to in this Commitment is described as follows:

See Attached Legal Description

(for informational purposes only) 218, 224 & 228 East 4th Street, Loveland, CO 80537

**PREMIUMS:**

TBD Commitment: \$100.00  
Extra Parcels Charge: \$100.00



01/04/2011 3:11:45 PM

Commitment No.: 580-F0358952-383-JNB, Amendment No. 2

## Attached Legal Description

### PARCEL 1:

Lot 7, Block 18, City of Loveland, Except that portion of said Lot 7 lying East of a straight line running from a point 11 ¼ inches West of the Southeast corner of said Lot 7 to a point 4 ¼ inches East of the Northeast corner of said Lot 7, City of Loveland, County of Larimer, State of Colorado.

ALSO,

All that portion of said Lot 6 in Block 18, in the City of Loveland, Colorado, lying West of a straight line running from a point 11 ¼ inches West of Southeast corner of said Lot 7 to a point 4 ¼ inches East of Northeast corner of said Lot 7, County of Larimer, State of Colorado.

### PARCEL 2:

Lot 8, Block 18,  
CITY OF LOVELAND,  
County of Larimer, State of Colorado.

### PARCEL 3:

All of Lots 5 and 6 in Block 18, in the City of Loveland, Colorado,  
Together with all that portion of Lot 7 in said Block lying East of a straight line running from a point 11 ¼ inches West of Southeast corner of said Lot 7 to a point 4 ¼ inches East of Northeast corner of said Lot 7;  
Excepting therefrom all that portion of said Lot 6 lying West of a straight line running from a point 4 ¼ inches East of Northwest corner of said Lot 6 to a point 11 ¼ inches West of Southwest corner of said Lot 6,  
County of Larimer, State of Colorado.



01/04/2011 3:11:45 PM

Commitment No.: 580-F0358952-383-JNB, Amendment No. 2

**SCHEDULE B – Section 1**  
**Requirements**

**The following requirements must be met:**

- a. Pay the agreed amounts for the interest in the land and/or for the mortgage to be insured.
- b. Pay us the premiums, fees and charges for the policy.

NOTE: This Commitment is for informational purposes only.

END OF REQUIREMENTS

## SCHEDULE B – Section 2

### Exceptions

**Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction:**

1. Taxes and Assessments not certified to the Treasurer's Office.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easements, not shown by public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the land would disclose, and which are not shown by the public records.
5. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Any and all unpaid taxes, assessments and unredeemed tax sales.
7. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 1775, an Ordinance Providing for the Creation and Establishment of a Downtown Development Authority in Loveland, Colorado as set forth below:  
Recording Date: April 30, 1979  
Recording No.: [Reception No. 304230](#)
8. Easement or right of way as contained in Deed recorded December 14, 1981 in [Book 2145 at Page 849](#).
9. Terms, conditions, provisions, agreements and obligations contained in the Lease and Option Agreement by and between Don P. Musso, Mary Jean Pennucci, Frank Musso, James Musso and City of Loveland, a Colorado Municipal Corporation recorded May 7, 2009 at [Reception No. 20090029011](#).
10. Any existing leases or tenancies.
11. A deed of trust to secure an indebtedness in the amount shown below, (as to Parcel 2 only)  
Amount: \$150,000.00  
Trustor/Grantor Troy Peterson and Melissa M. Peterson  
Trustee: Public Trustee of Larimer County  
Beneficiary: Community First National Bank  
Loan No.: Unknown  
Recording Date: May 5, 2004  
Recording No: [Reception No. 20040042450](#)
  - a. Assignment of Leases and Rents recorded May 5, 2004 at [Reception No. 20040042451](#).
12. UCC Financing Statement as follows: (as to Parcel 2 only)  
Debtor: Troy Peterson and Melissa M. Peterson  
Secured Party: Community First National Bank  
Recording Date: May 17, 2004

01/04/2011 3:11:45 PM

Commitment No.: 580-F0358952-383-JNB, Amendment No. 2

Recording No: [Reception No. 20040046616](#) and Modification recorded November 19, 2008 at [Reception No. 20080071715](#).

13. Terms, conditions, restrictions, provisions, agreements and obligations contained in the Deed as set forth below:  
Recording Date: January 29, 1927  
Recording No.: [Book 534 at Page 266](#)
14. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
Purpose: ingress and egress  
Recording Date: October 19, 1938  
Recording No.: [Book 680 at Page 367](#)
15. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:  
Recording Date: October 19, 1938  
Recording No.: [Book 687 at Page 539](#)
16. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
Granted to: Orator B. Melia and Helen M. Melia  
Purpose: water, gas, electric lines  
Recording Date: February 20, 1945  
Recording No.: [Book 784 at Page 151](#)
17. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
Purpose: support and use of wall  
Recording Date: May 28, 1965  
Recording No.: [Book 1291 at Page 391](#)
18. Terms, conditions, provisions, agreements and obligations contained in the Resolution #R-33-95 as set forth below:  
Recording Date: July 28, 1995  
Recording No.: [Reception No. 95044828](#)

END OF EXCEPTIONS

|                          | Public |             | Private |             |
|--------------------------|--------|-------------|---------|-------------|
|                          | %      | Amount      | %       | Amount      |
| Hard Costs               | 50%    | \$1,075,760 | 50%     | \$1,075,760 |
| Soft Costs               | 50%    | \$274,707   | 50%     | \$274,707   |
| Tenant Finish            |        |             |         |             |
| Public                   | 100%   | \$671,500   | 0%      | \$0         |
| Private                  | 0%     | \$0         | 100%    | \$748,500   |
| Remediation              | 100%   | \$41,900    | 0%      | \$0         |
| Private Other            | 0%     | \$0         | 100%    | \$58,650    |
|                          |        | \$2,063,867 |         | \$2,157,617 |
| <i>Contingency (10%)</i> |        | \$178,920   |         |             |

|                     |             |
|---------------------|-------------|
| Proposed Bid Award  | \$2,226,150 |
| Core & Shell        | \$1,612,000 |
| Tenant Finish       | \$614,150   |
| Accepted Alternates | \$24,870    |

|                                   |                      |
|-----------------------------------|----------------------|
| Public Cost                       | 2,063,867            |
| Design Appropriation              | (145,090)            |
| Community Fund                    | (700,000)            |
| Construction Appropriation        | 1,218,777            |
| Previously Appropriated           | (\$900,000)          |
| Additional Construction Cost      | <sup>1</sup> 318,780 |
| Contingency (10%)                 | 178,920              |
| <b>Supplemental Appropriation</b> | <b>\$497,700</b>     |

|                            |           |
|----------------------------|-----------|
| Public Share w/Contingency | 2,242,787 |
|----------------------------|-----------|

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<sup>1</sup> Budget office rounds all appropriations to the nearest \$10.

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**Cash Flow Statement**

Rialto Bridge Project

|                       | Oct-10  | Nov-10  | Dec-10  | Jan-11  | Feb-11 | Mar-11    | Apr-11    | May-11  | Jun-11  | Jul-11  | Aug-11  | Sep-11  | Oct-11    | Nov-11  | Dec-11  | Totals    |
|-----------------------|---------|---------|---------|---------|--------|-----------|-----------|---------|---------|---------|---------|---------|-----------|---------|---------|-----------|
| Opening Bank Balance  | 0       | 144,808 | 45,339  | 115,316 | 55,710 | 5,710     | (467,990) | 7,010   | 37,010  | (7,990) | 32,010  | 177,010 | 71,990    | 746,120 | 346,120 |           |
| <b>Inflows</b>        |         |         |         |         |        |           |           |         |         |         |         |         |           |         |         |           |
| Rialto Bridge, LLC    | 75,000  |         | 75,000  |         |        | 150,000   |           |         |         |         |         |         | 1,114,000 |         |         | 1,414,000 |
| City of Loveland      | 69,808  |         | 59,927  | 15,355  |        | 350,000   |           | 250,000 | 200,000 | 200,000 | 100,000 | 50,000  | 68,780    |         |         | 1,363,870 |
| Community Foundation  |         |         |         |         |        | 175,000   |           |         | 175,000 |         | 200,000 |         |           |         |         | 700,000   |
| <b>Total Inflows</b>  | 144,808 | 0       | 134,927 | 15,355  | 0      | 0         | 675,000   | 250,000 | 375,000 | 200,000 | 300,000 | 50,000  | 1,182,780 | 0       | 150,000 | 3,477,870 |
| <b>Outflows</b>       |         |         |         |         |        |           |           |         |         |         |         |         |           |         |         |           |
| Soft Costs            |         | 99,469  | 64,950  | 74,961  | 50,000 | 100,000   | 100,000   | 20,000  | 20,000  | 10,000  | 5,000   | 5,020   |           |         |         | 549,400   |
| Hard Costs            |         |         |         |         |        | 373,700   | 100,000   | 200,000 | 400,000 | 150,000 | 150,000 | 150,000 | 250,000   | 200,000 | 177,820 | 2,151,520 |
| Public Tenant Finish  |         |         |         |         |        |           |           |         |         |         |         |         | 200,000   | 200,000 | 271,500 | 671,500   |
| Private Tenant Finish |         |         |         |         |        |           |           |         |         |         |         |         |           |         |         | 0         |
| Private Other         |         |         |         |         |        |           |           |         |         |         |         |         | 58,650    |         |         | 58,650    |
| <b>Total Outflows</b> | 0       | 99,469  | 64,950  | 74,961  | 50,000 | 473,700   | 200,000   | 220,000 | 420,000 | 160,000 | 155,000 | 155,020 | 508,650   | 400,000 | 449,320 | 3,431,070 |
| Closing Bank Balance  | 144,808 | 45,339  | 115,316 | 55,710  | 5,710  | (467,990) | 7,010     | 37,010  | (7,990) | 32,010  | 177,010 | 71,990  | 746,120   | 346,120 | 46,800  | 46,800    |

\*October, December and January payments were previously appropriated and spent for the design phase.

City spent \$145,000 on design

Developer spent \$145,000 on design



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**EXHIBIT F  
Letter of Credit**

**EXHIBIT B**  
**FORM OF IRREVOCABLE LETTER OF CREDIT**

INSERT FINANCIAL INSTITUTION NAME & LETTERHEAD

IRREVOCABLE LETTER OF CREDIT NO. insert financial institution LOC number  
 City of Loveland  
 500 East Third Street  
 Loveland, CO 80537

Ladies and Gentlemen:

At the request and for the account of **Rialto Bridge, LLC**, a Colorado limited liability company (“Rialto Bridge”), we hereby establish in favor of the City of Loveland, Colorado, a home-rule municipality (the “City”), this irrevocable letter of credit (“Letter of Credit”) in the total aggregate amount of [INSERT]

Funds shall be made available to the City under this Letter of Credit upon presentation of one or more original sight drafts together with a written statement signed by the City Manager of the City of Loveland stating that Rialto Bridge has failed to make a payment due in a specified amount under that certain Project Construction Agreement – Rialto Bridge Project between the City and Rialto Bridge..

The original Letter of Credit shall accompany the first sight draft. The total aggregate amount of the Letter of Credit may be reduced, at the sole discretion of the City, from time to time, as a result of the Rialto Bridge’s payment of amounts due under the Agreement. Upon each payment hereunder, the total aggregate amount of this Letter of Credit shall be reduced by the amount of the payment.

All drafts must state on their face "DRAWN UNDER [financial institution] IRREVOCABLE LETTER OF CREDIT NO. **insert financial institution LOC number.**"

We hereby engage with the City, that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored, if drawn and presented for payment at our office in insert address of bank, on or before \_\_\_\_\_.

We further state and agree that this Letter of Credit is irrevocable prior to the expiration date unless all parties, including the City of Loveland, consent to such a revocation in writing.

The Letter Of Credit is governed by and construed in accordance with the Uniform Customs And Practice For Documentary Credits (2006 Revision, eff. 1Jul2007), Publication No. 600 of the International Chamber of Commerce (the “UCP”); provided, however, that Article 32, and the second sentence of Article 36, and paragraphs b through k, inclusive, of Article 38, of the UCP shall not apply to this Letter Of Credit. Furthermore, as provided in the first sentence of Article 36 of the UCP, we assume no liability or responsibility for consequences arising out of the interruption of our respective businesses by Acts of God, riots, civil commotions, insurrections, wars or any other causes beyond our control, or strikes or lockouts. As to matters not covered by the UCP and to the extent not inconsistent with the UCP or made inapplicable by this Letter Of Credit, this Letter Of Credit shall be governed by the laws of the State of Colorado, including the Uniform Commercial Code of the State Of Colorado. This Letter Of Credit is to be construed by the law

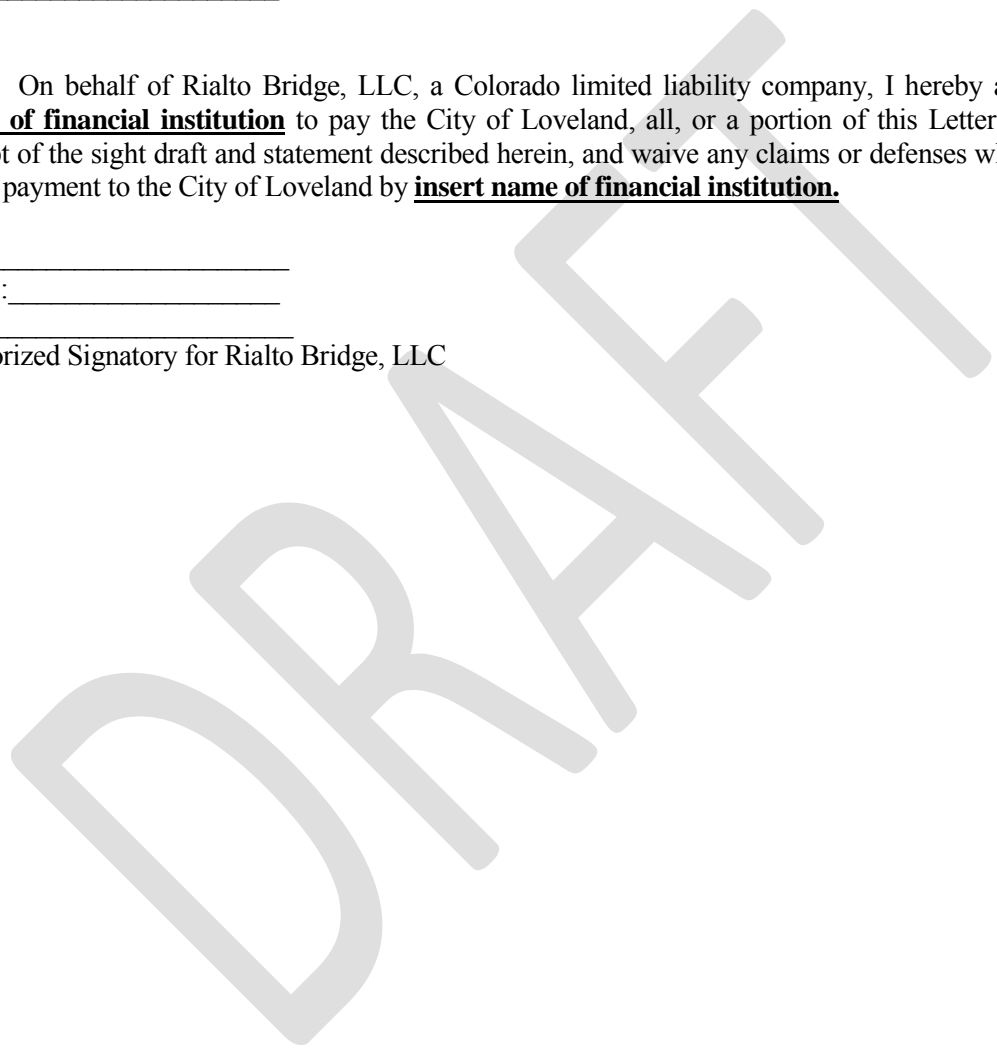
of Colorado of mercantile specialty and not by the law of contracts. Venue for all actions against the issuer shall be in Larimer County, Colorado.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2011 on behalf of **insert name of financial institution.**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

On behalf of Rialto Bridge, LLC, a Colorado limited liability company, I hereby authorize **insert name of financial institution** to pay the City of Loveland, all, or a portion of this Letter of Credit upon receipt of the sight draft and statement described herein, and waive any claims or defenses which I may have to the payment to the City of Loveland by **insert name of financial institution.**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Authorized Signatory for Rialto Bridge, LLC





## EXHIBIT G

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### CITY OF LOVELAND PUBLIC WORKS

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**TO:** TROY PETERSON & MIKE SCHOLL  
**FROM:** KEN COOPER, PW FACILITIES MANAGEMENT  
**SUBJECT:** SUPPORT FOR RIALTO BRIDGE – OCCUPANTS & BUILDING  
**DATE:** OCTOBER 12, 2010  
**CC:** DEVIN DAVIS, MARC KAPASKA, ALAN KRCMARIK

---

The City's Facilities Management (FM) Division provides full-scale support for about 650,000 square feet of highly diverse City-owned buildings across multiple campuses. There are 23 full-time team members in FM whose responsibilities are divided into three primary categories:

- Maintenance & Construction – building design & construction, capital improvements, preventive maintenance, general facilities upkeep
- Planning – facilities master plan, office design & change, furniture solutions, cost containment
- Support Services – events & special projects, general housekeeping, day-to-day building support, mail services

With the private/public partnership formed for the Rialto Bridge project, the project team is recommending a strategy entrusting the building's overall maintenance and support to the City's FM Team. For daily building operations, the City would act as landlord for both public and private occupants. This relationship mirrors the Loveland Police & Courts Building, where City FM maintains all that space and the County pays the City to do so for its share of the building.

The City recommends the private-side occupants of the Rialto Bridge pay the City \$5.00 per square foot annually to cover this full-scale support, or about \$53,000 each year. Like the Police & Courts Building, these payments would be made on a quarterly basis.

Included in this fee would be the following:

- Daily housekeeping
- Carpet care
- Trash removal
- Recycling program

- Events set-up, tear-down, and clean-up
- Events reservations, including initial showings
- Building open-up/lock-up
- HVAC maintenance & support
- Snow removal (sidewalk, lot in back of Rialto Bridge)
- 24/7 on-call maintenance support
- Tenant finish support (colors, finishes, etc.)
- Preventive maintenance to equipment manufacturer's guidelines
- Elevator maintenance
- Grease pit maintenance (4x per year – additional is responsibility of restaurant tenant)
- Fire protection
- Exterior window cleaning (2x per year – additional is responsibility of tenant)
- Lighting maintenance
- CAD management for building drawings, layouts
- Safety/evacuation plans
- Security system administration and maintenance
- Limited mail services
- Utilities

Please note this support excludes maintaining all the kitchen spaces and kitchen equipment specific to the restaurant operations. These items would be the responsibility of the restaurant operator.

Please also note that capital replacement costs (roof, structure, HVAC equipment, etc.) associated with this building and project will be handled in a separate arrangement and are not included in the \$5.00 per square foot annually.

Thank you.


**CITY OF LOVELAND**

BUDGET OFFICE

 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

**AGENDA ITEM:** 12  
**MEETING DATE:** 4/19/2011  
**TO:** City Council  
**FROM:** Renee Wheeler, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

**TITLE:**

A Public Hearing to consider:

- A. An ordinance on First Reading enacting a supplemental budget and appropriation to the 2011 City of Loveland budget to reappropriate remaining funds for projects approved but not completed in 2010 and new projects
- B. An ordinance on First Reading enacting a supplemental budget and appropriation to the 2011 Ft. Collins-Loveland Municipal Airport budget to appropriate funds for projects approved but not completed in 2010 and for compensation to the Public Works Director for extra duties

**DESCRIPTION:**

These are administrative actions. The Ordinances reappropriate funding for capital projects and other one-time projects approved but not completed in the prior year and a small number of new projects that were not anticipated at the time of budget adoption.

**BUDGET IMPACT:**
 Yes     No

- A. Fund balance generated by savings in the department budgets resulting from expenses that did not occur due to the timing of capital projects is used as the source of funds reappropriated for projects. Several projects include grant funding for which the City has been approved, but the grant funds have not yet been received.
- B. Fund balance is available due to savings in the 2010 budget from the projects being completed under budget.

**SUMMARY:**

- A. This action is the reappropriation of funds for projects approved in the 2010 Budget that have not been completed or closed out at the end of 2010. By City Charter and state



law, all appropriations for any one fiscal year expire on December 31. Reappropriation is necessary to allow the expenditures of ongoing projects to continue into 2011.

Council approved nearly all of the projects included in the ordinance as a part of the 2010 Budget. Also included are appropriations for some new projects. The funding for these projects is from grants, donations, or savings in the department budgets.

The ordinance is organized by fund, with new revenues and line item appropriations within each fund shown. Negative amounts indicate a budget is being reduced. This occurs in the Water Enterprise, Wastewater Enterprise, and Power Enterprise Funds. In the Water and Power Enterprises, new funds have been created. These new funds are to track System Impact and Plant Investment Fees (SIF and PIF) revenues and expenses. Previously the enterprises had all expenses within one fund. Staff believes the use of two funds will better represent the costs of projects funded through the impact fees by showing them in separate funds.

A detailed explanation of each project or program is included in the attached Staff Report. The descriptions are organized by project with the funding source(s) for each project or program identified. The projects or programs are listed in order of dollar amount. Many capital projects are funded by resources in multiple funds. These resources are transferred to the Capital Projects fund where the total expense for each project is budgeted. This allows the project to be budgeted in one place so the total impact is shown, rather than having to add several components across various funds to the total impact of the project

In the Staff Report, projects approved in 2010 and being “rolled over” into the 2011 Budget are referred to as “reappropriations”, since we are appropriating the remaining balance of the appropriation approved in 2010. New projects or projects that required an increased appropriation recommended by staff are described as “Supplements”, with the reason for the supplement described. In all cases, the supplemental appropriations are funded by savings that occurred in the 2010 budget or by grants and donations. The supplemental requests for new projects include the following projects:

- NIBRS crime statistics reporting program - \$148,680
- Rialto Theater Environmental Remediation - \$110,000
- Furniture and Telephone Replacement for the Dispatch Consoles - \$96,000
- Business Performance Agreements - \$88,500
- Library donation for books and materials - \$49,800
- Roof Replacement - \$40,000
- FDIC Security Details by the Police Department – \$13,880
- Cultural Services programs - \$4,000

Please refer to the Staff Report for details on these recommended supplemental appropriations.

- B. The funding will be used for the completion of the runway repair projects. These projects were approved and included in the 2010 Airport budget, projects were completed under budget. Reappropriation is necessary to make funds available to complete the projects.

These projects are FAA related and funds that were not spent in a calendar year are rolled into the next fiscal year for use at the airport, as required by federal regulation.

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**LIST OF ATTACHMENTS:**

1. Staff Report
2. An ordinance enacting a supplemental budget and appropriation to the 2011 City of Loveland budget to reappropriate remaining funds for projects approved but not completed in 2010 and new projects
3. An ordinance enacting a supplemental budget and appropriation to the 2011 Ft. Collins-Loveland Municipal Airport budget to appropriate funds for projects approved but not completed in 2010 and for compensation to the Public Works Director for extra duties

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**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a Public Hearing and approve the ordinances on First Reading

**REVIEWED BY CITY MANAGER:**


**CITY OF LOVELAND**

BUDGET DIVISION

 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

**TO:** City Council

**THROUGH:** Bill Cahill, City Manager  
 Renee Wheeler, Assistant City Manager

**FROM:** John Hartman, Budget Officer

**DATE:** April 19, 2011

**RE:** Staff Report on Projects in the Reappropriation Ordinance

This is an annual appropriation ordinance staff brings to Council. The total projected cost of a project is appropriated in the first year a project is funded. This allows Council and the public to see what the total project will cost and that resources are available to fund the entire project.

State law and the City Charter state that all appropriations cease on December 31, the final day of the fiscal year. Capital projects by their nature take more than one fiscal year to complete for a variety of reasons. This requires the reappropriation of the funding that was not spent on the projects in the prior year in order to make funding available to complete the projects.

Gross appropriations, the sum of the total appropriations for each fund, total \$31.61 million. With the exclusion of the transfers between the various funds; the net appropriation in the ordinance is \$22.48 million. This appropriation is funded by \$3.93 million of grant revenue and \$18.54 million in fund balance.

Of the net appropriation, 37% of the total is in one program, the Library Expansion Project.

73.0% of the total net appropriation is in five projects or programs, the one mentioned above, in addition to the four projects below:

- Storm Water infrastructure improvements;
- The Transportation Program;
- A project to tie the Airport Substation with the East Substation; and
- The Council Incentive Fund

The following is an explanation on a project basis with the funding sources identified. The projects are listed in descending order by the amount of the project.

### ***Projects Reappropriated***

#### **Loveland Public Library Department – Library Building Expansion - \$8,258,110**

Reappropriation of funding approved in 2010 for design and construction of the expansion project. This amount includes \$387,260 from a Stimulus Grant for Energy Efficiency to have the program be LEED certified.

The funding source is Library Impact Fees, General Government Impact Fees, donations and grants in the amount of \$2 million and a federal stimulus grant.

#### **Public Works Department – Storm Water Enterprise – Storm Water Infrastructure Improvements - \$3,478,970**

Reappropriation of funds approved in 2010 for the construction of the improvements. Projects include the following:

- Washington Avenue Outfall Phase IV - \$3,313,990; and
- Seven small miscellaneous projects \$124,980.

The funding source is Storm Water Enterprise Fund balance.

#### **Public Works Department - Transportation Program - \$3,109,080**

Reappropriation of funds approved in 2010 for the transportation program. Projects include:

- U.S. 34 and Madison Intersection Design - \$749,020;
- Completion of the I-25 and Crossroads Interchange – 497,410;
- Taft Avenue -14<sup>th</sup> Street SW Intersection - \$309,390;
- Taft Avenue and Eisenhower Blvd. Intersection Improvements - \$150,000;
- Upgrades to the Traffic Operations Center - \$211,580;
- Madison Avenue – Carlisle Drive to 5<sup>th</sup> Street SW - \$185,000
- Garfield Avenue at U.S. 34 Right Turn Lane - \$181,580;
- Signal Replacement at 4th Street and Lincoln/Cleveland Avenues - \$118,700; and
- Thirteen small miscellaneous projects - \$706,400.

The funding sources for the projects are from Street Impact Fee revenues in the amount of \$1,613,970, the General Fund from TABOR revenues of \$624,310, General Fund unrestricted fund balance of \$29,000, and Federal or State Grants of \$841,800.

#### **Water and Power Department – Tie the Airport and East Substations - \$825,000**

Reappropriation of funds approved in 2010 for right-way acquisition and placing conduit underground.

The funding source is Power Enterprise Fund balance.

#### **Non-Departmental – Council Business Incentive Program - \$736,590**

Reappropriation of funds approved in 2010 for economic development incentives.

The funding source is General Fund balance.

**Public Works – Civic Center Parking Lot - \$644,110**

Reappropriation of funding approved in 2010 for construction of the new lot.

The funding source is General Government CEF Fund balance.

**Development Services – ArtSpace Project - \$475,000**

Reappropriation of funds approved in 2010 for the development project.

The funding source is General Fund balance from the Council Capital Reserve.

**Water & Power – Filter Plant 2 Pipe Gallery Improvements – \$424,640**

Reappropriation of funds approved in 2010 for construction of the improvements.

The funding source is Water Enterprise Fund balance.

**Water & Power Department – Water Enterprise Projects - \$421,030**

Reappropriation of funds approved in 2010 for the following projects:

- Morning Drive Alternate Design - \$198,300
- Purchase of CBT Water - \$123,000
- Raw Water Yield Study - \$66,950
- Vulnerability Assessment Improvements - \$23,000
- Two small projects with invoices remaining to close out the projects -\$9,780

The funding source is Water Enterprise Fund balance, Water System Impact fees, and Raw Water revenues.

**Parks and Recreation Department – Hatfield Chilson Recreation Center Expansion- \$359,250**

Reappropriation of funds approved in 2010 for the completion of the expansion of the recreation center by approximately 16,000 square feet. The remaining work consists of completion of the landscaping on 1<sup>st</sup> street and the renovation and upgrade for the South Galleria and Senior Center. This portion of the project consists of carpet replacement, ceramic tile replacement in the bathrooms, ceiling tile replacement, and the replacement of some fixtures and furniture.

The funding source is General Fund balance.

**Development Services Department/Community Partnerships Division – Community Development Block Grant (CDBG) Grants -\$325,600**

Reappropriation of the CDBG block grant funds approved in 2010. The terms of the contracts for CDBG funds ends September 30, 2011.

The funding source is Federal CDBG Grants funds.

**Public Works Department – Fleet Division – Replacement of Fire truck and a bus - \$312,350**

Reappropriation of funding approved in 2010 for the purchase of replacement fire apparatus and a bus. The equipment was ordered but not received in 2010 due to the long lead time in the purchasing cycle for these trucks.

The funding source is a Fleet Fund balance and a Federal Transit Authority grant.

**Water & Power Department - Wastewater Line Projects - \$274,130**

Reappropriation of funding approved in 2010 for the following projects:

- Manhole rehabilitation Phase I - \$89,490;
- Wastewater Collection System Modeling - \$75,210
- Sludge Thickening Project – 52,010;
- Odor Control/Corrosion Improvements - \$30,000; and
- Two small projects totaling \$27,420.

The funding source is Wastewater Enterprise Fund balance.

**Parks and Recreation Department – Bike/Hike Trail Underpass at U.S. 287 - \$250,000**

Reappropriation of funds approved in 2010 for the construction of the underpass and the trail for Segments 6a and 6b. The two segments total about 2 miles and will connect to the east side of the under pass beneath U.S. 287 to be constructed near U.S. 287 and 65<sup>th</sup> Street.

The funding source is Conservation Trust Fund balance.

**Water & Power Department – Power Enterprise – Energy Efficiency Programs - \$246,200**

Reappropriation of funding approved in 2010. The projects include:

- OPower - \$129,300
- Larimer County Youth Conservation Corps - \$13,400
- Energy Star Clothes Washer Rebates - \$3,500
- PRPA Support in Excess of their Funding - \$100,000

The funding source is Power Enterprise Fund balance.

**Water & Power Department – Power Enterprise – East Substation - \$232,000**

Reappropriation of funding approved in 2010 for the installation of the control house and transformers.

The funding source is Power Enterprise Fund balance.



**Development Services Department/Community Partnerships Division – Human Services Grants -\$164,500**

Reappropriation of funding for Human Resource Commission grants approved in 2009. The terms of the contracts for Human Services grant funds ends June 30, 2010.

The funding source is General Fund balance.

**Information Technology – Network Hardware Replacement - \$148,980**

Reappropriation of funding approved in 2010 for the replacement of hardware. The replacement decision was deferred to make decision based on requirements related to voice over Internet Protocol (VOIP).

The funding source is General Fund balance.

**Information Technology Department – Public Works Asset Management System – \$148,250**

Reappropriation of funding approved in 2010 for the development and implementation of the system.

The funding source is General Government Capital Expansion Fee revenues.

**Development Services/Public Works Departments – Historic Preservation Projects - \$129,340**

Reappropriation of funds approved in 2010 for:

- The renovation of the Milner-Schwartz House; and
- The Historic Residential Guidelines.

The funding sources are historic preservation grants.

**Water & Power – 1<sup>st</sup> Street and Wilson to Namaqua Road Conductor Upgrade - \$100,000**

Reappropriation of funding approved in 2010 for the upgrade.

The funding source is Power Enterprise Fund balance.

**Finance – Unemployment Insurance - \$97,740**

Appropriation of remaining maximum liability for the Enterprise Funds for unemployment claims. Enterprise revenues are transferred to the Risk Fund for payment on the claims, with the exception of the Golf fund, which is being covered by the General fund due to low balances continuing in the Golf Fund.

The funding sources are General Fund balance, Water Enterprise Fund balance, Wastewater Enterprise Fund balance, Power Enterprise Fund balance, and Solid Waste Enterprise Fund balance.

**Public Works – Solid Waste Enterprise – Snow Plows - \$73,330**

Reappropriation of funding approved in 2010 for the purchase of snow plows to be placed on solid waste trucks for residential snow removal.

The funding source is Solid Waste Enterprise Fund balance.

**Information Technology Department – Electronic Drawing Review – \$59,250**

Reappropriation of funding approved in 2010. Purchase of hardware, software, web site interfaces and training to implement a new electronic development review process. This will allow the City to receive, review and return development review documents in an electronic format. Staff believes this will enable the building and development review process to be completed in a more timely and cost effective manner.

The funding source is General Fund balance.

**Police – Records System Purge - \$52,840**

Reappropriation of funding approved in 2010 for the project.

The funding source is General Fund balance.

**Cultural Services – Art in Public Places - \$52,840**

Reappropriation of funding approved in 2010 for the following projects:

- Library Expansion Art - \$42,500
- Highway 287 Underpass Art – 10,330

The funding source is Art in Public Places Fund balance.

**Development Services – Energy Efficiency Stimulus Grants - \$52,740**

Reappropriation of funding approved in 2010 for grants to non-profit agencies for energy efficiency grants.

The funding source is a federal stimulus grant.

**Information Technology – Web Redesign Project - \$41,810**

Reappropriation of funding approved in 2010 for the project.

The funding source is General Fund balance.

**Fire & Rescue – Fire Truck Replacement Equipment - \$38,500**

Reappropriation of funding approved in 2010 for equipment on the fire truck being replaced. The appropriations for the truck are in the Fleet Fund. The truck was delivered to the City in February of 2011. The reappropriations are to complete the payment of invoices for the truck and the equipment.

The funding source is General Fund balance.

**Parks and Recreation – Replacement Equipment - \$32,500**

Reappropriation of funding approved in 2010 for:

- Playground replacement at the Civic Center - \$25,000; and
- Irrigation projects - \$7,500

The funding source is General Fund balance.

**Cultural Services Department – Museum and Rialto Programs - \$23,960**

Reappropriation of funds approved in 2010 for exhibits and projects conducted by the Department. The projects include:

- Museum Expansion Feasibility Study - \$7,480
- India Exhibit - \$12,000;
- Threads to China Exhibit - \$3,980;
- History Exhibits - \$500.

The funding source is General Fund balance.

**Fire & Rescue – Mobile Data Terminals - \$25,730**

Reappropriation of a grant approved in 2010 for the purchase of mobile data terminals for the front line fire apparatus.

The funding source is a federal Assistance to Firefighters grant.

**Development Services –CanDo Grant - \$21,840**

Reappropriation of funds approved in 2010 for the CanDo grant for outreach to homeowner associations and the Community Design Element for the master plan.

The funding source is grant funds.

**Community and Business Relations Department – PRPA Economic Development funds - \$21,390**

Reappropriation of funding received in 2008 and 2009 from the Platte River Power Authority for economic development. Only part of the 2008 funding was allocated. The amount consists of \$6,990 from 2008 and all of the 2009 funding of \$14,400. Council has not decided on how to allocate these funds, but they are appropriated to be available when the decision is made. Past uses of this funding have been contributions to the Northern Colorado Economic Development Corporation and funding of the Business Appreciation Luncheon.

The funding source is General Fund balance.

**Development Services – Rialto Bridge Design - \$15,360**

Reappropriation of funding approved in 2010 for the design of the Rialto Bridge Project.

The funding source is General Fund balance from the Council Capital Reserve.

**Information Services Department – Completion of the Development Services Innoprise Module - \$14,460**

Reappropriation of funding approved in 2010 for disc storage, equipment and operating costs to complete the module installation.

The funding source is General Fund balance.

**Police Department – SWAT Equipment - \$10,700**

Reappropriation of funding approved in 2010 for the replacement of guns and ammunition purchases that were ordered but not received by the end of the year.

The funding source is General Fund balance.

**Parks & Recreation Department – Water Augmentation - \$10,230**

Reappropriation of funding approved in 2010 for legal and engineering fees associated with the Water Court proceedings for Barnes Park.

The funding source is General Fund balance.

**Fire & Rescue Department – Engine Repairs - \$9,650**

Reappropriation of funds approved in 2010. The repairs were not completed by the end of the year.

The funding source is General Fund balance.

**Information Technology – Chilson Fiber Optic Upgrade - \$6,050**

Reappropriation of funding approved in 2010 for the upgrade.

The funding source is General Fund balance.

**Library – Smart Investing Grant – 2,760**

Reappropriation of funding approved in 2010 for the program from a grant thought the Friends of the Library.

The funding source is General Fund balance.

**Fire & Rescue Department – Emergency Warning Sign Program - \$740**

Reappropriation of grant funding approved in 2010 for the sign program.

The funding source is General Fund balance.

**Community & Business Relations – Community Marketing Commission Grants (\$3,000)**

The Commission has provided the Cultural Services Department with a grant for the Threads to China exhibit. The grant line is reduced by \$3,000 and the funding is transferred to the General Fund for use on the exhibit's costs.

### *Supplemental Requests*

#### **Police Department – NIBRS Crime Statistics Reporting System - \$148,680**

**Supplemental Request** - Appropriation of funding to upgrade the records management system to enable NIBRS reporting as required by the State.

The funding source is General Fund balance from savings in the Department budget in 2010.

#### **Public Works – Rialto Theater Remediation - \$110,000**

**Supplement Request** – Appropriation of funding for environmental remediation issues within the Rialto Theater.

The funding source is Risk & Insurance Fund reserves.

#### **Police Department – Dispatch Furniture and Equipment Replacement - \$96,000**

**Supplemental Request** – Appropriation of funding to replace the furniture and telephones at the Emergency Dispatch consoles.

The funding source is General Fund balance from savings in the Department budget in 2010.

#### **Non-Departmental – Development Performance Agreements -\$88,500**

**Supplemental Request** – Appropriation of the percentage of sales tax revenues collected for deferred CEF fees in 2010 that apply to outstanding performance agreements. The performance agreements allowed a business to use part of the sales tax collected to pay for Capital Expansion Fees due to the City. If the level of sales tax in the agreement is not achieved within the specified time-frame, the businesses are required to pay the fees.

The funding source is General Fund balance.

#### **Library Department - Materials and Supplies - \$49,800**

**Supplemental Request** - Appropriation of gifts and donations received in 2010 for books and materials, other supplies and services.

The funding source is donations to the Library.

#### **Public Works – Roof Replacement - \$40,000**

**Supplemental Request** - The project was approved in the Capital Program but was inadvertently not included in the development of the numbers or entered on the financial system by the Budget Office for the Adopted Budget.

The funding source is General Fund balance.

**Police Department – Security Details - \$13,880**

**Supplemental Request** – Appropriation of FDIC security details providing police presence at two banks.

The funding source is a payment from the FDIC for the security details.

**Cultural Services Department – Museum and Rialto Programs - \$4,000**

**Supplemental Request** for appropriation of donations that will be received in 2011 for exhibits and programs conducted by the Department. The projects include:

- Threads to China Exhibit - \$3,000; and
- Rialto School residencies - \$1,000.

The funding source is donations of \$1,000, from Thompson R2J School District, and a grant from the Community Marketing Commission.



**FIRST READING** April 19, 2011

**SECOND READING** \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET TO REAPPROPRIATE REMAINING FUNDS FOR PROJECTS APPROVED BUT NOT COMPLETED IN 2010 AND NEW PROJECTS**

**WHEREAS**, the City’s 2010 budget included appropriations for projects not completed or closed out by the end of 2010, when the 2010 budget appropriations expired in accordance with the City of Loveland Charter and state law, requiring reappropriation in 2011 to permit expenditure of such funds to continue with respect to ongoing projects; and

**WHEREAS**, the City has also received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2011; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2011, as authorized by Section 11-6(a) of the Loveland City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That reserved funds not appropriated at the time of adoption of the budget for 2011 have resulted from expenditures that were budgeted in the 2010 budget but not made. Reappropriation is necessary to permit expenditure of the funds in 2011 for purposes previously approved by Council. In addition, grant funds have been received and reserve funds are available that were not anticipated or appropriated at the time of adoption of the 2011 budget. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
General Fund 1**

**Revenues**

|                           |   |           |
|---------------------------|---|-----------|
| Fund Balance              |   | 3,390,990 |
| 001-1914-334-24-00-SP1002 | State Historical Grant-Residential Design Guidelines  | 15,380    |
| 001-1914-363-00-00-SP1101 | Contributions -CanDo Grant                            | 1,840     |
| 001-1914-363-00-00-SP1102 | Contributions -CanDo Grant                            | 20,000    |
| 001-1924-334-48-00-STIM08 | Federal Grant - Energy Efficiency Stimulus Grant      | 52,740    |
| 001-2102-321-30-00        | Special Events  | 13,880    |
| 001-2202-334-48-00-FRAFG  | Federal Grant - Assistance to Firefighters Grant      | 25,730    |
| 001-2321-334-48-00-STIM08 | Federal Grant - Energy Efficiency Stimulus Grant      | 46,400    |
| 001-2332-334-24-00-SP0702 | State Historical Grant-Milner Swartz House Renovation | 113,960   |
| 001-5225-365-25-21        | Donation for Rialto School Residencies                | 1,000     |
| 001-0000-373-41-01        | Transfer from Lodging Tax Fund                        | 3,000     |

**Total Revenue****3,684,920****Appropriations:****Community & Business Relations**

|                    |                             |        |
|--------------------|-----------------------------|--------|
| 001-1822-409-03-76 | Economic Development - PRPA | 21,390 |
|--------------------|-----------------------------|--------|

**Cultural Services**

|                    |   |        |
|--------------------|---|--------|
| 001-5220-409-02-08 | Shipping and Freight - India Exhibit                        | 12,000 |
| 001-5220-409-02-28 | History Exhibits  | 500    |
| 001-5220-409-03-38 | Marketing - Threads to China Exhibit                        | 6,980  |
| 001-5220-409-03-99 | Other Purchased Services Museum Expansion Feasibility Study | 7,480  |
| 001-5225-409-03-38 | Marketing - Rialto School Residencies                       | 1,000  |

**Development Services**

|                           |   |         |
|---------------------------|---|---------|
| 001-1914-409-01-12-SP1101 | Temporary Salary - HOA Outreach Grant                         | 1,710   |
| 001-1914-409-01-44-SP1101 | FICA - HOA Outreach Grant                                     | 130     |
| 001-1914-409-03-50-SP1002 | Professional Services - Historic Residential Guidelines Grant | 15,380  |
| 001-1914-409-03-50-CMART  | Professional Services-Art Space                               | 475,000 |
| 001-1914-409-03-50-SP1001 | Professional Services -Rialto Bridge- Design                  | 15,360  |
| 001-1914-409-03-50-SP1102 | Professional Services -Community Design Element               | 20,000  |
| 001-1924-409-04-86        | Non-Profit Grants   | 164,500 |
| 001-1924-409-04-40-STIM08 | Non-Profit Grants - Energy Efficiency Stimulus Grant          | 52,740  |

**Fire & Rescue**

|                          |  |        |
|--------------------------|--|--------|
| 001-2202-409-02-15-FRAFG | Computer Supplies - Mobile Data Terminals        | 25,730 |
| 001-2202-409-09-44       | Motor Vehicle - Fire Truck Replacement Equipment | 38,500 |
| 001-2203-409-03-50       | Professional Services - Emergency Management     | 740    |

**Information Services**

|                           |   |         |
|---------------------------|---|---------|
| 001-1602-409-02-15        | Computer Supplies - Chilson Fiber Optic Upgrade             | 6,050   |
| 001-1602-409-02-15-ITEDR  | Computer Supplies - Electronic Drawing Review Project       | 14,370  |
| 001-1602-409-03-50-ITWEBR | Professional Services - Web Redesign                        | 41,810  |
| 001-1602-409-09-99        | Other Capital - Network Hardware Replacement                | 148,980 |
| 001-1604-409-02-15-ITEDR  | Computer Supplies - Electronic Drawing Review Project       | 15,570  |
| 001-1604-409-02-99-ITEDR  | Other Supplies - Electronic Drawing Review Project          | 14,310  |
| 001-1604-409-03-50        | Professional Services - Innoprise Dev. Srv. Module          | 14,460  |
| 001-1604-409-03-99-ITEDR  | Other Purchased Services- Electronic Drawing Review Project | 15,000  |

**General Fund Cont.****Library**

|                           |  |        |
|---------------------------|--|--------|
| 001-1410-409-01-11        | Regular Salaries - Smart Investing Grant | 2,550  |
| 001-1410-409-01-44        | FICA - Smart Investing Grant             | 210    |
| 001-1410-409-02-14-LBDONA | Books & Periodicals                      | 23,500 |
| 001-1410-409-02-99-LBDONA | Other Purchased Services                 | 3,000  |
| 001-1410-409-03-33-LBDONA | Subscriptions                            | 17,300 |
| 001-1410-409-03-99-LBDONA | Other Purchased Services                 | 6,000  |

**Parks & Recreation**

|                    |  |        |
|--------------------|--|--------|
| 001-5130-409-09-99 | Other Capital - Playground Replacement     | 25,000 |
| 001-5131-409-09-99 | Other Capital - Irrigation Projects        | 7,500  |
| 001-1592-409-03-50 | Professional Services - Water Augmentation | 10,230 |

**Police**

|                    |   |         |
|--------------------|---|---------|
| 001-2102-409-01-21 | Overtime                                | 13,880  |
| 001-2102-409-02-33 | SWAT Equipment                          | 10,700  |
| 001-2102-409-03-69 | Repair and Maintenance - AFR Purge      | 52,840  |
| 001-2102-409-09-47 | Office Furniture and Equipment          | 96,000  |
| 001-2106-409-03-69 | Repair and Maintenance - NIBRS Software | 148,680 |

**Public Works**

|                           |   |         |
|---------------------------|---|---------|
| 001-2303-409-09-99        | Other Capital                                 | 19,000  |
| 001-2321-409-03-50-STIM08 | Professional Services Energy Grant            | 46,400  |
| 001-2332-409-09-60-SP0702 | Construction - Milner Swartz House Renovation | 113,960 |

**Non-Departmental**

|                    |  |           |
|--------------------|--|-----------|
| 001-5502-409-03-76 | Economic Development                         | 88,500    |
| 001-5502-409-05-55 | Economic Incentives - Council Incentive Fund | 736,590   |
| 001-5502-473-07-02 | Transfer to Capital Projects Fund            | 1,052,560 |
| 001-5502-473-07-89 | Transfer to Risk                             | 80,830    |

**Total Appropriations****3,684,920**

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Capital Projects Fund 2**

**Revenues**

|                           |   |           |
|---------------------------|---|-----------|
| 002-0000-373-01-00        | Transfer from General Fund - Roof Replacement                       | 40,000    |
| 002-0000-373-01-00-EN0105 | Transfer from General Fund - Transportation Program                 | 30,000    |
| 002-0000-373-01-00-EN0109 | Transfer from General Fund - Transportation Program                 | 299,610   |
| 002-0000-373-01-00-EN0112 | Transfer from General Fund - Transportation Program                 | 10,000    |
| 002-0000-373-01-00-EN0212 | Transfer from General Fund - Transportation Program                 | 49,210    |
| 002-0000-373-01-00-EN0330 | Transfer from General Fund - Transportation Program                 | 14,160    |
| 002-0000-373-01-00-EN0332 | Transfer from General Fund - Transportation Program                 | 410       |
| 002-0000-373-01-00-EN0412 | Transfer from General Fund - Transportation Program                 | 9,110     |
| 002-0000-373-01-00-EN0606 | Transfer from General Fund - Transportation Program                 | 13,010    |
| 002-0000-373-01-00-EN0609 | Transfer from General Fund - Transportation Program                 | 30,940    |
| 002-0000-373-01-00-EN0705 | Transfer from General Fund - Transportation Program                 | 37,000    |
| 002-0000-373-01-00-EN0719 | Transfer from General Fund - Transportation Program                 | 400       |
| 002-0000-373-01-00-TS0901 | Transfer from General Fund - Transportation Program                 | 118,700   |
| 002-0000-373-01-00-EN1006 | Transfer from General Fund - Transportation Program                 | 4,090     |
| 002-0000-373-01-00-EN8212 | Transfer from General Fund - Transportation Program                 | 3,530     |
| 002-0000-373-01-00-TS0101 | Transfer from General Fund - Transportation Program                 | 4,320     |
| 002-0000-373-01-00-TS0706 | Transfer from General Fund - Transportation Program                 | 7,280     |
| 002-0000-373-01-00-TS0714 | Transfer from General Fund - Transportation Program                 | 16,340    |
| 002-0000-373-01-00-TS1002 | Transfer from General Fund - Transportation Program                 | 5,200     |
| 002-0000-373-01-00-PK0801 | Transfer from General Fund - Chilson Expansion                      | 359,250   |
| 002-0000-373-89-01-SP1001 | Transfer from Risk and Insurance Fund - Rialto Asbestos Remediation | 110,000   |
| 002-0000-373-22-06-GF0701 | Transfer from Library CEF - Library Expansion                       | 2,594,910 |
| 002-0000-373-22-08-GF0701 | Transfer from General Government CEF - Library Expansion            | 3,275,940 |
| 002-0000-373-22-09-EN0105 | Transfer from Street CEF - Transportation Program                   | 120,000   |
| 002-0000-373-22-09-EN0109 | Transfer from Street CEF - Transportation Program                   | 449,410   |
| 002-0000-373-22-09-EN0112 | Transfer from Street CEF - Transportation Program                   | 10,000    |
| 002-0000-373-22-09-EN0212 | Transfer from Street CEF - Transportation Program                   | 49,210    |
| 002-0000-373-22-09-EN0233 | Transfer from Street CEF - Transportation Program                   | 338,860   |
| 002-0000-373-22-09-EN0330 | Transfer from Street CEF - Transportation Program                   | 56,650    |
| 002-0000-373-22-09-EN0606 | Transfer from Street CEF - Transportation Program                   | 39,010    |
| 002-0000-373-22-09-EN0609 | Transfer from Street CEF - Transportation Program                   | 278,450   |
| 002-0000-373-22-09-EN0705 | Transfer from Street CEF - Transportation Program                   | 148,000   |
| 002-0000-373-22-09-EN0719 | Transfer from Street CEF - Transportation Program                   | 1,600     |
| 002-0000-373-22-09-EN8212 | Transfer from Street CEF - Transportation Program                   | 14,120    |
| 002-0000-373-22-09-TS0101 | Transfer from Street CEF - Transportation Program                   | 17,300    |
| 002-0000-373-22-09-TS0501 | Transfer from Street CEF - Transportation Program                   | 29,140    |
| 002-0000-373-22-09-TS0714 | Transfer from Street CEF - Transportation Program                   | 47,210    |
| 002-0000-373-22-09-TS1002 | Transfer from Street CEF - Transportation Program                   | 15,010    |
| 002-0000-373-22-08        | Transfer from General Government CEF - Asset Management System      | 148,250   |
| 002-0270-334-48-00-TS0706 | Federal Grant - Transportation Program                              | 175,160   |
| 002-0270-334-48-00-TS0714 | Federal Grant - Transportation Program                              | 118,030   |
| 002-0270-334-48-00-TS1002 | Federal Grant - Transportation Program                              | 37,530    |
| 002-0270-334-02-00-TSSR11 | Federal Grant - Safe Routes 2011-2011 SCY                           | 2,290     |
| 002-0270-334-02-00-TSSRTS | Federal Grant - Safe Routes to School                               | 11,380    |
| 002-1410-368-41-00-GF0701 | Contributions - Library Expansion                                   | 1,600,000 |
| 002-1410-334-48-01-STIM08 | Energy Efficiency Stimulus Grant - Library Expansion                | 387,260   |
| 002-1410-334-02-00-GF0701 | State Grant _ Library Expansion                                     | 400,000   |
| 002-2307-337-10-00-ENCROS | Federal Stimulus Grant - I25 and Crossroads Interchange             | 497,410   |

**Total Revenue****12,024,690**

**Capital Project Fund Cont.****Appropriations**

|                           |   |         |
|---------------------------|---|---------|
| 002-5502-409-09-99-SP1001 | Other Capital - Rialto Asbestos Remediation | 110,000 |
|---------------------------|---|---------|

**Information Technology**

|                    |   |        |
|--------------------|---|--------|
| 002-1604-409-02-15 | Software - Asset Management System              | 26,050 |
| 002-1604-409-02-99 | Other Supplies - Asset Management System        | 14,130 |
| 002-1604-409-03-50 | Professional Services - Asset Management System | 97,500 |
| 002-1604-409-03-80 | Training - Asset Management System              | 10,570 |

**Library**

|                            |   |         |
|----------------------------|---|---------|
| 002-1410-409-09-55-GF0701  | Design - Library Expansion                                    | 853,890 |
| 002-1410-409-09-55- STIM08 | Design - Library Expansion - Stimulus Grant for LEED elements | 387,260 |

**Parks & Recreation**

|                           |  |         |
|---------------------------|--|---------|
| 002-0704-409-09-55-PK0801 |  |         |
| 002-0704-409-09-60-PK0801 | Construction - Chilson Recreation Center Expansion | 359,250 |

**Public Works**

|                           |   |         |
|---------------------------|---|---------|
| 002-0270-409-09-60-EN0105 | Construction - Taft Avenue/Eisenhower Intersection                    | 150,000 |
| 002-0270-409-09-60-EN0109 | Construction - U.S. 34 at Madison Avenue Preliminary Design           | 749,020 |
| 002-0270-409-09-60-EN0112 | Construction - Bike Route Signage and Striping                        | 20,000  |
| 002-0270-409-09-60-EN0212 | Construction - Bike Lane Construction and Pedestrian Walkways         | 98,420  |
| 002-0270-409-09-60-EN0223 | Construction - Small Capital Projects                                 | 338,860 |
| 002-0270-409-09-60-EN0330 | Construction - Boise Avenue and 37th Street Intersection Improvements | 70,810  |
| 002-0270-409-09-60-EN0332 | Construction - Miscellaneous Repairs                                  | 410     |
| 002-0270-409-09-60-EN0412 | Construction - Arkins Branch Right of Way                             | 9,110   |
| 002-0270-409-09-60-EN0606 | Construction - Boyd Route Study                                       | 52,020  |
| 002-0270-409-09-60-EN0609 | Construction - Taft Avenue/ 14th Street SW Intersection               | 309,390 |
| 002-0270-409-09-60-EN0705 | Construction - Madison Avenue - Carlisle to 5th St. SW                | 185,000 |
| 002-0270-409-09-60-EN0719 | Construction - U.S.34/ Wilson Avenue Median Improvements              | 2,000   |
| 002-0270-409-09-60-TS0901 | Construction - Signal Replacement at 4th Street-Cleveland/Lincoln     | 118,700 |
| 002-0270-409-09-60-EN1006 | Construction - Garfield Corridor Study                                | 4,090   |
| 002-0270-409-09-60-EN8212 | Construction - Transportation Master Plan through 2050                | 17,650  |
| 002-0270-409-09-60-TS0101 | Construction - Signal System Interconnect                             | 21,620  |
| 002-0270-409-09-60-TS0706 | Construction - Upgrades to Traffic Operations Center                  | 211,580 |
| 002-0270-409-09-60-TS0714 | Construction - Garfield Ave. and U.S. 34 Southbound Turn Lane         | 181,580 |
| 002-0270-409-09-60-TS1002 | Construction - Centerra Area ITS                                      | 57,740  |
| 002-0270-409-09-60-TSSR11 | Construction - Safe Routes 2010-2011 SCY                              | 2,290   |
| 002-0270-409-09-60-TSSR7S | Construction - Safe Routes to School                                  | 11,380  |
| 002-2307-409-09-60-ENCROS | Construction - I25 and Crossroads Interchange                         | 497,410 |
| 002-2321-409-09-60        | Construction - Roof Replacement                                       | 40,000  |

**Total Appropriations****12,024,690**

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Conservation Trust Fund 29**

|                               |  |                |
|-------------------------------|--|----------------|
| <b>Revenues</b>               |  |                |
| Fund Balance                  |  | 250,000        |
| <b>Total Revenue</b>          |  | <b>250,000</b> |
| <b>Appropriations</b>         |  |                |
| <b>Parks &amp; Recreation</b> |  |                |
| 029-5136-409-09-60-PKTR10     | Construction -Segments 6a & 287 Bypass | 250,000        |
| <b>Total Appropriations</b>   |  | <b>250,000</b> |

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Community Development Block Grant Fund 31**

|                             |                   |                |
|-----------------------------|-------------------|----------------|
| <b>Revenues</b>             |                   |                |
| 031-0000-336-21-24          | Block Grant 2009  | 325,600        |
| <b>Total Revenue</b>        |                   | <b>325,600</b> |
| <b>Appropriations</b>       |                   |                |
| <b>2009 Grant</b>           |                   |                |
| 031-1924-409-04-40          | Non Profit Grants | 325,600        |
| <b>Total Appropriations</b> |                   | <b>325,600</b> |



**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Art in Public Places Fund 36**

**Revenues**

|              |        |
|--------------|--------|
| Fund Balance | 52,840 |
|--------------|--------|

|                      |               |
|----------------------|---------------|
| <b>Total Revenue</b> | <b>52,840</b> |
|----------------------|---------------|

**Appropriations**

|                    |        |
|--------------------|--------|
| 036-5240-409-08-73 | 42,500 |
|--------------------|--------|

|                    |        |
|--------------------|--------|
| 036-5240-409-08-96 | 10,340 |
|--------------------|--------|

|                             |               |
|-----------------------------|---------------|
| <b>Total Appropriations</b> | <b>52,840</b> |
|-----------------------------|---------------|

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Water Enterprise Fund 41**

**Revenues**

|                      |                                |                 |
|----------------------|--------------------------------|-----------------|
| Fund Balance         |                                | 1,304,000       |
| 041-0000-361-10-00   | Interest                       | (101,800)       |
| 041-0000-388-10-00   | Capital Recovery Surcharge     | (53,280)        |
| 041-0000-388-11-00   | Capital Recovery Surcharge-Out | (170)           |
| 041-0000-388-19-00   | Plant Investment Fee           | (1,095,750)     |
| 041-0000-388-19-01   | Developer Reimbursements       | (116,800)       |
| <b>Total Revenue</b> |                                | <b>(63,800)</b> |

**Appropriations****Water & Power**

|                             |   |                 |
|-----------------------------|---|-----------------|
| 041-4510-409-09-99-WA930    | Other Capital - Service Center Signage            | 7,400           |
| 041-4520-473-07-89          | Transfer to Risk & Insurance                      | 13,040          |
| 041-4610-409-03-50-W0812D   | Purchased Services - Centerra Booster Station     | 2,380           |
| 041-4610-409-09-52          | Engineering                                       | (431,300)       |
| 041-4610-409-09-61          | Oversizing  | (50,000)        |
| 041-4610-409-09-83          | Operating Expense Added To Capital                | (75,000)        |
| 041-4620-409-09-83          | Operating Expense Added To Capital                | (12,000)        |
| 041-4630-409-09-83          | Operating Expense Added To Capital                | (25,990)        |
| 041-4610-409-09-60-W1015C   | Construction - Vulnerability Assessment Program   | 23,000          |
| 041-4710-409-03-50-WA139C   | Professional Services - Raw Water Yield Study     | 66,950          |
| 041-4710-409-09-83          | Operating Expense Added To Capital                | (5,520)         |
| 041-4720-409-09-83          | Operating Expense Added To Capital                | (1,400)         |
| 041-4730-409-09-60-W1011C   | Construction - Filter Plant 2 Pipe Gallery Imprv. | 424,640         |
| <b>Total Appropriations</b> |   | <b>(63,800)</b> |

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Wastewater Enterprise Fund 42**

**Revenues**

|                      |                                |                    |
|----------------------|--------------------------------|--------------------|
| Fund Balance         |                                | (1,380,100)        |
| 042-0000-361-10-00   | Interest                       | (74,270)           |
| 042-0000-388-10-00   | Capital Recovery Surcharge     | (74,000)           |
| 042-0000-388-11-00   | Capital Recovery Surcharge-Out | (350)              |
| 042-0000-388-19-00   | Plant Investment Fee           | (708,990)          |
| <b>Total Revenue</b> |                                | <b>(1,528,370)</b> |

**Appropriations****Water & Power**

|                             |   |                    |
|-----------------------------|---|--------------------|
| 042-4510-409-09-99-WW930    | Other Capital - Service Center Signage      | 5,200              |
| 042-4520-473-07-89          | Transfer to Risk and Insurance              | 860                |
| 042-4610-409-03-50-WW380    | Professional Services - Collection Modeling | 75,210             |
| 042-4610-409-09-52          | Engineering                                 | (10,440)           |
| 042-4610-409-09-60          | Construction                                | (95,080)           |
| 042-4610-409-09-83          | Operating Expense Added to Capital          | (6,640)            |
| 042-4610-409-09-99-WW380    | Other Capital - Manhole Rehabilitation      | 89,490             |
| 042-4620-409-09-83          | Operating Expense Added to Capital          | (14,500)           |
| 042-4630-409-09-83          | Operating Expense Added to Capital          | (26,580)           |
| 042-4710-409-09-83          | Operating Expense Added to Capital          | (920)              |
| 042-4720-409-09-83          | Operating Expense Added to Capital          | (4,160)            |
| 042-4740-409-09-52-W1010H   | Engineering-Sludge Thickening Design        | 31,210             |
| 042-4740-409-09-52          | Engineering-Oder Control/Corrosion Imprv.   | (187,840)          |
| 042-4740-409-09-60          | Construction                                | (2,085,830)        |
| 042-4740-409-09-83          | Operating Expense Added to Capital          | (4,440)            |
| 042-4750-409-09-83          | Operating Expense Added to Capital          | (3,250)            |
| <b>Total Appropriations</b> |   | <b>(2,237,710)</b> |

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Storm Water Enterprise Fund 43**

|                             |  |                  |
|-----------------------------|--|------------------|
| <b>Revenues</b>             |  |                  |
| Fund Balance                |  | 3,478,970        |
| <br>                        |  |                  |
| <b>Total Revenue</b>        |  | <b>3,478,970</b> |
| <br>                        |  |                  |
| <b>Appropriations</b>       |  |                  |
| <b>Public Works</b>         |  |                  |
| 043-2310-409-03-50          | Professional Services -Rate Study                      | 40,000           |
| 043-2312-409-03-50-SW0702   | Professional Services -Floodplain Technical Asst.      | 10,130           |
| 043-2312-409-03-50-SW0804   | Professional Services -Lake Loveland Zone A Floodplain | 20,060           |
| 043-2312-409-03-50-SW0807   | Professional Services -Dry Creek at Mariana Butte      | 5,000            |
| 043-2312-409-03-50-SW0904   | Professional Services -Wernimont Pond Block Invt.      | 2,460            |
| 043-2312-409-09-52-SW0711   | Engineering - Boyd Lake Ditch Grading                  | 64,900           |
| 043-2312-409-09-52-SW0808   | Engineering - Airport Basin Regional Detention Pond    | 13,920           |
| 043-2312-409-09-52-SW0902   | Engineering - South Loveland Outfall Phase 3           | 8,510            |
| 043-2312-409-09-60-SW0710   | Construction - Washington Outfall Phase 4              | 3,313,990        |
| <br>                        |  |                  |
| <b>Total Appropriations</b> |  | <b>3,478,970</b> |

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Power Enterprise Fund 44**

|                             |  |                  |
|-----------------------------|--|------------------|
| <b>Revenues</b>             |  |                  |
| Fund Balance                |  | 1,376,880        |
| 044-0000-361-10-00          | Interest   | (63,550)         |
| 044-0000-388-19-00          | Plant Investment Fee                               | (1,500,000)      |
| <br>                        |  |                  |
| <b>Total Revenue</b>        |  | <b>(186,670)</b> |
| <br>                        |  |                  |
| <b>Appropriations</b>       |  |                  |
| <b>Water &amp; Power</b>    |  |                  |
| 044-4510-409-09-99          | Other Capital - Service Center Signage             | 7,400            |
| 044-4520-473-07-89          | Transfer to Risk and Insurance                     | 1,430            |
| 044-4810-409-03-50          | Professional Services - Energy Efficiency Programs | 146,200          |
| 044-4810-409-03-99          | Other Services - Energy Efficiency Programs        | 100,000          |
| 044-4830-409-09-99          | Other Capital - Tie Airport and East Substations   | 700,000          |
| 044-4850-409-09-99          | Other Capital                                      | (1,141,700)      |
| <br>                        |  |                  |
| <b>Total Appropriations</b> |  | <b>(186,670)</b> |

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Raw Water Enterprise Fund 46**

|                             |                                  |                |
|-----------------------------|----------------------------------|----------------|
| <b>Revenues</b>             |                                  |                |
| Fund Balance                |                                  | 123,000        |
| <b>Total Revenue</b>        |                                  | <b>123,000</b> |
| <b>Appropriations</b>       |                                  |                |
| <b>Water &amp; Power</b>    |                                  |                |
| 046-4710-409-09-52-W1014A   | Engineering - Purchase CBT Water | 123,000        |
| <b>Total Appropriations</b> |                                  | <b>123,000</b> |

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Fleet Internal Service Fund 80**

|                               |                        |                |
|-------------------------------|------------------------|----------------|
| <b>Revenues</b>               |                        |                |
| Fund Balance                  |                        | 222,450        |
| 080-0000-338-90-00            | Federal Grants - FTA   | 89,900         |
| <b>Total Revenue</b>          |                        | <b>312,350</b> |
| <b>Appropriations</b>         |                        |                |
| <b>Finance/Fleet Services</b> |                        |                |
| 080-2360-409-09-44            | Motor Vehicles and Bus | 312,350        |
| <b>Total Appropriations</b>   |                        | <b>312,350</b> |

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Risk & Insurance Fund 89**

| <b>Revenues</b>             |  |                |
|-----------------------------|--|----------------|
| Fund Balance                |  | 110,000        |
| 089-0000-373-01-00          | Transfer from General Fund                         | 80,830         |
| 089-0000-373-94-00          | Transfer from Solid Waste                          | 1,580          |
| 089-0000-373-41-00          | Transfer from Water                                | 13,040         |
| 089-0000-373-42-00          | Transfer from Wastewater                           | 860            |
| 089-0000-373-44-00          | Transfer from Power                                | 1,430          |
| <b>Total Revenue</b>        |  | <b>207,740</b> |
| <b>Appropriations</b>       |  |                |
| 089-1575-473-02-07          | Transfer to Capital Projects Fund -Rialto Asbestos | 110,000        |
| 089-1575-409-05-40          | Unemployment                                       | 97,740         |
| <b>Total Appropriations</b> |  | <b>207,740</b> |

**Solid Waste Enterprise Fund 94**

| <b>Revenues</b>             |                                |               |
|-----------------------------|--------------------------------|---------------|
| Fund Balance                |                                | 74,910        |
| <b>Total Revenue</b>        |                                | <b>74,910</b> |
| <b>Appropriations</b>       |                                |               |
| <b>Public Works</b>         |                                |               |
| 094-2355-409-03-40          | Equipment - Snow Plows         | 73,330        |
| 094-2355-473-89-00          | Transfer to Risk and Insurance | 1,580         |
| <b>Total Appropriations</b> |                                | <b>74,910</b> |



**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Library Capital Expansion Fee Fund 226**

|                             |   |                  |
|-----------------------------|---|------------------|
| <b>Revenues</b>             |   |                  |
| Fund Balance                |   | 2,594,910        |
| <b>Total Revenue</b>        |   | <b>2,594,910</b> |
| <b>Appropriations</b>       |   |                  |
| 226-1410-473-02-00-GF0701   | Transfer to Capital Projects Fund - Library Expansion | 2,594,910        |
| <b>Total Appropriations</b> |   | <b>2,594,910</b> |

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
General Government Capital Expansion Fee Fund 228**

|                             |   |                  |
|-----------------------------|---|------------------|
| <b>Revenues</b>             |   |                  |
| Fund Balance                |   | 4,068,300        |
| 228-0000-373-01-00          | Transfer from General Fund                            | -                |
| <b>Total Revenue</b>        |   | <b>4,068,300</b> |
| <b>Appropriations</b>       |   |                  |
| 228-2321-409-09-60- GF1002  | Construction - Employee Parking Lot                   | 644,110          |
| 228-5502-473-07-02          | Transfer to Capital Projects Fund - Asset Management  | 148,250          |
| 228-5502-473-07-02 -GF0701  | Transfer to Capital Projects Fund - Library Expansion | 3,275,940        |
| <b>Total Appropriations</b> |   | <b>4,068,300</b> |

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Streets Capital Expansion Fee Fund 229**

|                             |  |                  |
|-----------------------------|--|------------------|
| <b>Revenues</b>             |  |                  |
| Fund Balance                |  | 1,613,970        |
| <b>Total Revenue</b>        |  | <b>1,613,970</b> |
| <b>Appropriations</b>       |  |                  |
| <b>Public Works</b>         |  |                  |
| 229-0270-473-02-00          | Transfer to Capital Projects Fund - Transportation Program | 1,613,970        |
| <b>Total Appropriations</b> |  | <b>1,613,970</b> |

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Lodging Tax Fund Fund 241**

|                             |   |          |
|-----------------------------|---|----------|
| <b>Appropriations</b>       |   |          |
| <b>Lodging Tax</b>          |   |          |
| 241-1822-409-04-40          | Grants  | (3,000)  |
| 241-1822-473-01-00          | Transfer to General Fund - Threads to China Exhibit Grant to Museum | 3,000    |
| <b>Total Appropriations</b> |   | <b>-</b> |

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Water System Impact Fee Fund 301**

**Revenues**

|                    |           |
|--------------------|-----------|
| 301-0000-361-10-00 | 101,800   |
| 301-0000-388-10-00 | 53,450    |
| 301-0000-388-19-00 | 1,095,750 |
| 301-0000-388-19-01 | 116,800   |

**Total Revenue****1,367,800****Appropriations****Water & Power**

|                           |                                    |         |
|---------------------------|------------------------------------|---------|
| 301-4610-409-09-52-W1016D | Engineering                        | 190,550 |
| 301-4610-409-09-52-W1007D | Engineering                        | 198,300 |
| 301-4610-409-09-52-W1017D | Engineering                        | 240,750 |
| 301-4610-409-09-61-W0718E | Oversizing                         | 50,000  |
| 301-4610-409-09-83-W1016D | Operating Expense Added to Capital | 37,500  |
| 301-4610-409-09-83-W1017D | Operating Expense Added to Capital | 37,500  |
| 301-4620-409-09-83-W1016D | Operating Expense Added to Capital | 6,000   |
| 301-4620-409-09-83-W1017D | Operating Expense Added to Capital | 6,000   |
| 301-4630-409-09-83        | Operating Expense Added to Capital | 18,050  |
| 301-4630-409-09-83-W1016D | Operating Expense Added to Capital | 3,970   |
| 301-4630-409-09-83-W1017D | Operating Expense Added to Capital | 3,970   |
| 301-4710-409-09-83-W1016D | Operating Expense Added to Capital | 2,760   |
| 301-4710-409-09-83-W1017D | Operating Expense Added to Capital | 2,760   |
| 301-4720-409-09-83-W1016D | Operating Expense Added to Capital | 700     |
| 301-4720-409-09-83-W1017D | Operating Expense Added to Capital | 700     |

**Total Appropriations****799,510**

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Wastewater System Impact Fee Fund 316**

**Revenues**

|                    |           |
|--------------------|-----------|
| Fund Balance       | 1,655,090 |
| 316-0000-361-10-00 | 74,270    |
| 361-0000-388-10-00 | 74,350    |
| 316-0000-388-19-00 | 708,990   |

**Total Revenue** **2,512,700**

**Appropriations****Water & Power**

|                           |   |           |
|---------------------------|---|-----------|
| 316-4610-409-09-52-W1003H | Engineering-Carlisle Phase IV             | 32,660    |
| 316-4610-409-09-60-W1003H | Construction-Carlisle Phase IV            | 95,080    |
| 316-4610-409-09-83-W1003H | Operating Expense Added to Capital        | 6,400     |
| 316-4610-409-09-83-W1010H | Operating Expense Added to Capital        | 240       |
| 316-4620-409-09-83-W1003H | Operating Expense Added to Capital        | 500       |
| 316-4620-409-09-83-W1010H | Operating Expense Added to Capital        | 14,000    |
| 316-4630-409-09-83-W1003H | Operating Expense Added to Capital        | 7,480     |
| 316-4630-409-09-83-W1010H | Operating Expense Added to Capital        | 1,040     |
| 316-4630-409-09-83        | Operating Expense Added to Capital        | 18,060    |
| 316-4710-409-09-83-W1003H | Operating Expense Added to Capital        | 400       |
| 316-4710-409-09-83-W1010H | Operating Expense Added to Capital        | 520       |
| 316-4720-409-09-83-W1010H | Operating Expense Added to Capital        | 4,160     |
| 316-4740-409-09-52-W1010H | Engineering-Sludge Thickening Design      | 226,640   |
| 316-4740-409-09-52        | Engineering-Odor Control/Corrosion Imprv. | 12,000    |
| 316-4740-409-09-60-W1010H | Construction-Sludge Thickening            | 2,085,830 |
| 316-4740-409-09-83-W1010H | Operating Expense Added to Capital        | 4,440     |
| 316-4750-409-09-83-W1010H | Operating Expense Added to Capital        | 3,250     |

**Total Appropriations** **2,512,700**

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Power System Impact Fee Fund 331**

**Revenues**

|                      |                      |                  |
|----------------------|----------------------|------------------|
| Fund Balance         |                      | 173,450          |
| 331-0000-361-10-00   | Interest             | 63,550           |
| 331-0000-388-19-00   | Plant Investment Fee | 1,500,000        |
| <b>Total Revenue</b> |                      | <b>1,737,000</b> |

**Appropriations**

**Water & Power**

|                             |                                 |                  |
|-----------------------------|---------------------------------|------------------|
| 044-4830-409-09-99-PW921A   | Other Capital                   | 125,000          |
| 331-4850-409-09-99          | Other Capital - East Substation | 332,000          |
| 331-4850-409-09-99-PW920    | Other Capital                   | 1,280,000        |
| <b>Total Appropriations</b> |                                 | <b>1,737,000</b> |

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

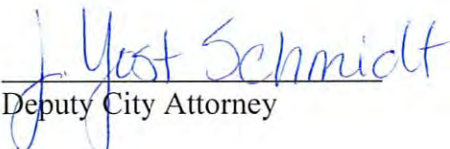
ADOPTED this \_\_\_\_ day of April, 2011.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
Deputy City Attorney



FIRST READING April 15, 2011

SECOND READING \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 FT. COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET TO APPROPRIATE FUNDS FOR PROJECTS APPROVED BUT NOT COMPLETED IN 2010 AND FOR COMPENSATION TO THE PUBLIC WORKS DIRECTOR FOR EXTRA DUTIES**

**WHEREAS**, the 2010 budget for the Fort Collins-Loveland Municipal Airport included appropriations for projects not completed or closed out by the end of 2010, when the 2010 budget appropriations expired in accordance with the City of Loveland Charter and state law, requiring reappropriation in 2011 to permit expenditure of such funds to continue with respect to ongoing projects; and

**WHEREAS**, the City also has reserved funds not appropriated at the time of the adoption of the City budget for 2011; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the Airport budget for 2011, as authorized by Section 11-6(a) of the Loveland City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That revenues and/or reserves in the amount of \$194,020 from fund balance in the Airport Fund 018 are available for appropriation. Revenues in the total amount of \$194,020 are hereby appropriated for projects approved in 2010 but not completed or closed out and for supplemental compensation to the Public Works Director for extra duties performed as Interim Airport Director as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Airport Fund 18**

|                             |                             |                |
|-----------------------------|-----------------------------|----------------|
| <b>Revenues</b>             |                             |                |
| Fund Balance                |                             | 194,020        |
| <b>Total Revenue</b>        |                             | <b>194,020</b> |
| <br>                        |                             |                |
| <b>Appropriations</b>       |                             |                |
| 018-5503-409-01-11          | Regular Salaries            | 6,100          |
| 018-5503-409-01-44          | FICA                        | 470            |
| 018-5503-409-09-52          | Design AIP Projects         | 39,130         |
| 018-5503-409-09-60          | Construction - AIP Projects | 148,320        |
| <b>Total Appropriations</b> |                             | <b>194,020</b> |

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

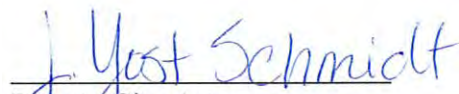
ADOPTED this \_\_\_ day of May, 2011.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney



**CITY OF LOVELAND**

BUDGET OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

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**AGENDA ITEM:** 13  
**MEETING DATE:** 4/19/2011  
**TO:** City Council  
**FROM:** Renee Wheeler, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

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**TITLE:**

Public Hearing and Consideration of an ordinance on First Reading enacting a supplemental budget and appropriation to the 2011 Loveland Urban Renewal Authority budget for the Facade Grant Program

**DESCRIPTION:**

This is an administrative action. The ordinance reappropriates the remaining balance of funding put in place for the program.

**BUDGET IMPACT:**

Yes  No

Fund balance is available for the appropriation.

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**SUMMARY:**

City Council provided general funds to seed the grant program. The remaining balance of the seed funds is \$43,870. These are reappropriated for facade grant requests that may be submitted in 2011.

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**LIST OF ATTACHMENTS:**

1. An ordinance enacting a supplemental budget and appropriation to the Loveland Urban Renewal Authority Budget to reappropriate the Facade Grant Program approved in 2010 but not completed.
-

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinance on First Reading

**REVIEWED BY CITY MANAGER:**

FIRST READING April 19, 2011

SECOND READING \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 LOVELAND URBAN RENEWAL AUTHORITY BUDGET FOR THE FAÇADE GRANT PROGRAM**

**WHEREAS**, the Authority’s 2010 budget included appropriations for grants not completed or closed out by the end of 2010, when the 2010 budget appropriations expired, requiring reappropriation in 2011 to permit expenditure of such funds in 2011 for grants approved but not completed in 2010; and

**WHEREAS**, the Authority also has received or has reserved funds not anticipated or appropriated at the time of the adoption of the Authority’s budget for 2011; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the Authority budget for 2011, as authorized by Section 11-6(a) of the Loveland City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That revenues and/or reserves in the amount of \$43,870 from fund balance in the Loveland Urban Renewal Authority Fund 037 are available for appropriation. Revenues in the total amount of \$43,870 are hereby reappropriated for the Façade Grant Program as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:



**Supplemental Budget  
2010 On-Going Projects and Capital Rollover  
Love land Urban Renewal Authority Fund 37**

|                             |               |               |
|-----------------------------|---------------|---------------|
| <b>Revenues</b>             |               |               |
| Fund Balance                |               | 43,870        |
| <b>Total Revenue</b>        |               | <b>43,870</b> |
| <b>Appropriations</b>       |               |               |
| 037-8004-409-04-02          | Façade Grants | 43,870        |
| <b>Total Appropriations</b> |               | <b>43,870</b> |

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

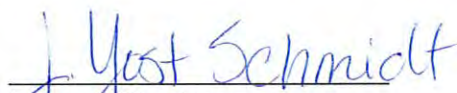
ADOPTED this \_\_\_ day of May, 2011.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney



**CITY OF LOVELAND**  
FINANCE DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 14  
**MEETING DATE:** 4/19/2011  
**TO:** City Council  
**FROM:** Renee Wheeler, Assistant City Manager/Finance Department  
**PRESENTER:** Renee Wheeler

**TITLE:**

Public Hearing and Consideration of;

- A. An ordinance on First Reading enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for the Employee Merit-Based Recognition Program.
- B. An ordinance enacting a supplemental budget and appropriation to the 2011 Ft. Collins-Loveland Municipal Airport budget for the employee merit-based recognition program.
- C. An ordinance enacting a supplemental budget and appropriation to the 2011 Loveland-Larimer Building Authority budget for the employee merit-based recognition program.

**DESCRIPTION:**

This is an administrative action. The positive General Fund budget performance both in terms of revenues in excess of the budget and expenditures below the budget allowed for the 2010 ending fund balance to exceed the projected ending fund balance by \$3.8 million. The proposal is to use one quarter of that additional fund balance to recognize employees with lump sum raises based on performance in 2010. The lump sum raise is preferred to a percentage added to the employees' base pay to prevent cumulative impacts on future year budgets.

**BUDGET IMPACT:**

Yes    No

The funding is from higher than anticipated fund balance at the end of the 2010 fiscal year.

**SUMMARY:**

Background:

City Council adopted a Financial Sustainability principle: *Maintain the City as an employer of choice, able to attract and retain high-quality employees.* This principle was one of six

principles that guide resource decision-making requiring a balance of values as an organization. Decisions related to pay increases are important for financial sustainability because personnel expenditures in the General Fund represent the largest portion of the budget. Using the General Fund Budget Summary, page 4-5 in the 2011 Adopted Budget, Personnel Services represent 66% of the total budget including transfers and capital and 73% of the budget without transfers and capital.

| <b>General Fund 2011 Adopted Budget Summary</b> |              |                |                    |
|---|--------------|----------------|--------------------|
|   |              | %<br>Operating | % Total<br>Adopted |
| Personnel Services                              | \$42,316,160 | 73%            | 66%                |
| Other Operating Expenditures                    | 15,462,110   | 27%            | 24%                |
| Total Operating                                 | \$57,778,270 |                |                    |
| Transfers                                       | 4,533,070    |                | 7%                 |
| Capital   | 1,933,380    |                | 3%                 |
| Total Adopted Budget                            | \$64,244,720 | 100%           | 100%               |

In 2009 the pool of money made available for merit based pay was reduced from 3.5% of salaries to 2.5% of salaries. In 2010 employees, with the exception of the sworn police, took a cut in pay. They were required to take four furlough days and were not granted raises. Over the two years changes in the benefit plan shifted around \$400,000 of medical expenses to the employees. 26 full time equivalent positions were eliminated while retaining the same levels of service, shifting work to other remaining staff. The Human Resources Director reported to City Council that there were a few positions that recruiting and retention of the employees had become a challenge and some positions that had fallen out of alignment with market (i.e., Power line employees).

Recommendation:

Staff recommends appropriating 2.5% of the salaries budget in each fund to recognize employees in the form of lump sum checks based on performance evaluations conducted at the end of 2010.

The commitment in the General Fund would equal \$910,570 of the \$3.8 million identified as fund balance in excess of the projected fund balance, leaving \$2.9 million that would allow for the flexibility to phase in Financial Sustainability strategies over the first couple of years if necessary.

The following chart demonstrates that there are sufficient funds available for appropriation in each fund that has salaries.

| Funds with Salaries             | Amount Available for Appropriation after 2011 Activity | Merit Pools for Consideration |
|---------------------------------|--|-------------------------------|
| General Fund 001                | \$10,303,767   | \$910,572                     |
| Conservation Trust Fund 029     | 4,548,243  | 2,730                         |
| Open Space Fund 032             | 10,539,260   | 3,440                         |
| Art in Public Places Fund 036   | 292,372  | 1,200                         |
| Water Enterprise Fund 041       | 1,929,776  | 69,810                        |
| Wastewater Enterprise Fund 042  | 2,741,222  | 51,240                        |
| Storm Water Enterprise Fund 043 | 634,174  | 27,840                        |
| Power Enterprise Fund 044       | 16,191,202   | 106,180                       |
| Golf Enterprise Fund 051        | 1,052,585  | 36,080                        |
| Vehicle Maintenance Fund 081    | 266,689  | 20,820                        |
| Risk Fund 089                   | 2,932,007  | 7,120                         |
| Solid Waste Enterprise Fund 094 | 3,981,417  | 39,660                        |
| Airport Fund 018                | 670,666  | 7,750                         |

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**LIST OF ATTACHMENTS:**

1. An ordinance enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for the Employee Merit-Based Recognition Program.
  2. An ordinance enacting a supplemental budget and appropriation to the 2011 Ft. Collins-Loveland Municipal Airport budget for the employee merit-based recognition program.
  3. An ordinance enacting a supplemental budget and appropriation to the 2011 Loveland-Larimer Building Authority budget for the employee merit-based recognition program.
- 

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinances on first reading.

**REVIEWED BY CITY MANAGER:**

**FIRST READING** April 19, 2011

**SECOND READING** \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR THE EMPLOYEE MERIT-BASED RECOGNITION PROGRAM**

**WHEREAS**, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2011; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2011, as authorized by Section 11-6(a) of the Loveland City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That revenues and/or reserves in the amount of \$910,570 in the General Fund 001; \$2,730 on Conservation Trust Fund 029; \$3,440 in the Open Space Fund 032; \$1,200 in the Art in Public Places Fund 036; \$69,810 in the Water Enterprise Fund 041; \$51,240 in the Wastewater Enterprise Fund 042; \$27,840 in the Storm Water Enterprise Fund 043; \$106,180 in the Power Enterprise Fund 044; \$36,080 in the Golf Enterprise Fund 051; \$20,820 in the Vehicle Maintenance Fund 081; \$7,120 in the Risk and Insurance Fund 089; and \$39,660 in the Solid Waste Enterprise Fund 094; from reserves are available for appropriation. These revenues are hereby appropriated for the Employee Merit-Based Recognition Program. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund - Merit Based Recognition Program**

|                             |                  |                |
|-----------------------------|------------------|----------------|
| <b>Revenues</b>             |                  |                |
| Fund Balance                |                  | 910,570        |
| <b>Total Revenue</b>        |                  | <b>910,570</b> |
| <b>Appropriations</b>       |                  |                |
| 001-5502-409-01-11          | Regular Salaries | 910,570        |
| <b>Total Appropriations</b> |                  | <b>910,570</b> |

**Supplemental Budget  
Conservation Trust Fund- Merit Based Recognition Program**

|                             |                  |              |
|-----------------------------|------------------|--------------|
| <b>Revenues</b>             |                  |              |
| Fund Balance                |                  | 2,730        |
| <b>Total Revenue</b>        |                  | <b>2,730</b> |
| <b>Appropriations</b>       |                  |              |
| 029-5136-409-01-11          | Regular Salaries | 2,730        |
| <b>Total Appropriations</b> |                  | <b>2,730</b> |

**Supplemental Budget  
Open Space Fund - Merit Based Recognition Program**

|                             |                  |              |
|-----------------------------|------------------|--------------|
| <b>Revenues</b>             |                  |              |
| Fund Balance                |                  | 3,440        |
| <b>Total Revenue</b>        |                  | <b>3,440</b> |
| <b>Appropriations</b>       |                  |              |
| 032-0745-409-01-11          | Regular Salaries | 3,440        |
| <b>Total Appropriations</b> |                  | <b>3,440</b> |

**Supplemental Budget  
Art in Public Places Fund -Merit Based Recognition Program**

|                             |                  |              |
|-----------------------------|------------------|--------------|
| <b>Revenues</b>             |                  |              |
| Fund Balance                |                  | 1,200        |
| <b>Total Revenue</b>        |                  | <b>1,200</b> |
| <b>Appropriations</b>       |                  |              |
| 036-5240-409-01-11          | Regular Salaries | 1,200        |
| <b>Total Appropriations</b> |                  | <b>1,200</b> |



**Supplemental Budget  
Water Enterprise Fund - Merit Based Recognition Program**

|                             |                  |               |
|-----------------------------|------------------|---------------|
| <b>Revenues</b>             |                  |               |
| Fund Balance                |                  | 69,810        |
| <b>Total Revenue</b>        |                  | <b>69,810</b> |
| <b>Appropriations</b>       |                  |               |
| 041-4520-409-01-11          | Regular Salaries | 69,810        |
| <b>Total Appropriations</b> |                  | <b>69,810</b> |

**Supplemental Budget  
Wastewater Enterprise Fund - Merit Based Recognition Program**

|                             |                  |               |
|-----------------------------|------------------|---------------|
| <b>Revenues</b>             |                  |               |
| Fund Balance                |                  | 51,240        |
| <b>Total Revenue</b>        |                  | <b>51,240</b> |
| <b>Appropriations</b>       |                  |               |
| 042-4520-409-01-11          | Regular Salaries | 51,240        |
| <b>Total Appropriations</b> |                  | <b>51,240</b> |

**Supplemental Budget  
Storm Water Enterprise Fund - Merit Based Recognition Program**

|                             |                  |               |
|-----------------------------|------------------|---------------|
| <b>Revenues</b>             |                  |               |
| Fund Balance                |                  | 27,840        |
| <b>Total Revenue</b>        |                  | <b>27,840</b> |
| <b>Appropriations</b>       |                  |               |
| 043-2310-409-01-11          | Regular Salaries | 27,840        |
| <b>Total Appropriations</b> |                  | <b>27,840</b> |

**Supplemental Budget  
Power Enterprise Fund Fund - Merit Based Recognition Program**

|                             |                  |                |
|-----------------------------|------------------|----------------|
| <b>Revenues</b>             |                  |                |
| Fund Balance                |                  | 106,180        |
| <b>Total Revenue</b>        |                  | <b>106,180</b> |
| <b>Appropriations</b>       |                  |                |
| 044-4520-409-01-11          | Regular Salaries | 106,180        |
| <b>Total Appropriations</b> |                  | <b>106,180</b> |

**Supplemental Budget  
Golf Enterprise Fund - Merit Based Recognition Program**

|                             |                  |               |
|-----------------------------|------------------|---------------|
| <b>Revenues</b>             |                  |               |
| Fund Balance                |                  | 36,080        |
| <b>Total Revenue</b>        |                  | <b>36,080</b> |
| <br><b>Appropriations</b>   |                  |               |
| 051-5101-409-01-11          | Regular Salaries | 36,080        |
| <b>Total Appropriations</b> |                  | <b>36,080</b> |

**Supplemental Budget  
Vehicle Maintenance Fund - Merit Based Recognition Program**

|                             |                  |               |
|-----------------------------|------------------|---------------|
| <b>Revenues</b>             |                  |               |
| Fund Balance                |                  | 20,820        |
| <b>Total Revenue</b>        |                  | <b>20,820</b> |
| <br><b>Appropriations</b>   |                  |               |
| 081-2361-409-01-11          | Regular Salaries | 20,820        |
| <b>Total Appropriations</b> |                  | <b>20,820</b> |

**Supplemental Budget  
Risk and Insurance Fund Fund - Merit Based Recognition Program**

|                             |                  |              |
|-----------------------------|------------------|--------------|
| <b>Revenues</b>             |                  |              |
| Fund Balance                |                  | 7,120        |
| <b>Total Revenue</b>        |                  | <b>7,120</b> |
| <br><b>Appropriations</b>   |                  |              |
| 089-1575-409-01-11          | Regular Salaries | 7,120        |
| <b>Total Appropriations</b> |                  | <b>7,120</b> |

**Supplemental Budget  
Solid Waste Enterprise Fund - Merit Based Recognition Program**

|                             |                  |               |
|-----------------------------|------------------|---------------|
| <b>Revenues</b>             |                  |               |
| Fund Balance                |                  | 39,660        |
| <b>Total Revenue</b>        |                  | <b>39,660</b> |
| <br><b>Appropriations</b>   |                  |               |
| 094-2355-409-01-11          | Regular Salaries | 39,660        |
| <b>Total Appropriations</b> |                  | <b>39,660</b> |

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

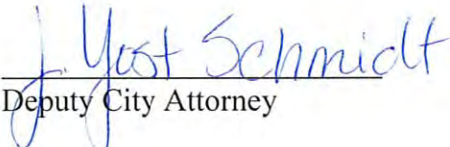
ADOPTED this \_\_\_ day of May, 2011.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney

FIRST READING April 19, 2011

SECOND READING \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 FT. COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET FOR THE EMPLOYEE MERIT-BASED RECOGNITION PROGRAM**

**WHEREAS**, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2011; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2011, as authorized by Section 11-6(a) of the Loveland City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That revenues and/or reserves in the amount of \$7,750 Airport Fund 018 from reserves are available for appropriation. Revenues in the total amount of \$7,750 are hereby appropriated for the Employee Merit-Based Recognition Program. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Airport Fund - Merit Based Recognition Program**

**Revenues**

|                      |              |
|----------------------|--------------|
| Fund Balance         | 7,750        |
| <b>Total Revenue</b> | <b>7,750</b> |

**Appropriations**

|                             |                  |              |
|-----------------------------|------------------|--------------|
| 001-5503-409-01-11          | Regular Salaries | 7,750        |
| <b>Total Appropriations</b> |                  | <b>7,750</b> |

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

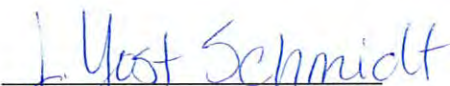
ADOPTED this \_\_\_\_ day of May, 2011.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney

**FIRST READING** April 19, 2011

**SECOND READING** \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 LOVELAND-LARIMER BUILDING AUTHORITY BUDGET FOR THE EMPLOYEE MERIT-BASED RECOGNITION PROGRAM**

**WHEREAS**, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2011; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2011, as authorized by Section 11-6(a) of the Loveland City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That revenues and/or reserves in the amount of \$2,580 in the Loveland-Larimer Building Authority Fund 026 are available for appropriation. Revenues in the total amount of \$2,580 are hereby appropriated for the Employee Merit-Based Recognition Program. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Larimer Loveland Building Authority - Merit Based Recognition Program**

|                             |                  |              |
|-----------------------------|------------------|--------------|
| <b>Revenues</b>             |                  |              |
| 026-0000-337-11-00          | Larimer County   | 520          |
| 026-0000-337-11-01          | City of Loveland | 2,060        |
| <b>Total Revenue</b>        |                  | <b>2,580</b> |
| <br>                        |                  |              |
| <b>Appropriations</b>       |                  |              |
| 026-2335-409-01-11          | Regular Salaries | 2,580        |
| <b>Total Appropriations</b> |                  | <b>2,580</b> |

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

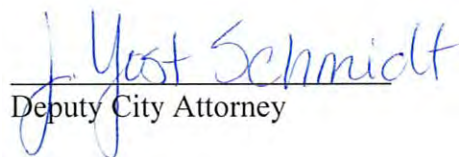
ADOPTED this \_\_\_\_ day of May, 2011.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney





**CITY OF LOVELAND**  
CITY COUNCIL

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

**AGENDA ITEM:** 15  
**MEETING DATE:** 4/19/2011  
**TO:** City Council  
**FROM:** Greg George, Development Services  
**PRESENTER:** Bob Paulsen, Current Planning Manager

**TITLE:**

- A. AN ORDINANCE AMENDING TITLES 16 AND 18 OF THE LOVELAND MUNICIPAL CODE BY REVISING PROVISIONS OF TITLES 16 AND 18 AND ENACTING A NEW CHAPTER 18.80 REGARDING APPEAL PROVISIONS
- B. AN ORDINANCE AMENDING TITLES 16 AND 18 OF THE LOVELAND MUNICIPAL CODE BY REVISING PROVISIONS OF TITLES 16 AND 18, WHICH RETAINS THE ZONING BOARD OF ADJUSTMENT HEARING OFFICER, AND ENACTING A NEW CHAPTER 18.80 REGARDING APPEAL PROVISIONS
- C. A RESOLUTION AMENDING THE CITY OF LOVELAND SITE DEVELOPMENT PERFORMANCE STANDARDS AND GUIDELINES ADOPTED OCTOBER 1989, UPDATED JANUARY 2000

**DESCRIPTION:**

A public hearing to consider a legislative action to:

- A. Adopt an ordinance on first reading: (i) amending Title 16 and Title 18 relating to appeals of subdivision, zoning and land use actions; (ii) adding Chapter 18.80 to consolidate and clarify appeal provisions; (iii) amending Chapter 18.60 concerning the Zoning Board of Adjustment; and (iv) amending Chapter 18.52 concerning Supplementary Regulations; and
- B. Adopt a resolution amending the appeal provisions in the Site Development Performance Standards and Guidelines to ensure procedural consistency.

**BUDGET IMPACT:**

Yes     No

**SUMMARY:**

The proposed code amendments provide clear, uniform and easy to find provisions for the appeal of subdivision, zoning and land use decisions. All appeal provisions are consolidated

and standardized in a new chapter of Title 18 which specifies appeal criteria, procedures and notice requirements. The amendments also revise provisions dealing with the Zoning Board of Adjustment to provide clearer criteria and procedures for granting variances and eliminate the ZBA hearing officer. Amendments to the Supplementary Regulations concerning administrative variations specify procedures and limitations for administrative approval of setback reductions. Amendments to the Site Development Performance Standards and Guidelines would ensure consistency with the amendments to the appeals procedures in the new chapter in Title 18.

The amendments were developed jointly by the Current Planning Division and the City Attorney's office. The amendments were reviewed and are supported by the Title 18 Committee. On February 28, 2011, the Planning Commission approved by a vote of 7-2 an alternative version of the ordinance amending Title 18 that would retain the Zoning Board of Adjustment Hearing Officer. The recommendation from City staff is to eliminate the Zoning Board of Adjustment Hearing Officer.

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**LIST OF ATTACHMENTS:**

- A. Ordinance amending Title 16 and 18 – staff recommendation
  - B. Ordinance amending Title 16 and 18 – Planning Commission recommendation
  - C. Resolution amending the Site Development Performance Standards and Guidelines
  - D. City Council staff memorandum, April 19, 2011
- 

**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motions for City Council action:

1. Move to accept the City staff recommendation and adopt on first reading: AN ORDINANCE AMENDING TITLES 16 AND 18 OF THE LOVELAND MUNICIPAL CODE BY REVISING PROVISIONS OF TITLES 16 AND 18 AND ENACTING A NEW CHAPTER 18.80 REGARDING APPEAL PROVISIONS; or
2. Move to accept the Planning Commission recommendation and adopt on first reading: AN ORDINANCE AMENDING TITLES 16 AND 18 OF THE LOVELAND MUNICIPAL CODE BY REVISING PROVISIONS OF TITLES 16 AND 18 WHICH RETAIN THE ZONING BOARD OF ADJUSTMENT HEARING OFFICER AND ENACTING A NEW CHAPTER 18.80 REGARDING APPEAL PROVISIONS; and
3. Move to adopt: A RESOLUTION AMENDING THE CITY OF LOVELAND SITE DEVELOPMENT PERFORMANCE STANDARDS AND GUIDELINES ADOPTED OCTOBER 1989, UPDATED JANUARY 2000.

**REVIEWED BY CITY MANAGER:**

First Reading: April 19, 2011

Second Reading: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING TITLES 16 AND 18 OF THE LOVELAND MUNICIPAL CODE BY REVISING PROVISIONS OF TITLES 16 AND 18 AND ENACTING A NEW CHAPTER 18.80 REGARDING APPEAL PROVISIONS.**

WHEREAS, City Council finds that updates to Titles 16 and 18 of the Loveland Municipal Code are necessary and required in the interest of the health, safety and welfare of the citizens of Loveland; and

WHEREAS, the Planning Commission held a public hearing regarding appeal provisions in Titles 16 and 18 of the Loveland Municipal Code; and

WHEREAS, City Council has received a recommendation from the Planning Commission regarding updates to the Code regarding appeal provisions, and the City Council desires to adopt such updates by amending Titles 16 and 18 and by adopting a new Chapter 18.80 regarding appeals.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, THAT:

**Section 1.** Chapter 16.04 of the Loveland Municipal Code is amended by the addition of a new Section 16.04.020 to read in full as follows:

**16.04.020 Penalty.**

Any person, firm or corporation violating any provisions of this title 16, upon conviction therefore, shall be fined not more than one thousand dollars or incarcerated not more than one year, or both. Each day during which the violation continues is deemed a separate offense.

**Section 2.** Title 16 of the Loveland Municipal Code is amended by the addition of the following definition to Section 16.08.010:

“Final decision” shall have the same meaning as set forth in Code section 18.80.020.

**Section 3.** Title 16 of the Loveland Municipal Code is amended by the addition of a new chapter 16.10 Appeals, to read in full as follows:

**Chapter 16.10**

**APPEALS**

**16.10.010 Appeals of Final Decisions.**

An appeal of a final decision by the director, other City staff decision maker, or the planning commission regarding any provisions in this title, shall be brought in accordance with Chapter 18.80 of this Code.

**Section 4.** Sections 16.16.030.B and 16.16.030.E of the Loveland Municipal Code are revised to read in full as follows:

**16.16.030 Review procedures, general.**

. . .

**B. Development Review.**

1. Submission of Application Signatures/Certified Lists.
  - a. Once the applicant has received comments on the sketch plan, the applicant may submit an application for the development review sought. Applications shall be submitted to the Current Planning Division on forms provided for this purpose. The application shall include all required supporting documentation as specified on submittal checklists provided by the Current Planning Division. Unless otherwise specified herein, the applicant shall provide the number of copies specified in the checklist. Applications shall be signed by all fee owners of the land described in the application; except, that where the fee is held by two or more owners as joint tenants or as tenants in common, such application may be signed by only one joint tenant or tenant in common. All other owners and lienholders who have an interest in the land described in the application shall be noted on the application.
  - b. At the time of filing a development review application requiring a public hearing, or where otherwise required under this title, the applicant shall submit to the Current Planning Division all information required pursuant to Section 16.16.070 and Tables 16.16.070-1 and 16.16.070-2.
  - c. Each application shall be submitted with the fee established for that application pursuant to resolution of the city council.
2. Application Submittal Date. The official application submittal date shall be the date on which the applicant submits a reviewable application. The director shall schedule the applicant for a meeting with the development review team upon determination that such application is reviewable. The director may

exempt applications for final plats, minor subdivisions, lot mergers, and boundary line adjustments from meeting with the development review team.

3. Applications Referred to Development Review Team/Determination of a Reviewable Application. The development center shall refer the reviewable application to the development review team members for their review. The development review team members shall comment on the application. Said comments shall be completed and compiled within approximately thirty days from the official application submittal date or by such time as required by the director. The director may require that any applicant for any development review under this title, reimburse the city for the cost of any legal or technical consultant fees incurred by the city in connection with reviewing the application. The application shall be deemed complete on the application acceptance date, which is the date that the director finds that the application contains adequate information on which to determine compliance with the review and design standards of this title and other applicable code provisions, city ordinances, comprehensive master plan, city policies, and state laws.
4. Written Comments to the Applicant. The development center shall make available to the applicant the development review team's comments a minimum of two working days prior to the development review team meeting or at such time as may be required by the director.
5. Development Review Team Meeting. On the scheduled date, the applicant shall meet with the development review team to discuss their comments. If the development review team determines that the application is not complete, the director may table further processing of the application and inform the applicant of the materials or revisions needed to make the application complete. The applicant shall submit a revised application no later than the deadline determined by the development review team. If the development review team finds that an application is not complete and cannot be made complete without revisions so extensive as to constitute a new application, the director may reject the application. Such application shall be resubmitted for development review under this title, in accordance with the applicable provisions of this title. The director will accept amendments to applications as long as they are submitted at least fifteen days prior to the scheduled development review team meeting. Nothing herein shall prevent the development review team, the planning commission, city council or director from requesting additional information in the course of the review if it is deemed necessary to determine compliance with the standards set forth in this title, or in Title 17 or 18 as applicable.
6. Scheduling Public Hearings. An application shall not be scheduled for planning commission or city council review or decision unless the director determines that the application is complete. Upon a finding that the application is complete, the director shall schedule the application for the next available planning commission or city council meeting, as applicable.

. . .

**E.** Appeal Procedure. Appeals from any final decision by the director or the planning commission shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 5.** Section 16.16.040.C of the Loveland Municipal Code is revised to read in full as follows:

**16.16.040 Staff review of certain applications.**

. . .

- C. Appeal Procedure.
  - 1. Appeals from any final decision by the director for final plats, minor subdivisions, boundary line adjustments and lot mergers shall be conducted by the planning commission in accordance with Chapter 18.80 of this Code.
  - 2. The appeal of a final decision of the planning commission to the city council shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 6.** Section 16.16.070.D.10 and section 16.16.070.E.2 of the Loveland Municipal Code are revised to read in full as follows:

**16.16.070 Public Notice Requirements.**

. . .

D. Content of Public Notice. . . .

10. For Director decision notices, a statement that interested parties may submit an appeal and the deadlines and requirements for filing an appeal, pursuant to Chapter 18.80 of this Code.

E. Mailed Notice. . . .

2. For all applications requiring mailed notice, the radius distances specified in Table 16.16.070-2 Area of Public Notice Distance by Application Type and Size, shall be used to determine the area to which such notice shall be given, except as provided in Sections 16.16.070.E. 3 and 4.

| Table 16.16.070-2 AREA OF MAILED NOTICE DISTANCE BY APPLICATION TYPE AND SIZE |                   |               |                       |
|---|-------------------|---------------|-----------------------|
| Application Type  | 20 acres or less  | 21 – 50 acres | Greater than 50 acres |
| Obsolete Subdivisions   | See Chapter 16.36 |               |                       |
| Preliminary Plat  | 500 ft.           | 750 ft.       | 1,000 ft.             |

|  |                   |         |         |
|--|-------------------|---------|---------|
| Minor Subdivision                        | 150 ft.           | 150 ft. | 150 ft. |
| Vacation (of easements or rights-of-way) | See Chapter 16.36 |         |         |

**Section 7.** Section 16.20.060.D of the Loveland Municipal Code is revised to read in full as follows:

**16.20.060. Preliminary Plat Review Procedure.**

. . .

D. Appeal Procedures of Planning Commission Decisions. An appeal under this section of a final decision of the planning commission shall be made to the city council and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 8.** Section 16.20.080.C.1 of the Loveland Municipal Code is revised to read in full as follows:

**16.20.080. Final plat review procedure.**

. . .

C. Final Plat Review.

1. Pursuant to the powers granted to the city in the Colorado Constitution and the city of Loveland Charter, the director is hereby assigned the power to approve all final plats. The director shall make final decision on the final plat application within thirty days after a complete final plat is submitted to the development center. The director shall make appropriate findings based on the applicable review standards, or adopted plans. Using the review standards set forth in this title, the director shall approve, approve with conditions or deny the application. All conditions of approval applicable to the final plat shall be included in a development agreement, which shall be recorded with Larimer County clerk and recorder concurrent with recordation of the final plat. Appeals of final decisions of the director shall be made to the planning commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 9.** Section 16.20.100 of the Loveland Municipal Code is revised to include an addition of a new Subsection E to read in full as follows:



**16.20.100 Minor subdivision review procedures.**

. . .

- E. Appeals from any final decision by the director for a minor subdivision shall be made to the planning commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 10.** Section 16.20.120 of the Loveland Municipal Code is revised to include an addition of a new Subsection D to read in full as follows:

**16.20.120 Simple plat review procedure.**

. . .

- D. Appeals from any final decision by the director for a simple plat shall be made to the planning commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 11.** Section 16.28.060 of the Loveland Municipal Code is revised to read in full as follows:

**16.28.060 Deed restriction in lieu of boundary line adjustment.**

- A. In the event the owner of property consisting of one or more adjacent lots and an adjacent unsubdivided parcel of land upon which a structure is located, wishes to obtain a building permit for either an accessory structure to be located on the property, an addition to the existing structure, or interior remodeling work without completing a boundary line adjustment, the owner may request that in lieu of a boundary line adjustment the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a boundary line adjustment. The deed restriction shall be released by the city upon completion of a boundary line adjustment combining all adjacent lots and un-subdivided parcels in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.
- B. Appeals from any final decision by the director for a deed restriction in lieu of a boundary line adjustment shall be made to the planning commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 12.** Section 16.32.060 of the Loveland Municipal Code is revised to read in full as follows:

**16.32.060 Deed restriction in lieu of lot merger.**

- A. In the event the owner of property, consisting of two or more adjacent lots and containing an existing residential use, wishes to obtain a building permit for either an accessory structure to be located on the property or an addition to the existing structure without completing a lot merger, the owner may request that in lieu of a lot merger the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a lot merger. The deed restriction shall be released by the city upon completion of a lot merger combining all adjacent lots in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.
- B. Appeals from any final decision by the director for a deed restriction in lieu of a lot merger shall be made to the planning commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 13.** Section 16.40.090 of the Loveland Municipal Code is revised to read in full as follows:

**16.40.090 Guarantee period.**

- A. All workmanship and materials (except materials provided by the city) for all required public improvements installed by the applicant (including, but not limited to the water supply system, sanitary sewage disposal system, storm drainage facilities, electrical distribution system, curbs, gutters, street pavement, sidewalks, street signs, survey monuments, landscaping, and pavement markings) shall be guaranteed to be free from defects by the applicant for a period of two years from the date of acceptance of the required improvement by the city, provided, that such defects are not the result of public abuse, misuse or natural causes, as determined by the city. In the event any other provision of this code or specifications adopted pursuant thereto shall require a guarantee of workmanship or materials or both for a different period of time, that provision regarding the longer period of guarantee shall govern. City inspection shall not relieve the property owner of such guarantee of workmanship and materials. Upon notification, the applicant shall promptly make all adjustments, repairs, or replacements in accordance with a repair plan approved by the city, which repair, in the opinion of the city, arose out of defects and became necessary during the guarantee period. The cost of all materials, parts, labor, transportation, supervision, special tools, and supplies required for replacement or repair of parts and for correction of defects shall be paid by the applicant, the contractor or by the holder of the approved financial security.
- B. This guarantee shall be extended to cover all repairs and replacements furnished under the guarantee, and the period of the guarantee for each repair or replacement shall be extended one year after installation or completion of the repair or replacement.
- C. If, within fifteen days after the city has notified the applicant of a defect, failure, or abnormality in the work, the applicant has not started to make the necessary repairs or adjustments or submitted a written objection to the city's request for repair work, the city is authorized to make the repairs or adjustments or to order the work be done by a third

party. The cost of the work shall be paid by the applicant. The director may authorize a temporary repair if necessary due to weather conditions or materials availability.

D. If an applicant has cause to object to the city's request for repair work, such objection shall be made in writing to the director. If the director confirms that the repair is necessary because of a defect in the applicant's materials or workmanship, the applicant shall complete the repairs as directed by the city.

E. In the event of an emergency, where in the judgment of the city, delay would cause serious loss or damage, repairs, or adjustments may be made by the city or a third party chosen by the city without advance notice to the applicant, the cost of the work shall be paid by the applicant or the holder of the financial security.

F. Within thirty days prior to expiration of the guarantee period, the applicant shall request, in writing, that the city verify that no defects exist. The city shall, within thirty days, inspect the completed work and, if no defects, failures, or abnormalities are observed or detected, the city shall cause the bond, deposit, escrow agent, or letter of credit to be released.

G. In the event that the applicant fails to complete any required repair work, or fails to reimburse the city for legitimate repair work performed by the city on behalf of the applicant, or fails to enter into an agreement with city regarding the satisfactory resolution of the obligation, the applicant shall be prohibited from participating in any further land development activity in the city of Loveland until such repair, reimbursement, or agreement is completed to the satisfaction of the director. Both the developer of the project and the contractor performing the defective work shall be subject to this restriction. The developer shall be prohibited from receiving any additional building permits for any lots owned by the developer, as well as from submitting or continuing the processing of any land development applications for review and consideration by the city. The contractor shall be subject to the issuance of a stop work order issued by the city to the contractor for any work within any city right-of-way or easement. Appeals from any final decision by the director shall be made to the planning commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 14.** The introductory language to Chapter 18.04 of the Loveland Municipal Code is revised to read in full as follows:

\*For statutory provisions regarding zoning of cities and towns generally, see CRS § 31-23-201 et. seq. ; for provisions authorizing local authorities to adopt zoning regulations, see CRS § 31-23-301 et. seq.

**Section 15.** Section 18.04.050 of the Loveland Municipal Code is revised to read in full as follows:

**18.04.050 Building, structure, or use exempt.**

Any building, structure, or use, as to which satisfactory proof shall be presented to the city council, that the present or proposed situation of such building, structure, or use is reasonably necessary for the convenience or welfare of the public, may be exempted from the operation of this title by the city council after conducting a public hearing in accordance with Chapter 18.05 with a mailed notice requirement of 300 feet. Upon the

council's making such required findings that exemption of the building, structure or use from the operation of this title is reasonably necessary for the convenience or welfare of the public, the council shall adopt a resolution exempting the building, structure or use from operation of this title.

**Section 16.** Section 18.32.050 of the Loveland Municipal Code is revised to read in full as follows:

**18.32.050 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the current planning manager for review and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's final decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 17.** Section 18.36.025 of the Loveland Municipal Code is revised to read in full as follows:

**18.36.025 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the current planning manager for review and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's final decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 18.** Section 18.40.055 of the Loveland Municipal Code is revised to read in full as follows:

**18.40.055 Appeal of an administrative or planning commission final decision.**

A. Appeal of Administrative Decision.

1. Any party-in-interest as defined in Chapter 18.80, may appeal to the planning commission a final decision of the planning division on a type 2 zoning permit in accordance with the procedures set forth in chapter 18.80 so long as the appeal is filed within ten (10) days of the mailing of a notice from the planning division office that a type 2 zoning permit will be issued.
2. Upon the filing of an appeal, the permit application shall be suspended pending conclusion of the appeal process. The appeal shall be scheduled for a public hearing in accordance with chapter 18.80, at which time the applicant shall have the burden of proving that the applicant is entitled to a permit under the standards set forth in Sections 18.40.030K and 18.40.005.
3. Following the close of the public hearing, the planning commission may deny the application for a special review permit or direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the planning commission deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed with such condition or restriction.

B. Appeal of Planning Commission Decision.

1. Any party-in-interest as defined in chapter 18.80, may appeal a final decision of the planning commission to the city council in accordance with the procedures set forth in chapter 18.80, within ten (10) days following the planning commission’s final decision.
  
2. If the city council determines that a decision to deny a type 3 zoning permit should be reversed, the city council shall direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the council deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed with such condition or restriction. If the city council determines that a decision to issue a type 3 zoning permit should be reversed, no such permit shall be issued and the application shall be denied. If the city council determines that certain conditions or restrictions should or should not have been imposed upon the type 3 zoning permit, it shall direct the planning division to issue the type 3 zoning permit subject to a modification in the conditions or restrictions. If the council determines that the conditions and restrictions should remain as provided by the planning commission, then it shall direct the planning division to issue the type 3 zoning permit without modification. In making its decision on the appeal, the city council shall consider the standards in Sections 18.40.030K and 18.40.005.

**Section 19.** Section 18.41.050.E.3 of the Loveland Municipal Code is revised to read in full as follows:

**18.41.050 Procedures for approval of a planned unit development.**

. . .

E. Preliminary Development Plan Approval.

. . .

3. Final Decisions and Appeals.
  - a. The effective date of the planning commission's final decision shall be the date that the planning commission adopts its written findings and conclusions. The planning commission shall issue findings and conclusions in support of any decision within thirty days of its decision. Any party-in-interest as defined in chapter 18.80, may file a written notice of appeal with the planning division within ten (10) days of the effective date of the planning commission's final decision. Upon the filing of a notice of appeal, the appeal shall be scheduled for a full public hearing in accordance with chapter 18.80. At the public hearing, the city council shall approve, approve with conditions, or disapprove the matter, considering the same standards as prescribed for the planning commission in this Title 18.

- b. If there is no applicable general development plan for the development, then the planning commission shall only make a recommendation to the city council regarding the approval, conditional approval or denial of the preliminary development plan. The council shall proceed in the same manner as in the case of general development plans as provided in Section 18.41.050.D.1-10.;

**Section 20.** Section 18.41.050.F.3 of the Loveland Municipal Code is revised to read in full as follows:

**18.41.050 Procedures for approval of a planned unit development.**

. . .

F. Final Development Plan Approval.

. . .

- 3. If the chief planner approves the final development plan, he shall issue an approval of final development plan which shall incorporate by reference the final development and shall be recorded in the real property records of Larimer County without due delay. The final development plan shall be filed with the building division and be available for public inspection. If the chief planner denies approval of the final development plan, he shall communicate a written notice of denial to the applicant setting forth the basis for the denial. Within ten days of the date the chief planner mails the notice of denial to the applicant, the applicant may file an appeal of the denial in accordance with chapter 18.80 to the planning commission, which shall hear the matter in accordance with the procedures set forth in chapter 18.80, except that no further public notice of the appeal shall be required. Both the chief planner and the applicant shall appear before the planning commission and be given an opportunity to speak to the issues. Except as permitted by a majority vote of the planning commission members present at the meeting, no other person shall be entitled to address the planning commission. The planning commission shall consider the same factors used by the chief planner when making his determination;

**Section 21.** Section 18.41.060 of the Loveland Municipal Code is repealed in its entirety.

**Section 22.** Section 18.41.090 of the Loveland Municipal Code is repealed in its entirety.

**Section 23.** Section 18.42.030.A of the Loveland Municipal Code, (but not including Table 18.42-1 Parking Spaces Required), is revised to read as follows:

**18.42.030 Spaces required.**

. . .

A. Upon submittal of written justification by the applicant, the current planning manager may allow application of an alternative standard, different than a Type 2 standard, provided the current planning manager determines the following:

- 1. The applicant has demonstrated that either:
  - a. Site-specific, physical constraints necessitate application of the alternative standard, and such constraints will not allow a reasonable use of the property without application of such alternative standard; or
  - b. The alternative standard achieves the intent of the subject Type 2 standard to the same or greater degree than the subject standard, and results in equivalent or greater benefits to the community as would compliance with the subject standard.
- 2. Granting of alternative compliance and appeal of final decision.
  - a. Whenever the current planning manager grants alternative compliance, the current planning manager shall formulate a written statement of findings based on the above criteria for such action. Such statement shall be placed in the development application file.
  - b. Final decisions by the current planning manager with respect to such alternative compliance may be appealed to the planning commission in accordance with chapter 18.80. The planning commission when hearing such an appeal, shall apply the standards set forth in Section 18.60.020.

**Section 24.** Section 18.45.090.A.1 of the Loveland Municipal Code is revised to read in full as follows:

**18.45.090 Nonconforming buildings or uses.**

. . .

1. Any nonconforming use of property may be expanded, provided that such expansion is approved by the public works director. Any appeal of the public works director’s final decision shall be made to the planning commission in accordance with chapter 18.80 of this Code.

**Section 25.** Section 18.48.020.G of the Loveland Municipal Code is revised to read in full as follows:

- G. Appeal.
  - 1. Appeal of director’s decision. Any applicant or member of the neighborhood may appeal a final decision of the director regarding the granting or denial of a business occupancy permit so long as the appeal is filed with the city within ten days of the date that a notice of intent to issue a business occupancy permit was mailed by the director, or the permit was denied. Upon the filing of an appeal, the permit application shall be suspended pending conclusion of the appeal process. Appeals shall be conducted by the planning commission in accordance with chapter 18.80 of this Code. The



applicant shall be notified of the appeal, and shall be responsible for sending a notice to the members of the neighborhood. The notice shall be in a form approved by the city and shall be mailed a minimum of fifteen days in advance of the scheduled public hearing.

- 2. Planning Commission consideration. At the appeal hearing, the planning commission shall follow the procedures set forth in chapter 18.80, and shall consider the application, the findings and determinations of staff, and take public testimony regarding the proposed home occupation. The planning commission shall review the application for compliance with the provisions of this code and other adopted regulations, the compatibility of the application with the character of the surrounding neighborhood and adverse influences that might result from approval of the application. The planning commission may either approve, approve with modifications or conditions or deny the application. The planning commission’s final decision may be further appealed to the city council in accordance with chapter 18.80.

**Section 26.** Section 18.48.020.I of the Loveland Municipal Code is revised to read in full as follows:

- I. Revocation of Permit and Appeal. A business occupancy permit may be revoked by the city if the city finds that the home occupation no longer conforms to the provisions of this section or the conditions of approval of the business occupancy permit. A business occupancy permit may also be revoked upon a determination by the city that the mailing list was faulty or the applicant failed to follow the application, review and appeal process. Notification to the applicant shall include findings in support of the revocation and the applicant's rights of appeal. The written notification of revocation shall be mailed to the last known address of the permit holder. The date of the mailing shall be the date of notification. The business occupancy permit holder may appeal the city's decision to the planning commission as provided for in chapter 18.80.

**Section 27.** Section 18.50.100.A.4.h of the Loveland Municipal Code is revised to read in full as follows:

**18.50.100 Sign regulations in nonresidential zones.**

. . .

- h. A request for variance to the maximum sign area, height or setback for a sign containing an electronic message module shall be heard by the Zoning Board of Adjustment in accordance with the procedures specified in Chapter 18.60. In addition to the findings specified Section 18.60.040, before granting any request, the Board shall find that:

1. The proposed area, setback and/or height of the electronic message sign module is the minimum required to be fully visible from the adjacent arterial or interstate roadway right-of-way; and
2. Traffic safety conditions will not be diminished by the increased square footage, increased height or decreased setback of the electronic message sign module; and
3. There are no reasonable alternatives to the increased size, height, setback and/or design of the electronic message sign.

**Section 28.** Section 18.50.100.B.11 of the Loveland Municipal Code is revised to read in full as follows:

**18.50.100 Sign regulations in nonresidential zones.**

. . .

11. Appeal of a Planning Division Decision. Should the applicant for a planned sign program not be satisfied with the decision of the planning division, the applicant shall have the right to appeal the final decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 29.** Section 18.50.150.B of the Loveland Municipal Code is revised to read in full as follows:

**18.50.150 Nonconforming signs.**

. . .

- B. Prohibited, illegal, nonconforming, abandoned or hazardous signs are declared nuisances and shall not be allowed within the city nor continued by variance. If any person fails to comply with the provisions of this chapter, in addition to the penalty provided therefor, a written order may be served upon the owner or agent in charge of such property, such order to be served personally or by mail, requiring the abatement of the nuisance within fifteen days, excluding weekends and official holidays, after mailing such notice. Such notice shall also advise the owner or agent of his or her right to appeal pursuant to chapter 18.80. If the abatement has not occurred within the stated time and an appeal has not been filed pursuant to the provisions of chapter 18.80, then the city may remove said sign, provided that the sign is either an off-premise sign, portable sign, free standing sign made of paper, balloons, pennants or banners, and charge the direct cost incurred by the city for removal of the sign, including five percent for inspection and other incidental costs in connection

therewith. Such assessment shall be a lien upon the land until such assessment is paid. In addition to any other means provided by law for collection, if any such assessment is not paid within thirty days after it is made and notice thereof is mailed, the same may be certified by the city clerk to the county treasurer and by him placed upon the tax list for the current year, and thereby collected in the same manner as other taxes are collected, with ten percent penalty thereon to defray the cost of collection.

**Section 30.** Section 18.50.190 of the Loveland Municipal Code is revised to read in full as follows:

**18.50.190 Appeals.**

A final decision of the current planning manager relative to the provisions of this chapter may be appealed to the planning commission in accordance with chapter 18.80 of this title. The decision of the current planning manager shall be upheld unless the planning commission finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious. Any appeal of the planning commission's final decision to the city council shall be made in accordance with Chapter 18.80 of this code and the city council shall uphold the decision of the current planning manager unless the city council finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious.

**Section 31.** Section 18.52.020 of the Loveland Municipal Code is revised to read in full as follows:

**18.52.020 Supplementary yard regulations.**

A. The purpose of a setback creating a yard is for the preservation of light and air to adjoining properties, fire protection, maintenance of property, preservation of open space and the retention of a visually cohesive pattern established by buildings and the spaces which separate them. To maximize the amount of open space on a lot and/or the beneficial use of the property, the current planning manager may approve a reduction of up to thirty-three percent (33%) of a required setback, so long as the current planning manager determines and makes written findings that:

1. The alternative setback would be in harmony with the spirit of this title;
2. The alternative setback would not limit the use or enjoyment of nearby property;
3. A letter of non-objection to the alternative setback is submitted from all adjacent property owners; and
4. A letter of non-objection to the alternative setback is submitted by other potentially impacted property owners, as determined by the current planning manager, who own property that falls wholly or partially within 150 feet of the subject property.

B. The front yard in all residential zones may be reduced by five feet for garages where the vehicle access door does not face directly onto the street. This allowance shall not apply to properties within a planned unit development or special review that contain specific yard provisions.

C. The following items may extend into required yards if determined to be incidental and harmless to adjacent properties by the current planning manager:

1. Architectural features including cornices, eaves, bay windows, an exterior chase for a fireplace or other similar features;
2. At grade uncovered decks and patios that are exempt from building permit requirements; and
3. Fire escapes that extend into the required rear yards by no more than six feet.

**Section 32.** Section 18.53.020 of the Loveland Municipal Code is revised to read in full as follows:

**18.53.020 Compliance.**

- A. Type 1 Standards. Compliance with the Type 1 standards set forth in this Chapter 18.53 is mandatory, unless a variance is granted pursuant to Chapter 18.60.
- B. Type 2 Standards.
  1. Alternative compliance. Compliance with the Type 2 standards set forth in this Chapter 18.53 is mandatory, unless the current planning manager grants alternative compliance in accordance with the following provisions. The current planning manager may allow application of an alternative standard, different than a Type 2 standard, provided the current planning manager determines that:
    - a. The applicant has demonstrated that either:
      - i. Site-specific, physical constraints necessitate application of the alternative standard, and such constraints will not allow a reasonable use of the property without application of such alternative standard; or
      - ii. The alternative standard achieves the intent of the subject Type 2 standard to the same or greater degree than the subject standard, and results in equivalent or greater benefits to the community as would compliance with the subject standard.
  2. Statement of findings. Whenever the current planning manager grants alternative compliance, the current planning manager shall formulate a written statement of findings based on the above criteria for such action. Such statement shall be filed in the development application file.
  3. Appeals. Final decisions by the current planning manager with respect to such alternative compliance may be appealed to the planning commission in accordance with chapter 18.80.

**Section 33.** Sections 18.54.050 and 18.54.060 of the Loveland Municipal Code are revised to read in full as follows:

**18.54.050 Request for exception.**

The owner of the proposed building or structure may request an exception from the height limitations imposed by this chapter. A request for an exception shall be made

to the planning commission. The planning commission shall hold a public hearing on such request, which hearing shall be noticed in accordance with Section 16.16.070 of this code.

Before granting any request, the Planning Commission shall find that:

- A. The requested exception allows adequate light and air to the adjacent neighborhood; and
- B. The requested exception is compatible with the character of the surrounding neighborhood; and
- C. The requested exception will not be injurious to the adjacent neighborhood or otherwise detrimental to the public health, safety and welfare; and
- D. The requested exception is consistent with the intent of the zoning district and the entire zoning ordinance.

**18.54.060 Appeal to city council.**

Any party-in-interest, as defined in section 18.80.020, may appeal the final decision of the planning commission to the city council. The city council shall hold a public hearing on such appeal, which appeal shall be held in accordance with chapter 18.80. Using the criteria set forth in section 18.54.050, the city council may affirm, modify or reverse the planning commission.

**Section 34.** Chapter 18.60 of the Loveland Municipal Code is repealed in its entirety and reenacted to read in full as follows:

**ZONING BOARD OF ADJUSTMENT\***

**Sections:**

- 18.60.010 Board of adjustment established.**
- 18.60.020 Powers and duties.**
- 18.60.030 General Variance Review Criteria.**
- 18.60.040 Sign Variance Review Criteria.**
- 18.60.050 Applications.**
- 18.60.060 Procedure.**
- 18.60.070 Notice.**

\*For statutory provisions regarding boards of adjustment, see CRS §§ 31-23-301 and 31-23-307.

**18.60.010 Board of adjustment established.**

The planning commission shall serve as the board of adjustment for the city.

**18.60.020 Powers and duties.**

The board of adjustment shall have the powers and duties to grant variances from certain standards set forth in this title 18 subject to and in compliance with this chapter and the laws of the state. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions of the title so that the spirit of the title is

observed, public safety and welfare secured, and substantial justice done. The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:

- A. Standards for lot area, lot dimensions, and setback requirements;
- B. Square footage of accessory structures;
- C. Percentage of open space; and
- D. Setbacks for a freestanding sign, spacing between freestanding signs and the area for freestanding and wall mounted signs.

After considering if the proposed variance meets the applicable criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions, or deny the application.

#### **18.60.030 General Variance Review Criteria**

To approve a zoning variance application, the board of adjustment shall consider the following review criteria and find that each criterion has been met or determined to be inapplicable:

- A. There are unique circumstances or conditions that are particular to or related to the land or structure for which the variance is requested. The circumstances may include, but are not limited to, exceptional topographic conditions, the shape or dimensions of the property, or the existence of mature landscaping or natural features that impact the property;
- B. The special circumstances are not the result of actions or inactions by the applicant or the current owner;
- C. The strict interpretation and enforcement of the provisions of the code would cause an unnecessary or undue hardship;
- D. Granting the variance is the minimum action needed to accommodate or alleviate the difficulty or hardship involved;
- E. The variance would not substantially impact the reasonable use and enjoyment or development of other property in the vicinity of the subject land or structure;
- F. The variance would not authorize any use in a zoning district other than a use specifically permitted in such zoning district; and
- G. The variance would not waive or modify the requirements of any use approved by special review.

#### **18.60.040 Sign Variance Review Criteria**

A. Variances to the requirements of Chapter 18.50 shall not be permitted, except as related to the requirements concerning the setback of a freestanding sign, the spacing between freestanding signs, or the maximum sign area. To approve a zoning variance application to Chapter 18.50, the board must consider the following review criteria and find that each criterion has been met.

- 1. There are special physical circumstances or physical conditions, including, without limitation, buildings, topography, vegetation, sign structures, or other physical features on adjacent properties or within the adjacent public right-of-way

that would substantially restrict the effectiveness of the sign in question, and such special circumstances or conditions are unique to the business to which the applicant desires to draw attention and do not apply generally to all businesses in the area;

2. The variance would be consistent with the purposes set forth in Section 18.50.010 and would not adversely affect the neighborhood or other businesses within the vicinity in which the subject business is located; and

3. The variance is the minimum necessary to permit the applicant to reasonably draw attention to its business.

B. In addition to the above criterion, for signs that contain an electronic message module, the board must consider the review criteria in Section 18.50.100.A.4.h and find that each criterion has been met.

#### **18.60.050 Applications.**

Any person seeking action or review upon any matter within the jurisdiction of the board of adjustment, shall make an application on forms provided by the Current Planning Division. The application shall be accompanied by such supporting material as may be required. The applicant shall also pay, at the time of filing of the application, any required filing fee as established by resolution of the city council.

#### **18.60.060 Procedure.**

The board of adjustment shall conduct public hearings on matters coming before the board. Within thirty (30) days after the conclusion of any such hearing, the board shall submit its findings and order to the applicant and all parties participating in the hearing. The findings and order of the board may be appealed to city council by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the current planning division within ten (10) days of the mailing of the findings and order. City Council shall consider any such appeal at a public hearing noticed in accordance with Section 18.80.050.C and conducted in accordance with Section 18.80.090. At the conclusion of the public hearing, city council may approve, approve with conditions, or deny the variance. Unless otherwise stated in the findings and order, or in the final decision of city council, all permits or actions authorized as a result of an approval of a variance must be initiated within six months of the date such findings and order became final. Upon written request by the applicant, an additional six months may be granted by the current planning manager for initiating such permits or actions. In reviewing the proposed time extension, the current planning manager shall consider the following criteria:

- A. Has there been a change of zoning for the site, or for any property adjacent to the site since the original approval?
- B. Has a change of use taken place on the site or on any adjacent property since the original approval, or is a change of use proposed for the site which would be divergent from the use shown in the application documents for the original variance?



- C. Have there been changes in the regulations and requirements specified in the Loveland Municipal Code which are applicable to the site and which should be addressed prior to the development of the site?
- D. Has the ownership of any adjacent property changed?
- E. Will the granting of the extension be detrimental to the public health, safety, or general welfare?
- F. Will the granting of the extension be in keeping with the purposes set forth in this title to the same degree as intended in the original approval?

**18.60.070 Notice.**

Notice requirements for appeals shall be provided in accordance with chapter 18.80. All other notices required by this Chapter shall be provided pursuant to Chapter 18.05.

**Section 35.** Section 18.68.045 of the Loveland Municipal Code is revised to read in full as follows:

**18.68.045 Code Enforcement Guidelines**

A duly appointed peace officer or code enforcement officer of the City may enforce the provisions of this title and of Titles 15 and 16 of the city code by the issuance of a summons and complaint as provided in Rule 204 of the Colorado Municipal Courts Rules of Procedure.

**Section 36.** Section 18.68.050.A of the Loveland Municipal Code is revised to read in full as follows:

**18.68.050 Violation.**

. . .

- A. Any violation of any of the provisions of this title or of any agreement or development plan approved under this title or under title 16, exists in any building, other structure or tract of land; or

**Section 37.** Section 18.68.070 of the Loveland Municipal Code is revised to read in full as follows:

**18.68.070 Penalty.**

Any person, firm or corporation violating any provisions of this title, upon conviction therefore, shall be fined not more than one thousand dollars or incarcerated not more than one year, or both. Each day during which the illegal erection, construction, reconstruction, alteration, maintenance, use, or any other violation of this title continues, is deemed a separate offense.

**Section 38.** A new chapter 18.80 regarding Appeals is added to the Loveland Municipal Code to read in full as follows:

## **APPEALS**

**18.80.010 Purpose**

**18.80.020 Definitions**

**18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal**

**18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision**

**18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision**

**18.80.060 Notice of Appeal Requirements**

**18.80.070 Cost of Appeal**

**18.80.080 Record on Appeal**

**18.80.090 Procedure at Hearing**

### **18.80.010 Purpose.**

This Chapter shall govern the procedures for appeals from any Final Decision made under Title 16 or Title 18 of this Code.

### **18.80.020 Definitions.**

The following words, terms and phrases, when used in this Title 18, shall have the meanings hereafter ascribed to them in this Chapter unless the context requires otherwise:

*Appellant* shall mean a Party-in-Interest who has filed a Notice of Appeal under the provisions of this Chapter.

*Applicant* shall mean a Person that has submitted to the City an application related to the development, zoning or subdivision of real property in the city as authorized or required under the provisions of Title 16 or Title 18 and which application is the subject of appeal under this Chapter.

*City Staff Decision Maker* shall mean any City staff member granted authority to make decisions under titles 16 and 18 of this Code.

*City Council* shall mean the City Council of the City of Loveland.

*Current Planning Division* shall mean the Current Planning Division for the City of Loveland Development Services Department.

*Days* shall mean all calendar days including Saturday and Sunday. Any computation of days under this Chapter shall not include the date a Final Decision is made. If a filing deadline falls upon a Saturday, Sunday or other legal holiday when City offices are closed, the filing deadline shall continue to the following day when City offices are open.

*De Novo Hearing* shall mean a new public hearing at which new and additional evidence may be presented.

*Director* shall mean the City's Director of Development Services or his or her designee.

*Evidence* shall mean documentary, electronic or testimonial evidence relevant to any application that was the subject of a final decision under the provisions of Title 16 or Title 18, presented at a hearing to support or refute a particular proposition or conclusion. *Evidence* shall not include argument as to how information offered as evidence should be viewed or interpreted.

*Effective Date of the Final Decision*, as it pertains to a City Staff Decision Maker's or Director's Final Decision, shall mean the date the City Staff Decision Maker or Director mails his or her written decision to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this title to be mailed. As this phrase pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean the date on which the Board or Commission adopts its written findings and conclusions.

*Final Decision*, as it pertains to a City Staff Decision Maker or the Director, shall mean a decision or action by the City Staff Decision Maker or Director under Title 16 or Title 18 that the City Staff Decision Maker or Director has reduced to writing and has promptly mailed to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this Code to be mailed. As this term pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean a decision or action by the Board or Commission under this Code for which the Board or Commission has adopted written findings and conclusions. A *Final Decision* shall not include any decision made by a City Staff Decision Maker or the Director that is a recommendation to the Planning Commission or to the City Council, or a decision by the Planning Commission under this Code that constitutes a recommendation to City Council.

*Notice of Appeal* shall mean an Appellant's written request for an appeal of a Final Decision submitted in the form required by Section 18.80.060.

*Party-in-Interest*, as it pertains to an appeal under this Chapter of a Final Decision by a City Staff Decision Maker or the Director, shall mean: the Applicant; any person required in Title 16 or this Title 18 to be mailed the City Staff Decision Maker's or Director's written Final Decision; two or more Planning Commission members; or two or more City Council members. As this term pertains to an appeal under this Chapter of a Final Decision by the Zoning Board of Adjustment or the Planning Commission, it shall mean: the Applicant, any city staff member, any Person required in Title 16 or this Title 18 to be mailed notice of the Zoning Board of Adjustment or Planning Commission's public

hearing; any Person who provided written or verbal testimony at the Zoning Board of Adjustment or Planning Commission's public hearing; or two or more City Council members. For an appeal of a Final Plat for a major subdivision or a Final Development Plan, only the Applicant shall be considered a Party-in-Interest with standing to appeal.

*Person* shall mean an individual, corporation, partnership, limited liability company or other legal entity.

*Planning Commission* shall mean the City of Loveland Planning Commission established pursuant to Section 2.60.080 of this Code.

*Record* shall mean all relevant documents reviewed by a previous Board, Commission or City Staff Decision Maker, and any transcript or written record of any such previous hearing.

*Zoning Board of Adjustment* shall mean the City of Loveland Zoning Board of Adjustment established pursuant to Section 18.60.010 of this code.

**18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal.**

A. An appeal of a Final Decision may be filed pursuant to sections 18.80.040 and 18.80.050 of this Chapter. Upon the filing of an appeal, any application process with the City pertaining to the subject matter being appealed shall be suspended while the appeal is pending. Any action taken in reliance upon any decision of a Board, Commission or other City Staff Decision Maker that is subject to appeal under the provisions of this Chapter shall be totally at the risk of the Person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action taken during said period of time.

B. Except for appeals by members of the City Council, the permissible grounds for appeal shall be limited to allegations that the Board, Commission or other City Staff Decision Maker committed one (1) or more of the following errors:

- (1) Failure to properly interpret and apply relevant provisions of the Municipal Code or other law; or
- (2) Failure to conduct a fair hearing in that:
  - a. The Board, Commission or other City Staff Decision Maker exceeded its authority or jurisdiction as contained in the Municipal Code or Charter;
  - b. The Board, Commission or other City Staff Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading; or

c. The Board, Commission or other City Staff Decision Maker improperly failed to receive all relevant evidence offered by the Appellant.

C. Appeals filed by members of the City Council need not include specific grounds for appeal, but shall include a general description of the issues to be considered on appeal. Council members who file an appeal shall not participate in deciding the appeal.

**18.80.035 Review of Notice of Appeal by City Attorney.**

Within seven (7) days of the date of the filing of the notice of appeal, the notice shall be reviewed by the City Attorney for any obvious defects in form or substance. A notice of appeal which fails to conform to the requirements of Section 18.80.030 shall be deemed deficient. The City Manager shall notify the appellant in writing of any such deficiency, which notice shall be mailed no more than seven (7) days from the date of the filing of the notice of appeal. The appellant shall have seven (7) days from the date of mailing of the notice of deficiency to cure such deficiency. If the deficiency is cured, the date the revised notice of appeal is received shall be considered the date of the filing of the notice of appeal. If the appellant does not cure the deficiency within said period of time, the appeal may be dismissed if, in the judgment of the City Manager, the notice of appeal does not provide adequate information to allow the parties involved to prepare for the hearing on the appeal.

**18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision.**

A. A Party-in-Interest may appeal any final decision by the Director or other City Staff Decision Maker to the Planning Commission.

B. To appeal a City Staff Decision Maker or Director's Final Decision to the Planning Commission, a Party-in-Interest must file a notice of appeal with the Current Planning Division within ten (10) days of the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in the dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the Planning Commission not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The Planning Commission shall conduct the appeal hearing as a De Novo hearing and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the Planning Commission may

uphold, reverse or modify the Final Decision being appealed. The Planning Commission shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions concerning the appeal.

**18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision.**

A. A Party-in-Interest may appeal any Final Decision by the Zoning Board of Adjustment or the Planning Commission to the City Council.

B. To appeal a Final Decision by the Zoning Board of Adjustment or Planning Commission to the City Council, a Party-in-Interest must file a Notice of Appeal with the Current Planning Division within ten (10) days of the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the City Council not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The property owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The City Council shall conduct the appeal hearing as a De Novo Hearing, and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the City Council may uphold, reverse or modify the Final Decision being appealed. The City Council may also remand the appeal to the Zoning Board of Adjustment or the Planning Commission with directions for the Zoning Board of Adjustment or Planning Commission's further consideration of the matter. If the City Council upholds, reverses or modifies a Final Decision made by the Zoning Board of Adjustment or the Planning Commission, the City Council shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions. The City Council's written findings and conclusions shall be considered the City Council's Final Decision for purposes of any appeal of the City Council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

**18.80.060 Notice of Appeal Requirements.**

The Notice of Appeal required to be filed under this Chapter shall include all of the following information:

- A. A description of the Final Decision being appealed.
- B. The date of the Final Decision being appealed.
- C. The name, address, telephone number and relationship of each Appellant to the subject of the Final Decision being appealed including a statement for each Appellant as to the Appellant's qualification for being considered a Party-in-Interest under this Chapter.
- D. For all appeals, except those filed by members of City Council, a description the grounds for the appeal of the Final Decision, including specific allegations of error as required in Section 18.80.030.B. For notices of appeal filed by members of city council, the notice must contain the general description of issues to be considered on appeal as required by Section 18.80.030.C.
- E. In the case of an appeal by more than one (1) Appellant, the name, address and telephone number of one (1) such Appellant who shall be authorized to receive, on behalf of all Appellants, any notice required to be mailed by the City to the Appellants under the provisions of section 18.80.040 or section 18.80.050.

#### **18.80.070 Cost of Appeal**

In all appeals under this Chapter except those filed by three or more members of the Planning Commission or those filed by three or more members of the City Council, the Appellant shall be charged a fee for the cost of the appeal as such fee is established by City Council pursuant to Code Section 3.04.025. The City Council may establish a fee for each level of appeal.

#### **18.80.080 Record on Appeal**

The record provided to the Planning Commission or City Council for appeals filed under this chapter shall include a record of any previous proceedings before a Board, Commission or other City Staff Decision Maker, including without limitation, all exhibits, writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the Board, Commission or other City Staff Decision Maker at any previous proceedings. A video recording of the Zoning Board of Adjustment Hearing or Planning Commission hearing is not required as part of the record on appeal provided summary minutes of such hearings are included as part of the record.

#### **18.80.090 Procedure at Hearing**

A. At the appeal hearing, the presentation of argument regarding the appeal shall be made in the following order, subject to the discretion of the Chairperson or Mayor relating to limitations in time and scope, or allowances accommodating adequate presentation of evidence or opportunity for rebuttal:



- (1) Explanation of the nature of the appeal by City staff;
- (2) Appellant's presentation of evidence, testimony and argument in support of the appeal;
- (3) Presentation of evidence, testimony and argument of the Applicant if the Applicant is not the Appellant; or, if the Applicant is the Appellant, presentation of evidence, testimony and argument by any City staff member or other Party-in-Interest in opposition to the appeal.
- (4) Public comment;
- (5) Rebuttal presentation by the Appellant; and
- (6) Motion, discussion and vote by the Board, Commission or City Council.

B. No person making a presentation or providing testimony at an appeal hearing shall be subject to cross-examination except that members of the Planning Commission or City Council and the City Attorney may at any time make inquiries for the purpose of eliciting information and for the purpose of clarifying information presented.

C. In the event of multiple appeals involving the same subject matter considered by the Planning Commission or City Council, the Chairperson or Mayor, in his or her discretion, may modify the procedure contained in Subsection (A) above so as to expedite the hearing of such appeals.

D. The City Council shall consider an appeal based upon evidence submitted at the public hearing, the record on appeal, the relevant provisions of the Municipal Code and Charter, and the grounds for appeal cited in the Notice of Appeal. Grounds for appeal raised for the first time at the public hearing, and therefore not raised in the Notice of Appeal, shall not be considered by the City Council in deciding the appeal.

**Section 38.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2011.


ATTEST:

CITY OF LOVELAND, COLORADO

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney

First Reading: April 19, 2011

Second Reading: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING TITLES 16 AND 18 OF THE LOVELAND MUNICIPAL CODE BY REVISING PROVISIONS OF TITLES 16 AND 18 WHICH RETAIN THE ZONING BOARD OF ADJUSTMENT HEARING OFFICER AND ENACTING A NEW CHAPTER 18.80 REGARDING APPEAL PROVISIONS.**

WHEREAS, City Council finds that updates to Titles 16 and 18 of the Loveland Municipal Code are necessary and required in the interest of the health, safety and welfare of the citizens of Loveland; and

WHEREAS, the Planning Commission held a public hearing regarding appeal provisions in Titles 16 and 18 of the Loveland Municipal Code; and

WHEREAS, City Council has received a recommendation from the Planning Commission regarding updates to the Code regarding appeal provisions, and the City Council desires to adopt such updates by amending Titles 16 and 18 and by adopting a new Chapter 18.80 regarding appeals.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, THAT:

**Section 1.** Chapter 16.04 of the Loveland Municipal Code is amended by the addition of a new Section 16.04.020 to read in full as follows:

**16.04.020 Penalty.**

Any person, firm or corporation violating any provisions of this title 16, upon conviction therefore, shall be fined not more than one thousand dollars or incarcerated not more than one year, or both. Each day during which the violation continues is deemed a separate offense.

**Section 2.** Title 16 of the Loveland Municipal Code is amended by the addition of the following definition to Section 16.08.010:

“Final decision” shall have the same meaning as set forth in Code section 18.80.020.

**Section 3.** Title 16 of the Loveland Municipal Code is amended by the addition of a new chapter 16.10 Appeals, to read in full as follows:

**Chapter 16.10**

**APPEALS**

**16.10.010 Appeals of Final Decisions.**

An appeal of a final decision by the director, other City staff decision maker, or the planning commission regarding any provisions in this title, shall be brought in accordance with Chapter 18.80 of this Code.

**Section 4.** Sections 16.16.030.B and 16.16.030.E of the Loveland Municipal Code are revised to read in full as follows:

**16.16.030 Review procedures, general.**

. . .

**B. Development Review.**

**1. Submission of Application Signatures/Certified Lists.**

- a. Once the applicant has received comments on the sketch plan, the applicant may submit an application for the development review sought. Applications shall be submitted to the Current Planning Division on forms provided for this purpose. The application shall include all required supporting documentation as specified on submittal checklists provided by the Current Planning Division. Unless otherwise specified herein, the applicant shall provide the number of copies specified in the checklist. Applications shall be signed by all fee owners of the land described in the application; except, that where the fee is held by two or more owners as joint tenants or as tenants in common, such application may be signed by only one joint tenant or tenant in common. All other owners and lienholders who have an interest in the land described in the application shall be noted on the application.
- b. At the time of filing a development review application requiring a public hearing, or where otherwise required under this title, the applicant shall submit to the Current Planning Division all information required pursuant to Section 16.16.070 and Tables 16.16.070-1 and 16.16.070-2.
- c. Each application shall be submitted with the fee established for that application pursuant to resolution of the city council.

2. **Application Submittal Date.** The official application submittal date shall be the date on which the applicant submits a reviewable application. The director shall schedule the applicant for a meeting with the development review team upon determination that such application is reviewable. The director may exempt applications for final plats, minor subdivisions, lot mergers, and boundary line adjustments from meeting with the development review team.
3. **Applications Referred to Development Review Team/Determination of a Reviewable Application.** The development center shall refer the reviewable application to the development review team members for their review. The development review team members shall comment on the application. Said comments shall be completed and compiled within approximately thirty days from the official application submittal date or by such time as required by the director. The director may require that any applicant for any development review under this title, reimburse the city for the cost of any legal or technical consultant fees incurred by the city in connection with reviewing the application. The application shall be deemed complete on the application acceptance date, which is the date that the director finds that the application contains adequate information on which to determine compliance with the review and design standards of this title and other applicable code provisions, city ordinances, comprehensive master plan, city policies, and state laws.
4. **Written Comments to the Applicant.** The development center shall make available to the applicant the development review team's comments a minimum of two working days prior to the development review team meeting or at such time as may be required by the director.
5. **Development Review Team Meeting.** On the scheduled date, the applicant shall meet with the development review team to discuss their comments. If the development review team determines that the application is not complete, the director may table further processing of the application and inform the applicant of the materials or revisions needed to make the application complete. The applicant shall submit a revised application no later than the deadline determined by the development review team. If the development review team finds that an application is not complete and cannot be made complete without revisions so extensive as to constitute a new application, the director may reject the application. Such application shall be resubmitted for development review under this title, in accordance with the applicable provisions of this title. The director will accept amendments to applications as long as they are submitted at least fifteen days prior to the scheduled development review team meeting. Nothing herein shall prevent the development review team, the planning commission, city council or director from requesting additional information in the course of the review if it is deemed necessary to determine compliance with the standards set forth in this title, or in Title 17 or 18 as applicable.
6. **Scheduling Public Hearings.** An application shall not be scheduled for planning commission or city council review or decision unless the director determines that the application is complete. Upon a finding that the

application is complete, the director shall schedule the application for the next available planning commission or city council meeting, as applicable.

. . .

E. Appeal Procedure. Appeals from any final decision by the director or the planning commission shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 5.** Section 16.16.040.C of the Loveland Municipal Code is revised to read in full as follows:

**16.16.040 Staff review of certain applications.**

. . .

C. Appeal Procedure.

1. Appeals from any final decision by the director for final plats, minor subdivisions, boundary line adjustments and lot mergers shall be conducted by the planning commission in accordance with Chapter 18.80 of this Code.
2. The appeal of a final decision of the planning commission to the city council shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 6.** Section 16.16.070.D.10 and section 16.16.070.E.2 of the Loveland Municipal Code are revised to read in full as follows:

**16.16.070 Public Notice Requirements.**

. . .

D. Content of Public Notice. . . .

10. For Director decision notices, a statement that interested parties may submit an appeal and the deadlines and requirements for filing an appeal, pursuant to Chapter 18.80 of this Code.

E. Mailed Notice. . . .

2. For all applications requiring mailed notice, the radius distances specified in Table 16.16.070-2 Area of Public Notice Distance by Application Type and Size, shall be used to determine the area to which such notice shall be given, except as provided in Sections 16.16.070.E. 3 and 4.

| Table 16.16.070-2 AREA OF MAILED NOTICE DISTANCE BY APPLICATION TYPE AND SIZE |                  |         |                       |
|---|------------------|---------|-----------------------|
| Application Type  | 20 acres or less | 21 – 50 | Greater than 50 acres |

|  |                   |         |           |
|--|-------------------|---------|-----------|
|  |                   | acres   |           |
| Obsolete Subdivisions                    | See Chapter 16.36 |         |           |
| Preliminary Plat                         | 500 ft.           | 750 ft. | 1,000 ft. |
| Minor Subdivision                        | 150 ft.           | 150 ft. | 150 ft.   |
| Vacation (of easements or rights-of-way) | See Chapter 16.36 |         |           |

**Section 7.** Section 16.20.060.D of the Loveland Municipal Code is revised to read in full as follows:

**16.20.060. Preliminary Plat Review Procedure.**

. . .

D. Appeal Procedures of Planning Commission Decisions. An appeal under this section of a final decision of the planning commission shall be made to the city council and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 8.** Section 16.20.080.C.1 of the Loveland Municipal Code is revised to read in full as follows:

**16.20.080. Final plat review procedure.**

. . .

C. Final Plat Review.

1. Pursuant to the powers granted to the city in the Colorado Constitution and the city of Loveland Charter, the director is hereby assigned the power to approve all final plats. The director shall make final decision on the final plat application within thirty days after a complete final plat is submitted to the development center. The director shall make appropriate findings based on the applicable review standards, or adopted plans. Using the review standards set forth in this title, the director shall approve, approve with conditions or deny the application. All conditions of approval applicable to the final plat shall be included in a development agreement, which shall be recorded with Larimer County clerk and recorder concurrent with recordation of the final plat. Appeals of final decisions of the director shall be made to the planning



commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 9.** Section 16.20.100 of the Loveland Municipal Code is revised to include an addition of a new Subsection E to read in full as follows:

**16.20.100 Minor subdivision review procedures.**

. . .

- E. Appeals from any final decision by the director for a minor subdivision shall be made to the planning commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 10.** Section 16.20.120 of the Loveland Municipal Code is revised to include an addition of a new Subsection D to read in full as follows:

**16.20.120 Simple plat review procedure.**

. . .

- D. Appeals from any final decision by the director for a simple plat shall be made to the planning commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 11.** Section 16.28.060 of the Loveland Municipal Code is revised to read in full as follows:

**16.28.060 Deed restriction in lieu of boundary line adjustment.**

- A. In the event the owner of property consisting of one or more adjacent lots and an adjacent unsubdivided parcel of land upon which a structure is located, wishes to obtain a building permit for either an accessory structure to be located on the property, an addition to the existing structure, or interior remodeling work without completing a boundary line adjustment, the owner may request that in lieu of a boundary line adjustment the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a boundary line adjustment. The deed restriction shall be released by the city upon completion of a boundary line adjustment combining all adjacent lots and un-subdivided parcels in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.
- B. Appeals from any final decision by the director for a deed restriction in lieu of a boundary line adjustment shall be made to the planning commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 12.** Section 16.32.060 of the Loveland Municipal Code is revised to read in full as follows:

**16.32.060 Deed restriction in lieu of lot merger.**

- A. In the event the owner of property, consisting of two or more adjacent lots and containing an existing residential use, wishes to obtain a building permit for either an accessory structure to be located on the property or an addition to the existing structure without completing a lot merger, the owner may request that in lieu of a lot merger the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a lot merger. The deed restriction shall be released by the city upon completion of a lot merger combining all adjacent lots in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.
- B. Appeals from any final decision by the director for a deed restriction in lieu of a lot merger shall be made to the planning commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 13.** Section 16.40.090 of the Loveland Municipal Code is revised to read in full as follows:

**16.40.090 Guarantee period.**

- A. All workmanship and materials (except materials provided by the city) for all required public improvements installed by the applicant (including, but not limited to the water supply system, sanitary sewage disposal system, storm drainage facilities, electrical distribution system, curbs, gutters, street pavement, sidewalks, street signs, survey monuments, landscaping, and pavement markings) shall be guaranteed to be free from defects by the applicant for a period of two years from the date of acceptance of the required improvement by the city, provided, that such defects are not the result of public abuse, misuse or natural causes, as determined by the city. In the event any other provision of this code or specifications adopted pursuant thereto shall require a guarantee of workmanship or materials or both for a different period of time, that provision regarding the longer period of guarantee shall govern. City inspection shall not relieve the property owner of such guarantee of workmanship and materials. Upon notification, the applicant shall promptly make all adjustments, repairs, or replacements in accordance with a repair plan approved by the city, which repair, in the opinion of the city, arose out of defects and became necessary during the guarantee period. The cost of all materials, parts, labor, transportation, supervision, special tools, and supplies required for replacement or repair of parts and for correction of defects shall be paid by the applicant, the contractor or by the holder of the approved financial security.

B. This guarantee shall be extended to cover all repairs and replacements furnished under the guarantee, and the period of the guarantee for each repair or replacement shall be extended one year after installation or completion of the repair or replacement.

C. If, within fifteen days after the city has notified the applicant of a defect, failure, or abnormality in the work, the applicant has not started to make the necessary repairs or adjustments or submitted a written objection to the city's request for repair work, the city is authorized to make the repairs or adjustments or to order the work be done by a third party. The cost of the work shall be paid by the applicant. The director may authorize a temporary repair if necessary due to weather conditions or materials availability.

D. If an applicant has cause to object to the city's request for repair work, such objection shall be made in writing to the director. If the director confirms that the repair is necessary because of a defect in the applicant's materials or workmanship, the applicant shall complete the repairs as directed by the city.

E. In the event of an emergency, where in the judgment of the city, delay would cause serious loss or damage, repairs, or adjustments may be made by the city or a third party chosen by the city without advance notice to the applicant, the cost of the work shall be paid by the applicant or the holder of the financial security.

F. Within thirty days prior to expiration of the guarantee period, the applicant shall request, in writing, that the city verify that no defects exist. The city shall, within thirty days, inspect the completed work and, if no defects, failures, or abnormalities are observed or detected, the city shall cause the bond, deposit, escrow agent, or letter of credit to be released.

G. In the event that the applicant fails to complete any required repair work, or fails to reimburse the city for legitimate repair work performed by the city on behalf of the applicant, or fails to enter into an agreement with city regarding the satisfactory resolution of the obligation, the applicant shall be prohibited from participating in any further land development activity in the city of Loveland until such repair, reimbursement, or agreement is completed to the satisfaction of the director. Both the developer of the project and the contractor performing the defective work shall be subject to this restriction. The developer shall be prohibited from receiving any additional building permits for any lots owned by the developer, as well as from submitting or continuing the processing of any land development applications for review and consideration by the city. The contractor shall be subject to the issuance of a stop work order issued by the city to the contractor for any work within any city right-of-way or easement. Appeals from any final decision by the director shall be made to the planning commission and shall be conducted in accordance with Chapter 18.80 of this Code.

**Section 14.** The introductory language to Chapter 18.04 of the Loveland Municipal Code is revised to read in full as follows:

\*For statutory provisions regarding zoning of cities and towns generally, see CRS § 31-23-201 et. seq. ; for provisions authorizing local authorities to adopt zoning regulations, see CRS § 31-23-301 et. seq.

**Section 15.** Section 18.04.050 of the Loveland Municipal Code is revised to read in full as follows:

**18.04.050 Building, structure, or use exempt.**

Any building, structure, or use, as to which satisfactory proof shall be presented to the city council, that the present or proposed situation of such building, structure, or use is reasonably necessary for the convenience or welfare of the public, may be exempted from the operation of this title by the city council after conducting a public hearing in accordance with Chapter 18.05 with a mailed notice requirement of 300 feet. Upon the council's making such required findings that exemption of the building, structure or use from the operation of this title is reasonably necessary for the convenience or welfare of the public, the council shall adopt a resolution exempting the building, structure or use from operation of this title.

**Section 16.** Section 18.32.050 of the Loveland Municipal Code is revised to read in full as follows:

**18.32.050 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the current planning manager for review and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's final decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 17.** Section 18.36.025 of the Loveland Municipal Code is revised to read in full as follows:

**18.36.025 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the current planning manager for review and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's final decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 18.** Section 18.40.055 of the Loveland Municipal Code is revised to read in full as follows:

**18.40.055 Appeal of an administrative or planning commission final decision.****A. Appeal of Administrative Decision.**

1. Any party-in-interest as defined in Chapter 18.80, may appeal to the planning commission a final decision of the planning division on a type 2 zoning permit in accordance with the procedures set forth in chapter 18.80 so long as the appeal is filed within ten (10) days of the mailing of a notice from the planning division office that a type 2 zoning permit will be issued.
2. Upon the filing of an appeal, the permit application shall be suspended pending conclusion of the appeal process. The appeal shall be scheduled for a public hearing in accordance with chapter 18.80, at which time the applicant shall have the burden of proving that the applicant is entitled to a permit under the standards set forth in Sections 18.40.030K and 18.40.005.

- 3. Following the close of the public hearing, the planning commission may deny the application for a special review permit or direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the planning commission deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed with such condition or restriction.

B. Appeal of Planning Commission Decision.

- 1. Any party-in-interest as defined in chapter 18.80, may appeal a final decision of the planning commission to the city council in accordance with the procedures set forth in chapter 18.80, within ten (10) days following the planning commission’s final decision.
- 2. If the city council determines that a decision to deny a type 3 zoning permit should be reversed, the city council shall direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the council deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed with such condition or restriction. If the city council determines that a decision to issue a type 3 zoning permit should be reversed, no such permit shall be issued and the application shall be denied. If the city council determines that certain conditions or restrictions should or should not have been imposed upon the type 3 zoning permit, it shall direct the planning division to issue the type 3 zoning permit subject to a modification in the conditions or restrictions. If the council determines that the conditions and restrictions should remain as provided by the planning commission, then it shall direct the planning division to issue the type 3 zoning permit without modification. In making its decision on the appeal, the city council shall consider the standards in Sections 18.40.030K and 18.40.005.

**Section 19.** Section 18.41.050.E.3 of the Loveland Municipal Code is revised to read in full as follows:

**18.41.050 Procedures for approval of a planned unit development.**

. . .

E. Preliminary Development Plan Approval.

. . .

- 3. Final Decisions and Appeals.
  - a. The effective date of the planning commission's final decision shall be the date that the planning commission adopts its written findings and conclusions. The planning commission shall issue findings and conclusions in support of any decision within thirty days of its decision. Any party-in-interest as defined in chapter 18.80, may file a written notice

of appeal with the planning division within ten (10) days of the effective date of the planning commission's final decision. Upon the filing of a notice of appeal, the appeal shall be scheduled for a full public hearing in accordance with chapter 18.80. At the public hearing, the city council shall approve, approve with conditions, or disapprove the matter, considering the same standards as prescribed for the planning commission in this Title 18.

- b. If there is no applicable general development plan for the development, then the planning commission shall only make a recommendation to the city council regarding the approval, conditional approval or denial of the preliminary development plan. The council shall proceed in the same manner as in the case of general development plans as provided in Section 18.41.050.D.1-10.;

**Section 20.** Section 18.41.050.F.3 of the Loveland Municipal Code is revised to read in full as follows:

**18.41.050 Procedures for approval of a planned unit development.**

. . .

F. Final Development Plan Approval.

. . .

- 3. If the chief planner approves the final development plan, he shall issue an approval of final development plan which shall incorporate by reference the final development and shall be recorded in the real property records of Larimer County without due delay. The final development plan shall be filed with the building division and be available for public inspection. If the chief planner denies approval of the final development plan, he shall communicate a written notice of denial to the applicant setting forth the basis for the denial. Within ten days of the date the chief planner mails the notice of denial to the applicant, the applicant may file an appeal of the denial in accordance with chapter 18.80 to the planning commission, which shall hear the matter in accordance with the procedures set forth in chapter 18.80, except that no further public notice of the appeal shall be required. Both the chief planner and the applicant shall appear before the planning commission and be given an opportunity to speak to the issues. Except as permitted by a majority vote of the planning commission members present at the meeting, no other person shall be entitled to address the planning commission. The planning commission shall consider the same factors used by the chief planner when making his determination;

**Section 21.** Section 18.41.060 of the Loveland Municipal Code is repealed in its entirety.

**Section 22.** Section 18.41.090 of the Loveland Municipal Code is repealed in its entirety.

**Section 23.** Section 18.42.030.A of the Loveland Municipal Code, (but not including Table 18.42-1 Parking Spaces Required), is revised to read as follows:

**18.42.030 Spaces required.**

. . .

A. Upon submittal of written justification by the applicant, the current planning manager may allow application of an alternative standard, different than a Type 2 standard, provided the current planning manager determines the following:

- 1. The applicant has demonstrated that either:
  - a. Site-specific, physical constraints necessitate application of the alternative standard, and such constraints will not allow a reasonable use of the property without application of such alternative standard; or
  - b. The alternative standard achieves the intent of the subject Type 2 standard to the same or greater degree than the subject standard, and results in equivalent or greater benefits to the community as would compliance with the subject standard.
- 2. Granting of alternative compliance and appeal of final decision.
  - a. Whenever the current planning manager grants alternative compliance, the current planning manager shall formulate a written statement of findings based on the above criteria for such action. Such statement shall be placed in the development application file.
  - b. Final decisions by the current planning manager with respect to such alternative compliance may be appealed to the planning commission in accordance with chapter 18.80. The planning commission, when hearing such an appeal shall apply the standards set forth in section 18.60.020.

**Section 24.** Section 18.45.090.A.1 of the Loveland Municipal Code is revised to read in full as follows:

**18.45.090 Nonconforming buildings or uses.**

. . .

1. Any nonconforming use of property may be expanded, provided that such expansion is approved by the public works director. Any appeal of the public works director’s final decision shall be made to the planning commission in accordance with chapter 18.80 of this Code.

**Section 25.** Section 18.48.020.G of the Loveland Municipal Code is revised to read in full as follows:

G. Appeal.



1. Appeal of director’s decision. Any applicant or member of the neighborhood may appeal a final decision of the director regarding the granting or denial of a business occupancy permit so long as the appeal is filed with the city within ten days of the date that a notice of intent to issue a business occupancy permit was mailed by the director, or the permit was denied. Upon the filing of an appeal, the permit application shall be suspended pending conclusion of the appeal process. Appeals shall be conducted by the planning commission in accordance with chapter 18.80 of this Code. The applicant shall be notified of the appeal, and shall be responsible for sending a notice to the members of the neighborhood. The notice shall be in a form approved by the city and shall be mailed a minimum of fifteen days in advance of the scheduled public hearing.
2. Planning Commission consideration. At the appeal hearing, the planning commission shall follow the procedures set forth in chapter 18.80, and shall consider the application, the findings and determinations of staff, and take public testimony regarding the proposed home occupation. The planning commission shall review the application for compliance with the provisions of this code and other adopted regulations, the compatibility of the application with the character of the surrounding neighborhood and adverse influences that might result from approval of the application. The planning commission may either approve, approve with modifications or conditions or deny the application. The planning commission’s final decision may be further appealed to the city council in accordance with chapter 18.80.

**Section 26.** Section 18.48.020.I of the Loveland Municipal Code is revised to read in full as follows:

- I. Revocation of Permit and Appeal. A business occupancy permit may be revoked by the city if the city finds that the home occupation no longer conforms to the provisions of this section or the conditions of approval of the business occupancy permit. A business occupancy permit may also be revoked upon a determination by the city that the mailing list was faulty or the applicant failed to follow the application, review and appeal process. Notification to the applicant shall include findings in support of the revocation and the applicant's rights of appeal. The written notification of revocation shall be mailed to the last known address of the permit holder. The date of the mailing shall be the date of notification. The business occupancy permit holder may appeal the city's decision to the planning commission as provided for in chapter 18.80.

**Section 27.** Section 18.50.100.A.4.h of the Loveland Municipal Code is revised to read in full as follows:

**18.50.100 Sign regulations in nonresidential zones.**

. . .

h. A request for variance to the maximum sign area, height or setback for a sign containing an electronic message module shall be heard by the Zoning Board of Adjustment in accordance with the procedures specified in Chapter 18.60. In addition to the findings specified Section 18.60.040, before granting any request, the Board shall find that:

1. The proposed area, setback and/or height of the electronic message sign module is the minimum required to be fully visible from the adjacent arterial or interstate roadway right-of-way; and
2. Traffic safety conditions will not be diminished by the increased square footage, increased height or decreased setback of the electronic message sign module; and
3. There are no reasonable alternatives to the increased size, height, setback and/or design of the electronic message sign.

**Section 28.** Section 18.50.100.B.11 of the Loveland Municipal Code is revised to read in full as follows:

**18.50.100 Sign regulations in nonresidential zones.**

. . .

11. Appeal of a Planning Division Decision. Should the applicant for a planned sign program not be satisfied with the decision of the planning division, the applicant shall have the right to appeal the final decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 29.** Section 18.50.150.B of the Loveland Municipal Code is revised to read in full as follows:

**18.50.150 Nonconforming signs.**

. . .

- B. Prohibited, illegal, nonconforming, abandoned or hazardous signs are declared nuisances and shall not be allowed within the city nor continued by variance. If any person fails to comply with the provisions of this chapter, in addition to the penalty provided therefor, a written order may be served upon the owner or agent in charge of such property, such order to be served personally or by mail, requiring the abatement of the nuisance within fifteen days, excluding weekends and official holidays, after mailing such notice. Such notice shall also advise the owner or agent of his or her right to appeal pursuant to chapter

18.80. If the abatement has not occurred within the stated time and an appeal has not been filed pursuant to the provisions of chapter 18.80, then the city may remove said sign, provided that the sign is either an off-premise sign, portable sign, free standing sign made of paper, balloons, pennants or banners, and charge the direct cost incurred by the city for removal of the sign, including five percent for inspection and other incidental costs in connection therewith. Such assessment shall be a lien upon the land until such assessment is paid. In addition to any other means provided by law for collection, if any such assessment is not paid within thirty days after it is made and notice thereof is mailed, the same may be certified by the city clerk to the county treasurer and by him placed upon the tax list for the current year, and thereby collected in the same manner as other taxes are collected, with ten percent penalty thereon to defray the cost of collection.

**Section 30.** Section 18.50.190 of the Loveland Municipal Code is revised to read in full as follows:

**18.50.190 Appeals.**

A final decision of the current planning manager relative to the provisions of this chapter may be appealed to the planning commission in accordance with chapter 18.80 of this title. The decision of the current planning manager shall be upheld unless the planning commission finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious. Any appeal of the planning commission's final decision to the city council shall be made in accordance with Chapter 18.80 of this code and the city council shall uphold the decision of the current planning manager unless the city council finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious.

**Section 31.** Section 18.52.020 of the Loveland Municipal Code is revised to read in full as follows:

**18.52.020 Supplementary yard regulations.**

A. The purpose of a setback creating a yard is for the preservation of light and air to adjoining properties, fire protection, maintenance of property, preservation of open space and the retention of a visually cohesive pattern established by buildings and the spaces which separate them. To maximize the amount of open space on a lot and/or the beneficial use of the property, the current planning manager may approve a reduction of up to thirty-three percent (33%) of a required setback, so long as the current planning manager determines and makes written findings that:

1. The alternative setback would be in harmony with the spirit of this title;
2. The alternative setback would not limit the use or enjoyment of nearby property;

3. A letter of non-objection to the alternative setback is submitted from all adjacent property owners; and
4. A letter of non-objection to the alternative setback is submitted by other potentially impacted property owners, as determined by the current planning manager, who own property that falls wholly or partially within 150 feet of the subject property.

B. The front yard in all residential zones may be reduced by five feet for garages where the vehicle access door does not face directly onto the street. This allowance shall not apply to properties within a planned unit development or special review that contain specific yard provisions.

C. The following items may extend into required yards if determined to be incidental and harmless to adjacent properties by the current planning manager:

1. Architectural features including cornices, eaves, bay windows, an exterior chase for a fireplace or other similar features;
2. At grade uncovered decks and patios that are exempt from building permit requirements; and
3. Fire escapes that extend into the required rear yards by no more than six feet.

**Section 32.** Section 18.53.020 of the Loveland Municipal Code is revised to read in full as follows:

**18.53.020 Compliance.**

- A. Type 1 Standards. Compliance with the Type 1 standards set forth in this Chapter 18.53 is mandatory, unless a variance is granted pursuant to Chapter 18.60.
- B. Type 2 Standards.
  1. Alternative compliance. Compliance with the Type 2 standards set forth in this Chapter 18.53 is mandatory, unless the current planning manager grants alternative compliance in accordance with the following provisions. The current planning manager may allow application of an alternative standard, different than a Type 2 standard, provided the current planning manager determines that:
    - a. The applicant has demonstrated that either:
      - i. Site-specific, physical constraints necessitate application of the alternative standard, and such constraints will not allow a reasonable use of the property without application of such alternative standard; or
      - ii. The alternative standard achieves the intent of the subject Type 2 standard to the same or greater degree than the subject standard, and results in equivalent or greater benefits to the community as would compliance with the subject standard.
  2. Statement of findings. Whenever the current planning manager grants alternative compliance, the current planning manager shall formulate a written statement of findings based on the above criteria for such action. Such statement shall be filed in the development application file.
  3. Appeals. Final decisions by the current planning manager with respect to such alternative compliance may be appealed to the planning commission in accordance with chapter 18.80.

**Section 33.** Sections 18.54.050 and 18.54.060 of the Loveland Municipal Code are revised to read in full as follows:

**18.54.050 Request for exception.**

The owner of the proposed building or structure may request an exception from the height limitations imposed by this chapter. A request for an exception shall be made to the planning commission. The planning commission shall hold a public hearing on such request, which hearing shall be noticed in accordance with Section 16.16.070 of this code.

Before granting any request, the Planning Commission shall find that:

- A. The requested exception allows adequate light and air to the adjacent neighborhood; and
- B. The requested exception is compatible with the character of the surrounding neighborhood; and
- C. The requested exception will not be injurious to the adjacent neighborhood or otherwise detrimental to the public health, safety and welfare; and
- D. The requested exception is consistent with the intent of the zoning district and the entire zoning ordinance.

**18.54.060 Appeal to city council.**

Any party-in-interest, as defined in section 18.80.020, may appeal the final decision of the planning commission to the city council. The city council shall hold a public hearing on such appeal, which appeal shall be held in accordance with chapter 18.80. Using the criteria set forth in section 18.54.050, the city council may affirm, modify or reverse the planning commission.

**Section 34.** Chapter 18.60 of the Loveland Municipal Code is repealed in its entirety and reenacted to read in full as follows:

**ZONING BOARD OF ADJUSTMENT\***

**Sections:**

- 18.60.010 Board of adjustment established.**
- 18.60.020 Powers and duties.**
- 18.60.030 General Variance Review Criteria.**
- 18.60.040 Sign Variance Review Criteria.**
- 18.60.050 Applications.**
- 18.60.060 Procedure.**
- 18.60.070 Notice.**

\*For statutory provisions regarding boards of adjustment, see CRS §§ 31-23-301 and 31-23-307.

**18.60.010 Board of adjustment established.**

The planning commission shall serve as the board of adjustment for the city.

**18.60.020 Powers and duties.**

The board of adjustment shall have the powers and duties to grant variances from certain standards set forth in this title 18 subject to and in compliance with this chapter and the laws of the state. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions of the title so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done. The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:

- A. Standards for lot area, lot dimensions, and setback requirements;
- B. Square footage of accessory structures;
- C. Percentage of open space; and
- D. Setbacks for a freestanding sign, spacing between freestanding signs and the area for freestanding and wall mounted signs.

After considering if the proposed variance meets the applicable criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions, or deny the application.

**18.60.030 General Variance Review Criteria**

To approve a zoning variance application, the board of adjustment shall consider the following review criteria and find that each criterion has been met or determined to be inapplicable:

- A. There are unique circumstances or conditions that are particular to or related to the land or structure for which the variance is requested. The circumstances may include, but are not limited to, exceptional topographic conditions, the shape or dimensions of the property, or the existence of mature landscaping or natural features that impact the property;
- B. The special circumstances are not the result of actions or inactions by the applicant or the current owner;
- C. The strict interpretation and enforcement of the provisions of the code would cause an unnecessary or undue hardship;
- D. Granting the variance is the minimum action needed to accommodate or alleviate the difficulty or hardship involved;
- E. The variance would not substantially impact the reasonable use and enjoyment or development of other property in the vicinity of the subject land or structure;
- F. The variance would not authorize any use in a zoning district other than a use specifically permitted in such zoning district; and
- G. The variance would not waive or modify the requirements of any use approved by special review.

**18.60.040 Sign Variance Review Criteria**

A. Variances to the requirements of Chapter 18.50 shall not be permitted, except as related to the requirements concerning the setback of a freestanding sign, the spacing between freestanding signs, or the maximum sign area. To approve a zoning variance application to Chapter 18.50, the board must consider the following review criteria and find that each criterion has been met.

1. There are special physical circumstances or physical conditions, including, without limitation, buildings, topography, vegetation, sign structures, or other physical features on adjacent properties or within the adjacent public right-of-way that would substantially restrict the effectiveness of the sign in question, and such special circumstances or conditions are unique to the business to which the applicant desires to draw attention and do not apply generally to all businesses in the area;

2. The variance would be consistent with the purposes set forth in Section 18.50.010 and would not adversely affect the neighborhood or other businesses within the vicinity in which the subject business is located; and

3. The variance is the minimum necessary to permit the applicant to reasonably draw attention to its business.

B. In addition to the above criterion, for signs that contain an electronic message module, the board must consider the review criteria in Section 18.50.100.A.4.h and find that each criterion has been met.

#### **18.60.050 Applications.**

Any person seeking action or review upon any matter within the jurisdiction of the board of adjustment, shall make an application on forms provided by the Current Planning Division. The application shall be accompanied by such supporting material as may be required. The applicant shall also pay, at the time of filing of the application, any required filing fee as established by resolution of the city council.

#### **18.60.060 Procedure.**

The board of adjustment may designate one or more hearing officers from within the board to conduct public hearings on matters coming before the board. The designated hearing officer shall have the discretion to forward any matter onto the full board of adjustment for the initial public hearing. Within ten (10) days after the conclusion of any hearing conducted by the hearing officer, the hearing officer shall submit proposed findings and order to the board of adjustment and to the applicant and all parties participating in the hearing. The findings and order of the hearing officer may be appealed to the full board of adjustment by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the current planning division in accordance with the provisions contained in Section 18.80.030.B, within ten (10) days of the decision of the hearing officer. If no appeal is filed, the proposed findings and order shall become final without further action by the board. If an appeal is filed, the hearing officer shall forward to the board of adjustment the record of the hearing. The board shall consider any such appeal on the first available date for which proper notice can be provided pursuant to Chapter 18.05. The appeal shall be conducted as a *De Novo* hearing as defined in Chapter 18.80, and shall follow the procedures set forth in Section



18.80.090. Whether as a result of an initial public hearing by the board or an appeal of the hearing officer's final decision, the board shall submit its findings and order to the applicant and all parties participating in the hearing within thirty (30) days following the conclusion of the hearing. The findings and order of the board representing the board's final decision, may be appealed to city council by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the current planning division in accordance with the provisions contained in Section 18.80.030.B, within ten (10) days of the mailing of the findings and order. City Council shall consider any such appeal at a public hearing noticed in accordance with Section 18.80.050.C. and conducted in accordance with Section 18.80.090. Unless otherwise stated in the findings and order, or in the decision of city council, all permits or actions authorized as a result of an approval of a variance must be initiated within six months of the date such findings and order became final. Upon written request by the applicant, an additional six months may be granted by the current planning manager for initiating such permits or actions. In reviewing the proposed time extension, the current planning manager shall consider the following criteria:

- A. Has there been a change of zoning for the site, or for any property adjacent to the site since the original approval?
- B. Has a change of use taken place on the site or on any adjacent property since the original approval, or is a change of use proposed for the site which would be divergent from the use shown in the application documents for the original variance?
- C. Have there been changes in the regulations and requirements specified in the Loveland Municipal Code which are applicable to the site and which should be addressed prior to the development of the site?
- D. Has the ownership of any adjacent property changed?
- E. Will the granting of the extension be detrimental to the public health, safety, or general welfare?
- F. Will the granting of the extension be in keeping with the purposes set forth in this title to the same degree as intended in the original approval?

**18.60.070 Notice.**

Notice requirements for appeals shall be provided in accordance with chapter 18.80. All other notices required by this Chapter shall be provided pursuant to Chapter 18.05.

**Section 35.** Section 18.68.045 of the Loveland Municipal Code is revised to read in full as follows:

**18.68.045 Code Enforcement Guidelines**

A duly appointed peace officer or code enforcement officer of the City may enforce the provisions of this title and of Titles 15 and 16 of the city code by the issuance of a summons and complaint as provided in Rule 204 of the Colorado Municipal Courts Rules of Procedure.

**Section 36.** Section 18.68.050.A of the Loveland Municipal Code is revised to read in full as follows:

**18.68.050 Violation.**

. . .

- A. Any violation of any of the provisions of this title or of any agreement or development plan approved under this title or under title 16, exists in any building, other structure or tract of land; or

**Section 37.** Section 18.68.070 of the Loveland Municipal Code is revised to read in full as follows:

**18.68.070 Penalty.**

Any person, firm or corporation violating any provisions of this title, upon conviction therefore, shall be fined not more than one thousand dollars or incarcerated not more than one year, or both. Each day during which the illegal erection, construction, reconstruction, alteration, maintenance, use, or any other violation of this title continues, is deemed a separate offense.

**Section 38.** A new chapter 18.80 regarding Appeals is added to the Loveland Municipal Code to read in full as follows:

**APPEALS**

**18.80.010 Purpose**

**18.80.020 Definitions**

**18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal**

**18.80.040 Appeal of City Staff Decision Maker or Director’s Final Decision**

**18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission’s Final Decision**

**18.80.060 Notice of Appeal Requirements**

**18.80.070 Cost of Appeal**

**18.80.080 Record on Appeal**

**18.80.090 Procedure at Hearing**

**18.80.010 Purpose.**

This Chapter shall govern the procedures for appeals from any Final Decision made under Title 16 or Title 18 of this Code.

**18.80.020 Definitions.**

The following words, terms and phrases, when used in this Title 18, shall have the meanings hereafter ascribed to them in this Chapter unless the context requires otherwise:

*Appellant* shall mean a Party-in-Interest who has filed a Notice of Appeal under the provisions of this Chapter.

*Applicant* shall mean a Person that has submitted to the City an application related to the development, zoning or subdivision of real property in the city as authorized or required under the provisions of Title 16 or Title 18 and which application is the subject of appeal under this Chapter.

*City Staff Decision Maker* shall mean any City staff member granted authority to make decisions under titles 16 and 18 of this Code.

*City Council* shall mean the City Council of the City of Loveland.

*Current Planning Division* shall mean the Current Planning Division for the City of Loveland Development Services Department.

*Days* shall mean all calendar days including Saturday and Sunday. Any computation of days under this Chapter shall not include the date a Final Decision is made. If a filing deadline falls upon a Saturday, Sunday or other legal holiday when City offices are closed, the filing deadline shall continue to the following day when City offices are open.

*De Novo Hearing* shall mean a new public hearing at which new and additional evidence may be presented.

*Director* shall mean the City's Director of Development Services or his or her designee.

*Evidence* shall mean documentary, electronic or testimonial evidence relevant to any application that was the subject of a final decision under the provisions of Title 16 or Title 18, presented at a hearing to support or refute a particular proposition or conclusion. *Evidence* shall not include argument as to how information offered as evidence should be viewed or interpreted.

*Effective Date of the Final Decision*, as it pertains to a City Staff Decision Maker's or Director's Final Decision, shall mean the date the City Staff Decision Maker or Director mails his or her written decision to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this title to be mailed. As this phrase pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean the date on which the Board or Commission adopts its written findings and conclusions.

*Final Decision*, as it pertains to a City Staff Decision Maker or the Director, shall mean a decision or action by the City Staff Decision Maker or Director under Title 16 or Title 18 that the City Staff Decision Maker or Director has reduced to writing and has promptly mailed to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this Code to be mailed. As this term pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean a decision or action by the Board or Commission under this Code for which the Board or Commission has adopted written findings and conclusions. A *Final Decision* shall not include any decision made by a City Staff Decision Maker or the Director that is a recommendation to the Planning Commission or to the City Council, or a decision by the Planning Commission under this Code that constitutes a recommendation to City Council.

*Notice of Appeal* shall mean an Appellant's written request for an appeal of a Final Decision submitted in the form required by Section 18.80.060.

*Party-in-Interest*, as it pertains to an appeal under this Chapter of a Final Decision by a City Staff Decision Maker or the Director, shall mean: the Applicant; any person required in Title 16 or this Title 18 to be mailed the City Staff Decision Maker's or Director's written Final Decision; two or more Planning Commission members; or two or more City Council members. As this term pertains to an appeal under this Chapter of a Final Decision by the Zoning Board of Adjustment or the Planning Commission, it shall mean: the Applicant, any city staff member, any Person required in Title 16 or this Title 18 to be mailed notice of the Zoning Board of Adjustment or Planning Commission's public hearing; any Person who provided written or verbal testimony at the Zoning Board of Adjustment or Planning Commission's public hearing; or two or more City Council members. For an appeal of a Final Plat for a major subdivision or a Final Development Plan, only the Applicant shall be considered a Party-in-Interest with standing to appeal.

*Person* shall mean an individual, corporation, partnership, limited liability company or other legal entity.

*Planning Commission* shall mean the City of Loveland Planning Commission established pursuant to Section 2.60.080 of this Code.

*Record* shall mean all relevant documents reviewed by a previous Board, Commission or City Staff Decision Maker, and any transcript or written record of any such previous hearing.

*Zoning Board of Adjustment* shall mean the City of Loveland Zoning Board of Adjustment established pursuant to Section 18.60.010 of this code.

### **18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal.**

A. An appeal of a Final Decision may be filed pursuant to sections 18.80.040 and 18.80.050 of this Chapter. Upon the filing of an appeal, any application process with the

City pertaining to the subject matter being appealed shall be suspended while the appeal is pending. Any action taken in reliance upon any decision of a Board, Commission or other City Staff Decision Maker that is subject to appeal under the provisions of this Chapter shall be totally at the risk of the Person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action taken during said period of time.

B. Except for appeals by members of the City Council, the permissible grounds for appeal shall be limited to allegations that the Board, Commission or other City Staff Decision Maker committed one (1) or more of the following errors:

- (1) Failure to properly interpret and apply relevant provisions of the Municipal Code or other law; or
- (2) Failure to conduct a fair hearing in that:
  - a. The Board, Commission or other City Staff Decision Maker exceeded its authority or jurisdiction as contained in the Municipal Code or Charter;
  - b. The Board, Commission or other City Staff Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading; or
  - c. The Board, Commission or other City Staff Decision Maker improperly failed to receive all relevant evidence offered by the Appellant.

C. Appeals filed by members of the City Council need not include specific grounds for appeal, but shall include a general description of the issues to be considered on appeal. Council members who file an appeal shall not participate in deciding the appeal.

#### **18.80.035 Review of Notice of Appeal by City Attorney.**

Within seven (7) days of the date of the filing of the notice of appeal, the notice shall be reviewed by the City Attorney for any obvious defects in form or substance. A notice of appeal which fails to conform to the requirements of Section 18.80.030 shall be deemed deficient. The City Manager shall notify the appellant in writing of any such deficiency, which notice shall be mailed no more than seven (7) days from the date of the filing of the notice of appeal. The appellant shall have seven (7) days from the date of mailing of the notice of deficiency to cure such deficiency. If the deficiency is cured, the date the revised notice of appeal is received shall be considered the date of the filing of the notice of appeal. If the appellant does not cure the deficiency within said period of time, the appeal may be dismissed if, in the judgment of the City Manager, the notice of appeal does not provide adequate information to allow the parties involved to prepare for the hearing on the appeal.

#### **18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision.**

A. A Party-in-Interest may appeal any final decision by the Director or other City Staff Decision Maker to the Planning Commission.

B. To appeal a City Staff Decision Maker or Director's Final Decision to the Planning Commission, a Party-in-Interest must file a notice of appeal with the Current Planning Division within ten (10) days of the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in the dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the Planning Commission not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The Planning Commission shall conduct the appeal hearing as a De Novo hearing and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the Planning Commission may uphold, reverse or modify the Final Decision being appealed. The Planning Commission shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions concerning the appeal.

**18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision.**

A. A Party-in-Interest may appeal any Final Decision by the Zoning Board of Adjustment or the Planning Commission to the City Council. An appeal of a decision made by the Zoning Board of Adjustment hearing officer, shall follow the procedures set forth in Section 18.60.060.

B. To appeal a Final Decision by the Zoning Board of Adjustment or Planning Commission to the City Council, a Party-in-Interest must file a Notice of Appeal with the Current Planning Division within ten (10) days of the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the City Council not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice

requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The property owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The City Council shall conduct the appeal hearing as a De Novo Hearing, and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the City Council may uphold, reverse or modify the Final Decision being appealed. The City Council may also remand the appeal to the Zoning Board of Adjustment or the Planning Commission with directions for the Zoning Board of Adjustment or Planning Commission's further consideration of the matter. If the City Council upholds, reverses or modifies a Final Decision made by the Zoning Board of Adjustment or the Planning Commission, the City Council shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions. The City Council's written findings and conclusions shall be considered the City Council's Final Decision for purposes of any appeal of the City Council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

#### **18.80.060 Notice of Appeal Requirements.**

The Notice of Appeal required to be filed under this Chapter shall include all of the following information:

- A. A description of the Final Decision being appealed.
- B. The date of the Final Decision being appealed.
- C. The name, address, telephone number and relationship of each Appellant to the subject of the Final Decision being appealed including a statement for each Appellant as to the Appellant's qualification for being considered a Party-in-Interest under this Chapter.
- D. For all appeals, except those filed by members of City Council, a description the grounds for the appeal of the Final Decision, including specific allegations of error as required in Section 18.80.030.B. For notices of appeal filed by members of city council, the notice must contain the general description of issues to be considered on appeal as required by Section 18.80.030.C.
- E. In the case of an appeal by more than one (1) Appellant, the name, address and telephone number of one (1) such Appellant who shall be authorized to receive, on behalf of all Appellants, any notice required to be mailed by the City to the Appellants under the provisions of section 18.80.040 or section 18.80.050.

#### **18.80.070 Cost of Appeal**



In all appeals under this Chapter except those filed by three or more members of the Planning Commission or those filed by three or more members of the City Council, the Appellant shall be charged a fee for the cost of the appeal as such fee is established by City Council pursuant to Code Section 3.04.025. The City Council may establish a fee for each level of appeal.

#### **18.80.080 Record on Appeal**

The record provided to the Planning Commission or City Council for appeals filed under this chapter shall include a record of any previous proceedings before a Board, Commission or other City Staff Decision Maker, including without limitation, all exhibits, writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the Board, Commission or other City Staff Decision Maker at any previous proceedings. A video recording of the Zoning Board of Adjustment Hearing or Planning Commission hearing is not required as part of the record on appeal provided summary minutes of such hearings are included as part of the record.

#### **18.80.090 Procedure at Hearing**

A. At the appeal hearing, the presentation of argument regarding the appeal shall be made in the following order, subject to the discretion of the Chairperson or Mayor relating to limitations in time and scope, or allowances accommodating adequate presentation of evidence or opportunity for rebuttal:

- (1) Explanation of the nature of the appeal by City staff;
- (2) Appellant's presentation of evidence, testimony and argument in support of the appeal;
- (3) Presentation of evidence, testimony and argument of the Applicant if the Applicant is not the Appellant; or, if the Applicant is the Appellant, presentation of evidence, testimony and argument by any City staff member or other Party-in-Interest in opposition to the appeal.
- (4) Public comment;
- (5) Rebuttal presentation by the Appellant; and
- (6) Motion, discussion and vote by the Board, Commission or City Council.

B. No person making a presentation or providing testimony at an appeal hearing shall be subject to cross-examination except that members of the Planning Commission or City Council and the City Attorney may at any time make inquiries for the purpose of eliciting information and for the purpose of clarifying information presented.

C. In the event of multiple appeals involving the same subject matter considered by the Planning Commission or City Council, the Chairperson or Mayor, in his or her discretion, may modify the procedure contained in Subsection (A) above so as to expedite the hearing of such appeals.

D. The City Council shall consider an appeal based upon evidence submitted at the public hearing, the record on appeal, the relevant provisions of the Municipal Code and Charter, and the grounds for appeal cited in the Notice of Appeal. Grounds for appeal raised for the first time at the public hearing, and therefore not raised in the Notice of Appeal, shall not be considered by the City Council in deciding the appeal.

**Section 38.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

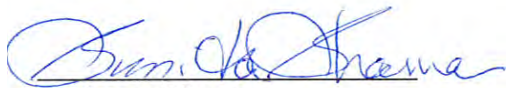
ATTEST:

CITY OF LOVELAND, COLORADO

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney

**RESOLUTION # R-27-2011**

**A RESOLUTION AMENDING THE CITY OF LOVELAND  
SITE DEVELOPMENT PERFORMANCE STANDARDS AND  
GUIDELINES ADOPTED OCTOBER 1989, UPDATED JANUARY 2000**

WHEREAS, in October 1989 the City adopted Site Development Performance Standards and Guidelines, as amended in August, 2007, that provide supplemental development standards to Title 18, "Zoning," of the Loveland Municipal Code; and

WHEREAS, modification to the Site Development Performance Standards and Guidelines is necessary for updating general provisions, as well as updating procedures for appeals; and

WHEREAS, Section 18.47.020 of the Municipal Code provides that the Site Development Performance Standards and Guidelines may be amended from time to time by resolution of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 5.01 of the City of Loveland Site Development Performance Standards and Guidelines, adopted 1989, as amended in August 2007, is hereby amended as provided in **Exhibit A**, a copy of which is attached hereto and incorporated herein.

Section 2. That this resolution shall take effect as of the date and time of its adoption.

ADOPTED this \_\_\_\_ Day of \_\_\_\_\_, 2011

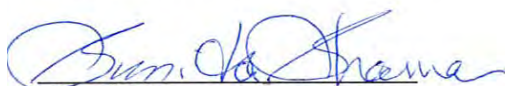
ATTEST:

CITY OF LOVELAND, COLORADO

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney

## **EXHIBIT A**

### **CHAPTER 5 - APPEAL/STANDARDS FOR REDEVELOPMENT**

#### **SECTION 5.01 APPEAL**

Should the applicant or any user of the Site Development Standards and Guidelines not be satisfied with the decision of the City concerning the application of performance standards and guidelines, or the application materials required, the affected party shall have the right to request an appeal to the Planning Commission for review of the issue(s). The request for an appeal shall be filed with the Current Planning Division no later than ten (10) days from the date of the mailing of the decision by the City. The City shall place the appeal on the Planning Commission agenda no later than thirty (30) days from the date of the request for such appeal, unless a longer period of time is agreed to by the Appellant. The appeal shall be conducted in accordance with Chapter 18.80 of the Loveland Municipal Code.



## Development Services Current Planning

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### MEMORANDUM

TO: City Council

FROM: Bob Paulsen, Current Planning Manager

DATE: April 19, 2011

SUBJECT: Appeals-related amendments to Titles 16 and 18 of the Municipal Code and to the Site Development Performance Standards and Guidelines document

#### I. EXHIBITS

1. Planning Commission Staff Report from February 28, 2011
2. Planning Commission Minutes from February 28, 2011
3. Redline version of staff-recommended amendments
4. Redline version of Planning Commission-recommended amendments to Chapter 18.60 (Zoning Board of Adjustment) retaining the ZBA hearing officer
5. Redline version of Chapter 5 of the Site Development Performance Standards

#### II. BACKGROUND

The Current Planning Division and the City Attorney's office have jointly developed amendments to the appeals provisions and other related code provisions contained in Title 16 (the subdivision code) and in Title 18 (the zoning code). The purpose of the amendments is to create clear and uniform requirements and appeal procedures for subdivision, land use and zoning decisions. The amendments have been reviewed and are supported by the Title 18 Committee. At the August 10, 2010 Study Session, the City Council expressed agreement with the primary recommendations contained in the amendments. The Planning Commission reviewed the amendments at their December 13, 2010 meeting and again at their February 28, 2011 meeting, recommending approval to the City Council by a vote of 7-2.

The Planning Commission's approval differs from the staff recommendation. Specifically, the Commission is recommending that the Zoning Board of Adjustment hearing officer be retained in order to hear variance requests. City staff recommends that the hearing officer position be eliminated and

that all variances be heard by the full nine-member Zoning Board of Adjustment. Accordingly, the Council packet includes two ordinances for consideration:

1. Attachment A to the coversheet is the ordinance recommended by City staff, eliminating the ZBA hearing officer. The reasons why City staff is recommending elimination of the hearing officer are:
  - In many cases, eliminating the hearing officer hearing would save a step in the process. Decisions by the hearing officer are often appealed to the Planning Commission by either the applicant, if the variance is denied, or an opposing neighbor, if the variance is granted.
  - Many of the appeals deal with emotional issues that may be difficult for a single individual to appreciate and fairly consider. The nine members of the ZBA represent a much broader cross section of community values than a single hearing officer and, therefore, are more likely to render decisions that reflect to a higher degree the values of the community as a whole.
  - The proposal to eliminate the hearing officer would not overburden the Planning Commission since in the last four years the hearing officer conducted only 23 hearings.
  
2. Attachment B to the coversheet is the ordinance recommended by the Planning Commission retaining the ZBA hearing officer. Some of the reasons why the majority of Planning Commission members support retaining the hearing officer are:
  - The process for variances is working well and doesn't require major modification.
  - The hearing officer is able to make common sense decisions without requiring an applicant to present before the full ZBA, which can be intimidating to some citizens.
  - The hearing officer effectively handles a number of minor variance requests that don't warrant review by the entire ZBA.
  - Commissioners did support giving the hearing officer the discretion to forward variance applications directly to the ZBA, to expedite the hearing process for complex or controversial matters that would likely be appealed to the ZBA regardless of the decision by the hearing officer.

In addition to the two ordinance versions, a redline version of the appeals amendment is provided to indicate the code revisions. A separate redline version of Chapter 18.60 Zoning Board of Adjustment indicates revisions associated with the retention of the hearing officer--reflecting the Planning Commission's recommendation. A further elaboration of the Planning Commission's recommendation is provided in Section IV of this report.

### **III. SUMMARY OF AMENDMENTS**

The appeals amendments include revisions to several related portions of Titles 16 and 18; these revisions are summarized as follows:

### **Chapter 18.80: APPEALS.**

A new chapter of the zoning code is proposed which consolidates appeals requirements and procedures that are currently located in various sections of Title 16 and Title 18. The provisions of this chapter are summarized as follows:

- Consolidation of appeals requirements into a single chapter
- Elimination of the two-step merit hearing process
- Appeal hearings are to be conducted as “de novo” hearings, allowing for new evidence and new testimony
- Grounds for appeal are clearly specified in order to guide the application and decision making processes
- Uniform appeal filing requirements and notice requirements are specified, including a consistent 10-day filing deadline for appeals
- Hearing procedures for appeals are specified
- 2 City Councilors may appeal the decision of the Zoning Board of Adjustment or of the Planning Commission; the Councilors filing such an appeal cannot participate in the appeal hearing. Following the Planning Commission hearing on the Appeals provisions, staff reduced from 3 to 2 the number of City Councilors needed to file an appeal. This lower threshold helps to ensure that a sufficient number of Councilors can participate in the appeal hearing.
- Appeal fees are not established, but a new section in chapter 18.80 allows the City Council to establish fees to cover the cost of an appeal pursuant to Code Section 3.04.025

### **Chapter 18.60: Zoning Board of Adjustment**

The Planning Commission serves as the Zoning Board of Adjustment (ZBA). Under the current code, the ZBA is responsible for deciding variance requests and for hearing appeals of administrative decisions. The ZBA has the authority to appoint a Hearing Officer from among its ranks to conduct hearings and report decisions back to the board. The amendments to this chapter are highlighted as follows:

- The ZBA would be limited to hearing variances; appeals of administrative decisions would go to the Planning Commission as specified in new chapter 18.80.
- Variance review criteria, including sign variance criteria, are specified in order to guide the variance decision making process.
- Requirements for variance applications, procedures and notice are clarified.
- The ZBA hearing officer would be eliminated. Variance requests would heard by the full 9-member board.

### **Chapter 18.52 Supplementary Regulations**

The Supplementary Regulations chapter of Title 18 contains provisions that do not fit readily into other chapters of the Code. The Supplementary yard regulations (Section 18.52.020) allow for administrative approval of setback variations. Under the current provisions, the Chief Planner (Current Planning Manager) has authority to approve building setback variations without limits as to extent or guidance as to procedure. Amendments to this section are summarized below:

- The Current Planning Manager’s approval authority would be limited to a 33% setback reduction. Setback adjustments beyond 33% would require a variance.



- In approving setback variations, the Current Planning Manager would be required to make written findings. Setback variations could be approved only when letters of non-objection from nearby, potentially-impacted property owners have been submitted.
- Clean-up text has been provided concerning garage setback allowances and the allowance for certain architectural features to extend into setback areas.

### **Chapter 5 of the Site Development Performance Standards and Guidelines**

The Site Development Performance Standards and Guidelines (SDPSG) document is supplementary to the zoning code. Changes to this document are made by City Council resolution. Minor changes to the appeals provisions of this document are recommended as summarized below:

- Amend Section 5.01 of the SDPSG document to provide consistency with new Chapter 18.80

## **IV. PLANNING COMMISSION CONSIDERATIONS**

On December 13, 2010, the Planning Commission reviewed the proposed appeals-related amendments. The following is a summary of their comments:

- There was general support for the new appeals provisions, including the elimination of the merit hearing procedures
- Several commissioners spoke in favor of charging a fee for appeals, or having the ability to charge an appellant for the administrative costs associated with an appeal. Charging a fee or recovery of costs was viewed as a means of discouraging so-called frivolous appeals.
- Several commissioners supported the retention of the ZBA hearing officer.

With these considerations in mind, the Commission unanimously voted to table the proposed code amendments until a future meeting so that staff could develop text that would retain the hearing officer, but allow the hearing officer the discretion to forward variance requests to the full ZBA board when appropriate.

On February 28, 2011, the Planning Commission reviewed the proposed appeals-related amendments for a second time. An alternate amendment had been prepared as directed by the Commission on December 13<sup>th</sup> which retains the ZBA hearing officer and gives the officer the discretion to forward any variance requests onto the full board. In addition, staff developed additional procedural measures regarding variances and integrated these changes into the proposal. Also, the February 28<sup>th</sup> materials included amendments to the Supplementary Regulations chapter (18.52) that placed limitations on administrative setback variations and established criteria and procedures for the approval of these requests.

Commission comments from the February 28<sup>th</sup> meeting are summarized as follows:

1. There was a lengthy discussion about appeal fees and about the recovery of administrative costs associated with appeals. It was argued that the ability to recover administrative costs from an appellant was more equitable than charging a predetermined appeal fee and would serve as a more appropriate deterrent to frivolous appeals. Staff noted that City Council had directed staff not to establish appeal fees with the proposed amendments, but indicated that while the amendments did not establish appeal fees, the provisions would accommodate the establishment of appeal fees or charges through a separate effort. Staff also indicated that the comments from

the Commission would be forwarded to the City Council and explained that the issue of development review fees would likely be taken up with the City Council later in 2011.

2. There was an associated discussion of whether the grounds for appeal, as proposed, were too general to discourage frivolous appeals. Staff acknowledged that the grounds for appeal were fairly broad, and were not designed to prevent appeals; rather, the specified grounds for appeal were designed to assist the hearing body in evaluating the appeal and determining whether or not the appeal had merit and was worthy of approval. Specifying the grounds for appeal was also intended to assist appellants in preparing their appeal documents.

Following the Planning Commission hearing, staff has added new Section 18.80.035, “Review of notice of appeal by City Attorney”, to the recommended ordinance. This new section provides for the City Attorney’s review of appeal materials. Appellants filing a notice of appeal which is deficient in form or substance will be given the opportunity to correct the deficiency; if such a deficiency is not remedied within the prescribed timeframe, the City Manager may dismiss the appeal.

3. Discussion was conducted on whether it was necessary to amend the Code regarding procedures for administrative setback variations rather than continuing to rely on established but less formal policies. Commission comments indicated a preference for the efficiencies and flexibilities available through departmental policy versus the relative inflexibility involved when working with Code. Staff explained that Code was vague and that staff would prefer to have clear parameters and procedures from which to operate—believing that the recommended provisions would allow for necessary flexibility while establishing clear procedures for applicants and citizens to rely upon.
4. A majority of Planning Commissioners indicated their preference for retaining the ZBA hearing officer.



City of Loveland

**Development Services****Current Planning**

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**ITEM NO:****1 - Regular Agenda****PLANNING COMMISSION MEETING:**

February 28, 2011

**TITLE:**

Amendments to Title 16 and Title 18 regarding Appeal procedures, Supplementary Regulations, the Zoning Board of Adjustment and Site Development Standards and Guidelines, including new Chapter 18.80 Appeals

**APPLICANT:**

City of Loveland, Current Planning Division

**STAFF CONTACTS:**Robert Paulsen, Current Planning  
Kerri Burchett, Current Planning  
Sunita Sharma, City Attorney's office**APPLICATION TYPE:**

Amendments to Titles 16 and 18 of the Municipal Code

**ACTION:**

Recommend for adoption by City Council

**STAFF RECOMMENDATION:**

Subject to additional evidence at the public hearing, City Staff recommends the following motion:

*Move to recommend that City Council approve the amendments to Title 16 and Title 18 regarding land use appeal provisions, including the following: new Chapter 18.80 Appeals; Supplementary Regulations (Chapter 18.52); Zoning Board of Adjustment (Chapter 18.60) eliminating the ZBA Hearing Officer position; and, Site Development Performance Standards & Guidelines (Chapter 5) as described in the February 28, 2011 Planning Commission staff report and as amended on the record.*

## I. ATTACHMENTS

Due to the length and complexity of this report, including the attachments listed below, annotations have been provided to describe the attachments in order to aid the Commission and other readers in understanding these contents. Generally, the redline versions of the amendments provide the easiest means of understanding what is being amended. The Ordinances provide a “clean” view of how the amended language would read in the final form.

**1. Ordinance amending Titles 16 and 18 of the Loveland Municipal Code by revising provisions of Titles 16 and 18 and enacting a new Chapter 18.80 regarding Appeal provisions**

*This Ordinance provides a “clean” or final version of amendments to Titles 16 and 18. This version eliminates the Zoning Board of Adjustment Hearing Officer.*

**2. APPEALS, SUPPLEMENTARY REGULATIONS AND ZONING BOARD OF ADJUSTMENT AMENDMENT: Redline Version**

*This is a redline version of the amendments contained in the Ordinance listed as Attachment 1. This version eliminates the ZBA Hearing Officer.*

**3. Ordinance amending Titles 16 and 18 of the Loveland Municipal Code by revising provisions of Titles 16 and 18 and enacting a new Chapter 18.80 regarding Appeal provisions (Version which Retains Hearing Officer)**

*This Alternate Ordinance provides a “clean” or final version of Title 16 and Title 18 amendments. This version differs from the other Ordinance (Attachment 1) in that it retains the ZBA Hearing Officer.*

**4. ZONING BOARD OF ADJUSTMENT ALTERNATIVE OPTION WITH HEARING OFFICER: Redline Version**

*This document includes only Section 18.60.060 Procedure. This section from the Zoning Board of Adjustment Chapter specifies that the Hearing Officer would be retained. This is a companion document to the Alternate Ordinance (Attachment 3).*

**5. Resolution amending the Site Development Performance Standards and Guidelines with Exhibit A. CHAPTER 5 – APPEAL /STANDARDS FOR REDEVELOPMENT**

*This Resolution is needed to amend the appeals provisions within the Site Development Performance Standards and Guidelines (SDPSG) document. Exhibit is A is a final version which incorporates amendments into the text of Section 5.01 of the SDPSG document.*

**6. SECTION 5.01 APPEALS**

*This is the Redline Version of the amendment to Section 5.01 of the SDPGS.*

**7. Planning Commission Minutes from the 12-13-2010 meeting relating to the Appeals Amendment**

*The Commission may be interested in reviewing these Minutes.*

## **II. BACKGROUND**

For the last several years the Current Planning office has been working with the City's Title 18 Committee in developing a series of amendments to the Municipal Code. The effort has focused on amendments to Title 18 (the zoning chapter). In addition, updates to Title 16 (the subdivision code) and Title 17 (the annexation code) have also been part of this effort. The general purpose of these amendments is to update city development standards and procedures in order to provide clear, consistent and equitable development regulations. The ultimate goal is establishment of standards which result in land development that is of high-quality and consistent with City policies as articulated in the Loveland Comprehensive Plan.

The amendments presented in this packet address appeal provisions relating to land use, zoning and subdivision matters. The amendments, including new Chapter 18.80 Appeals, have been developed by the City Attorney's office in collaboration with the Current Planning Division. The City's Title 18 Committee reviewed the proposed appeals amendments over a series of meetings in the Spring of 2010. At a study session on August 10, 2010, the Appeals Chapter was reviewed by the City Council. The Council was generally supportive of the policy approach represented by the amendments.

On December 13, 2010, the described amendments were presented to the Planning Commission in a public hearing. While the Commission was supportive of the Appeals-related amendments, concerns were raised as to the proposal for the elimination of the Zoning Board of Adjustment Hearing Officer. After discussing the merits of whether or not to retain the Hearing Officer, the Commission requested that staff adjust the amendments so that the Hearing Officer would be retained. The Commission then unanimously passed a motion to table the amendments until adjustments were available for consideration at a future meeting.

Since the December 13<sup>th</sup> Planning Commission meeting, staff has been working to respond to Planning Commission comments, and to adjust and refine the proposed amendments. Substantive changes to the amendments since the December 13<sup>th</sup> Planning Commission meeting are described in Section III of this report below.

## **III. CHANGES TO THE PROPOSED AMENDMENTS SINCE DECEMBER 13<sup>TH</sup>**

Several adjustments have been made to the Appeals-related amendments since the December 13<sup>th</sup> Planning Commission hearing. Adjustments that have gone beyond minor corrections or wording changes are summarized below:

### **Chapter 18.52 Supplementary Regulations**

A section of this Chapter has been amended because the provisions relate to setback allowances and reductions, and therefore are related to variances.

#### **Section 18.52.020 Supplementary yard regulations.**

1. Subsection 18.52.020.A. has been amended to clarify the authority of the Current Planning Manager regarding administrative variations to setback (yard) standards. Currently, this

section affords the Current Planning Manager the authority to approve setback variations without limitation. Text has been added to limit setback reductions to a maximum of 25% of a required setback distance through this administrative procedure. More significant setback reductions would automatically require a variance application through the ZBA. Text has also been added to specify procedures for this process, including the requirement for the submittal of letters of non-objection from nearby property owners.

2. Subsection 18.52.020.B. has been amended to correct an error in the Code which would allow a side-loaded garage to be setback only 5 feet from the street. The correction specifies that a 5-foot front yard setback reduction is available for side-loaded garages that are not within a PUD or controlled by a Special Review.
3. Subsection 18.52.020.C. has been amended to clarify that certain architectural features, including cornices, eaves and bay windows and at grade decks or patios, can extend into a setback area if determined to be harmless by the Current Planning Manager.

### **Chapter 18.60 Zoning Board of Adjustment**

This Chapter has been amended for clarity beyond the amendments presented to the Planning Commission on December 13, 2010.

#### Section 18.60.020 Powers and duties.

This Section has been further amended to specify what types of standards within the Zoning Code that the ZBA can approve variances for; the changes also indicate that the ZBA can approve variances with conditions.

#### Section 18.60.030. General Variance Review Criteria.

This is a new section; the “Applications” section that currently exists as 18.60.030 has been moved to become 18.60.050. The amendments specify required review criteria that must be met in approving a variance. The specified criteria are modeled after similar criteria in the zoning codes of other communities. These criteria are designed to clarify the variance decisionmaking process and make it more defensible. The main criterion is that there are unique circumstances associated with the subject property that justify a variance.

#### Section 18.60.040. Sign Variance Review Criteria.

This is a new section which specifies that what standards can be varied for signs and specifies the required review criteria. Freestanding signs can be varied as to setback requirements, spacing between signs or maximum sign area. Building-mounted signs can be varied as to maximum sign area.

### **Retention of the Zoning Board of Adjustment Hearing Officer**

This Amendment is reflected in the Alternate Version of the Ordinance (**Attachment 3**) and in the companion REDLINE Version for Section 18.60.060 (**Attachment 4**) as provided in this report. The Alternate Ordinance differs from the other Ordinance (**Attachment 1**) only with respect to the Hearing Officer. Retention of the Zoning Board of Adjustment Hearing Officer was requested by the Planning Commission at the hearing on December 13, 2010.

Section 18.60.060. Procedure.

This Section has been adjusted to retain the Hearing Officer. Adjustments to this section ensure that it aligns with the remainder of Chapter 18.60 (as amended) and with the proposed Appeals amendments (new Chapter 18.80). The proposed amendment gives discretion to the Hearing Officer to forward any matter on to the full Zoning Board of Adjustment—as requested by the Planning Commission on December 13<sup>th</sup>.

Should the Commission decide to recommend to the City Council that the ZBA Hearing Officer be retained, then the Commission will need to adjust the staff recommended motion accordingly.

**Chapter 5 of the Site Development Performance Standards and Guidelines**

This is a minor “satellite amendment” to ensure that the appeals provisions of the Site Development Performance Standards and Guidelines document include reference to the new Appeals Chapter 18.80 and are therefore consistent with the new provisions.

Section 5.01 (SDPSG) Appeals

Amend these provisions to provide consistency with new Chapter 18.80.

**IV. PURPOSE OF THE APPEALS AMENDMENTS**

The over-arching purpose of the amendments has been to develop a new chapter in Title 18 which provides clear and uniform appeal provisions. These new provisions would apply to the appeal of land use, zoning and subdivision applications and related administrative actions as specified within Title 16 (the subdivision code) and Title 18 (the zoning code). New Chapter 18.80 is designed to replace existing appeal procedures with a single, uniform set of standards and procedures.

At the present time, provisions for the appeal of land use, zoning and subdivision-related decisions are contained in various locations within Title 16 (the subdivision code) and Title 18 (the zoning code). The appeal requirements and procedures can vary based on application type. For example, some types of appeals must undergo a determination of merit (a so-called Merit Hearing) before an actual appeal hearing is conducted. In other instances, an appeal hearing is conducted following submittal of the necessary appeal documents. Similarly, some types of appeals require the simple filing of an appeal; in other instances, a two-stage appeal submittal process is specified: 1) filing of a notice of appeal; 2) filing of a written appeal report. Varying provisions such as these are confusing and can result in frustration for appellants, staff and decision makers.

The new Appeals Chapter includes a number of new definitions that are designed to clarify the appeals process. These definitions specify responsible parties, define procedures and define terminology that is needed to support the new provisions. An effort has been made to keep the new provisions simple as possible while ensuring clarity and completeness.

Numerous sections throughout Title 16 and 18 are being amended along with the new Appeals Chapter. These amendments are incorporated into the attached ordinance and into the redline version of the amendments. These “satellite” or associated amendments are necessary to provide



proper references and to ensure consistency with the new chapter. Such amendments are generally technical in nature rather than substantive.

## **V. DESCRIPTION OF PROPOSED AMENDMENTS**

Below is a summary of the main components of the proposed amendments:

### **Amendments Relating to New Appeals Chapter 18.80:**

1. Consolidation of appeal provisions from Titles 16 and 18 into new Chapter 18.80. As mentioned above, consolidation of the appeal provisions will make this material easier to find and easier to follow. The greater uniformity in the appeals process will help reduce confusion and procedural errors.
2. New definitions: these definitions are designed to specify responsibilities relative to the appeals process, to clarify procedures and to define important terms used in this Chapter.
3. The grounds for appeal are specified in the new Chapter (18.80.030). Currently, the grounds for appeals are vague. As a result, prospective appellants have little guidance preparing appeals; staff and to the bodies hearing appeals also suffer from lack of guidance. Identification of the grounds for appeal is designed to help appellants focus their appeals on applicable matters and help decision-making bodies focus on relevant information. The grounds for appeal are limited to one or both of the following errors:
  - Failure to properly interpret and apply relevant portions of the Code
  - Failure to conduct a fair hearing
4. Appeal of a City Staff Decision Maker or Director's Decision (18.80.040): An effort has been made in the new Chapter to clearly specify that a final decision by staff is appealable, and to specify the procedures for such an appeal.
5. The new Chapter specifies that appeal hearings would be conducted as de novo hearings, meaning that the hearing would be a new public hearing allowing for the submittal of new evidence and new testimony; however, new grounds for the appeal could not be considered by the City Council in deciding the appeal. The current requirement for merit hearings would be eliminated and all appeal hearings would be de novo hearings,
6. A consistent time period (10 days) for filing appeals is established in the Chapter (18.80.050).
7. Notice requirements and parties responsible for providing notice are specified. This is another clarifying addition designed to eliminate confusion.
8. Hearing procedures are specified in the new Chapter (18.80.080). The existing Code omits such provisions; the new provisions should clarify expectations and lead to more

consistently-run hearings. While procedures are specified, allowance is provided for the chairperson of the hearing to have discretion relating to limitations in time or scope of the hearing.

### **Amendments to Chapter 1860: Zoning Board of Adjustment**

1. Elimination of the Zoning Board of Adjustment Hearing Officer. Zoning Board of Adjustment (ZBA) powers and duties are specified in Chapter 18.60. The Planning Commission serves as the Zoning Board of Adjustment. The Board is responsible for deciding variance requests and for hearing appeals of administrative decisions. Each year the Board appoints a Hearing Officer from among its ranks to conduct the hearings and report decisions back to the Board. Under the proposed amendments, all hearings that were formerly assigned to the Hearing Officer would be heard by the full Zoning Board of Adjustment. Elimination of the Hearing Officer position would eliminate a step in the appeals process. Moreover, hearings conducted by the full 9-member Zoning Board of Adjustment will likely result in more consistent procedures and rulings.
2. The amendments to Chapter 18.60 would limit ZBA duties to hearing variances. Responsibility for hearing appeals of administrative decisions would go to the Planning Commission as specified in new Chapter 18.80. On average, there have been 5-7 hearings conducted annually by the Hearing Officer.

### **Retention of the Zoning Board of Adjustment Hearing Officer**

As specified in section III of this report, the Planning Commission requested that text be drafted that would allow for the Hearing Officer position to be retained. The Alternate Ordinance (**Attachment 3**) and the companion Redline Version of Section 18.60.060 (**Attachment 4**) respond to this request.

### **Amendments Relating to Appeals Fees:**

The amendments do not propose the establishment of Appeal fees. Currently, there are no fees charged for appeals. At the August 10, 2010 study session with City Council, staff proposed the establishment of a stepped fee schedule for the various types of appeals. This recommendation was based on considerations of the Title 18 Committee that the current absence of fees for appeals encourages the filing of appeals that may be frivolous or designed to delay a project for punitive reasons. The City Council, however, was concerned about the establishment of appeals fees and questioned whether the proposed fees would discourage valid appeals. Based on these concerns, staff has withdrawn the proposal for the establishment of appeal fees. A comprehensive evaluation of development fees is scheduled to occur in 2011; if so directed, staff will include appeals fees in this future process.

**AT THE TIME OF POSTING OF THE AGENDA THE ATTACHMENTS WERE NOT COMPLETE. FOR A COMPLETE SET OF ATTACHMENTS PLEASE CONTACT THE CURRENT PLANNING DEPARTMENT 970-962-2523 - 500 E. 3rd Street, Suite 310.**

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING TITLES 16 AND 18 OF THE LOVELAND MUNICIPAL CODE BY REVISING PROVISIONS OF TITLES 16 AND 18 AND ENACTING A NEW CHAPTER 18.80 REGARDING APPEAL PROVISIONS.**

WHEREAS, City Council finds that updates to Titles 16 and 18 of the Loveland Municipal Code are necessary and required in the interest of the health, safety and welfare of the citizens of Loveland; and

WHEREAS, the Planning Commission held a public hearing regarding appeal provisions in Titles 16 and 18 of the Loveland Municipal Code; and

WHEREAS, City Council has received a recommendation from the Planning Commission regarding updates to the Code regarding appeal provisions, and the City Council desires to adopt such updates by amending Titles 16 and 18 and by adopting a new Chapter 18.80 regarding appeals.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, THAT:

**Section 1.** Title 16 of the Loveland Municipal Code is amended by the addition of the following language to Section 16.08.010:

\* “Final decision” shall have the meaning set forth in Code section 18.80.020.

**Section 2.** Title 16 of the Loveland Municipal Code is amended by the addition of a new chapter 16.10 Appeals, to read as follows:

**Chapter 16.10**

**APPEALS**

**Section:****16.10.010 Appeals of Final Decisions****16.10.010 Appeals of Final Decisions.**

An appeal of a final decision by the director, other City staff decision maker, or the planning commission regarding any provisions in this title, shall be brought in accordance with Chapter 18.80 of this Code.

**Section 3.** Sections 16.16.030.B and 16.16.030.E of the Loveland Municipal Code are revised to read as follows:

**16.16.30 Review procedures, general.**

...

**B. Development Review.****1. Submission of Application Signatures/Certified Lists.**

- a. Once the applicant has received comments on the sketch plan, the applicant may submit an application for the development review sought. Applications shall be submitted to the Current Planning Division on forms provided for this purpose. The application shall include all required supporting documentation as specified on submittal checklists provided by the Current Planning Division. Unless otherwise specified herein, the applicant shall provide the number of copies specified in the checklist. Applications shall be signed by all fee owners of the land described in the application; except, that where the fee is held by two or more owners as joint tenants or as tenants in common, such application may be signed by only one joint tenant or tenant in common. All other owners and lienholders who have an interest in the land described in the application shall be noted on the application.
- b. At the time of filing a development review application requiring a public hearing, or where otherwise required under this title, the applicant shall submit to the Current Planning Division all information required pursuant to Section 16.16.070 and Tables 16.16.070-1 and 16.16.070-2.
- c. Each application shall be submitted with the fee established for that application pursuant to resolution of the city council.

2. Application Submittal Date. The official application submittal date shall be the date on which the applicant submits a reviewable application. The director shall schedule the applicant for a meeting with the development review team upon determination that such application is reviewable. The director may exempt applications for final plats, minor subdivisions, lot mergers, and boundary line adjustments from meeting with the development review team.

3. Applications Referred to Development Review Team/Determination of a Reviewable Application. The development center shall refer the reviewable application to the development review team members for their review. The development review team members shall comment on the application. Said comments shall be completed and compiled within approximately thirty days from the official application submittal date or by such time as required by the director. The director may require that any applicant for any development review under this title, reimburse the city for the cost of any legal or technical consultant fees incurred by the city in connection with reviewing the application. The application shall be deemed complete on the application acceptance date, which is the date that the director finds that the application contains adequate information on which to determine compliance with the review and design standards of this title and other applicable code provisions, city ordinances, comprehensive master plan, city policies, and state laws.
4. Written Comments to the Applicant. The development center shall make available to the applicant the development review team's comments a minimum of two working days prior to the development review team meeting or at such time as may be required by the director.
5. Development Review Team Meeting. On the scheduled date, the applicant shall meet with the development review team to discuss their comments. If the development review team determines that the application is not complete, the director may table further processing of the application and inform the applicant of the materials or revisions needed to make the application complete. The applicant shall submit a revised application no later than the deadline determined by the development review team. If the development review team finds that an application is not complete and cannot be made complete without revisions so extensive as to constitute a new application, the director may reject the application. Such application shall be resubmitted for development review under this title, in accordance with the applicable provisions of this title. The director will accept amendments to applications as long as they are submitted at least fifteen days prior to the scheduled development review team meeting. Nothing herein shall prevent the development review team, the planning commission city council or director from requesting additional information in the course of the review if it is deemed necessary to determine compliance with the standards set forth in this title, or in Title 17 or 18 as applicable.
6. Scheduling Public Hearings. An application shall not be scheduled for planning commission or city council review or decision unless the director determines that the application is complete. Upon a finding that the application is complete, the director shall schedule the application for the next available planning commission or city council meeting, as applicable.

...

#### E. Appeal Procedure.

Appeals from any final decision by the director or the planning commission shall be conducted pursuant to Chapter 18.80 of this Code.

**Section 4.** Section 16.16.040.C of the Loveland Municipal Code is revised to read as follows:

**16.16.040 Staff review of certain applications.**

. . .

C. Appeal Procedure.

1. Appeals from any final decision by the director for final plats, minor subdivisions, boundary line adjustments and lot mergers shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.
2. Appeal Procedure for Planning Commission Decisions. The decision of the planning commission shall be considered final absent an appeal to city council pursuant to Chapter 18.80 of this Code.

**Section 5.** Section 16.16.070.D.10 and section 16.16.070.E.2 of the Loveland Municipal Code are revised to read as follows:

**16.16.070 Public Notice Requirements.**

. . .

D. Content of Public Notice. . . .

10. For Director decision notices, a statement that interested parties may submit an appeal and the deadlines and requirements for filing an appeal, pursuant to Chapter 18.80 of this Code.

E. Mailed Notice. . . .

2. For all applications requiring mailed notice, the radius distances specified in Table 16.16.070-2 Area of Public Notice Distance by Application Type and Size, shall be used to determine the area to which such notice shall be given, except as provided in Sections 16.16.070.E. 3 and 4.

| Table 16.16.070-2 AREA OF MAILED NOTICE DISTANCE BY APPLICATION TYPE AND SIZE |                   |               |                       |
|---|-------------------|---------------|-----------------------|
| Application Type  | 20 acres or less  | 21 – 50 acres | Greater than 50 acres |
| Obsolete Subdivisions   | See Chapter 16.36 |               |                       |



|  |                   |         |           |
|--|-------------------|---------|-----------|
| Preliminary Plat                         | 500 ft.           | 750 ft. | 1,000 ft. |
| Minor Subdivision                        | 150 ft.           | 150 ft. | 150 ft.   |
| Vacation (of easements or rights-of-way) | See Chapter 16.36 |         |           |

**Section 6.** Section 16.20.060.D of the Loveland Municipal Code is revised to read as follows:

**16.20.060. Preliminary Plat Review Procedure.**

...

D. Appeal Procedures of Planning Commission Decisions. The decision of the planning commission shall be considered final on all matters as prescribed in this Title 16 absent an appeal to city council pursuant to Chapter 18.80 of this Code.

**Section 7.** Section 16.20.080.C.1 of the Loveland Municipal Code is revised to read as follows:

**16.20.080. Final plat review procedure.**

...

C. Final Plat Review.

1. Pursuant to the powers granted to the city in the Colorado Constitution and the city of Loveland Charter, the director is hereby assigned the power to approve all final plats. The director shall make final decision on the final plat application within thirty days after a complete final plat is submitted to the development center. The director shall make appropriate findings based on the applicable review standards, or adopted plans. Using the review standards set forth in this title, the director shall approve, approve with conditions or deny the application. All conditions of approval applicable to the final plat shall be included in a development agreement, which shall be recorded with Larimer County clerk and recorder concurrent with recordation of the final plat. The decision of the director shall be considered final on matters prescribed in this Title 16 absent an appeal to planning commission pursuant to Chapter 18.80 of this Code.

**Section 8.** Section 16.20.100 of the Loveland Municipal Code is revised to include an addition of a new Subsection E to read as follows:

**16.20.100 Minor subdivision review procedures.**

. . .

- E. Appeals from any final decision by the director for a minor subdivision shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.

**Section 9.** Section 16.20.120 of the Loveland Municipal Code is revised to include an addition of a new Subsection D to read as follows:

**16.20.120 Simple plat review procedure.**

. . .

- D. Appeals from any final decision by the director for a minor subdivision shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.

**Section 10.** Section 16.28.060 of the Loveland Municipal Code is revised to read as follows:

**16.28.060 Deed restriction in lieu of boundary line adjustment.**

- A. In the event the owner of property consisting of one or more adjacent lots and an adjacent unsubdivided parcel of land upon which a structure is located, wishes to obtain a building permit for either an accessory structure to be located on the property, an addition to the existing structure, or interior remodeling work without completing a boundary line adjustment, the owner may request that in lieu of a boundary line adjustment the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a boundary line adjustment. The deed restriction shall be released by the city upon completion of a boundary line adjustment combining all adjacent lots and un-subdivided parcels in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.
- B. Appeals from any final decision by the Director for a deed restriction in lieu of a boundary line adjustment shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.

**Section 11.** Section 16.32.060 of the Loveland Municipal Code is revised to read as follows:

**16.32.060 Deed restriction in lieu of lot merger.**

- A. In the event the owner of property, consisting of two or more adjacent lots and containing an existing residential use, wishes to obtain a building permit for either an accessory structure to be located on the property or an addition to the existing structure without completing a lot merger, the owner may request that in lieu of a lot merger the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a lot merger. The deed restriction shall be released by the city upon completion of a lot merger combining all adjacent lots in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.
- B. Appeals from any final decision by the Director for a deed restriction in lieu of a lot merger shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.

**Section 12.** Section 16.40.090 of the Loveland Municipal Code is revised to read as follows:

**16.40.090 Guarantee period.**

All workmanship and materials (except materials provided by the city) for all required public improvements installed by the applicant (including, but not limited to the water supply system, sanitary sewage disposal system, storm drainage facilities, electrical distribution system, curbs, gutters, street pavement, sidewalks, street signs, survey monuments, landscaping, and pavement markings) shall be guaranteed to be free from defects by the applicant for a period of two years from the date of acceptance of the required improvement by the city, provided, that such defects are not the result of public abuse, misuse or natural causes, as determined by the city. In the event any other provision of this code or specifications adopted pursuant thereto shall require a guarantee of workmanship or materials or both for a different period of time, that provision regarding the longer period of guarantee shall govern. City inspection shall not relieve the property owner of such guarantee of workmanship and materials. Upon notification, the applicant shall promptly make all adjustments, repairs, or replacements in accordance with a repair plan approved by the city, which repair, in the opinion of the city, arose out of defects and became necessary during the guarantee period. The cost of all materials, parts, labor, transportation, supervision, special tools, and supplies required for replacement or repair of parts and for correction of defects shall be paid by the contractor or by the holder of the approved financial security.

This guarantee shall be extended to cover all repairs and replacements furnished under the guarantee, and the period of the guarantee for each repair or replacement shall be extended one year after installation or completion of the repair or replacement.

If, within fifteen days after the city has notified the applicant of a defect, failure, or abnormality in the work, the applicant has not started to make the necessary repairs or adjustments or submitted a written objection to the city's request for repair work, the city is hereby authorized to make the repairs or adjustments or to order the work be done by a third party. The cost of the work shall be paid by the applicant. The director may authorize a temporary repair if necessary due to weather conditions or materials availability.

If an applicant has cause to object to the city's request for repair work, such objection shall be made in writing to the director. If the director confirms that the repair is necessary because of a defect in the applicant's materials or workmanship, the applicant shall complete the repairs as directed by the city.

In the event of an emergency, where in the judgment of the city, delay would cause serious loss or damage, repairs, or adjustments may be made by the city or a third party chosen by the city without advance notice to the applicant, the cost of the work shall be paid by the applicant or the holder of the financial security.

Within thirty days prior to expiration of the guarantee period, the applicant shall request, in writing, that the city verify that no defects exist. The city shall, within thirty days, inspect the completed work and, if no defects, failures, or abnormalities are observed or detected, the city shall cause the bond, deposit, escrow agent, or letter of credit to be released.

In the event that the applicant fails to complete any required repair work, or fails to reimburse the city for legitimate repair work performed by the city on behalf of the applicant, or fails to enter into an agreement with city regarding the satisfactory resolution of the obligation, the applicant shall be prohibited from participating in any further land development activity in the city of Loveland until such repair, reimbursement, or agreement is completed to the satisfaction of the director. Both the developer of the project and the contractor performing the defective work shall be subject to this restriction. The developer shall be prohibited from receiving any additional building permits for any lots owned by the developer, as well as from submitting or continuing the processing of any land development applications for review and consideration by the city. The contractor shall be subject to the issuance of a stop work order issued by the city to the contractor for any work within any city right-of-way or easement. Appeals from any final decision by the Director shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.

**Section 13.** The introductory language to Chapter 18.04 of the Loveland Municipal Code is revised to read as follows:

\*For statutory provisions regarding zoning of cities and towns generally, see CRS § 31-23-201 et. seq. ; for provisions authorizing local authorities to adopt zoning regulations, see CRS § 31-23-301 et. seq.

**Section 14.** Section 18.04.050 of the Loveland Municipal Code is revised to read as follows:

**18.04.050 Building, structure, or use exempt.**

Any building, structure, or use as to which satisfactory proof shall be presented to the city council, that the present or proposed situation of such building, structure, or use is reasonably necessary for the convenience or welfare of the public, shall be exempt from the operation of this title.

**Section 15.** Section 18.32.050 of the Loveland Municipal Code is revised to read as follows:

**18.32.050 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the current planning manager for review and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 16.** Section 18.36.025 of the Loveland Municipal Code is revised to read as follows:

**18.36.025 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the current planning manager for review and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 17.** Section 18.40.055 of the Loveland Municipal Code is revised to read as follows:

**18.40.055 Appeal of an administrative or planning commission decision.**

A.

1. Any party-in-interest as defined in Chapter 18.80, may appeal to the planning commission a decision of the planning division on a type 2 zoning permit in accordance with the procedures set forth in chapter 18.80 so long as the appeal is filed within ten (10) days of the mailing of a notice from the planning division office that a type 2 zoning permit will be issued.
2. Upon the filing of an appeal, the permit application shall be suspended pending conclusion of the appeal process. The appeal shall be scheduled for a public hearing in accordance with chapter 18.80, at which time the applicant shall have the burden of proving that he or she is entitled to a permit under the standards set forth in Sections 18.40.030K and 18.40.005.
3. Following the close of the public hearing, the planning commission may deny the application for a special review permit or direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the

planning commission deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed with such condition or restriction.

B.

1. Any party-in-interest as defined in chapter 18.80, may appeal a decision of the planning commission to the city council in accordance with the procedures set forth in chapter 18.80, within ten (10) days following the planning commission decision.
  
2. If the city council determines that a decision to deny a type 3 zoning permit should be reversed, the city council shall direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the council deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed with such condition or restriction. If the city council determines that a decision to issue a type 3 zoning permit should be reversed, no such permit shall issue and the application shall be denied. If the city council determines that certain conditions or restrictions should or should not have been imposed upon the type 3 zoning permit, it shall direct the planning division to issue the type 3 zoning permit subject to a modification in the conditions or restrictions. If the council determines that the conditions and restrictions should remain as provided by the planning commission, then it shall direct the planning division to issue the type 3 zoning permit without modification. In making its decision on the appeal, the city council shall consider the standards in Sections 18.40.030K and 18.40.005.

**Section 18.** Section 18.41.050.E.3 of the Loveland Municipal Code is revised to read as follows:

**18.41.050 Procedures for approval of a planned unit development.**

. . .

E. Preliminary Development Plan Approval.

. . .

3.
  - a. The effective date of the planning commission's decision shall be the date that the planning commission adopts its written findings and conclusions. The planning commission shall issue findings and conclusions in support of any decision within thirty days of its decision. Any party-in-interest as defined in chapter 18.80, may file a written notice of appeal with the planning division within ten (10) days of the effective date of the planning commission's decision. Upon the filing of a notice of appeal, the appeal

shall be scheduled for a full public hearing in accordance with chapter 18.80. At the public hearing, the city council shall approve, approve with conditions, or disapprove the matter, considering the same standards as prescribed for the planning commission in this Title 18.

- b. If there is no applicable general development plan for the development, then the planning commission shall only make a recommendation to the city council regarding the approval, conditional approval or denial of the preliminary development plan. The council shall proceed in the same manner as in the case of general development plans. See Section 18.41.050(D)(6-10);

**Section 19.** Section 18.41.050.F.3 of the Loveland Municipal Code is revised to read as follows:

**18.41.050 Procedures for approval of a planned unit development.**

. . .

F. Final Development Plan Approval.

. . .

- 3. If the chief planner approves the final development plan, he shall issue an approval of final development plan which shall incorporate by reference the final development and shall be recorded in the real property records of Larimer County without due delay. The final development plan shall be filed with the building division and be available for public inspection. If the chief planner denies approval of the final development plan, he shall communicate a notice of denial to the applicant setting forth the basis for the denial. Within ten days of the date the chief planner mails the notice of denial to the applicant, the applicant may file an appeal of the denial in accordance with chapter 18.80 to the planning commission, which shall hear the matter in accordance with the procedures set forth in chapter 18.80, except that no further public notice of the appeal shall be required. Both the chief planner and the applicant shall appear before the planning commission and be given an opportunity to speak to the issues. Except as permitted by a majority vote of the planning commission members present at the meeting, no other person shall be entitled to address the planning commission. The planning commission shall consider the same factors used by the chief planner when making his determination;

**Section 20.** Section 18.41.060 of the Loveland Municipal Code is repealed in its entirety.

**Section 21.** Section 18.41.090 of the Loveland Municipal Code is repealed in its entirety.

**Section 22.** Section 18.42.030.A.1.d of the Loveland Municipal Code is revised to read as follows:

**18.42.030 Spaces required.**

. . .

A.1.d. Decisions by the Current Planning Manager with respect to such alternative compliance may be appealed to the planning commission in accordance with chapter 18.80. The planning commission, when hearing such an appeal shall apply the standards set forth in section 18.60.020.

**Section 23.** Section 18.45.090.A.1 of the Loveland Municipal Code is revised to read as follows:

**18.45.090 Nonconforming buildings or uses.**

. . .

A.1. Any nonconforming use of property may be expanded, provided that such expansion is approved by the public works director. Any appeal of the public works director’s decision shall be made to the planning commission in accordance with chapter 18.80 of this Code.

**Section 24.** Section 18.48.020.G of the Loveland Municipal Code is revised to read as follows:

G. Appeal.

1. Appeal of director’s decision. Any applicant or member of the neighborhood may appeal a decision of the director regarding the granting or denial of a business occupancy permit so long as the appeal is filed with the city within ten days of the date that a notice of intent to issue a business occupancy permit was mailed by the director, or the permit was denied. Upon the filing of an appeal, the permit application shall be suspended pending conclusion of the appeal process. Appeals shall be conducted by the planning commission in accordance with chapter 18.80 of this Code. The applicant shall be notified of the appeal, and shall be responsible for sending a notice to the members of the neighborhood. The notice shall be in a form approved by the city and shall be mailed a minimum of fifteen days in advance of the scheduled public hearing.
2. Planning Commission consideration. At the appeal hearing, the planning commission shall follow the procedures set forth in chapter 18.80, and shall



consider the application, the findings and determinations of staff, and take public testimony regarding the proposed home occupation. The planning commission shall review the application for compliance with the provisions of this code and other adopted regulations, the compatibility of the application with the character of the surrounding neighborhood and adverse influences that might result from approval of the application. The planning commission may either approve, approve with modifications or conditions or deny the application. The planning commission’s decision may be further appealed in accordance with chapter 18.80.

**Section 25.** Section 18.48.020.I of the Loveland Municipal Code is revised to read as follows:

- I. Revocation of Permit-Appeal. A business occupancy permit may be revoked by the city if the city finds that the home occupation no longer conforms to the provisions of this section or the conditions of approval of the business occupancy permit. A business occupancy permit may also be revoked upon a determination by the city that the mailing list was faulty or the applicant failed to follow the application, review and appeal process. Notification to the applicant shall include findings in support of the revocation and the applicant's rights of appeal. The written notification of revocation shall be mailed to the last known address of the permit holder. The date of the mailing shall be the date of notification. The business occupancy permit holder may appeal the city's decision to the planning commission as provided for in chapter 18.80.

**Section 26.** Section 18.50.100.A.4.h of the Loveland Municipal Code is revised to read as follows:

**18.50.100 Sign regulations in nonresidential zones.**

A.4.h. A request for variance to the maximum sign area, height or setback for a sign containing an electronic message module shall be heard by the Zoning Board of Adjustment in accordance with the procedures specified in Chapter 18.60. In addition to the findings specified Section 18.60.040, before granting any request, the Board shall find that:

- 1. The proposed area, setback and/or height of the electronic message sign module is the minimum required to be fully visible from the adjacent arterial or interstate roadway right-of-way; and
- 2. Traffic safety conditions will not be diminished by the increased square footage, increased height or decreased setback of the electronic message sign module; and

3. There are no reasonable alternatives to the increased size, height, setback and/or design of the electronic message sign.

**Section 27.** Section 18.50.100.B.11 of the Loveland Municipal Code is revised to read as follows:

**18.50.100 Sign regulations in nonresidential zones.**

...

- B.11. Appeal of a Planning Division Decision. Should the applicant for a planned sign program not be satisfied with the decision of the planning division, the applicant shall have the right to appeal the decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 28.** Section 18.50.150.B of the Loveland Municipal Code is revised to read as follows:

**18.50.150 Nonconforming signs.**

...

- B. Prohibited, illegal, nonconforming, abandoned or hazardous signs are declared nuisances and shall not be allowed within the city nor continued by variance. If any person fails to comply with the provisions of this chapter, in addition to the penalty provided therefore, a written order may be served upon the owner or agent in charge of such property, such order to be served personally or by mail, requiring the abatement of the nuisance within fifteen days, excluding weekends and official holidays, after mailing such notice. Such notice shall also advise the owner or agent of his or her right to appeal pursuant to chapter 18.80. If the abatement has not occurred within the stated time and an appeal has not been filed pursuant to the provisions of chapter 18.80, then the city may remove said sign, provided that the sign is either an off-premise sign, portable sign, free standing sign made of paper, balloons, pennants or banners, and charge the direct cost incurred by the city for removal of the sign, including five percent for inspection and other incidental costs in connection therewith, upon the land and such assessment is a lien until paid. In addition to any other means provided by law for collection, if any such assessment is not paid within thirty days after it is made and notice thereof is mailed, the same may be certified by the city clerk to the county treasurer and by him placed upon the tax list for the current year, and thereby collected in the same manner as other taxes are collected, with ten percent penalty thereon to defray the cost of collection.

**Section 29.** Section 18.50.190 of the Loveland Municipal Code is revised to read as follows:

**18.50.190 Appeals.**

A decision of the current planning manager relative to the provisions of this chapter may be appealed to the planning commission in accordance with chapter 18.80 of this title. The decision of the current planning manager shall be upheld unless the planning commission finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious. Any appeal of the planning commission's decision to the city council shall be made in accordance with Chapter 18.80 of this code and the city council shall uphold the decision of the current planning manager unless the city council finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious.

**Section 30.** Section 18.52.020 of the Loveland Municipal Code is revised to read as follows:

**18.52.020 Supplementary yard regulations.**

A. The purpose of a setback creating a yard is for the preservation of light and air to adjoining properties, fire protection, maintenance of property, preservation of open space and the retention of a visually cohesive pattern established by buildings and the spaces which separate them. To maximize the amount of open space on a lot and/or the beneficial use of the property, the current planning manager may approve a reduction of up to 25 percent of a required setback, so long as the current planning manager determines and finds that:

1. The alternative setback would be in harmony with the spirit of this title;
2. The alternative setback would not limit the use or enjoyment of nearby property;
3. A letter of non-objection to the alternative setback is submitted from all adjacent property owners; and
4. A letter of non-objection to the alternative setback is submitted by other potentially impacted property owners, as determined by the Current Planning Manager, who own property that falls wholly or partially within 150 feet of the subject property.

B. The front yard in all residential zones may be reduced by five feet for garages where the vehicle access door does not face directly onto the street. This allowance shall not apply to properties within a planned unit development or special review that contain specific yard provisions.

C. The following items may extend into required yards if determined to be incidental and harmless to adjacent properties by the current planning manager:

1. Architectural features including cornices, eaves, bay windows, an exterior chase for a fireplace or other similar features;
2. At grade uncovered decks and patios that are exempt from building permit requirements; and
3. Fire escapes that extend into the required rear yards by no more than six feet.

**Section 31.** Section 18.53.020 of the Loveland Municipal Code is revised to read as follows:

**18.53.020 Compliance.**

- A. Type 1 Standards. Compliance with the Type 1 standards set forth in this Chapter 18.53 is mandatory, unless a variance is granted pursuant to Chapter 18.60.
- B. Type 2 Standards.
  1. Alternative compliance. Compliance with the Type 2 standards set forth in this Chapter 18.53 is mandatory, unless the current planning manager grants alternative compliance in accordance with the following provisions. The current planning manager may allow application of an alternative standard, different than a Type 2 standard, provided the current planning manager determines that:
    - a. The applicant has demonstrated that either:
      - i. Site-specific, physical constraints necessitate application of the alternative standard, and such constraints will not allow a reasonable use of the property without application of such alternative standard; or
      - ii. The alternative standard achieves the intent of the subject Type 2 standard to the same or greater degree than the subject standard, and results in equivalent or greater benefits to the community as would compliance with the subject standard.
  2. Statement of findings. Whenever the current planning manager grants alternative compliance, the current planning manager shall formulate a written statement of findings based on the above criteria for such action. Such statement shall be filed in the development application file.
  3. Appeals. Decisions by the current planning manager with respect to such alternative compliance may be appealed to the planning commission in accordance with chapter 18.80.

**Section 32.** Sections 18.54.050 and 18.54.060 of the Loveland Municipal Code are revised to read as follows:

**18.54.050 Request for exception.**

The owner of the proposed building or structure may request an exception from the height limitations imposed by this chapter. A request for an exception shall be made to the planning commission. The planning commission shall hold a public hearing on such request, which hearing shall be noticed in accordance with Section 16.16.070 of this code.

Before granting any request, the Planning Commission shall find that:

- A. The requested exception allows adequate light and air to the adjacent neighborhood; and
- B. The requested exception is compatible with the character of the surrounding neighborhood; and
- C. The requested exception will not be injurious to the adjacent neighborhood or otherwise detrimental to the public health, safety and welfare; and
- D. The requested exception is consistent with the intent of the zoning district and the entire zoning ordinance.

**18.54.060 Appeal to city council.**

Any party-in-interest, as defined in section 18.80.020, may appeal the decision of the planning commission to the city council. The city council shall hold a public hearing on such appeal, which appeal shall be held in accordance with chapter 18.80. Using the criteria set forth in section 18.54.050, the city council may affirm, modify or reverse the planning commission.

**Section 33.** Chapter 18.60 of the Loveland Municipal Code is repealed in its entirety and reenacted to read as follows:

**ZONING BOARD OF ADJUSTMENT\***

**Sections:**

- 18.60.010 Board of adjustment established.**
- 18.60.020 Powers and duties.**
- 18.60.030 General Variance Review Criteria.**
- 18.60.040 Sign Variance Review Criteria.**
- 18.60.050 Applications.**
- 18.60.060 Procedure.**
- 18.60.070 Notice.**

\*For statutory provisions regarding boards of adjustment, see CRS §§ 31-23-301 and 31-23-307.

**18.60.010 Board of adjustment established.**

The planning commission shall be the ex officio board of adjustment for the city.

**18.60.020 Powers and duties.**

The board of adjustment shall have the powers and duties to grant variances from certain standards set forth in this title 18 subject to and in compliance with this chapter and the laws of the state. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions of the title so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done. The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:

- A. Standards for lot area, lot dimensions, and setback requirements;
- B. Square footage of accessory structures;
- C. Percentage of open space; and
- D. Setbacks for a freestanding sign, spacing between freestanding signs and the area for freestanding and wall mounted signs.

After considering if the proposed variance meets the criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions, deny or table the application for future consideration.

#### **18.60.030 General Variance Review Criteria**

To approve a zoning variance application, the board of adjustment shall consider the following review criteria and find that each criterion has been met or determined to be inapplicable:

- A. There are unique circumstances or conditions that are particular to or related to the land or structure for which the variance is requested. The circumstances may include, but are not limited to, exceptional topographic conditions, the shape or dimensions of the property, or the existence of mature landscaping or natural features that impact the property;
- B. The special circumstances are not the result of actions or inactions by the applicant or the current owner;
- C. The strict interpretation and enforcement of the provisions of the code would cause an unnecessary or undue hardship;
- D. Granting the variance is the minimum action needed to accommodate or alleviate the difficulty or hardship involved;
- E. The variance would not substantially impact the reasonable use and enjoyment or development of other property in the vicinity of the subject land or structure;
- F. The variance would not authorize any use in a zoning district other than a use specifically permitted in such zoning district; and
- G. The variance would not waive or modify the requirements of any use approved by special review.

#### **18.60.040 Sign Variance Review Criteria**

A. Variances to the requirements of Chapter 18.50 shall not be permitted, except as related to the requirements concerning the setback of a freestanding sign, the spacing between freestanding signs, or the maximum sign area. To approve a zoning variance application to Chapter 18.50, the board must consider the following review criteria and find that each criterion has been met.

- 1. There are special physical circumstances or physical conditions, including, without limitation, buildings, topography, vegetation, sign structures, or other physical features on adjacent properties or within the adjacent public right-of-way that would substantially restrict the effectiveness of the sign in question, and such

special circumstances or conditions are unique to the business to which the applicant desires to draw attention and do not apply generally to all businesses in the area;

2. The variance would be consistent with the purposes set forth in Section 18.50.010 and would not adversely affect the neighborhood or other businesses within the vicinity in which the subject business is located; and

3. The variance is the minimum necessary to permit the applicant to reasonably draw attention to its business.

B. In addition to the above criterion, for signs that contain an electronic message module, the board must consider the review criteria in Section 18.50.100.A.4.h and find that each criterion has been met.

#### **18.60.050 Applications.**

Any person seeking action or review upon any matter within the jurisdiction of the board of adjustment, shall make an application on forms provided by the Current Planning Division. The application shall be accompanied by such supporting material as may be required. The applicant shall also pay, at the time of filing of the application, any required filing fee as established by resolution of the city council.

#### **18.60.060 Procedure.**

The board of adjustment shall conduct public hearings on matters coming before the board. Within thirty (30) days after the conclusion of any such hearing, the board shall submit its findings and order to the applicant and all parties participating in the hearing. The findings and order of the board may be appealed to city council by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the current planning division within ten (10) days of the mailing of the findings and order. City Council shall consider any such appeal at a public hearing noticed in accordance with Section 18.80.050.C and conducted in accordance with Section 18.80.090. At the conclusion of the public hearing, city council may approve, approve with conditions, or deny the variance. Unless otherwise stated in the findings and order, or in the decision of city council, all permits or actions authorized as a result of an approval of a variance must be initiated within six months of the date such findings and order became final. Upon written request by the applicant, an additional six months may be granted by the current planning manager for initiating such permits or actions. In reviewing the proposed time extension, the current planning manager shall consider the following criteria:

- A. Has there been a change of zoning for the site, or for any property adjacent to the site since the original approval?
- B. Has a change of use taken place on the site or on any adjacent property since the original approval, or is a change of use proposed for the site which would be divergent from the use shown in the application documents for the original variance?

- C. Have there been changes in the regulations and requirements specified in the Loveland Municipal Code which are applicable to the site and which should be addressed prior to the development of the site?
- D. Has the ownership of any adjacent property changed?
- E. Will the granting of the extension be detrimental to the public health, safety, or general welfare?
- F. Will the granting of the extension be in keeping with the purposes set forth in this title to the same degree as intended in the original approval?

**18.60.070 Notice.**

Notice requirements for appeals shall be provided in accordance with chapter 18.80. All other notices required by this Chapter shall be provided pursuant to Chapter 18.05.

**Section 34.** Section 18.68.045 of the Loveland Municipal Code is revised to read as follows:

**18.68.045 Code Enforcement Guidelines**

A duly appointed peace officer or code enforcement officer of the City may enforce the provisions of this title and of Titles 15 and 16 of the city code by the issuance of a summons and complaint as provided in Rule 204 of the Colorado Municipal Courts Rules of Procedure.

**Section 35.** Section 18.68.050.A of the Loveland Municipal Code is revised to read as follows:

**18.68.050 Violation.**

. . .

- A. Any violation of any of the provisions of this title or any Agreement or development plan approved under this title, exists in any building, other structure or tract of land; or

**Section 36.** Section 18.68.070 of the Loveland Municipal Code is revised to read as follows:

**18.68.070 Penalty.**

Any person, firm or corporation violating any provisions of this title, upon conviction therefore, shall be fined not more than one thousand dollars or incarcerated not more than one year, or both. Each day during which the illegal erection, construction, reconstruction, alteration, maintenance, use, or any other violation of this title continues, is deemed a separate offense.



**Section 37.** A new chapter 18.80 regarding Appeals is added to the Loveland Municipal Code to read as follows:

## **APPEALS**

**18.80.010 Purpose**

**18.80.020 Definitions**

**18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal**

**18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision**

**18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision**

**18.80.060 Notice of Appeal Requirements**

**18.80.070 Cost of Appeal**

**18.80.080 Record on Appeal**

**18.80.090 Procedure at Hearing**

### **18.80.010 Purpose.**

This Chapter shall govern the procedures for appeals from any Final Decision made under Title 16 or Title 18 of this Code.

### **18.80.020 Definitions.**

The following words, terms and phrases, when used in this Title, shall have the meanings hereafter ascribed to them in this Chapter unless the context requires otherwise:

*Appellant* shall mean a Party-in-Interest who has filed a Notice of Appeal under the provisions of this Chapter.

*Applicant* shall mean a Person that has submitted to the City an application related to the development, zoning or subdivision of real property in the city as authorized or required under the provisions of Title 16 or Title 18 and which application is the subject of appeal under this Chapter.

*City Staff Decision Maker* shall mean any City staff member granted authority to make decisions under titles 16 and 18 of this Code.

*City Council* shall mean the City Council of the City of Loveland.

*Current Planning Division* shall mean the Current Planning Division for the City of Loveland Development Services Department.

*Days* shall mean all calendar days including Saturday and Sunday. Any computation of days under this Chapter shall not include the date a Final Decision is made. If a filing deadline falls upon a Saturday, Sunday or other legal holiday when City offices are closed, the filing deadline shall continue to the following day when City offices are open.

*De Novo Hearing* shall mean a new public hearing.

*Director* shall mean the City's Director of Development Services or his or her designee.

*Evidence* shall mean documentary, electronic or testimonial evidence relevant to any application that was the subject of a final decision under the provisions of Title 16 or Title 18, presented at a hearing to support or refute a particular proposition or conclusion. *Evidence* shall not include argument as to how information offered as evidence should be viewed or interpreted.

*Effective Date of the Final Decision*, as it pertains to a City Staff Decision Maker's or Director's Final Decision, shall mean the date the City Staff Decision Maker or Director mails his or her written decision to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this title to be mailed. As this phrase pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean the date on which the Board or Commission adopts its written findings and conclusions.

*Final Decision*, as it pertains to a City Staff Decision Maker or the Director, shall mean a decision or action by the City Staff Decision Maker or Director under Title 16 or Title 18 that the City Staff Decision Maker or Director has reduced to writing and has promptly mailed to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this Code to be mailed. As this term pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean a decision or action by the Board or Commission under this Code for which the Board or Commission has adopted written findings and conclusions. A *Final Decision* shall not include any decision made by a City Staff Decision Maker or the Director that is a recommendation to the Planning Commission or to the City Council, or a decision by the Planning Commission under this Code that constitutes a recommendation to City Council.

*Notice of Appeal* shall mean an Appellant's written request for an appeal of a Final Decision submitted in the form required by Section 18.80.060.

*Party-in-Interest*, as it pertains to an appeal under this Chapter of a Final Decision by a City Staff Decision Maker or the Director, shall mean: the Applicant; any person required in Title 16 or this Title 18 to be mailed the City Staff Decision Maker's or Director's written Final Decision; three or more Planning Commission members; or three or more City Council members. As this term pertains to an appeal under this Chapter of a Final

Decision by the Zoning Board of Adjustment or the Planning Commission, it shall mean: the Applicant, any Person required in Title 16 or this Title 18 to be mailed notice of the Zoning Board of Adjustment or Planning Commission's public hearing; any Person who provided written or verbal testimony at the Zoning Board of Adjustment or Planning Commission's public hearing; or three or more City Council members. For an appeal of a Final Plat for a major subdivision or a Final Development Plan, only the Applicant shall be considered a Party-in-Interest with standing to appeal.

*Person* shall mean an individual, corporation, partnership, limited liability company or other legal entity.

*Planning Commission* shall mean the City of Loveland Planning Commission established pursuant to Section 2.60.080 of this Code.

*Record* shall mean all relevant documents reviewed by a previous Board, Commission or City Staff Decision Maker, and any transcript or written record of any such previous hearing.

*Zoning Board of Adjustment* shall mean the City of Loveland Zoning Board of Adjustment established pursuant to Section 18.60.010 of this code.

**18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal.**

A. An appeal of a Final Decision may be filed pursuant to sections 18.80.040 and 18.80.050 of this Chapter. Upon the filing of an appeal, any application process with the City pertaining to the subject matter being appealed shall be suspended while the appeal is pending. Any action taken in reliance upon any decision of a Board, Commission or other City Staff Decision Maker that is subject to appeal under the provisions of this Chapter shall be totally at the risk of the Person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action taken during said period of time.

B. Except for appeals by members of the City Council, the permissible grounds for appeal shall be limited to allegations that the Board, Commission or other City Staff Decision Maker committed one (1) or more of the following errors:

- (1) Failure to properly interpret and apply relevant provisions of the Municipal Code or other law; or
- (2) Failure to conduct a fair hearing in that:

- a. The Board, Commission or other City Staff Decision Maker exceeded its authority or jurisdiction as contained in the Municipal Code or Charter;
- b. The Board, Commission or other City Staff Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading; or
- c. The Board, Commission or other City Staff Decision Maker improperly failed to receive all relevant evidence offered by the Appellant.

C. Appeals filed by members of the City Council need not include specific grounds for appeal, but shall include a general description of the issues to be considered on appeal. Council members who file an appeal shall not participate in deciding the appeal.

**18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision.**

A. A Party-in-Interest may appeal any final decision by the Director or other City Staff Decision Maker to the Planning Commission.

B. To appeal a City Staff Decision Maker or Director's Final Decision to the Planning Commission, a Party-in-Interest must file a notice of appeal with the Current Planning Division within ten (10) days of the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in the dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the Planning Commission not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The Planning Commission shall conduct the appeal hearing as a De Novo hearing and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the Planning Commission may uphold, reverse or modify the Final Decision being appealed. The Planning Commission shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions concerning the appeal.

**18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision.**

A. A Party-in-Interest may appeal any Final Decision by the Zoning Board of Adjustment or the Planning Commission to the City Council.

B. To appeal a Final Decision by the Zoning Board of Adjustment or Planning Commission to the City Council, a Party-in-Interest must file a Notice of Appeal with the Current Planning Division within ten (10) days of the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the City Council not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The property owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The City Council shall conduct the appeal hearing as a De Novo Hearing, and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the City Council may uphold, reverse or modify the Final Decision being appealed. The City Council may also remand the appeal to the Zoning Board of Adjustment or the Planning Commission with directions for the Zoning Board of Adjustment or Planning Commission's further consideration of the matter. If the City Council upholds, reverses or modifies a Final Decision made by the Zoning Board of Adjustment or the Planning Commission, the City Council shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions. The City Council's written findings and conclusions shall be considered the City Council's Final Decision for purposes of any appeal of the City Council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

#### **18.80.060 Notice of Appeal Requirements.**

The Notice of Appeal required to be filed under this Chapter shall include all of the following information:

A. A description of the Final Decision being appealed.

B. The date of the Final Decision being appealed.

C. The name, address, telephone number and relationship of each Appellant to the subject of the Final Decision being appealed including a statement for each Appellant as

to the Appellant's qualification for being considered a Party-in-Interest under this Chapter.

D. For all appeals, except those filed by members of City Council, a description the grounds for the appeal of the Final Decision, including specific allegations of error.

E. In the case of an appeal by more than one (1) Appellant, the name, address and telephone number of one (1) such Appellant who shall be authorized to receive, on behalf of all Appellants, any notice required to be mailed by the City to the Appellants under the provisions of section 18.80.040 or section 18.80.050.

#### **18.80.070 Cost of Appeal**

In all appeals under this Chapter except those filed by three or more members of the Planning Commission or those filed by three or more members of the City Council, the Appellant shall be charged a fee for the cost of the appeal as such fee is established by City Council pursuant to Code Section 3.04.025. The City Council may establish a fee for each level of appeal.

#### **18.80.080 Record on Appeal**

The record provided to the Planning Commission or City Council for appeals filed under this chapter shall include a record of any previous proceedings before a Board, Commission or other City Staff Decision Maker, including without limitation, all exhibits, writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the Board, Commission or other City Staff Decision Maker at any previous proceedings. A video recording of the Zoning Board of Adjustment Hearing or Planning Commission hearing is not required as part of the record on appeal provided summary minutes of such hearings are included as part of the record.

#### **18.80.090 Procedure at Hearing**

A. At the appeal hearing, the presentation of argument regarding the appeal shall be made in the following order, subject to the discretion of the Chairperson or Mayor relating to limitations in time and scope, or allowances accommodating adequate presentation of evidence or opportunity for rebuttal:

- (1) Explanation of the nature of the appeal by City staff;
- (2) Appellant's presentation of evidence, testimony and argument in support of the appeal;

- (3) Presentation of evidence, testimony and argument of the Applicant if the Applicant is not the Appellant; or, if the Applicant is the Appellant, presentation of evidence, testimony and argument by any City staff member or other Party-in-Interest in opposition to the appeal.
- (4) Public comment;
- (5) Rebuttal presentation by the Appellant; and
- (6) Motion, discussion and vote by the Board, Commission or City Council.

B. No person making a presentation or providing testimony at an appeal hearing shall be subject to cross-examination except that members of the Planning Commission or City Council and the City Attorney may at any time make inquiries for the purpose of eliciting information and for the purpose of clarifying information presented.

C. In the event of multiple appeals involving the same subject matter considered by the Planning Commission or City Council, the Chairperson or Mayor, in his or her discretion, may modify the procedure contained in Subsection (A) above so as to expedite the hearing of such appeals.

D. The City Council shall consider an appeal based upon evidence submitted at the public hearing, the record on appeal, the relevant provisions of the Municipal Code and Charter, and the grounds for appeal cited in the Notice of Appeal. Grounds for appeal raised for the first time at the public hearing, and therefore not raised in the Notice of Appeal, shall not be considered by the City Council in deciding the appeal.

**Section 38.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

CITY OF LOVELAND, COLORADO

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney



# APPEALS, SUPPLEMENTARY REGULATIONS AND ZONING BOARD OF ADJUSTMENT AMENDMENT: REDLINE VERSION

Title 16

Chapter 16.08

## DEFINITIONS

### 16.08.010 Definitions.

"Final decision" shall have the meaning set forth in Code section 18.80.020.

Chapter 16.10.10

## APPEALS

Section:

### 16.10.010 Appeals of Final Decisions.

An appeal of a final decision by the director, other City staff decision maker, or the planning commission regarding any provisions in this title, shall be brought in accordance with Chapter 18.80 of this Code.

### 16.16.030 Review procedures, general.

#### B. Development Review.

##### 1. Submission of Application Signatures/Certified Lists.

- a. Once the applicant has received comments on the sketch plan, the applicant may submit an application for the development review sought. Applications shall be submitted to the Current Planning Division on forms provided for this purpose. The application shall include all required supporting documentation as specified on submittal checklists provided by the Current Planning Division. Unless otherwise specified herein, the applicant shall provide the number of copies specified in the checklist. Applications shall be signed by all fee owners of the land described in the application; except, that where the fee is held by two or more owners as joint tenants or as tenants in common, such application may be signed by only one joint tenant or tenant in common. All other owners and lienholders who have an interest in the land described in the application shall be noted on the application.
- b. At the time of filing a development review application requiring a public hearing, or where otherwise required under this title, the applicant shall submit to the Current Planning Division all information required pursuant to Section 16.16.070 and Tables 16.16.070-1 and 16.16.070-2.

~~RADIUS DISTANCES FOR NOTIFICATION BY APPLICATION TYPE AND PROJECT  
SIZE APPLICATION TYPE~~

| APPLICATION TYPE | PROJECT SIZE              |                  |                       |
|------------------|---------------------------|------------------|-----------------------|
|                  | 20<br>acres<br>or<br>less | 50 acres or less | Greater than 50 acres |
|                  | Radius Distances (feet)*  |                  |                       |

|  |       |       |       |
|--|-------|-------|-------|
| Annexation and zoning                    | 1,000 | 1,000 | 1,000 |
| General Development Plan                 | 1,000 | 1,000 | 1,000 |
| Non-Phased PUD--                         | 500   | 750   | 1,000 |
| Preliminary Development Plan             |       |       |       |
| Phased PUD--Preliminary Development Plan | 500   | 750   | 1,000 |
| Preliminary Plat                         | 500   | 750   | 1,000 |
| Rezoning                                 | 500   | 750   | 1,000 |
| Special Review                           | 500   | 750   | 1,000 |

\*Note: All notification radius distances shall be reduced by 50%, but shall not be less than 300 feet, for infill projects that are 20 acres or less in size. A project shall be considered an infill project if the project is adjacent on at least 80% of its boundary to existing city limits of the City of Loveland. Such radii shall be calculated exclusive of water bodies, public rights-of-way, and public streets. Where addresses of said owners of record as they appear in the telephone directory of general use in the city or on the tax records of Larimer County or the City of Loveland are different from the records of the Larimer County clerk and recorder, such different addresses, if any, shall also be included on said list.

- i. ~~An affidavit certifying that the applicant conducted a neighborhood meeting and all neighborhood property owners, as defined in Section 16.16.030(B)(1)(b)(ii), were notified, by first class mail, of the neighborhood meeting at least ten days prior to the neighborhood meeting.~~
- ii. ~~Failure to provide the required affidavit or evidence of a defective mailing list shall result in termination of the review process until proper notice is provided and the neighborhood meeting conducted.~~

~~a. c. Each application shall be submitted with the fee established for that application pursuant to resolution of the city council.~~

~~1. 2. Application Submittal Date. The official application submittal date shall be the date on which the applicant submits a reviewable application. The director shall schedule the applicant for a meeting with the development review team upon determination that such application is reviewable. The director may exempt applications for final plats, minor subdivisions, lot mergers, and boundary line adjustments from meeting with the development review team.~~

~~2. 3. Applications Referred to Development Review Team/Determination of a Reviewable Application. The development center shall refer the reviewable application to the development review team members for their review. The development review team members~~

shall comment on the application. Said comments shall be completed and compiled within approximately thirty days from the official application submittal date or by such time as required by the director. The director may require that any applicant for any development review under this title, reimburse the city for the cost of any legal or technical consultant fees incurred by the city in connection with reviewing the application. The application shall be deemed complete on the application acceptance date, which is the date that the director finds that the application contains adequate information on which to determine compliance with the review and design standards of this title and other applicable code provisions, city ordinances, comprehensive master plan, city policies, and state laws.

3. ~~4.~~ 4. ~~Written Comments to the Applicant.~~ The development center shall make available to the applicant the development review team's comments a minimum of two working days prior to the development review team meeting or at such time as may be required by the director.

4. ~~5.~~ 5. ~~Development Review Team Meeting.~~ On the scheduled date, the applicant shall meet with the development review team to discuss their comments. If the development review team determines that the application is not complete, the director may table further processing of the application and inform the applicant of the materials or revisions needed to make the application complete. The applicant shall submit a revised application no later than the deadline determined by the development review team. If the development review team finds that an application is not complete and cannot be made complete without revisions so extensive as to constitute a new application, the director may reject the application. Such application shall be resubmitted for development review under this title, in accordance with the applicable provisions of this title. The director will accept amendments to applications as long as they are submitted at least fifteen days prior to the scheduled development review team meeting. Nothing herein shall prevent the development review team, the planning commission, city council or director from requesting additional information in the course of the review if it is deemed necessary to determine compliance with the standards set forth in this title, or in Title 17 or 18 as applicable.

5. ~~6.~~ 6. ~~Scheduling Public Hearings.~~ An application shall not be scheduled for planning commission or city council review or decision unless the director determines that the application is complete. Upon a finding that the application is complete, the director shall schedule the application for the next available planning commission or city council meeting, as applicable.

C. ~~Public Hearing Notification.~~ The director and applicant shall give or cause to be given notice as provided in Section 16.16.070.

D. ~~Planning Commission and City Council Review and Approval.~~ The planning commission and city council shall review applications for development review under this title, in accordance with the specific provisions herein. If, as determined by the director, the applicant makes substantial revisions to the application after planning commission review, the development review team and the planning commission shall review the revised application prior to review by the city council. Such additional review by the development review team and the planning commission shall be scheduled as if the application were a new application.

E. ~~Appeal Procedure.~~

~~i. Appeals from any final decision by the director or the planning commission shall be conducted pursuant to chapter 18.80 of this Code. of Determination that Application is Incomplete. In accordance with the provisions set forth herein, an applicant may appeal to the planning commission any determination by the director that the application is incomplete. In the case of such an appeal, the planning commission's decision shall be at a regularly scheduled meeting and limited to a determination as to whether the application is complete or incomplete.~~

~~ii. Appeal Procedure for Decisions of the Director.~~

~~a. The decision of the director on any matter made pursuant to this Title 16, may be appealed to the planning commission by the applicant, any property owner within the area subject to the~~

notice requirements of this title, three or more planning commission members, or three or more city council members. In the event an appeal is filed, the applicant shall provide the development center with one original eleven inch by seventeen inch photo reduction of the final plat, minor subdivision plat, boundary line adjustment or lot merger, the approval of which is being appealed. A reduced paper copy is initially acceptable, but the photo reduction shall be submitted no less than twenty-two days before the public hearing. The effective date of the director's decision shall be the date that the director makes the decision. The director shall issue findings and conclusions in support of any decision within fifteen days of the effective date of the decision on any matter for which an appeal is filed.

b. For appeals filed by the applicant or a property owner within the area subject to notice, the appellant shall file a written notice of appeal with the development center, on a form provided by the development center, within ten days of the effective date of the director's decision, and the appellant shall file a written report outlining the basis for the appeal with the development center, within fifteen days of the effective date of the director's decision. At the next regularly scheduled planning commission meeting which occurs more than twenty days following the effective date of the director's decision, planning commission shall consider the merits of the appeal. The planning commission consideration shall be limited to a review of the information contained in the written report filed by the appellant, the findings and conclusions of the director, and any clarifying remarks made at the meeting by the appellant. Planning commission may find: (i) that the appeal has insufficient merit, in which case the decision of the director shall be final or, (ii) that the appeal has sufficient merit to warrant further review, in which case the appeal shall be scheduled for a full public hearing, at the next regularly scheduled planning commission meeting following the merit consideration meeting, in accordance with the provisions of Section 16.16.070 of this code.

e. For appeals filed by three or more planning commissioners or three or more city council members, the appellants shall file a written notice of appeal with the development center, on a form provided by the development center, within fifteen days of the effective date of the director's decision. Upon the filing of a notice of appeal by three or more planning commission members or three or more City Councilors, the appeal shall be scheduled for a full public hearing, at the next regularly scheduled planning commission meeting following the receipt of the notice of appeal at which all public notification requirements can be complied with, in accordance with the provisions of Section 16.16.070 of this code.

d. At the public hearing, the planning commission shall approve, approve with conditions, or disapprove the matter, following the same procedures as prescribed for the director in this Title 16.

### iii. Appeal Procedure for Planning Commission Decisions.

a. The decision of the planning commission on any matter made pursuant to this Title 16, may be appealed to the city council by the applicant, any person who was required by this code to receive legal notice regarding the planning commission's review of the matter, any person who gave either written or verbal testimony at the planning commission public hearing on the matter, or at least three members of the city council. The effective date of the planning commission decision shall be the date that the planning commission votes on its decision. The planning commission shall issue findings and conclusions in support of any decision within thirty days of its decision.

b. For appeals filed by the applicant, any person who was required by this code to receive legal notice, or any person who gave either written or verbal testimony at the planning commission public hearing on the matter, the appellant shall file a written notice of appeal with the development center, on a form provided by the development center, within ten days of the effective date of the planning commission's decision, and the appellant shall file a written report outlining the basis for the appeal with the development center, within thirty days of the

~~effective date of the planning commission's decision. At the next regularly scheduled city council meeting following the effective date of the planning commission's decision, the city council shall consider the merits of the appeal. The city council's consideration shall be limited to a review of the information contained in the written report filed by the appellant, the findings and conclusions of the director and the planning commission, as are applicable, and any clarifying remarks made by the appellant. The city council may find: (i) that the appeal has insufficient merit, in which case the decision of the planning commission shall be final or, (ii) that the appeal has sufficient merit to warrant further review, in which case the appeal shall be scheduled for a full public hearing, at the next regularly scheduled city council meeting following the merit consideration meeting at which all public notification requirements can be complied with, in accordance with the provisions of Section 16.16.070 of this code.~~

- ~~e. For appeals filed by three or more city council members, the appellants shall file a written notice of appeal with the development center, on a form provided by the development center, within twenty days of the effective date of the planning commission's decision. Upon the filing of a notice of appeal by three or more city council members, the appeal shall be scheduled for a full public hearing, at the next regularly scheduled city council meeting following the receipt of the notice of appeal at which all public notification requirements can be complied with, in accordance with the provisions of Section 16.16.070 of this code.~~
- ~~d. At the public hearing, the city council shall approve, approve with conditions, or disapprove the matter, following the same procedures as prescribed for the planning commission in this Title 16.~~

#### 16.16.040 Staff review of certain applications.

##### C. Appeal Procedure.

1. Appeals from any final decision by the director for final plats, minor subdivisions, boundary line adjustments and lot mergers shall be conducted by the planning commission pursuant to chapter 18.80 of this Code. Procedure for Decisions of the Director. The decision of the director shall be considered final on matters as prescribed in this Title 16 absent an appeal to planning commission pursuant Section 16.16.030(E)(1) and (2).
2. Appeal Procedure for Planning Commission Decisions. The decision of the planning commission shall be considered final ~~matters as prescribed in this Title 16~~ absent an appeal to city council pursuant to chapter 18.80 of this Code. Section 16.16.030(E)(3).

#### 16.16.070 Public notice requirements.

D. Content of Public Notice. Where public notice is required for neighborhood meetings, public hearings, Director's decisions, or as otherwise required under this title, the notice shall include the following:

10. For Director decision notices, a statement that interested parties may submit an appeal and the deadlines and requirements for filing an appeal, pursuant to chapter 18.80 of this Code.

E. Mailed Notice. At least fifteen (15) days prior to a neighborhood meeting, public hearing, or the date of the Director's decision, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.16.070.E.1 at the address listed for each owner. An affidavit of the applicant's compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 16.16.070.J. When Mailed Notice is required under this Chapter, the following shall apply:

2. For all applications requiring mailed notice, the radius distances specified in Table 16.16.070-2 Area of Public Notice Distance by Application Type and Size, shall be used to determine the area to which such notice shall be given, except as provided in Sections 16.16.070.E. 3 and 4.

| Application Type                         | 20 acres or less  | 21 -- 50 acres | Greater than 50 acres |
|--|-------------------|----------------|-----------------------|
| Obsolete Subdivisions                    | See Chapter 16.36 |                |                       |
| Preliminary Plat                         | 500 ft.           | 750 ft.        | 1,000 ft.             |
| Minor Subdivision                        | 150 ft.           | 150 ft.        | 150 ft.               |
| Vacation (of easements or rights-of-way) | See Chapter 16.36 |                |                       |

## Chapter 16.20

### SUBMITTAL PROCEDURES AND REQUIREMENTS

#### 16.20.060 Preliminary plat review procedure.

- D. Appeal Procedures of Planning Commission Decisions. The decision of the planning commission shall be considered final on all matters as prescribed in this Title 16 absent an appeal to city council pursuant to chapter 18.80 of this Code, Section 16.16.030(E)(2).

#### 16.20.080 Final plat review procedure.

##### C. Final Plat Review.

1. Pursuant to the powers granted to the city in the Colorado Constitution and the city of Loveland Charter, the director is hereby assigned the power to approve all final plats. The director shall make final decision on the final plat application within thirty days after a complete final plat is submitted to the development center. The director shall make appropriate findings based on the applicable review standards, or adopted plans. Using the review standards set forth in this title, the director shall approve, approve with conditions or deny the application. All conditions of approval applicable to the final plat shall be included in a development agreement, which shall be recorded with Larimer County clerk and recorder concurrent with recordation of the final plat. The decision of the director shall be considered final on matters prescribed in this Title 16 absent an appeal to planning commission pursuant to chapter 18.80 of this Code, Section 16.16.030 (E)(1).

#### 16.20.100 Minor subdivision review procedures.

- E. Appeals from any final decision by the director for a minor subdivision shall be conducted by the planning commission pursuant to chapter 18.80 of this Code.

#### 16.20.120 Simple plat review procedure.

- D. Appeals from any final decision by the director for a simple plat shall be conducted by the planning commission pursuant to chapter 18.80 of this Code.

## Chapter 16.28

### BOUNDARY LINE ADJUSTMENTS

#### 16.28.060 Deed restriction in lieu of boundary line adjustment.

A. In the event the owner of property consisting of one or more adjacent lots and an adjacent unsubdivided parcel of land upon which a structure is located, wishes to obtain a building permit for either an accessory structure to be located on the property, an addition to the existing structure, or interior remodeling work without completing a boundary line adjustment, the owner may request that in lieu of a boundary line adjustment the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a boundary line adjustment. The deed restriction shall be released by the city upon completion of a boundary line adjustment combining all adjacent lots and unsubdivided parcels in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.

B. Appeals from any final decision by the director for a deed restriction in lieu of a boundary line adjustment shall be conducted by the planning commission pursuant to chapter 18.80 of this Code.

## Chapter 16.32

### LOT MERGER

#### 16.32.060 Deed restriction in lieu of lot merger.

A. In the event the owner of property, consisting of two or more adjacent lots and containing an existing residential use, wishes to obtain a building permit for either an accessory structure to be located on the property or an addition to the existing structure without completing a lot merger, the owner may request that in lieu of a lot merger the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a lot merger. The deed restriction shall be released by the city upon completion of a lot merger combining all adjacent lots in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.

B. Appeals from any final decision by the director for a deed restriction in lieu of a lot merger shall be conducted by the planning commission pursuant to chapter 18.80 of this Code.

## Chapter 16.40

### IMPROVEMENTS

#### 16.40.090 Guarantee period.

All workmanship and materials (except materials provided by the city) for all required public improvements installed by the applicant (including, but not limited to the water supply system, sanitary sewage disposal system, storm drainage facilities, electrical distribution system, curbs, gutters, street pavement, sidewalks, street signs, survey monuments, landscaping, and pavement markings) shall be guaranteed to be free from defects by the applicant for a period of two years from the date of acceptance

of the required improvement by the city, provided, that such defects are not the result of public abuse, misuse or natural causes, as determined by the city. In the event any other provision of this code or specifications adopted pursuant thereto shall require a guarantee of workmanship or materials or both for a different period of time, that provision regarding the longer period of guarantee shall govern. City inspection shall not relieve the property owner of such guarantee of workmanship and materials. Upon notification, the applicant shall promptly make all adjustments, repairs, or replacements in accordance with a repair plan approved by the city, which repair, in the opinion of the city, arose out of defects and became necessary during the guarantee period. The cost of all materials, parts, labor, transportation, supervision, special tools, and supplies required for replacement or repair of parts and for correction of defects shall be paid by the contractor or by the holder of the approved financial security.

This guarantee shall be extended to cover all repairs and replacements furnished under the guarantee, and the period of the guarantee for each repair or replacement shall be extended one year after installation or completion of the repair or replacement.

If, within fifteen days after the city has notified the applicant of a defect, failure, or abnormality in the work, the applicant has not started to make the necessary repairs or adjustments or submitted a written objection to the city's request for repair work, the city is hereby authorized to make the repairs or adjustments or to order the work be done by a third party. The cost of the work shall be paid by the applicant. The director may authorize a temporary repair if necessary due to weather conditions or materials availability.

If an applicant has cause to object to the city's request for repair work, such objection shall be made in writing to the director. If the director confirms that the repair is necessary because of a defect in the applicant's materials or workmanship, the applicant shall complete the repairs as directed by the city, ~~or appeal the director's decision as set forth in Section 16.16.040.~~

In the event of an emergency, where in the judgment of the city, delay would cause serious loss or damage, repairs, or adjustments may be made by the city or a third party chosen by the city without advance notice to the applicant, the cost of the work shall be paid by the applicant or the holder of the financial security.

Within thirty days prior to expiration of the guarantee period, the applicant shall request, in writing, that the city verify that no defects exist. The city shall, within thirty days, inspect the completed work and, if no defects, failures, or abnormalities are observed or detected, the city shall cause the bond, deposit, escrow agent, or letter of credit to be released.

In the event that the applicant fails to complete any required repair work, or fails to reimburse the city for legitimate repair work performed by the city on behalf of the applicant, or fails to enter into an agreement with city regarding the satisfactory resolution of the obligation, the applicant shall be prohibited from participating in any further land development activity in the city of Loveland until such repair, reimbursement, or agreement is completed to the satisfaction of the director. Both the developer of the project and the contractor performing the defective work shall be subject to this restriction. The developer shall be prohibited from receiving any additional building permits for any lots owned by the developer, as well as from submitting or continuing the processing of any land development applications for review and consideration by the city. The contractor shall be subject to the issuance of a stop work order issued by the city to the contractor for any work within any city right-of-way or easement.

Appeals from any final decision by the director shall be conducted by the planning commission pursuant to chapter 18.80 of this Code.



## Title 18

## ZONING

\*For statutory provisions regarding zoning of cities and towns generally, see CRS § 31-23-201 et. seq. 139-60; for provisions authorizing local authorities to adopt zoning regulations, see CRS § 31-23-301 et. seq. 139-60-1; for provisions regarding purposes to be served by zoning, see CRS § 139-60-3.

**18.04.050 Building, ~~or~~ structure, or use exempt.**

Any building, ~~or~~ structure, or use as to which satisfactory proof shall be presented to the city council zoning board of adjustment, that the present or proposed situation of such building, ~~or~~ structure, or use is reasonably necessary for the convenience or welfare of the public, shall be exempt from the operation of this title.

## Chapter 18.32

## PP DISTRICT – PUBLIC PARK DISTRICT

**18.32.050 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the ~~Director~~current planning manager for review, ~~recommendation~~ and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's decision to the planning commission in accordance with chapter 18.80 of this Code. ~~request that the site plan be further reviewed by the City Council, and, in the event of such further review, the approval or disapproval of the City Council shall be final.~~

## Chapter 18.36

## I DISTRICT-DEVELOPING INDUSTRIAL DISTRICT

**18.36.025 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the ~~community development director~~ current planning manager for review, ~~recommendation~~ and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's decision to the planning commission in accordance with chapter 18.80 of this Code. ~~request that the site plan be further reviewed by the city council, and, in the event of such further review, the approval or disapproval of the city council shall be final.~~

## Chapter 18.40

## USES PERMITTED BY SPECIAL REVIEW

**18.40.055 Appeal of an administrative or planning commission decision.**

A.

1. Any ~~party-in-interest as defined in Chapter 18.80, may neighborhood property owner, person in attendance at the neighborhood meeting, member of the planning commission or city council~~ can appeal to the planning commission a decision of the planning division on a type 2 zoning permit in accordance with the procedures set forth in chapter 18.80 so long as the appeal is filed within ~~five~~ten (10) working days of the ~~mailing~~posting of a notice ~~in from~~ the planning division office that a type 2 zoning permit will be issued.

2. Upon the filing of an appeal, the permit application shall be suspended pending conclusion of the appeal process. The appeal shall be scheduled ~~within a reasonable time~~ for a public hearing in accordance with chapter 18.80, at which time the applicant shall have the burden of proving that he or she is entitled to a permit under the standards set forth in Sections 18.40.030K and 18.40.005. ~~Written notice to the appellant and all others shown on the list described in Section 18.40.030A.3 shall be given by the applicant and published notice in a newspaper of general circulation within the city shall be given by the planning division at least fifteen (15) days prior to the public hearing. Written notice shall be deemed to be given when the notice is deposited, postage prepaid, with the United States Postal Service.~~
3. Following the close of the public hearing, the planning commission may deny the application for a special review permit or direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the planning commission deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed with such condition or restriction. ~~At its next regularly scheduled meeting, the planning commission shall adopt findings consistent with its decision.~~

## B.

1. ~~Any party-in-interest as defined in chapter 18.80, may applicant, neighborhood property owner, person in attendance at the neighborhood meeting or city council member can appeal a decision of the planning commission to the city council in accordance with the procedures set forth in chapter 18.80, within five (5) ten (10) working days following the planning commission decision.~~
1. ~~The appeal shall be scheduled to be heard by the city council within a reasonable time. The appeal shall be on a form to be provided by the planning division and shall set forth the specific relief that the appellant seeks and the planning division shall inform the applicant of the appeal. More than one person may file an appeal and each person shall be entitled to speak when the appeal is heard except that the city council may refuse to accept redundant or repetitive arguments.~~
2. ~~The appeal shall be on the record, which shall include all materials provided to the planning commission when it made its decision, a transcript of the planning commission's public hearing and the planning commission's findings. In addition, any party to the appeal may file a brief written statement at least seven (7) working days before the council meeting where the appeal will be heard. No new testimony or other evidence shall be allowed. At the council meeting where the appeal is heard, only the applicant and the planning division shall be heard if the appeal was taken by the applicant. The planning division shall defend the decision of the planning commission. If the appeal is taken by a person other than the applicant, only the appellant, the applicant and the planning division shall be heard. The planning division shall defend the decision of the planning commission. In either case, the appellant shall have the burden of demonstrating that there was no reasonable basis for the planning commission's decision.~~
1. ~~2. If the city council determines that a decision to deny a type 3 zoning permit should be reversed, the city council shall direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the council deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed with such condition or restriction, the matter shall be referred back to the planning commission with directions to cause the permit to be issued under such conditions and restrictions as the planning commission determines are appropriate. No further public hearing shall be required and no further appeal may be taken to the city council. If the city council determines that a decision to issue a type 3 zoning permit should be reversed, no such permit shall issue and the application shall be denied. If the city council determines that certain conditions or restrictions should or should not have been imposed upon the type 3 zoning permit, it shall direct the planning division~~

to issue the type 3 zoning permit subject to a modification in the conditions or restrictions. If the council determines that the conditions and restrictions should remain as provided by the planning commission, then it shall direct the planning division to issue the type 3 zoning permit without modification. In making its decision on the appeal, the city council shall consider the standards in Sections 18.40.030K and 18.40.005. ~~At its next regularly scheduled meeting, the city council shall adopt findings consistent with its decision.~~

## Chapter 18.41

### UNIT DEVELOPMENT ZONE DISTRICT REQUIREMENTS AND PROCEDURES

#### 18.41.050 Procedures for approval of a planned unit development.

##### E. Preliminary Development Plan Approval.

3.

- a. The effective date of the planning commission's decision shall be the date that the planning commission adopts its written findings and conclusions~~votes on its decision~~. The planning commission shall issue findings and conclusions in support of any decision within thirty days of its decision. Any party-in-interest as defined in chapter 18.80, may ~~For appeals filed by the applicant, any person who was required by this code to receive legal notice, or any person who gave either written or verbal testimony at the planning commission public hearing on the matter, the appellant shall file a written notice of appeal with the~~ planning division~~development center, on a form provided by the development center,~~ within ten (10) days of the effective date of the planning commission's decision, ~~and the appellant shall file a written report outlining the basis for the appeal with the development center, within thirty days of the effective date of the planning commission's decision. At the next regularly scheduled city council meeting following the effective date of the planning commission's decision, the city council shall consider the merits of the appeal. The city council's consideration shall be limited to a review of the information contained in the written report filed by the appellant, the findings and conclusions of the planning commission, and any clarifying remarks made by the appellant. The city council may find: (i) that the appeal has insufficient merit, in which case the decision of the planning commission shall be final or; (ii) that the appeal has sufficient merit to warrant further review, in which case the appeal shall be scheduled for a full public hearing, at the next regularly scheduled city council meeting following the merit consideration meeting at which all public notification requirements can be complied with, in accordance with the provisions of Chapter 18.05 Public Notice of this code.~~

~~For appeals filed by three or more city council members, the appellants shall file a written notice of appeal with the development center, on a form provided by the development center, within twenty days of the effective date of the planning commission's decision. Upon the filing of a notice of appeal by three or more city council members, the appeal shall be scheduled for a full public hearing, in accordance with chapter 18.80, at the next regularly scheduled city council meeting following receipt of the notice of appeal at which all public notification requirements can be complied with, in accordance with the provisions of Chapter 18.05 Public Notice of this code. At the public hearing, the city council shall approve, approve with conditions, or disapprove the matter,~~

~~following~~ considering the same procedures standards as prescribed for the planning commission in this Title 18.

b. If there is no applicable general development plan for the development, then the planning commission shall only make a recommendation to the city council regarding the approval, conditional approval or denial of the preliminary development plan. The council shall proceed in the same manner as in the case of general development plans. See Section 18.41.050(D)(6-10);

#### F. Final Development Plan Approval.

3. If the chief planner approves the final development plan, he shall issue an approval of final development plan which shall incorporate by reference the final development and shall be recorded in the real property records of Larimer County without due delay. The final development plan shall be filed with the building division and be available for public inspection. If the chief planner denies approval of the final development plan, he shall communicate a notice of denial to the applicant setting forth the basis for the denial. Within ten days of the date the chief planner mails the notice of denial to the applicant, the applicant may file an appeal of the denial in accordance with chapter 18.80 to the planning commission, which shall hear the matter in accordance with the procedures set forth in chapter 18.80, except that no further public notice of the appeal shall be required. ~~review the matter at its next regularly scheduled public meeting.~~ Both the chief planner and the applicant shall appear before the planning commission and be given an opportunity to speak to the issues. Except as permitted by a majority vote of the planning commission members present at the meeting, no other person shall be entitled to address the planning commission. The planning commission shall consider the same factors used by the chief planner when making his determination;

#### ~~18.41.060~~ ~~Grievances.~~

~~Whenever an applicant for any development plan authorized or required under this chapter believes that he has been aggrieved by a decision of the chief planner or the planning division, the applicant may appeal the decision to the director of community development services who shall convene an informal meeting to resolve the dispute.~~

#### ~~18.41.090~~ ~~Vested rights.~~

~~For purposes of acquiring vested property rights as established under state law, only the preliminary development plan shall constitute a site specific development plan as that term is defined by state law, except that the city and the applicant may enter into a development agreement that provides vested rights for the entire planned unit development.~~

## Chapter 18.42

### OFF-STREET PARKING AND LOADING REQUIREMENTS

#### 18.42.030 Spaces required.

Adequate off-street parking shall be required for all development. The number of off-street parking spaces on Table 18.42-1 shall be required with land uses or buildings containing such land uses. These requirements shall be Type 2 Standards which shall be mandatory, unless otherwise approved by alternative compliance in accordance with the following provisions or as part of an approved special review, or an approved Planned Unit Development.

- A. Upon submittal of written justification by the applicant, the Current Planning Manager may allow application of an alternative standard, different than a Type 2 standard, provided the Current Planning Manager determines the following:
1. The applicant has demonstrated that either:
    - a. Site-specific, physical constraints necessitate application of the alternative standard, and such constraints will not allow a reasonable use of the property without application of such alternative standard; or
    - b. The alternative standard achieves the intent of the subject Type 2 standard to the same or greater degree than the subject standard, and results in equivalent or greater benefits to the community as would compliance with the subject standard.
    - c. Whenever the Current Planning Manager grants alternative compliance, the Current Planning Manager shall formulate a written statement of findings based on the above criteria for such action. Such statement shall be placed in the development application file.
    - d. Decisions by the Current Planning Manager with respect to such alternative compliance may be appealed to the planning commission in Zoning Board of Adjustment in accordance with chapter 18.80. The planning commission, when hearing such an appeal shall apply the standards set forth in section 18.60.020, Section 18.60.020.A.

## Chapter 18.45

### FLOODPLAIN REGULATIONS

#### 18.45.090 Nonconforming buildings or uses.

- A. A structure or use within a structure or use of premises which was lawful before the passage of this chapter, but which is not in conformity with the provisions of this chapter may be continued without compliance with this chapter. Such nonconforming uses or nonconforming buildings may be repaired, expanded or altered only upon compliance with the following conditions:
1. Any nonconforming use of property may be expanded, provided, that such expansion is approved by the public works director board of appeals pursuant to Section 15.14.070(C) of this code. Any appeal of the public works director's decision shall be made to the planning commission in accordance with chapter 18.80 of this Code.

## Chapter 18.48

### ACCESSORY BUILDINGS AND USES

#### 18.48.020 Home occupations.

- G. Appeal.
1. Appeal of director's decision. Any applicant or member of the neighborhood ~~can~~ may appeal a decision of the director regarding the granting or denial of a business occupancy permit so long as the appeal is filed with the city within ten days of the date that a notice of intent to issue a business occupancy permit was ~~posted~~ mailed by the director, or the permit was denied. Upon the filing of an appeal, the permit application shall be suspended pending conclusion of the appeal process. Appeals shall be conducted by the planning commission in accordance with chapter 18.80 of this Code. ~~before the city council at a public hearing.~~ The applicant shall be notified of the appeal, and shall be responsible for sending a notice to the members of the neighborhood. The notice shall be in a form approved by the city and shall be mailed a minimum of fifteen days in advance of the scheduled public hearing.

2. ~~Planning Commission~~~~City Council~~ consideration. At the ~~public~~appeal hearing, the ~~planning commission~~ ~~city council~~ shall ~~follow the procedures set forth in chapter 18.80, and shall~~ consider the application, the findings and determinations of staff, and take public testimony regarding the proposed home occupation. The ~~planning commission~~ ~~city council~~ shall review the application for compliance with the provisions of this code and other adopted regulations, the compatibility of the application with the character of the surrounding neighborhood and adverse influences that might result from approval of the application. The ~~planning commission~~ ~~city council~~ may either approve, approve with modifications or conditions or deny the application. ~~The planning commission's decision may be further appealed in accordance with chapter 18.80.~~

#### H. Permit.

1. All applications for a business occupancy permit shall include a list of the names and addresses of all the property owners and tenants who were mailed a notice and an affidavit which certifies that the property owners and tenants on the list have been notified at each step in the review process.
2. Prior to the issuance of the business occupancy permit, the applicant shall certify that he or she will operate the home occupation in conformity with the provisions of this title and any conditions agreed upon at the neighborhood and city council meetings, if applicable.
3. Once issued, said permit shall apply only to the applicant, occupation and premises stated in the application. The permit is nontransferable and nonassignable and shall remain in full force and effect unless revoked pursuant to subsection J of this section. Said permit shall also be deemed to be automatically revoked when the applicant ceases engaging in the home occupation at the approved premises for ninety consecutive days or longer.

- I. ~~Revocation of Permit~~~~License~~-Appeal. A business occupancy permit may be revoked by the city if the city finds that the home occupation no longer conforms to the provisions of this section or the conditions of approval of the business occupancy permit. A business occupancy permit may also be revoked upon a determination by the city that the mailing list was faulty or the applicant failed to follow the application, review and appeal process. Notification to the applicant shall include findings in support of the revocation and the applicant's rights of appeal. The written notification of revocation shall be mailed to the last known address of the permit holder. The date of the mailing shall be the date of notification. The business occupancy permit holder may ~~file a written appeal of the city's decision to the planning commission as provided for in chapter 18.80, subsection 18.60.030(B) of the Loveland Municipal Code.~~

## Chapter 18.50

### SIGNS

#### 18.50.100 Sign regulations in nonresidential zones.

The following regulations shall apply to all uses in nonresidential zoning districts. Included are districts Be, B, I, MAC, E and DR. In addition, within the downtown development authority boundary, all signs shall comply with Section 18.50.110, and along Interstate Highway-25 (I-25), all signs shall comply with Chapter 8 of the Site Development Performance Standards and Guidelines and Section 18.50.120. All signs allowed pursuant to this section shall have their sign area applied to the total allowable sign area. (Ord. 5431 § 3, 2009)

- A. Basic Sign Regulations. Every business desiring signs as allowed by right in this code may apply for a sign permit and a permit shall be issued if all the provisions in this section are met.

4. Electronic Message Signs. Electronic message signs shall be subject to the following limitations:

- h. A request for variance to the maximum sign area, height or setback for a sign containing an electronic message module shall be heard by the ~~full~~ Zoning Board of Adjustment in accordance with the procedures specified in Chapter 18.60. In addition to the findings specified in ~~Section~~ Chapter 18.60.040, before granting any request, the Board shall find that:
1. The proposed area, setback and/or height of the electronic message sign module is the minimum required to be fully visible from the adjacent arterial or interstate roadway right-of-way; and
  2. Traffic safety conditions will not be diminished by the increased square footage, increased height or decreased setback of the electronic message sign module; and
  3. There are no reasonable alternatives to the increased size, height, setback and/or design of the electronic message sign.

B. Planned Sign Program Regulations. Owners or tenants of a premise desiring signs which vary from the basic sign regulations as contained in Section 18.50.100 A, may apply for approval of a planned sign program for the entire premises.

11. Appeal of a Planning Division Decision. Should the applicant for a planned sign program not be satisfied with the decision of the planning division, the applicant shall have the right to appeal the decision to the planning commission in accordance with chapter 18.80 of this Code. ~~request that the planning commission review and approve the proposed planned sign program. The planning division shall place the proposed sign program on the planning commission agenda no later than thirty days from the date of the request for planning commission review and approval.~~

**18.50.150 Nonconforming signs.**

- B. Prohibited, illegal, nonconforming, abandoned or hazardous signs are declared nuisances and shall not be allowed within the city nor continued by variance. If any person fails to comply with the provisions of this chapter, in addition to the penalty provided therefore, a written order may be served upon the owner or agent in charge of such property, such order to be served personally or by mail, requiring the abatement of the nuisance within fifteen days, excluding weekends and official holidays, after mailing such notice. Such notice shall also advise the owner or agent of his or her right to appeal pursuant to ~~chapter 18.80, Section 18.60.030~~. If the abatement has not occurred within the stated time and an appeal has not been filed pursuant to the provisions of ~~chapter 18.80, Section 18.60.030~~, then the city may remove said sign, provided that the sign is either an off-premise sign, portable sign, free standing sign made of paper, balloons, pennants or banners, and charge the direct cost incurred by the city for removal of the sign, including five percent for inspection and other incidental costs in connection therewith, upon the land and such assessment is a lien until paid. In addition to any other means provided by law for collection, if any such assessment is not paid within thirty days after it is made and notice thereof is mailed, the same may be certified by the city clerk to the county treasurer and by him placed upon the tax list

for the current year, and thereby collected in the same manner as other taxes are collected, with ten percent penalty thereon to defray the cost of collection.

### 18.50.190 Appeals.

A decision of the current planning manager relative to the provisions of this chapter may be appealed to the planning commission in accordance with chapter 18.80 of this title, zoning board of adjustment according to Chapter 18.60 of this code. (Ord. 4185 § 1 (part), 1996). The decision of the current planning manager shall be upheld unless the planning commission finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious. Any appeal of the planning commission's decision to the city council shall be made in accordance with Chapter 18.80 of this code and the city council shall uphold the decision of the current planning manager unless the city council finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious.

## Chapter 18.52 SUPPLEMENTARY REGULATIONS

### 18.52.020 Supplementary yard regulations.

A. The purpose of a setback creating a yard is for the preservation of light and air to adjoining properties, fire protection, maintenance of property, preservation of open space and the retention of a visually cohesive pattern established by buildings and the spaces which separate them. To maximize the amount of open space on a lot and/or the beneficial use of the property, the current planning manager chief planner may approve alternative setback requirements so long as the purpose of Title 18 is met, a reduction of up to 25 percent of a required setback, so long as the current planning manager determines and finds that:

1. The alternative setback would be in harmony with the spirit of this title;
2. The alternative setback would not limit the use or enjoyment of nearby property;
3. A letter of non-objection to the alternative setback is submitted from all adjacent property owners; and
4. A letter of non-objection to the alternative setback is submitted by other potentially impacted property owners, as determined by the Current Planning Manager, who own property that falls wholly or partially within 150 feet of the subject property.

~~The purpose of a setback creating a yard is for the preservation of light and air to adjoining properties, fire protection for non-rated structures, maintenance of property and preservation of open space.~~

B. The front yard in all residential zones may be reduced by to five feet for garages where the vehicle access door does not face directly onto the street when made part of a master plan. This allowance shall not apply to properties within a planned unit development or special review that contain specific yard provisions.

C. The following items may extend into required yards if determined to be incidental and harmless to adjacent properties by the current planning manager:

1. Architectural features such as uncovered porches and patios, and including cornices, eaves, bay windows, an exterior chase for a fireplace or other similar architectural features; may extend into required yards
2. At grade uncovered decks and patios that are exempt from building permit requirements; and
3. ~~D.~~ Fire escapes that may extend into the required rear yards by no more than six feet.

## Chapter 18.53

### COMMERCIAL AND INDUSTRIAL ARCHITECTURAL STANDARDS

#### 18.53.020 Compliance.



- A. Type 1 Standards. Compliance with the Type 1 standards set forth in this Chapter 18.53 is mandatory, unless a variance is granted pursuant to Chapter 18.60.
- B. Type 2 Standards.
  - 1. **Alternative compliance.** Compliance with the Type 2 standards set forth in this Chapter 18.53 is mandatory, unless the ~~Director~~current planning manager grants alternative compliance in accordance with the following provisions. The ~~Director~~current planning manager may allow application of an alternative standard, different than a Type 2 standard, provided the current planning manager~~Director~~ determines that:
    - a. The applicant has demonstrated that either:
      - i. Site-specific, physical constraints necessitate application of the alternative standard, and such constraints will not allow a reasonable use of the property without application of such alternative standard; or
      - ii. The alternative standard achieves the intent of the subject Type 2 standard to the same or greater degree than the subject standard, and results in equivalent or greater benefits to the community as would compliance with the subject standard.
  - 2. **Statement of findings.** Whenever the ~~Director~~current planning manager grants alternative compliance, the ~~Director~~current planning manager shall formulate a written statement of findings based on the above criteria for such action. Such statement shall be filed in the development application file.
  - 3. Appeals. Decisions by the ~~Director~~current planning manager with respect to such alternative compliance may be appealed to the planning commission Zoning Board of Adjustment in accordance with chapter 18.80, Section 18.60.020.A.

## Chapter 18.54

### BUILDING HEIGHT REGULATIONS

#### 18.54.050 Request for exception.

The owner of the proposed building or structure may request an exception from the height limitations imposed by this chapter. A request for an exception shall be made to the planning commission. The planning commission shall hold a public hearing on such request, which hearing shall be noticed in accordance with Section 16.16.070 and ~~16.16.080~~ of this code.

#### 18.54.060 Appeal to city council.

~~Any party-in-interest, as defined in section 18.80.020, The owner of the proposed building or structure, any neighborhood property owner, person in attendance at the public hearing on the requested exception held by the planning commission or any member of planning commission or city council may~~ appeal the decision of the planning commission to the city council. The city council shall hold a public hearing on such appeal, which appeal shall be held in accordance with chapter 18.80, noticed in accordance with Chapter 18.05 Public Notice of this code. ~~Such appeals shall be made within five (5) working days of the decision of the planning commission.~~ Using the criteria set forth in this section 18.54.050, the city council may affirm, modify or reverse the planning commission.

## Chapter 18.60

### ZONING BOARD OF ADJUSTMENT\*

#### Sections:

|            |                                   |
|------------|-----------------------------------|
| 18.60.010  | Board of adjustment established.  |
| 18.60.020  | Powers and duties.                |
| 18.60.030  | General Variance Review Criteria. |
| 18.60.040  | Sign Variance Review Criteria.    |
| 18.60.0350 | Applications.                     |
| 18.60.0460 | Procedure.                        |
| 18.60.0570 | Notice.                           |

\*For statutory provisions regarding boards of adjustment, see CRS §§ 31-23-301 and 31-23-307. ~~CRS § 139-60-7~~; for provisions regarding method of procedures, see CRS § 139-60-4.

#### **18.60.010 Board of adjustment established.**

The planning commission shall be the ex officio board of adjustment for the city.

#### **18.60.020 Powers and duties.**

The board of adjustment shall have the following powers and duties to grant variances from certain standards set forth in this title 18 all of which shall be subject to and in compliance with this chapter and the laws of the state. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions of the title so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done, in harmony with the purpose and intent of this title and in accordance with the public interest and the most appropriate development of the neighborhood. The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:

- A. Standards for lot area, lot dimensions and setback requirements;
- B. Square footage for accessory structures;
- C. Percentage of open space; and
- D. Setbacks for a freestanding sign, spacing between freestanding signs and the area for freestanding and wall mounted signs.

After considering if the proposed variance meets the criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions, deny or table the application for future consideration.

- ~~A. To hear and decide appeals from, and review any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this title;~~
- ~~B. To reverse or affirm wholly or partly, or modify the order, requirement, decision or determination appealed from; shall make such order, requirement, decision or determination as in its opinion should be made in the premises; and to that end shall have all the powers of the officer from whom the appeal was taken;~~
- ~~C. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title to vary or modify, in passing upon appeals, the application of the regulations or provisions of this title relating to use, construction or alteration of buildings or structures, or the use of land, so that the spirit of the title shall be observed, public safety and welfare secured and substantial justice done; provided, no variance shall authorize any use in a zoning district other than a use specifically permitted in such zoning district, and no variance shall waive or modify the requirements of uses by special review. No variance may be granted which is in violation of the statutes of the state.~~

#### 18.60.030 General Variance Review Criteria

To approve a zoning variance application, the board of adjustment shall consider the following review criteria and find that each criterion has been met or determined to be inapplicable:

A. There are unique circumstances or conditions that are particular to or related to the land or structure for which the variance is requested. The circumstances may include, but are not limited to, exceptional topographic conditions, the shape or dimensions of the property, or the existence of mature landscaping or natural features that impact the property;

B. The special circumstances are not the result of actions or inactions by the applicant or the current owner;

C. The strict interpretation and enforcement of the provisions of the code would cause an unnecessary or undue hardship;

D. Granting the variance is the minimum action needed to accommodate or alleviate the difficulty or hardship involved;

E. The variance would not substantially impact the reasonable use and enjoyment or development of other property in the vicinity of the subject land or structure;

F. The variance would not authorize any use in a zoning district other than a use specifically permitted in such zoning district; and

G. The variance would not waive or modify the requirements of any use approved by special review.

#### **18.60.040 Sign Variance Review Criteria**

A. Variances to the requirements of Chapter 18.50 shall not be permitted, except as related to the requirements concerning the setback of a freestanding sign, the spacing between freestanding signs, or the maximum sign area. To approve a zoning variance application to Chapter 18.50, the board must consider the following review criteria and find that each criterion has been met.

1. There are special physical circumstances or physical conditions, including, without limitation, buildings, topography, vegetation, sign structures, or other physical features on adjacent properties or within the adjacent public right-of-way that would substantially restrict the effectiveness of the sign in question, and such special circumstances or conditions are unique to the business to which the applicant desires to draw attention and do not apply generally to all businesses in the area;

2. The variance would be consistent with the purposes set forth in Section 18.50.010 and would not adversely affect the neighborhood or other businesses within the vicinity in which the subject business is located; and

3. The variance is the minimum necessary to permit the applicant to reasonably draw attention to its business.

B. In addition to the above criterion, for signs that contain an electronic message module, the board must consider the review criteria in Section 18.50.100.A.4.h and find that each criterion has been met.

#### **18.60.0350 Applications.**

~~A. Any person seeking action or review upon any matter within the jurisdiction of the board of adjustment, except an appeal of an order issued by an administrative official, shall make an application therefore to the board upon forms provided prescribed by the board, which Current Planning Division The application shall be accompanied by such supporting material as may be required. The applicant shall also pay, at the time of filing of the application, a any required filing fee of twenty-five dollars as established adopted by resolution of the city council.~~

~~B. Any person seeking to appeal any order issued by an administrative official in the administration or enforcement of the provisions of this title shall file with such official from whom the appeal is taken a written notice of appeal within fifteen days, excluding weekends and official holidays, from the date of the order. Such notice of appeal shall specify the grounds for the appeal. Such appeal hearing shall be conducted~~

pursuant to Section 18.60.040, with not less than seven days' notice to the appellant. Upon hearing, the appellant may appear in person, or by agent or attorney.

#### 18.60.060 Procedure.

The board of adjustment shall designate one or more hearing officers to conduct public hearings on matters coming before the board. A hearing officer may be an employee of the city or a member of the board of adjustment or some other person knowledgeable in the application of the city's zoning regulations. Within ten days after the conclusion of any such hearing, the hearing officer shall submit proposed findings and order to the board and to the applicant and all parties participating in the hearing. Any party objecting to the proposed findings and order shall have ten days from the mailing thereof to file such objections with the board, stating with particularity the matters objected to. If no such objections is filed, the proposed findings and order shall become final without further action of the board. If an objection is filed, the hearing officer shall forward to the board the record of the hearing. The board, based upon a review of the record, may modify, in whole or in part, the proposed findings and order, upon the concurring vote of four members of the board. The proposed findings and order, as modified, shall become the findings of the board. The proposed findings of the hearing officer shall become the findings and order of the board upon the failure of the board to modify such findings.

The board of adjustment shall conduct public hearings on matters coming before the board. Within thirty (30) days after the conclusion of any such hearing, the board shall submit its findings and order to the applicant and all parties participating in the hearing. The findings and order of the board may be appealed to city council by any party-in-interest as defined in chapter 18.80, by the applicant or any person participating in the board hearing by any such person filing of a written appeal with the current planning division director within ten (10) days after of the mailing of the findings and order. City Council shall consider any such appeal at a public hearing noticed in accordance with Section 18.680.050.C and conducted in accordance with Section 18.80.090. At the conclusion of the public hearing, city council may approve, approve with conditions, or deny the variance. Unless otherwise stated in the findings and order, or if applicable in the decision of city council, all permits or actions authorized as a result of an approval of a variance must be initiated within six months of the date such findings and order become final. Upon written request by the applicant, an additional six months may be granted by the Director of Community Services-current planning manager for initiating such permits or actions. In reviewing the proposed time extension, the Director-current planning manager shall consider the following criteria:

- A. ~~h~~Has there been a change of zoning for the site, or for any property adjacent to the site since the original approval?
- B. ~~h~~Has a change of use taken place on the site or on any adjacent property since the original approval, or is a change of use proposed for the site which would be divergent from the use shown in the application documents for the original variance?
- C. ~~h~~Have there been changes in the regulations and requirements specified in the Loveland Municipal Code which are applicable to the site and which should be addressed prior to the development of the site?
- D. ~~h~~Has the ownership of any adjacent property changed?
- E. ~~w~~Will the granting of the extension be detrimental to the public health, safety, or general welfare?
- F. ~~w~~Will the granting of the extension be in keeping with the purposes set forth in this title to the same degree as intended in the original approval?

#### 18.60.0570 Notice.

~~All notices required by this Chapter shall be provided pursuant to Chapter 18.05 Public Notice. Notice requirements for appeals shall be provided in accordance with chapter 18.80. All other notices required by this Chapter shall be provided pursuant to Chapter 18.05.~~

## Chapter 18.68

### ENFORCEMENT-PENALTIES

#### 18.68.045 Code Enforcement Guidelines

A duly appointed peace officer or code enforcement officer of the City may enforce the provisions of this title and of Titles 15 and 16 of the city code by the issuance of a summons and complaint as provided in Rule 204 of the Colorado Municipal Courts Rules of Procedure.

#### 18.68.050 Violation.

- A. Any violation of any of the provisions of this title or any Agreement or development plan approved under this title, exists in any building, other structure or tract of land; or

#### 18.68.070 Penalty.

Any person, firm or corporation violating any provisions of this title, upon conviction therefore, shall be fined not more than ~~five hundred~~ one thousand dollars or incarcerated not more than one year ~~six months~~, or both. Each day during which the illegal erection, construction, reconstruction, alteration, maintenance, ~~or use~~, or any other violation of this title continues, is deemed a separate offense.

## APPEALS

18.80.010 Purpose

18.80.020 Definitions

18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal

18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision

18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision

18.80.060 Notice of Appeal Requirements

18.80.070 Cost of Appeal

18.80.080 Record on Appeal

18.80.090 Procedure at Hearing

18.80.010 Purpose.

This Chapter shall govern the procedures for appeals from any Final Decision made under Title 16 or Title 18 of this Code.

18.80.020 Definitions.

The following words, terms and phrases, when used in this Title, shall have the meanings hereafter ascribed to them in this Chapter unless the context requires otherwise:

*Appellant* shall mean a Party-in-Interest who has filed a Notice of Appeal under the provisions of this Chapter.

*Applicant* shall mean a Person that has submitted to the City an application related to the development, zoning or subdivision of real property in the city as authorized or required under the provisions of Title 16 or Title 18 and which application is the subject of appeal under this Chapter.

*City Staff Decision Maker* shall mean any City staff member granted authority to make decisions under titles 16 and 18 of this Code.

*City Council* shall mean the City Council of the City of Loveland.

*Current Planning Division* shall mean the Current Planning Division for the City of Loveland Development Services Department.

*Days* shall mean all calendar days including Saturday and Sunday. Any computation of days under this Chapter shall not include the date a Final Decision is made. If a filing deadline falls upon a Saturday, Sunday or other legal holiday when City offices are closed, the filing deadline shall continue to the following day when City offices are open.

*De Novo Hearing* shall mean a new public hearing.

*Director* shall mean the City's Director of Development Services or his or her designee.

*Evidence* shall mean documentary, electronic or testimonial evidence relevant to any application that was the subject of a final decision under the provisions of Title 16 or Title 18, presented at a hearing to support or refute a particular proposition or conclusion. *Evidence* shall not include argument as to how information offered as evidence should be viewed or interpreted.

*Effective Date of the Final Decision*, as it pertains to a City Staff Decision Maker's or Director's Final Decision, shall mean the date the City Staff Decision Maker or Director mails his or her written decision to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this title to be mailed. As this phrase pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean the date on which the Board or Commission adopts its written findings and conclusions.

*Final Decision*, as it pertains to a City Staff Decision Maker or the Director, shall mean a decision or action by the City Staff Decision Maker or Director under Title 16 or Title 18 that the City Staff Decision Maker or Director has reduced to writing and has promptly mailed to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this Code to be mailed. As this term pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean a decision or action by the Board or Commission under this Code for which the Board or Commission has adopted written findings and conclusions. A *Final Decision* shall not include any decision made by a City Staff Decision Maker or the Director that is a recommendation to the Planning Commission or to the City Council, or a decision by the Planning Commission under this Code that constitutes a recommendation to City Council.

*Notice of Appeal* shall mean an Appellant's written request for an appeal of a Final Decision submitted in the form required by Section 18.80.060.

*Party-in-Interest*, as it pertains to an appeal under this Chapter of a Final Decision by a City Staff Decision Maker or the Director, shall mean: the Applicant; any person required in Title 16 or this Title 18 to be mailed the City Staff Decision Maker's or Director's written Final Decision; three or more Planning Commission members; or three or more City Council members. As this term pertains to an appeal under this Chapter of a Final Decision by the Zoning Board of Adjustment or the Planning Commission, it shall mean: the Applicant, any Person required in Title 16 or this Title 18 to be mailed notice of the Zoning Board of Adjustment or Planning Commission's public hearing; any Person who provided written or verbal testimony at the Zoning Board of Adjustment or Planning Commission's public hearing; or three or more City Council members. For an appeal of a Final Plat for a major subdivision or a Final Development Plan, only the Applicant shall be considered a Party-in-Interest with standing to appeal.

*Person* shall mean an individual, corporation, partnership, limited liability company or other legal entity.

*Planning Commission* shall mean the City of Loveland Planning Commission established pursuant to Section 2.60.080 of this Code.

*Record* shall mean all relevant documents reviewed by a previous Board, Commission or City Staff Decision Maker, and any transcript or written record of any such previous hearing.

*Zoning Board of Adjustment* shall mean the City of Loveland Zoning Board of Adjustment established pursuant to Section 18.60.010 of this code.

#### 18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal.

A. An appeal of a Final Decision may be filed pursuant to sections 18.80.040 and 18.80.050 of this Chapter. Upon the filing of an appeal, any application process with the City pertaining to the subject matter being appealed shall be suspended while the appeal is pending. Any action taken in reliance

upon any decision of a Board, Commission or other City Staff Decision Maker that is subject to appeal under the provisions of this Chapter shall be totally at the risk of the Person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action taken during said period of time.

B. Except for appeals by members of the City Council, the permissible grounds for appeal shall be limited to allegations that the Board, Commission or other City Staff Decision Maker committed one (1) or more of the following errors:

(1) Failure to properly interpret and apply relevant provisions of the Municipal Code or other law; or

(2) Failure to conduct a fair hearing in that:

a. The Board, Commission or other City Staff Decision Maker exceeded its authority or jurisdiction as contained in the Municipal Code or Charter;

b. The Board, Commission or other City Staff Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading; or

c. The Board, Commission or other City Staff Decision Maker improperly failed to receive all relevant evidence offered by the Appellant.

C. Appeals filed by members of the City Council need not include specific grounds for appeal, but shall include a general description of the issues to be considered on appeal. Council members who file an appeal shall not participate in deciding the appeal.

#### **18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision.**

A. A Party-in-Interest may appeal any final decision by the Director or other City Staff Decision Maker to the Planning Commission.

B. To appeal a City Staff Decision Maker or Director's Final Decision to the Planning Commission, a Party-in-Interest must file a notice of appeal with the Current Planning Division within ten (10) days of the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in the dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the Planning Commission not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The Planning Commission shall conduct the appeal hearing as a De Novo hearing and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the Planning Commission may uphold, reverse or modify the Final Decision being appealed. The Planning Commission shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions concerning the appeal.



**18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision.**

A. A Party-in-Interest may appeal any Final Decision by the Zoning Board of Adjustment or the Planning Commission to the City Council.

B. To appeal a Final Decision by the Zoning Board of Adjustment or Planning Commission to the City Council, a Party-in-Interest must file a Notice of Appeal with the Current Planning Division within ten (10) days of the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the City Council not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The property owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The City Council shall conduct the appeal hearing as a De Novo Hearing, and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the City Council may uphold, reverse or modify the Final Decision being appealed. The City Council may also remand the appeal to the Zoning Board of Adjustment or the Planning Commission with directions for the Zoning Board of Adjustment or Planning Commission's further consideration of the matter. If the City Council upholds, reverses or modifies a Final Decision made by the Zoning Board of Adjustment or the Planning Commission, the City Council shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions. The City Council's written findings and conclusions shall be considered the City Council's Final Decision for purposes of any appeal of the City Council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

**18.80.060 Notice of Appeal Requirements.**

The Notice of Appeal required to be filed under this Chapter shall include all of the following information:

A. A description of the Final Decision being appealed.

B. The date of the Final Decision being appealed.

C. The name, address, telephone number and relationship of each Appellant to the subject of the Final Decision being appealed including a statement for each Appellant as to the Appellant's qualification for being considered a Party-in-Interest under this Chapter.

D. For all appeals, except those filed by members of City Council, a description the grounds for the appeal of the Final Decision, including specific allegations of error.

E. In the case of an appeal by more than one (1) Appellant, the name, address and telephone number of one (1) such Appellant who shall be authorized to receive, on behalf of all Appellants, any notice required to be mailed by the City to the Appellants under the provisions of section 18.80.040 or section 18.80.050.

### 18.80.070 Cost of Appeal

In all appeals under this Chapter except those filed by three or more members of the Planning Commission or those filed by three or more members of the City Council, the Appellant shall be charged a fee for the cost of the appeal as such fee is established by City Council pursuant to Code Section 3.04.025. The City Council may establish a fee for each level of appeal.

### 18.80.080 Record on Appeal

The record provided to the Planning Commission or City Council for appeals filed under this chapter shall include a record of any previous proceedings before a Board, Commission or other City Staff Decision Maker, including without limitation, all exhibits, writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the Board, Commission or other City Staff Decision Maker at any previous proceedings. A video recording of the Zoning Board of Adjustment Hearing or Planning Commission hearing is not required as part of the record on appeal provided summary minutes of such hearings are included as part of the record.

### 18.80.090 Procedure at Hearing

A. At the appeal hearing, the presentation of argument regarding the appeal shall be made in the following order, subject to the discretion of the Chairperson or Mayor relating to limitations in time and scope, or allowances accommodating adequate presentation of evidence or opportunity for rebuttal:

- (1) Explanation of the nature of the appeal by City staff;
- (2) Appellant's presentation of evidence, testimony and argument in support of the appeal;
- (3) Presentation of evidence, testimony and argument of the Applicant if the Applicant is not the Appellant; or, if the Applicant is the Appellant, presentation of evidence, testimony and argument by any City staff member or other Party-in-Interest in opposition to the appeal.
- (4) Public comment;
- (5) Rebuttal presentation by the Appellant; and
- (6) Motion, discussion and vote by the Board, Commission or City Council.

B. No person making a presentation or providing testimony at an appeal hearing shall be subject to cross-examination except that members of the Planning Commission or City Council and the City Attorney may at any time make inquiries for the purpose of eliciting information and for the purpose of clarifying information presented.

C. In the event of multiple appeals involving the same subject matter considered by the Planning Commission or City Council, the Chairperson or Mayor, in his or her discretion, may modify the procedure contained in Subsection (A) above so as to expedite the hearing of such appeals.

D. The City Council shall consider an appeal based upon evidence submitted at the public hearing, the record on appeal, the relevant provisions of the Municipal Code and Charter, and the grounds for appeal cited in the Notice of Appeal. Grounds for appeal raised for the first time at the public hearing, and therefore not raised in the Notice of Appeal, shall not be considered by the City Council in deciding the appeal.

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING TITLES 16 AND 18 OF THE LOVELAND MUNICIPAL CODE BY REVISING PROVISIONS OF TITLES 16 AND 18 AND ENACTING A NEW CHAPTER 18.80 REGARDING APPEAL PROVISIONS.**

WHEREAS, City Council finds that updates to Titles 16 and 18 of the Loveland Municipal Code are necessary and required in the interest of the health, safety and welfare of the citizens of Loveland; and

WHEREAS, the Planning Commission held a public hearing regarding appeal provisions in Titles 16 and 18 of the Loveland Municipal Code; and

WHEREAS, City Council has received a recommendation from the Planning Commission regarding updates to the Code regarding appeal provisions, and the City Council desires to adopt such updates by amending Titles 16 and 18 and by adopting a new Chapter 18.80 regarding appeals.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, THAT:

**Section 1.** Title 16 of the Loveland Municipal Code is amended by the addition of the following language to Section 16.08.010:

\* “Final decision” shall have the meaning set forth in Code section 18.80.020.

**Section 2.** Title 16 of the Loveland Municipal Code is amended by the addition of a new chapter 16.10 Appeals, to read as follows:

**Chapter 16.10**

**APPEALS**

**Section:****16.10.010 Appeals of Final Decisions****16.10.010 Appeals of Final Decisions.**

An appeal of a final decision by the director, other City staff decision maker, or the planning commission regarding any provisions in this title, shall be brought in accordance with Chapter 18.80 of this Code.

**Section 3.** Sections 16.16.030.B and 16.16.030.E of the Loveland Municipal Code are revised to read as follows:

**16.16.30 Review procedures, general.**

- ...
- B. Development Review.
1. Submission of Application Signatures/Certified Lists.
    - a. Once the applicant has received comments on the sketch plan, the applicant may submit an application for the development review sought. Applications shall be submitted to the Current Planning Division on forms provided for this purpose. The application shall include all required supporting documentation as specified on submittal checklists provided by the Current Planning Division. Unless otherwise specified herein, the applicant shall provide the number of copies specified in the checklist. Applications shall be signed by all fee owners of the land described in the application; except, that where the fee is held by two or more owners as joint tenants or as tenants in common, such application may be signed by only one joint tenant or tenant in common. All other owners and lienholders who have an interest in the land described in the application shall be noted on the application.
    - b. At the time of filing a development review application requiring a public hearing, or where otherwise required under this title, the applicant shall submit to the Current Planning Division all information required pursuant to Section 16.16.070 and Tables 16.16.070-1 and 16.16.070-2.
    - c. Each application shall be submitted with the fee established for that application pursuant to resolution of the city council.
  2. Application Submittal Date. The official application submittal date shall be the date on which the applicant submits a reviewable application. The director shall schedule the applicant for a meeting with the development review team upon determination that such application is reviewable. The director may exempt applications for final plats, minor subdivisions, lot mergers, and boundary line adjustments from meeting with the development review team.

3. Applications Referred to Development Review Team/Determination of a Reviewable Application. The development center shall refer the reviewable application to the development review team members for their review. The development review team members shall comment on the application. Said comments shall be completed and compiled within approximately thirty days from the official application submittal date or by such time as required by the director. The director may require that any applicant for any development review under this title, reimburse the city for the cost of any legal or technical consultant fees incurred by the city in connection with reviewing the application. The application shall be deemed complete on the application acceptance date, which is the date that the director finds that the application contains adequate information on which to determine compliance with the review and design standards of this title and other applicable code provisions, city ordinances, comprehensive master plan, city policies, and state laws.
4. Written Comments to the Applicant. The development center shall make available to the applicant the development review team's comments a minimum of two working days prior to the development review team meeting or at such time as may be required by the director.
5. Development Review Team Meeting. On the scheduled date, the applicant shall meet with the development review team to discuss their comments. If the development review team determines that the application is not complete, the director may table further processing of the application and inform the applicant of the materials or revisions needed to make the application complete. The applicant shall submit a revised application no later than the deadline determined by the development review team. If the development review team finds that an application is not complete and cannot be made complete without revisions so extensive as to constitute a new application, the director may reject the application. Such application shall be resubmitted for development review under this title, in accordance with the applicable provisions of this title. The director will accept amendments to applications as long as they are submitted at least fifteen days prior to the scheduled development review team meeting. Nothing herein shall prevent the development review team, the planning commission city council or director from requesting additional information in the course of the review if it is deemed necessary to determine compliance with the standards set forth in this title, or in Title 17 or 18 as applicable.
6. Scheduling Public Hearings. An application shall not be scheduled for planning commission or city council review or decision unless the director determines that the application is complete. Upon a finding that the application is complete, the director shall schedule the application for the next available planning commission or city council meeting, as applicable.

#### E. Appeal Procedure.

Appeals from any final decision by the director or the planning commission shall be conducted pursuant to Chapter 18.80 of this Code.

**Section 4.** Section 16.16.040.C of the Loveland Municipal Code is revised to read as follows:

**16.16.040 Staff review of certain applications.**

. . . .

C. Appeal Procedure.

1. Appeals from any final decision by the director for final plats, minor subdivisions, boundary line adjustments and lot mergers shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.
2. Appeal Procedure for Planning Commission Decisions. The decision of the planning commission shall be considered final absent an appeal to city council pursuant to Chapter 18.80 of this Code.

**Section 5.** Section 16.16.070.D.10 and section 16.16.070.E.2 of the Loveland Municipal Code are revised to read as follows:

**16.16.070 Public Notice Requirements.**

. . . .

D. Content of Public Notice. . . .

10. For Director decision notices, a statement that interested parties may submit an appeal and the deadlines and requirements for filing an appeal, pursuant to Chapter 18.80 of this Code.

E. Mailed Notice. . . .

2. For all applications requiring mailed notice, the radius distances specified in Table 16.16.070-2 Area of Public Notice Distance by Application Type and Size, shall be used to determine the area to which such notice shall be given, except as provided in Sections 16.16.070.E. 3 and 4.

| Table 16.16.070-2 AREA OF MAILED NOTICE DISTANCE BY APPLICATION TYPE AND SIZE |                   |               |                       |
|---|-------------------|---------------|-----------------------|
| Application Type  | 20 acres or less  | 21 – 50 acres | Greater than 50 acres |
| Obsolete Subdivisions   | See Chapter 16.36 |               |                       |

|  |                   |         |           |
|--|-------------------|---------|-----------|
| Preliminary Plat                         | 500 ft.           | 750 ft. | 1,000 ft. |
| Minor Subdivision                        | 150 ft.           | 150 ft. | 150 ft.   |
| Vacation (of easements or rights-of-way) | See Chapter 16.36 |         |           |

**Section 6.** Section 16.20.060.D of the Loveland Municipal Code is revised to read as follows:

**16.20.060. Preliminary Plat Review Procedure.**

...

D. Appeal Procedures of Planning Commission Decisions. The decision of the planning commission shall be considered final on all matters as prescribed in this Title 16 absent an appeal to city council pursuant to Chapter 18.80 of this Code.

**Section 7.** Section 16.20.080.C.1 of the Loveland Municipal Code is revised to read as follows:

**16.20.080. Final plat review procedure.**

...

C. Final Plat Review.

1. Pursuant to the powers granted to the city in the Colorado Constitution and the city of Loveland Charter, the director is hereby assigned the power to approve all final plats. The director shall make final decision on the final plat application within thirty days after a complete final plat is submitted to the development center. The director shall make appropriate findings based on the applicable review standards, or adopted plans. Using the review standards set forth in this title, the director shall approve, approve with conditions or deny the application. All conditions of approval applicable to the final plat shall be included in a development agreement, which shall be recorded with Larimer County clerk and recorder concurrent with recordation of the final plat. The decision of the director shall be considered final on matters prescribed in this Title 16 absent an appeal to planning commission pursuant to Chapter 18.80 of this Code.

**Section 8.** Section 16.20.100 of the Loveland Municipal Code is revised to include an addition of a new Subsection E to read as follows:

**16.20.100 Minor subdivision review procedures.**

...

- E. Appeals from any final decision by the director for a minor subdivision shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.

**Section 9.** Section 16.20.120 of the Loveland Municipal Code is revised to include an addition of a new Subsection D to read as follows:

**16.20.120 Simple plat review procedure.**

...

- D. Appeals from any final decision by the director for a minor subdivision shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.

**Section 10.** Section 16.28.060 of the Loveland Municipal Code is revised to read as follows:

**16.28.060 Deed restriction in lieu of boundary line adjustment.**

- A. In the event the owner of property consisting of one or more adjacent lots and an adjacent unsubdivided parcel of land upon which a structure is located, wishes to obtain a building permit for either an accessory structure to be located on the property, an addition to the existing structure, or interior remodeling work without completing a boundary line adjustment, the owner may request that in lieu of a boundary line adjustment the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a boundary line adjustment. The deed restriction shall be released by the city upon completion of a boundary line adjustment combining all adjacent lots and un-subdivided parcels in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.
- B. Appeals from any final decision by the Director for a deed restriction in lieu of a boundary line adjustment shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.



**Section 11.** Section 16.32.060 of the Loveland Municipal Code is revised to read as follows:

**16.32.060 Deed restriction in lieu of lot merger.**

- A. In the event the owner of property, consisting of two or more adjacent lots and containing an existing residential use, wishes to obtain a building permit for either an accessory structure to be located on the property or an addition to the existing structure without completing a lot merger, the owner may request that in lieu of a lot merger the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a lot merger. The deed restriction shall be released by the city upon completion of a lot merger combining all adjacent lots in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.
- B. Appeals from any final decision by the Director for a deed restriction in lieu of a lot merger shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.

**Section 12.** Section 16.40.090 of the Loveland Municipal Code is revised to read as follows:

**16.40.090 Guarantee period.**

All workmanship and materials (except materials provided by the city) for all required public improvements installed by the applicant (including, but not limited to the water supply system, sanitary sewage disposal system, storm drainage facilities, electrical distribution system, curbs, gutters, street pavement, sidewalks, street signs, survey monuments, landscaping, and pavement markings) shall be guaranteed to be free from defects by the applicant for a period of two years from the date of acceptance of the required improvement by the city, provided, that such defects are not the result of public abuse, misuse or natural causes, as determined by the city. In the event any other provision of this code or specifications adopted pursuant thereto shall require a guarantee of workmanship or materials or both for a different period of time, that provision regarding the longer period of guarantee shall govern. City inspection shall not relieve the property owner of such guarantee of workmanship and materials. Upon notification, the applicant shall promptly make all adjustments, repairs, or replacements in accordance with a repair plan approved by the city, which repair, in the opinion of the city, arose out of defects and became necessary during the guarantee period. The cost of all materials, parts, labor, transportation, supervision, special tools, and supplies required for replacement or repair of parts and for correction of defects shall be paid by the contractor or by the holder of the approved financial security.

This guarantee shall be extended to cover all repairs and replacements furnished under the guarantee, and the period of the guarantee for each repair or replacement shall be extended one year after installation or completion of the repair or replacement.

If, within fifteen days after the city has notified the applicant of a defect, failure, or abnormality in the work, the applicant has not started to make the necessary repairs or adjustments or submitted a written objection to the city's request for repair work, the city is hereby authorized to make the repairs or adjustments or to order the work be done by a third party. The cost of the work shall be paid by the applicant. The director may authorize a temporary repair if necessary due to weather conditions or materials availability.

If an applicant has cause to object to the city's request for repair work, such objection shall be made in writing to the director. If the director confirms that the repair is necessary because of a defect in the applicant's materials or workmanship, the applicant shall complete the repairs as directed by the city.

In the event of an emergency, where in the judgment of the city, delay would cause serious loss or damage, repairs, or adjustments may be made by the city or a third party chosen by the city without advance notice to the applicant, the cost of the work shall be paid by the applicant or the holder of the financial security.

Within thirty days prior to expiration of the guarantee period, the applicant shall request, in writing, that the city verify that no defects exist. The city shall, within thirty days, inspect the completed work and, if no defects, failures, or abnormalities are observed or detected, the city shall cause the bond, deposit, escrow agent, or letter of credit to be released.

In the event that the applicant fails to complete any required repair work, or fails to reimburse the city for legitimate repair work performed by the city on behalf of the applicant, or fails to enter into an agreement with city regarding the satisfactory resolution of the obligation, the applicant shall be prohibited from participating in any further land development activity in the city of Loveland until such repair, reimbursement, or agreement is completed to the satisfaction of the director. Both the developer of the project and the contractor performing the defective work shall be subject to this restriction. The developer shall be prohibited from receiving any additional building permits for any lots owned by the developer, as well as from submitting or continuing the processing of any land development applications for review and consideration by the city. The contractor shall be subject to the issuance of a stop work order issued by the city to the contractor for any work within any city right-of-way or easement. Appeals from any final decision by the Director shall be conducted by the planning commission pursuant to Chapter 18.80 of this Code.

**Section 13.** The introductory language to Chapter 18.04 of the Loveland Municipal Code is revised to read as follows:

\*For statutory provisions regarding zoning of cities and towns generally, see CRS § 31-23-201 et. seq. ; for provisions authorizing local authorities to adopt zoning regulations, see CRS § 31-23-301 et. seq.

**Section 14.** Section 18.04.050 of the Loveland Municipal Code is revised to read as follows:

**18.04.050 Building, structure, or use exempt.**

Any building, structure, or use as to which satisfactory proof shall be presented to the city council, that the present or proposed situation of such building, structure, or use is reasonably necessary for the convenience or welfare of the public, shall be exempt from the operation of this title.

**Section 15.** Section 18.32.050 of the Loveland Municipal Code is revised to read as follows:

**18.32.050 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the current planning manager for review and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 16.** Section 18.36.025 of the Loveland Municipal Code is revised to read as follows:

**18.36.025 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the current planning manager for review and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 17.** Section 18.40.055 of the Loveland Municipal Code is revised to read as follows:

**18.40.055 Appeal of an administrative or planning commission decision.**

A.

1. Any party-in-interest as defined in Chapter 18.80, may appeal to the planning commission a decision of the planning division on a type 2 zoning permit in accordance with the procedures set forth in chapter 18.80 so long as the appeal is filed within ten (10) days of the mailing of a notice from the planning division office that a type 2 zoning permit will be issued.
2. Upon the filing of an appeal, the permit application shall be suspended pending conclusion of the appeal process. The appeal shall be scheduled for a public hearing in accordance with chapter 18.80, at which time the applicant shall have the burden of proving that he or she is entitled to a permit under the standards set forth in Sections 18.40.030K and 18.40.005.
3. Following the close of the public hearing, the planning commission may deny the application for a special review permit or direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the

planning commission deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed with such condition or restriction.

B.

1. Any party-in-interest as defined in chapter 18.80, may appeal a decision of the planning commission to the city council in accordance with the procedures set forth in chapter 18.80, within ten (10) days following the planning commission decision.
  
2. If the city council determines that a decision to deny a type 3 zoning permit should be reversed, the city council shall direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the council deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed with such condition or restriction. If the city council determines that a decision to issue a type 3 zoning permit should be reversed, no such permit shall issue and the application shall be denied. If the city council determines that certain conditions or restrictions should or should not have been imposed upon the type 3 zoning permit, it shall direct the planning division to issue the type 3 zoning permit subject to a modification in the conditions or restrictions. If the council determines that the conditions and restrictions should remain as provided by the planning commission, then it shall direct the planning division to issue the type 3 zoning permit without modification. In making its decision on the appeal, the city council shall consider the standards in Sections 18.40.030K and 18.40.005.

**Section 18.** Section 18.41.050.E.3 of the Loveland Municipal Code is revised to read as follows:

**18.41.050 Procedures for approval of a planned unit development.**

. . .

E. Preliminary Development Plan Approval.

. . .

3.
  - a. The effective date of the planning commission's decision shall be the date that the planning commission adopts its written findings and conclusions. The planning commission shall issue findings and conclusions in support of any decision within thirty days of its decision. Any party-in-interest as defined in chapter 18.80, may file a written notice of appeal with the planning division within ten (10) days of the effective date of the planning commission's decision. Upon the filing of a notice of appeal, the appeal

shall be scheduled for a full public hearing in accordance with chapter 18.80. At the public hearing, the city council shall approve, approve with conditions, or disapprove the matter, considering the same standards as prescribed for the planning commission in this Title 18.

- b. If there is no applicable general development plan for the development, then the planning commission shall only make a recommendation to the city council regarding the approval, conditional approval or denial of the preliminary development plan. The council shall proceed in the same manner as in the case of general development plans. See Section 18.41.050(D)(6-10);

**Section 19.** Section 18.41.050.F.3 of the Loveland Municipal Code is revised to read as follows:

**18.41.050 Procedures for approval of a planned unit development.**

...

F. Final Development Plan Approval.

...

- 3. If the chief planner approves the final development plan, he shall issue an approval of final development plan which shall incorporate by reference the final development and shall be recorded in the real property records of Larimer County without due delay. The final development plan shall be filed with the building division and be available for public inspection. If the chief planner denies approval of the final development plan, he shall communicate a notice of denial to the applicant setting forth the basis for the denial. Within ten days of the date the chief planner mails the notice of denial to the applicant, the applicant may file an appeal of the denial in accordance with chapter 18.80 to the planning commission, which shall hear the matter in accordance with the procedures set forth in chapter 18.80, except that no further public notice of the appeal shall be required. Both the chief planner and the applicant shall appear before the planning commission and be given an opportunity to speak to the issues. Except as permitted by a majority vote of the planning commission members present at the meeting, no other person shall be entitled to address the planning commission. The planning commission shall consider the same factors used by the chief planner when making his determination;

**Section 20.** Section 18.41.060 of the Loveland Municipal Code is repealed in its entirety.

**Section 21.** Section 18.41.090 of the Loveland Municipal Code is repealed in its entirety.

**Section 22.** Section 18.42.030.A.1.d of the Loveland Municipal Code is revised to read as follows:

**18.42.030 Spaces required.**

. . .

A.1.d. Decisions by the Current Planning Manager with respect to such alternative compliance may be appealed to the planning commission in accordance with chapter 18.80. The planning commission, when hearing such an appeal shall apply the standards set forth in section 18.60.020.

**Section 23.** Section 18.45.090.A.1 of the Loveland Municipal Code is revised to read as follows:

**18.45.090 Nonconforming buildings or uses.**

. . .

A.1. Any nonconforming use of property may be expanded, provided that such expansion is approved by the public works director. Any appeal of the public works director's decision shall be made to the planning commission in accordance with chapter 18.80 of this Code.

**Section 24.** Section 18.48.020.G of the Loveland Municipal Code is revised to read as follows:

G. Appeal.

1. Appeal of director's decision. Any applicant or member of the neighborhood may appeal a decision of the director regarding the granting or denial of a business occupancy permit so long as the appeal is filed with the city within ten days of the date that a notice of intent to issue a business occupancy permit was mailed by the director, or the permit was denied. Upon the filing of an appeal, the permit application shall be suspended pending conclusion of the appeal process. Appeals shall be conducted by the planning commission in accordance with chapter 18.80 of this Code. The applicant shall be notified of the appeal, and shall be responsible for sending a notice to the members of the neighborhood. The notice shall be in a form approved by the city and shall be mailed a minimum of fifteen days in advance of the scheduled public hearing.
2. Planning Commission consideration. At the appeal hearing, the planning commission shall follow the procedures set forth in chapter 18.80, and shall

consider the application, the findings and determinations of staff, and take public testimony regarding the proposed home occupation. The planning commission shall review the application for compliance with the provisions of this code and other adopted regulations, the compatibility of the application with the character of the surrounding neighborhood and adverse influences that might result from approval of the application. The planning commission may either approve, approve with modifications or conditions or deny the application. The planning commission's decision may be further appealed in accordance with chapter 18.80.

**Section 25.** Section 18.48.020.I of the Loveland Municipal Code is revised to read as follows:

- I. Revocation of Permit-Appeal. A business occupancy permit may be revoked by the city if the city finds that the home occupation no longer conforms to the provisions of this section or the conditions of approval of the business occupancy permit. A business occupancy permit may also be revoked upon a determination by the city that the mailing list was faulty or the applicant failed to follow the application, review and appeal process. Notification to the applicant shall include findings in support of the revocation and the applicant's rights of appeal. The written notification of revocation shall be mailed to the last known address of the permit holder. The date of the mailing shall be the date of notification. The business occupancy permit holder may appeal the city's decision to the planning commission as provided for in chapter 18.80.

**Section 26.** Section 18.50.100.A.4.h of the Loveland Municipal Code is revised to read as follows:

**18.50.100 Sign regulations in nonresidential zones.**

A.4.h. A request for variance to the maximum sign area, height or setback for a sign containing an electronic message module shall be heard by the Zoning Board of Adjustment in accordance with the procedures specified in Chapter 18.60. In addition to the findings specified Section 18.60.040, before granting any request, the Board shall find that:

1. The proposed area, setback and/or height of the electronic message sign module is the minimum required to be fully visible from the adjacent arterial or interstate roadway right-of-way; and
2. Traffic safety conditions will not be diminished by the increased square footage, increased height or decreased setback of the electronic message sign module; and

- 3. There are no reasonable alternatives to the increased size, height, setback and/or design of the electronic message sign.

**Section 27.** Section 18.50.100.B.11 of the Loveland Municipal Code is revised to read as follows:

**18.50.100 Sign regulations in nonresidential zones.**

...

- B.11. Appeal of a Planning Division Decision. Should the applicant for a planned sign program not be satisfied with the decision of the planning division, the applicant shall have the right to appeal the decision to the planning commission in accordance with chapter 18.80 of this Code.

**Section 28.** Section 18.50.150.B of the Loveland Municipal Code is revised to read as follows:

**18.50.150 Nonconforming signs.**

...

- B. Prohibited, illegal, nonconforming, abandoned or hazardous signs are declared nuisances and shall not be allowed within the city nor continued by variance. If any person fails to comply with the provisions of this chapter, in addition to the penalty provided therefore, a written order may be served upon the owner or agent in charge of such property, such order to be served personally or by mail, requiring the abatement of the nuisance within fifteen days, excluding weekends and official holidays, after mailing such notice. Such notice shall also advise the owner or agent of his or her right to appeal pursuant to chapter 18.80. If the abatement has not occurred within the stated time and an appeal has not been filed pursuant to the provisions of chapter 18.80, then the city may remove said sign, provided that the sign is either an off-premise sign, portable sign, free standing sign made of paper, balloons, pennants or banners, and charge the direct cost incurred by the city for removal of the sign, including five percent for inspection and other incidental costs in connection therewith, upon the land and such assessment is a lien until paid. In addition to any other means provided by law for collection, if any such assessment is not paid within thirty days after it is made and notice thereof is mailed, the same may be certified by the city clerk to the county treasurer and by him placed upon the tax list for the current year, and thereby collected in the same manner as other taxes are collected, with ten percent penalty thereon to defray the cost of collection.



**Section 29.** Section 18.50.190 of the Loveland Municipal Code is revised to read as follows:

**18.50.190 Appeals.**

A decision of the current planning manager relative to the provisions of this chapter may be appealed to the planning commission in accordance with chapter 18.80 of this title. The decision of the current planning manager shall be upheld unless the planning commission finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious. Any appeal of the planning commission's decision to the city council shall be made in accordance with Chapter 18.80 of this code and the city council shall uphold the decision of the current planning manager unless the city council finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious.

**Section 30.** Section 18.52.020 of the Loveland Municipal Code is revised to read as follows:

**18.52.020 Supplementary yard regulations.**

A. The purpose of a setback creating a yard is for the preservation of light and air to adjoining properties, fire protection, maintenance of property, preservation of open space and the retention of a visually cohesive pattern established by buildings and the spaces which separate them. To maximize the amount of open space on a lot and/or the beneficial use of the property, the current planning manager may approve a reduction of up to 25 percent of a required setback, so long as the current planning manager determines and finds that:

1. The alternative setback would be in harmony with the spirit of this title;
2. The alternative setback would not limit the use or enjoyment of nearby property;
3. A letter of non-objection to the alternative setback is submitted from all adjacent property owners; and
4. A letter of non-objection to the alternative setback is submitted by other potentially impacted property owners, as determined by the Current Planning Manager, who own property that falls wholly or partially within 150 feet of the subject property.

B. The front yard in all residential zones may be reduced by five feet for garages where the vehicle access door does not face directly onto the street. This allowance shall not apply to properties within a planned unit development or special review that contain specific yard provisions.

C. The following items may extend into required yards if determined to be incidental and harmless to adjacent properties by the current planning manager:

1. Architectural features including cornices, eaves, bay windows, an exterior chase for a fireplace or other similar features;
2. At grade uncovered decks and patios that are exempt from building permit requirements; and
3. Fire escapes that extend into the required rear yards by no more than six feet.

**Section 31.** Section 18.53.020 of the Loveland Municipal Code is revised to read as follows:

**18.53.020 Compliance.**

- A. Type 1 Standards. Compliance with the Type 1 standards set forth in this Chapter 18.53 is mandatory, unless a variance is granted pursuant to Chapter 18.60.
- B. Type 2 Standards.
  1. Alternative compliance. Compliance with the Type 2 standards set forth in this Chapter 18.53 is mandatory, unless the current planning manager grants alternative compliance in accordance with the following provisions. The current planning manager may allow application of an alternative standard, different than a Type 2 standard, provided the current planning manager determines that:
    - a. The applicant has demonstrated that either:
      - i. Site-specific, physical constraints necessitate application of the alternative standard, and such constraints will not allow a reasonable use of the property without application of such alternative standard; or
      - ii. The alternative standard achieves the intent of the subject Type 2 standard to the same or greater degree than the subject standard, and results in equivalent or greater benefits to the community as would compliance with the subject standard.
  2. Statement of findings. Whenever the current planning manager grants alternative compliance, the current planning manager shall formulate a written statement of findings based on the above criteria for such action. Such statement shall be filed in the development application file.
  3. Appeals. Decisions by the current planning manager with respect to such alternative compliance may be appealed to the planning commission in accordance with chapter 18.80.

**Section 32.** Sections 18.54.050 and 18.54.060 of the Loveland Municipal Code are revised to read as follows:

**18.54.050 Request for exception.**

The owner of the proposed building or structure may request an exception from the height limitations imposed by this chapter. A request for an exception shall be made to the planning commission. The planning commission shall hold a public hearing on such request, which hearing shall be noticed in accordance with Section 16.16.070 of this code.

Before granting any request, the Planning Commission shall find that:

- A. The requested exception allows adequate light and air to the adjacent neighborhood; and
- B. The requested exception is compatible with the character of the surrounding neighborhood; and
- C. The requested exception will not be injurious to the adjacent neighborhood or otherwise detrimental to the public health, safety and welfare; and
- D. The requested exception is consistent with the intent of the zoning district and the entire zoning ordinance.

**18.54.060 Appeal to city council.**

Any party-in-interest, as defined in section 18.80.020, may appeal the decision of the planning commission to the city council. The city council shall hold a public hearing on such appeal, which appeal shall be held in accordance with chapter 18.80. Using the criteria set forth in section 18.54.050, the city council may affirm, modify or reverse the planning commission.

**Section 33.** Chapter 18.60 of the Loveland Municipal Code is repealed in its entirety and reenacted to read as follows:

**ZONING BOARD OF ADJUSTMENT\***

**Sections:**

- 18.60.010 Board of adjustment established.**
- 18.60.020 Powers and duties.**
- 18.60.030 General Variance Review Criteria.**
- 18.60.040 Sign Variance Review Criteria.**
- 18.60.050 Applications.**
- 18.60.060 Procedure.**
- 18.60.070 Notice.**

\*For statutory provisions regarding boards of adjustment, see CRS §§ 31-23-301 and 31-23-307.

**18.60.010 Board of adjustment established.**

The planning commission shall be the ex officio board of adjustment for the city.

**18.60.020 Powers and duties.**

The board of adjustment shall have the powers and duties to grant variances from certain standards set forth in this title 18 subject to and in compliance with this chapter and the laws of the state. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions of the title so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done. The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:

- A. Standards for lot area, lot dimensions and setback requirements;
- B. Square footage of accessory structures;
- B. Percentage of open space; and
- C. Setbacks for a freestanding sign, spacing between freestanding signs and the area for freestanding and wall mounted signs.

After considering if the proposed variance meets the criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions, deny or table the application for future consideration.

### **18.60.030 General Variance Review Criteria**

To approve a zoning variance application, the board of adjustment shall consider the following review criteria and find that each criterion has been met or determined to be inapplicable:

- A. There are unique circumstances or conditions that are particular to or related to the land or structure for which the variance is requested. The circumstances may include, but are not limited to, exceptional topographic conditions, the shape or dimensions of the property, or the existence of mature landscaping or natural features that impact the property;
- B. The special circumstances are not the result of actions or inactions by the applicant or the current owner;
- C. The strict interpretation and enforcement of the provisions of the code would cause an unnecessary or undue hardship;
- D. Granting the variance is the minimum action needed to accommodate or alleviate the difficulty or hardship involved;
- E. The variance would not substantially impact the reasonable use and enjoyment or development of other property in the vicinity of the subject land or structure;
- F. The variance would not authorize any use in a zoning district other than a use specifically permitted in such zoning district; and
- G. The variance would not waive or modify the requirements of any use approved by special review.

### **18.60.040 Sign Variance Review Criteria**

A. Variances to the requirements of Chapter 18.50 shall not be permitted, except as related to the requirements concerning the setback of a freestanding sign, the spacing between freestanding signs, or the maximum sign area. To approve a zoning variance application to Chapter 18.50, the board must consider the following review criteria and find that each criterion has been met.

- 1. There are special physical circumstances or physical conditions, including, without limitation, buildings, topography, vegetation, sign structures, or other physical features on adjacent properties or within the adjacent public right-of-way that would substantially restrict the effectiveness of the sign in question, and such

special circumstances or conditions are unique to the business to which the applicant desires to draw attention and do not apply generally to all businesses in the area;

2. The variance would be consistent with the purposes set forth in Section 18.50.010 and would not adversely affect the neighborhood or other businesses within the vicinity in which the subject business is located; and

3. The variance is the minimum necessary to permit the applicant to reasonably draw attention to its business.

B. In addition to the above criterion, for signs that contain an electronic message module, the board must consider the review criteria in Section 18.50.100.A.4.h and find that each criterion has been met.

#### **18.60.050 Applications.**

Any person seeking action or review upon any matter within the jurisdiction of the board of adjustment, shall make an application on forms provided by the Current Planning Division. The application shall be accompanied by such supporting material as may be required. The applicant shall also pay, at the time of filing of the application, any required filing fee as established by resolution of the city council.

#### **18.60.060 Procedure.**

The board of adjustment may designate one or more hearing officers from within the board to conduct public hearings on matters coming before the board. The designated hearing officer shall have the discretion to forward any matter onto the full board of adjustment for the initial public hearing. Within ten (10) days after the conclusion of any hearing conducted by the hearing officer, the hearing officer shall submit proposed findings and order to the board of adjustment and to the applicant and all parties participating in the hearing. The findings and order of the hearing officer may be appealed to the full board of adjustment by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the current planning division within ten (10) days of the decision of the hearing officer. If no appeal is filed, the proposed findings and order shall become final without further action by the board. If an appeal is filed, the hearing officer shall forward to the board of adjustment the record of the hearing. The board shall consider any such appeal on the first available date for which proper notice can be provided pursuant to Chapter 18.05. The appeal shall be conducted as a *De Novo* hearing as defined in Chapter 18.80, and the board shall follow the procedures set forth in Section 18.80.090. Whether as a result of an initial public hearing by the board or an appeal of the hearing officer's decision, the board shall submit its findings and order to the applicant and all parties participating in the hearing within thirty (30) days following the conclusion of the hearing. The findings and order of the board may be appealed to city council by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the Current Planning Division within ten (10) days of the mailing of the findings and order. City Council shall consider any such appeal at a public hearing noticed in accordance with Section 18.80.050.C. and conducted in accordance with Section 18.80.090. Unless otherwise stated in the findings and order, or in the decision of city council, all permits or actions authorized as a result of an approval of a variance must be initiated within six months of the date such findings and order became final. Upon

written request by the applicant, an additional six months may be granted by the current planning manager for initiating such permits or actions. In reviewing the proposed time extension, the current planning manager shall consider the following criteria:

- A. Has there been a change of zoning for the site, or for any property adjacent to the site since the original approval?
- B. Has a change of use taken place on the site or on any adjacent property since the original approval, or is a change of use proposed for the site which would be divergent from the use shown in the application documents for the original variance?
- C. Have there been changes in the regulations and requirements specified in the Loveland Municipal Code which are applicable to the site and which should be addressed prior to the development of the site?
- D. Has the ownership of any adjacent property changed?
- E. Will the granting of the extension be detrimental to the public health, safety, or general welfare?
- F. Will the granting of the extension be in keeping with the purposes set forth in this title to the same degree as intended in the original approval?

**18.60.070 Notice.**

Notice requirements for appeals shall be provided in accordance with chapter 18.80. All other notices required by this Chapter shall be provided pursuant to Chapter 18.05.

**Section 34.** Section 18.68.045 of the Loveland Municipal Code is revised to read as follows:

**18.68.045 Code Enforcement Guidelines**

A duly appointed peace officer or code enforcement officer of the City may enforce the provisions of this title and of Titles 15 and 16 of the city code by the issuance of a summons and complaint as provided in Rule 204 of the Colorado Municipal Courts Rules of Procedure.

**Section 35.** Section 18.68.050.A of the Loveland Municipal Code is revised to read as follows:

**18.68.050 Violation.**

- A. Any violation of any of the provisions of this title or any Agreement or development plan approved under this title, exists in any building, other structure or tract of land; or

**Section 36.** Section 18.68.070 of the Loveland Municipal Code is revised to read as follows:

**18.68.070 Penalty.**

Any person, firm or corporation violating any provisions of this title, upon conviction therefore, shall be fined not more than one thousand dollars or incarcerated not more than one year, or both. Each day during which the illegal erection, construction, reconstruction, alteration, maintenance, use, or any other violation of this title continues, is deemed a separate offense.

**Section 37.** A new chapter 18.80 regarding Appeals is added to the Loveland Municipal Code to read as follows:

**APPEALS**

**18.80.010 Purpose**

**18.80.020 Definitions**

**18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal**

**18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision**

**18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision**

**18.80.060 Notice of Appeal Requirements**

**18.80.070 Cost of Appeal**

**18.80.080 Record on Appeal**

**18.80.090 Procedure at Hearing**

**18.80.010 Purpose.**

This Chapter shall govern the procedures for appeals from any Final Decision made under Title 16 or Title 18 of this Code.

**18.80.020 Definitions.**

The following words, terms and phrases, when used in this Title, shall have the meanings hereafter ascribed to them in this Chapter unless the context requires otherwise:

*Appellant* shall mean a Party-in-Interest who has filed a Notice of Appeal under the provisions of this Chapter.

*Applicant* shall mean a Person that has submitted to the City an application related to the development, zoning or subdivision of real property in the city as authorized or required under the provisions of Title 16 or Title 18 and which application is the subject of appeal under this Chapter.

*City Staff Decision Maker* shall mean any City staff member granted authority to make decisions under titles 16 and 18 of this Code.

*City Council* shall mean the City Council of the City of Loveland.

*Current Planning Division* shall mean the Current Planning Division for the City of Loveland Development Services Department.

*Days* shall mean all calendar days including Saturday and Sunday. Any computation of days under this Chapter shall not include the date a Final Decision is made. If a filing deadline falls upon a Saturday, Sunday or other legal holiday when City offices are closed, the filing deadline shall continue to the following day when City offices are open.

*De Novo Hearing* shall mean a new public hearing.

*Director* shall mean the City's Director of Development Services or his or her designee.

*Evidence* shall mean documentary, electronic or testimonial evidence relevant to any application that was the subject of a final decision under the provisions of Title 16 or Title 18, presented at a hearing to support or refute a particular proposition or conclusion. *Evidence* shall not include argument as to how information offered as evidence should be viewed or interpreted.

*Effective Date of the Final Decision*, as it pertains to a City Staff Decision Maker's or Director's Final Decision, shall mean the date the City Staff Decision Maker or Director mails his or her written decision to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this title to be mailed. As this phrase pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean the date on which the Board or Commission adopts its written findings and conclusions.

*Final Decision*, as it pertains to a City Staff Decision Maker or the Director, shall mean a decision or action by the City Staff Decision Maker or Director under Title 16 or Title 18 that the City Staff Decision Maker or Director has reduced to writing and has promptly mailed to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this Code to be mailed. As this term pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean a decision or action by the Board or Commission under this Code for which the Board or Commission has adopted written findings and conclusions. A *Final Decision* shall not include any decision made by a City Staff Decision Maker or the Director that is a recommendation



to the Planning Commission or to the City Council, or a decision by the Planning Commission under this Code that constitutes a recommendation to City Council.

*Notice of Appeal* shall mean an Appellant's written request for an appeal of a Final Decision submitted in the form required by Section 18.80:060.

*Party-in-Interest*, as it pertains to an appeal under this Chapter of a Final Decision by a City Staff Decision Maker or the Director, shall mean: the Applicant; any person required in Title 16 or this Title 18 to be mailed the City Staff Decision Maker's or Director's written Final Decision; three or more Planning Commission members; or three or more City Council members. As this term pertains to an appeal under this Chapter of a Final Decision by the Zoning Board of Adjustment or the Planning Commission, it shall mean: the Applicant, any Person required in Title 16 or this Title 18 to be mailed notice of the Zoning Board of Adjustment or Planning Commission's public hearing; any Person who provided written or verbal testimony at the Zoning Board of Adjustment or Planning Commission's public hearing; or three or more City Council members. For an appeal of a Final Plat for a major subdivision or a Final Development Plan, only the Applicant shall be considered a Party-in-Interest with standing to appeal.

*Person* shall mean an individual, corporation, partnership, limited liability company or other legal entity.

*Planning Commission* shall mean the City of Loveland Planning Commission established pursuant to Section 2.60.080 of this Code.

*Record* shall mean all relevant documents reviewed by a previous Board, Commission or City Staff Decision Maker, and any transcript or written record of any such previous hearing.

*Zoning Board of Adjustment* shall mean the City of Loveland Zoning Board of Adjustment established pursuant to Section 18.60.010 of this code.

### **18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal.**

A. An appeal of a Final Decision may be filed pursuant to sections 18.80.040 and 18.80.050 of this Chapter. Upon the filing of an appeal, any application process with the City pertaining to the subject matter being appealed shall be suspended while the appeal is pending. Any action taken in reliance upon any decision of a Board, Commission or other City Staff Decision Maker that is subject to appeal under the provisions of this Chapter shall be totally at the risk of the Person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action taken during said period of time.

B. Except for appeals by members of the City Council, the permissible grounds for appeal shall be limited to allegations that the Board, Commission or other City Staff Decision Maker committed one (1) or more of the following errors:

- (1) Failure to properly interpret and apply relevant provisions of the Municipal Code or other law; or
- (2) Failure to conduct a fair hearing in that:
  - a. The Board, Commission or other City Staff Decision Maker exceeded its authority or jurisdiction as contained in the Municipal Code or Charter;
  - b. The Board, Commission or other City Staff Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading; or
  - c. The Board, Commission or other City Staff Decision Maker improperly failed to receive all relevant evidence offered by the Appellant.

C. Appeals filed by members of the City Council need not include specific grounds for appeal, but shall include a general description of the issues to be considered on appeal. Council members who file an appeal shall not participate in deciding the appeal.

**18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision.**

A. A Party-in-Interest may appeal any final decision by the Director or other City Staff Decision Maker to the Planning Commission.

B. To appeal a City Staff Decision Maker or Director's Final Decision to the Planning Commission, a Party-in-Interest must file a notice of appeal with the Current Planning Division within ten (10) days of the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in the dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the Planning Commission not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The Planning Commission shall conduct the appeal hearing as a De Novo hearing and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the Planning Commission may uphold, reverse or modify the Final Decision being appealed. The Planning Commission shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions concerning the appeal.

**18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision.**

A. A Party-in-Interest may appeal any Final Decision by the Zoning Board of Adjustment or the Planning Commission to the City Council. An appeal of a decision made by the Zoning Board of Adjustment hearing officer, shall follow the procedures set forth in Section 18.60.060.

B. To appeal a Final Decision by the Zoning Board of Adjustment or Planning Commission to the City Council, a Party-in-Interest must file a Notice of Appeal with the Current Planning Division within ten (10) days of the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the City Council not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The property owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The City Council shall conduct the appeal hearing as a De Novo Hearing, and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the City Council may uphold, reverse or modify the Final Decision being appealed. The City Council may also remand the appeal to the Zoning Board of Adjustment or the Planning Commission with directions for the Zoning Board of Adjustment or Planning Commission's further consideration of the matter. If the City Council upholds, reverses or modifies a Final Decision made by the Zoning Board of Adjustment or the Planning Commission, the City Council shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions. The City Council's written findings and conclusions shall be considered the City Council's Final Decision for purposes of any appeal of the City Council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

### **18.80.060 Notice of Appeal Requirements.**

The Notice of Appeal required to be filed under this Chapter shall include all of the following information:

- A. A description of the Final Decision being appealed.
- B. The date of the Final Decision being appealed.
- C. The name, address, telephone number and relationship of each Appellant to the subject of the Final Decision being appealed including a statement for each Appellant as to the Appellant's qualification for being considered a Party-in-Interest under this Chapter.
- D. For all appeals, except those filed by members of City Council, a description the grounds for the appeal of the Final Decision, including specific allegations of error.
- E. In the case of an appeal by more than one (1) Appellant, the name, address and telephone number of one (1) such Appellant who shall be authorized to receive, on behalf of all Appellants, any notice required to be mailed by the City to the Appellants under the provisions of section 18.80.040 or section 18.80.050.

### **18.80.070 Cost of Appeal**

In all appeals under this Chapter except those filed by three or more members of the Planning Commission or those filed by three or more members of the City Council, the Appellant shall be charged a fee for the cost of the appeal as such fee is established by City Council pursuant to Code Section 3.04.025. The City Council may establish a fee for each level of appeal.

### **18.80.080 Record on Appeal**

The record provided to the Planning Commission or City Council for appeals filed under this chapter shall include a record of any previous proceedings before a Board, Commission or other City Staff Decision Maker, including without limitation, all exhibits, writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the Board, Commission or other City Staff Decision Maker at any previous proceedings. A video recording of the Zoning Board of Adjustment Hearing or Planning Commission hearing is not required as part of the record on appeal provided summary minutes of such hearings are included as part of the record.

### 18.80.090 Procedure at Hearing

A. At the appeal hearing, the presentation of argument regarding the appeal shall be made in the following order, subject to the discretion of the Chairperson or Mayor relating to limitations in time and scope, or allowances accommodating adequate presentation of evidence or opportunity for rebuttal:

- (1) Explanation of the nature of the appeal by City staff;
- (2) Appellant's presentation of evidence, testimony and argument in support of the appeal;
- (3) Presentation of evidence, testimony and argument of the Applicant if the Applicant is not the Appellant; or, if the Applicant is the Appellant, presentation of evidence, testimony and argument by any City staff member or other Party-in-Interest in opposition to the appeal.
- (4) Public comment;
- (5) Rebuttal presentation by the Appellant; and
- (6) Motion, discussion and vote by the Board, Commission or City Council.

B. No person making a presentation or providing testimony at an appeal hearing shall be subject to cross-examination except that members of the Planning Commission or City Council and the City Attorney may at any time make inquiries for the purpose of eliciting information and for the purpose of clarifying information presented.

C. In the event of multiple appeals involving the same subject matter considered by the Planning Commission or City Council, the Chairperson or Mayor, in his or her discretion, may modify the procedure contained in Subsection (A) above so as to expedite the hearing of such appeals.

D. The City Council shall consider an appeal based upon evidence submitted at the public hearing, the record on appeal, the relevant provisions of the Municipal Code and Charter, and the grounds for appeal cited in the Notice of Appeal. Grounds for appeal raised for the first time at the public hearing, and therefore not raised in the Notice of Appeal, shall not be considered by the City Council in deciding the appeal.

**Section 38.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

CITY OF LOVELAND, COLORADO

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney

ZONING BOARD OF ADJUSTMENT ALTERNATIVE OPTION WITH HEARING  
OFFICER: REDLINE VERSION

Title 18

Chapter 18.60

18.60.060 Procedure.

The board of adjustment ~~shall~~ may designate one or more hearing officers from within the board to conduct public hearings on matters coming before the board. The designated hearing officer shall have the discretion to forward any matter onto the full board for the initial public hearing. A hearing officer may be an employee of the city or a member of the board of adjustment or some other person knowledgeable in the application of the city's zoning regulations. Within ten (10) days after the conclusion of any ~~such~~ hearing conducted by the hearing officer, the hearing officer shall submit proposed findings and order to the board and to the applicant and all parties participating in the hearing. ~~Any party objecting to the proposed findings and order shall have ten days from the mailing thereof to file such objections with the board, stating with particularity the matters objected to. The findings and order of the hearing officer may be appealed to the board by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the current planning division within ten (10) days of the decision of the hearing officer. If no such objections is filed, the proposed findings and order shall become final without further action of the board. If no appeal is filed, the proposed findings and order shall become final without further action by the board. If an objection appeal is filed, the hearing officer shall forward to the board the record of the hearing. The board, based upon a review of the record, may modify, in whole or in part, the proposed findings and order, upon the concurring vote of four members of the board. The proposed findings and order, as modified, shall become the findings of the board. The proposed findings of the hearing officer shall become the findings and order of the board upon the failure of the board to modify such findings. The board shall consider any such appeal on the first available date for which proper notice can be provided pursuant to Chapter 18.05. The appeal shall be conducted as a De Novo hearing as defined in Chapter 18.80, and the board shall follow the procedures set forth in Section 18.80.090. Whether as a result of an initial public hearing by the board or an appeal of the hearing officer's decision, the board shall submit its findings and order to the applicant and all parties participating in the hearing within thirty (30) days following the conclusion of the hearing. The findings and order of the board may be appealed to city council by any party-in-interest as defined in chapter 18.80, by the the applicant or any person participating in the board hearing by any such person filing of a written appeal with the Current Planning Division director within ten (10) days after of the mailing of the findings and order decision of the board. City Council shall consider any such appeal at a public hearing noticed in accordance with Section 18.680.050 C. and conducted in accordance with Section 18.80.090. At the conclusion of the public hearing, city council may approve, approve with conditions, or deny the variance. Unless otherwise stated in the findings and order, or if applicable in the decision of city council, all permits or actions authorized as a result of an approval of a variance must be initiated within six months of the date such findings and order became final. Upon written request by the applicant, an additional six months may be granted by the Director of Community Services current planning manager for initiating such permits or~~

actions. In reviewing the proposed time extension, the ~~Director~~ current planning manager shall consider the following criteria:

- A. ~~h~~Has there been a change of zoning for the site, or for any property adjacent to the site since the original approval?
- B. ~~h~~Has a change of use taken place on the site or on any adjacent property since the original approval, or is a change of use proposed for the site which would be divergent from the use shown in the application documents for the original variance?
- C. ~~h~~Have there been changes in the regulations and requirements specified in the Loveland Municipal Code which are applicable to the site and which should be addressed prior to the development of the site?
- D. ~~h~~Has the ownership of any adjacent property changed?
- E. ~~w~~Will the granting of the extension be detrimental to the public health, safety, or general welfare?
- F. ~~w~~Will the granting of the extension be in keeping with the purposes set forth in this title to the same degree as intended in the original approval?



RESOLUTION # R- -2011

A RESOLUTION AMENDING THE CITY OF LOVELAND  
SITE DEVELOPMENT PERFORMANCE STANDARDS AND  
GUIDELINES ADOPTED OCTOBER 1989, UPDATED JANUARY 2000

WHEREAS, in October 1989 the City adopted Site Development Performance Standards and Guidelines, as amended in August, 2007, that provide supplemental development standards to Title 18, "Zoning," of the Loveland Municipal Code; and

WHEREAS, modification to the Site Development Performance Standards and Guidelines is necessary for updating general provisions, as well as updating procedures for appeals; and

WHEREAS, Section 18.47.020 of the Municipal Code provides that the Site Development Performance Standards and Guidelines may be amended from time to time by resolution of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 5.01 of the City of Loveland Site Development Performance Standards and Guidelines, adopted 1989, as amended in August 2007, is hereby amended as provided in Exhibit A, a copy of which is attached hereto and incorporated herein.

Section 2. That this resolution shall take effect as of the date and time of its adoption.

ADOPTED this \_\_\_\_ Day of \_\_\_\_\_, 2011

ATTEST:

CITY OF LOVELAND, COLORADO

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
Assistant City Attorney

## EXHIBIT A

### CHAPTER 5 - APPEAL/STANDARDS FOR REDEVELOPMENT

#### SECTION 5.01 APPEAL

Should the applicant or any user of the Site Development Standards and Guidelines not be satisfied with the decision of the City concerning the application of performance standards and guidelines, or the application materials required, the affected party shall have the right to request an appeal to the Planning Commission for review of the issue(s). The request for an appeal shall be filed with the Current Planning Division no later than ten (10) days from the date of the mailing of the decision by the City. The City shall place the appeal on the Planning Commission agenda no later than thirty (30) days from the date of the request for such appeal, unless a longer period of time is agreed to by the Appellant. The appeal shall be conducted in accordance with Chapter 18.80 of the Loveland Municipal Code.

## CHAPTER 5 - APPEAL/STANDARDS FOR REDEVELOPMENT

### SECTION 5.01 APPEAL

Should the applicant or any user of the Site Development Standards and Guidelines not be satisfied with the decision of the City concerning the application of performance standards and/or guidelines, and/or the application materials required, the affected party shall have the right to request an appeal to the Planning Commission for review of the issue(s). The request for an appeal shall be filed with the Current Planning Division no later than ten (10) days from the date of the mailing of the decision by the City. The City shall place the appeal on the Planning Commission agenda no later than thirty (30) days from the date of the request for such appeal, review, unless a longer period of time is agreed to by the Appellant. The appeal shall be conducted in accordance with Chapter 18.80 of the Loveland Municipal Code.

CITY OF LOVELAND  
 PLANNING COMMISSION MINUTES  
 December 13, 2010

1  
2  
3  
4  
5 **1. Amendments to Title 16 and Title 18 Regarding Appeals**

6  
7 Amendments are proposed to Titles 16 and 18 of the Municipal Code that address standards and  
8 procedures for appeals. Presently, provisions relating to the appeal of land use, zoning and  
9 subdivision actions are located throughout the subdivision and zoning codes. This amendment  
10 proposes a new chapter in the zoning code that would provide uniform standards and procedures for  
11 appeals. This item requires legislative action by the Planning Commission; the Commission will  
12 forward a recommendation to the City Council.

13  
14 **Robert Paulsen, Current Planning Manager**, explained this item noting that the redline version  
15 has been included in the packet so that the Commission can see what is being struck out and/or  
16 added. He stated that for the last several years the Current Planning office has been working with the  
17 City's Title 18 Committee in developing a series of amendments to the Municipal Code.

18  
19 **Mr. Paulsen** stated these amendments would consolidate relevant provisions from Titles 16 and 18,  
20 making the appeals provisions easy to find and follow. He clarified that the new chapter has been  
21 designed to replace existing appeal procedures with a single, uniform set of standards and  
22 procedures.

23  
24 He reported that the changes include that there would be only two grounds for appeals: failure to  
25 properly interpret or apply the code; or, failure to conduct a fair hearing. He stated all hearings  
26 would be de novo hearings, thus eliminating the merit hearing process. He further stated that staff  
27 and the Title 18 Committee are proposing to eliminate the Zoning Board of Adjustment hearing  
28 officer, which would make the full Planning Commission the Board of Adjustments further  
29 streamlining the process to promote consistency.

30  
31 **Commissioner Crescibene** stated that he has served as a Hearing Officer and has appeared before a  
32 hearing officer. He commented that in the past, there have been times when he would have  
33 welcomed the opinions of others and then there were times when the hearings have been very simple  
34 and straightforward. He suggested that staff and the Committee consider a way to create a tiered  
35 process.

36  
37 **Vice Chairman Ray** stated that he did not like the merit hearing process because the rules do not  
38 allow the Commission to ask questions of staff or the applicant.

39  
40 **Commissioner Krenning** stated that he supports retaining the ZBA Hearing Officer. He suggested  
41 that if a decision is too difficult for the Hearing Officer to decide, then the Hearing Officer should be  
42 given the discretion to the matter to the full Zoning Board of Adjustment. He emphasized that if an

1 issue can be resolved easily by a hearing officer, it would be a disservice to the applicant to bring  
2 such a matter before the full board.

3  
4 He further commented that he was in support of charging fees for appeals. He stated that if an appeal  
5 is denied by the Board and then proceeds to City Council, a fee should be charged to cover the costs  
6 associated with the appeal. He stated there is no disincentive to file an appeal.

7  
8 After further comment, **Ms. Sharma** noted stated until a Variance is heard by the Hearing Officer,  
9 the Officer would not know if the decision would be easily made or would require a full hearing of  
10 the Board.

11  
12 **Commissioner Krenning** restated his support for leaving the ZBA provisions as currently written  
13 concerning the role of the Hearing Officer, but indicated his support for amending the appeals  
14 provisions as recommended by staff. He further stated he did not support the need for the Hearing  
15 Officer to recuse himself at a full hearing of the Board.

16  
17 **Vice Chairman Ray** indicated that he would caution the Commission from adding fees to the appeal  
18 process that would unduly penalize citizens that wanted to file a legitimate appeal.

19  
20 **Mr. Paulsen** stated he would draft language that would retain the hearing officer position and allow  
21 the hearing officer to participate with the entire board in an appeal hearing. He stated that City  
22 Council emphasized they did not support attaching fees to appeals at this time. He stated that staff  
23 would draft some alternate language and come back with options at the next scheduled hearing.

24  
25 **Commissioner Krenning** stated it should be the discretion of the City Council to attribute the City's  
26 actual costs associated with an appeal to the appellant.

27  
28 **Commissioner Meyers** stated that if someone is truly committed to an appeal then they should be  
29 required to pay a reasonable fee.

30  
31 **Commissioner Fancher** supported keeping the ZBA Officer and supported authorizing the Officer  
32 to refer a decision to the entire Board.

33  
34 *Commissioner Meyers made a motion to capture the essence of the desires of the Commission and  
35 table further discussion on this item to next regularly scheduled hearing. Upon a second by  
36 Commissioner Middleton, the motion was unanimously adopted.*

37  
38 **Vice Chair Ray** thanked the City Planning Department for always providing informative and factual  
39 information.

40

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**CITY OF LOVELAND**  
**PLANNING COMMISSION MINUTES**  
**February 28, 2011**

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A meeting of the City of Loveland Planning Commission was held in the City Council Chambers of the Civic Center on February 28, 2011 at 6:30 p.m. Members present: Chairman Molloy; Vice Chairman Meyers; and Commissioners Dowding, Crescibene, Fancher, Krenning, Leadbetter and Middleton. Commissioners Absent: Ray. City Staff present: Kerri Burchett, Current Planning; Robert Paulsen, Current Planning Manager; Sunita Sharma, Assistant City Attorney.

*These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.*

**COMMISSIONER REPORTS**

**Vice Chair Meyers** reported that the Financial Sustainability Committee that he was serving on has concluded its work and their recommendations will be forwarded on to City Council.

**STAFF MATTERS**

**Robert Paulsen, Current Planning Manager**, noted that the Boards and Commission Summit is March 2 and Chairman Molloy and Vice Chair Meyers will be attending. He stated that he would provide the Commission a report on any relevant items discussed at the Summit at the next regularly scheduled meeting.

**Mr. Paulsen** reported that there are no items scheduled for the next Planning Commission meeting and suggested that the Commission make a motion to cancel the meeting.

*Commissioner Middleton made a motion to cancel the hearing of March 14, 2011. Upon a second by Vice Chair Meyers the motion was unanimously adopted.*

**APPROVAL OF MINUTES**

*Commissioner Middleton moved to approve the Minutes of the February 14, 2011 Planning Commission meeting. Upon a second by Commissioner Fancher the motion passed unanimously.*

1 **REGULAR AGENDA**

2  
3 **1. Title 18 - Amendments to Title 16 and Title 18 Regarding Appeals**

4  
5 Amendments are proposed to Titles 16 and 18 of the Municipal Code, which address standards  
6 and procedures for appeals. Presently, provisions relating to the appeal of land use, zoning and  
7 subdivision actions are located throughout the subdivision and zoning codes. This amendment  
8 proposes a new chapter in the zoning code (Chapter 18.80) that would provide uniform standards  
9 and procedures for appeals. In addition, the proposed amendments adjust the provisions relating  
10 to the Zoning Board of Adjustment (Chapter 18.60) and the Supplementary Regulations (Chapter  
11 18.52) relating to setback allowances. The application requires legislative action by the Planning  
12 Commission; the Commission will forward a recommendation to the City Council.

13  
14 **Mr. Paulsen** indicated that the presentation of the proposed amendments to Title 16 and Title 18  
15 regarding appeals represents a follow up to the presentation on December 13, 2010 where the  
16 Planning Commission reviewed and commented on the amendments to the appeal provisions. He  
17 commented that the Commission was generally supportive of the amendments but had expressed  
18 concerns regarding eliminating the Zoning Board of Adjustment Hearing Officer (“the Hearing  
19 Officer”). He stated that at the meeting of December 13, the Commission requested that staff amend  
20 the language to keep the Hearing Officer and voted unanimously to table their vote until the revised  
21 amendments were reviewed. He clarified that the Planning Commission staff report packet includes  
22 clean versions of the proposed ordinances as well as redline copies which are intended to clearly  
23 show the Commission how the Code is proposed to be amended.

24  
25 **Mr. Paulsen** stated since the meeting in December, staff has been working to respond to the  
26 Commission’s comments to adjust the proposed amendments. Mr. Paulsen summarized the  
27 changes. He stated the purpose of the amendments is to provide clear and uniform appeal provisions  
28 as well as providing a single set of standards and procedures regarding how appeals are heard. He  
29 commented that the associated amendments which are minor in nature, included clarification of  
30 administrative variations, adjustments to the Hearing Officer provisions and technical corrections.  
31 He stated the proposed appeal amendments are based on recommendations by the Planning  
32 Commission and the Title 18 Committee. He stated that Council had a lengthy discussion regarding  
33 appeal fees and directed staff to leave the fees out of the proposed amendments. He commented that  
34 staff is anticipating taking an updated fee schedule to City Council later in the year, which will  
35 include appeal fees.

36  
37 **Chairman Molloy** asked if the Planning Commission would have a hearing on the fee schedules.

1 **Mr. Paulsen** stated that they are not coming to the Commission with the fee schedule, but noted that  
2 the Commission could make a recommendation to the City Council if they wanted to.

3  
4 **Mr. Paulsen** stated that all appeals hearings would be conducted as de novo hearings and that merit  
5 hearings would be eliminated. **He** reported that there are two specific grounds for appeals:

- 6 • Failure to interpret or apply the Code; or
- 7 • Failure to conduct a fair hearing

8  
9 **Commissioner Krenning** stated that since appeals would be done in a de novo nature, he asked who  
10 would make the determination that the grounds for an appeal have been met.

11  
12 **Ms. Sharma** clarified that the instruction came from the Planning Commission's original direction  
13 to limit the grounds for appeal and emphasized that the grounds are very broad. She reiterated that  
14 an appellant would have to specify their grounds for appeal, and the appropriate body hearing the  
15 appeal would make the determination if there was a failure to interpret or apply the Code, or  
16 determine if there was a failure to conduct a fair hearing.

17  
18 **Commissioner Krenning** argued that these grounds still do not address the issue of the filing of  
19 frivolous appeals. He contended that associating an actual cost with filing an appeal would  
20 demonstrate that the appellant's intent is serious, and it would potentially stop frivolous appeals,  
21 which are an attempt to either stop or slow a potential development.

22  
23 **Mr. Paulsen** stated that staff is following the direction given by City Council regarding the  
24 establishment of appeal fees; however, he agreed with Commissioner Krenning's comments that  
25 there would not be any deterrent from filing frivolous appeals until there is an associated cost to an  
26 appellant.

27  
28 **Commissioner Krenning** clarified that the Commission is not seeing frivolous appeals at this time,  
29 but believed since the Code is being amended it would be a good time to add it.

30  
31 **Commissioner Dowding** stated that specifying grounds is helpful in providing a clear structure in  
32 which to measure the merit of an appeal.

33  
34 **Mr. Paulsen** stated that the revisions to the Appeals Chapter include:

- 35 • Consistent 10-day filing period
- 36 • Clarification of notice requirements and responsibilities
- 37 • Specified Hearing Procedures
  - 38 ❖ Provides direction/clarifies expectations
  - 39 ❖ Gives the chairperson discretion
  - 40 ❖ Addresses multiple appeals of the same application

41 **Vice Chair Meyers** believed that City Council should have to present grounds for an appeal,  
42 following the procedures like everyone else.



1  
2 **Commissioner Fancher** clarified that a Councilor's constituent can request that the City Council file  
3 an appeal on their behalf, even if they are not a party-in-interest.  
4

5 **Mr. Paulsen** continued discussion of the amendments. He stated that administrative variations to  
6 setbacks can be approved by the Current Planning Manager without limitation, and stated that the  
7 proposed provision would limit administrative setback reductions to 25% and specify procedures for  
8 administrative approval.  
9

10 **Commissioner Krenning** stated he supported adopting policies not adopting Code, commenting it is  
11 easier to change a policy. He questioned why the Code is being changed and stated that the Code  
12 was changed once to allow for a Director's Decision, and now we are changing it back.  
13

14 **Commissioner Middleton** what happens if the Current Planning Manager does receive a letter of  
15 objection from a neighbor.  
16

17 **Mr. Paulsen** indicated that if he received an objection letter he would schedule the matter for a  
18 variance hearing. He spoke of the proposed supplementary regulations and commented that they are  
19 needed to provide clear parameters regarding what is permitted to encroach in the setback. He  
20 further reported that staff believes there is an error in the Code that allows for setbacks to a side-  
21 loaded garage be setback at a minimum of 5-foot from the street. He commented that he believed the  
22 intent was to allow a reduction in 5-feet by side loading a garage.  
23

24 **Commissioner Fancher** questioned if these amendments are a result of situations that occur often.  
25

26 **Mr. Paulsen** stated that many of these items come up on a regular basis. He spoke of the need to be  
27 able to provide citizens and applicants clear guidance when come and ask what they can or cannot  
28 do. He stated it is difficult in those cases to rely on policy and it makes it easier to refer to the Code.  
29

30 **Commissioner Krenning** stated he felt that having a policy in place is more efficient than writing  
31 Code.  
32

33 **Mr. Paulsen** explained the two basic options provided relating to the Hearing Officer:

- 34 • The first option is to eliminate the ZBA Hearing Officer.
- 35 • The second option is to retain the ZBA Hearing Officer as requested by the Planning  
36 Commission.  
37

38 **Mr. Paulsen** indicated that if the Hearing Officer is retained, it is recommended that the Hearing  
39 Officer be able to forward any variance applications to the full board. He also indicated that it would  
40 be inappropriate for the Hearing Officer to sit with the Board to hear an appeal of the Hearing  
41 Officer's decision.  
42

1 He stated that based on advice from legal staff, the language that would allow the Hearing Officer to  
2 participate in the full hearing of the Board was not included.

3  
4 **Commissioner Krenning** stated he supported leaving the ZBA option in the Code for reasons he  
5 previously stated which are as follows:

- 6 • if a decision is too difficult for the Hearing Officer to decide, then the Hearing  
7 Officer should be given the discretion to forward the matter to the full ZBA; and
- 8 • if an issue can be resolved easily by the Hearing Officer, it would be a disservice to  
9 the applicant to bring such a matter before the full board.

10  
11 **Mr. Paulsen** clarified that staff's motion was to eliminate the Hearing Officer and if the Planning  
12 Commission did not agree with recommendation, they would need to amend the motion.

13  
14 **Commissioner Dowding** stated she supported having all ZBA matters coming to the full board  
15 stating that because there are so few hearings she did not see that it was an issue.

16  
17 **Vice Chair Meyers** concurred with statements by Commissioner Krenning, commenting that most  
18 cases presented to the ZBA are minor in nature and felt that holding a public, televised hearing can  
19 be intimidating and costly.

20  
21 **Commissioner Dowding** commented that she did not support having only one person making  
22 decisions, stating that having a full board would allow everyone to have equal opportunity. She felt  
23 that the ZBA Hearing Officer adds another level of unneeded bureaucracy.

24  
25 **Commissioner Krenning** stated that the current process is informal and typically the issues are  
26 minor. He concurred with comments made by Vice Chair Meyers.

27  
28 **Commissioner Dowding** reemphasized that she opposed having one person making a decision; she  
29 questioned if there was an alternate elected to serve in the absence of the Hearing Officer.

30  
31 **Vice Chair Meyers** reiterated his comments from at the December 13 meeting in that he strongly  
32 supported retaining the Hearing Officer.

33  
34 **Commissioner Middleton** supported retaining the Hearing Officer, and asked that the Commission  
35 be advised of the future hearing outcomes.

36  
37 **Chairman Molloy** stated that he supported including a fee for appeals and would like an opportunity  
38 to discuss the issue with City Council in the future. After a lengthy discussion, it was consensus of  
39 the Planning Commission that due to the amount of money associated with hearing an appeal, they  
40 felt that costs should be imposed and that the public should be made aware of how much money is  
41 spent on hearing an appeal.

## APPEALS, SUPPLEMENTARY REGULATIONS AND ZONING BOARD OF ADJUSTMENT AMENDMENT: **REDLINE VERSION\***

\*Yellow-highlighted text has been adjusted since the February 28, 2011 Planning Commission meeting.

### Title 16

#### Chapter 16.04

##### 16.04.020 Penalty.

Any person, firm or corporation violating any provisions of this title 16, upon conviction therefore, shall be fined not more than one thousand dollars or incarcerated not more than one year, or both. Each day during which the violation continues is deemed a separate offense.

### Chapter 16.08

#### DEFINITIONS

##### 16.08.010 Definitions.

“Final decision” shall have the same meaning as set forth in Code section 18.80.020.

### Chapter 16.10.10

#### APPEALS

##### Section:

##### 16.10.010 Appeals of Final Decisions.

An appeal of a final decision by the director, other City staff decision maker, or the planning commission regarding any provisions in this title, shall be brought in accordance with Chapter 18.80 of this Code.

##### 16.16.030 Review procedures, general.

###### B. Development Review.

###### 1. Submission of Application Signatures/Certified Lists.

- a. Once the applicant has received comments on the sketch plan, the applicant may submit an application for the development review sought. Applications shall be submitted to the Current Planning Division on forms provided for this purpose. The application shall include all required supporting documentation as specified on submittal checklists provided by the Current Planning Division. Unless otherwise specified herein, the applicant shall provide the number of copies specified in the checklist. Applications shall be signed by all fee owners of the land described in the application; except, that where the fee is held by two or more owners as joint tenants or as tenants in common, such application may be signed by only one joint tenant or tenant in common. All other owners and lienholders who have an interest in the land described in the application shall be noted on the application.

- b. At the time of filing a development review application requiring a public hearing, or where otherwise required under this title, the applicant shall submit to the Current Planning Division all information required pursuant to Section 16.16.070 and Tables 16.16.070-1 and 16.16.070-2.

~~RADIUS DISTANCES FOR NOTIFICATION BY APPLICATION TYPE AND PROJECT SIZE APPLICATION TYPE~~

| <del>APPLICATION TYPE</del>                            | <del>20<br/>acres<br/>or<br/>less</del> | <del>PROJECT<br/>SIZE<br/>50 acres or less</del> | <del>Greater<br/>than 50<br/>acres</del> |
|--|---|--|--|
|  |   | <b>Radius<br/>Distances<br/>(feet)*</b>          |  |
| <del>Annexation and zoning</del>                       | <del>1,000</del>                        | <del>1,000</del>                                 | <del>1,000</del>                         |
| <del>General Development Plan</del>                    | <del>1,000</del>                        | <del>1,000</del>                                 | <del>1,000</del>                         |
| <del>Non-Phased PUD</del>                              | <del>500</del>                          | <del>750</del>                                   | <del>1,000</del>                         |
| <del>Preliminary Development Plan</del>                |   |  |  |
| <del>Phased PUD Preliminary<br/>Development Plan</del> | <del>500</del>                          | <del>750</del>                                   | <del>1,000</del>                         |
| <del>Preliminary Plat</del>                            | <del>500</del>                          | <del>750</del>                                   | <del>1,000</del>                         |
| <del>Rezoning</del>                                    | <del>500</del>                          | <del>750</del>                                   | <del>1,000</del>                         |
| <del>Special Review</del>                              | <del>500</del>                          | <del>750</del>                                   | <del>1,000</del>                         |

~~\*Note: All notification radius distances shall be reduced by 50%, but shall not be less than 300 feet, for infill projects that are 20 acres or less in size. A project shall be considered an infill project if the project is adjacent on at least 80% of its boundary to existing city limits of the City of Loveland. Such radii shall be calculated exclusive of water bodies, public rights-of-way, and public streets. Where addresses of said owners of record as they appear in the telephone directory of general use in the city or on the tax records of Larimer County or the City of Loveland are different from the records of the Larimer County clerk and recorder, such different addresses, if any, shall also be included on said list.~~

- ~~i. An affidavit certifying that the applicant conducted a neighborhood meeting and all neighborhood property owners, as defined in Section 16.16.030(B)(1)(b)(ii), were notified, by first class mail, of the neighborhood meeting at least ten days prior to the neighborhood meeting.~~
- ~~ii. Failure to provide the required affidavit or evidence of a defective mailing list shall result in termination of the review process until proper notice is provided and the neighborhood meeting conducted.~~
- a. c. Each application shall be submitted with the fee established for that application pursuant to resolution of the city council.
- 1. 2. Application Submittal Date. The official application submittal date shall be the date on which the applicant submits a reviewable application. The director shall schedule the applicant

for a meeting with the development review team upon determination that such application is reviewable. The director may exempt applications for final plats, minor subdivisions, lot mergers, and boundary line adjustments from meeting with the development review team.

- ~~2.~~ 3. Applications Referred to Development Review Team/Determination of a Reviewable Application. The development center shall refer the reviewable application to the development review team members for their review. The development review team members shall comment on the application. Said comments shall be completed and compiled within approximately thirty days from the official application submittal date or by such time as required by the director. The director may require that any applicant for any development review under this title, reimburse the city for the cost of any legal or technical consultant fees incurred by the city in connection with reviewing the application. The application shall be deemed complete on the application acceptance date, which is the date that the director finds that the application contains adequate information on which to determine compliance with the review and design standards of this title and other applicable code provisions, city ordinances, comprehensive master plan, city policies, and state laws.
- ~~3.~~ 4. Written Comments to the Applicant. The development center shall make available to the applicant the development review team's comments a minimum of two working days prior to the development review team meeting or at such time as may be required by the director.
- ~~4.~~ 5. Development Review Team Meeting. On the scheduled date, the applicant shall meet with the development review team to discuss their comments. If the development review team determines that the application is not complete, the director may table further processing of the application and inform the applicant of the materials or revisions needed to make the application complete. The applicant shall submit a revised application no later than the deadline determined by the development review team. If the development review team finds that an application is not complete and cannot be made complete without revisions so extensive as to constitute a new application, the director may reject the application. Such application shall be resubmitted for development review under this title, in accordance with the applicable provisions of this title. The director will accept amendments to applications as long as they are submitted at least fifteen days prior to the scheduled development review team meeting. Nothing herein shall prevent the development review team, the planning commission, city council or director from requesting additional information in the course of the review if it is deemed necessary to determine compliance with the standards set forth in this title, or in Title 17 or 18 as applicable.
- ~~5.~~ 6. Scheduling Public Hearings. An application shall not be scheduled for planning commission or city council review or decision unless the director determines that the application is complete. Upon a finding that the application is complete, the director shall schedule the application for the next available planning commission or city council meeting, as applicable.
- C. Public Hearing Notification. The director and applicant shall give or cause to be given notice as provided in Section 16.16.070.
- D. Planning Commission and City Council Review and Approval. The planning commission and city council shall review applications for development review under this title, in accordance with the specific provisions herein. If, as determined by the director, the applicant makes substantial revisions to the application after planning commission review, the development review team and the planning commission shall review the revised application prior to review by the city council. Such additional review by the development review team and the planning commission shall be scheduled as if the application were a new application.
- E. Appeal Procedure.
- ~~i.~~ Appeals from any final decision by the director or the planning commission shall be conducted pursuant to chapter 18.80 of this Code. ~~of Determination that Application is Incomplete. In accordance with the provisions set forth herein, an applicant may appeal to the~~

~~planning commission any determination by the director that the application is incomplete. In the case of such an appeal, the planning commission's decision shall be at a regularly scheduled meeting and limited to a determination as to whether the application is complete or incomplete.~~

~~ii.—Appeal Procedure for Decisions of the Director:~~

- ~~a.—The decision of the director on any matter made pursuant to this Title 16, may be appealed to the planning commission by the applicant, any property owner within the area subject to the notice requirements of this title, three or more planning commission members, or three or more city council members. In the event an appeal is filed, the applicant shall provide the development center with one original eleven-inch by seventeen-inch photo reduction of the final plat, minor subdivision plat, boundary line adjustment or lot merger, the approval of which is being appealed. A reduced paper copy is initially acceptable, but the photo reduction shall be submitted no less than twenty-two days before the public hearing. The effective date of the director's decision shall be the date that the director makes the decision. The director shall issue findings and conclusions in support of any decision within fifteen days of the effective date of the decision on any matter for which an appeal is filed.~~
- ~~b.—For appeals filed by the applicant or a property owner within the area subject to notice, the appellant shall file a written notice of appeal with the development center, on a form provided by the development center, within ten days of the effective date of the director's decision, and the appellant shall file a written report outlining the basis for the appeal with the development center, within fifteen days of the effective date of the director's decision. At the next regularly scheduled planning commission meeting which occurs more than twenty days following the effective date of the director's decision, planning commission shall consider the merits of the appeal. The planning commission consideration shall be limited to a review of the information contained in the written report filed by the appellant, the findings and conclusions of the director, and any clarifying remarks made at the meeting by the appellant. Planning commission may find: (i) that the appeal has insufficient merit, in which case the decision of the director shall be final or, (ii) that the appeal has sufficient merit to warrant further review, in which case the appeal shall be scheduled for a full public hearing, at the next regularly scheduled planning commission meeting following the merit consideration meeting, in accordance with the provisions of Section 16.16.070 of this code.~~
- ~~c.—For appeals filed by three or more planning commissioners or three or more city council members, the appellants shall file a written notice of appeal with the development center, on a form provided by the development center, within fifteen days of the effective date of the director's decision. Upon the filing of a notice of appeal by three or more planning commission members or three or more City Councilors, the appeal shall be scheduled for a full public hearing, at the next regularly scheduled planning commission meeting following the receipt of the notice of appeal at which all public notification requirements can be complied with, in accordance with the provisions of Section 16.16.070 of this code.~~
- ~~d.—At the public hearing, the planning commission shall approve, approve with conditions, or disapprove the matter, following the same procedures as prescribed for the director in this Title 16.~~

~~iii.—Appeal Procedure for Planning Commission Decisions:~~

- ~~a.—The decision of the planning commission on any matter made pursuant to this Title 16, may be appealed to the city council by the applicant, any person who was required by this code to receive legal notice regarding the planning commission's review of the matter, any person who gave either written or verbal testimony at the planning commission public hearing on the matter, or at least three members of the city council. The effective date of the planning commission decision shall be the date that the planning commission votes on its decision.~~

The planning commission shall issue findings and conclusions in support of any decision within thirty days of its decision.

- b. ~~For appeals filed by the applicant, any person who was required by this code to receive legal notice, or any person who gave either written or verbal testimony at the planning commission public hearing on the matter, the appellant shall file a written notice of appeal with the development center, on a form provided by the development center, within ten days of the effective date of the planning commission's decision, and the appellant shall file a written report outlining the basis for the appeal with the development center, within thirty days of the effective date of the planning commission's decision. At the next regularly scheduled city council meeting following the effective date of the planning commission's decision, the city council shall consider the merits of the appeal. The city council's consideration shall be limited to a review of the information contained in the written report filed by the appellant, the findings and conclusions of the director and the planning commission, as are applicable, and any clarifying remarks made by the appellant. The city council may find: (i) that the appeal has insufficient merit, in which case the decision of the planning commission shall be final or, (ii) that the appeal has sufficient merit to warrant further review, in which case the appeal shall be scheduled for a full public hearing, at the next regularly scheduled city council meeting following the merit consideration meeting at which all public notification requirements can be complied with, in accordance with the provisions of Section 16.16.070 of this code.~~
- e. ~~For appeals filed by three or more city council members, the appellants shall file a written notice of appeal with the development center, on a form provided by the development center, within twenty days of the effective date of the planning commission's decision. Upon the filing of a notice of appeal by three or more city council members, the appeal shall be scheduled for a full public hearing, at the next regularly scheduled city council meeting following the receipt of the notice of appeal at which all public notification requirements can be complied with, in accordance with the provisions of Section 16.16.070 of this code.~~
- d. ~~At the public hearing, the city council shall approve, approve with conditions, or disapprove the matter, following the same procedures as prescribed for the planning commission in this Title 16.~~

#### 16.16.040 Staff review of certain applications.

##### C. Appeal Procedure.

1. ~~Appeals from any final decision by the director for final plats, minor subdivisions, boundary line adjustments and lot mergers shall be conducted by the planning commission chapter 18.80 of this Code. Procedure for Decisions of the Director. The decision of the director shall be considered final on matters as prescribed in this Title 16 absent an appeal to planning commission pursuant Section 16.16.030(E)(1) and (2).~~
2. ~~Appeal Procedure for Planning Commission Decisions. The appeal of a final decision of the planning commission to the city council shall be considered final matters as prescribed in this Title 16 absent an appeal to city council conducted in accordance with pursuant to chapter 18.80 of this Code. Section 16.16.030(E)(3).~~

#### 16.16.070 Public notice requirements.

D. Content of Public Notice. Where public notice is required for neighborhood meetings, public hearings, Director's decisions, or as otherwise required under this title, the notice shall include the following:

10. For Director decision notices, a statement that interested parties may submit an appeal and the deadlines and requirements for filing an appeal, pursuant to chapter 18.80 of this Code.

- E. Mailed Notice. At least fifteen (15) days prior to a neighborhood meeting, public hearing, or the date of the Director’s decision, the applicant shall, by first class mail, send written notice to all property owners on the certified list required in Section 16.16.070.E.1 at the address listed for each owner. An affidavit of the applicant’s compliance with such requirements shall be provided to the City prior to the public hearing for which the notice was given and shall meet the provisions of Section 16.16.070.J. When Mailed Notice is required under this Chapter, the following shall apply:
  - 2. For all applications requiring mailed notice, the radius distances specified in Table 16.16.070-2 Area of Public Notice Distance by Application Type and Size, shall be used to determine the area to which such notice shall be given, except as provided in Sections 16.16.070.E. 3 and 4.

| Table 16.16.070-2 AREA OF MAILED NOTICE DISTANCE BY APPLICATION TYPE AND SIZE |                   |               |                       |
|---|-------------------|---------------|-----------------------|
| Application Type  | 20 acres or less  | 21 – 50 acres | Greater than 50 acres |
| Obsolete Subdivisions   | See Chapter 16.36 |               |                       |
| Preliminary Plat  | 500 ft.           | 750 ft.       | 1,000 ft.             |
| Minor Subdivision   | 150 ft.           | 150 ft.       | 150 ft.               |
| Vacation (of easements or rights-of-way)                                      | See Chapter 16.36 |               |                       |

**Chapter 16.20**

**SUBMITTAL PROCEDURES AND REQUIREMENTS**

**16.20.060 Preliminary plat review procedure.**

D. Appeal Procedures of Planning Commission Decisions. ~~The decision of the~~ **An appeal under this section of a final decision of the planning commission shall be made considered final on all matters as prescribed in this Title 16 absent an appeal to the city council and shall be conducted in accordance with pursuant to chapter 18.80 of this Code. Section 16.16.030(E)(2).**

**16.20.080 Final plat review procedure.**

C. Final Plat Review.

1. Pursuant to the powers granted to the city in the Colorado Constitution and the city of Loveland Charter, the director is hereby assigned the power to approve all final plats. The director shall make final decision on the final plat application within thirty days after a complete final plat is submitted to the development center. The director shall make appropriate findings based on the applicable review standards, or adopted plans. Using the review standards set forth in this title, the director shall approve, approve with conditions or deny the application. All conditions of approval applicable to the final plat shall be included in a development agreement, which shall be recorded with Larimer County clerk and recorder concurrent with recordation of the final plat. **Appeals of final decisions -The decision of the director shall be made to the planning commission and shall be conducted in accordance with shall be considered final on matters prescribed in this Title 16 absent an appeal to planning commission pursuant to chapter 18.80 of this Code. Section 16.16.030 (E)(1).**



**16.20.100 Minor subdivision review procedures.**

E. Appeals from any final decision by the director for a minor subdivision shall be made to the planning commission and shall be conducted in accordance with chapter 18.80 of this Code.

**16.20.120 Simple plat review procedure.**

D. Appeals from any final decision by the director for a simple plat shall be made to the planning commission and shall be conducted in accordance with chapter 18.80 of this Code.

**Chapter 16.28****BOUNDARY LINE ADJUSTMENTS****16.28.060 Deed restriction in lieu of boundary line adjustment.**

A. In the event the owner of property consisting of one or more adjacent lots and an adjacent unsubdivided parcel of land upon which a structure is located, wishes to obtain a building permit for either an accessory structure to be located on the property, an addition to the existing structure, or interior remodeling work without completing a boundary line adjustment, the owner may request that in lieu of a boundary line adjustment the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a boundary line adjustment. The deed restriction shall be released by the city upon completion of a boundary line adjustment combining all adjacent lots and unsubdivided parcels in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.

B. Appeals from any final decision by the director for a deed restriction in lieu of a boundary line adjustment shall be made to the planning commission and shall be conducted in accordance with chapter 18.80 of this Code.

**Chapter 16.32****LOT MERGER****16.32.060 Deed restriction in lieu of lot merger.**

A. In the event the owner of property, consisting of two or more adjacent lots and containing an existing residential use, wishes to obtain a building permit for either an accessory structure to be located on the property or an addition to the existing structure without completing a lot merger, the owner may request that in lieu of a lot merger the city issue the building permit after receiving from the owner a deed restriction in a form approved by the city attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a lot merger. The deed restriction shall be released by the city upon completion of a lot merger combining all adjacent lots in common ownership, or upon the determination of the director that the purpose for which the deed restriction was given is no longer served. The director shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the city.

B. Appeals from any final decision by the director for a deed restriction in lieu of a lot merger shall be made to the planning commission and shall be conducted in accordance with chapter 18.80 of this Code.

## Chapter 16.40

### IMPROVEMENTS

#### 16.40.090 Guarantee period.

**A.** All workmanship and materials (except materials provided by the city) for all required public improvements installed by the applicant (including, but not limited to the water supply system, sanitary sewage disposal system, storm drainage facilities, electrical distribution system, curbs, gutters, street pavement, sidewalks, street signs, survey monuments, landscaping, and pavement markings) shall be guaranteed to be free from defects by the applicant for a period of two years from the date of acceptance of the required improvement by the city, provided, that such defects are not the result of public abuse, misuse or natural causes, as determined by the city. In the event any other provision of this code or specifications adopted pursuant thereto shall require a guarantee of workmanship or materials or both for a different period of time, that provision regarding the longer period of guarantee shall govern. City inspection shall not relieve the property owner of such guarantee of workmanship and materials. Upon notification, the applicant shall promptly make all adjustments, repairs, or replacements in accordance with a repair plan approved by the city, which repair, in the opinion of the city, arose out of defects and became necessary during the guarantee period. The cost of all materials, parts, labor, transportation, supervision, special tools, and supplies required for replacement or repair of parts and for correction of defects shall be paid by the applicant, the contractor or by the holder of the approved financial security.

**B.** This guarantee shall be extended to cover all repairs and replacements furnished under the guarantee, and the period of the guarantee for each repair or replacement shall be extended one year after installation or completion of the repair or replacement.

**C.** If, within fifteen days after the city has notified the applicant of a defect, failure, or abnormality in the work, the applicant has not started to make the necessary repairs or adjustments or submitted a written objection to the city's request for repair work, the city is hereby authorized to make the repairs or adjustments or to order the work be done by a third party. The cost of the work shall be paid by the applicant. The director may authorize a temporary repair if necessary due to weather conditions or materials availability.

**D.** If an applicant has cause to object to the city's request for repair work, such objection shall be made in writing to the director. If the director confirms that the repair is necessary because of a defect in the applicant's materials or workmanship, the applicant shall complete the repairs as directed by the city, ~~or appeal the director's decision as set forth in Section 16.16.040.~~

**E.** In the event of an emergency, where in the judgment of the city, delay would cause serious loss or damage, repairs, or adjustments may be made by the city or a third party chosen by the city without advance notice to the applicant, the cost of the work shall be paid by the applicant or the holder of the financial security.

**F.** Within thirty days prior to expiration of the guarantee period, the applicant shall request, in writing, that the city verify that no defects exist. The city shall, within thirty days, inspect the completed work and, if no defects, failures, or abnormalities are observed or detected, the city shall cause the bond, deposit, escrow agent, or letter of credit to be released.

**G.** In the event that the applicant fails to complete any required repair work, or fails to reimburse the city for legitimate repair work performed by the city on behalf of the applicant, or fails to enter into an agreement with city regarding the satisfactory resolution of the obligation, the applicant shall be prohibited from participating in any further land development activity in the city of Loveland until such repair, reimbursement, or agreement is completed to the satisfaction of the director. Both the developer of the project and the contractor performing the defective work shall be subject to this restriction. The developer shall be prohibited from receiving any additional building permits for any lots owned by the developer, as well as from submitting or continuing the processing of any land development applications

for review and consideration by the city. The contractor shall be subject to the issuance of a stop work order issued by the city to the contractor for any work within any city right-of-way or easement.

Appeals from any final decision by the director to the planning commission shall be conducted in accordance with chapter 18.80 of this Code.

**Title 18****ZONING**

\*For statutory provisions regarding zoning of cities and towns generally, see CRS § ~~31-23-201 et. seq. 139-60~~; for provisions authorizing local authorities to adopt zoning regulations, see CRS § ~~31-23-301 et. seq. 139-60-1~~; for provisions regarding purposes to be served by zoning, see ~~CRS § 139-60-3~~.

**18.04.050 Building, ~~or~~ structure, or use exempt.**

Any building, ~~or~~ structure, or use, as to which satisfactory proof shall be presented to the ~~zoning board of adjustment, city council~~, that the present or proposed situation of such building, ~~or~~ structure, or use is reasonably necessary for the convenience or welfare of the public, may be exempted from the operation of this title by the city council after conducting a public hearing in accordance with Chapter 18.05 with a mailed notice requirement of 300 feet. Upon the council's making such required findings that exemption of the building, structure or use from the operation of this title is reasonably necessary for the convenience or welfare of the public, the council shall adopt a resolution exempting the building, structure or use from operation of this title.

**Chapter 18.32****PP DISTRICT – PUBLIC PARK DISTRICT****18.32.050 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the ~~Director~~current planning manager for review; ~~recommendation~~ and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's final decision to the planning commission in accordance with chapter 18.80 of this Code. ~~request that the site plan be further reviewed by the City Council, and, in the event of such further review, the approval or disapproval of the City Council shall be final.~~

**Chapter 18.36****I DISTRICT-DEVELOPING INDUSTRIAL DISTRICT****18.36.025 Site plan review process.**

The site plan required by Chapter 18.46 shall be submitted to the ~~community development director~~current planning manager for review; ~~recommendation~~ and approval or disapproval. In the event of disapproval, the applicant may appeal the current planning manager's final decision to the planning commission in accordance with chapter 18.80 of this Code. ~~request that the site plan be further reviewed by the city council, and, in the event of such further review, the approval or disapproval of the city council shall be final.~~

**Chapter 18.40****USES PERMITTED BY SPECIAL REVIEW****18.40.055 Appeal of an administrative or planning commission final decision.**

A. Appeal of Administrative Decision.

1. Any party-in-interest as defined in Chapter 18.80, may neighborhood property owner, person in attendance at the neighborhood meeting, member of the planning commission or city council can appeal to the planning commission a **final** decision of the planning division on a type 2 zoning permit in accordance with the procedures set forth in chapter 18.80 so long as the appeal is filed within five ten (10) working days of the mailing/posting of a notice in from the planning division office that a type 2 zoning permit will be issued.
2. Upon the filing of an appeal, the permit application shall be suspended pending conclusion of the appeal process. The appeal shall be scheduled within a reasonable time for a public hearing in accordance with chapter 18.80, at which time the applicant shall have the burden of proving that the applicant it is entitled to a permit under the standards set forth in Sections 18.40.030K and 18.40.005. Written notice to the appellant and all others shown on the list described in Section 18.40.020A.3 shall be given by the applicant and published notice in a newspaper of general circulation within the city shall be given by the planning division at least fifteen (15) days prior to the public hearing. Written notice shall be deemed to be given when the notice is deposited, postage prepaid, with the United States Postal Service.
3. Following the close of the public hearing, the planning commission may deny the application for a special review permit or direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the planning commission deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed with such condition or restriction. At its next regularly scheduled meeting, the planning commission shall adopt findings consistent with its decision.

B. **Appeal of Planning Commission Decision.**

1. Any party-in-interest as defined in chapter 18.80, may applicant, neighborhood property owner, person in attendance at the neighborhood meeting or city council member can appeal a decision of the planning commission to the city council in accordance with the procedures set forth in chapter 18.80, within five (5) ten (10) working days following the planning commission's **final** decision.
  1. ~~The appeal shall be scheduled to be heard by the city council within a reasonable time. The appeal shall be on a form to be provided by the planning division and shall set forth the specific relief that the appellant seeks and the planning division shall inform the applicant of the appeal. More than one person may file an appeal and each person shall be entitled to speak when the appeal is heard except that the city council may refuse to accept redundant or repetitive arguments.~~
  2. ~~The appeal shall be on the record, which shall include all materials provided to the planning commission when it made its decision, a transcript of the planning commission's public hearing and the planning commission's findings. In addition, any party to the appeal may file a brief written statement at least seven (7) working days before the council meeting where the appeal will be heard. No new testimony or other evidence shall be allowed. At the council meeting where the appeal is heard, only the applicant and the planning division shall be heard if the appeal was taken by the applicant. The planning division shall defend the decision of the planning commission. If the appeal is taken by a person other than the applicant, only the appellant, the applicant and the planning division shall be heard. The planning division shall defend the decision of the planning commission. In either case, the appellant shall have the burden of demonstrating that there was no reasonable basis for the planning commission's decision.~~
1. ~~2.~~ If the city council determines that a decision to deny a type 3 zoning permit should be reversed, the city council shall direct the planning division to issue a type 3 zoning permit with or without restrictions or conditions as the council deems appropriate. If the applicant fails to object to any condition or restriction on the record, the applicant shall be deemed to have agreed

~~with such condition or restriction, the matter shall be referred back to the planning commission with directions to cause the permit to be issued under such conditions and restrictions as the planning commission determines are appropriate. No further public hearing shall be required and no further appeal may be taken to the city council.~~ If the city council determines that a decision to issue a type 3 zoning permit should be reversed, no such permit shall **be issued** and the application shall be denied. If the city council determines that certain conditions or restrictions should or should not have been imposed upon the type 3 zoning permit, it shall direct the planning division to issue the type 3 zoning permit subject to a modification in the conditions or restrictions. If the council determines that the conditions and restrictions should remain as provided by the planning commission, then it shall direct the planning division to issue the type 3 zoning permit without modification. In making its decision on the appeal, the city council shall consider the standards in Sections 18.40.030K and 18.40.005. ~~At its next regularly scheduled meeting, the city council shall adopt findings consistent with its decision.~~

## Chapter 18.41

### UNIT DEVELOPMENT ZONE DISTRICT REQUIREMENTS AND PROCEDURES

#### 18.41.050 Procedures for approval of a planned unit development.

##### E. Preliminary Development Plan Approval.

#### 3. **Final Decisions and Appeals.**

- a. The effective date of the planning commission's **final** decision shall be the date that the planning commission ~~adopts its written findings and conclusions~~**votes on its decision.** The planning commission shall issue findings and conclusions in support of any decision within thirty days of its decision. ~~Any party-in-interest as defined in chapter 18.80, may For appeals filed by the applicant, any person who was required by this code to receive legal notice, or any person who gave either written or verbal testimony at the planning commission public hearing on the matter, the appellant shall file a written notice of appeal with the planning division~~~~development center, on a form provided by the development center,~~ within ten (10) days of the effective date of the planning commission's **final** decision, ~~and the appellant shall file a written report outlining the basis for the appeal with the development center, within thirty days of the effective date of the planning commission's decision. At the next regularly scheduled city council meeting following the effective date of the planning commission's decision, the city council shall consider the merits of the appeal. The city council's consideration shall be limited to a review of the information contained in the written report filed by the appellant, the findings and conclusions of the planning commission, and any clarifying remarks made by the appellant. The city council may find: (i) that the appeal has insufficient merit, in which case the decision of the planning commission shall be final or; (ii) that the appeal has sufficient merit to warrant further review, in which case the appeal shall be scheduled for a full public hearing, at the next regularly scheduled city council meeting following the merit consideration meeting at which all public notification requirements can be complied with, in accordance with the provisions of Chapter 18.05 Public Notice of this code.~~

~~For appeals filed by three or more city council members, the appellants shall file a written notice of appeal with the development center, on a form provided by the development center, within twenty days of the effective date of the planning commission's decision. Upon the filing of a notice of appeal by three or more city council members, the appeal shall be scheduled for a full public hearing. in accordance with chapter 18.80. ,~~at the next regularly scheduled city council meeting following receipt of the notice of appeal at which all public notification requirements can be complied with, in accordance with the provisions of Chapter 18.05 Public Notice of this code.~~ At the public hearing, the city council shall approve, approve with conditions, or disapprove the matter, ~~following~~considering the same ~~procedures~~ standards as prescribed for the planning commission in this Title 18.~~

b. If there is no applicable general development plan for the development, then the planning commission shall only make a recommendation to the city council regarding the approval, conditional approval or denial of the preliminary development plan. The council shall proceed in the same manner as in the case of general development plans as provided in-See Section 18.41.050(D)(61-10.);

#### F. Final Development Plan Approval.

3. If the chief planner approves the final development plan, he shall issue an approval of final development plan which shall incorporate by reference the final development and shall be recorded in the real property records of Larimer County without due delay. The final development plan shall be filed with the building division and be available for public inspection. If the chief planner denies approval of the final development plan, he shall communicate a written notice of denial to the applicant setting forth the basis for the denial. Within ten days of the date the chief planner mails the notice of denial to the applicant, the applicant may file an appeal of the denial in accordance with chapter 18.80 to the planning commission, which shall hear the matter in accordance with the procedures set forth in chapter 18.80, except that no further public notice of the appeal shall be required. review the matter at its next regularly scheduled public meeting. Both the chief planner and the applicant shall appear before the planning commission and be given an opportunity to speak to the issues. Except as permitted by a majority vote of the planning commission members present at the meeting, no other person shall be entitled to address the planning commission. The planning commission shall consider the same factors used by the chief planner when making his determination;

#### **18.41.060 — Grievances.**

~~Whenever an applicant for any development plan authorized or required under this chapter believes that he has been aggrieved by a decision of the chief planner or the planning division, the applicant may appeal the decision to the director of community development services who shall convene an informal meeting to resolve the dispute.~~

#### **18.41.090 — Vested rights.**

~~For purposes of acquiring vested property rights as established under state law, only the preliminary development plan shall constitute a site specific development plan as that term is defined by state law, except that the city and the applicant may enter into a development agreement that provides vested rights for the entire planned unit development.~~

#### **Chapter 18.42**



## OFF-STREET PARKING AND LOADING REQUIREMENTS

### 18.42.030 Spaces required.

Adequate off-street parking shall be required for all development. The number of off-street parking spaces on Table 18.42-1 shall be required with land uses or buildings containing such land uses. These requirements shall be Type 2 Standards which shall be mandatory, unless otherwise approved by alternative compliance in accordance with the following provisions or as part of an approved special review, or an approved Planned Unit Development.

- A. Upon submittal of written justification by the applicant, the Current Planning Manager may allow application of an alternative standard, different than a Type 2 standard, provided the Current Planning Manager determines the following:
1. The applicant has demonstrated that either:
    - a. Site-specific, physical constraints necessitate application of the alternative standard, and such constraints will not allow a reasonable use of the property without application of such alternative standard; or
    - b. The alternative standard achieves the intent of the subject Type 2 standard to the same or greater degree than the subject standard, and results in equivalent or greater benefits to the community as would compliance with the subject standard.

### e- 2. Granting of alternative compliance and appeal of final decision.

~~e-~~ a. Whenever the Current Planning Manager grants alternative compliance, the Current Planning Manager shall formulate a written statement of findings based on the above criteria for such action. Such statement shall be placed in the development application file.

b. Decisions by the Current Planning Manager with respect to such alternative compliance may be appealed to the planning commission in Zoning Board of Adjustment in accordance with chapter 18.80. The planning commission, when hearing such an appeal shall apply the standards set forth in section 18.60.020. Section 18.60.020.A.

## Chapter 18.45

## FLOODPLAIN REGULATIONS

### 18.45.090 Nonconforming buildings or uses.

- A. A structure or use within a structure or use of premises which was lawful before the passage of this chapter, but which is not in conformity with the provisions of this chapter may be continued without compliance with this chapter. Such nonconforming uses or nonconforming buildings may be repaired, expanded or altered only upon compliance with the following conditions:
1. Any nonconforming use of property may be expanded, provided, that such expansion is approved by the public works director, board of appeals pursuant to Section 15.14.070(C) of this code. Any appeal of the public works director's final decision shall be made to the planning commission in accordance with chapter 18.80 of this Code.

## Chapter 18.48

## ACCESSORY BUILDINGS AND USES

### 18.48.020 Home occupations.

- G. Appeal.



1. Appeal of director's decision. Any applicant or member of the neighborhood ~~can~~ **may** appeal a **final** decision of the director regarding the granting or denial of a business occupancy permit so long as the appeal is filed with the city within ten days of the date that a notice of intent to issue a business occupancy permit was ~~posted~~ **mailed** by the director, or the permit was denied. Upon the filing of an appeal, the permit **application** shall be suspended pending conclusion of the appeal process. Appeals shall be conducted **by the planning commission in accordance with chapter 18.80 of this Code.** ~~before the city council at a public hearing.~~ The applicant shall be notified of the appeal, and shall be responsible for sending a notice to the members of the neighborhood. The notice shall be in a form approved by the city and shall be mailed a minimum of fifteen days in advance of the scheduled public hearing.
2. ~~Planning Commission~~ **City Council** consideration. At the ~~public~~ **appeal** hearing, the ~~planning commission~~ **city council** shall **follow the procedures set forth in chapter 18.80, and shall** consider the application, the findings and determinations of staff, and take public testimony regarding the proposed home occupation. The ~~planning commission~~ **city council** shall review the application for compliance with the provisions of this code and other adopted regulations, the compatibility of the application with the character of the surrounding neighborhood and adverse influences that might result from approval of the application. The ~~planning commission~~ **city council** may either approve, approve with modifications or conditions or deny the application. **The planning commission's final decision may be further appealed to the city council in accordance with chapter 18.80.**

#### H. Permit.

1. All applications for a business occupancy permit shall include a list of the names and addresses of all the property owners and tenants who were mailed a notice and an affidavit which certifies that the property owners and tenants on the list have been notified at each step in the review process.
2. Prior to the issuance of the business occupancy permit, the applicant shall certify that he or she will operate the home occupation in conformity with the provisions of this title and any conditions agreed upon at the neighborhood and city council meetings, if applicable.
3. Once issued, said permit shall apply only to the applicant, occupation and premises stated in the application. The permit is nontransferable and nonassignable and shall remain in full force and effect unless revoked pursuant to subsection J of this section. Said permit shall also be deemed to be automatically revoked when the applicant ceases engaging in the home occupation at the approved premises for ninety consecutive days or longer.

- I. Revocation of ~~Permit License~~ **and** Appeal. A business occupancy permit may be revoked by the city if the city finds that the home occupation no longer conforms to the provisions of this section or the conditions of approval of the business occupancy permit. A business occupancy permit may also be revoked upon a determination by the city that the mailing list was faulty or the applicant failed to follow the application, review and appeal process. Notification to the applicant shall include findings in support of the revocation and the applicant's rights of appeal. The written notification of revocation shall be mailed to the last known address of the permit holder. The date of the mailing shall be the date of notification. The business occupancy permit holder may **file a written** appeal ~~of~~ the city's decision **to the planning commission** as provided for in **chapter 18.80, subsection 18.60.030(B) of the Loveland Municipal Code.**

## Chapter 18.50

## SIGNS

### 18.50.100 Sign regulations in nonresidential zones.

The following regulations shall apply to all uses in nonresidential zoning districts. Included are districts Be, B, I, MAC, E and DR. In addition, within the downtown development authority boundary, all signs shall comply with Section 18.50.110, and along Interstate Highway-25 (I-25), all signs shall comply with Chapter 8 of the Site Development Performance Standards and Guidelines and Section 18.50.120. All signs allowed pursuant to this section shall have their sign area applied to the total allowable sign area. (Ord. 5431 § 3, 2009)

A. Basic Sign Regulations. Every business desiring signs as allowed by right in this code may apply for a sign permit and a permit shall be issued if all the provisions in this section are met.

4. Electronic Message Signs. Electronic message signs shall be subject to the following limitations:

h. A request for variance to the maximum sign area, height or setback for a sign containing an electronic message module shall be heard by the ~~full~~ Zoning Board of Adjustment in accordance with the procedures specified in Chapter 18.60. In addition to the findings specified ~~in Section~~ Chapter 18.60.040, before granting any request, the Board shall find that:

1. The proposed area, setback and/or height of the electronic message sign module is the minimum required to be fully visible from the adjacent arterial or interstate roadway right-of-way; and
2. Traffic safety conditions will not be diminished by the increased square footage, increased height or decreased setback of the electronic message sign module; and
3. There are no reasonable alternatives to the increased size, height, setback and/or design of the electronic message sign.

B. Planned Sign Program Regulations. Owners or tenants of a premise desiring signs which vary from the basic sign regulations as contained in Section 18.50.100 A, may apply for approval of a planned sign program for the entire premises.

11. Appeal of a Planning Division Decision. Should the applicant for a planned sign program not be satisfied with the decision of the planning division, the applicant shall have the right to appeal the final decision to the planning commission in accordance with chapter 18.80 of this Code. ~~request that the planning commission review and approve the proposed planned sign program. The planning division shall place the proposed sign program on the planning commission agenda no later than thirty days from the date of the request for planning commission review and approval.~~

### 18.50.150 Nonconforming signs.

B. Prohibited, illegal, nonconforming, abandoned or hazardous signs are declared nuisances and shall not be allowed within the city nor continued by variance. If any person fails to comply with the provisions of this chapter, in addition to the penalty provided therefore, a written order may be served upon the owner or agent in charge of such property, such order to be served personally or by mail, requiring the abatement of the nuisance within fifteen days, excluding weekends and official holidays, after

mailing such notice. Such notice shall also advise the owner or agent of his or her right to appeal pursuant to ~~chapter 18.80, Section 18.60.030~~. If the abatement has not occurred within the stated time and an appeal has not been filed pursuant to the provisions of ~~chapter 18.80, Section 18.60.030~~, then the city may remove said sign, provided that the sign is either an off-premise sign, portable sign, free standing sign made of paper, balloons, pennants or banners, and charge the direct cost incurred by the city for removal of the sign, including five percent for inspection and other incidental costs in connection therewith. **Such assessment shall be a lien upon the land until and such assessment is a lien until paid.** In addition to any other means provided by law for collection, if any such assessment is not paid within thirty days after it is made and notice thereof is mailed, the same may be certified by the city clerk to the county treasurer and by him placed upon the tax list for the current year, and thereby collected in the same manner as other taxes are collected, with ten percent penalty thereon to defray the cost of collection.

### **18.50.190 Appeals.**

A **final** decision of the current planning manager relative to the provisions of this chapter may be appealed to the ~~planning commission in accordance with chapter 18.80 of this title. zoning board of adjustment according to Chapter 18.60 of this code. (Ord. 4185 § 1 (part), 1996)~~. ~~The decision of the current planning manager shall be upheld unless the planning commission finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious. Any appeal of the planning commission's final decision to the city council shall be made in accordance with Chapter 18.80 of this code and the city council shall uphold the decision of the current planning manager unless the city council finds that the current planning manager's findings are clearly erroneous, arbitrary or capricious.~~

### **Chapter 18.52**

### **SUPPLEMENTARY REGULATIONS**

#### **18.52.020 Supplementary yard regulations.**

~~A. The purpose of a setback creating a yard is for the preservation of light and air to adjoining properties, fire protection, maintenance of property, preservation of open space and the retention of a visually cohesive pattern established by buildings and the spaces which separate them. To maximize the amount of open space on a lot and/or the beneficial use of the property, the current planning manager chief planner may approve alternative setback requirements so long as the purposed of Title 18 is met. a reduction of up to thirty-three percent (33%) of a required setback, so long as the current planning manager determines and makes written findings that:~~

- ~~1. The alternative setback would be in harmony with the spirit of this title;~~
- ~~2. The alternative setback would not limit the use or enjoyment of nearby property;~~
- ~~3. A letter of non-objection to the alternative setback is submitted from all adjacent property owners; and~~
- ~~4. A letter of non-objection to the alternative setback is submitted by other potentially impacted property owners, as determined by the Ccurrent Pplanning Mmanager, who own property that falls wholly or partially within 150 feet of the subject property.~~

~~The purpose of a setback creating a yard is for the preservation of light and air to adjoining properties, fire protection for non-rated structures, maintenance of property and preservation of open space.~~

B. The front yard in all residential zones may be reduced ~~by to~~ five feet for garages where the vehicle access door does not face directly onto the street ~~when made part of a master plan~~. This allowance shall not apply to properties within a planned unit development or special review that contain specific yard provisions.

C. The following items may extend into required yards if determined to be incidental and harmless to adjacent properties by the current planning manager:

1. Architectural features ~~such as uncovered porches and patios, and including~~ cornices, eaves, bay windows, an exterior chase for a fireplace or other similar ~~architectural~~ features; ~~may extend into required yards~~
2. At grade uncovered decks and patios that are exempt from building permit requirements; and
3. ~~D~~-Fire escapes ~~that may~~ extend into the required rear yards ~~by~~ no more than six feet.

## Chapter 18.53

### COMMERCIAL AND INDUSTRIAL ARCHITECTURAL STANDARDS

#### 18.53.020 Compliance.

- A. Type 1 Standards. Compliance with the Type 1 standards set forth in this Chapter 18.53 is mandatory, unless a variance is granted pursuant to Chapter 18.60.
- B. Type 2 Standards.
  1. **Alternative compliance.** Compliance with the Type 2 standards set forth in this Chapter 18.53 is mandatory, unless the ~~Director~~current planning manager grants alternative compliance in accordance with the following provisions. The ~~Director~~current planning manager may allow application of an alternative standard, different than a Type 2 standard, provided the current planning manager~~Director~~ determines that:
    - a. The applicant has demonstrated that either:
      - i. Site-specific, physical constraints necessitate application of the alternative standard, and such constraints will not allow a reasonable use of the property without application of such alternative standard; or
      - ii. The alternative standard achieves the intent of the subject Type 2 standard to the same or greater degree than the subject standard, and results in equivalent or greater benefits to the community as would compliance with the subject standard.
  2. **Statement of findings.** Whenever the ~~Director~~current planning manager grants alternative compliance, the ~~Director~~current planning manager shall formulate a written statement of findings based on the above criteria for such action. Such statement shall be filed in the development application file.
  3. Appeals. Final ~~D~~ decisions by the ~~Director~~current planning manager with respect to such alternative compliance may be appealed to the planning commission ~~Zoning Board of Adjustment~~ in accordance with chapter 18.80 ~~Section 18.60.020.A~~.

## Chapter 18.54

### BUILDING HEIGHT REGULATIONS

#### 18.54.050 Request for exception.

The owner of the proposed building or structure may request an exception from the height limitations imposed by this chapter. A request for an exception shall be made to the planning commission. The planning commission shall hold a public hearing on such request, which hearing shall be noticed in accordance with Section 16.16.070 ~~and 16.16.080~~ of this code.

**18.54.060 Appeal to city council.**

~~Any party-in-interest, as defined in section 18.80.020. The owner of the proposed building or structure, any neighborhood property owner, person in attendance at the public hearing on the requested exception held by the planning commission or any member of planning commission or city council may appeal the decision of the planning commission to the city council. The city council shall hold a public hearing on such appeal, which appeal shall be held in accordance with chapter 18.80. noticed in accordance with Chapter 18.05 Public Notice of this code. Such appeals shall be made within five (5) working days of the decision of the planning commission.~~ Using the criteria set forth in ~~this~~ section 18.54.050, the city council may affirm, modify or reverse the planning commission.

**Chapter 18.60**

**ZONING BOARD OF ADJUSTMENT\***

**Sections:**

- 18.60.010 Board of adjustment established.**
- 18.60.020 Powers and duties.**
- 18.60.030 General Variance Review Criteria.**
- 18.60.040 Sign Variance Review Criteria.**
- 18.60.0350 Applications.**
- 18.60.0460 Procedure.**
- 18.60.0570 Notice.**

\*For statutory provisions regarding boards of adjustment, see CRS §§ 31-23-301 and 31-23-307. CRS § 139-60-7; for provisions regarding method of procedures, see CRS § 139-60-4.

**18.60.010 Board of adjustment established.**

The planning commission shall serve as the ex-officio board of adjustment for the city.

**18.60.020 Powers and duties.**

The board of adjustment shall have the ~~following~~ powers and duties to grant variances from certain standards set forth in this title 18 all of which shall be subject to and in compliance with this chapter and the laws of the state. ~~Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions of the title so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done. in harmony with the purpose and intent of this title and in accordance with the public interest and the most appropriate development of the neighborhood. The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:~~

- A. Standards for lot area, lot dimensions and setback requirements;
- B. Square footage for accessory structures;
- C. Percentage of open space; and
- D. Setbacks for a freestanding sign, spacing between freestanding signs and the area for freestanding and wall mounted signs.

~~After considering if the proposed variance meets the applicable criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions, or deny or table the application for future consideration.~~

~~A. To hear and decide appeals from, and review any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this title;~~

~~B. To reverse or affirm wholly or partly, or modify the order, requirement, decision or determination appealed from; shall make such order, requirement, decision or determination as in its opinion should be made in the premises; and to that end shall have all the powers of the officer from whom the appeal was taken;~~

~~C. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title to vary or modify, in passing upon appeals, the application of the regulations or provisions of this title relating to use, construction or alteration of buildings or structures, or the use of land, so that the spirit of the title shall be observed, public safety and welfare secured and substantial justice done; provided, no variance shall authorize any use in a zoning district other than a use specifically permitted in such zoning district, and no variance shall waive or modify the requirements of uses by special review. No variance may be granted which is in violation of the statutes of the state.~~

### **18.60.030 General Variance Review Criteria**

To approve a zoning variance application, the board of adjustment shall consider the following review criteria and find that each criterion has been met or determined to be inapplicable:

A. There are unique circumstances or conditions that are particular to or related to the land or structure for which the variance is requested. The circumstances may include, but are not limited to, exceptional topographic conditions, the shape or dimensions of the property, or the existence of mature landscaping or natural features that impact the property;

B. The special circumstances are not the result of actions or inactions by the applicant or the current owner;

C. The strict interpretation and enforcement of the provisions of the code would cause an unnecessary or undue hardship;

D. Granting the variance is the minimum action needed to accommodate or alleviate the difficulty or hardship involved;

E. The variance would not substantially impact the reasonable use and enjoyment or development of other property in the vicinity of the subject land or structure;

F. The variance would not authorize any use in a zoning district other than a use specifically permitted in such zoning district; and

G. The variance would not waive or modify the requirements of any use approved by special review.

### **18.60.040 Sign Variance Review Criteria**

A. Variances to the requirements of Chapter 18.50 shall not be permitted, except as related to the requirements concerning the setback of a freestanding sign, the spacing between freestanding signs, or the maximum sign area. To approve a zoning variance application to Chapter 18.50, the board must consider the following review criteria and find that each criterion has been met.

1. There are special physical circumstances or physical conditions, including, without limitation, buildings, topography, vegetation, sign structures, or other physical features on adjacent properties or within the adjacent public right-of-way that would substantially restrict the effectiveness of the sign in question, and such special circumstances or conditions are unique to the business to which the applicant desires to draw attention and do not apply generally to all businesses in the area;

2. The variance would be consistent with the purposes set forth in Section 18.50.010 and would not adversely affect the neighborhood or other businesses within the vicinity in which the subject business is located; and

3. The variance is the minimum necessary to permit the applicant to reasonably draw attention to its business.



B. In addition to the above criterion, for signs that contain an electronic message module, the board must consider the review criteria in Section 18.50.100.A.4.h and find that each criterion has been met.

### **18.60.0350 Applications.**

~~A.~~ Any person seeking action or review upon any matter within the jurisdiction of the board of adjustment, ~~except an appeal of an order issued by an administrative official,~~ shall make an application ~~therefore to the board upon forms provided prescribed by the board, which.~~ Current Planning Division. The application shall be accompanied by such supporting material as may be required. The applicant shall also pay, at the time of filing of the application, a any required filing fee ~~of twenty-five dollars as established adopted by resolution of~~ the city council.

~~B. Any person seeking to appeal any order issued by an administrative official in the administration or enforcement of the provisions of this title shall file with such official from whom the appeal is taken a written notice of appeal within fifteen days, excluding weekends and official holidays, from the date of the order. Such notice of appeal shall specify the grounds for the appeal. Such appeal hearing shall be conducted pursuant to Section 18.60.040, with not less than seven days' notice to the appellant. Upon hearing, the appellant may appear in person, or by agent or attorney.~~

### **18.60.060 Procedure.**

~~The board of adjustment shall designate one or more hearing officers to conduct public hearings on matters coming before the board. A hearing officer may be an employee of the city or a member of the board of adjustment or some other person knowledgeable in the application of the city's zoning regulations. Within ten days after the conclusion of any such hearing, the hearing officer shall submit proposed findings and order to the board and to the applicant and all parties participating in the hearing. Any party objecting to the proposed findings and order shall have ten days from the mailing thereof to file such objections with the board, stating with particularity the matters objected to. If no such objections is filed, the proposed findings and order shall become final without further action of the board. If an objection is filed, the hearing officer shall forward to the board the record of the hearing. The board, based upon a review of the record, may modify, in whole or in part, the proposed findings and order, upon the concurring vote of four members of the board. The proposed findings and order, as modified, shall become the findings of the board. The proposed findings of the hearing officer shall become the findings and order of the board upon the failure of the board to modify such findings.~~

The board of adjustment shall conduct public hearings on matters coming before the board. Within thirty (30) days after the conclusion of any such hearing, the board shall submit its findings and order to the applicant and all parties participating in the hearing. The findings and order of the board may be appealed to city council by any party-in-interest as defined in chapter 18.80, by the applicant or any person participating in the board hearing by any such person filing of a written appeal with the current planning division director within ten (10) days after of the mailing of the findings and order. City Council shall consider any such appeal at a public hearing noticed in accordance with Section 18.680.050. C and conducted in accordance with Section 18.80.090. At the conclusion of the public hearing, city council may approve, approve with conditions, or deny the variance. Unless otherwise stated in the findings and order, or if applicable in the final decision of city council, all permits or actions authorized as a result of an approval of a variance must be initiated within six months of the date such findings and order became final. Upon written request by the applicant, an additional six months may be granted by the Director of Community Services-current planning manager for initiating such permits or actions. In reviewing the proposed time extension, the Director-current planning manager shall consider the following criteria:

- A. ~~h~~H~~as~~ there been a change of zoning for the site, or for any property adjacent to the site since the original approval?
- B. ~~h~~H~~as~~ a change of use taken place on the site or on any adjacent property since the original approval, or is a change of use proposed for the site which would be divergent from the use shown in the application documents for the original variance?
- C. ~~h~~H~~ave~~ there been changes in the regulations and requirements specified in the Loveland Municipal Code which are applicable to the site and which should be addressed prior to the development of the site?
- D. ~~h~~H~~as~~ the ownership of any adjacent property changed?
- E. ~~w~~W~~ill~~ the granting of the extension be detrimental to the public health, safety, or general welfare?
- F. ~~w~~W~~ill~~ the granting of the extension be in keeping with the purposes set forth in this title to the same degree as intended in the original approval?

#### **18.60.0570 Notice.**

~~All notices required by this Chapter shall be provided pursuant to Chapter 18.05 Public Notice. Notice requirements for appeals shall be provided in accordance with chapter 18.80. All other notices required by this Chapter shall be provided pursuant to Chapter 18.05.~~

## **Chapter 18.68**

### **ENFORCEMENT-PENALTIES**

#### **18.68.045 Code Enforcement Guidelines**

A duly appointed peace officer or code enforcement officer of the City may enforce the provisions of this title and of Titles 15 and 16 of the city code by the issuance of a summons and complaint as provided in Rule 204 of the Colorado Municipal Courts Rules of Procedure.

#### **18.68.050 Violation.**

A person is guilty of a violation of this title in any case where:

- A. Any violation of any of the provisions of this title or of any agreement or development plan approved under this title or under title 16, exists in any building, other structure or tract of land;  
or
- B. An order to remove any alleged violation has been served upon the owner, general agent, lessee or tenant of the building, other structure or tract of land (or any part thereof) or upon the architect, builder, contractor or any other person who commits or assists in any alleged violation, and such person fails to comply with such order within fifteen days, excluding weekends and legal holidays, after the service thereof

#### **18.68.070 Penalty.**

Any person, firm or corporation violating any provisions of this title, upon conviction therefore, shall be fined not more than ~~five hundredone thousand~~ dollars or incarcerated not more than ~~one yearsix months~~, or both. Each day during which the illegal erection, construction, reconstruction, alteration, maintenance, ~~or~~ use, or any other violation of this title continues, is deemed a separate offense.



## APPEALS

### 18.80.010 Purpose

### 18.80.020 Definitions

### 18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal

### 18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision

### 18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision

### 18.80.060 Notice of Appeal Requirements

### 18.80.070 Cost of Appeal

### 18.80.080 Record on Appeal

### 18.80.090 Procedure at Hearing

#### 18.80.010 Purpose.

This Chapter shall govern the procedures for appeals from any Final Decision made under Title 16 or Title 18 of this Code.

#### 18.80.020 Definitions.

The following words, terms and phrases, when used in this Title **18**, shall have the meanings hereafter ascribed to them in this Chapter unless the context requires otherwise:

*Appellant* shall mean a Party-in-Interest who has filed a Notice of Appeal under the provisions of this Chapter.

*Applicant* shall mean a Person that has submitted to the City an application related to the development, zoning or subdivision of real property in the city as authorized or required under the provisions of Title 16 or Title 18 and which application is the subject of appeal under this Chapter.

*City Staff Decision Maker* shall mean any City staff member granted authority to make decisions under titles 16 and 18 of this Code.

*City Council* shall mean the City Council of the City of Loveland.

*Current Planning Division* shall mean the Current Planning Division for the City of Loveland Development Services Department.

*Days* shall mean all calendar days including Saturday and Sunday. Any computation of days under this Chapter shall not include the date a Final Decision is made. If a filing deadline falls upon a Saturday, Sunday or other legal holiday when City offices are closed, the filing deadline shall continue to the following day when City offices are open.

*De Novo Hearing* shall mean a new public hearing **at which new and additional evidence may be presented.**

*Director* shall mean the City's Director of Development Services or his or her designee.

*Evidence* shall mean documentary, electronic or testimonial evidence relevant to any application that was the subject of a final decision under the provisions of Title 16 or Title 18, presented at a hearing to

support or refute a particular proposition or conclusion. *Evidence* shall not include argument as to how information offered as evidence should be viewed or interpreted.

*Effective Date of the Final Decision*, as it pertains to a City Staff Decision Maker's or Director's Final Decision, shall mean the date the City Staff Decision Maker or Director mails his or her written decision to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this title to be mailed. As this phrase pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean the date on which the Board or Commission adopts its written findings and conclusions.

*Final Decision*, as it pertains to a City Staff Decision Maker or the Director, shall mean a decision or action by the City Staff Decision Maker or Director under Title 16 or Title 18 that the City Staff Decision Maker or Director has reduced to writing and has promptly mailed to the affected Applicant and to any other Party-in-Interest to whom the written decision is required by this Code to be mailed. As this term pertains to the Zoning Board of Adjustment or the Planning Commission, it shall mean a decision or action by the Board or Commission under this Code for which the Board or Commission has adopted written findings and conclusions. A *Final Decision* shall not include any decision made by a City Staff Decision Maker or the Director that is a recommendation to the Planning Commission or to the City Council, or a decision by the Planning Commission under this Code that constitutes a recommendation to City Council.

*Notice of Appeal* shall mean an Appellant's written request for an appeal of a Final Decision submitted in the form required by Section 18.80.060.

*Party-in-Interest*, as it pertains to an appeal under this Chapter of a Final Decision by a City Staff Decision Maker or the Director, shall mean: the Applicant; any person required in Title 16 or this Title 18 to be mailed the City Staff Decision Maker's or Director's written Final Decision; **threetwo** or more Planning Commission members; or **threetwo** or more City Council members. As this term pertains to an appeal under this Chapter of a Final Decision by the Zoning Board of Adjustment or the Planning Commission, it shall mean: the Applicant, **any city staff member**, any Person required in Title 16 or this Title 18 to be mailed notice of the Zoning Board of Adjustment or Planning Commission's public hearing; any Person who provided written or verbal testimony at the Zoning Board of Adjustment or Planning Commission's public hearing; or **threetwo** or more City Council members. For an appeal of a Final Plat for a major subdivision or a Final Development Plan, only the Applicant shall be considered a Party-in-Interest with standing to appeal.

*Person* shall mean an individual, corporation, partnership, limited liability company or other legal entity.

*Planning Commission* shall mean the City of Loveland Planning Commission established pursuant to Section 2.60.080 of this Code.

*Record* shall mean all relevant documents reviewed by a previous Board, Commission or City Staff Decision Maker, and any transcript or written record of any such previous hearing.

*Zoning Board of Adjustment* shall mean the City of Loveland Zoning Board of Adjustment established pursuant to Section 18.60.010 of this code.

### **18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal.**

A. An appeal of a Final Decision may be filed pursuant to sections 18.80.040 and 18.80.050 of this Chapter. Upon the filing of an appeal, any application process with the City pertaining to the subject matter being appealed shall be suspended while the appeal is pending. Any action taken in reliance upon any decision of a Board, Commission or other City Staff Decision Maker that is subject to appeal under the provisions of this Chapter shall be totally at the risk of the Person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action taken during said period of time.

B. Except for appeals by members of the City Council, the permissible grounds for appeal shall be limited to allegations that the Board, Commission or other City Staff Decision Maker committed one (1) or more of the following errors:

(1) Failure to properly interpret and apply relevant provisions of the Municipal Code or other law; or

(2) Failure to conduct a fair hearing in that:

a. The Board, Commission or other City Staff Decision Maker exceeded its authority or jurisdiction as contained in the Municipal Code or Charter;

b. The Board, Commission or other City Staff Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading; or

c. The Board, Commission or other City Staff Decision Maker improperly failed to receive all relevant evidence offered by the Appellant.

C. Appeals filed by members of the City Council need not include specific grounds for appeal, but shall include a general description of the issues to be considered on appeal. Council members who file an appeal shall not participate in deciding the appeal.

#### **18.80.035 Review of Notice of Appeal by City Attorney.**

Within seven (7) days of the date of the filing of the notice of appeal, the notice shall be reviewed by the City Attorney for any obvious defects in form or substance. A notice of appeal which fails to conform to the requirements of Section 18.80.030 shall be deemed deficient. The City Manager shall notify the appellant in writing of any such deficiency, which notice shall be mailed no more than seven (7) days from the date of the filing of the notice of appeal. The appellant shall have seven (7) days from the date of mailing of the notice of deficiency to cure such deficiency. If the deficiency is cured, the date the revised notice of appeal is received shall be considered the date of the filing of the notice of appeal. If the appellant does not cure the deficiency within said period of time, the appeal may be dismissed if, in the judgment of the City Manager, the notice of appeal does not provide adequate information to allow the parties involved to prepare for the hearing on the appeal.

#### **18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision.**

A. A Party-in-Interest may appeal any final decision by the Director or other City Staff Decision Maker to the Planning Commission.

B. To appeal a City Staff Decision Maker or Director's Final Decision to the Planning Commission, a Party-in-Interest must file a notice of appeal with the Current Planning Division within ten (10) days of

the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in the dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the Planning Commission not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The Planning Commission shall conduct the appeal hearing as a De Novo hearing and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the Planning Commission may uphold, reverse or modify the Final Decision being appealed. The Planning Commission shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions concerning the appeal.

**18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision.**

A. A Party-in-Interest may appeal any Final Decision by the Zoning Board of Adjustment or the Planning Commission to the City Council.

B. To appeal a Final Decision by the Zoning Board of Adjustment or Planning Commission to the City Council, a Party-in-Interest must file a Notice of Appeal with the Current Planning Division within ten (10) days of the effective date of the Final Decision. Failure of a Party-in-Interest to timely file a Notice of Appeal under this section shall result in dismissal of that appeal.

C. When a Party-in-Interest timely files a Notice of Appeal under this section, the Current Planning Division shall schedule a public hearing for the appeal to be heard by the City Council not less than thirty (30) nor more than sixty (60) days of the filing of the Notice of Appeal unless a longer period of time is agreed to by the Appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the Applicant in Section 16.16.070 shall be the responsibility of the Current Planning Division unless the Applicant is an Appellant. The property owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.

D. The City Council shall conduct the appeal hearing as a De Novo Hearing, and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the City Council may uphold, reverse or modify the Final Decision being appealed. The City Council may also remand the appeal to the Zoning Board of Adjustment or the Planning Commission with directions for the Zoning Board of Adjustment or Planning Commission's further consideration of the matter. If the City Council upholds, reverses or modifies a Final Decision made by the Zoning Board of Adjustment or the Planning Commission, the City Council shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions. The City Council's written findings and conclusions shall be considered the City Council's Final Decision for purposes of any appeal of the City Council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

**18.80.060 Notice of Appeal Requirements.**

The Notice of Appeal required to be filed under this Chapter shall include all of the following information:

- A. A description of the Final Decision being appealed.
- B. The date of the Final Decision being appealed.
- C. The name, address, telephone number and relationship of each Appellant to the subject of the Final Decision being appealed including a statement for each Appellant as to the Appellant's qualification for being considered a Party-in-Interest under this Chapter.
- D. For all appeals, except those filed by members of City Council, a description the grounds for the appeal of the Final Decision, including specific allegations of error as required in Section 18.80.030.B. For notices of appeal filed by members of city council, the notice must contain the general description of issues to be considered on appeal as required by Section 18.80.030.C.
- E. In the case of an appeal by more than one (1) Appellant, the name, address and telephone number of one (1) such Appellant who shall be authorized to receive, on behalf of all Appellants, any notice required to be mailed by the City to the Appellants under the provisions of section 18.80.040 or section 18.80.050.

#### **18.80.070 Cost of Appeal**

In all appeals under this Chapter except those filed by three or more members of the Planning Commission or those filed by three or more members of the City Council, the Appellant shall be charged a fee for the cost of the appeal as such fee is established by City Council pursuant to Code Section 3.04.025. The City Council may establish a fee for each level of appeal.

#### **18.80.080 Record on Appeal**

The record provided to the Planning Commission or City Council for appeals filed under this chapter shall include a record of any previous proceedings before a Board, Commission or other City Staff Decision Maker, including without limitation, all exhibits, writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the Board, Commission or other City Staff Decision Maker at any previous proceedings. A video recording of the Zoning Board of Adjustment Hearing or Planning Commission hearing is not required as part of the record on appeal provided summary minutes of such hearings are included as part of the record.

#### **18.80.090 Procedure at Hearing**

- A. At the appeal hearing, the presentation of argument regarding the appeal shall be made in the following order, subject to the discretion of the Chairperson or Mayor relating to limitations in time and scope, or allowances accommodating adequate presentation of evidence or opportunity for rebuttal:
  - (1) Explanation of the nature of the appeal by City staff;
  - (2) Appellant's presentation of evidence, testimony and argument in support of the appeal;
  - (3) Presentation of evidence, testimony and argument of the Applicant if the Applicant is not the Appellant; or, if the Applicant is the Appellant, presentation of evidence, testimony

- and argument by any City staff member or other Party-in-Interest in opposition to the appeal.
- (4) Public comment;
  - (5) Rebuttal presentation by the Appellant; and
  - (6) Motion, discussion and vote by the Board, Commission or City Council.

B. No person making a presentation or providing testimony at an appeal hearing shall be subject to cross-examination except that members of the Planning Commission or City Council and the City Attorney may at any time make inquiries for the purpose of eliciting information and for the purpose of clarifying information presented.

C. In the event of multiple appeals involving the same subject matter considered by the Planning Commission or City Council, the Chairperson or Mayor, in his or her discretion, may modify the procedure contained in Subsection (A) above so as to expedite the hearing of such appeals.

D. The City Council shall consider an appeal based upon evidence submitted at the public hearing, the record on appeal, the relevant provisions of the Municipal Code and Charter, and the grounds for appeal cited in the Notice of Appeal. Grounds for appeal raised for the first time at the public hearing, and therefore not raised in the Notice of Appeal, shall not be considered by the City Council in deciding the appeal.

## ZONING BOARD OF ADJUSTMENT ALTERNATIVE OPTION WITH HEARING OFFICER: **REDLINE VERSION** \*

\*Yellow-highlighted text has been adjusted since the February 28, 2011 Planning Commission meeting.

### Title 18

#### Chapter 18.60

##### 18.60.060 Procedure.

The board of adjustment ~~shall~~may designate one or more hearing officers from within the board to conduct public hearings on matters coming before the board. The designated hearing officer shall have the discretion to forward any matter onto the full board for the initial public hearing. A hearing officer may be an employee of the city or a member of the board of adjustment or some other person knowledgeable in the application of the city's zoning regulations. Within ten (10) days after the conclusion of any ~~such~~ hearing conducted by the hearing officer, the hearing officer shall submit proposed findings and order to the board and to the applicant and all parties participating in the hearing. ~~Any party objecting to the proposed findings and order shall have ten days from the mailing thereof to file such objections with the board, stating with particularity the matters objected to.~~ The findings and order of the hearing officer may be appealed to the board by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the current planning division in accordance with the provisions contained in Section 18.80.030.B, within ten (10) days of the decision of the hearing officer. ~~If no such objections is filed, the proposed findings and order shall become final without further action of the board.~~ If no appeal is filed, the proposed findings and order shall become final without further action by the board. ~~If an objection appeal is filed, the hearing officer shall forward to the board the record of the hearing. The board, based upon a review of the record, may modify, in whole or in part, the proposed findings and order, upon the concurring vote of four members of the board. The proposed findings and order, as modified, shall become the findings of the board. The proposed findings of the hearing officer shall become the findings and order of the board upon the failure of the board to modify such findings.~~ The board shall consider any such appeal on the first available date for which proper notice can be provided pursuant to Chapter 18.05. The appeal shall be conducted as a De Novo hearing as defined in Chapter 18.80, and the board shall follow the procedures set forth in Section 18.80.090. Whether as a result of an initial public hearing by the board or an appeal of the hearing officer's final decision, the board shall submit its findings and order to the applicant and all parties participating in the hearing within thirty (30) days following the conclusion of the hearing. The findings and order of the board representing the board's final decision, may be appealed to city council by any party-in-interest as defined in chapter 18.80, by the the applicant or any person participating in the board hearing by any such person filing of a written appeal with the current planning division in accordance with the provisions contained in Section 18.80.030.B, director within ten (10) days after of the mailing of the findings and order decision of the board. City Council shall consider any such appeal at a public hearing noticed in accordance with Section 18.680.050.C. and conducted in accordance with Section 18.80.090. ~~At the conclusion of the public hearing, city council may approve,~~

~~approve with conditions, or deny the variance.~~ Unless otherwise stated in the findings and order, or ~~if applicable in~~ the decision of city council, all permits or actions authorized as a result of an approval of a variance must be initiated within six months of the date such findings and order become final. Upon written request by the applicant, an additional six months may be granted by the ~~Director of Community Services~~ current planning manager for initiating such permits or actions. In reviewing the proposed time extension, the ~~Director~~ current planning manager shall consider the following criteria:

- A. ~~h~~HHas there been a change of zoning for the site, or for any property adjacent to the site since the original approval?
- B. ~~h~~HHas a change of use taken place on the site or on any adjacent property since the original approval, or is a change of use proposed for the site which would be divergent from the use shown in the application documents for the original variance?
- C. ~~h~~HHave there been changes in the regulations and requirements specified in the Loveland Municipal Code which are applicable to the site and which should be addressed prior to the development of the site?
- D. ~~h~~HHas the ownership of any adjacent property changed?
- E. ~~w~~Will the granting of the extension be detrimental to the public health, safety, or general welfare?
- F. ~~w~~Will the granting of the extension be in keeping with the purposes set forth in this title to the same degree as intended in the original approval?



# SITE DEVELOPMENT PERFORMANCE STANDARDS AND GUIDELINES: REDLINE

## CHAPTER 5 - APPEAL/STANDARDS FOR REDEVELOPMENT

### SECTION 5.01 APPEAL

Should the applicant or any user of the Site Development Standards and Guidelines not be satisfied with the decision of the City concerning the application of performance standards and/or guidelines, and/or the application materials required, the affected party shall have the right to request an appeal to the Planning Commission for review of the issue(s). The request for an appeal shall be filed with the Current Planning Division no later than ten (10) days from the date of the mailing of the decision by the City. The City shall place the appeal on the Planning Commission agenda no later than thirty (30) days from the date of the request for such appeal, review, unless a longer period of time is agreed to by the Appellant. The appeal shall be conducted in accordance with Chapter 18.80 of the Loveland Municipal Code.