



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

AGENDA ITEM: 10
MEETING DATE: 9/20/2011
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Kerri Burchett, Current Planning

TITLE:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING AN AMENDMENT TO THE ANNEXATION AGREEMENT FOR CERTAIN PROPERTY LOCATED WITHIN THE OZZIE'S FIRST ADDITION, CITY OF LOVELAND, COUNTY OF LARIMER, COLORADO

DESCRIPTION:

A public hearing and consideration of a legislative action for adoption of an ordinance on first reading to amend the Ozzie's First Addition Annexation Agreement. The agreement pertains to the Loveland Habitat for Humanity Restore located at 5250 N. Garfield Avenue. The property is approximately 2.16 acres in size and zoned B – Developing Business. The owner of the property is Loveland Habitat for Humanity, Inc.

BUDGET IMPACT:

Yes No

SUMMARY:

The proposed amendment to the annexation agreement would revise a condition of approval related to the timing of roadway improvements on US Highway 287. The agreement requires ultimate roadway improvements, including curb, gutter and sidewalk, to be constructed along Highway 287 prior to the issuance of any building permit. Habitat for Humanity is requesting the amendment so that a building permit for a 120 square foot modular structure can be issued without triggering roadway improvements. The modular structure is being used as an office for automobile sales. The proposed revision would exempt building permits that would create an insignificant traffic impact, as defined in the Larimer County Urban Area Street Standards, from the conditions requiring ultimate roadway improvements on Highway 287.

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 OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING AN AMENDMENT TO THE ANNEXATION AGREEMENT FOR CERTAIN PROPERTY LOCATED WITHIN THE OZZIE'S FIRST ADDITION, CITY OF LOVELAND, COUNTY OF LARIMER, COLORADO

REVIEWED BY CITY MANAGER:

FIRST READING: September 20, 2011

SECOND READING: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING AN AMENDMENT TO THE ANNEXATION AGREEMENT FOR CERTAIN PROPERTY LOCATED WITHIN OZZIE'S FIRST ADDITION, CITY OF LOVELAND, COUNTY OF LARIMER, COLORADO

WHEREAS, on November 5, 2002, under Ordinance No. 4750, the Loveland City Council approved annexation of certain property known as Ozzie's First Addition to the City of Loveland, Colorado, more particularly described in **Attachment 1**, attached hereto and incorporated herein, (the "Property"); and

WHEREAS, Ozzie's First Addition is subject to an Annexation Agreement which was approved by Loveland City Council also under Ordinance No. 4750 (the "Annexation Agreement"); and

WHEREAS, the Annexation Agreement was recorded with the Larimer County Clerk and Recorder on April 29, 2003, under Reception No. 20030051670; and

WHEREAS, the Annexation Agreement requires that prior to any building permits issued for the Property, the ultimate roadway improvements for US 287 including curb and gutter, and the sidewalk adjacent to the property must be constructed or a cash-in-lieu payment for the same be provided to the City; and

WHEREAS, the owners of the Property desire to modify this requirement to allow a certain amount of flexibility regarding issuance of building permits; and

WHEREAS, City staff has reviewed the owners' amendment request and have no objection to adopting an Amendment to the Annexation Agreement to allow for some flexibility regarding issuance of building permits.

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

Section 1. That the "First Amendment to the Annexation Agreement" ("Amended Annexation Agreement") pertaining to Ozzie's First Addition to The City of Loveland, Larimer County, Colorado, attached hereto and incorporated herein by reference as **Exhibit A**, is hereby approved.

Section 2. That the City Manager is authorized, following consultation with the City Attorney, to approve changes to the form of the Amended Annexation Agreement provided that such changes do not impair the intended purpose of the Amended Annexation Agreement as approved by this Ordinance. The City Manager and the City Clerk are authorized and directed to execute the Amended Annexation Agreement on behalf of the City of Loveland.

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.

Dated this ____ day of _____, 2011.

ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:

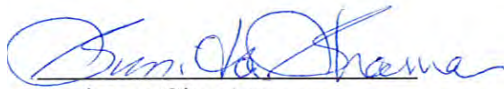

Assistant City Attorney

EXHIBIT A

FIRST AMENDMENT TO ANNEXATION AGREEMENT

This FIRST AMENDMENT TO ANNEXATION AGREEMENT pertaining to Ozzie's First Addition to the City of Loveland, Larimer County, Colorado, is entered into this ____ day of _____, 2011 ("First Amendment"), by and among the CITY OF LOVELAND, COLORADO, a home rule municipality ("City"); and MTC Enterprises LLC, and Loveland Habitat for Humanity, together jointly referred to herein as ("the Parties").

WITNESSETH

WHEREAS, on November 5, 2002, MTC Enterprises LLC, Stephen and Jeneal McKinley, and Loveland Habitat for Humanity, (the "Developers") entered into an Annexation Agreement Pertaining to Ozzie's First Addition to the City of Loveland, Larimer County, Colorado, ("the Annexation Agreement") regarding certain property, more particularly described in **Attachment 1**, attached hereto and incorporated herein; and

WHEREAS, on November 5, 2002, the Loveland City Council passed on second reading, Ordinance No. 4750 approving the Annexation Agreement and such Agreement was recorded on April 29, 2003 with the Larimer County Clerk and Recorder under Reception Number 20030051670; and

WHEREAS, the Annexation Agreement provides that it may only be amended by written Agreement signed by the Loveland City Council and the Developers, and

WHEREAS, Stephen and Jeneal McKinley are no longer owners of the Property, but the Property is now owned solely by MTC Enterprises LLC and Loveland Habitat for Humanity, Inc., as the Developers; and

WHEREAS, the Parties now desire to make certain changes to the Annexation Agreement.

NOW, THEREFORE, by and in consideration of mutual covenants contained herein and other good and valuable consideration, the Parties hereto agree to the following:

1. Paragraph 3 of the Annexation Agreement is amended to read in full as follows:

3. Roadway Improvements.

- a. Unless waived under the provisions of the Larimer County Urban Street Standards (“LCUASS”) section 1.9.2.D, regarding Insignificant Traffic Impact Developments, or a variance is granted per LCUASS Section 1.9.4, prior to the issuance of any building permits within the Property, the ultimate roadway improvements for US 287, adjacent to the property for which the building permit will be issued, shall be constructed including curb, gutter and sidewalk. A cash-in-lieu payment may be accepted for all or part of the improvements, if approved by the City Engineer.
 - b. At such time of development or redevelopment of the Parcels within the Property, the access to each property from US 287 will be reevaluated and may be eliminated if access can be provided through cross access easements on adjacent properties unless otherwise approved by the City Engineer.
 - c. All future development within the Property shall comply with the public improvement design and construction standards adopted January 2001 (Larimer County Urban Area Street Standards) and the Transportation Plan adopted July 2000 and any updates to either in effect at the time of development application.
2. Except for the changes set forth above, all of the terms and conditions of the Annexation Agreement shall continue in full force and effect and shall continue to be binding on all parties thereto. Any modification from the original Annexation Agreement or this First Amendment must be in writing, signed by both Parties, and shall require approval from City Council.
 3. The City shall record this First Amendment with the Larimer County Clerk and Recorder.

ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

William D. Cahill, City Manager

APPROVED AS TO FORM:


Assistant City Attorney

ATTACHMENT 1

Ozzie's First Addition to the City of Loveland, Colorado

That portion of the Northeast Quarter of Section 35 and the Northwest Quarter of Section 36, Township 6 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the Northwest Quarter of said Section 36 as bearing South 00°07'00" East and with all bearings contained herein relative thereto:

Beginning at the Northwest corner of the Northwest Quarter of said Section 36; thence along the West line of the Northwest Quarter of said Section 36 South 00°07'00" East 1324.24 feet, more or less, to the Northwest corner of the South Half of the Northwest Quarter of said Section 36 and the TRUE POINT OF BEGINNING; thence along the North line of the South Half of the Northwest Quarter of said Section 36 South 89°43'28" East 499.05 feet to the Northwest corner of Tract "A", Shade Tree Park Fourth Addition to the City of Loveland, County of Larimer, State of Colorado; thence departing said North line and along the Westerly lines of said Tract "A", Shade Tree Park Fourth Addition and along the Northerly and Westerly lines of Lot 2, Block 1, Shade Tree Park First Subdivision to the City of Loveland, County of Larimer, State of Colorado and along the Northerly line of Lot 1, Block 1, Shade Tree Park First Subdivision to the City of Loveland, County of Larimer, State of Colorado and along the Northerly line of Shade Tree Park Fifth Addition to the City of Loveland, County of Larimer, State of Colorado the following six (6) courses and distances:

- | | | |
|----|----------------------|--------------|
| 1) | South 00°07'18" East | 28.57 feet; |
| 2) | North 89°46'11" East | 99.83 feet; |
| 3) | South 00°09'40" East | 172.65 feet; |
| 4) | North 89°47'00" West | 224.83 feet; |
| 5) | South 00°07'00" East | 337.72 feet; |
| 6) | North 89°44'05" West | 424.18 feet, |

more or less, to a point on the Westerly right-of-way line of U.S. Highway No. 287; thence departing said Northerly line of said Shade Tree Park Fifth Addition and along said Westerly right-of-way line of U.S. Highway No. 287 North 00°07'00" West 538.37 feet; thence departing said Westerly right of Way line and along the Westerly prolongation of the North line of the South Half of the Northwest Quarter of said Section 36 South 89°43'28" East 50.00 feet, more or less, to the Northwest corner of the South Half of the Northwest Quarter of said Section 36 and the TRUE POINT OF BEGINNING.

The above-described parcel contains 6.21 acres, more or less, and is subject to all easements and rights-of-way of record or existing.



DEVELOPMENT SERVICES
Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537
 (970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
 www.cityofloveland.org

MEMORANDUM

TO: City Council

FROM: Kerri Burchett, Principal Planner
 Jeff Bailey, Senior Civil Engineer

DATE: September 20, 2011

RE: Ozzie's First Addition Annexation Agreement Amendment

I. EXHIBITS

1. Letter of request to amend the Annexation Agreement
2. Annexation Agreement (recorded copy for reference)
3. Habitat for Humanity Special Review Plan (for reference)

II. PROJECT SUMMARY

A. Description

Loveland Habitat for Humanity is requesting an amendment to the annexation agreement for Ozzie's First Addition. The amendment would revise a condition of approval related to the timing of roadway improvements on US Highway 287. The property is located at 5250 N. Garfield Avenue, which is the location for the Habitat for Humanity Restore. The annexation agreement stipulates the following timing for roadway improvements on Hwy. 287:

3.A Prior to the issuance of any building permits within the Property, the ultimate roadway improvements for US 287, adjacent to the property for which the building permit will be issued, shall be constructed including curb and gutter. A cash-in-lieu payment may be accepted for all or part of the improvements, if approved by the City Engineer.

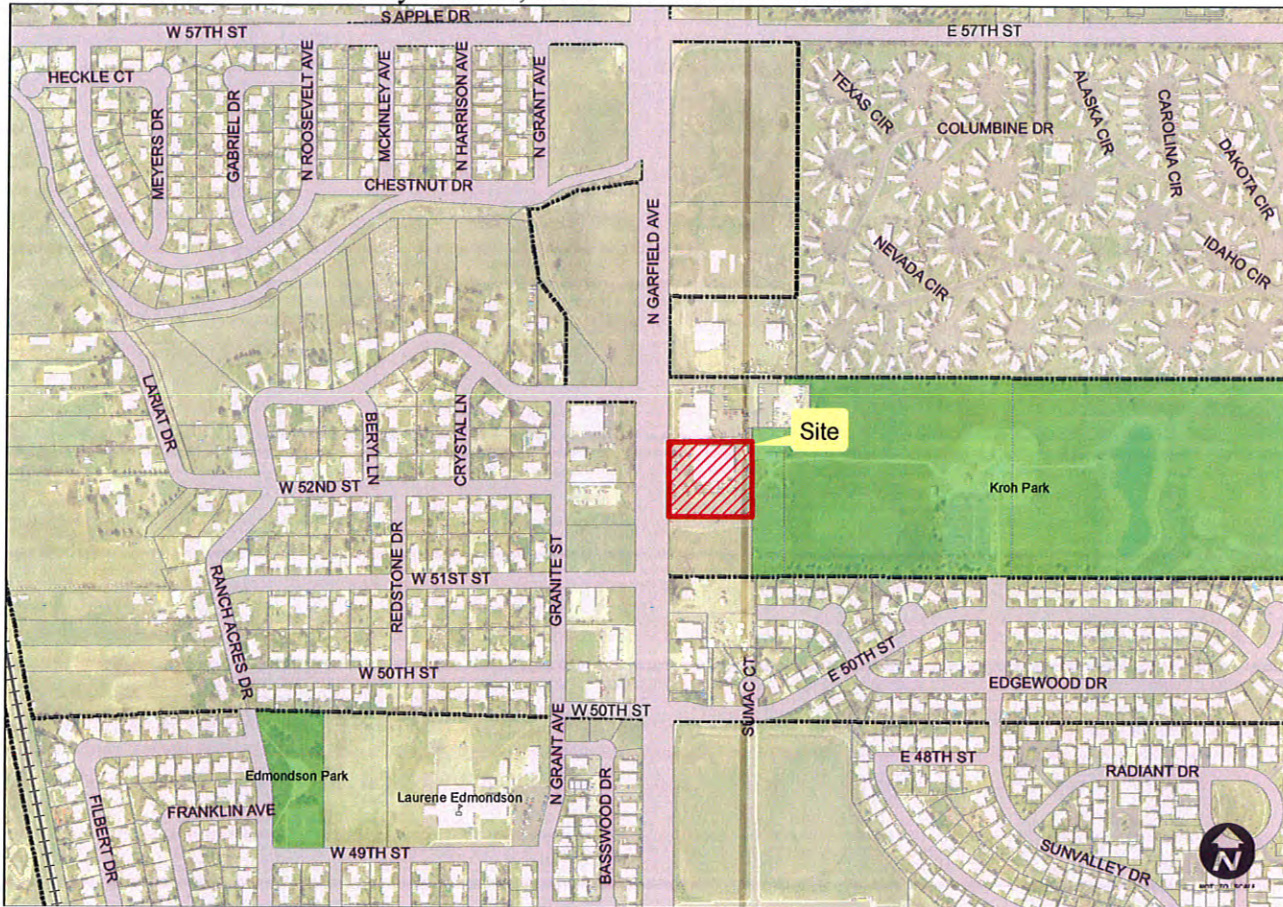
3.B Prior to the issuance of any building permits within the Property, the sidewalk adjacent to the property for which the building permit will be issued shall be constructed at its ultimate location in accordance with City Standards.

Habitat for Humanity is requesting that these provisions be amended in order to obtain a building permit for a 120 square foot modular structure that was placed on the site. Without an amendment

to the annexation conditions, ultimate roadway improvements on Hwy. 287 including curb, gutter and sidewalk would need to be constructed or financially secured with the City prior to issuance of the building permit. The modular structure is currently being used for an automotive sales office, which was authorized in a recently approved special review.

B. Property Location

Loveland Habitat for Humanity Restore, 5250 N. Garfield Avenue



C. Key Issues

Staff has not identified any key issues associated with the request.

D. Background Information

The Habitat for Humanity Restore property was annexed into the City in November of 2002 as part of Ozzie's First Addition and zoned B-Developing Business. The annexation agreement set forth development and redevelopment standards including roadway and access improvements, utility improvements and site design, landscaping and architectural requirements. As the Habitat Restore was annexed as an existing use, site improvements were generally triggered with the development/redevelopment of the site or prior to issuance of a building permit.

Along with the sales of donated merchandise, Habitat for Humanity received a State License in 2002 to sell automobiles. In July of 2007, Habitat applied for and received an electrical permit from the City to install electric service to a 120 square modular shed that was placed on the site. The modular structure was subsequently used as a car sales office. The use of automobile sales in the B zone district requires a special review approval. A special review permit and a city building permit for the sales office was not obtained. In the summer of 2010, the City received a complaint regarding the automobile sales use occurring on the site. After receiving notification from the City's Code Enforcement Division, Habitat for Humanity submitted a special review application to remedy the use violation. The special review was approved on July 27, 2011. Through the review of the application, the applicant was informed of the annexation agreement conditions related to Hwy. 287 roadway improvements. Staff recommended that the applicant pursue an amendment to the annexation agreement.

Notice of the City Council hearing was posted on site and mailed to property owners within 300 feet of the subject property 15 days prior to the August 16, 2011 City Council hearing. Additionally, a neighborhood meeting was held on July 7, 2011 concerning the special review proposal. No neighbors attended the meeting and City staff has not received any verbal or written correspondence from the neighborhood as of the date of this memorandum.

E. **Proposed Amendment**

City staff is recommending that Annexation Condition 3.a and 3.b be amended as follows. Text shown in red indicates newly proposed language; text shown in strike-out is proposed to be eliminated.

3.a Unless waived under the provisions of LCUASS Section 1.9.2.D, regarding Insignificant Traffic Impact Developments, or a variance is granted per LCUASS Section 1.9.4, prior to the issuance of any building permits within the Property, the ultimate roadway improvements for US 287, adjacent to the property for which the building permit will be issued, shall be constructed including curb, gutter **and sidewalk**. A cash-in-lieu payment may be accepted for all or part of the improvements, if approved by the City Engineer.

~~3.b Prior to the issuance of any building permits within the Property, the sidewalk adjacent to the property for which the building permit will be issued shall be constructed at its ultimate location in accordance with City Standards.~~



May 16, 2011

Dear City Representatives:

Loveland Habitat for Humanity has thrived in our community for 23 years. Strong city support has enabled Habitat to enrich the lives of many citizens. Its major accomplishment has been the building of 100 quality homes in the Loveland area.

A crucial revenue generator for the affiliate is the ReStore. The sales of donated merchandise and automobiles have been its lifeblood. Located at 5250 N Garfield, the property was annexed from Larimer County to the City of Loveland in 2002. Provisions for legal zoning of the automobile program were not implemented at that time. Additionally, a city building permit for the auto sales office was not obtained. Loveland Habitat for Humanity comes to council in a responsible manner to resolve these issues to maintain the auto sales portion of the ReStore operation.

We are a State of Colorado licensed and approved Auto Sales Dealer. At any given time, we have from 5 to 10 cars displayed on our premises for sale. The display area is accompanied by a 10'X14'X10' car sales office. On average, we sell 6 vehicles per month. Hours of operation are Wednesday to Saturday 10am to 5:30 pm.

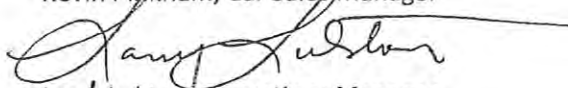
Loveland Habitat for Humanity is requesting that the City of Loveland release a building permit for the auto sales office without triggering improvements to Highway 287.

Habitat would like to thank the City of Loveland Staff and the Loveland City Council for their understanding, assistance and patience during this process.

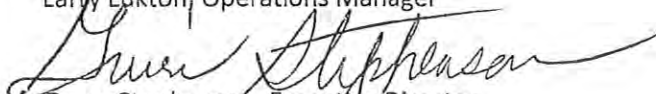
Most Sincerely,



Kevin Pirckham, Car Sales Manager



Larry Lukton, Operations Manager



Gwen Stephenson, Executive Director



#143297

SCOTT DOYLE, RECORDER, LARIMER COUNTY CO
RCPTN# 2003-0051670 04/29/2003 10:03:34
PAGES - 16 FEE \$81.00 DOC \$0.00

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (the "Agreement") is entered into this 5th day of November, 2002, by and between MTC Enterprises LLC, Stephen and Jeneal McKinley, and Loveland Habitat for Humanity (the "Developers"); and the CITY OF LOVELAND, COLORADO (the "City").

RECITALS

WHEREAS, the Developers own approximately 6.2 acres of real property located in Larimer County, Colorado, more particularly described in Exhibit A, attached hereto and by this reference incorporated herein (the "Property"); and

WHEREAS, the Property consists of five (5) contiguous Parcels, more particularly described in Exhibit B, attached hereto and by this reference incorporated herein; and

WHEREAS, the Developers are requesting that the City annex the Property, and zone the Property to allow for the coordinated development of the Property to the benefit of the parties, including the City; and

WHEREAS, the City is unable to annex the Property under the terms and conditions of this Agreement without the consent of the Developers.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Consent to annexation. Developers have petitioned for the annexation of the Property described in the attached Exhibit A. The Developers hereby consent to the annexation of the Property subject to the terms and conditions of the Petition for Annexation and this Agreement. In the event the City enters into this Agreement prior to approval by the 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 the Developers' application is expressly conditioned upon such approval by the City Council and the execution and delivery of this Agreement by all parties thereto.

2. Dedication of additional rights-of-way.
 - a. Prior to or concurrent with approval of any final plat or special review within Parcel 1, additional right-of-way shall be dedicated along U.S. Highway 287 such that the total east one-half (1/2) right-of-way is seventy (70) feet.

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**CITY OF LOVELAND
CITY CLERK'S OFFICE**

- 2.
- b. Prior to approval of any redevelopment or change of use for Parcel 5; additional right-of-way shall be dedicated along US 287 such that the total east one-half (1/2) right-of-way is 70 feet.

3. Roadway Improvements.

- a. Prior to the issuance of any building permits within the Property, the ultimate roadway improvements for US 287, adjacent to the property for which the building permit will be issued, shall be constructed including curb and gutter. A cash-in-lieu payment may be accepted for all or part of the improvements, if approved by the City Engineer.
- b. Prior to the issuance of any building permits within the Property, the sidewalk adjacent to the property for which the building permit will be issued shall be constructed at its ultimate location in accordance with City Standards.
- c. At such time of development or redevelopment of the Parcels within the Property, the access to each property from US 287 will be reevaluated and may be eliminated if access can be provided through cross access easements on adjacent properties unless otherwise approved by the City Engineer.
- c. All future development within the Property shall comply with the public improvement design and construction standards adopted January 2001 (Larimer County Urban Area Street Standards) and the Transportation Plan adopted July 2000 and any updates to either in effect at the time of development application.

4. Utility Improvements.

- a. Regarding potable water service, the Developers shall either connect to the City of Loveland's 8" water main on the west side of US 287 or Ft. Collins/Loveland Water District's 6" water main on the east side of US 287. In the case of a connection to the District's water main, the Developers shall remain a customer of the City of Loveland; paying all impact and water rights fees per the City's Municipal Code.
- b. Regarding sanitary sewer service, the Developers shall connect to the City's 8" sanitary sewer main that exists near the center of the subject annexation.

5. Fire Prevention. Prior to approval of any development or redevelopment proposal, a fire flow analysis shall be completed and approved by the Fire Chief. This analysis shall include a determination of required fire flows for the proposed buildings and if the available fire flows can support fire department operations and sprinkler system demands for the proposed use.

6. Access Improvements. An access easement at least 24 feet wide shall be provided along the northeast corner of the Property that is immediately adjacent to Kroh

7. Park. This easement shall be dedicated to the City of Loveland prior to approval of a special review or building permit.

7. Development/Redevelopment Standards.

1. All signs which are prohibited, illegal or nonconforming in accordance with City standards as determined by the City, or which are determined by the City to be abandoned or hazardous signs, including but not limited to off-premises signs and billboards located on the Property, with the exception of Parcel 5, shall be removed from the Property prior to recordation of the annexation map. Signs located on Parcel 5 shall be brought into compliance with City requirements at the time of redevelopment of said Parcel.
2. All development/re-development of the Property shall comply with City of Loveland Major Arterial Corridor Design Guidelines.
3. In the event that a Parcel within the Property is developed or redeveloped as a non-residential use, the following standards shall apply:
 - a. At least one (1) main entrance of any commercial or mixed-use building shall face and open onto a walkway that is connected to an adjacent public sidewalk. Such a connection may be established with a band of a raised, patterned, scored, and/or colored concrete at least 8' in width, clearly defining the space as a pedestrian walkway.
 - b. The vertical plane of any structure shall not exceed a height to width ratio of 1:3 without substantial variation in massing that includes a change in height and a projecting or recessed element.
 - c. Bay doors shall not face a public right-of-way, and any bay doors located at an angle to the public-right-of-way or visible from any public right-of-way shall be noticeably recessed into the façade of the building, shall include windows or other architectural feature, and shall not exceed 8' in height and 8' in width.
 - d. No wall facing a street or connecting walkway shall have a blank, uninterrupted length exceeding thirty (30) feet without including at least two (2) of the following: (i) change in plane; (ii) change in texture or masonry pattern; (iii) windows; (iv) treillage with vines; or (v) an equivalent element that subdivides the wall into human scale proportions.
 - e. All sides of the building visible from the public right-of-way shall include materials and design characteristics consistent with those on the front of the building. Use of inferior or lesser quality materials for side or rear facades shall be prohibited.

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- f. Facades that face streets or connecting pedestrian frontage shall be subdivided and proportioned using features such as windows, entrances, arcades, change in plane or in exterior materials, arbors, awnings, treillage with vines, along no less than fifty (50) percent of the facade.
 - g. Primary building entrances shall be clearly defined and recessed or framed by a sheltering element such as an awning, arcade, or portico in order to provide shelter from the summer sun and winter weather.
 - h. Awnings shall be no longer than a single storefront.
 - i. All facades visible from the public right-of-way shall have a recognizable "base" consisting of: (i) thicker walls, ledges, or sills; (ii) integrally textured materials such as stone or other masonry; (iii) integrally colored and patterned materials such as smooth-finished stone or tile; (iv) lighter or darker colored materials, mullions, or panels; or (v) planters.
 - j. All facades shall have a recognizable "top" consisting of: (i) cornice treatments, other than just colored "stripes" or "bands," with integrally textured materials such as stone or other masonry or different colored materials; (ii) sloping roof with overhangs and brackets; or (iii) stepped parapets.
 - k. Facades greater than one hundred (100) feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least 12" from the surface of the building, and extending at least twenty (20) percent of the length of any facade. No uninterrupted length of any facade shall exceed one hundred (100) horizontal feet.
 - l. Where principal buildings contain additional, separately owned stores that occupy less than twenty-five thousand (25,000) square feet of gross floor area, with separate, exterior customer entrances, the street level facade of such stores shall be transparent between the height of three (3) feet and eight (8) feet above the walkway grade for no less than sixty (60) percent of the horizontal length of the building facade of such additional stores.
 - m. Customer drop-off areas shall be fully screened with landscaping and masonry elements matching in design and materials to the architecture of the main structure, and shall not to be visible from the public-right-of-way.
 - n. Parking lot light fixtures, including the concrete base, shall not be over twenty (20) feet in height. Lighting must not contribute to Light pollution within the city limits. Dust, water, vapor and other particles will reflect and scatter any stray or reflected light that is emitted into the atmosphere. The result is sky glow. Ground reflected light could account for up to 20% of sky glow. In order to control light pollution, development on the Property must (1) propose a lighting plan that does not cause upward emission of any light, including

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shading fixtures to throw all light to the ground; (2) minimize non-target light, such as that used at night to enhance architectural features, security lighting is, of course, allowed to the extent necessary; and (3) minimize light fixtures that are not intended for a specific use.

- o. Façade colors shall be low reflectance, subtle, neutral or earth tone colors. The use of high intensity colors, metallic colors, or fluorescent colors is prohibited.
- p. Predominant exterior building materials shall be high quality materials, including, but not limited to: stucco, brick, sandstone, other native stone and tinted/textured concrete masonry units.
- q. Building trim and accent areas may feature brighter colors, but neon tubing shall not be an acceptable feature for building trim or accent areas.
- r. Except for walls that are not in public view, no exterior building materials shall include smooth-faced concrete block, tilt-up concrete panels, or prefabricated steel panels. Should any portion of any wall project above an adjacent building so that such wall is in public view, then the portion of the wall in view shall be subject to compliance with this design standard.
- s. All exterior HVAC and other similar equipment shall be screened from view from all nearby public rights-of-way. Screen materials shall consist of quality materials and colors that are harmonious with and or match the primary materials and colors used on the exterior of the principle structure. Building permit plans shall include details demonstrating compliance with this design standard.
- t. Fences and walls shall be constructed of material similar to, or compatible with and complementary to, the primary building material and architecture. Chain link type fences with or without wood slats or other inserts are not acceptable. Solid wood fences needed for security of a business and not visible from public right of-way are acceptable. Elevations for fences are subject to review and approval by the Current Planning Manager at the site plan review for building permit or special review permit.
- u. All building elevations that are visible from a public right-of-way shall not include loading docks, primary delivery doors and areas, trash containers or enclosures, or any features that are deemed unsightly in accordance with the City of Loveland Site Development Performance Standards and Guidelines.
- v. Parking lot screening adjacent to Highway 287 shall comply with the descriptions and depictions on Figure 6.18 and 6.20 of the Corridor Plan, as incorporated into the 1994 Loveland Comprehensive Master Plan.

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- w. In addition to the standards set forth in Title 18 of the Loveland Municipal Code, all signs shall comply with the design guidelines set forth on page 6.21 of the Corridor Plan, as incorporated into the 1994 Comprehensive Master Plan. All internally illuminated signs shall have sign faces that are either opaque or routed so as to allow illumination through or around only the sign graphics.
 - x. All commercial uses shall be screened from Kroh Park with intensive landscaping, an opaque fence or a masonry wall. Elevations for this feature shall be submitted and approved by the Current Planning Manager as part of any development or redevelopment proposal on Parcel 4.
8. Compliance with Larimer County Urban Area Street Standards. The Developers shall design and construct all public improvements in conformance with the Larimer County Urban Area Street Standards adopted on January 2, 2001, or any subsequent amendments thereto in effect at the time of application for a final development plan.
 9. Application of City of Loveland Site Development Standards and Performance Guidelines. Notwithstanding Section 1.02.A. of the City of Loveland Site Development Standards and Performance Guidelines, all portions of the Property shall be governed by the provisions of said Site Development Standards and Performance Guidelines.
 10. Incorporation. The terms and conditions of this Agreement shall be deemed to be incorporated into the Developers' Petition for annexation of the Property.
 11. 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. If conflicts between the Annexation Conditions listed in the Staff Report for City Council on October 15, 2002, and the terms and conditions of this Annexation Agreement occur, this Annexation Agreement shall prevail. This Agreement may only be amended by written agreement signed by the Developers and the City. Only the City Council, as a representative of the City, shall have authority to amend this Agreement.
 12. 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.
 13. 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 does not annex the Property, this Agreement shall become null and void and of no force or effect

return receipt requested mail shall be deemed effective as of the date it is deposited in the United States mail.

- 16. Waiver. No waiver by the City or Developers 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.
- 17. 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 constitution, statutes and laws of the State of Colorado, 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. Provided, however, if any obligation of this Agreement is declared invalid, the party deprived of the benefit thereof, shall be entitled to an equitable adjustment in its corresponding obligations and/or benefits and, in that event, the parties agree to negotiate in good faith to accomplish such equitable adjustment.
- 18. Paragraph Headings. Paragraph headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.

IN WITNESS WHEREOF, the parties have caused this Annexation Agreement to be executed as of the date first written above.



THE CITY OF LOVELAND, COLORADO

By: Kathleen R. Gilliland
Mayor

Donna Visconti
City Clerk

APPROVED AS TO FORM:

[Signature]
Assistant City Attorney

12

EXECUTED this 1st day of November, 2002.

By: Jeneal R. McKinley
Jeneal R. McKinley
5350 N. Garfield Avenue
Loveland, CO 80538

STATE OF COLORADO)

County of Larimer)ss)

Subscribed and sworn to before me this 1st day of November, 2002 by

Jeneal R. McKinley

WITNESS my hand and official seal.

My commission expires 10/07/02.



Heather M. McQueen
Notary Public

14

EXHIBIT A

Ozzie's First Addition to the City of Loveland, Colorado

That portion of the Northeast Quarter of Section 35 and the Northwest Quarter of Section 36, Township 6 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of the Northwest Quarter of said Section 36 as bearing South 00°07'00" East and with all bearings contained herein relative thereto:

Beginning at the Northwest corner of the Northwest Quarter of said Section 36; thence along the West line of the Northwest Quarter of said Section 36 South 00°07'00" East 1324.24 feet, more or less, to the Northwest corner of the South Half of the Northwest Quarter of said Section 36 and the TRUE POINT OF BEGINNING; thence along the North line of the South Half of the Northwest Quarter of said Section 36 South 89°43'28" East 499.05 feet to the Northwest corner of Tract "A", Shade Tree Park Fourth Addition to the City of Loveland, County of Larimer, State of Colorado; thence departing said North line and along the Westerly lines of said Tract "A", Shade Tree Park Fourth Addition and along the Northerly and Westerly lines of Lot 2, Block 1, Shade Tree Park First Subdivision to the City of Loveland, County of Larimer, State of Colorado and along the Northerly line of Lot 1, Block 1, Shade Tree Park First Subdivision to the City of Loveland, County of Larimer, State of Colorado and along the Northerly line of Shade Tree Park Fifth Addition to the City of Loveland, County of Larimer, State of Colorado the following six (6) courses and distances:

- | | | |
|----|----------------------|--------------|
| 1) | South 00°07'18" East | 28.57 feet; |
| 2) | North 89°46'11" East | 99.83 feet; |
| 3) | South 00°09'40" East | 172.65 feet; |
| 4) | North 89°47'00" West | 224.83 feet; |
| 5) | South 00°07'00" East | 337.72 feet; |
| 6) | North 89°44'05" West | 424.18 feet, |

more or less, to a point on the Westerly right-of-way line of U.S. Highway No. 287; thence departing said Northerly line of said Shade Tree Park Fifth Addition and along said Westerly right-of-way line of U.S. Highway No. 287 North 00°07'00" West 538.37 feet; thence departing said Westerly right of Way line and along the Westerly prolongation of the North line of the South Half of the Northwest Quarter of said Section 36 South 89°43'28" East 50.00 feet, more or less, to the Northwest corner of the South Half of the Northwest Quarter of said Section 36 and the TRUE POINT OF BEGINNING.

The above-described parcel contains 6.21 acres, more or less, and is subject to all easements and rights-of-way of record or existing.

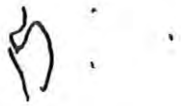


EXHIBIT B

Site plan identifying Parcels 1 through 5.

HABITAT FOR HUMANITY AUTOMOBILE SALES SPECIAL REVIEW #891

PROPERTY DESCRIPTION

LOT 1, BLOCK 1, OZZIE'S FIRST ADDITION to the City of Loveland, County of Larimer, State of Colorado.

PROPERTY ADDRESS

5250 North Garfield Avenue
Loveland, CO 80538

PROJECT NARRATIVE

Operate a retail store with automotive sales for a maximum of ten vehicles.

Current Planning Manager Approval Certificate

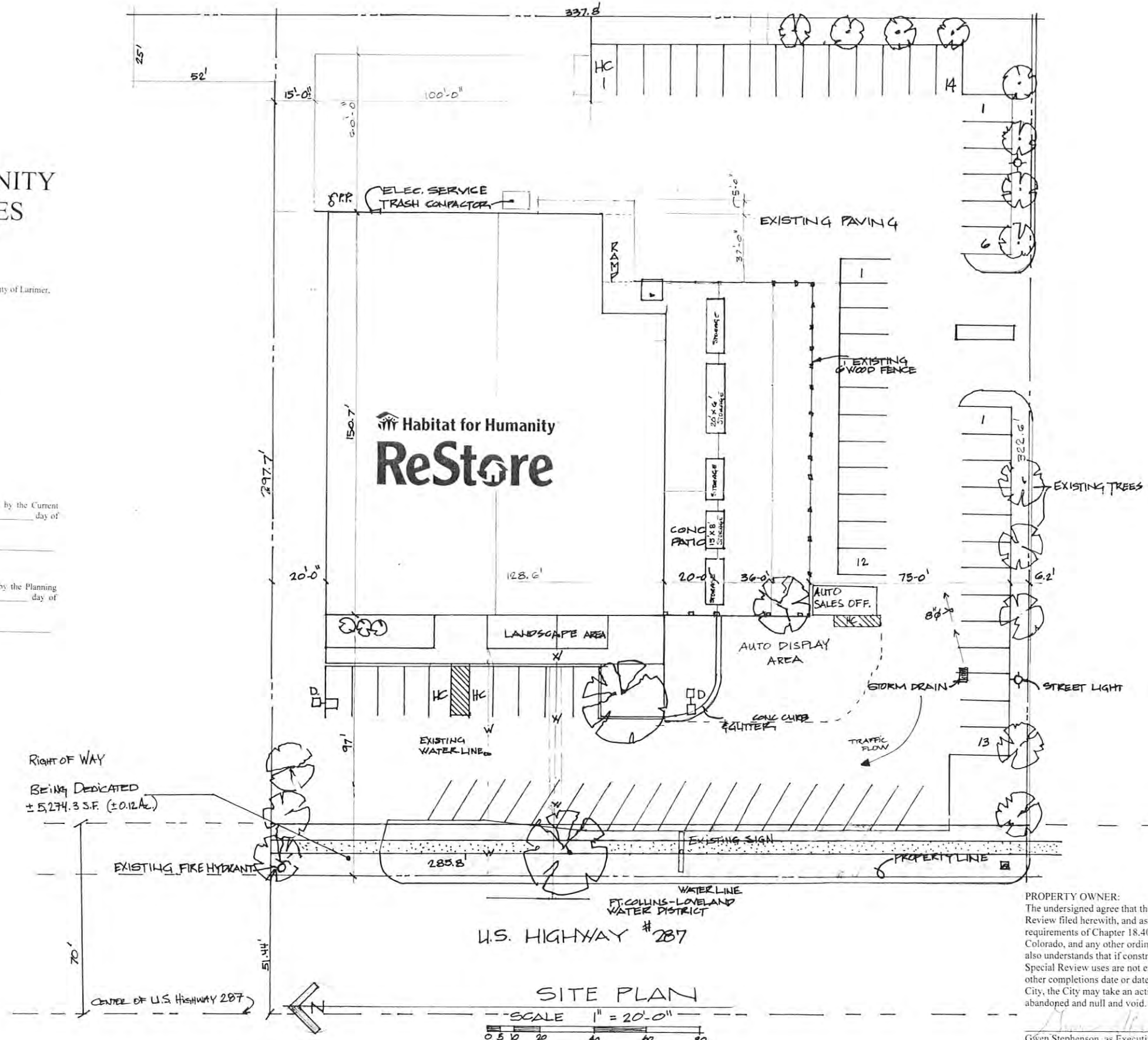
This Special Review is approved, subject to all conditions set forth herein, by the Current Planning Manager of the City of Loveland, Larimer County, Colorado, this _____ day of _____, 20__.

Current Planning Manager

Planning Commission Approval Certificate

This Special Review is approved, subject to all conditions set forth herein, by the Planning Commission of the City of Loveland, Larimer County, Colorado, this _____ day of _____, 20__.

Planning Commission Chair



PROPERTY OWNER:
The undersigned agree that the real property described in the application for Special Review filed herewith, and as shown on the site plan, shall be subject to the requirements of Chapter 18.40 of the Municipal Code of the City of Loveland, Colorado, and any other ordinances of the City of Loveland thereto. The undersigned also understands that if construction of all improvements is not completed and if the Special Review uses are not established within three years of the date of approval, or other completions date or dates established in a development agreement approved by the City, the City may take an action to declare the permit and Special Review Plans abandoned and null and void.

Gwen Stephenson
Gwen Stephenson, as Executive Director for
Habitat For Humanity Loveland, Colorado Affiliate

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before
_____, 2011, by Gwen Stephenson,
Habitat For Humanity Loveland, Colorado Affiliat
Witness my hand and official seal. My cc

Susan M. Berg
Notary Public



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

AGENDA ITEM: 11
MEETING DATE: 9/20/2011
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Brian Burson, Current Planning Division

TITLE:

AN ORDINANCE VACATING A PORTION OF A UTILITY AND DRAINAGE EASEMENT LOCATED ON LOT 7, BLOCK 2, WINDEMERE 1st SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO.

DESCRIPTION:

A public hearing to consider a legislative action to adopt an ordinance, on first reading, vacating a portion of a utility and drainage easement on Lot 7, Block 2, Windemere 1st Subdivision, aka 2629 West 28th Street.

BUDGET IMPACT:

Yes No

SUMMARY:

The site is located along the north side of West 28th Street, approximately 450 feet east of North Wilson Avenue. The application proposes to vacate a 4 foot x 20 foot portion of the easement that lies along the rear of the lot to allow the property owner to install a storage shed/workshop on this residential property. This easement was originally dedicated by the subdivision plat of Windemere 1st Subdivision approved in 1976. City staff and other providers of utilities have determined that this portion of the platted easement on this property is no longer needed.

Planning Commission action is not required for vacation of a utility easement. No Planning Commission staff report or minutes are attached.

LIST OF ATTACHMENTS:

- A. Vacation ordinance
- B. Staff memorandum dated September 20, 2011, with exhibits.

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for City Council action:

Move to make the findings in Section V. of the staff memorandum dated September 20, 2011, and approve, on first reading, AN ORDINANCE VACATING A PORTION OF A UTILITY AND DRAINAGE EASEMENT LOCATED ON LOT 7, BLOCK 2, WINDEMERE 1st SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO.

REVIEWED BY CITY MANAGER:

FIRST READING: September 20, 2011

SECOND READING: _____

ORDINANCE NO.

AN ORDINANCE VACATING A PORTION OF A UTILITY AND DRAINAGE EASEMENT ON LOT 7, BLOCK 2, WINDEMERE FIRST SUBDIVISION

WHEREAS, the City Council, at a regularly scheduled meeting, considered the vacation of a portion of a utility and drainage easement described below, located in Lot 7, Block 2, Windemere First Subdivision to the City of Loveland, County of Larimer, State of Colorado;

WHEREAS, the City Council finds and determines that the portion of the utility and 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 portion of a utility and drainage easement be and the same is hereby vacated:

A portion of Lot 7, Block 2, WINDEMERE FIRST SUBDIVISION, to the City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

That portion of the Southerly Four (4) Feet of the Northerly Ten (10) Feet of said of Lot 7, Block 2, WINDEMERE FIRST SUBDIVISION more particularly described as follows:

Beginning at the Northwest corner of said of Lot 7, Block 2, WINDEMERE FIRST SUBDIVISION; thence along the Westerly line of said of Lot 7, Block 2, WINDEMERE FIRST SUBDIVISION South 00°53'00" West 6.00 feet and again South 89°07'00" East 7.00 feet to a point on the Easterly line of an existing Seven (7) foot Utility Easement and the TRUE POINT OF BEGINNING; thence continuing South 89°07'00" East 20.00 feet; thence South 00°53'00" West 4.00 feet, more or less, to a point on the Southerly line of an existing Ten (10) Foot Utility Easement; thence along said Southerly line of said existing Ten (10) Foot Utility Easement North 89°07'00" West 20.00 feet, more or less, to a point on said Easterly line of said existing Seven (7) foot Utility Easement; thence departing said Southerly line of said existing Ten (10) Foot Utility Easement and along said Easterly line of said existing Seven (7) foot Utility Easement North 00°53'00" East 4.00 feet to the TRUE POINT OF BEGINNING.

Containing 80.0 Square Feet (0.0018 Acres), more or less.

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:


Deputy City Attorney



**Development Services
Current Planning**

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

M E M O R A N D U M

TO: City Council

FROM: Brian Burson, Current Planning Division

DATE: September 20, 2011

SUBJECT: Vacation of a portion of utility and drainage easement on Lot 7, Block 2, Windemere 1st Subdivision

I. EXHIBITS

1. Vicinity Map
2. Applicant's letter of request
3. Vacation Exhibits

II. KEY ISSUES

Staff believes that there are no outstanding issues regarding this requested easement vacation.

III. STAFF SUMMARY

A. Project Description

The application proposes to vacate a 4 foot X 20 foot portion of the easement that lies along the rear of this lot to allow the property owner to install a storage shed/workshop. This easement was originally dedicated by the plat of Windemere 1st Subdivision, as approved in 1976. City staff and other providers of utilities have determined that this portion of the platted easement on this property is no longer needed. The proposed storage shed/workshop will meet minimum setbacks for accessory structures.

B. Site location

The site is located along the north side of West 28th Street, approximately 450 feet east of North Wilson Avenue. The property is one of eight (8) lots platted along the north side of this stretch of West 28th Street, between North Wilson Avenue and Glendevey Drive.



IV. BACKGROUND

3/2/76 - annexation of Windemere 2nd Addition

4/6/76 - approval of Windemere 1st Subdivision

V. FINDINGS and ANALYSIS

The following two findings must be met in order for the City Council to vacate the water line easement. These findings are included in section 16.36.010.B of the Loveland Municipal Code.

1. *That no land adjoining any right-of-way to be vacated is left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement.*

Transportation: Public street right-of-way, dedicated as West 28th Street, exists to serve as vehicular and pedestrian access to the property. Since the proposed vacation of the utility easement does not involve the vacation of any existing public street or alley rights-of-way, no land will be left without an established public or private right-of-way or easement connecting said land with the established public or private right-of-way or easement.

2. *That the easement to be vacated is no longer necessary for the public use and convenience.*

Transportation: The vacation is solely for a utility and drainage easement along the rear of the property. The vacation of the easement has no bearing on the existing public use and convenience in regards to vehicular access.

Water/Wastewater: The property in which this easement lies is within the City's current service area for both water and wastewater. The vacation of this portion of the easement will not impact the existing water and wastewater utility configuration within and adjacent to this development. The portion of the easement to be vacated is not needed for the public use and convenience.

Power: This property is currently served from a pedestal in the southeast corner of the adjacent property at 2641 W 28th Street. A single phase primary conductor runs along the rear property line and secondary underground conductor runs along the west property line. The proposed portion of the easement to be vacated is not needed for the public use and convenience.

Stormwater: The existing utility and drainage easement, of which a 4 foot by 20 foot area is to be vacated, is not used to convey stormwater and thus is not necessary for the public use and conveyance of stormwater.

VI. CONDITIONS

No City departments or other review agencies have submitted any recommended conditions for this application.



VICINITY MAP

EXHIBIT 1

June 27, 2011

To: Planning Division
500 East Third Street
Loveland, CO 80537

From: Clark Judy
2629 West 28th Street
Loveland, CO 80538
970-667-9158

Re: Request for the partial vacation of an easement

I am requesting that a section of the easement along the back side of our lot, 4 feet deep x 20 feet wide, be vacated for the purpose of constructing a storage shed/workshop. The existing shed (which is on the easement) will be removed. We plan to install a Tuff Shed TRS-800 building with paint and roofing to match our house. The vacation of the front 4 feet of the easement will allow better utilization of our yard, while preserving access and honoring the 5 foot setback requirement for the structure.

The documents listed on the "vacation submittal checklist" are attached.

I sent a letter and site sketch to the following; copies of their emails are attached:

Xcel Energy, Terry Stencel, responded via email:

"After reviewing your request I don't see any problem vacating that portion of the easement."

COMCAST, Bill Blair, verbally agreed with the vacation during a site visit.

Loveland Water & Power, Melissa Morin, responded via email:

"The water and wastewater utility division is willing to allow you to vacate the utility easement as shown within the shaded portion of your exhibit."

Loveland Water & Power, Kathleen Porter, responded via email:

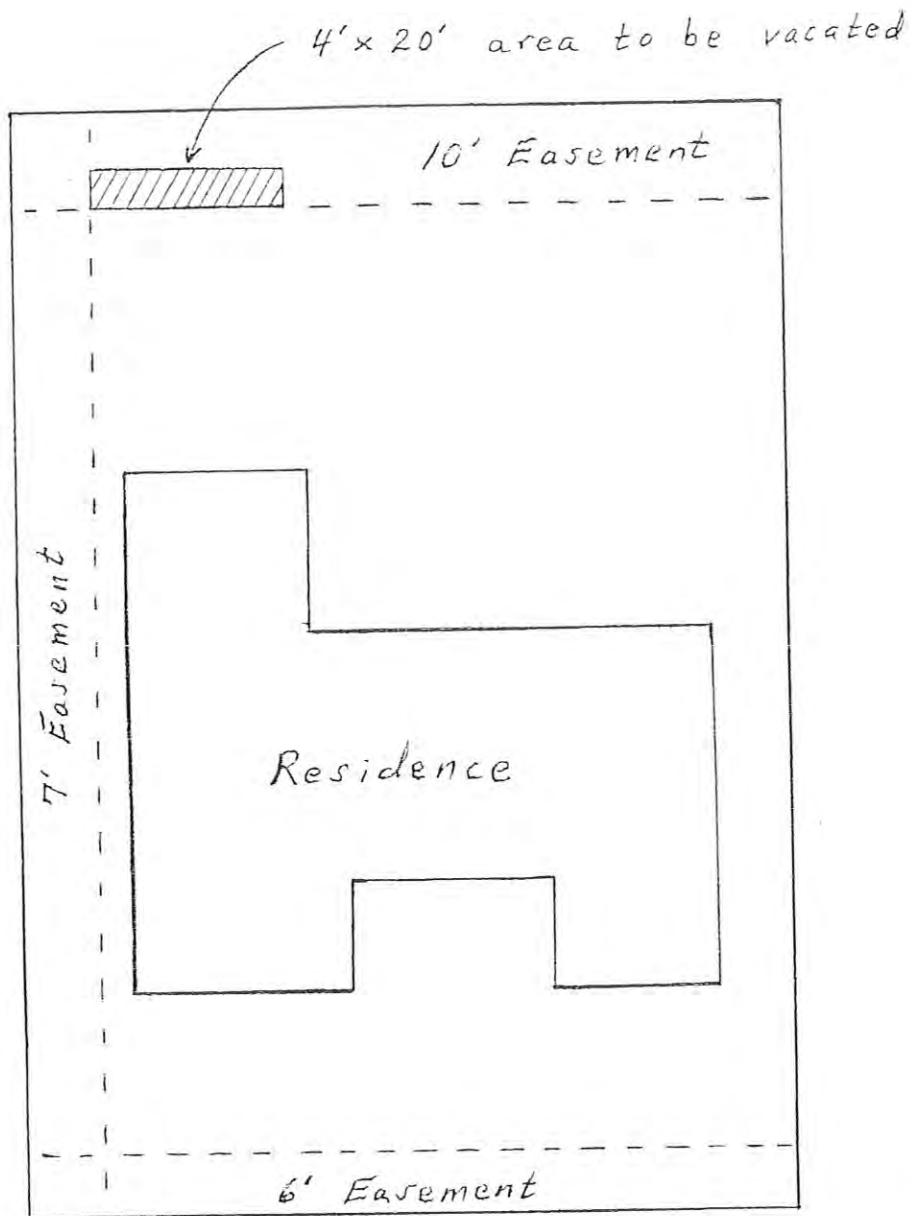
"We can vacate a portion of the utility easement in question, but not the whole length of the property."

Qwest, Donna Mastriona, did not respond.

Kathleen Porter qualified her approval by restricting the vacated area to the foot print of the proposed structure, which we addressed by limiting our request to an area 20 feet wide (starting at the edge of the easement along the west side of the yard and extending 20 feet to the east).

RECEIVED
JUL 27 2011

EXHIBIT 2



2629 W 28th Street

RECEIVED
JUL 27 2011



INTERMILL LAND SURVEYING, INC.
1301 North Cleveland Avenue – Loveland, Colorado 80537
P: (970) 669-0516 F: (970) 635-9775
E: intermill@qwestoffice.net

P-11-7018

July 25, 2011

PROPERTY DESCRIPTION FOR EASEMENT VACATION

That portion of Lot 7, Block 2, WINDEMERE FIRST SUBDIVISION, to the City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

The Southerly Four (4) Feet of the Northerly Ten (10) Feet of said of Lot 7, Block 2, WINDEMERE FIRST SUBDIVISION, EXCEPTING THEREFROM the Westerly Seven (7) Feet thereof, the entire Easement Vacation Area being more particularly described as follows:

Beginning at the Northwest corner of said of Lot 7, Block 2, WINDEMERE FIRST SUBDIVISION; thence along the Westerly line of said of Lot 7, Block 2, WINDEMERE FIRST SUBDIVISION South 00°53'00" West 6.00 feet and again South 89°07'00" East 7.00 feet to a point on the Easterly line of an existing Seven (7) foot Utility Easement and the TRUE POINT OF BEGINNING; thence continuing South 89°07'00" East 20.00 feet; thence South 00°53'00" West 4.00 feet, more or less, to a point on the Southerly line of an existing Ten (10) Foot Utility Easement; thence along said Southerly line of said existing Ten (10) Foot Utility Easement North 89°07'00" West 20.00 feet, more or less, to a point on said Easterly line of said existing Seven (7) foot Utility Easement; thence departing said Southerly line of said existing Ten (10) Foot Utility Easement and along said Easterly line of said existing Seven (7) foot Utility Easement North 00°53'00" East 4.00 feet to the TRUE POINT OF BEGINNING.

Containing 80.0 Square Feet (0.0018 Acres), more or less.

PREPARED BY AND ON BEHALF OF:

INTERMILL LAND SURVEYING, INC.
1301 North Cleveland Avenue
Loveland, Colorado 80537
P: (970) 669-0516
F: (970) 635-9775
E: intermill@qwestoffice.net

Robert George Persichitte
Colorado PLS 34174

Date: 07/25/2011



RECEIVED
JUL 27 2011

**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: 12
MEETING DATE: 9/20/2011
TO: City Council
FROM: Renee Wheeler, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

A Resolution establishing a date, time, and place for a Public Hearing on the 2012 Recommended Budget for the City of Loveland, Colorado.

DESCRIPTION:

This is an administrative action. The resolution sets the date for the public hearing for October 4, 2011.

BUDGET IMPACT:

Yes No

SUMMARY:

The City Charter requires an action to set the date, time, and place for a public hearing on the 2012 Recommended Budget, after it has been submitted by the City Manager for Council consideration. This action satisfies that requirement. The resolution sets the date for the public hearing for October 4, 2011, to coincide with consideration of the budget ordinances to adopt the 2012 Budget on first reading.

LIST OF ATTACHMENTS:

1. Resolution establishing the date, time and place for a Public Hearing on the 2012 Recommended Budget for the City of Loveland, Colorado.
-

RECOMMENDED CITY COUNCIL ACTION:

Approval of the Resolution.

REVIEWED BY CITY MANAGER:

RESOLUTION #R-54-2011

A RESOLUTION ESTABLISHING A DATE, TIME, AND PLACE FOR A PUBLIC HEARING ON THE 2012 RECOMMENDED BUDGET FOR THE CITY OF LOVELAND, COLORADO

WHEREAS, pursuant to Section 11-2(b) of the Loveland City Charter, the City Manager is required to submit to the City Council, on or before the first Tuesday in October of each year, a proposed budget for the City for the next ensuing fiscal year; and

WHEREAS, on September 13, 2011, the City Manager submitted the 2012 Recommended Budget, including the 2012-2016 Recommended Capital Projects Program, to the City Council; and

WHEREAS, in accordance with Section 11-4(a) of the Loveland City Charter, the City Council desires to set a date, time, and place for a public hearing on the 2012 Recommended Budget.

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

Section 1. That a public hearing is hereby scheduled to consider the adoption of the 2012 Recommended Budget for October 4, 2011 at 6:30 p.m., at which time objections of the electors of the City of Loveland shall be considered. Said hearing shall be held at the Loveland Municipal Complex, 500 East Third Street, Loveland, Colorado.

Section 2. That the City Clerk shall give notice of said hearing in the manner prescribed by Section 11-4(b) of the Loveland City Charter and § 29-1-106, C.R.S.

Section 3. That this Resolution shall be effective as of the date of its adoption.

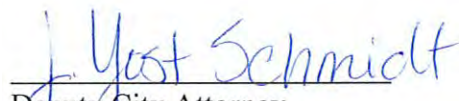
ADOPTED this 20th day of September, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
BUSINESS DEVELOPMENT OFFICE
 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 13
MEETING DATE: 9/20/2011
TO: City Council
FROM: Betsey Hale, Economic Development
PRESENTER: Betsey Hale

TITLE:

A Resolution approving Amendment Number One to Fee Deferral Agreement

DESCRIPTION: This is an administrative action to consider a resolution approving an amendment to a fee deferral agreement approved by Council in 2006. Pine Hill Partners, LLLP, has requested that in consideration of a payment of \$5,000.00 on or before November 1, 2011, the payment date for capital expansion fees and building permit fees which were deferred until October 31, 2011 under the Deferral Agreement be extended until November 1, 2014. Deferred capital expansion fees and building permit fees will be reduced by City sales tax from the Eslan Park Event Center collected and paid to the City through November 1, 2014.

BUDGET IMPACT:

Yes No

SUMMARY: City Council Resolution No. 66-2006 adopted July 25, 2006 approved a sales tax credit based incentive for the deferral of \$160,000.00 in capital expansion fees and building permit fees related to the construction of an event center. The agreement provided that 100% of the sales taxes collected by activity in or from the event center for a period of 36 months would be credited against the amount of deferred fees, up to but not to exceed \$160,000.00. Any balance due the City after 36 months would be paid by the owners, and this payment was the subject of a personal guarantee. The estimated balance due the City upon October 31, 2011 is \$110,575.00.

The Fee Deferral Agreement approved in 2006, permitted Eslan Park to assign its interest in the agreement to Pine Hill Partners, LLLP, a Colorado limited liability limited partnership. An assignment of the agreement was completed with a form acceptable by the City Manager, as required by the agreement, and was approved June 14, 2011.

City Staff in the legal, finance and the economic development departments met with the owners on numerous occasions in 2010 and 2011 to discuss the performance agreement. Due to unforeseen economic conditions, the business has not generated the sales tax originally projected. However; the business is a going concern and a benefit to the local economy. The Event Center continues to generate sales tax and should meet the projections over time. City staff worked with the owners to draft the amendment and believe it is the best resolution to meet the intent of the original agreement.

Pine Hill Partners, LLLP, is requesting the City consider an extension of the deferral period until November 1, 2014 and Pine Hill would make a payment of \$5,000.00 on or before November 1, 2011. All City sales tax collected with respect to taxable transactions in or from the event center and paid to the City during the 36 month extension will be credited to the outstanding balance due the City.

LIST OF ATTACHMENTS:

1. Resolution and Amendment Number One to Fee Deferral Agreement
2. Assignment of agreement to Pine Hill Partners, LLLP

RECOMMENDED CITY COUNCIL ACTION: Approve Resolution

REVIEWED BY CITY MANAGER:

RESOLUTION #R-55-2011**A RESOLUTION APPROVING AMENDMENT NUMBER ONE TO FEE DEFERRAL AGREEMENT**

WHEREAS, Eslan Park, LLC, a Colorado limited liability company (“Eslan Park”) and the City entered into that certain Eslan Park Event Center Fee Deferral Agreement dated July 25, 2006 (the “Agreement”), approved by City Council by adoption of Resolution No. 66-2006; and

WHEREAS, the Agreement permitted Eslan Park to assign its interest in the Agreement to Pine Hill Partners, LLLP, a Colorado limited liability limited partnership (“Pine Hill”) provided that Pine Hill assumed all of Eslan Park’s obligations under the Agreement, and such an assignment has been accomplished and accepted and approved on behalf of the City pursuant to that certain Assignment of Agreement dated June 14, 2011 (the “Assignment”); and

WHEREAS, the Agreement deferred, for a period of 36 months ending October 31, 2011, payment of certain Fees, including CEF’s and building permit fees, in the total amount of \$160,000.00 due in connection with construction of an Event Center (the “Deferred Fees”), as more specifically set forth in the Agreement; and

WHEREAS, the Agreement further provided that one hundred percent (100%) of the City’s sales taxes collected from sales at the Event Center during the 36 month deferral period be credited to the payment of the Deferred Fees, with the balance of the Deferred Fees, if any, to be paid to the City on November 1, 2011 (the “Payment Date”); and

WHEREAS, the Hamid Eslan and Janice Eslan (collectively, the “Eslans”), as managers and members of Eslan Park, guaranteed any payment of the Deferred Fees due under the Agreement; and

WHEREAS, Pine Hill and the Eslans have requested that the Payment Date for the Deferred Fees be extend to November 1, 2014, and in consideration of such extension has offered to make a payment of \$5,000.00 on or before November 1, 2011 to be credited against the Deferred Fees, all as more fully set forth in Amendment Number One to Eslan Park Center Fee Deferral Agreement attached hereto as **Exhibit A** and incorporated herein by this reference (“Amendment Number One”); and

WHEREAS, the City Council believes the execution of Amendment Number One will further the public purposes of providing significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased property tax revenues to the City, that were served by the Agreement and,

therefore, that the provisions of Amendment Number One are in the best interests of the public and the City.

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

Section 1. That the City Council finds that the Amendment Number One will further the public purposes of providing the social and economic benefits to the citizens of Loveland in the form of jobs, economic development, and increased property tax revenues to the City that were served by the Agreement and, therefore, that Amendment Number One is in the best interest of the public and the City.

Section 2. That Amendment Number One is hereby approved.

Section 3. That the City Manager is authorized, following consultation with the City Attorney, to modify Amendment Number One in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 4. That the City Manager and the City Clerk are hereby authorized and directed to execute Amendment Number One on behalf of the City of Loveland.

Section 5. That this Resolution shall be effective as of the date and time of its adoption.

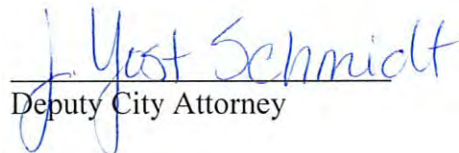
ADOPTED this 20th day of September, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

AMENDMENT NUMBER ONE TO FEE DEFERRAL AGREEMENT

THIS AMENDMENT NUMBER ONE TO FEE DEFERRAL AGREEMENT (Amendment Number One”) is made this ___ day of _____, 2011, by and between the **City of Loveland, Colorado**, a home rule municipality (“City”) and **Pine Hill Partners, LLLP**, a Colorado limited liability limited partnership (“Pine Hill”) and **Hamid Eslan** and **Janice Eslan** (collectively, the “Eslans”).

WHEREAS, Eslan Park, LLC, a Colorado limited liability company (“Eslan Park”) and the City entered into that certain Eslan Park Event Center Fee Deferral Agreement dated July 25, 2006 (the “Agreement”), approved by City Council by adoption of Resolution No. 66-2006; and

WHEREAS, the Agreement permitted Eslan Park to assign its interest in the Agreement to Pine Hill provided that Pine Hill assumed all of Eslan Park’s obligations under the Agreement, and such an assignment has been accomplished and accepted and approved on behalf of the City pursuant to that certain Assignment of Agreement dated June 14, 2011 (the “Assignment”); and

WHEREAS, the Agreement deferred, for a period of 36 months ending October 31, 2011, payment of certain Fees, including CEF’s and building permit fees, in the total amount of \$160,000.00 due in connection with construction of an Event Center (the “Deferred Fees”), as more specifically set forth in the Agreement; and

WHEREAS, the Agreement further provided that one hundred percent (100%) of the City’s sales taxes collected from sales at the Event Center during the 36 month deferral period be credited to the payment of the Deferred Fees, with the balance of the Deferred Fees, if any, to be paid to the City on November 1, 2011 (the “Payment Date”); and

WHEREAS, the Eslans, as managers and members of Eslan Park, guaranteed payment of the Deferred Fees under the Agreement; and

WHEREAS, Pine Hill and the Eslans have requested that the Payment Date for the Deferred Fees be extend to November 1, 2014, and in consideration of such extension has offered to make a payment of \$5,000.00 on or before November 1, 2011 to be credited against the Deferred Fees, all as more fully set forth in this Amendment Number One; and

WHEREAS, by adoption of Resolution No. _____, the City Council has made a finding that the execution of this Amendment Number One will further the public purposes of providing significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased property

tax revenues to the City, that were served by the Agreement and, therefore, that the provisions of this Amendment Number One are in the best interests of the public and the City.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. In recognition and implementation of the Assignment and the assumption of all obligations of Eslan Park, LLC, a Colorado limited liability company, all references in the Agreement to Eslan Park, LLC, a Colorado limited liability company, shall hereinafter be deemed to refer to Pine Hill Partners, LLLP, a Colorado limited liability limited partnership.
2. Paragraph 2 of the Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

“2. Payment of Fees.

A. Pine Hill, as successor to Eslan Park, promises to pay to the City the Fees in the sum of One Hundred Sixty Thousand Dollars (\$160,000), less credits available as set forth in Paragraph 3 below and less any amounts paid pursuant to paragraph 2.B below (the “Net Deferred Amount”), on or before November 1, 2014 (the “Payment Date”); provided however, that in the event that the operation of the Event Center as a business is discontinued for any reason other than a Permitted Reason (as defined below) at any time prior to the Payment Date, Pine Hill shall pay the total amount required in this paragraph 2 on the date that is sixty (60) days after the date business is so discontinued. As used herein, “Permitted Reasons” shall mean (i) damage or destruction due to casualty; (ii) force majeure, (iii) condemnation, (iv) labor disputes, or (v) periods of remodel, remerchandising, renovation or repair. So long as Pine Hill is not in default of this payment, such amount shall bear no interest.

B. Pine Hill shall pay the amount of Five Thousand Dollars (\$5,000) to the City on or before October 31, 2011 to be credited against the Fees due hereunder (the “2011 Payment”). In the event that Pine Hill does not make the 2011 Payment on or before October 31, 2011, then notwithstanding the Payment Date set forth above or the provisions of paragraph 3 below, the Net Deferred Amount shall become due and payable on or before December 31, 2011.”

3. Paragraph 3 of the Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

“3. Credit for City Sales Taxes Collected and Paid

Subject to the provisions of paragraph 4 below, Pine Hill may reduce the payment required in paragraph 2 above and credit against the deferred Fees of \$160,000.00, an amount equal to one hundred percent (100%) of all City sales taxes collected by Pine Hill and received by the City with respect to taxable transactions in or from the Event Center during the period commencing on the first day of the month following the date upon which the Event Center opened to the public for business and terminating on the Payment Date.

This credit, however, shall only be taken for City sales taxes so collected that have in fact been paid to the City. In addition, the total amount of the credits granted herein shall in no event exceed the \$160,000 of the Fees deferred in this Agreement.”

3. By their signature below, the Eslans acknowledge and agree that their unconditional guarantee of Pine Hill’s full and punctual performance of any and all obligations under the Agreement, including but not limited to payment of the Net Deferred Amount, shall remain in full force and effect in accordance with the provisions of the Agreement, as modified by this Amendment Number One.
4. Except as expressly modified by this Amendment Number One, the Agreement shall remain in full force and effect in accordance with its terms.

DATED THIS _____ DAY OF _____, 2011.

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ASSIGNMENT OF AGREEMENT

THIS ASSIGNMENT, made and entered into this 14th day June, 2011, by and between **Eslan Park, LLC, a Colorado limited liability company (“Assignor”) and Hamid Eslan and Janice Eslan, (“Eslans”), and Pine Hill Partners, LLLP, a Colorado limited liability limited partnership (the “Assignee”).**

WHEREAS, the Assignor, as a party to the “Eslan Park Center Fee Deferral Agreement” as amended by the “Amendment Number One To Eslan Park Center Fee Deferral Agreement” [collectively the “Agreement”] with the City of Loveland, Colorado (the “City”) as the other party to the Agreement; and

WHEREAS, the Eslans, as manger and members of Assignee, have guaranteed Assignee’s performance of its obligations under the Agreement, including payment of the Deferred Fees, if any, due thereunder; and

WHEREAS, subject as hereinafter provided, the Assignor desires to assign the Agreement to the Assignee; and

WHEREAS, subject as hereinafter provided, the Assignee agrees to assume and perform the Assignor’s obligations under the Agreement; and

WHEREAS, the City has consented to such assignment.


NOW, THEREFORE, the parties hereto agree as follows:

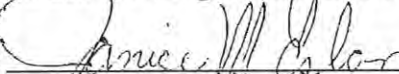
1. The Assignor hereby assigns, transfers, and quit claims unto the Assignee all rights, title, and interest of the Assignor in and to the Agreement as of the date of this Assignment.
2. The Assignee hereby agrees to accept assignment of the Agreement, and hereby assumes and agrees to perform all obligations, duties, responsibilities, and liabilities of Assignor as a party thereunder, whether accruing before or after the date of this Assignment. The Assignor shall not remain responsible and for the performance of any obligation of the Assignor under the Agreement.
3. By their signature below, the Eslans acknowledge and agree that their unconditional guarantee of full and punctual performance of any and all obligations under the Agreement, including but not limited to payment of any amounts due thereunder, shall remain in full force and effect in accordance with the provisions of the Agreement, notwithstanding this Assignment.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR

Eslan Park, LLC,
a Colorado limited liability company

By: 
Hamid Eslan, Manager and Member

By: 
Janice Eslan, Manager and Member

State of Colorado)
) ss.
County of Larimer)

ASSIGNEE

Pine Hill Partners, LLLP,
a Colorado limited liability limited partnership

By: *Hamid Eslan*
Hamid Eslan, as General Partner

State of Colorado)
) ss.
County of Larimer)

The foregoing instrument was acknowledged before me this 14th day of June, 2011 by Hamid Eslan, as General Partner of Pine Hill Partners, LLLP, a Colorado limited liability limited partnership.

Danielle Hill-Lidmark

Notary Public
(S E A L)

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ACCEPTED AND APPROVED
CITY OF LOVELAND,
a Colorado home rule municipality

By: William D. Cahill
William D. Cahill, City Manager

ATTEST:

Jennie M. Weaver
City Clerk Deputy



APPROVED AS TO FORM

J. Gost Schmidt
Deputy City Attorney

State of Colorado)
) ss.
County of Larimer)

The foregoing instrument was acknowledged before me this 16 day of June 2011 by William D. Cahill, City Manager, City of Loveland, Colorado.

Mary Skipworth
Notary Public
(S E A L)





CITY OF LOVELAND
BUSINESS DEVELOPMENT OFFICE
 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 14
MEETING DATE: 9/20/2011
TO: City Council
FROM: Betsey Hale, Economic Development
PRESENTER: Betsey Hale

TITLE: Holding Costs for ACE Park Campus

DESCRIPTION: This is an information only item. The City purchased the former Agilent Technologies campus on June 23, 2011. At that time, funding was appropriated to cover two months of holding costs for the operations of the site. City staff is conservatively estimating the City may own the property until April of 2012.

BUDGET IMPACT:

Yes No

Staff is estimating total holding costs for 8 months to be \$490,000.00. Because the incentive fund is currently appropriated, the only new funding not currently appropriated is \$245,000 for the January to April 2012 time frame. This funding will be incorporated into the 2012 Budget.

SUMMARY: City holding costs for the former Agilent property for the remainder of 2011 are estimated to be \$245,000. This amount is available in the City Council incentive fund and is an appropriate use of these funds. The current balance in the fund is \$705,000, so the use for this purpose leaves \$460,000 available in the incentive fund for 2011. These costs (\$245,000) can be administratively transferred to the Facilities Management Division, and will be transferred unless the Council directs otherwise. The holding costs for the months of January-April 2012 will be appropriated in the 2012 budget also from the City Council incentive fund and this is also estimated to be \$245,000.00.

LIST OF ATTACHMENTS: None

RECOMMENDED CITY COUNCIL ACTION:

No action required at this time.

REVIEWED BY CITY MANAGER:

**CITY OF LOVELAND**
CITY MANAGER

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 15
MEETING DATE: 9/20/2011
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill

TITLE:

A Resolution Amending the Scheduled Meeting Dates of the City of Loveland Board of Retirement

DESCRIPTION:

This is an administrative action to change the meeting dates of the City of Loveland Board of Retirement from the fourth Thursday of January, April, July and October of each calendar year to the second Thursday of February, May, August and November of each calendar year.

BUDGET IMPACT:

Yes No

SUMMARY:

The City of Loveland Board of Retirement currently meets on the fourth Thursday of January, April, July and October of each calendar year. These meeting dates do not provide the City's retirement plan consultant, Innovest, with sufficient time to review the quarterly and annual financial performance data of the City of Loveland Employees' Retirement Plan and provide the Board with feedback at the quarterly meetings. On August 31, 2011, the Board approved a motion to recommend that City Council change the Board meeting dates to the Second Thursday of February, May, August and November of each calendar year in order to provide Innovest with an opportunity to review and prepare an analysis of the financial performance data prior to the Board's quarterly meetings.

LIST OF ATTACHMENTS:

A Resolution Amending the Scheduled Meeting Dates of the City of Loveland Board of Retirement

RECOMMENDED CITY COUNCIL ACTION:

Motion to approve the resolution.

REVIEWED BY CITY MANAGER:

RESOLUTION #R-56-2011

**A RESOLUTION AMENDING THE SCHEDULED MEETING DATES OF THE
CITY OF LOVELAND BOARD OF RETIREMENT**

WHEREAS, on December 7, 2010, City Council adopted Resolution #R-67-2010 setting forth the 2011 meeting dates for the City's boards and commissions, including the City of Loveland Board of Retirement (the "Board"); and

WHEREAS, the Board meeting time is currently set on the fourth Thursday of January, April, July and October of each calendar year at 2:00 p.m. in the Main Floor Conference Room, 500 East Third Street, Loveland, Colorado; and

WHEREAS, the City's retirement consultant, Innovest Portfolio Solutions, LLC ("Innovest"), is unable to review and provide the Board with analysis on the financial performance data of the City of Loveland Employees' Retirement Plan because the financial data is released too closely to the current Board meeting dates; and

WHEREAS, on August 31, 2011, the Board approved a motion to recommend that City Council change the Board meeting dates to provide Innovest sufficient time to review the financial performance data prior to the Board's quarterly meetings.

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

Section 1. That the meeting dates adopted in Resolution #R-67-2010 are hereby amended to change the Board's meeting dates from the fourth Thursday of January, April, July and October of each calendar year to the Second Thursday of February, May, August and November of each calendar year. The meeting time and location shall remain the same: 2:00 p.m. in the Main Floor Conference Room, 500 East Third Street, Loveland, Colorado.

Section 2. That Resolution #R-67-2010, as amended herein and by prior resolutions, shall remain in full force and effect.

Section 3. That pursuant to City Code Section 2.14.020B, the City Clerk is directed to publish the revised meeting dates established by this Resolution within seven days after the date of this Resolution to be published in a newspaper of general circulation in the City and in addition post such notice of revised meeting dates in a conspicuous place in the City Municipal Building.

Section 4. That this Resolution shall take effect as of the date and time of its adoption.

ADOPTED this ____ day of September, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney



CITY OF LOVELAND
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 16
MEETING DATE: 9/20/2011
TO: City Council
FROM: City Manager's Office
PRESENTER: Alan Krcmarik, Executive Fiscal Advisor

TITLE:

A Resolution to Amend the 1966 Intergovernmental Agreement between the City of Loveland and the Loveland Rural Fire Protection District to Modify the Composition of the Board of Trustees of the Consolidated Firemen's Pension Fund of Loveland and Rural District and to Set Attendance Requirements

DESCRIPTION:

This is an administrative action to amend the 1966 intergovernmental agreement between the City of Loveland and the Loveland Rural Fire Protection District ("LRFPD") to modify the board composition of the Consolidated Firemen's Pension Fund of Loveland and Rural District (the "Consolidated Pension Fund"), effective January 1, 2012, to reflect the reality of fewer volunteer firefighters being available to serve on the board, the lack of any formal volunteer firefighter organization to designate representatives to the board, and the need to assure participation by board members. The proposed composition of the board is as follows: three representatives appointed by City Council with preference for a volunteer firefighter in one position, three representatives appointed by the LRFPD with preference for a volunteer firefighter in one position, and one representative appointed by the sitting members of the board with a preference for a volunteer firefighter.

BUDGET IMPACT:

Yes No

SUMMARY:

Since 1966 the City and the LRFPD have jointly participated in the Consolidated Pension Fund for their volunteer firefighters. The Consolidated Pension Fund is currently comprised of seven members: three representatives from the volunteer firefighters, two representatives appointed by City Council, and two representatives appointed by the LRFPD. Over the past 25 years the

number of volunteer firefighters available to serve on the Consolidated Pension Fund board has diminished significantly because participation in the City's fire and rescue department, which also serves the LRFPD, has shifted from primarily volunteer firefighters to paid City employee firefighters. Also, the organization which previously acted as a voice for the volunteer firefighters and designated volunteer firefighters for the Consolidated Pension Fund board is no longer in existence. These changes have left the Consolidated Pension Fund board unable to maintain sufficient members to properly fulfill its obligations.

As a result, the City and the LRFPD desire to modify the composition of the Consolidated Pension Fund board to reflect the reality of fewer volunteer firefighters being available to serve on the board and the lack of any formal volunteer firefighter organization to designate representatives to the board. This modification will maximize the opportunity for volunteer firefighters to act as representatives on the Consolidated Pension Fund board by considering retired volunteer firefighters and retired volunteer firefighters returned to active service as volunteer firefighters, if there are no current volunteer firefighters able, willing and qualified to act as board members.

The City and the LRFPD propose the following composition of the Consolidated Pension Fund board: three representatives appointed by City Council with preference for a volunteer firefighter in one representative position, three representatives appointed by the LRFPD with preference for a volunteer firefighter in one representative position, and one representative appointed by the Consolidated Pension Fund board with preference for a volunteer firefighter. Because the board meets quarterly, the City and the LRFPD also propose attendance requirements that prohibit a board member from missing three or more meetings within four consecutive calendar quarters to assure participation by members. If a board member violates the attendance requirements, he or she will be deemed to have resigned their position with the board, unless the absences are excused by the remaining board members.

The LRFPD will be considering a counter-part resolution.

LIST OF ATTACHMENTS:

1. Resolution to Amend the 1966 Intergovernmental Agreement between the City of Loveland and the Loveland Rural Fire Protection District to Modify the Composition of the Board of Trustees of the Consolidated Firemen's Pension Fund of Loveland and Rural District and to Set Attendance Requirements
2. Exhibit A: Second Amendment to Agreement of May 17, 1966, Regarding the Consolidated Firemen's Pension Fund of Loveland and Rural District

RECOMMENDED CITY COUNCIL ACTION:

Adoption of the Resolution

REVIEWED BY CITY MANAGER:

RESOLUTION #R-57-2011**A RESOLUTION TO AMEND THE 1966 INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND AND THE LOVELAND RURAL FIRE PROTECTION DISTRICT TO MODIFY THE COMPOSITION OF THE BOARD OF TRUSTEES OF THE CONSOLIDATED FIREMEN'S PENSION FUND OF LOVELAND AND THE RURAL DISTRICT AND TO SET ATTENDANCE REQUIREMENTS**

WHEREAS, in 1966 the City of Loveland (the "City"), by and through its Trustees for the Loveland Firemen's Pension Fund, entered into an agreement with the Loveland Rural Fire Protection District ("LRFPD"), by and through its Trustees for the Loveland Rural Fire Protection District Firemen's Pension Fund, to consolidate the pension funds for their respective volunteer firefighters into a Consolidated Firemen's Pension Fund of Loveland and Rural District (the "Consolidated Pension Fund Agreement"); and

WHEREAS, the Consolidated Pension Fund Agreement established a board comprised of seven members: three representative from the volunteer firefighters, three representatives appointed by the City Council, and one representative appointed by the LRFPD, with each representative having a two-year term (the "Consolidated Pension Fund Board"); and

WHEREAS, in 1984 the City and the LRFPD amended the Consolidated Pension Fund Agreement pursuant to an intergovernmental agreement titled "Amendment to Agreement of May 17, 1966" (the "First Amendment") to increase the term of each board member from two years to four years and to change the composition of the seven member board as follows: three representatives from the volunteer firefighters, two representatives appointed by the City Council, and two representatives appointed by the LRFPD; and

WHEREAS, over the past twenty-five (25) years, the number of volunteer firefighters available to serve on the Consolidated Pension Fund Board has diminished significantly because participation in the City's fire and rescue department, which pursuant to an intergovernmental agreement also serves the LRFPD jurisdiction, has shifted from primarily volunteer firefighters to paid City employee firefighters; and

WHEREAS, Loveland Volunteer Fire Department, Inc., the organization which previously acted as a voice for the volunteer firefighters and designated volunteer firefighters for the Consolidated Pension Fund Board, is no longer in existence; and

WHEREAS, the City and the LRFPD desire to amend the 1966 intergovernmental agreement to modify the composition of the Consolidated Pension Fund Board to reflect the reality of fewer volunteer firefighters being available to serve on the board and the lack of any formal volunteer firefighter organization to designate representatives to the board by modifying the board composition as follows: three representatives appointed by the City Council with preference for a volunteer firefighter in one representative position, three representatives appointed by the LRFPD with preference for a volunteer firefighter in one representative position, and one representative appointed by the Consolidated Pension Fund Board with preference for a volunteer firefighter; and

WHEREAS, the City and the LRFPD also desire to maximize the opportunity for volunteer firefighters to act as representatives on the Consolidated Pension Fund Board by expanding the definition of a volunteer firefighter to include retired volunteer firefighters and retired volunteer firefighters returned to active service, in the event there are no current volunteer firefighters able, willing and qualified to act as a Consolidated Pension Fund Board representative; and

WHEREAS, the City and the LRFPD also desire to set attendance requirement for those appointed to serve as members of the Consolidated Pension Fund board to further ensure that the board is adequately staffed to fulfill its designated functions; and

WHEREAS, the City Council finds that it is in the best interests of the City and its citizens to enter into the “Second Amendment to Agreement of May 17, 1966, Regarding the Consolidated Firemen’s Pension Fund of Loveland and Rural District,” attached hereto as Exhibit A and incorporated by reference (the “Agreement”), to address the lack of volunteer firefighters available to serve on the Consolidated Pension Fund Board and to ensure participation of appointed board members; and

WHEREAS, pursuant to C.R.S. § 29-1-203(1), the City and the LRFPD are authorized to cooperate with one another to provide any function or service lawfully authorized to each, and are therefore each authorized under C.R.S. § 29-1-203(1) to enter into the Agreement.

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

Section 1. That the Agreement is hereby approved.

Section 2. That the City Manager is hereby authorized and directed to enter into the Agreement, 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 and time of its adoption.

Dated this _____ day of _____, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Assistant City Attorney

A RESOLUTION TO AMEND THE 1966 INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND AND THE LOVELAND RURAL FIRE PROTECTION DISTRICT TO MODIFY THE COMPOSITION OF THE BOARD OF TRUSTEES OF THE CONSOLIDATED FIREMEN'S PENSION FUND OF LOVELAND AND THE RURAL DISTRICT AND TO SET ATTENDANCE REQUIREMENTS

**SECOND AMENDMENT TO AGREEMENT OF MAY 17, 1966, REGARDING
THE CONSOLIDATED FIREMEN’S PENSION FUND OF LOVELAND
AND RURAL DISTRICT**

WHEREAS, the City of Loveland (the “City”) and the Loveland Rural Fire Protection District (the “LRFPD”) desire to amend their agreement dated May 17, 1966, as first amended by the Amendment to Agreement of May 17, 1966, dated November 20, 1984 (collectively, the “Agreement”) that created the Consolidated Firemen’s Pension Fund of Loveland and Rural District (the “Consolidated Pension Fund”); and

WHEREAS, the purpose this second amendment (“Second Amendment”) is to modify the composition of the Board of Trustees of the Consolidated Pension Fund, effective January 1, 2012, to reflect the reality of fewer volunteer firefighters being available to serve on the board, the lack of any formal volunteer firefighter organization to designate representatives to the board, and the need to assure participation by board members.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the LRFPD agree as follows:

1. Part 4 of the Agreement is hereby superseded and amended to read in full as follows:
 4. Board of Trustees.
 - A. The Consolidated Firemen’s Pension Fund of Loveland and Rural District shall be administered by a board of trustees which shall consist of seven members of whom no more than three shall be current volunteer firefighters. Representation on the board shall be as follows:
 - (i) Three members of the board shall be appointed by the City Council of the City of Loveland and one such board member, if possible, shall be a volunteer firefighter;
 - (ii) Three members of the board shall be appointed by the Board of Directors of the Loveland Rural Fire Protection District and one such board member, if possible, shall be a volunteer firefighter; and
 - (iii) One member of the board shall be appointed by a majority vote of the members of the board appointed by the City Council of the City of Loveland and by the Board of Directors of the Loveland Rural Fire Protection District and, if possible, shall be a volunteer firefighter.
 - B. If reasonable efforts are made to recruit a current volunteer firefighter to serve as a member of the board of trustees and there is none able, willing and qualified to serve, retired volunteer firefighters and retired volunteer firefighters returned to active service shall be considered volunteer firefighters for the purposes of appointing members to the board of trustees.
 - C. A member of the board of trustees shall serve for a term of four (4) years, or until his or her successor is appointed; except that a board member who is absent from

three (3) or more board meetings in any four (4) consecutive calendar quarters shall be deemed to have resigned from the board, unless a majority of the remaining board members vote to excuse such absences. Except for a vacancy of the board member position appointed by the board of trustees, vacancies occurring on the board shall be filled by either the City Council of the City of Loveland or the Board of Directors of the Loveland Rural Fire Protection District, which ever entity originally appointed the board member vacating the seat on the board. A vacancy of the position appointed by the board of trustees shall be filled as provided is section (iii) of paragraph A above.

- 2. The effective date of the Second Amendment shall be January 1, 2012.
- 3. All other terms and conditions of the Agreement shall remain in full force and effect.

Dated this _____ day of _____, 2011.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Agreement of May 17, 1966, Regarding the Consolidated Firemen’s Pension Fund of Loveland and Rural District as of the date above written.

CITY OF LOVELAND, COLORADO

By: _____
William D. Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

LOVELAND RURAL FIRE
PROTECTION DISTRICT

By: _____
Dave Legits, President

ATTEST:

Secretary

APPROVED AS TO FORM:

Legal Counsel



CITY OF LOVELAND
 CULTURAL SERVICES /MUSEUM •ART IN PUBLIC PLACES
 503 N. Lincoln Avenue • Loveland, Colorado 80537
 (970) 962-2410 • FAX (970) 962-2910 • TDD (970) 962-2833

AGENDA ITEM: 17
MEETING DATE: 9/20/2011
TO: City Council
FROM: Susan Ison, Cultural Services Department
PRESENTER: Susan Ison

TITLE:

Public Hearing and an ordinance on first reading enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for Museum programs and exhibits.

DESCRIPTION:

This is an administrative action. Donations received by the Department are appropriated for programs and exhibit expenses.

BUDGET IMPACT:

Yes No

The appropriation is totally funded by donations received from outside entities.

SUMMARY:

The Cultural Services Department seeks donations and grants throughout the year to support programming not fully funded by the department's budget. The following programs would not have been possible without our donors' generous support: Foote Lagoon Summer Concerts; Rita Dove, poet laureate, lecture and reading; *Chuck Close* exhibit; and *Hobos to Homeless* exhibit. Donors were: the Erion Foundation (\$17,000); Colorado Creative Industries (\$8500); Medical Center of the Rockies (\$5,000); First Western Trust (\$7,725); Audiology and Hearing Center (\$1,000); Kroh Foundation (\$8,685) and Poet Laureate Silver Sponsors (\$2,000). Total donation amount is \$49,910.

LIST OF ATTACHMENTS:

1. An ordinance on first reading enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for Museum programs and exhibits.

RECOMMENDED CITY COUNCIL ACTION:

Conduct a Public Hearing and approve the ordinance on first reading.

REVIEWED BY CITY MANAGER:

FIRST READING September 20, 2011

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR MUSEUM PROGRAMS AND EXHIBITS

WHEREAS, the City has received 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 in the amount of \$49,910 from donations in the General Fund 001 are available for appropriation. Revenues in the total amount of \$49,910 are hereby appropriated for Museum programs and exhibits and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

General Fund 001 - Museum Programs and Exhibits

Revenues

001-5220-363-90-00	Contributions/Donations	49,910
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Total Revenue		49,910
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Appropriations

001-5220-409-02-08	Art Exhibit	8,500
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001-5220-409-02-28	History Exhibit	20,690
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001-5220-409-03-38	Marketing	6,000
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001-5220-409-04-89	Artist Fees	14,720
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Total Appropriations		49,910
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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).

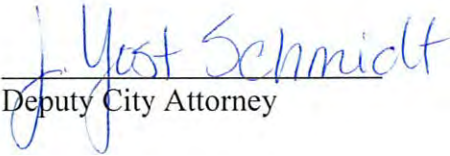
ADOPTED this ___ day of October, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



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

AGENDA ITEM: 18
MEETING DATE: 9/20/2011
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Brian Burson, Current Planning Division

TITLE:
AN ORDINANCE AMENDING TITLE 18 OF THE LOVELAND MUNICIPAL CODE REGARDING
REGULATION AND ZONING OF SMALL WIND ENERGY SYSTEMS.

DESCRIPTION:

A public hearing to consider a legislative action to adopt an ordinance, on first reading, to add provisions to Title 18 of the Municipal Code to allow Small Wind Energy Systems (small wind turbines) on residential properties, and establish standards and procedures for City review and approval of such devices.

BUDGET IMPACT:

Yes No

SUMMARY:

The ordinance proposes to allow Small Wind Energy Systems as an accessory use on residential properties in the City. Specific requirements and limitations are included in the code in the form of standards. Small Wind Energy Systems that fully comply with the proposed standards would be a use permitted by right, but subject to written notice to adjacent property owners and residents who would have the right to appeal. Small Wind Energy Systems that do not fully comply with all of the specific standards would be a use permitted only by special review, subject to the normal procedures for such, which also involves neighborhood notification and the right to appeal. Staff believes the proposed standards and procedures will appropriately balance the growing interest in alternative forms of energy generation and other important considerations such as peace and tranquility in, and the appearance and character of, residential areas in the city.

LIST OF ATTACHMENTS:

- A. Ordinance.
 - B. Staff Memorandum dated September 20, 2011, with exhibits.
-

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for City Council action:

Move to approve, on first reading, AN ORDINANCE AMENDING TITLE 18 OF THE LOVELAND MUNICIPAL CODE REGARDING REGULATION AND ZONING OF SMALL WIND ENERGY SYSTEMS.

REVIEWED BY CITY MANAGER:

FIRST READING: September 20, 2011

SECOND READING: _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 18 OF THE LOVELAND MUNICIPAL CODE REGARDING REGULATION AND ZONING OF SMALL WIND ENERGY SYSTEMS

WHEREAS, City Council finds that amendment of Title 18 of the Loveland Municipal Code is necessary and required in the interest of the health, safety and welfare of the people; and

WHEREAS, the Planning Commission held a public hearing on August 8, 2011 to consider amendments to Title 18 of the Loveland Municipal Code to allow small wind energy systems (small wind turbines) on all residential properties in the City, subject to specific standards and processes, and recommended that City Council approve amendments to Chapters 18.04, 18.07, 18.08, 18.12, 18.13, 18.16, 18.20, 18.24, 18.28, 18.29, 18.30, 18.38 and 18.48 thereof; and

WHEREAS, the City Council desires to amend the Loveland Municipal Code to allow small wind energy systems (small wind turbines) on all residential properties in the City subject to specific regulations as hereinafter set forth.

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

Section 1. That Chapter 18.04 of the Loveland Municipal Code is hereby amended to add Subsections 18.04.113.3, 18.04.164.5 and 18.04.355.5 as follows:

18.04.113.3 Building-mounted small wind energy system defined.

“Building-mounted small wind energy system” means a small wind energy system which is permanently attached to the roof, wall, gable or eave of a building, but not attached or anchored into the ground.

18.04.164.5 Freestanding small wind energy system defined.

“Freestanding small wind energy system” means a small wind energy system which is permanently attached to and supported by a tower which is attached or anchored into the ground.

18.04.355.5 Small wind energy system defined.

“Small wind energy system” means any device or mechanism such as a wind charger, windmill, wind turbine, wind generator, or wind alternator which converts wind energy to

a form of original useable electrical energy, and which has a maximum output rating of 10 kilowatts (kW), including associated external components, elements or features such as base, tower, wiring, connections, batteries, and associated control equipment.

Section 2. That Section 18.07.040 of the Loveland Municipal Code is hereby amended to add subsections H. and I. as follows:

H. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

I. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

Section 3. That Section 18.07.050 of the Loveland Municipal Code is hereby amended to add subsections K. and L. as follows:

K. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

L. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Section 4. That Section 18.08.010 of the Loveland Municipal Code is hereby amended to add subsections G. and H. as follows:

G. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

H. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

Section 5. That Section 18.08.020 of the Loveland Municipal Code is hereby amended to add subsections O. and P. as follows:

O. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

P. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Section 6. That Section 18.12.010 of the Loveland Municipal Code is hereby amended to add subsections G. and H. as follows:

G. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

H. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

Section 7. That Section 18.12.020 of the Loveland Municipal Code is hereby amended to add subsections O. and P. as follows:

O. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

P. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Section 8. That Section 18.13.020 of the Loveland Municipal Code is hereby amended to add subsections I. and J. as follows:

I. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

J. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

Section 9. That Section 18.13.030 of the Loveland Municipal Code is hereby amended to add subsections M. and N. as follows:

M. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

N. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Section 10. That Section 18.16.010 of the Loveland Municipal Code is hereby amended to add subsections M. and N. as follows:

M. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with standards set forth in section 18.48.110.

N. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

Section 11. That Section 18.16.020 of the Loveland Municipal Code is hereby amended to add subsections BB. and CC. as follows:

BB. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

CC. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Section 12. That Section 18.20.010 of the Loveland Municipal Code is hereby amended to add subsections K. and L. as follows:

K. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

L. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

Section 13. That Section 18.20.020 of the Loveland Municipal Code is hereby amended to add subsections W. and X. as follows:

W. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

X. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Section 14. That Section 18.24.020 of the Loveland Municipal Code is hereby amended to add subsections YY. and ZZ. as follows:

YY. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

ZZ. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

Section 15. That Section 18.24.030 of the Loveland Municipal Code is hereby amended to add subsections X. and Y. as follows:

X. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Y. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Section 16. That Section 18.28.010 of the Loveland Municipal Code is hereby amended to add subsections RR. and SS. as follows:

RR. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

SS. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

Section 17. That Section 18.28.020 of the Loveland Municipal Code is hereby amended to add subsections OO. and PP. as follows:

OO. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

PP. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Section 18. That Section 18.29.020 of the Loveland Municipal Code is hereby amended to add subsections SS. and TT. as follows:

SS. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

TT. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

Section 19. That Section 18.29.030 of the Loveland Municipal Code is hereby amended to add subsections Q. and R. as follows:

Q. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

R. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Section 20. That Section 18.30.020 of the Loveland Municipal Code is hereby amended to add subsections MM. and NN. as follows:

MM. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

NN. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

Section 21. That Section 18.30.030 of the Loveland Municipal Code is hereby amended to add subsections X. and Y. as follows:

X. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Y. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Section 22. That Subsection 18.38.010 of the Loveland Municipal Code is hereby amended to read as follows:

18.38.010 Uses permitted by right.

A. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

B. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

Section 23. That Section 18.38.020 of the Loveland Municipal Code is hereby amended to add subsections J. and K. as follows:

J. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

K. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

Section 24. That Chapter 18.48 of the Loveland Municipal Code is hereby amended to add Sections 18.48.110 as follows:

18.48.110 Small wind energy systems.

A. Purpose.

1. To allow opportunities for certain alternative forms of electrical energy generation in appropriate areas of the City by installation and operation of small wind energy systems;
2. To assure that small wind energy systems comply with the provisions for accessory uses, as set forth in this chapter;
3. To assure that potential negative impacts on public and private safety, aesthetics, economy and convenience that may result from a small wind energy system are adequately mitigated; and,
4. To assure that small wind energy systems are reasonably compatible with the character of the neighborhood in which they are to be located.

B. General Provisions.

1. A small wind energy system shall be deemed, and is hereby declared to be, an accessory use in designated zone districts, provided it complies with the standards set forth in this chapter, or is otherwise approved by the City pursuant to the provisions of chapter 18.40 of this title.
2. The City hereby declares that the provisions of this section shall not be deemed to establish, grant, require, assure, reserve, preserve, or imply, any easement or right of access to wind for the function of any small wind energy system approved by the City; and the City hereby expressly declares that it shall not be party to any effort, negotiation or acquisition of any such access or right to wind.
3. The allowance of small wind energy systems is not intended, nor shall it be construed, to abrogate or otherwise modify other zoning restrictions, subdivision restrictions, covenants, or other restrictions that may apply to a premise.
4. It is unlawful for any person to operate a small wind energy system that does not conform to the provisions of this section, or the conditions of approval as stated on the small wind energy system permits.

C. Definitions.

As used in this section, the following words and phrases shall have the following meanings:

1. "Abutting property" means all real property which is contiguous to the property upon which a small wind energy system is proposed, including those properties which have contiguity at only a single point of contact.

2. "Tower" means a self-supporting monopole, or other similar structure approved by the City, that is designed and constructed primarily for the purpose of supporting a small wind energy system or portion thereof.

D. General standards.

The following standards shall apply to all small wind energy systems except as otherwise approved by a special review pursuant to the provisions of chapter 18.40 of this title:

1. There shall be no more than one (1) small wind energy system per property and it shall be located on the same property as the principal dwelling for which it is an accessory use.

2. The small wind energy system shall have a maximum rated capacity not to exceed 10 kilowatts (kW).

3. Irrespective of the zoning district in which the small wind energy system is located, the small wind energy system shall be located a minimum distance of twenty (20) feet from all property lines of the property upon which the small wind energy system is located. A small wind energy system may not be located in a dedicated easement or right-of-way.

4. Notwithstanding sub-section 18.48.110.D.3, no small wind energy system shall be located in the front yard of any property, as defined in subsection 18.04.420.1 of this title.

5. The small wind energy system shall comply, at all times, with the maximum allowable noise levels set forth in chapter 7.32 of the municipal code.

6. The small wind energy system shall be designed and installed in compliance with all applicable provisions of chapter 15 of this title as determined by the building official.

7. For properties which receive electrical power from the City of Loveland, the small wind energy system shall be in compliance with "The Standard for Interconnecting Distributed Resources with the City of Loveland Power Department," including a site inspection by a representative of the water and power department prior to approval of a building permit. For properties which receive electrical power from another public provider of electric power, no building permit shall be approved until the applicant has submitted written verification from said provider that they have reviewed the permit application and have determined that the small wind energy system will meet all

requirements of said provider. Off-grid systems shall be exempt from these requirements.

8. No advertising or signs may be placed on the small wind energy system other than those incorporated by the manufacturer.

9. Colors of all external surfaces of the small wind energy system must uniformly be matte grey or other neutral or muted colors approved by the City which best blends the small wind energy system into its surroundings.

10. No illumination of the small wind energy system shall be allowed unless required by the regulations of the Federal Aviation Administration, by the manager for the Loveland-Fort Collins Airport, or if said illumination is not directly visible beyond the property upon which the small wind energy system is located.

11. The small wind energy system shall be equipped with a manual override system to allow shut-down in case of an emergency.

12. The small wind energy system shall be equipped with an automatic braking, governing, or feathering system to assure that over-rotation cannot occur.

13. Any small wind energy system that is out of service for a continuous period of twelve (12) months may be deemed by the City to be abandoned and the permit for the small wind energy system may be revoked, whereupon the small wind energy system shall be deemed a violation of this title and subject to removal by the property owners pursuant to the provisions of chapter 18.68 of this title.

14. The electrical energy produced by a small wind energy system shall be stored, used or consumed only on the same property upon which the small wind energy system is located, except when connected to a public provider system in compliance with "The Standards for Interconnecting Distributed Resources with the City of Loveland Power Department" or other applicable standards adopted by said other public provider of electrical power to the property.

15. Electrical lines or ground wires connecting a small wind energy system to other functional components, elements, or features, including service cabinets, battery cabinets, and accessory components, or to a building on the property shall be located internal to, or attached immediately upon, the external surfaces of the small wind energy system or the building upon which the small wind energy system is attached.

E. Additional standards for building-mounted small wind energy systems.

In addition to the general standards set forth in sub-section D. above, all building-mounted small wind energy systems shall comply with the following standards except as otherwise approved pursuant to the provisions of chapter 18.40 of this title:

1. A building-mounted small wind energy system shall be permanently attached to a permitted principal or accessory building on the property.
2. The maximum total height of a building-mounted small wind energy system which is attached directly to the roof of a building shall be ten (10) feet above the highest point of the roof upon which the small wind energy systems is attached. The maximum total height of a small wind energy system which is attached to a building in some manner other than directly to the roof shall be ten (10) feet above the highest point of the roof to which it is most closely located.
3. Any guy wires, tether wires, or stabilizing wires needed to affix the small wind energy system to a building shall be attached only to the building upon which the small wind energy system is attached.
4. When a building-mounted small wind energy system is attached to the wall, gable or eave of a building, the support structure shall be positioned and attached to the building so that its relative position is as close to the building as can be practically and reasonably accomplished by standard construction techniques, as determined by the current planning manager and building official.

F. Additional standards for freestanding small wind energy systems.

In addition to the general standards set forth in section D. above, all freestanding small wind energy system shall comply with the following standards except as otherwise approved pursuant to the provisions of chapter 18.40 of this title:

1. The tower upon which the small wind energy system is attached shall be a self-supporting mono-pole with no other means of support or stabilization such as guy wires, tether wires, or stability wires. However, on a case-by-case basis, the current planning manager may approve other types of towers, based upon a determination that the proposed tower will not have a negative visual impact on the neighborhood or adjacent properties, and provided the tower is designed by a professional engineer currently licensed in the State of Colorado. When submitted to the City, the plans for all towers shall be stamped by the designing professional engineer.
2. The maximum total height of any freestanding small wind energy system shall be thirty-five (35) feet above grade directly below, as defined in sub-section 18.04.113.2 of this title.
3. The distance between the bottom of rotor blades, at their lowest point of arc, to grade, as defined in sub-section 18.04.113.2 of this title, shall be a minimum of fifteen (15) feet.
4. No permanently attached mechanism for access to or onto the tower, which mechanism is incorporated or attached to the tower such as foot pegs, steps, rungs or ladders, shall be within twelve (12) feet of the grade directly below.

5. Appropriate warning signage shall be placed on both the small wind energy system and tower in accordance with the manufacturer's recommendations.

6. The minimum horizontal distance between the small wind energy system, and all property lines shall be ten percent (10%) greater than the total height of the small wind energy system.

7. The horizontal distance between the tower and all overhead public utility lines shall be twenty-five percent (25%) greater than the total height of the small wind energy system.

G. Application and review procedure.

1. No person shall install a small wind energy system within the City without first obtaining the appropriate permits from the City, as determined by the current planning manager and the building official at the time of application. The applicant shall submit the required applications to the City on forms required by the City, including the application fee, as determined by City Council resolution, and all other items set forth on the submittal checklist determined by the current planning manager.

2. Upon completion of review by the City, the City shall notify the applicant whether a final decision can be made, or if the application must be revised and further reviewed. Upon City determination that a final decision can be made, the City shall issue its final decision in the form of a written notice.

3. Upon issuance of the final decision, a copy of the written notice shall be mailed by the City to the applicant and to all owners and tenants of abutting properties, as indicated on the mailing list. All notified persons shall have ten (10) days from the date of mailing to submit an appeal of the final decision, pursuant to the provisions of chapter 18.80 of this title.

4. No permit shall be issued by the City until the City determines that the small wind energy system will be installed and operated in compliance with all requirements determined by the City, and that all appeal processes have concluded in a manner which allows issuance of the permit.

H. Issuance of permits.

1. Upon completion of any appeal process regarding the proposed small wind energy system, and if the application is approved, the City shall issue all permits necessary to allow installation and operation of the small wind energy system as described in the application and in accordance with any conditions placed on the permits by the City.

2. Prior to the issuance of said permits, the applicant shall certify that he or she will install and operate the small wind energy system in conformity with the provisions of

this title and any conditions determined by the City as part of the review and approval process.

I. Revocation of permits and appeal provisions.

Any permits issued by the City for a small wind energy system may be revoked by the City if the City finds any of the following:

1. The small wind energy system no longer conforms to the provisions of this section or the conditions of approval accompanying the approval of the permits.
2. The mailing list provided by the applicant was faulty.
3. The applicant failed to follow the application, review and appeal process.

Written notification of said revocation shall be mailed to the last known address of the permit holder and shall include findings in support of the revocation and the applicant's rights of appeal. The date of the mailing shall be the date of notification. The permit holder and/or the current owner of the property may file a written appeal of the City's decision as provided for in chapter 18.80 of this title.

Section 25. 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).

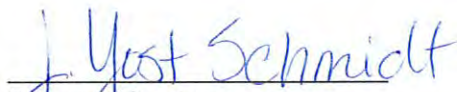
ADOPTED this ____ day of _____, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy 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: September 20, 2011

SUBJECT: Amendments to Title 18 to allow small wind energy systems (wind turbines)

I. EXHIBITS

- A. August 8, 2011 Planning Commission staff report, with Attachments 1-2
- B. Approved August 8, 2011 Planning Commission minutes

II. EXECUTIVE SUMMARY

A. Project Description

This application proposes to allow small wind energy systems, (small wind turbines) as an accessory use on all residential properties in the City, subject to specific standards and process. Small wind energy systems could be either building-mounted (including roof-mounted or gable-mounted) or freestanding (pole-mounted).

As set forth in Chapter 18.48 of the Municipal Code, all accessory uses are required to be a subordinate use on the property which is:

- Clearly incidental to the principal use of the property;
- Customary in connection with the principal building or use;
- Ordinarily located on the same property as the principal use

The proposed standards are written to assure that small wind energy systems would be an accessory use that is not likely to prompt significant concern or objection by adjacent property owners or the neighborhood. However, since small wind energy systems will be a new allowed use, it is impossible to say they are currently "customary" in connection with any residential uses in the City. This is always

a problem for allowing the first of anything. In order to address this issue, the proposed code expressly stipulates that a small wind energy system will be deemed as an accessory use.

Small wind turbines that fully comply with all of the specific standards would be an accessory use that could be approved by the City through staff review and issuance of the appropriate permits. Small wind turbines that do not fully comply with all of the specific standards could prompt some measure of concern or objection by the adjacent property owners or neighborhood, and therefore would be a use-by-special review. If approved as a use-by-special review, the small wind energy system would still be deemed as an accessory use. The basic elements of the amendments are as follows:

- Limited to one wind turbine per property, with a maximum rating of 10 kilowatts;
- Limit the height to 10 feet above the ridge line of the roof for building-mounted small wind energy systems; or 35 feet from grade for freestanding small wind energy systems;
- Require appropriate distances from all property lines and all overhead utility lines to limit the impacts and prevent damage to other property and improvements;
- Minimize visual impacts by requiring neutral or muted colors, minimizing guy wires, and prohibiting signs and lights on the devices or towers;
- Assure compliance with the existing noise ordinance for residential properties.

All of the proposed code is new content, except for striking the first line of text from Section 18.38.010. of the DR-Developing Resources Zoning District. Rather than include the entire proposal as strike-out and red-line text to portray this element, it is included below for clarification. The accompanying ordinance includes a complete compilation of the proposed additions to the code.

"18.38.010 Uses permitted by right.

~~There are no uses permitted by right in a DR district."~~

A. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

B. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

B. Key Issues

During the process for this code amendment, the following concerns have been identified and evaluated. Staff believes the proposed code adequately addresses each of these issues in a manner that balances the growing interest in alternative forms of energy production with the important issues of appearance and character of residential neighborhoods.

1. Visual clutter and obtrusive appearance
2. Noise
3. Safety of devices and towers
4. Signs and illumination on devices and towers
5. Impacts to birds and animals
6. Impacts to adjacent properties and neighborhood

7. Compliance with local and state codes
8. Safety and compatibility with public power supply
9. Abandonment/disuse
10. Lack of overarching testing and approval entity such as Underwriters Laboratory

Staff has researched information from various sources such as U.S. Energy Department, the State of Colorado, Rocky Mountain Land Use Institute, American Planning Association, American Wind Energy Association and other regional, state, and local governments, to determine if small wind-energy systems could become a viable source of renewable alternative energy in Loveland. This research has indicated the following which addresses these matters of concern:

- A small wind energy generator is generally considered as one with the capacity of 100 kilowatts (kW) or less. Most communities cap these at 10 kilowatts due to the current size of the generators and associated towers, as well as the complications that result to public providers of electric energy.
- The average household in the U.S. consumes 9,400 kWh per year, 783 per month, 26 kWh per week. (For comparison, the City of Loveland Power Department recently reports that the electric power consumed by the average residence in Loveland is currently 728 kWh per month.) Expert sources indicate that this average demand could be supplied by a 10 kW small wind-energy generator operating at 50% capacity for approximately 40% of an average twenty-four hour period.
- Certain regions of the U.S. are more suitable than others for use of wind as an alternative source of energy. Some estimates indicate that the wind energy potential in the state of North Dakota could provide up to 25% of the total U.S. demand. However, the northern front range of Colorado has a fairly low average wind speed, and therefore limited potential for effective use of small wind energy generators.
- Wind maps that are available for areas of the U.S. typically measure wind speeds at 150 feet height above the surface. Small wind generators cannot reach “full capacity” unless they are in “good” wind areas and the generator height is approximately 150 feet above the surrounding surface. Capacity drops dramatically as generator height diminishes, and reaching 50% capacity requires a height of approximately 65 feet. The potential capacity is lower in poor wind areas, and lower still with generator heights of less than 65 feet.
- Most sources agree that for any meaningful capacity, generator height must be at least 80 feet, which is normally far taller than traditionally allowed by local zoning codes. One source indicated that, “Limiting small wind generators to 35 feet is like installing a solar panel in the shade.” Heights less than 80 feet subject the generator to increased fluctuations in wind speed and increased turbulence which diminishes its effectiveness and may even damage the generator.
- Expert sources indicate that for wind generators to be reasonably effective at any height, the generator must be at least 30 feet taller than any other obstacle within a distance of approximately 300 feet, including structures, trees, ridges, etc.

- According to wind maps published by the U.S. Energy Department, average wind speed in the Loveland-Fort Collins area is approximately 7 mph. Many small wind generators currently on the market do not even function below wind speeds of 5 mph. These are useful only for very limited power generation, as described above. Therefore, with current technology, small wind generators can be sufficient only for such things as charging boat, motorcycle and cell phone batteries, or for “trickle charging” a system of battery-operated power, etc. With ongoing technological advances, limited power systems for residential properties are likely to be achieved.
- Small wind energy generators can be mounted on either structures or towers (monopoles, lattice towers, etc.). However, the U.S. Energy Department strongly discourages mounting them on structures due to the vibrations which are transferred to the structure, which can increase the noise levels from the generator and can cause long term damage to the structure itself.
- Noise levels emanating from small wind energy generators are typically 50–60 db(A), which is approximately the same as a residential refrigerator or large ceiling fan. Mounting the generator on a building can increase this noise unless mounted in a manner that does not transfer the vibrations to the structure itself. City of Loveland noise ordinance limits noise in residential areas to 55 db(A) during the day and 50 db(A) at night. The noise ordinance is not part of the zoning code, and the noise produced by small wind energy generators will be investigated and enforced in the same manner as all other noise complaints in the City.
- Bird and bat kills by rotating small wind generators are far less than feared, except in specific areas and flyways. Research has shown that more birds and bats are killed each year by sliding glass doors/picture windows and household cats. The Audubon Society has issued a formal statement supporting wind energy generation as long as special areas and flyways are appropriately identified and protected.
- Small wind generators do not normally interfere with radio, TV and cell phone signals; they do not create “flicker shadow” on nearby structures and areas; they do not emit vibrations in high winds; and they do not throw ice or blades. They are all typically designed to withstand winds up to 130 mph.
- Although a qualified person may be able to design and build their own small wind generator, most will be acquired as a “kit” from established manufacturers of these devices. The manufacturer usually provides a device that is designed and stamped by an engineer, but he/she may not be an engineer licensed in the State of Colorado.
- Even with design by a licensed engineer, the overall assembly and installation will not be performed, supervised or assured by a licensed engineer.

C. Planning Commission Recommendation

On August 8, 2011, the Planning Commission held a public hearing to consider the code amendments. No one from the public attended or offered either written or verbal testimony.

At the hearing, staff recognized that some further minor refinements were needed to a few portions of the proposed code to assure that the difference between building-mounted small wind energy systems and freestanding small wind energy systems was clear; that the provisions for maximum height for each could be clearly and consistently administered; and to assure that support structures for building mounted small wind energy systems had a limited visual impact. The refinements affected the definitions for each of the types of devices, as well as one of the standards for building mounted small wind energy systems. These revisions have been made to the proposed code, as follows:

18.04.113.3 Building-mounted small wind energy system defined.

“Building-mounted small wind energy system” means a small wind energy system which is permanently attached to the roof, walls, ~~or~~ **gable or eave** of a building, but not attached or anchored into the ground.

18.04.164.5 Freestanding small wind energy system defined.

“Freestanding small wind energy system” means a small wind energy system which is permanently attached to and supported by a tower which is attached or **anchored into** the ground.

18.48.110.E. 4. When a building-mounted small wind energy system is attached ~~in the manner described in sub-section 18.04.113.3.b~~ **to the wall, gable, or eave of a building**, the support structure shall be positioned and attached to the building so that its relative position is as close to the building as can be practically and reasonably accomplished by standard construction techniques, as determined by the Current Planning Manager **and Chief Building Official**.

D. Subsequent to Planning Commission

Since the Planning Commission hearing, no inquiries or concerns from the general public have been received by the Current Planning staff.

(For further analysis, please see the August 8, 2011 Planning Commission staff report included with this staff memorandum as **Exhibit A.**)



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Planning Commission Staff Report
August 8, 2011

<p>Agenda #: Regular Agenda - 2</p> <p>Title: Amendments to Title 18 to allow small wind energy systems (wind turbines) on residential properties</p> <p>Applicant: City of Loveland Current Planning Division</p> <p>Request: Amendments to Title 18</p> <p>Staff Planner: Brian Burson</p>	<p>Staff Recommendation</p> <p>Subject to additional evidence presented at the public hearing, City staff recommends the following motion:</p> <p>Recommended Motion:</p> <p><i>"Move to recommend the City Council approve the amendments to Title 18 of the Loveland Municipal Code, as set forth in Attachment #3 of the attached Planning Commission staff memorandum, dated August 8, 2011, as amended on the record; and to authorize the City Attorney's Office to correct spelling, punctuation, and clerical and typographical errors, and make other such other modifications in form, but not substance, as necessary to effectuate the purposes of the recommended amendments."</i></p>
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Summary of Analysis:

This is a public hearing to consider amendments to Title 18 of the City of Loveland Municipal Code to allow small wind energy systems, (small wind turbines) on all residential properties in the City, subject to specific standards and process. Small wind energy systems could be either building-mounted or freestanding. Small wind turbines that fully comply with all of the specific standards would be a use-by-right as an accessory use. Small wind turbines that do not fully comply with all of the specific standards would be a use-by-special review. If approved as a use-by-special review, the small wind energy system would still be deemed as an accessory use.

In early 2009, City staff received an inquiry from a Loveland resident expressing interest in installing a small wind-energy generator on his property, as well as marketing the devices in the region. Currently, there are no provisions in the City code to allow these devices. City staff has been working with the Title 18 Committee to propose code amendments that would allow such devices on residential properties, subject to specific standards and process and in a manner that balances private, neighborhood, and public interests. Staff has also consulted with the Loveland Utilities Commission and the Construction Advisory Board. Study sessions have been held with the Planning Commission and City Council which resulted in positive response and general support. When allowed as a use-by-right, written notice to all adjacent property owners and residents will be required before City approval. When proposed as a use-by-special review, the normal written and posted notice to the neighborhood will be required as part of the normal process.

I. ATTACHMENTS:

1. Red-line draft of proposed Title 18 amendments
2. Clean draft of proposed Title 18 amendments

II. SUMMARY OF PROPOSED AMENDMENTS:

The proposed amendments would allow small wind energy systems, (small wind turbines) as an accessory use on all residential properties in the City, subject to specific standards and process. Small wind energy systems could be either building-mounted (including roof-mounted or gable-mounted) or freestanding (pole-mounted). As set forth in Chapter 18.48 of the Municipal Code, all accessory uses are required to be a subordinate use on the property which is:

- Clearly incidental to the principal use of the property;
- Customary in connection with the principal building or use;
- Ordinarily located on the same property as the principal use

The proposed standards are written to assure that small wind energy systems would truly be an accessory use, not likely to prompt significant concern or objection by the adjacent property owners or neighborhood. However, since small wind energy systems will be a new allowed use, it is impossible to say they are "customary" in connection to residential uses in the City. This is always a problem for allowing the first examples of anything. In order to address this issue, the proposed code expressly stipulates that a small wind energy system will be deemed as an accessory use.

Small wind turbines that fully comply with all of the specific standards would be an accessory use that could be approved by the City through staff review and issuance of the appropriate permits. Small wind turbines that do not fully comply with all of the specific standards could prompt some measure of concern or objection by the adjacent property owners or neighborhood, and therefore would be a use-by-special review. If approved as a use-by-special review, the small wind energy system would still be deemed as an accessory use.

The basic elements of the amendments are as follows:

- Limited to one per property, with a maximum rating of 10 kilowatts;
- Limit the height to 10 feet above the ridge line of the roof or 35 feet from grade for freestanding;
- Require appropriate distances from all property lines and all overhead utility lines to limit the impacts and prevent damage to other property and improvements;
- Minimize visual impacts by requiring neutral or muted colors, minimizing guy wires, and prohibiting signs and lights on the devices or towers;
- Assure compliance with the existing noise ordinance for residential properties.

III. BACKGROUND

In early 2009, City staff received an inquiry from a Loveland resident expressing interest in installing small wind-energy generators on his property, as well as marketing the devices in the region. Based on the current zoning code, staff determined that the current zoning code would not allow installation of the desired device, because it cannot be considered as "customary" under the current code provisions. This prompted staff to initiate research to determine what would be necessary and appropriate in order to allow small wind turbines in residential areas of the City.

Growing concerns about rising costs, interrupted or diminishing supplies and available energy resources are prompting citizen interest in alternative sources of energy for both the immediate and long-term future. As the public and private interest increases for alternative and renewable forms of energy, cities and counties around the nation are adopting local codes to appropriately accommodate such devices. The federal government is encouraging and supporting development and use of various forms of alternative energy. The state government has also adopted incentives, and has passed legislation to limit the powers of private home owners associations to inappropriately interfere with installation of certain alternative energy devices on residential properties. The policies, incentives and support forthcoming thus far emphasize the need for a variety of measures on multiple levels to meet the rising future demand on energy resources, including smaller applications which can be implemented by individual citizens. This array of factors has prompted staff to initially focus on allowances for small wind-energy generators (traditional wind turbines) which could be used for augmentation to normal electrical energy resources for residential users.

Staff has endeavored to strike an appropriate balance between respecting the overall purposes of the zoning code and the long term public and private interest in this form of alternative energy. These amendments would be the first step in a larger overall effort to allow other forms of alternative energy to be pursued by residents of the City, as appropriate. Additional amendments are anticipated in the future to allow alternative energy in non-residential zones. This would take a much larger effort on the part of the City.

IV. RESEARCH

Staff has researched information from various sources such as U.S. Energy Department, the State of Colorado, Rocky Mountain Land Use Institute, American Planning Association, American Wind Energy Association and other local governments around the nation, to determine if small wind-energy systems could become a viable source of renewable alternative energy in Loveland. Staff research has discovered that, since potential for wind energy is governed by basic principles of physics and the current state of technology, there is a remarkable consensus within the public and private sectors regarding design, installation and use of small wind-energy generators, as well as the viable potential of such devices.

These available sources of expertise clearly indicate that the potential for viable electric power by small wind energy generators on individual residential properties in Loveland is very limited. Under the current technology, prevailing wind speeds and patterns are not likely to generate a substantial amount of electrical power from a small generator with a height that is appropriate for

residential zones. Expert sources indicate that, in order for a wind turbine to operate with reasonable capacity, it must be at least 80 feet above the ground, and 30 feet above all other objects within 300 feet of the generator. To function at full capacity, a wind turbine must be 120 feet above the ground. This is not viable for most home owners and most neighborhoods. The information available to staff indicates that, with current technology, the available wind energy in the Loveland area is only sufficient for basic emergency lighting or such limited uses as charging the batteries of motor-cycles, boats or cell phones. However, as viewed from a larger perspective, the potential for shrinking or unavailable resources at the national and international level, the forward impetus in technology, and the growing demand for alternative energy sources, accommodating alternative sources may be in the best long-term interest of the City.

Another issue that has clearly surfaced in the research is that use of currently available forms of alternative energy sources can often be inadvertently hindered by traditional local regulations, especially for traditional residential areas. Much of the current City of Loveland zoning code was adopted in 1973-1993, when the need for alternative renewable energy was not keenly felt, and certain elements of technology were not available. Therefore the current zoning code does not adequately accommodate some of the typical devices now available, especially on private residential properties. The main body of the current zoning code was written in the early 1970s and it was never amended to accommodate any type of alternative energy devices such as solar hot-water systems, solar panels, wind generators, etc. Solar panels are now considered acceptable under the parameters of “customary and incidental” under the Accessory Uses section of the code. However, the currently available forms of small wind-energy devices would not be considered “customary and incidental” and cannot currently be allowed unless the code is amended.

Primary sources consulted by staff further recommend that regulation of small wind turbines be held to a strict minimum, to hold down costs and other discouraging factors. Although staff can easily understand the desire to keep the use of alternative energy a relatively simple matter for a property owner to achieve, the visual and noise impact issues sometimes linked to wind turbines also prompts concern from some participants. Therefore this updated draft includes provisions to assure written notice to adjacent owners and residents and appeal rights, under the procedures of the recently adopted Chapter 18.80.

V. PROCESS FOLLOWED

The proposed amendments have been thoroughly discussed with the Title 18 Committee, as well as various City departments to assure that any proposed code amendments will be consistent and compatible with the other City codes, standards and procedures. Consultations, presentations and discussions of the proposal have occurred as follows:

Title 18 Committee: September 14, 2009
 October 22, 2009
 November 19, 2009
 May 27, 2011

Planning Commission
study session: October 26, 2009

Loveland Utilities
Commission: April 21, 2010

Construction Advisory
Board: April 21, 2010

City Council
study session: April 27, 2010

VI. MAJOR COMPONENTS

The basic elements of the amendments are as follows:

1. Use the term “Small wind-energy system” (SWES) for these devices. This is becoming the common term in the industry and would accommodate developing and future forms other than the traditional wind turbine which is currently popular on the market.
2. Allow building-mounted and free-standing SWES upon all residential properties in the City, including grandfathered residential uses in the DR zone, as an accessory use. This would require compliance with all normal limitations and requirements for any other accessory use, along with other specific standards for the SWES to balance the need for alternative forms of energy with the overall purposes of the zoning code. The proposed standards include:
 - a. Limit the rated capacity of the SWES to 10 kW;
 - b. Allow only one per property;
 - c. Limit the height to 35 feet from grade, or 10 feet above the ridge line of the roofline;
 - d. Require minimum distance from property lines and easements to assure that any collapse of the device or a support tower will not result in danger to adjacent properties or public utilities. No freestanding SWES would be allowed in the front yard of a property.
 - e. Require SWES to be equipped with manual override system, automatic braking system, and governing or feathering system to allow shut down and prevent over-rotation;
 - f. Require a minimum of 15 feet between the bottom arc of the blades to the ground below (freestanding SWES only).
 - g. Allow no permanent access mechanisms such as foot pegs, steps, rungs or ladders within 12 feet of the ground below;

- h. Require compliance with all pertinent Building and Electric Codes and requirements of the City of Loveland Power Department or any other public provider of electric power for the property;
 - i. Require uniform neutral or muted colors approved by the City to blend into the surroundings;
 - j. Allow no illumination allowed unless required by FAA or the Airport Manager for purposes of safety;
 - k. Allow no signs to be installed on, or be part of, the SWES or its support members;
 - l. Require towers for freestanding SWES to be monopoles. Other types of support structures, such as the traditional "triangular web-joist" or "lattice towers", could be approved through the special review process, or on a case-by-case basis, by the Current Planning Manager;
 - m. Restate that the maximum noise levels set forth in the City noise ordinance applies to the SWES. This limits noise in residential areas to 55 db(A) during the day and 50 db(A) at night, measured 25 feet beyond the property line. This is compared to the noise produced by the average household refrigerator, and would be less noise than produced from an external residential AC unit. There is no need to include noise provisions in the Title 18 amendments other than to reference them for awareness and consistency. The City noise ordinance is not part of the zoning code, and cannot be varied by any provisions of the zoning code or related standards.
3. Allow building-mounted and freestanding SWES which do not fully comply with these standards as a use-by-special review in all residential zones. If the non-conforming element(s) of the Applicant's proposal is related to building code, electric code, etc., it could also require approval through other advisory bodies, such as Construction Advisory Board.
4. The proposed code does not require the design or plans for each individual turbine device to be stamped and signed by a Colorado PE. All professional and technical sources of information urge that this should not be done because it escalates the costs prohibitively, and adds nothing to the safety issues. The continuing absence of any overarching review and approval/certification entity, such as URL, is a problem that cannot be resolved by the City. If other pertinent codes, such as building code or electric code require this, it will be determined as part of the permit review by the Building Division.
5. The U.S. Energy Department recommends that SWES not be mounted on the roof of a building, due to potential of increased noise and vibrations, possibly resulting in structural damage over time. However, after considerable discussion on this matter by the Title 18 Committee and other participants, the proposed code does not include provisions for prevention or dampening of noise or vibrations to the structure at the mounting points upon which it is mounted. This will be treated as a "buyer-beware" issue for the owner to consider. If dependable model codes are offered in the future, the City can consider adding it in the future.

Attachments # 1 and #2 to this staff memorandum describe the staff proposal, in the form of actual code amendments that will be needed to implement the allowance for Small wind-energy systems (SWES) for residential properties in Loveland. We believe this will be an important first step in a longer and more valuable effort of the City to be better prepared for the energy needs of the future.

**PROPOSED TITLE 18 AMENDMENTS
SMALL WIND ENERGY SYSTEMS - Red-lines
PLANNING COMMISSION PUBLIC HEARING
August 8, 2011**

A. Add definitions:

- 1. Add sub-section 18.04.355.5 to read as follows:

18.04.355.5 Small wind energy system defined.

“Small wind energy system” means any device or mechanism such as a wind charger, windmill, wind turbine, wind generator, or wind alternator which converts wind energy to a form of original useable electrical energy, and which has a maximum output rating of 10 kilowatts (kW), including associated external components, elements or features such as base, tower, wiring, connections, batteries, and associated control equipment.

- 2. Add sub-section 18.04.113.3 to read as follows:

18.04. 113.3 Building-mounted small wind energy system defined.

“Building-mounted small wind energy system” means a small wind energy system which is permanently attached to the roof, walls, or gable of a building, but not attached or anchored into the ground.

- 3. Add sub-section 18.04.164.5 to read as follows:

18.04.164.5 Freestanding small wind energy system defined

“Freestanding small wind energy system” means a small wind energy system which is permanently attached to and supported by a tower which is anchored into the ground.

B. Allow both building-mounted and freestanding small wind energy systems which comply with the specific standards in chapter 18.48 on all residential properties in the City as a use-by-right accessory use. This would include residential properties in the Be, B, MAC and E zones, and on properties in the DR zone which have a grandfathered residential use. Also allow building-mounted and freestanding SWES which does not comply with the normal standards as a use-by-special review on all such properties:

1. ER District:

- a. Add sub-sections 18.07.040. H. and I. as follows:

H. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

I. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.07.050. K. and L. as follows:

K. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

L. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

2. R1e District:

a. Add subsections 18.08.010. G. and H. as follows:

G. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18. 48.110.

H. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.08.020. O. and P. as follows:

O. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

P. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

3. R1 District:

a. Add sub-sections 18.12.010. G. and H. as follows:

G. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18. 48.110.

H. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

- b. Add sub-sections 18.12.020. O. and P. as follows:

O. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

P. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

4. R2 District:

- a. Add sub-sections 18.13.020. I. and J. as follows:

I. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18. 48.110.

J. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

- b. Add sub-sections 18.13.030. M. and N. as follows:

M. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

N. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

5. R3e District:

- a. Add sub-sections 18.16.010. M. and N. as follows:

M. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with standards set forth in section 18. 48.110.

N. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

- b. Add sub-sections 18.16.020. BB. and CC. as follows:

BB. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

CC. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

6. R3 District:

a. Add sub-sections 18.20.010. K. and L. as follows:

K. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18. 48.110.

L. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.20.020. W. and X. as follows:

W. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

X. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

7. Be District:

a. Add sub-sections 18.24.020. YY. and ZZ. as follows:

YY. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

ZZ. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.24.030. X. and Y. as follows:

X. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

Y. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

8. B District:

- a. Add sub-sections 18.28.010. RR. and SS. as follows:

RR. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

SS. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

- b. Add sub-sections 18.28.020. OO. and PP. as follows:

OO. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

PP. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

9. MAC District:

- a. Add sub-sections 18.29.020. SS. and TT. as follows:

SS. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

TT. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

- b. Add sub-sections 18.29.030. Q. and R. as follows:

Q. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

R. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

10. E District:

- a. Add sub-sections 18.30.020. MM. and NN. as follows:

MM. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18. 48.110.

NN. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.30.030. X. and Y. as follows:

X. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

Y. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

11. DR District:

a. Amend sub-section 18.38.010. to read as follows:

18.38.010 Uses permitted by right.

~~There are no uses permitted by right in a DR district.~~

A. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

B. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.38.020. J. and K. as follows:

J. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

K. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

C. Establish a new sub-section in Chapter 18.48 to allow small wind energy systems, as follows:

18.48.110 Small wind energy systems

A. Purpose.

1. To allow opportunities for certain alternative forms of electrical energy generation in appropriate areas of the City by installation and operation of small wind energy systems;
2. To assure that small wind energy systems comply with the provisions for accessory uses, as set forth in this chapter;
3. To assure that potential negative impacts on public and private safety, aesthetics, economy and convenience that may result from a small wind energy system are adequately mitigated; and,
4. To assure that small wind energy systems are reasonably compatible with the character of the neighborhood in which they are to be located.

B. General Provisions

1. A small wind energy system shall be deemed, and is hereby declared to be, an accessory use in designated zone districts, provided it complies with the standards set forth in this chapter, or is otherwise approved by the City pursuant to the provisions of chapter 18.40 of this title.
2. The City hereby declares that the provisions of this section shall not be deemed to establish, grant, require, assure, reserve, preserve, or imply, any easement or right of access to wind for the function of any small wind energy system approved by the City; and the City hereby expressly declares that it shall not be party to any effort, negotiation or acquisition of any such access or right to wind.
3. The allowance of small wind energy systems is not intended, nor shall it be construed, to abrogate or otherwise modify other zoning restrictions, subdivision restrictions, covenants, or other restrictions that may apply to a premise.

C. Definitions. As used in this section, the following words and phrases shall have the following meanings:

1. "Abutting property" means all real property which is contiguous to the property upon which a small wind energy system is proposed, including those properties which have contiguity at only a single point of contact.
2. "Tower" means a self-supporting monopole, or other similar structure approved by the City, that is designed and constructed primarily for the purpose of supporting a small wind energy system or portion thereof.

D. General standards. The following standards shall apply to all small wind energy systems except as otherwise approved by a special review pursuant to the provisions of chapter 18.40 of this title:

1. There shall be no more than one (1) small wind energy system per property and it shall be located on the same property as the principal dwelling for which it is an accessory use.

2. The small wind energy system shall have a maximum rated capacity not to exceed 10 kilowatts (kW).
3. Irrespective of the zoning district in which the small wind energy system is located, the small wind energy system shall be located a minimum distance of twenty (20) feet from all property lines of the property upon which the small wind energy system is located. A small wind energy system may not be located in a dedicated easement or right-of-way.
4. Notwithstanding sub-section 18.48.110.D.3, no small wind energy system shall be located in the front yard of any property, as defined in subsection 18.04.420.1 of this title.
5. The small wind energy system shall comply, at all times, with the maximum allowable noise levels set forth in chapter 7.32 of the municipal code.
6. The small wind energy system shall be designed and installed in compliance with all applicable provisions of chapter 15 of this title as determined by the chief building official.
7. For properties which receive electrical power from the City of Loveland, the small wind energy system shall be in compliance with “The Standard for Interconnecting Distributed Resources with the City of Loveland Power Department”, including a site inspection by a representative of the water and power department prior to approval of a building permit. For properties which receive electrical power from another public provider of electric power, no building permit shall be approved until the applicant has submitted written verification from said provider that they have reviewed the permit application and have determined that the small wind energy system will meet all requirements of said provider. Off-grid systems shall be exempt from these requirements.
8. No advertising or signs may be placed on the small wind energy system other than those incorporated by the manufacturer.
9. Colors of all external surfaces of the small wind energy system must uniformly be matte grey or other neutral or muted colors approved by the City which best blends the small wind energy system into its surroundings.
10. No illumination of the small wind energy system shall be allowed unless required by the regulations of the Federal Aviation Administration, by the manager for the Loveland-Fort Collins Airport, or if said illumination is not directly visible beyond the property upon which the small wind energy system is located.
11. The small wind energy system shall be equipped with a manual override system to allow shut-down in case of an emergency.
12. The small wind energy system shall be equipped with an automatic braking, governing, or feathering system to assure that over-rotation cannot occur.

13. Any small wind energy system that is out of service for a continuous period of twelve (12) months may be deemed by the City to be abandoned and the permit for the small wind energy system may be revoked, whereupon the small wind energy system shall be deemed a violation of this title and subject to removal by the property owners pursuant to the provisions of chapter 18.68 of this title.

14. The electrical energy produced by a small wind energy system shall be stored, used or consumed only on the same property upon which the small wind energy system is located, except when connected to a public provider system in compliance with "The Standards for Interconnecting Distributed Resources with the City of Loveland Power Department" or other applicable standards adopted by said other public provider of electrical power to the property.

15. Electrical lines or ground wires connecting a small wind energy system to other functional components, elements, or features, including service cabinets, battery cabinets, and accessory components, or to a building on the property shall be located internal to, or attached immediately upon, the external surfaces of the small wind energy system or the building upon which the small wind energy system is attached.

E. Additional standards for building-mounted small wind energy systems.

In addition to the general standards set forth in sub-section D. above, all building-mounted small wind energy systems shall comply with the following standards except as otherwise approved pursuant to the provisions of chapter 18.40 of this title:

1. A building-mounted small wind energy system shall be permanently attached to a permitted principal or accessory building on the property.

2. The maximum total height of a building-mounted small wind energy system which is attached directly to the roof of a building shall be ten (10) feet above the highest point of the roof upon which the small wind energy systems is attached. The maximum total height of a small wind energy system which is attached to a building in some manner other than directly to the roof shall be ten (10) feet above the highest point of the roof to which it is most closely located.

3. Any guy wires, tether wires, or stabilizing wires needed to affix the small wind energy system to a building shall be attached only to the building upon which the small wind energy system is attached.

4. When a building-mounted small wind energy system is attached in the manner described in sub-section 18.04.113.3.b, the support structure shall be positioned and attached to the building so that its relative position is as close to the building as can be practically and reasonably accomplished by standard construction techniques, as determined by the Current Planning Manager.

F. Additional standards for freestanding small wind energy systems.

In addition to the general standards set forth in section D. above, all freestanding small wind energy system shall comply with the following standards except as otherwise approved pursuant to the provisions of chapter 18.40 of this title:

1. The tower upon which the small wind energy system is attached shall be a self-supporting mono-pole with no other means of support or stabilization such as guy wires, tether wires, or stability wires. However, on a case-by-case basis, the Current Planning Manager may approve other types of towers, based upon a determination that the proposed tower will not have a negative visual impact on the neighborhood or adjacent properties, and provided the tower is designed by a professional engineer currently licensed in the State of Colorado. When submitted to the City, the plans for all towers shall be stamped by the designing professional engineer.
2. The maximum total height of any freestanding small wind energy system shall be thirty-five (35) feet above grade directly below, as defined in sub-section 18.04.113.2 of this title.
3. The distance between the bottom of rotor blades, at their lowest point of arc, to grade, as defined in sub-section 18.04.113.2 of this title, shall be a minimum of fifteen (15) feet.
4. No permanently attached mechanism for access to or onto the tower, which mechanism is incorporated or attached to the tower such as foot pegs, steps, rungs or ladders, shall be within twelve (12) feet of the grade directly below.
5. Appropriate warning signage shall be placed on both the small wind energy system and tower in accordance with the manufacturer's recommendations.
6. The minimum horizontal distance between the small wind energy system, and all property lines shall be ten percent (10%) greater than the total height of the small wind energy system.
7. The horizontal distance between the tower and all overhead public utility lines shall be twenty-five percent (25%) greater than the total height of the small wind energy system.

G. Application and review procedure.

1. No person shall install a small wind energy system within the City without first obtaining the appropriate permits from the City, as determined by the Current Planning Manager and the Chief Building Official at the time of application. The applicant shall submit the required applications to the City on forms required by the City, including the application fee, as determined by City Council resolution, and all other items set forth on the submittal checklist determined by the Current Planning Manager.
2. Upon completion of review by the City, the City shall notify the applicant whether a final decision can be made, or if the application must be revised and further reviewed. Upon City

determination that a final decision can be made, the City shall issue its final decision in the form of a written notice.

3. Upon issuance of the final decision, a copy of the written notice shall be mailed by the City to the applicant and to all owners and tenants of abutting properties, as indicated on the mailing list. All notified persons shall have ten (10) days from the date of mailing to submit an appeal of the final decision, pursuant to the provisions of chapter 18.80 of this title.

4. No permit shall be issued by the City until the City determines that the small wind energy system will be installed and operated in compliance with all requirements determined by the City, and that all appeal processes have concluded in a manner which allows issuance of the permit.

H. Issuance of permits.

1. Upon completion of any appeal process regarding the proposed small wind energy system, and if the application is approved, the City shall issue all permits necessary to allow installation and operation of the small wind energy system as described in the application and in accordance with any conditions placed on the permits by the City.

2. Prior to the issuance of said permits, the applicant shall certify that he or she will install and operate the small wind energy system in conformity with the provisions of this title and any conditions determined by the City as part of the review and approval process.

I. It is unlawful for any person to operate a small wind energy system that does not conform to the provisions of this section, or the conditions of approval as stated on the small wind energy system permits.

J. Revocation of permits and appeal provisions.

Any permits issued by the City for a small wind energy system may be revoked by the City if the City finds any of the following:

1. The small wind energy system no longer conforms to the provisions of this section or the conditions of approval accompanying the approval of the permits.

2. The mailing list provided by the applicant was faulty.

3. The applicant failed to follow the application, review and appeal process.

Written notification of said revocation shall be mailed to the last known address of the permit holder and shall include findings in support of the revocation and the applicant's rights of appeal. The date of the mailing shall be the date of notification. The permit holder and/or the current owner of the property may file a written appeal of the City's decision as provided for in chapter 18.80 of this title.

**PROPOSED TITLE 18 AMENDMENTS
SMALL WIND ENERGY SYSTEMS - Clean copy**

**PLANNING COMMISSION PUBLIC HEARING
August 8, 2011**

A. Definitions:

- 1. Add sub-section 18.04.355.5 to read as follows:

18.04.355.5 Small wind energy system defined.

“Small wind energy system” means any device or mechanism such as a wind charger, windmill, wind turbine, wind generator, or wind alternator which converts wind energy to a form of original useable electrical energy, and which has a maximum output rating of 10 kilowatts (kW), including associated external components, elements or features such as base, tower, wiring, connections, batteries, and associated control equipment.

- 2. Add sub-section 18.04.113.3 to read as follows:

18.04. 113.3 Building-mounted small wind energy system defined.

“Building-mounted small wind energy system” means a small wind energy system which is permanently attached to the roof, walls, or gable of a building, but not attached or anchored into the ground.

- 3. Add sub-section 18.04.164.5 to read as follows:

18.04.164.5 Freestanding small wind energy system defined

“Freestanding small wind energy system” means a small wind energy system which is permanently attached to and supported by a tower which is anchored into the ground.

B. Allow both building-mounted and freestanding small wind energy systems which comply with the specific standards in chapter 18.48 on all residential properties in the City as a use-by-right accessory use. This would include residential properties in the Be, B, MAC and E zones, and on properties in the DR zone which have a grandfathered residential use. Also allow building-mounted and freestanding SWES which does not comply with the normal standards as a use-by-special review on all such properties:

1. ER District:

- a. Add sub-sections 18.07.040. H. and I. as follows:

H. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

I. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.07.050. K. and L. as follows:

K. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

L. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

2. R1e District:

a. Add subsections 18.08.010. G. and H. as follows:

G. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18. 48.110.

H. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.08.020. O. and P. as follows:

O. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

P. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

3. R1 District:

a. Add sub-sections 18.12.010. G. and H. as follows:

G. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18. 48.110.

H. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

- b. Add sub-sections 18.12.020. O. and P. as follows:

O. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

P. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

4. R2 District:

- a. Add sub-sections 18.13.020. I. and J. as follows:

I. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18. 48.110.

J. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

- b. Add sub-sections 18.13.030. M. and N. as follows:

M. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

N. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18.48.110.

5. R3e District:

- a. Add sub-sections 18.16.010. M. and N. as follows:

M. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with standards set forth in section 18. 48.110.

N. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

- b. Add sub-sections 18.16.020. BB. and CC. as follows:

BB. Building-mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

CC. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

6. R3 District:

a. Add sub-sections 18.20.010. K. and L. as follows:

K. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18. 48.110.

L. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.20.020. W. and X. as follows:

W. Building–mounted small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

X. Freestanding small wind energy system, as an accessory use to the permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

7. Be District:

a. Add sub-sections 18.24.020. YY. and ZZ. as follows:

YY. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

ZZ. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.24.030. X. and Y. as follows:

X. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

Y. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

8. B District:

- a. Add sub-sections 18.28.010. RR. and SS. as follows:

RR. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

SS. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

- b. Add sub-sections 18.28.020. OO. and PP. as follows:

OO. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

PP. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

9. MAC District:

- a. Add sub-sections 18.29.020. SS. and TT. as follows:

SS. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

TT. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

- b. Add sub-sections 18.29.030. Q. and R. as follows:

Q. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

R. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

10. E District:

- a. Add sub-sections 18.30.020. MM. and NN. as follows:

MM. Building–mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18. 48.110.

NN. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.30.030. X. and Y. as follows:

X. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

Y. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

11. DR District:

a. Amend sub-section 18.38.010. to read as follows:

18.38.010 Uses permitted by right.

A. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

B. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is in compliance with the standards set forth in section 18.48.110.

b. Add sub-sections 18.38.020. J. and K. as follows:

J. Building-mounted small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

K. Freestanding small wind energy system, as an accessory use to a permitted residential use, which is not in compliance with one or more of the standards set forth in section 18. 48.110.

C. Establish a new sub-section in Chapter 18.48 to allow small wind energy systems, as follows:

18.48.110 Small wind energy systems

A. Purpose.

1. To allow opportunities for certain alternative forms of electrical energy generation in appropriate areas of the City by installation and operation of small wind energy systems;

2. To assure that small wind energy systems comply with the provisions for accessory uses, as set forth in this chapter;
3. To assure that potential negative impacts on public and private safety, aesthetics, economy and convenience that may result from a small wind energy system are adequately mitigated; and,
4. To assure that small wind energy systems are reasonably compatible with the character of the neighborhood in which they are to be located.

B. General Provisions

1. A small wind energy system shall be deemed, and is hereby declared to be, an accessory use in designated zone districts, provided it complies with the standards set forth in this chapter, or is otherwise approved by the City pursuant to the provisions of chapter 18.40 of this title.
2. The City hereby declares that the provisions of this section shall not be deemed to establish, grant, require, assure, reserve, preserve, or imply, any easement or right of access to wind for the function of any small wind energy system approved by the City; and the City hereby expressly declares that it shall not be party to any effort, negotiation or acquisition of any such access or right to wind.
3. The allowance of small wind energy systems is not intended, nor shall it be construed, to abrogate or otherwise modify other zoning restrictions, subdivision restrictions, covenants, or other restrictions that may apply to a premise.

C. Definitions. As used in this section, the following words and phrases shall have the following meanings:

1. "Abutting property" means all real property which is contiguous to the property upon which a small wind energy system is proposed, including those properties which have contiguity at only a single point of contact.
2. "Tower" means a self-supporting monopole, or other similar structure approved by the City, that is designed and constructed primarily for the purpose of supporting a small wind energy system or portion thereof.

D. General standards. The following standards shall apply to all small wind energy systems except as otherwise approved by a special review pursuant to the provisions of chapter 18.40 of this title:

1. There shall be no more than one (1) small wind energy system per property and it shall be located on the same property as the principal dwelling for which it is an accessory use.

2. The small wind energy system shall have a maximum rated capacity not to exceed 10 kilowatts (kW).
3. Irrespective of the zoning district in which the small wind energy system is located, the small wind energy system shall be located a minimum distance of twenty (20) feet from all property lines of the property upon which the small wind energy system is located. A small wind energy system may not be located in a dedicated easement or right-of-way.
4. Notwithstanding sub-section 18.48.110.D.3, no small wind energy system shall be located in the front yard of any property, as defined in subsection 18.04.420.1 of this title.
5. The small wind energy system shall comply, at all times, with the maximum allowable noise levels set forth in chapter 7.32 of the municipal code.
6. The small wind energy system shall be designed and installed in compliance with all applicable provisions of chapter 15 of this title as determined by the chief building official.
7. For properties which receive electrical power from the City of Loveland, the small wind energy system shall be in compliance with “The Standard for Interconnecting Distributed Resources with the City of Loveland Power Department”, including a site inspection by a representative of the water and power department prior to approval of a building permit. For properties which receive electrical power from another public provider of electric power, no building permit shall be approved until the applicant has submitted written verification from said provider that they have reviewed the permit application and have determined that the small wind energy system will meet all requirements of said provider. Off-grid systems shall be exempt from these requirements.
8. No advertising or signs may be placed on the small wind energy system other than those incorporated by the manufacturer.
9. Colors of all external surfaces of the small wind energy system must uniformly be matte grey or other neutral or muted colors approved by the City which best blends the small wind energy system into its surroundings.
10. No illumination of the small wind energy system shall be allowed unless required by the regulations of the Federal Aviation Administration, by the manager for the Loveland-Fort Collins Airport, or if said illumination is not directly visible beyond the property upon which the small wind energy system is located.
11. The small wind energy system shall be equipped with a manual override system to allow shut-down in case of an emergency.
12. The small wind energy system shall be equipped with an automatic braking, governing, or feathering system to assure that over-rotation cannot occur.

13. Any small wind energy system that is out of service for a continuous period of twelve (12) months may be deemed by the City to be abandoned and the permit for the small wind energy system may be revoked, whereupon the small wind energy system shall be deemed a violation of this title and subject to removal by the property owners pursuant to the provisions of chapter 18.68 of this title.

14. The electrical energy produced by a small wind energy system shall be stored, used or consumed only on the same property upon which the small wind energy system is located, except when connected to a public provider system in compliance with "The Standards for Interconnecting Distributed Resources with the City of Loveland Power Department" or other applicable standards adopted by said other public provider of electrical power to the property.

15. Electrical lines or ground wires connecting a small wind energy system to other functional components, elements, or features, including service cabinets, battery cabinets, and accessory components, or to a building on the property shall be located internal to, or attached immediately upon, the external surfaces of the small wind energy system or the building upon which the small wind energy system is attached.

E. Additional standards for building-mounted small wind energy systems.

In addition to the general standards set forth in sub-section D. above, all building-mounted small wind energy systems shall comply with the following standards except as otherwise approved pursuant to the provisions of chapter 18.40 of this title:

1. A building-mounted small wind energy system shall be permanently attached to a permitted principal or accessory building on the property.

2. The maximum total height of a building-mounted small wind energy system which is attached directly to the roof of a building shall be ten (10) feet above the highest point of the roof upon which the small wind energy systems is attached. The maximum total height of a small wind energy system which is attached to a building in some manner other than directly to the roof shall be ten (10) feet above the highest point of the roof to which it is most closely located.

3. Any guy wires, tether wires, or stabilizing wires needed to affix the small wind energy system to a building shall be attached only to the building upon which the small wind energy system is attached.

4. When a building-mounted small wind energy system is attached in the manner described in sub-section 18.04.113.3.b, the support structure shall be positioned and attached to the building so that its relative position is as close to the building as can be practically and reasonably accomplished by standard construction techniques, as determined by the Current Planning Manager.

F. Additional standards for freestanding small wind energy systems.

In addition to the general standards set forth in section D. above, all freestanding small wind energy system shall comply with the following standards except as otherwise approved pursuant to the provisions of chapter 18.40 of this title:

1. The tower upon which the small wind energy system is attached shall be a self-supporting mono-pole with no other means of support or stabilization such as guy wires, tether wires, or stability wires. However, on a case-by-case basis, the Current Planning Manager may approve other types of towers, based upon a determination that the proposed tower will not have a negative visual impact on the neighborhood or adjacent properties, and provided the tower is designed by a professional engineer currently licensed in the State of Colorado. When submitted to the City, the plans for all towers shall be stamped by the designing professional engineer.
2. The maximum total height of any freestanding small wind energy system shall be thirty-five (35) feet above grade directly below, as defined in sub-section 18.04.113.2 of this title.
3. The distance between the bottom of rotor blades, at their lowest point of arc, to grade, as defined in sub-section 18.04.113.2 of this title, shall be a minimum of fifteen (15) feet.
4. No permanently attached mechanism for access to or onto the tower, which mechanism is incorporated or attached to the tower such as foot pegs, steps, rungs or ladders, shall be within twelve (12) feet of the grade directly below.
5. Appropriate warning signage shall be placed on both the small wind energy system and tower in accordance with the manufacturer's recommendations.
6. The minimum horizontal distance between the small wind energy system, and all property lines shall be ten percent (10%) greater than the total height of the small wind energy system.
7. The horizontal distance between the tower and all overhead public utility lines shall be twenty-five percent (25%) greater than the total height of the small wind energy system.

G. Application and review procedure.

1. No person shall install a small wind energy system within the City without first obtaining the appropriate permits from the City, as determined by the Current Planning Manager and the Chief Building Official at the time of application. The applicant shall submit the required applications to the City on forms required by the City, including the application fee, as determined by City Council resolution, and all other items set forth on the submittal checklist determined by the Current Planning Manager.
2. Upon completion of review by the City, the City shall notify the applicant whether a final decision can be made, or if the application must be revised and further reviewed. Upon City

determination that a final decision can be made, the City shall issue its final decision in the form of a written notice.

3. Upon issuance of the final decision, a copy of the written notice shall be mailed by the City to the applicant and to all owners and tenants of abutting properties, as indicated on the mailing list. All notified persons shall have ten (10) days from the date of mailing to submit an appeal of the final decision, pursuant to the provisions of chapter 18.80 of this title.

4. No permit shall be issued by the City until the City determines that the small wind energy system will be installed and operated in compliance with all requirements determined by the City, and that all appeal processes have concluded in a manner which allows issuance of the permit.

H. Issuance of permits.

1. Upon completion of any appeal process regarding the proposed small wind energy system, and if the application is approved, the City shall issue all permits necessary to allow installation and operation of the small wind energy system as described in the application and in accordance with any conditions placed on the permits by the City.

2. Prior to the issuance of said permits, the applicant shall certify that he or she will install and operate the small wind energy system in conformity with the provisions of this title and any conditions determined by the City as part of the review and approval process.

I. It is unlawful for any person to operate a small wind energy system that does not conform to the provisions of this section, or the conditions of approval as stated on the small wind energy system permits.

J. Revocation of permits and appeal provisions.

Any permits issued by the City for a small wind energy system may be revoked by the City if the City finds any of the following:

1. The small wind energy system no longer conforms to the provisions of this section or the conditions of approval accompanying the approval of the permits.

2. The mailing list provided by the applicant was faulty.

3. The applicant failed to follow the application, review and appeal process.

Written notification of said revocation shall be mailed to the last known address of the permit holder and shall include findings in support of the revocation and the applicant's rights of appeal. The date of the mailing shall be the date of notification. The permit holder and/or the current owner of the property may file a written appeal of the City's decision as provided for in chapter 18.80 of this title.

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
August 8, 2011

The meeting of the City of Loveland Planning Commission was held in the City Council Chambers on August 8, 2011 at 6:30 p.m. Members present: Chair Molloy; Vice Chair Meyers; and Commissioners Crescibene, Middleton, Dowding and Leadbetter. Commissioners Absent: Krenning, Ray and Fancher. City Staff present: Troy Bliss, Current Planning; Brian Burson 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, the audio and videotapes are available for review in the Community Services office.

STAFF MATTERS

Assistant City Attorney Judy Schmidt briefly introduced herself to the Planning Commission explaining that she would soon be assuming the duties of Assistant City Attorney that Ms. Sharma has been performing. She indicated that the change is simply an ongoing effort within the City Attorney's Office to cross-train and work with other city departments and the various boards and commissions.

Robert Paulsen, Current Planning Manager, reported that he provided the Commission with a memorandum regarding the Comprehensive Plan update. He stated that ten (10) revised and consolidated objectives have been identified and he asked the Planning Commission to review the objectives prior to the discussion at the August 22, 2011 Planning Commission Meeting.

APPROVAL OF MINUTES

Commissioner Meyers made a motion to adopt the June 27, 2011 meeting minutes. Upon a second by Commissioner Dowding the motion was unanimously adopted. Commissioner Crescibene abstained.

After a brief discussion regarding the lack of a quorum at the July 25, 2011 Planning Commission meeting, **Assistant City Attorney Sunita Sharma** reported there were no minutes from July 25, 2011 to approve, as no action other than continuance of agenda items was taken.

COMMITTEE REPORTS

Vice Chair Meyers stated that the Title 18 Committee will not meet in August and the items before the Commission are the items that they have been working on.

CONSENT AGENDA

1. Lee Farm 1st Subdivision

SUMMARY OF AGENDA ITEM: Consideration of a request for a two year extension for the approval of the Lee Farm 1st Subdivision preliminary plat, consisting of 246.86 acres. The preliminary plat was originally approved by the Planning Commission on August 23, 2010.

With the original approval of the related Lee Farm 1st Subdivision PUD Preliminary Development Plan, vested rights were acquired, assuring the validity of the PDP for three years. Since the preliminary plat and PDP are interrelated, it is appropriate to grant validity to the preliminary plat for the same length of time.

This application involves administrative action by the Planning Commission. Absent an appeal, the Planning Commission's action is final.

Commissioner Middleton made a motion to approve the Consent Agenda. Upon a second by Commissioner Crescibene the motion was unanimously adopted.

REGULAR AGENDA

1. Amendments to Title 18 Regarding Signs Not Subject to Permit-Exempt Signs and Project Marketing Signs.

SUMMARY OF AGENDA ITEM: This is a public hearing to consider the proposed amendments to Title 18 which are focused on the City's exempt sign and project marketing sign provisions. The amendments are considered minor and are associated with the larger set of Temporary Sign amendments reviewed and recommended for approval by the Planning Commission on June 27, 2011.

Troy Bliss, Project Planner, gave a staff presentation on this item. He reported that staff had initiated some minor adjustments to the signage provisions for government flags and real estate marketing signs following the July 25, 2011 Planning Commission hearing. These adjustments responded to issues raised during the discussion of Temporary signs.

He stated that the proposed amendments are to the City's exempt and project marketing sign provisions, specifically structured in three main areas of focus:

- Expanding and clarifying the use of flags as exempt forms of signs;
- Providing greater allowances for real estate marketing and advertisement needs specifically relating to flying banners-type signs; and
- Allowing a longer duration period for the use of project marketing signs for new residential developments.

He reported that these amendments were presented to the Title 18 Committee on July 14 and received full support of the Committee. He stated that with the Planning Commission's review of these amendments, staff intends to incorporate them into the Temporary Sign amendments when they are presented to the City Council in early September.

Vice Chair Meyers thanked staff for their patience and flexibility in accommodating real estate and business owners. He stated he fully supported the item.

Commissioner Dowding stated that at the June 27, 2011 meeting the Planning Commission supported provisions to accommodate flying banners that were 13 foot high with a total of 25 square feet in area. She questioned why the new amendment specifies a maximum width allowances rather than a square footage limit; she suggested that the standards be consistent on all temporary signage.

Mr. Bliss concurred that the width limitation was not specified in the original Temporary Sign amendments. He clarified that in the new amendments staff is specifying a width of 4 feet, not a specific square footage limitation on the size of the banner.

Vice Chair Meyers he stated that there is no industry standard and that all signs are custom made.

Mr. Bliss clarified that the Commission approved a maximum height of 13 feet and maximum square footage allowance of 25 square feet for flying banners used in commercial applications; he further stated that staff had not specified a width limit. He asked if the Commission would like to keep the height to 13 feet with the maximum width of 25 square feet.

Commissioner Dowding asked if the Commission was comfortable with maintaining a different standard for business and real estate signs.

Vice Chair Meyers reemphasized there are no industry standards for the tear drop banners and that the temporary signs for businesses have already been determined, and for clarification the Commission is only looking at temporary real estate signs. He stated that most signs made are customized.

Mr. Bliss stated staff's intent is to allow a height and width standard for residential banners, vs. the commercial provisions that only identify height and square footage. He further commented that commercial businesses are allowed to have four (4) banners (approx. 100 square ft.) without a permit, and residential banners are limited to two (2) banners and when the height and width is calculated it is approximately the same in square footage.

Vice Chair Meyers, after alluding to the previous hearing, commented that he would not support the 4 foot width and stated that he would support what was approved at the hearing on June 27, 2011.

Assistant City Attorney Sharma noted that she believed that there was an error in the minutes of the June 27, 2011 hearing that were previously adopted. She stated that she believed that the intent of the Commission was for flying banners to be limited to 25 square feet in total area and that the reference in the minutes to “width” was incorrect.

PUBLIC COMMENT

There was no public comment.

Upon closing the public comment portion of the hearing, there was a discussion involving several Commissioners to the effect that the amendment regarding flying banners should include a height limit of 13 feet, a width limit of 4 feet, and a square footage limit of 25 feet for each flying banner type sign. This position appeared to represent a consensus of the Commission.

Vice Chair Meyers made a motion to recommend that City Council approve the amendments to Title 18 regarding signs not subject to permit-exempt signs and project marketing signs as described in the August 8, 2011 Planning Commission staff report, as amended on the record, and to authorize the City Attorney’s Office to correct spelling, punctuation, and clerical and typographical errors, and make other such modifications in form, but not substance, as necessary to effectuate the purposes of the recommended amendments. Upon a second by Commissioner Leadbetter the motion was unanimously adopted.

2. Amendments to Title 18 to allow small wind energy systems (wind turbines) on residential properties

SUMMARY OF AGENDA ITEM: This is a public hearing to consider amendments to Title 18 of the City of Loveland Municipal Code to allow small wind energy systems, (small wind turbines) on all residential properties in the City, subject to specific standards and process. Small wind energy systems could be either building-mounted or freestanding. Small wind turbines that fully comply with all of the specific standards would be a use-by-right as an accessory use. Small wind turbines that do not fully comply with all of the specific standards would be a use-by-special review. If approved as a use-by-special review, the small wind energy system would still be deemed as an accessory use.

Brian Burson, Project Planner, gave a brief history and staff report on this item. He commented that information from the American Wind Energy Association was very helpful in guiding staff in drafting the proposed regulations. He stated that the majority of the sources that staff utilized in developing the regulations encouraged the removal of regulatory obstacles in making allowances for small wind energy systems.

Mr. Burson commented that Loveland is considered to be a poor wind generating community (it is located in an area which has relatively low potential for wind power generation) and the amount of energy that could be generated would be used for limited functions; however, future technological advancements could although with on-going technology staff believes that could change. He reported that the majority of the small-scale wind generators come in a kit and can be mounted on a pole or a roof. He stated that the wind systems can be purchased in numerous

places and that the purchaser or a contractor can mount them. He stated that the manufacturers generally provide devices that are designed and stamped by an engineer; the proposed regulations do not require that a Colorado PE stamp the plans for such units. . He stated that the installation of turbines, whether pole or roof-mounted, would be subject to applicable building codes and inspections.

He outlined the proposed standards as follows:

- Limit of one per property, with a maximum rating of 10 kilowatts;
- Limit the height to 10 feet above the ridge line of the roof or 35 feet from grade for freestanding;
- Require appropriate distances from all property lines and all overhead utility lines to limit the impacts and prevent damage to other property and improvements;
- Minimize visual impacts by requiring neutral or muted colors, minimizing guy wires, and prohibiting signs and lights on the devices or towers;
- Assure compliance with the existing noise ordinance for residential properties.

Mr. Burson noted that under the recommended motion, a reference was made to Attachment #3; the reference should read Attachment #2. He concluded by stating that staff is requesting that small wind power generators be allowed as uses by right on all residential properties.

Commissioner Crescibene stated he did not support the proposed amendments and felt that that the small wind turbines would be an eye sore and create visual clutter. He questioned their benefit if Loveland is not in an area that produces a sufficient amount of wind and stated he was opposed to allowing them to be in the City limits, specifically not in a residential area.

Vice Chair Meyers commented that he felt it was important to allow citizens a choice on whether they want to use this type of alternative energy. He spoke of the advances in technology that have recently occurred, stating that there are bladeless generators that can operate with winds of 5 miles per hour.

Mr. Burson responded to a question from Commissioner Middleton, and clarified that a building permit would be required.

Commissioner Middleton stated he supported the amendment and felt that we were behind the green power curve on the alternative power issue in the United States.

Commissioner Dowding stated she support the proposed amendment but expressed concerns that it may potentially create a battleground with Homeowner's Associations.

Commissioner Crescibene commented that due to federal regulations any issue regarding energy supersedes any regulations that a Homeowner's Association may have.

Mr. Burson clarified that the Colorado State Legislature passed legislation that prohibits Homeowner's Associations from denying the generators, but stated they can control how they look and where they are located.

Commissioner Leadbetter stated that he is not a proponent of seeing these generators going up, but he believed there is a need for this type of alternative energy and that it is necessary to have regulations in place. He clarified that his concern was that there be a permitting process to make sure that they are properly erected and that the mounting should be stamped by a local engineer.

Chair Molloy commented that currently the generators may not produce much electricity but believed with time and with advances in technology they will become more efficient. He stated that a reduction in energy usage was a benefit to the community.

PUBLIC COMMENT

There was no public comment.

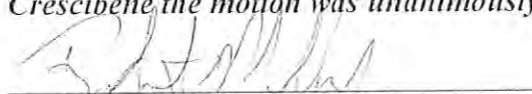
Commissioner Middleton made a motion to recommend the City Council approve the amendments to Title 18 of the Loveland Municipal Code, as set forth in Attachment #2 of the attached Planning Commission staff memorandum, dated July 25, 2011, as amended on the record, and to authorize the City Attorney's Office to correct spelling, punctuation, and clerical and typographical errors, and make other such modifications in form, but not substance, as necessary to effectuate the purposes of the recommended amendments. Upon a second by Vice Chair Meyers the motion was adopted 5-1 (Commissioner Crescibene voting Nay).

(Secretary's note: There was a brief recess)

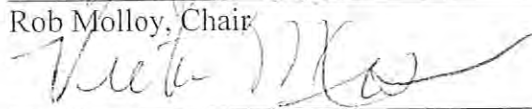
Vice Chair Meyers made a motion to redact his previous motion to approve the June 27, 2011 meeting minutes. Upon a second by Commissioner Middleton the motion was unanimously adopted.

ADJOURNMENT

Commissioner Middleton made a motion to adjourn. Upon a second by Commissioner Crescibene the motion was unanimously adopted.



Rob Molloy, Chair



Vicki Mesa, Secretary