



**LOVELAND PLANNING COMMISSION MEETING  
AGENDA**

**Monday, March 22, 2012  
500 E. 3<sup>rd</sup> Street – Council Chambers  
Loveland, CO 80537**

THE CITY OF LOVELAND DOES NOT DISCRIMINATE ON THE BASIS OF DISABILITY, RACE, CREED, COLOR, GENDER, SEXUAL ORIENTATION, RELIGION, AGE, NATIONAL ORIGIN OR ANCESTRY IN THE PROVISION OF SERVICES. FOR DISABLED PERSONS NEEDING REASONABLE ACCOMODATIONS TO ATTEND OR PARTICIPATE IN A CITY SERVICE OR PROGRAM, CALL 962-2523 OR TDD 962-2620 AS FAR IN ADVANCE AS POSSIBLE.

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. REGULAR AGENDA**

**1. Kum & Go Special Review #896- Type 3 Zoning Permit**

A quasi-judicial matter to consider approval of a Type 3 Zoning Permit for Special Review #896 for a proposed gas station and convenience store at the southwest corner of Eisenhower Boulevard and Boise Avenue.

**IV. ADJOURNMENT**



## DEVELOPMENT SERVICES Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537  
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[www.cityofloveland.org](http://www.cityofloveland.org)

**AGENDA ITEM NO:**

**1**

**PLANNING COMMISSION MEETING:**

March 19, 2012

**APPELLANT:** Kevin Borchers on behalf of Champion K&K Enterprise, LLC

**APPLICANT:** Kum & Go, L.C. of West Des Moines, Iowa

**STAFF PRESENTER:** Bob Paulsen, Current Planning Manager

**APPLICATION TYPE:** Special Review – Type 3 zoning permit

### **SUMMARY OF KEY ISSUES:**

The discussion by the Planning Commission at the March 12, 2012 public hearing focused primarily on the appropriate height of the sound mitigation wall (the “Sound Wall”). The following motions are provided for the Commission’s consideration:

- Recommended motion (Motion A) includes the condition requiring an 8 foot high Sound Wall, along with the additional conditions relative to the acquisition of the necessary easements to locate the Sound Wall on the south property line and the construction of an extension of the Sound Wall to the south.
- Alternative Motion B has been structured to allow the Planning Commission to determine the height of the Sound Wall necessary to permit the special review use to be consistent with the purposes of zoning as set forth in Section 18.04 of the Loveland Municipal Code and for the proposed use to be compatible with the surrounding uses. The only difference between the recommended motion (Motion A) and alternative Motion B is the height of the Sound Wall, which is left blank for determination by the Commission.
- Alternative Motion C is a denial of the Type 3 zoning permit.

### **SUMMARY OF PROCEDURAL STATUS:**

This is an application for a Use by Special Review pursuant to Chapter 18.40 of the Loveland Municipal Code for a proposed Kum & Go gas station at the southwest corner of Eisenhower Boulevard and Boise Avenue (Special Review #896).

Special Review #896 was approved by the Planning Division and the Current Planning Manager’s Final Statement of Findings and Proposed Determination, proposing to issue a Type 2 zoning permit, was posted on January 31, 2012 (the “Planning Division Approval”).

The Planning Division Approval:

- Included, as a part of the approved site plan, an 8 foot high Sound Wall on the rear (south boundary) of the project site;

- Provided that a Type 2 zoning permit would be issued if no appeal was timely filed, and
- Further provided that if a timely appeal was filed, the staff determination would be suspended and the application for the Special Review would be scheduled for Planning Commission consideration.

In accordance with Loveland Municipal Code Section 18.40.055:

- A timely appeal was filed and the approval of Special Review #896 was suspended and scheduled for public hearing by the Planning Commission; and
- Following the close of the public hearing, the Planning Commission may deny the application for the Special Review or direct the Planning Division to issue a Type 3 zoning permit with or without restrictions or conditions as the Planning Commission deems appropriate to address compatibility of use.

Consideration of Special Review #896 at a duly noticed public hearing was held by the Planning Commission on March 12, 2012. Although 7 Commissioners were present for the bulk of the meetings and public hearing, one Commissioner left at approximately 8:30 p.m., before a motion was made and a vote was taken. A quorum of 6 (out of 9) Commissioners remained.

A motion, as recommended in the Staff Report, was made to deny the appeal, uphold the Planning Division Approval of Special Review #896, and to issue a Type 3 zoning permit based on the findings and subject to the conditions set forth in the Staff Report dated March 12, 2012. If passed, this motion would have approved the issuance of a Type 3 zoning permit for the Kum & Go, including the 8 foot Sound Wall included as condition #9 in Section X of the Staff Report.

The Commission vote was a 3-3 tie, and *therefore the motion to approve Special Review #896 and issue a Type 3 zoning permit did not pass*. Passage requires an affirmative vote by a majority of the members present. As a result, Special Review #896 was not approved.

The Planning Commission's further consideration of Special Review #896 was continued by a unanimous vote of 6 Commissioners to March 19, 2012 at 6:30 p.m.

#### **RECOMMENDED MOTION:**

##### **Motion A - Approve Type 3 zoning permit with 8 foot tall sound wall**

City staff recommends, subject to additional evidence presented at the hearing, that the Planning Commission pass the following motion:

- A. Move to direct the Current Planning Division to issue a Type 3 zoning permit for Special Review #896 for Kum & Go Station #995 to be located on Lots 10 and 11, Block 1 of the Brown's Corner Addition, Loveland, Colorado, based on the findings in Section IX and subject to the conditions set forth in Section X of the City staff report dated March 12, 2012, with the following modification:
  - 1) Current Planning Condition #9 shall be revised to read as follows:
    9. The proposed the Sound Wall shall be 8 feet in height and constructed on the Kum & Go property, adjacent to the common property line with the mobile home park to the south.
      - a. The exact location of the Sound Wall shall be subject to approval by the Current Planning Manager to ensure that the Sound Wall meets City requirements for structures in a utility easement.
      - b. If temporary or permanent easements are required to locate the Sound Wall adjacent to the common property line with the mobile home park, the owner of the mobile home park and Kum & Go (the "Parties") shall work in good faith to agree upon the terms of such easements.
      - c. At no time shall the City compel the owner of the mobile home park to agree to grant any such easements.
      - d. Kum & Go shall pay the total costs to extend the Sound Wall (the "Wall Extension") in a southerly direction from the southeast corner of the Kum & Go property for a total distance

of \_\_\_\_\_ feet. Total costs shall include the costs to construct the Wall Extension and to obtain any required building permit or variance.

- e. If the Wall Extension is to exceed 6 feet 3 inches in height, then construction of the Wall Extension shall be subject to approval of a variance by the City.
- f. Construction of the Sound Wall shall be completed and approved by the City prior to issuance of a footing and foundation or building permit for the Kum & Go project.
- g. Construction of the Wall Extension shall be completed and approved by the City prior to issuance of a Certificate of Occupancy for the Kum & Go project.
- h. If no easements are received from the owner of the adjacent mobile home park within 10 calendar days after the final decision by the Planning Commission, or in the case of an appeal to City Council, within 5 calendar days after the final decision by City Council, then the Sound Wall shall be constructed at the located shown Exhibit A, subject to approval by the Current Planning Manager, and no Wall Extension shall be required.

#### **ALTERNATE MOTIONS:**

Alternative motions for Planning Commission consideration for the Kum & Go project - Special Review #896.

#### **Alternative Motion B - Approve Type 3 zoning permit with sound wall taller than 8 feet**

- A. Move to direct the Current Planning Commission to issue a Type 3 zoning permit for Special Review #896 for Kum & Go Station #995 to be located on Lots 10 and 11, Block 1 of the Brown's Corner Addition, Loveland, Colorado, based on the findings in Section IX and subject to the conditions set forth in Section X of the City staff report dated March 12, 2012, with the following modification:

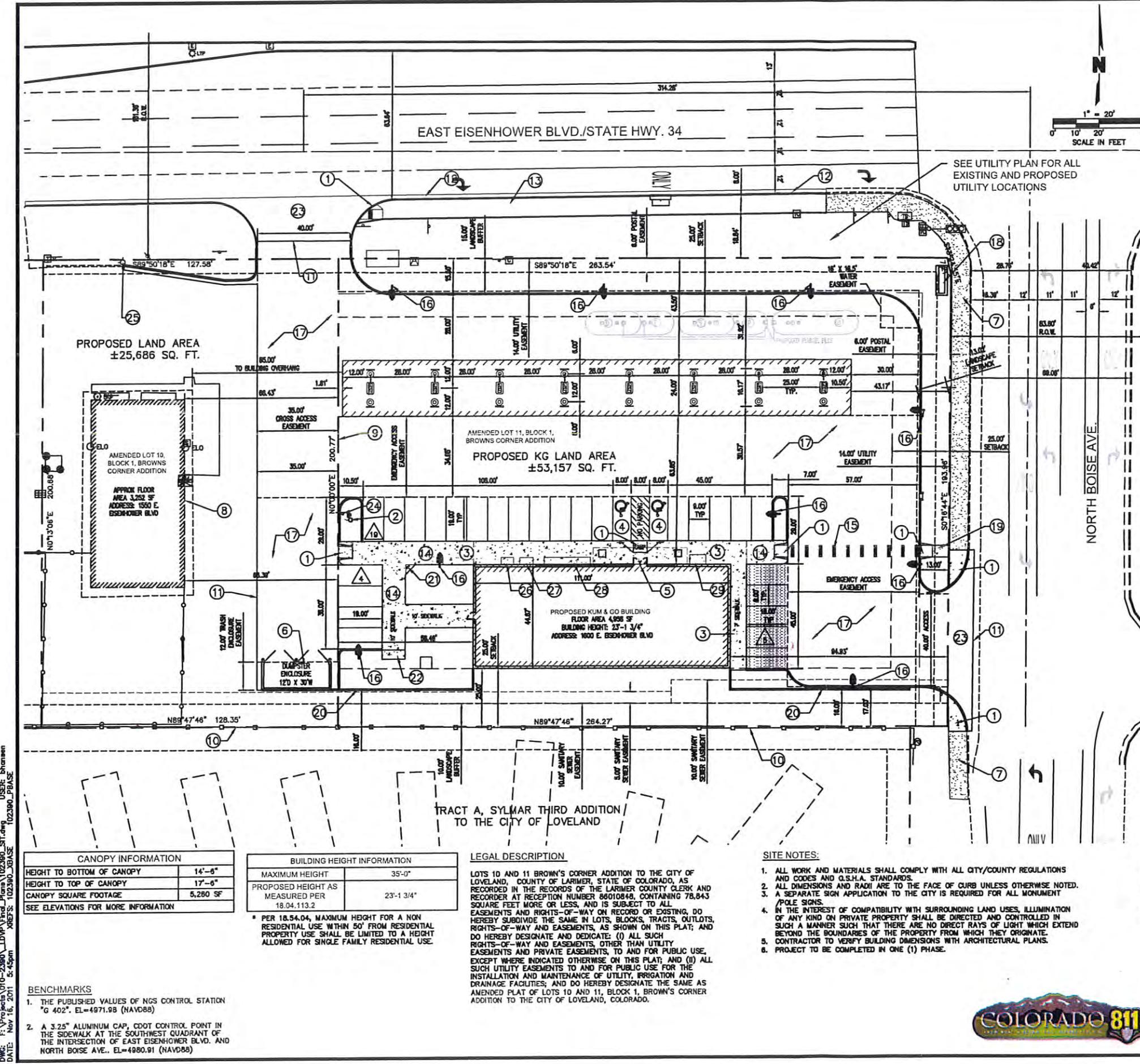
- 1) Current Planning Condition #9 shall be revised to read as follows:
  - 9. The proposed the Sound Wall shall be 8 feet in height and constructed on the Kum & Go property, adjacent to the common property line with the mobile home park to the south.
    - a. The exact location of the Sound Wall shall be subject to approval by the Current Planning Manager to ensure that the Sound Wall meets City requirements for structures in a utility easement.
    - b. If temporary or permanent easements are required to locate the Sound Wall adjacent to the common property line with the mobile home park, the owner of the mobile home park and Kum & Go (the "Parties") shall work in good faith to agree upon the terms of such easements.
    - c. At no time shall the City compel the owner of the mobile home park to agree to grant any such easements.
    - d. Kum & Go shall pay the total costs to extend the Sound Wall (the "Wall Extension") in a southerly direction from the southeast corner of the Kum & Go property for a total distance of \_\_\_\_\_ feet. Total costs shall include the costs to construct the Wall Extension and to obtain any required building permit or variance.
  - e. If the Wall Extension is to exceed 6 feet 3 inches in height, then construction of the Wall Extension shall be subject to approval of a variance by the City.
  - f. Construction of the Sound Wall shall be completed and approved by the City prior to issuance of a footing and foundation or building permit for the Kum & Go project.
  - g. Construction of the Wall Extension shall be completed and approved by the City prior to issuance of a Certificate of Occupancy for the Kum & Go project.
  - h. If no easements are received from the owner of the adjacent mobile home park within 10 calendar days after the final decision by the Planning Commission, or in the case of an appeal to City Council, within 5 calendar days after the final decision by City Council, then the Sound Wall shall be constructed at the located shown Exhibit A, subject to approval by the Current Planning Manager, and no Wall Extension shall be required.

**Alternative Motion C - Deny Type 3 zoning permit for Special Review #896**

B. Move to deny the application for use by special review and a Type 3 zoning permit for Special Review #896 for Kum & Go Station #995 to be located on Lots 10 and 11, Block 1 of the Brown's Corner Addition, Loveland, Colorado, based on the finding that the proposed special review use cannot be subject to reasonable conditions or restrictions that will permit the special review use to be consistent with the purposes of zoning as set forth in Section 18.04 of the Loveland Municipal Code or for the proposed use to be compatible with the surrounding uses.

**EXHIBITS:**

- A. Site Plan with Sound Wall setback from south property line, with no Wall Extension
- B. Letter from Kevin Borchers, Appellant, concerning the Wall Extension



**OLSSON**  
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Golden, CO 80403  
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FAX-515-223-9873

EXHIBIT A

Special Review #896 and Site Development Plan for  
Kum & Go Station # 995  
Loveland, Colorado  
DRAWING INFORMATION:

DEPARTMENT:  
STORE  
DEVELOPMENT

CONSTRUCTION:  
R. HALDER

DRAWN BY:  
B. LANG

SCALE:  
1" = 20'

DATE:  
03/09/2012

DRAWING SHEET:  
1 OF 1

NOTE:  
THIS DOCUMENT HAS BEEN  
RELEASED BY OLSSON  
ASSOCIATES FOR REVIEW BY  
REGULATORY AGENCIES AND  
OTHER PROFESSIONALS, AND  
IS SUBJECT TO CHANGE.  
THIS DOCUMENT IS NOT TO  
BE USED FOR  
CONSTRUCTION.



March 14, 2012

To: Planning Commissioners,

This letter is to address the sound wall turndown next to the Sylmar mobile home park. A meeting at the site by the city, Kum and Go, and Sylmar's park owner was agreed on to determine the length needed to protect the residents of the park. Waited to be contacted about the meeting and by accident found that Brian had a heart attack. After that the city changed the agreement about the 12 ft. wall and no meeting ever occurred about the turndown wall. Because of the acceleration of vehicles turning southbound the wall should be long enough to protect the homes backing to Boise. The wall should stair step down for appearance.

The sound wall should be built first if this project is approved to insulate the residents from some of the construction.

Since this is Kum and Go's project the expense and the fulfilling of the requirements for the variance and turndown wall should be their responsibility.



Kevin Borchers  
Champion K&K Enterprises

**Exhibit B**

to a height of 8 feet above finished grade. Since dedicated utility easements lie in this same area, the final location and configuration must be approved by all City and non-City providers of utilities. If further investigation determines that this location will not meet City requirements for structures in a utility easement, an alternate location and configuration may be determined by agreement between Kum and Go, the City of Loveland, and the owner of the mobile home park to the south. If temporary or permanent easements are necessary, the parties shall work together in good faith to agree upon terms of such easements. At no time shall the City compel the owner of the mobile home park to convey or agree to such alternative location if it is located upon his property, or any portion thereof. If this location for the wall can be agreed upon by all parties, Kum and Go shall also extend the wall southward from the southeast corner of the Kum and Go site, extending to a point southward which is agreed upon by the parties. This is for the purpose of providing additional noise mitigation from vehicles leaving the site southbound upon Boise Avenue. If the wall is to be greater in height than 6-foot 3-inches, application for a variance application shall be submitted to and approved by the City prior to construction of this portion of the wall.

*In  
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1/11*

#### Transportation Engineering:

9. Notwithstanding any information presented in the Special Review or accompanying construction plan documents (text or graphical depictions), all public improvements shall conform to the Larimer County Urban Area Street Standards (LCUASS) as amended, unless specific variances are requested and approved in writing.
10. Prior to the issuance of any building permits within this Special Review, unless otherwise approved by the Director pursuant to the provisions in Section 16.40.010.B of the Loveland Municipal Code, the following public improvements shall be designed and constructed by the Developer unless designed and constructed by others. A cash-in-lieu payment for all or part of these improvements may be accepted if approved in writing by the City Engineer:
  - a. Ultimate roadway improvements to US 34 adjacent to the property, including curb, gutter, and sidewalk as shown on the City approved Public Improvement Construction Plans.
  - b. The northbound left-turn lane striping at Boise Avenue and the site access as shown on the City approved Public Improvement Construction Plans.
11. Prior to the issuance of any building permits within this Special Review, written concurrence from CDOT needs to be provided to the City for the proposed improvements within CDOT right-of-way.
12. Prior to submittal of the Final Special Review mylars, the applicant shall provide the City with a copy of the approved CDOT access permit for the proposed access to US 34.