

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
September 27, 2010

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers of the Civic Center on September 27, 2010 at 6:30 p.m. Members present: Chairman Molloy; Vice Chairman Ray; and Commissioners Crescibene, Fancher, Krenning, Leadbetter and Meyers. Commissioner Middleton was absent. City Staff present: Kerri Burchett, Current Planning; Robert Paulsen, Current Planning Manager; Sunita Sharma, Assistant City Attorney.

These minutes are a general summary of the meeting. For more detailed information, the audio and videotapes are available for review in the Community Services office.

APPROVAL OF AGENDA

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

CITIZEN REPORTS

There were no citizen reports.

COMMITTEE REPORTS

Chairman Molloy gave a brief update regarding the Pedestrian and Bicycle Path Committee meeting he recently attended. He spoke of the work that they are doing and how they identify where the needs are, he stated that it is helpful that he is on the PC so that he can provide the Committee with concerns that citizens have identified to the Commission.

STAFF MATTERS

Robert Paulsen gave a brief update on the following City Council items:

- Adoption of the North Cleveland Subarea Plan – approved.
- Mirasol PDP and GDP amendment and vacation – adopted on First Reading.
- Extension of the sunset period for the High Country Farms GDP - Minor Amendment – approved.

He reported that the Site Plan process improvements and the Ehrlich Addition would be coming before the Commission in October.

1 **Commissioner Meyers** requested an update regarding the remodeling of the Western Convenience
2 store and the Murphy Oil gas station approved by the Commission at the new Wal-Mart Store.
3

4 **Mr. Paulsen** stated he would provide the Commission with the status of those projects. He reported
5 that the Planning Commission was invited to attend the presentation and update on the City's Smart
6 Objectives meeting. He stated that the meeting will be held Thursday, September 30, from 7:30 a.m.
7 9:30 a.m. in the Council Chambers. He stated that the meeting was to discuss the update of the
8 research and measures that have been put in place as an outcome of the Tipton Process.
9

10 **APPROVAL OF THE MINUTES**

11 *Commissioner Fancher made a motion to approve the August 23, 2010 meeting minutes. Upon a
12 second by Commissioner Ray the motion was adopted.*

13 **CONSENT AGENDA**

14 **1. South Horseshoe Lift Station Addition.**

15 This is a public hearing to consider the annexation and zoning of 0.85 acres of City-owned property
16 that contains the existing wastewater lift station located on the east side of Horseshoe Lake.
17 Planning Commission action is legislative.
18

19 **2. Evanbrier First Addition Rezoning.**

20 This is a Public hearing to consider the rezoning of City-owned property, Tracts A and B of the
21 Evanbrier First Addition. Tract A is a 10 foot wide strip of land that is used as Right of Way within
22 North Monroe Avenue. Tract B is a vacant 10 foot strip of land that abuts the South Horseshoe Lift
23 Station Addition. Planning Commission action is quasi-judicial.
24

25 **REGULAR AGENDA**

26 **3. Presentation Regarding the City's Capital Expansion Fee process.**

27 The Planning Commission has provided the opportunity for Ed Klen to address the Commission
28 regarding his concerns with the City's Capital Expansion Fee program.
29

30 **Mr. Klen** thanked the Commission for allowing him the opportunity to present to them. He clarified
31 that the reason for requesting this time was to present his concerns regarding Section 16.38.010 of the
32 City Code. He believed that this section of the Code has been applied in a manner contrary to what
33 he believed was correct. He read the intent portion of Section 16.38.010 into the record.
34

1 **16.38.010 Intent.**

2 It is the intent of this chapter to adopt a rational system for identifying
3 growth-related costs incurred by the city in providing for new and expanded capital
4 facilities made necessary by expanded population levels and economic activity levels,
5 to develop a fee structure therefore directly related to such costs and to provide a
6 method for collection of such fees. It is the further intent of this chapter that such fees
7 accurately reflect actual growth-related capital costs, that once such costs are paid
8 ongoing operating charges will be similar to charges imposed prior to such
9 development, that the system be understandable and inexpensive to apply, that
10 policies and fees will be subject to revision as conditions change and that the system
11 will be linked to a capital improvement program designed to provide the facilities for
12 which the fees are imposed. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

13
14 **Mr. Klen** went on to say that he felt the fees must be rational and gave examples that the impact
15 an airport hanger would have on city services vs. a McDonalds. He further stated that the
16 believed that occupancy is the major role in setting Capital Expansion Fees (CEFs).

17
18 **Mr. Klen** read Chapter 16.38.020 B.1-4 into the record.

19 **16.38.020 Fees imposed.**

20 B. Capital expansion fees shall be due and payable as follows:

21
22 1. Except in the case of an accessory dwelling unit, for any activity requiring a
23 certificate of occupancy, the fees shall be due and payable at the time that a final
24 inspection for a certificate of occupancy is requested, except that if a temporary
25 certificate of occupancy or other certificate of occupancy does not issue within thirty
26 days after the call for inspection, the paid fees shall be returned to the party who paid
27 such fees.

28
29 2. Upon a change in the use of property where the new use is in a different
30 category for which additional or higher fees are applicable, such additional or higher
31 fees shall be due and payable at the time that a final inspection is requested, but if no
32 certificate of occupancy is required, then at such time as the new use is actually
33 commenced.

34
35 3. For all other activities for which a certificate of occupancy is not required,
36 including expansion or remodeling which creates additional dwelling units or
37 additional square footage for commercial or industrial use, fees shall be due and
38 payable at the time such additional space is actually occupied, except that a credit
39 shall be received for all fees for the prior use.

40
41 4. Prior to recording any annexation map of property which contains a mobile
 home which existed on the property on or before July 1, 1984, or which contains the

1 type of structure for which capital expansion fees are currently collected and for
2 which a building permit was issued on or after July 1, 1984.
3

4 He highlighted various sections stated that if a Certificate of Occupancy (CO) is not issued within
5 30-days after completion then the believed that the fees should be returned to the applicant. He
6 stated that alteration of an existing space would trigger CO fees.
7

8 **Mr. Klen** stated that only under these four circumstances of the Code could fees be collected. He
9 further emphasized that there is not a category in the Code that allows for an anticipated use, only for
10 identified uses. He stated that collecting CEFs prior to occupancy was not rationale and commented
11 that upon issuance of a core and shell permit there is a minimal charge until an accurate assessment
12 of impact can be made.
13

14 **Mr. Klen** attempted to present court documents regarding a Court Deposition from Director of
15 Development Services, Greg George. **Chairman Molloy** reminded Mr. Klen of the agreement that
16 was made between the Commission and Mr. Klen that there would be no negative comments or
17 pointing out decisions made by staff. He stated that the Commission was only to hear his comments
18 on Title 16.38.
19

20 **Mr. Klen** stated that he felt that the portion of the copy of the Court Deposition by Greg George,
21 demonstrated that both he and Mr. George had the same understanding of the Code. He presented a
22 Limited Letter of Completion issued for certain levels of construction commenting that this letter
23 does not allow for any occupancy or use. He showed the Commission an email regarding CEFs and a
24 copy of minutes from the Construction Advisory Board (CAB) that also spoke about CEFs and when
25 they are collected.
26

27 **Mr. Klen** stated that empty or vacant spaces should not be charged CEFs. He showed the
28 Commission a portion of minutes from the Construction Advisory Board (CAB) that discussed how
29 CEFs are reviewed and calculated annually. He clarified that Alan Krcmarik, Director of Finance,
30 reported that CEFs are due to the City at the time of occupancy which strengthens his understanding
31 of the Code.
32

33 He was not allowed to show a video testimony from a City Council meeting regarding an affirmation
34 of what Mr. Klen is discussing.
35

36 He acknowledged that staff and the Boards and Commission work long hours to figure out who pays
37 for what and when those fees are collected which is also outlined in the Code. He further clarified
38 that his major concern was that he believed how and when CEFs have been collected in the past have
39 not been properly applied. He stated that there have been times that CEFs have been collected at the
40 time of Core and Shell phase (early permitting phase) not at the Certificate of Occupancy phase. He
41 stated that Council will be discussing fees at an upcoming meeting. He stated that in the Tipton

1 Report there were comments that the Code is not applied consistently. He further stated that City
2 Council will be discussing the CEFs at its September 28th Study Session.

3
4 **Chairman Molloy** asked Mr. Klen if he felt the Code was correct but the interpretations were
5 incorrect.

6
7 **Mr. Klen** emphasized that the collection of fees are not consistent.

8
9 **Chairman Molloy** thanked Mr. Klen for his presentation. He further clarified that it is the
10 Commissions position to make sure that the Code is followed, not to make Code interpretations.

11
12 **Mr. Klen** stated that he believed the Commission did review certain sections of the code as it applies
13 to consistency and thanked the Commission for their time.

14
15 **Commissioner Meyers** acknowledged that the process should remain uniform and that the process is
16 applied consistently for all applications.

17
18 **Mr. Klen** concurred with Mr. Meyer's statement.

19
20 **Commissioner Fancher** thanked Mr. Klen for his time.

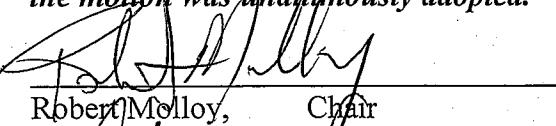
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22 **Commissioner Krenning** asked what was troubling Mr. Klen so much that he wanted to talk to the
23 Commission.

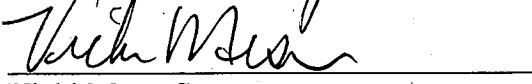
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25 **Mr. Klen** stated he and other contractors believe that they were improperly charged CEFs and he is
26 attempting to recover his funds the best way he knows how. He stated he is trying to effect change
27 and agreed that he would keep his motive for addressing the Planning Commission out of the
28 discussion.

29
30 **Commissioner Krenning** thanked Mr. Klen for taking the time to come and express his concerns
31 with the Commission and wished him good luck in his resolution.

32
33 **ADJOURNMENT**

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35 *Commissioner Crescibene made a motion to adjourn. Upon a second by Commissioner Fancher*
36 *the motion was unanimously adopted.*

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38 
39 Robert Molloy, Chair

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41 
42 Vicki Mesa, Secretary