

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

ROLL CALL

Roll was called and the following responded: Gutierrez, Taylor, Farley, Klassen, Shaffer, Trenary, McKean, McEwen and Fogle.

**PROCEDURAL
INFORMATION**

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

CONSENT AGENDA

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to speak on any of the items or public hearings listed on the Consent Agenda. Item 8 was removed from the consent agenda. Councilor McEwen moved to approve the Consent Agenda with the exception of Item 8. The motion was seconded by Councilor Shaffer and a roll call vote was taken with all councilors present voting in favor thereof.

1. CITY CLERK

Approval of Council Minutes

Motion

Administrative Action: A motion approving Council minutes from December 13, 2011 study session and December 20, 2011 regular meeting was approved.

2. CITY MANAGER

Board & Commission Appointments

Motion

Administrative Action: City Council approved the following appointments:
Citizens' Finance Advisory Commission: John Case and Jason Napolitano were appointed, each for three year terms effective until December 31, 2014.
Golf Advisory Board: James Corlett, Jim Thompson, and Robert Walkowicz were reappointed, each for terms effective until December 31, 2014. Thomas O'Gorman and Jan Wall were appointed as Alternate members, each for a term effective until December 31, 2012.
Historic Preservation Commission: Laura McGinley was appointed for a partial term effective until June 30, 2012.
Parks and Recreation Commission: Twyla Dennis and Neil Spooner were reappointed, each for terms effective until December 31, 2014. Kerry Brooks was appointed for a term effective until December 31, 2014. Margo Ervin was appointed as an Alternate member for a one-year term effective until December 31, 2012.

Planning Commission: Troy Krenning, Buddy Meyers, and Rob Molloy were reappointed, each for terms effective until December 31, 2014.

Senior Advisory Board: Lynn Hayden-Ugarte was reappointed and Carol Rehme appointed for three year terms effective until December 31, 2014. Angle Sawtelle, Richard Hedlund, and Richard Zlamany were appointed as Alternate Members, each for one year terms effective until December 31, 2012.

Visual Arts Commission: Angela Canada-Hopkins and Nancy Jakobsson were reappointed, each for terms effective until December 31, 2014. MaryJo Morgan was appointed for a term effective until December 31, 2014. Greg Hoff was appointed as an Alternate for a one-year term effective until December 31, 2012.

3. CITY CLERK

Posting Location for City of Loveland Meeting Notices

Resolution #R-1-2012

Administrative Action: Resolution #R-1-2012 establishing the location for the posting of City of Loveland notices was approved.

RESOLUTION #R-1-2012

A RESOLUTION ESTABLISHING THE LOCATION FOR THE POSTING OF CITY OF LOVELAND NOTICES

WHEREAS, City Charter Section 4-4(b) requires that the notice of each regular and special City Council meeting shall be posted at least twenty-four hours in advance of the meeting; and

WHEREAS, under C.R.S. Section 24-6-402(2)(c) a local public body is deemed to have given full and timely notice of its meetings if the meeting notice is posted in a designated public place within the local public body's boundaries no less than twenty-four hours prior to the holding of the meeting; and

WHEREAS, C.R.S. Section 24-6-402 (2)(c) further provides that the public place for posting such notice shall be designated annually by the local public body at its first regular meeting in each calendar year; and

WHEREAS, City Council meetings are held in the Council Chambers located at 500 E. 3rd St, immediately adjacent to the City Clerk's Office.

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

Section 1. The City Council hereby designates the place for the posting of all meeting notices for the Loveland City Council and Loveland's Boards and Commissions to be the bulletin board immediately adjacent to the Loveland City Council Chambers located at 500 East 3rd Street, City of Loveland, Colorado.

Section 2. This Resolution shall go into effect on the date of its adoption.

ADOPTED this 3rd day of January, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

4. PUBLIC WORKS

Meeting Location Change – Transportation Advisory Board

Resolution #R-2-2012

Administrative Action: Resolution #R-2-2012 amending the scheduled meeting place of the City of Loveland Transportation Advisory Board was approved.

RESOLUTION #R-2-2012

A RESOLUTION AMENDING THE SCHEDULED MEETING PLACE OF THE CITY OF LOVELAND TRANSPORTATION ADVISORY BOARD

WHEREAS, on December 6, 2011, City Council adopted Resolution #R-81-2011 setting forth the 2012 meeting dates, times, and places for the City's boards and commissions, including the City of Loveland Transportation Advisory Board ("Board"); and

WHEREAS, the Board meeting place is currently set as the City Council Chambers, 500 East Third Street, Loveland, Colorado; and

WHEREAS, due to holidays, special meetings, and other scheduling conflicts, the Board had to move its meeting place several times during 2011 to the Emergency Operations Center, Fire Administration Building, 410 East Fifth Street, Loveland, Colorado; and

WHEREAS, on December 5, 2011, the Board adopted a motion recommending that City Council change the Board meeting place to the Emergency Operations Center in order to avoid future scheduling conflicts.

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

Section 1. That Resolution #R-81-2011 is hereby amended to change the Board's meeting place from the City Council Chambers, 500 East Third Street, Loveland, Colorado, to the Emergency Operations Center, Fire Administration Building, 410 East Fifth Street, Loveland, Colorado. The Board meeting dates and times shall remain the same.

Section 2. That except as amended herein, Resolution #R-81-2011 shall remain in full force and effect.

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

ADOPTED this 3rd day of January, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

5. WATER & POWER

Amendment to the Agreement for the Windy Gap FIRMING Project

Resolution #R-3-2012

Administrative Action: Resolution #R-3-2012 approving the Fifth Amendment to the Fourth Interim Agreement with Northern Colorado Water Conservancy District was approved.

RESOLUTION #R-3-2012

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A FIFTH AMENDMENT TO THE FOURTH INTERIM AGREEMENT WITH THE MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY DISTRICT WINDY GAP FIRMING PROJECT WATER ACTIVITY ENTERPRISE, FOR PARTICIPATION IN THE WINDY GAP FIRMING PROJECT

WHEREAS, since the 1970s, the City of Loveland has been a participant in the Windy Gap Project ("Project"), which is managed by the Municipal Subdistrict of the Northern Colorado Water Conservancy District ("Subdistrict"); and

WHEREAS, the City owns 40 units, which represent raw water, in the Windy Gap Project; and

WHEREAS, the Windy Gap Project water rights are junior, and won't supply water during drought without storage; and

WHEREAS, the Subdistrict and participants have been seeking ways to improve the reliability and yield of Windy Gap Project units (the "Windy Gap FIRMING Project"); and

WHEREAS, the City has been involved in the Windy Gap FIRMING Project, which has identified a possible reservoir site at Chimney Hollow; and

WHEREAS, the City has reserved 7,000 acre-feet of storage in the Windy Gap FIRMING Project; and

WHEREAS, the Subdistrict requested a further commitment from all participants, including the City, to make possible the completion of environmental and other permitting, environmental studies, further engineering studies, preliminary design work, and land acquisition for the Project ("the Fourth Phase") by way of a Fourth Interim Agreement Between the Municipal Subdistrict, Northern Colorado Water Conservancy District Windy Gap FIRMING Project Water Activity Enterprise, and City of Loveland, Colorado for Participation in the Windy Gap FIRMING Project ("Agreement"), which was signed on February 16, 2006; and

WHEREAS, the Agreement was amended on December 11, 2007 ("First Amendment") to provide additional funding to complete the Fourth Phase; on August 18, 2008 ("Second Amendment") to increase the City's storage capacity in the Project; on June 10, 2009 ("Third Amendment") to provide additional funding to complete the Fourth Phase; and on July 15, 2010 to provide additional funding to complete the Fourth Phase ("Fourth Amendment"); and

WHEREAS, the Subdistrict needs additional funds to complete the Fourth Phase and is requesting that all participants, including the City, execute another amendment to the Agreement committing additional monies proportionate to their commitment to the Project; and

WHEREAS, the Loveland Utilities Commission recommends that the City enter into an amendment to complete the Fourth Phase of the Project; and

WHEREAS, the City Council finds that participation In the Project will benefit the Utility's ratepayers and is in the best interests of Loveland's citizens; and

WHEREAS, the City Council desires to enter into an amendment to complete the Fourth Phase of the Project.

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

Section 1. That the "Fifth Amendment to Fourth Interim Agreement Between the Municipal Subdistrict, Northern Colorado Water Conservancy District Windy Gap Firming Project Water Activity Enterprise, and the City of Loveland for Participation in the Windy Gap Firming Project" ("Fifth Amendment"), attached hereto as Exhibit A and incorporated herein by reference, is approved, and the Mayor and City Clerk are authorized to execute and enter into the Fifth Amendment on behalf of the City of Loveland.

Section 2. That the Mayor is authorized, following consultation with the City Manager and the City Attorney, to approve changes to the form of the Fifth Amendment, In form or in substance, as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That this Resolution shall take effect as of the date and time of its adoption.

ADOPTED this 3rd day of January, 2012. Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

6. FINANCE

2012 Supplemental Appropriation – Financial Administrative Changes

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET TO REORGANIZE THE UTILITY BILLING, CUSTOMER SERVICE AND METER READING FUNCTIONS WITHIN THE GENERAL FUND UNDER THE FINANCE DEPARTMENT-REVENUE DIVISION" was approved and ordered published on first reading.

7. FINANCE

2011 Supplemental Appropriation - Special Improvement District #1

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 BUDGET AND RATIFYING DISTRICT BOND PREPAYMENT" was approved and ordered published on first reading.

8. DEVELOPMENT SERVICES

Mariana Butte 23rd Subdivision – Findings and Conclusions

This item was removed from the consent agenda.

9. CITY MANAGER

2012 Legislative Policy Agenda

Motion

Administrative Action: A motion approving the 2012 Loveland City Council Legislative Policy Agenda was approved.

END OF CONSENT AGENDA

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports

Ed Klen, Loveland resident, stated he disagreed with the City Manager's findings regarding the building at 209 E. 4th Street. Mr. Klen indicated that he had conducted his own investigation and was requesting this matter be set to a future agenda for further discussion. The Mayor asked Mr. Klen to provide him with a copy of the materials he wanted Council to review.

b) Business from Council

Trenary

Councilor Trenary thanked staff for their response to Saturday's high winds, emphasizing the positive impact to local businesses.

McKean

Councilor McKean stated he would like to hear more about Mr. Klen's concerns. Councilor Fogle stated the City Manager should be present at any future discussions with Mr. Klen, since his findings were being challenged. Council requested the Mayor forward Mr. Klen's materials to the rest of Council. Council Shaffer requested staff comments be included on the material they receive.

Shaffer

Councilor Shaffer commented on the 75th anniversary of the Loveland Museum, encouraging the public to attend the events planned for the year 2012. She also invited Council to attend two events with Congressman Polis both on Friday, January 6th. At 2:00 pm, there will be a walk-through of the Rocky Mountain Center for Innovation and Technology at 915 SW 14th St. S.E. and a reception at 218 E. 6th from 5:00 to 6:30 p.m.

c) City Manager Report

None

d) City Attorney Report

None

PROCEDURAL INFORMATION

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

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

8. DEVELOPMENT SERVICES

Mariana Butte 23rd Subdivision – Findings and Conclusions

Resolution #R-4-2012

Administrative Action: City Councilor Farley recused himself due to his relationship with John Baxter, manager of B&B I LLC. Development Services Director Greg George introduced this item to Council. Councilor McEwen made a motion to approve Resolution #R-4-2012 adopting findings and conclusions regarding denial of an amendment to a Preliminary Development Plan and Preliminary Plat for Lots 1-5, Block 1 and Outlots A, B, C and D of Mariana Butte 23rd Subdivision located within the Mariana Butte Planned Unit Development (#P-8), City of Loveland, Larimer County, Colorado. Councilor Shaffer seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof, and Councilor Farley recusing himself.

RESOLUTION #R-4-2012

A RESOLUTION ADOPTING FINDINGS AND CONCLUSIONS REGARDING DENIAL OF AN AMENDMENT TO A PRELIMINARY DEVELOPMENT PLAN AND PRELIMINARY PLAT FOR LOTS 1-5, BLOCK 1 AND OUTLOTS A, B, C AND D OF MARIANA BUTTE 23RD SUBDIVISION LOCATED WITHIN THE MARIANA BUTTE PLANNED UNIT DEVELOPMENT (#P-8), CITY OF LOVELAND, LARIMER COUNTY, COLORADO

WHEREAS, on June 11, 2007, the Planning Commission for the City of Loveland approved Resolution #07-04 PDP approving a Preliminary Development Plan for PUD #P-8, for Tract A Mariana Butte PUD, Tenth Subdivision; and

WHEREAS, a proposed Amendment to the Preliminary Development Plan for PUD #P-8 for that portion of the Mariana Butte PUD #P-8 known as Lots 1-5, Block 1 and Outlots A, B, C and D of Mariana Butte PUD 23rd Subdivision and referred to herein as the "Amended PDP", was submitted to the Loveland Planning Commission for consideration pursuant to Chapter 18.41 of the Loveland Municipal Code; and

WHEREAS, the Mariana Butte 26th Subdivision Preliminary Plat (the "Preliminary Plat") for the same portion of the Mariana Butte PUD #P-8 was also submitted to the Planning Commission for consideration, pursuant to Code Section 16.20.060; and

WHEREAS, the applications for the Amended PDP and the Preliminary Plat were considered as a joint application under Code Section 18.41.080; and

WHEREAS, pursuant to Code Section 18.41.050.E.2 and after due notice had been given, the Planning Commission held a public hearing on August 22, 2011 regarding said Amended PDP and Preliminary Plat; and

WHEREAS, at said hearing the recommendations of the Current Planning Division as set forth in the Planning Staff Report dated August 22, 2011 and all attachments thereto (the "Staff Report") were received and duly considered by the Commission, as was testimony from the applicant, John Baxter on behalf of B & B I, LLC, the applicant's representative, Ken Merritt of Landmark Planning and Engineering, and the public; and

WHEREAS, the Planning Commission considered the application for approval of the Amended PDP in light of the intent and objectives of Chapter 18.41 of the Loveland Municipal Code, and more specifically the factors set forth in Code Sections 18.41.050.E.2.a-c, which expressly require consideration of the factors set forth in sections 18.41.050.D.4.b and c, and determined that the Amended PDP does not satisfy these factors and must be denied; and

WHEREAS, on August 22, 2011 the Commission took no action on the Preliminary Plat as it could not be approved since the Amended PDP was not approved; and

WHEREAS, on September 12, 2011 the Planning Commission approved Resolution #11-01 PDP setting forth its written findings and conclusions and denying approval of the Amended PDP (the "Commission's Final Decision"); and

WHEREAS, pursuant to Code Section 18.18.050, an appeal of the Commission's Final Decision was received by the Current Planning Division within ten (10) days of the effective date of the Final Decision; and

WHEREAS, pursuant to Code Section 18.80.030.D and after due notice had been given, the City Council held a public hearing on December 6, 2011 regarding said appeal; and

WHEREAS, at said hearing, the decision of the Planning Commission as set forth in Resolution #11-01 and recommendations of the Current Planning Division as set forth in the City Council staff memorandum dated December 6, 2011 and all attachments thereto (the "City Council Staff Report") were received and duly considered by the City Council, as was testimony from the applicant, John Baxter on behalf of B & B I, LLC, the applicant's representatives, Ken Merritt of Landmark Planning and Engineering and Tim Goddard of Hasler, Fonfara and Goddard LLP, and the public; and

WHEREAS, the City Council considered the application for approval of the Amended PDP in light of the intent and objectives of Chapter 18.41 of the Loveland Municipal Code, and more specifically the factors set forth in Code Sections 18.41.050.E.2.a-c, including the factors set forth in sections 18.41.050.D.4.b and c, and determined that the Amended PDP does not satisfy these factors and must therefore be denied; and

WHEREAS, City Council also considered the application for approval of the Preliminary Plat as a joint application under Code Section 18.41.080 and in light of the factors set forth in Code Section 16.20.030, and determined that the Preliminary Plat does not satisfy these factors and must therefore be denied.

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

Section 1. That the City Council hereby finds that the Amended PDP and Preliminary Plat pertain to 5.3 acres, more or less, being that portion of the Mariana Butte Planned Unit Development General Development Plan (#P-8) more particularly described as follows:

LOTS 1-5, BLOCK 1 AND OUTLOTS A, B, C AND D OF MARIANA BUTTE 23RD SUBDIVISION, MARIANA BUTTE PUD, City of Loveland, Larimer County, Colorado,
is on file in the office of the City of Loveland Planning Division, and is incorporated herein by this reference.

Section 2. That the City Council hereby finds that the Amended PDP does not meet the requirements of Code Section 18.41.050.E.2, and more specifically the requirement in Code Section 18.41.050E.2.b that the Amended PDP must satisfy both of the following factors set forth in Sections 18.41.050.D.4.b and c:

a. Section 18.41.050.D.4.b: Whether the proposed development [permitted by the Amended PDP] will ... have a detrimental impact on property that is in sufficient proximity to the proposed development to be affected by it.

b. Section 18.41.050.D.4.c: Whether the proposed development [permitted by the Amended PDP] will be complementary to and in harmony with existing development and future development plans for the area in which the proposed development is to take place by:

i. Incorporating natural physical features into the PDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.

ii. Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan.

iii. Incorporating physical design features that will provide a transition between the project and adjacent land uses through the provisions of an attractive entryway, edges along public streets, architectural design, and appropriate height and bulk restrictions on structures.

iv. Incorporating an overall plan for the design of the streetscape within the project, including landscaping, auto parking, bicycle and pedestrian circulation, architecture, placement of buildings and street furniture.

The Council finds that the character of the area in which the development proposed by the Amended PDP is located is unique and that density of the development proposed by the Amended PDP will have detrimental impacts on the property in sufficient proximity to the proposed development to be affected by it.

The Council further finds that the density of the proposed development of eleven (11) residential lots on the site included in the Amended PDP will not be complementary to and in harmony with the existing development and future development plans for the area in which the proposed development is to take place.

Section 3. That the City Council also finds that the Preliminary Plat does not meet the requirement set forth in Code Section 16.20.030.A that the "subdivision does not create, or mitigates to the extent possible, negative impacts on the surrounding property."

The Council finds that the density of the development proposed by the Preliminary Plat creates negative impacts on the surrounding property and that mitigation of such negative impacts has not, or cannot, be accomplished.

Section 4. That the City Council has concluded, on the basis of the findings set forth herein, that the application for approval of the Amended PDP and Preliminary Plat is therefore denied.

Section 6. That as of the date set forth below and in accordance with Code Section 18.80.050.D, this Resolution shall constitute the written findings and conclusions and final decision of the City Council with respect to the application for approval of the Amended PDP and Preliminary Plat for purposes of any appeal of the City Council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Section 7. That this Resolution shall be effective as of the date of its adoption.

Adopted this 3rd day of January, 2012.
Cecil A. Gutierrez, Mayor
Attest: Teresa G. Andrews, City Clerk

10. FINANCE

No Action Required

This is an information only item. Acting Finance Director, Bonnie Steele gave Council a summary of the City's financial position. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the eleven months ending November 30, 2011.

11. CITY MANAGER

No Action Required

This is an information only item. Chief Executive Financial Advisor, Alan Krcmarik gave Council a summary of the City's investment position. The budget estimate for investment earnings for 2011 is \$3,163,130. For the first eleven months of 2011, the amount posted to the investment account is \$3,251,372 including realized gains. Actual year-to-date earnings are *higher* than the year-to-date projection by \$351,689. Based on November's monthly statement, the estimated annualized yield on the U.S. agencies and corporates was up to 1.76%, under the annual target rate of 2% but higher than recent months. Reinvestment rates are still significantly lower than the first-half of 2011.

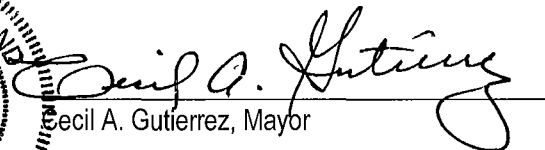
ADJOURNMENT

Having no further business to come before Council, the January 3, 2012 Regular Meeting was adjourned at 7:30 p.m.

Respectfully Submitted,


Teresa G. Andrews, City Clerk




Cecil A. Gutierrez, Mayor