

**CITY COUNCIL**

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PROCLAMATION

WHEREAS seventy years ago this week, on December 7, 1941, the surprise attack of the Imperial Japanese Naval Forces against the United States 7th Fleet at Pearl Harbor, Hawaii, occurred, marking the entry of America into World War II; and

WHEREAS the Congress of the United States has designated December 7 as National Pearl Harbor Remembrance Day (36 U.S. C. §129) to honor all who perished at Pearl Harbor; and

WHEREAS the battleship USS Arizona BB 39 commissioned in 1916, was the most heavily damaged vessel along battleship row, suffering four direct hits from 800 kg bombs which penetrated her deck, resulting in detonation of her ammunition stores thereby sinking her in less than 9 minutes and killing 1,177 crewmen ; and

WHEREAS Harold Dwayne Webster, United States Navy Seaman Second Class, born October 31, 1923 in Loveland, Colorado, who enlisted in the United States Navy on December 7, 1940, was Killed in Action on December 7, 1941 while serving on the battleship USS Arizona at Pearl Harbor, Territory of Hawaii, and

WHEREAS Harold Dwayne Webster, United States Seaman Second Class is entombed within the USS Arizona and was the first native Lovelander to lose his life in World War II,

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim the week of December 4 through December 11, 2011 as

HAROLD DWAYNE WEBSTER WEEK

in Loveland, Colorado, and in so doing, urge all citizens to join together in remembering and honoring Seaman Second Class Harold Dwayne Webster as well as all who perished at Pearl Harbor that fateful day.

Signed this 6th day of December, 2011

Cecil A. Gutierrez
Mayor



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CALL TO ORDER

Mayor Gutierrez called the Special 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, Heckel, Solt, McEwen, Klassen, Shaffer, Johnson, McKean and Rice.

SWEARING IN CEREMONY

Judge Starks swore in Councilors Taylor, Farley, Trenary and Fogle at 6:35 p.m. Recognition plaques were presented to Councilors Heckel, Solt, Johnson and Rice. Farewell comments were made by Councilors Heckel, Solt and Rice.

ROLL CALL

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

ELECTION OF MAYOR PRO TEM

Councilor McKean made a motion to appoint Cathleen McEwen as Mayor Pro Tem. Councilor Klassen seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof. Councilor McEwen accepted the appointment as Mayor Pro Tem.

1. CITY MANAGER**Presentation on Colorado's Fiscal Reality: A Long-term Structural Deficit**

This is a discussion item only, no action was taken. Andrew Lindstad, Fiscal Education Network Coordinator with Colorado Nonprofit Association discussed Colorado's fiscal challenges.

ADJOURNMENT

Having no further business to come before Council, the November 8, 2011 Special Meeting was adjourned at 7:59 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

ROLL CALL

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

PROCLAMATION

Mayor Gutierrez read the proclamation "American Music Month" which was received by Ruth Fleming and Ruth Hale.

PROCLAMATION

WHEREAS, Music, the universal language of peace, is one of the great arts and an outstanding feature of our culture; and

WHEREAS, The National Federation of Music Clubs, having as a foremost objective, the promotion of American music, will stage its annual "Parade of American Music" throughout the month of November; and

WHEREAS, The Colorado Federation of Music Clubs and Loveland join in encouraging and stimulating interest in American music and the enjoyment and appreciation thereof; and

WHEREAS, The "Parade of American Music" is designed to give our own worthy United States composers recognition, encouragement and support, and to impress upon the public of the United States that it has creative as well as performing musical artists and a musical culture equal to that of other countries.

NOW, THEREFORE, we, the City Council of Loveland, in recognition of the American Composer and in order to encourage native creative musical art, do hereby proclaim November, 2011 as

AMERICAN MUSIC MONTH

and urge all our citizens to join in the observance and share the joy of music.

Signed this 15th day of November, 2011

Cecil A. Gutierrez, Mayor

PROCLAMATION

Councilor Farley read the proclamation "Alzheimer's Awareness Month" which was received by Emmalie Connor.

PROCLAMATION

WHEREAS, More than 5 million Americans are now living with Alzheimer's disease, a figure that is expected to grow to as many as 16 million by mid-century if we don't take action today; and

WHEREAS, There are currently 72,000 people in the state of Colorado living with Alzheimer's approximately 5,000 people over the age of 65 diagnosed with Alzheimer's disease in Larimer County; and

WHEREAS, Alzheimer's disease is not a normal part of aging; and

WHEREAS, Because 80% of those with Alzheimer's are cared for at home, we know there are 222,000 family members in Colorado providing \$3 billion in unpaid care; and

WHEREAS, Every 70 seconds someone is diagnosed with Alzheimer's disease therefore the number of people with Alzheimer's in Colorado is expected to increase to 140,000 by 2015; and

WHEREAS, You will never meet a survivor of Alzheimer's disease. There is no cure.

WHEREAS, There is hope with 25 medications currently in clinical trials and researchers making great strides in developing better treatments and eventually a cure for Alzheimer's disease.

NOW, THEREFORE, we, the City Council of the City of Loveland, do hereby proclaim November 2011 as

ALZHEIMER'S AWARENESS MONTH

in the City of Loveland.

Signed this 15th day of November, 2011

Cecil A. Gutierrez, Mayor

PROCLAMATION

Councilor McKean read the proclamation for the "Loveland Salvation Army Red Kettle Kickoff Day" which was received by Mike Knight.

PROCLAMATION

WHEREAS The City of Loveland recognizes the importance of assisting Loveland families and individuals living in or near poverty in 2012; and
 WHEREAS More than 50% of our homeless neighbors in Loveland are families and in need of emergency services throughout the year; and
 WHEREAS Current funds available to help our neighbors in need just doesn't cover all these emergency needs; and
 WHEREAS The generous people of Loveland take pride that the Loveland Salvation Army Red Kettle Campaign is an all volunteer effort that assists our local human service agencies in their efforts to reach out to those in greatest need; and
 WHEREAS Our primary goal is to continue assisting local programs like the House of Neighborly Service, Neighbor to Neighbor Rental Assistance, Loveland Police Chaplains, Back to School backpacks, Christ's Church of the Rockies Front Porch Meal Ministry Boys and Girls Club, Disabled Resource Service, Alternatives to Violence, The Community Kitchen and Salvation Army Special Needs Request Fund

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim the 18th of November, 2011 as
 Loveland Salvation Army Red Kettle Kickoff Day

in Loveland, Colorado, and in so doing, urge all citizens to join us by volunteering to ring bells for two hours in one of nine locations in a citywide effort to help us reach our goal of \$100,000 to aid and assist needy families and individuals in 2012.

Signed this 15th day of November, 2011

Cecil A Gutierrez, Mayor

PROCEDURAL INFORMATION

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

CONSENT AGENDA

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

1. CITY MANAGER

Board & Commission Appointment

Motion

Administrative Action: A motion appointing Blaine Rappe to the Construction Advisory Board for a full term effective until June 30, 2014 was approved.

2. FINANCE

Supplemental Appropriation – City's 2011 Budget

Ordinance #5651

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE CITY OF LOVELAND, COLORADO 2011 BUDGET" was approved and ordered published on second reading.

3. FINANCE

Supplemental Appropriation – 2011 Special Improvement District #1 Budget

Ordinance #5652

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 2011 BUDGET" was approved and ordered published on second reading.

4. PUBLIC WORKS

Sale of the Bishop House

Ordinance #5653

Administrative Action: "AN ORDINANCE AUTHORIZING THE SALE OF THE BISHOP HOUSE AND THE SALE OF REAL PROPERTY OWNED BY THE CITY OF LOVELAND PURSUANT SECTION 4-7 OF THE CITY OF LOVELAND MUNICIPAL CHARTER" was approved and ordered published on second reading.

5. ECONOMIC DEVELOPMENT

Meeting Date & Location Change – Creative Sector Development Advisory Commission

Resolution #R-73-2011

Administrative Action: Resolution #R-73-2011 amending the scheduled meeting dates and location of the Creative Sector Development Advisory Commission was approved.

RESOLUTION #R-73-2011

A RESOLUTION AMENDING THE SCHEDULED MEETING DATES AND LOCATION OF THE CREATIVE SECTOR DEVELOPMENT ADVISORY COMMISSION

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

WHEREAS, the CSDC regular meeting time is currently set on the third Thursday of each month at 6:00 p.m. in the City Manager's Conference Room, 500 East Third Street, Loveland, Colorado; and

WHEREAS, the CSDC desires to change the regular meeting time to the third Thursday of every other calendar month and the meeting location commencing with the November, 2011 meeting as set forth in this Resolution.

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

Section 1. That the meeting dates and location adopted in Resolution #R-67-2010 are hereby amended to change the CSDC's regular meeting dates and location from the third Thursday of each calendar month in the City Manager's Conference Room to the third Thursday of every other calendar month in the Council Chambers commencing with the November, 2011 meeting. The meeting time shall remain the same: 6:00 p.m. The Council Chambers is located at 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 and location 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 to post notice of such revised meeting dates and location 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 15th day of November, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

6. FINANCE

Increase to Fuel Contract

Motion

Administrative Action: A motion awarding an increase to the contract for fuel from \$1,175,000 to \$1,350,000 to Gray Oil and authorizing the City Manager to sign the contract on behalf of the City for the remainder of 2011 (November –December 2011) was approved.

AT 6:45 P.M. CITY COUNCIL ADJOURNED AND CONVENED AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)

7. DEVELOPMENT SERVICES

Supplemental Appropriation for Downtown Façade Improvement Grant Program

1st Rdg Ordinance & Public Hearing

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO LOVELAND URBAN RENEWAL AUTHORITY 2011 BUDGET" was approved and ordered published on first reading.

AT 6:45 P.M. THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY ADJOURNED AND CITY COUNCIL RECONVENED

8. ECONOMIC DEVELOPMENT

Rezoning Property in Waterfall Subdivision

1st Rdg Ordinance & Public Hearing

Quasi-judicial Action: A public hearing was held and "AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED IN THE WATERFALL SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO was approved and ordered published on first reading.

9. FIRE & RESCUE

Modify purpose & membership of Fire & Rescue Advisory Commission

1st Rdg Ordinance & Public Hearing

Legislative Action: A public hearing was held and "AN ORDINANCE AMENDING SECTION 2.60.110 OF THE LOVELAND MUNICIPAL CODE TO MODIFY THE PURPOSE OF THE FIRE AND RESCUE ADVISORY COMMISSION TO REFLECT THE CREATION OF A FIRE AUTHORITY AND TO INCREASE THE LOVELAND RURAL FIRE PROTECTION DISTRICT'S REPRESENTATION ON THE COMMISSION TO INCLUDE VOTING MEMBERS" was approved and ordered published on first reading.

10. PARKS & RECREATION

Farm Lease

Resolution #R-74-2011

Administrative Action: Resolution #R-74-2011 approving Farm Lease between the City of Loveland and Schwarz Farms, LLC was approved.

Resolution #R-74-2011

A RESOLUTION APPROVING A FARM LEASE BETWEEN THE CITY OF LOVELAND AND SCHWARZ FARMS, LLC

WHEREAS, the City of Loveland (the "City") owns approximately 34 acres of land located in the city of Loveland (the "Property"); and

WHEREAS, the City has in previous years, entered into a Lease Agreement with Schwarz Farms, LLC, ("Tenant") for the purpose of farming and maintenance of the Property; and

WHEREAS, the City of Loveland desires to enter into a new lease agreement with Tenant for farming of the Property, which is attached hereto as Attachment 1 and incorporated herein by reference.

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

Section 1. That the Farm Lease attached hereto and incorporated herein as Attachment 1 is hereby approved.

Section 2. That the Mayor is hereby authorized and directed to enter into the Farm Lease, subject to such modifications in form or substance as the Mayor, 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.

ADOPTED the 15th day of November, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Attachment 1 is available in the City Clerk's Office

11. FINANCE

Revised Centerra Retail Development Collection Agreement

Resolution #R-75-2011

Administrative Action: Resolution #R-75-2011 approving the First Amended and Restated Collection Agreement for the City of Loveland to collect Public Improvement Fee Revenues and Retail Sales Fee Revenues in the Centerra Retail Development was approved.

RESOLUTION #R-75-2011

A RESOLUTION APPROVING THE FIRST AMENDED AND RESTATED COLLECTION AGREEMENT FOR THE CITY OF LOVELAND TO COLLECT PUBLIC IMPROVEMENT FEE REVENUES AND RETAIL SALES FEE REVENUES IN THE CENTERRA RETAIL DEVELOPMENT

WHEREAS, on January 20, 2004, the City Council approved the Centerra Master Financing and Intergovernmental Agreement (the "MFA"); and

WHEREAS, the MFA authorized a public improvement fee ("PIF") to be charged on retail sales made in the Centerra Development; and

WHEREAS, subsequently, covenants imposing and implementing the PIF, as well as a Centerra retail sales fee (the "Centerra RSF") and a Lifestyle Center retail sales fee ("Lifestyle RSF") were finalized and recorded; and

WHEREAS, pursuant to the respective covenants, the Centerra Public Improvement Collection Corporation (with respect to the PIF), the Centerra RSF Corporation (with respect to the Centerra RSF) and G&I VI Retail Prom, LLC (as the owner of the Lifestyle Center and successor in interest with respect to the Lifestyle RSF) are entitled to receipt of these respective revenues; and

WHEREAS, on September 7, 2004, the Loveland City Council adopted Resolution #R-79-2004 to approve a Collection Agreement, dated September 1, 2004 (the "Collection Agreement"), pursuant to which the City collects the Lifestyle RSF, Centerra RSF, and PIF, remits the revenues to the respective recipients, and is compensated for this service; and

WHEREAS, the Collection Agreement has been amended by that certain First Amendment approved by the City Council's adoption of Resolution #R-27-2008 on March 18, 2008 (the Collection Agreement and the First Amendment are referred to collectively as the "Collection Agreement"); and

WHEREAS, the parties desire to further amend and restate the Collection Agreement in its entirety as more fully set forth in that certain First Amended and Restated Collection Agreement dated as of November 1, 2011 attached hereto as Exhibit A attached hereto and incorporated herein by this reference (the "First Amended and Restated Collection Agreement").

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

Section 1: That the First Amended and Restated Collection Agreement attached hereto as Exhibit A is hereby approved.

Section 2. That the City Manager is authorized, following consultation with the City Attorney, to modify the First Amended and Restated Collection Agreement in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the First Amended and Restated Collection Agreement on behalf of the City of Loveland.

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

ADOPTED this 15th day of November, 2011

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

12. HUMAN RESOURCES

2012 PROPERTY AND LIABILITY CONTRACT

Motion

Administrative Action: A motion awarding the City's property and liability insurance coverage for 2012 to CIRSA, authorizing the City to continue the Intergovernmental Agreement with CIRSA and establishing a purchase order in the amount of \$861,978 was approved.

13. HUMAN RESOURCES

2012 WORKERS' COMPENSATION CONTRACT

Motion

Administrative Action: A motion awarding the workers' compensation contract to Pinnacol Assurance and authorizing the City Manager to execute a contract with Pinnacol, on behalf of the City, not to exceed \$1,727,920 was approved.

END OF CONSENT AGENDA

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports

* Todd Primmer, 1738 Silver Leaf Dr, spoke to restricting a home security camera to the homeowner's property only. Staff was directed to contact Mr Primmer for additional information on the issue.

* Charles Jay, 3942 Cottonwood, complemented staff in regards to the drop off sites for tree branches and leaves setup after the October storms.

* Ed Klen, 6909 Shannon Ct, distributed information to Council regarding his claims of a public safety issue at the building located at 209 4th St.

b) Business from Council

City Council Liaison Appointment to Boards & Commissions

Councilor McEwen made a motion to approve the liaison appointments as submitted, with the addition of Councilor Shaffer as the liaison to the Economic Development Committee. Councilor Shaffer seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

Shaffer	Councilor Shaffer participated as a judge for Loveland's "Miss Valentine", attended the HACOL Veterans Day luncheon and was a panelist at the Larimer County Advocacy Training Workshop.
Trenary	Councilor Trenary offered congrats on the Veteran's Day Services and bell ringers.
McEwen	Councilor McEwen participated in the Veteran's Day parade and attended the ribbon cutting at the Odd Fellows Lodge.
Klassen	In response to Councilor Klassen's request, City Manager Cahill updated Council on the storm cleanup. The cleanup is going well with some work continuing for the disabled and elderly. Loveland's cost continues to be less than surrounding communities.
Gutierrez	By consensus of Council, Councilors McKean and Klassen will be part of the Council Advance planning subcommittee along with the City Manager and Mayor. The Mayor encouraged Loveland citizens to apply for the openings on the various Boards and Commissions. He also attended a "Shine A Light" event in support of those touched by lung cancer.
c) <u>City Manager Report</u>	None
d) <u>City Attorney Report</u>	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

14. CITY CLERK'S OFFICE

Approval of Council Minutes
 Motion

Administrative Action: Mayor Gutierrez introduced this item. This is an administrative action to approve the Council minutes from the study session and special meeting held on October 25 and the regular meeting held on November 1. Four Councilors were sworn into office on November 8, 2011. As they were not present for the October 25 and November 1, 2011 meetings, staff recommends they take no action on this item. This item is on the regular agenda to allow the Councilors who were present to take action. This is a standard administrative action that will be on the consent agenda for future meetings. City Attorney John Duval clarified that abstaining counts as an affirmative vote. Councilor McEwen moved to approve Council meeting minutes from October 25, 2011 and November 1, 2011 as submitted. Councilor Klassen seconded the motion and a roll call vote was taken with Councilors Gutierrez, McEwen, Klassen and Shaffer voting in favor and Councilors Trenary, McKean, Fogle, Taylor and Farley abstaining. The motion passed.

15. DEVELOPMENT SERVICES

**Municipal Code Amendment – Air Pollution
1st Reading Ordinance & Public Hearing**

Legislative Action: Development Services Director Greg George introduced this item to Council. This is a public hearing to consider a legislative action to adopt, on first reading, an ordinance amending Title 7 of the Loveland Municipal Code to protect the health, safety, and welfare of the residents of the City by prohibiting unreasonable emissions into the air. The proposed ordinance would declare it to be unlawful for any person to cause, permit or maintain a public nuisance resulting from the emission of smoke, ashes, fumes, odors and other substances in such a manner as to: (i) unreasonably endanger the public's health, safety, or welfare; (ii) cause physical injury to any person or damage to any property; (iii) or interfere with any person's comfortable enjoyment of that person's real property or the normal conduct of that person's business. The Mayor opened the public hearing at 7:28 p.m.

John Rust, W 6th St, spoke in opposition; Robin Thayer, 1710 Elk Springs Ct, spoke in opposition; Linda Hays, 1532 W 8th St, spoke in support; Joyce Hanson, 2029 Creede Ave, spoke in opposition; Bob Boss, 514 Sherry Dr, spoke in opposition; Everette Roberts, 1803 Tincup Ct; spoke in opposition; John Larmas, Loveland resident, spoke in support; Jim Hays, 1532 W 8th St, spoke in support; Ken Johnson, 2038 Rio Blanco Ave, spoke in opposition; Becky Amschwand, 2053 Creede Ave, spoke in opposition; Kent Hanson, 2029 Creede, spoke in opposition; Tom Green, 1973 Creede Ave, spoke in support; Charles Jay, 3942 Cottonwood Dr, spoke in opposition; Nancy Larma, 2005 Creede Ave, spoke in support, Janet Johnson, 874 E 5th St, spoke in opposition; Bob Gardner, 1166 N. Madison, spoke in opposition; Tom Holden, 242 E 2nd St, spoke in opposition; Tom Buchanan, 910 W 8th St, spoke in opposition; Kevin S., 585 Wildstone, spoke in opposition; Dennis Trentadue, 4195 Peach Tree Ct, spoke in opposition; Ray Ezinga, 5258 N. Monroe spoke in opposition; Larry Dassow, 3363 Cuchara Ct spoke in opposition.

The Mayor closed the public hearing at 8:37 p.m. Discussion ensued. Councilor McEwen made a motion to approve and ordered published on first reading "AN ORDINANCE TO ENACT A NEW CODE CHAPTER 7.38 TO PROHIBIT AIR POLLUTION NUISANCES". Councilor Fogle seconded the motion and a roll call vote was taken with all Councilors present voting against the motion. The motion failed unanimously.

16. POLICE

Larimer Humane Society – Licensing Fees & Contract Approval

Administrative Actions: Police Chief Luke Hecker introduced this item to Council. The resolution approves Larimer Humane Society's request to increase the licensing fees for spayed and neutered animals from \$10.00 to \$12.00 and for all other animals (intact and unaltered animals) from \$27.00 to \$35.00. These fee increases reflect increased operational costs including wages, animal food, vaccinations, utilities, building maintenance, vans, fuel and equipment for animal control officers and the shelter. The second action approves the contract for Larimer Humane Society services as revised for the 2012 calendar year. Although a public hearing was not required the Mayor took public comments at 9:56 p.m. Sheila Carasco, 1303 Harlow Lane, spoke in opposition because of the decrease in funding. Council directed staff to evaluate service levels at end of June/beginning of July. Chief Hecker clarified the response to animal emergencies will occur seven days a week, at any time.

a) Resolution #R-76-2011

Councilor McEwen made a motion to approve Resolution #R-76-2011 approving an increase in the Larimer Humane Society's animal licensing fees for the City of Loveland. Councilor Fogle seconded the motion and a roll call vote was made with all Councilors present voting in favor thereof.

RESOLUTION # R-76-2011

A RESOLUTION APPROVING AN INCREASE IN THE LARIMER HUMANE SOCIETY'S ANIMAL LICENSING FEES FOR THE CITY OF LOVELAND

WHEREAS, the City of Loveland, a home rule municipality (the "City") and the Larimer Humane Society, a Colorado non-profit corporation (the "Humane Society") entered into an Agreement for Animal Control Services dated January 1, 2010, for services through the 2010 calendar year and a Renewal for Animal Control Services dated December 16, 2010, for services through the 2011 calendar year (together, the "Agreement"); and

WHEREAS, City Code Section 6.08.050 A. establishes that licensing fees for animals shall be set by resolution of the Loveland City Council (the "Council") and Section 9 of the Agreement authorizes the Humane Society to collect license and impound fees established by the Council; and

WHEREAS, beginning January 1, 2012, the Humane Society desires to increase the licensing fees for spayed and neutered animals from \$10.00 to \$12.00 and for all other animals (intact/unaltered animals) from \$27.00 to \$35.00 to reflect its increased operational costs including wages, animal food, vaccinations, utilities, building maintenance, vans, fuel and equipment for animal control officers and the shelter; and

WHEREAS, the Humane Society is facing a budget shortfall because licensing fees have not changed for spayed and neutered animals since 1996 and for all other animals since 2002, and revenue from the Agreement with the City has not increased since 2008; and

WHEREAS, the Council finds that the Humane Society's request for an increase in licensing fee is reasonable and that such increase is in the best interests of the City and its citizens to maintain the services provided by the Humane Society; and

WHEREAS, the Humane Society, which also serves the City of Fort Collins and Larimer County, has received approval from Larimer County for the proposed licensing fee increase.

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

Section 1. That beginning January 1, 2012 at 12:01 a.m., the Humane Society fee to license an animal in the City shall be as follows:

	<u>License Fee</u>
Spayed or Neutered Animal	\$12.00
Intact/Unaltered Animal	\$35.00

Section 2. That all other Humane Society fees authorized by Council for the City shall remain in effect.

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

ADOPTED this 15th day of November, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

b) Motion

Councilor McEwen made a motion to approve the 2012 Agreement for Animal Control Services with Larimer Humane Society. Councilor McKean seconded the motion and a roll call vote was made with all Councilors present voting in favor thereof.

17. ECONOMIC DEVELOPMENT

Community Marketing Commission & Lodging Tax Fund

These are administrative actions. Economic Development Director Betsey Hale introduced this item to Council. Linda Hughey, chair of the Community Marketing Commission was also present. On October 19th, 2011 the Community Marketing Commission made unanimous recommendations to City Council for approval of:

1. The Destination Loveland strategic plan
2. A public hearing and ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland Budget for the Lodging Tax Fund
3. The recruitment for a Visitor Services Coordinator position
4. A reallocation of the 2011 lodging tax funds for uses other than grants

This agenda item addresses the Council actions to be taken as recommended by the CMC.

a) Resolution #R-77-2011

Councilor McEwen made a motion to approve Resolution #R-77-2011 approving the Destination Loveland Strategic Plan for the use of Lodging Tax Funds and marketing of Loveland. Councilor Shaffer seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

RESOLUTION #R-77-2011

RESOLUTION APPROVING THE DESTINATION LOVELAND STRATEGIC PLAN FOR THE USE OF LODGING TAX FUNDS AND MARKETING OF LOVELAND

WHEREAS, the City began collecting lodging tax pursuant to Chapter 3.24 of the Loveland Municipal Code in January, 2010; and

WHEREAS, the purpose of the lodging tax is to promote tourism, conventions, and related activities within the City by marketing the City and sponsoring community events; and

WHEREAS, the Destination Loveland strategic plan was developed with the assistance of a third-party marketing consultant after a ten month period of stakeholder input and research in the tourism industry and is intended to guide the use of lodging tax funds to market the City as a destination for art, leisure and business visitors in order to attract more visitors to Loveland and increase visitor spending; and

WHEREAS, the Community Marketing Commission unanimously recommended the Destination Loveland strategic plan to City Council for approval.

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

Section 1. That the Destination Loveland strategic plan attached hereto as Exhibit A and incorporated herein by this reference, be, and is hereby, approved.

Section 2. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 15th day of November, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

b) 1st Reading Ordinance & Public Hearing

The Mayor opened the public hearing at 10:19 p.m. Sheila Carasco, 1303 Harlow Lane, a member of the Creative Sector Development Advisory Commission, spoke about getting clarity for Community Marketing Commission work. The Mayor closed the public hearing at 10:27 p.m. Councilor McEwen made a motion to approve and ordered published on first reading "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE LODGING TAX FUND". Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

c) Motion

Council discussed the Visitor's Center's budget. Councilor McEwen made a motion directing staff to recruit and hire the Visitor Services Coordinator position. Councilor Shaffer seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

d) Motion

Staff was directed to look into the feasibility of televising the CMC meetings. Councilor McEwen made a motion approving reallocation and use of funds in the 2011 Lodging Tax budget. Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

ADJOURNMENT

Having no further business to come before Council, the November 15, 2011 Regular Meeting was adjourned at 11:34 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor



CITY OF LOVELAND
BUDGET OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537

(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 2
MEETING DATE: 12/6/2011
TO: City Council
FROM: Bonnie Steele, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Consideration of an ordinance on second reading enacting a supplemental budget and appropriation to the City of Loveland, Colorado 2011 budget

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is an administrative action. The ordinance is necessary to resolve several year-end issues and finalize the 2011 Budget. Several of the issues are new and the remainder we have been following through the year and have waited until now in order to provide the best forecast for the cost to the end of the year. This ordinance was unanimously approved by Council on first reading November 1, 2011. Due to a publication error this item is coming back to Council on December 6, 2011 for approval on second reading. There are no other changes to this item.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

Nearly all of the additional appropriations are funded by unanticipated revenues and reserves set aside for a specific purpose, therefore there is no budget impact. The appropriation for the Vehicle Maintenance Fund is funded by unrestricted fund balance and is necessary due to higher than anticipated fuel prices during the year, reducing the flexibility within the fund to use the balance for other purposes leading to the negative impact designation.

SUMMARY:

The Ordinance is necessary to make adjustments in several departments. Staff has been monitoring many of these issues throughout the year to arrive at a single more accurate forecast. The details of the adjustments are as follows:

- Funding is appropriated (\$25,000) in the Library Department for a mural or other art project to be displayed permanently on the curved wall on the second floor of the Library's new construction between the Administrative Offices and the iExplore public computer lab. The funding source is reserves from the balance in the Kroh Charitable Trust Account.
- Appropriation of the PRPA contribution for economic development in 2011 (\$14,270).
- Appropriation of donations received for the Business Appreciation event to offset the cost of the food for the event (\$10,000).
- Funding is included in the Development Services department for a reimbursement related to the asbestos cleanup at the Leslie the Cleaners building.
- Funding is appropriated (\$13,500) in the Development Services Department for the final payment on the Lincoln Hotel redevelopment project. This appropriation is to receive funds from the State Historical Fund to reimburse the costs the City paid for the preparation and recording of a conservation easement for the Lincoln Hotel Rehabilitation Grant. This appropriation will allow the grant to be finalized and closed out. The funding source is a reimbursement from a State Historical Grant.
- Funding for the purchase of bulletproof vests (\$2,600) and for supplies (\$16,760) in the Police Department. The funding source is a Federal Bureau of Justice Assistance Grant.
- Funding for overtime (\$9,350) is appropriated in the Police Department. The funding source is a State DUI Enforcement Grant.
- Funding is appropriated for the renovation and expansion of the Dispatch Communications Center (\$916,000). The funding sources are reserves in the General Fund (\$616,000) and Police CEF fees (\$300,000). The project will be completed in 2012 and the final funding for the total project of \$1.2 million is included in the 2012 adopted budget.
- The Fire Department receives reimbursements for Wildland fire response outside our jurisdiction to cover overtime and equipment use associated with the response. The department has also received rental fees for use of the training facility. These revenues are appropriated for overtime (\$25,000), training center repair and maintenance (\$9,730), and replacement of air compressor to fill breathing apparatus (\$42,680).
- Funding is appropriated to begin the design of the expansion of Fire Station 6 (\$25,000). The funding source is Fire CEF funds.
- Federal Grant funding for Transit operations is appropriated for an upgrade to the Paratransit scheduling software (\$36,730).
- Funding for a development agreement that allows generated sales tax to pay for deferred Capital Expansion Fees is appropriated based on actual sales tax generated. The funding source is General Fund reserves.

- Funding for fuel purchases is appropriated in the Public Works Department (\$175,000) due to higher than anticipated fuel prices. The funding source is Vehicle Maintenance Fund Unrestricted Fund Balance.
- The Police Department receives revenues from forfeited property and seizures (\$50,160). These revenues are appropriated to fund part of the expenses associated with the Regional Drug Task Force, primarily for overtime costs associated with investigations.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. An Ordinance on second reading enacting a supplemental budget and appropriation to the City of Loveland, Colorado 2011 budget.

FIRST READING November 1, 2011

SECOND READING December 6, 2011

ORDINANCE #_____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE CITY OF LOVELAND, COLORADO 2011 BUDGET

WHEREAS, the City of Loveland has reserved funds on hand not appropriated at the time of the adoption of the City budget for 2011; and

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 and reserves are available for appropriation and/or transfer from the following sources: donations, contributions, state and federal grants and reserves. In the Forfeiture Fund revenues from forfeitures are appropriated for overtime and other costs. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
General Fund 001

Revenues

Fund Balance		676,520
001-1822-363-00-00	Contributions	24,270
001-1903-341-04-00	Code Abatement	1,200
001-1914-334-24-00-SP0501	State Historical Grant	13,500
001-2102-338-30-00-PDBULL	Federal Grant	2,600
001-2102-338-30-00-PDJAG0	Federal Grant	16,760
001-2113-334-02-00	State Grant - DUI Enforcement	9,350
001-2202-337-44-00	Wildland Fire Reimbursements	59,900
001-2202-341-25-00	Fire Academy Fees	17,510
001-2303-338-90-00	Federal Transit Authority Grant	36,730
Total Revenue		858,340

Appropriations

001-1410-409-03-50	Professional Services	25,000
001-1822-409-03-76	Incentives	14,270
001-1822-414-02-22	Food/Special Events	10,000
001-1903-409-03-75	Code Abatement	1,200
001-1914-409-04-86-SP0501	Developer Reimbursement - Lincoln Hotel	13,500
001-2102-409-02-25-PDBULL	Clothing	2,600
001-2112-409-02-32-PDJAG0	Parts & Supplies	16,760
001-2113-409-01-21	Overtime	9,350
001-2202-409-01-21	Overtime	25,000
001-2202-409-03-69	Repair & Maintenance	9,730
001-2202-409-09-99	Other Capital	42,680
001-2304-409-02-15	Computer Software	36,730
001-5502-473-07-02	Transfer to Capital Project Fund	616,000
001-5502-473-07-41	Transfer to Water Enterprise Fund	200
001-5502-473-41-01	Transfer to Water SIF Fund	5,190
001-5502-473-07-42	Transfer to Wastewater Enterprise Fund	5,680
001-5502-473-07-43	Transfer to Storm Water Enterprise Fund	2,150
001-5502-473-07-46	Transfer to Raw Water Enterprise Fund	690
001-5502-473-22-04	Transfer to Fire CEF Fund	660
001-5502-473-22-05	Transfer to Police CEF Fund	790
001-5502-473-22-08	Transfer to General Government CEF Fund	920
001-5502-473-22-09	Transfer to Street CEF Fund	19,240
Total Appropriations		858,340

**Supplemental Budget
Capital Projects Fund 002**

Revenues		
002-2107-363-01-00	Transfer from General Fund	616,000
002-2107-363-22-05	Transfer from Police CEF Fund	300,000
Total Revenue		916,000

Appropriations		
002-2107-409-09-47-PDDISP	Office Furniture & Equipment	9,790
002-2107-409-09-48-PDDISP	Computer Equipment	906,210
Total Appropriations		916,000

**Supplemental Budget
Vehicle Maintenance Fund 081**

Revenues		
Fund Balance		175,000
Total Revenue		175,000
Appropriations		

081-2362-409-02-30	Motor Fuel	175,000
Total Appropriations		175,000

**Supplemental Budget
Fire CEF Fund 224**

Revenues		
Fund Balance		25,000
Total Revenue		25,000
Appropriations		

224-2202-409-09-55-GF1106	Fire Station 6 Expansion Design	25,000
Total Appropriations		25,000

**Supplemental Budget
Police CEF Fund 225**

Revenues		
Fund Balance		300,000
Total Revenue		300,000

Appropriations		
225-2102-473-02-00	Transfer to Capital Projects Fund	300,000
Total Appropriations		300,000

**Supplemental Budget
Police Seizure Fund 240**

Revenues		
240-2112-338-30-00	Federal Grant	50,000
240-2112-361-10-00	Interest	160
Total Revenue		50,160
Appropriations		
240-2112-409-01-21	Overtime	50,160
Total Appropriations		50,160

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.

Section 3. That as provided in City Charter Section 11-5(d), this Ordinance shall be effective upon final adoption.

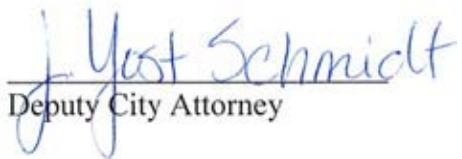
ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


J. Yost Schmidt
Deputy City Attorney



CITY OF LOVELAND
BUDGET OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 3
MEETING DATE: 12/6/2011
TO: City Council
FROM: Bonnie Steele, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Consideration of an ordinance on second reading enacting a supplemental budget and appropriation to Loveland Special Improvement District #1 2011 budget.

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is administrative action. The Ordinance appropriates funds from prepaid assessments to pay down debt. This ordinance was unanimously approved by Council on first reading November 1, 2011. Due to a publication error this item is coming back to Council on December 6, 2011 for approval on second reading. There are no other changes to this item.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

The revenue for the appropriation is from a prepaid assessment in full. The revenue is being used to call District bonds early reducing the debt service for the District.

SUMMARY:

The Special Improvement District #1 (SID) was established to allow for the collection of assessments from property owners in the district to back bonded debt used to construct infrastructure improvements located within the district. The District is in east Loveland north of

Eisenhower Boulevard along Rocky Mountain Avenue, extending north above Houts Reservoir. A large property within the district prepaid the assessment. The funds are used to call District bonds early reducing the debt service in the District.

The City does not have any legal obligation towards this debt.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. An Ordinance enacting a supplemental budget and appropriation to Loveland Special Improvement District #1 2011 budget

FIRST READING November 1, 2011

SECOND READING December 6, 2011

ORDINANCE #_____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 2011 BUDGET

WHEREAS, the Loveland Special Improvement District #1 has received funds not anticipated or appropriated at the time of the adoption of the District's budget for 2011; and

WHEREAS, the City Council acting as the Board of Directors for the Loveland Special Improvement District #1 desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the District's 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 are available for appropriation from prepaid assessments and are appropriated to call District bonds early, reducing the debt services amount. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Loveland Special Improvement District #1 Fund 038

Revenues

038-0000-318-35-00	Special Assessment -Prepaid	196,450
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Total Revenue	196,450
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Appropriations

038-5502-409-06-10	Principal	196,450
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Total Appropriations	196,450
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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.

Section 3. That as provided in City Charter Section 11-5(d), this Ordinance shall be effective upon final adoption.

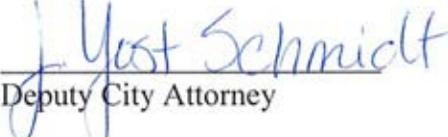
ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


J. Yost Schmidt
Deputy City Attorney



CITY OF LOVELAND

PUBLIC WORKS DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537

(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM:

4

MEETING DATE:

11/15/2011

TO:

City Council

FROM:

Ken Cooper, Public Works - Facilities Management

PRESENTER:

Ken Cooper

TITLE:

Second reading of an ordinance authorizing the sale of the "Bishop House" and the sale of real property owned by the City of Loveland pursuant to Section 4-7 of the City of Loveland Municipal Charter

RECOMMENDED CITY COUNCIL ACTION:

Adopt the ordinance on second reading

OPTIONS:

1. Adopt the ordinance on second reading
2. Deny the ordinance
3. Adopt a modified ordinance
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is an administrative action to approve the sale of the "Bishop House," located at 871 E. 1st Street, and approximately 0.4 acres of City-owned real property located at 1317, 1321, & 1375 W. 8th Street (these parcels were acquired for the Taft Avenue widening project). This ordinance was unanimously approved by Council on first reading November 1, 2011. Due to a publication error this item is coming back to Council on December 6, 2011 for approval on second reading. There are no other changes to this item.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

If approved on second reading by City Council, the monies collected from the sale will be used to reimburse Public Works Capital Expansion Fees originally used to purchase the 8th Street Properties for the Taft Avenue widening project.

SUMMARY:

On November 1, 2011, City Council approved on first reading the sale of these City-owned properties to a group led by Bryant Bajema.

In 1999, the City purchased approximately three acres of real property southeast of the Chilson Center to help provide growth space for future Civic Center needs. This three-acre parcel, which has a mailing address of 871 E. 1st Street, is commonly referred to as the “Bishop Property.” In 2009, City Council directed staff to move forward with expansion projects at both the Chilson Center and the Library, and the Bishop Property was targeted for redevelopment to meet additional access and parking needs for Civic Center visitors and employees. However, it was always the City’s desire to save the old farm house located on the Bishop Property (“Bishop House”).

In 2009, City staff sent out a Request for Proposals soliciting someone to purchase and move the Bishop House. Although there was interest, nobody bid on the Bishop House. Eventually, local business owner Steve Schroeder offered to buy the Bishop House for \$100 and pay for all costs to move it. Mr. Schroeder first planned to move it to 1179 E. 7th Street, but the site had too many constraints. Mr. Schroeder then set his sights on 1725 Garfield Avenue, land he owned near Lake Loveland, but opposition from neighbors was problematic.

Mr. Schroeder then hoped to buy the City-owned properties at the northeast corner of 8th Street and Taft Avenue known as 1317, 1321, and 1375 W. 8th Street (“8th Street Properties”) and buy the Bishop House and move the House to that location. The 8th Street Properties total approximately 0.4 acre and were purchased for the Taft Avenue widening project, which was completed in late 2005. Although the 8th Street Properties have been for sale by the City since early 2008, no other offers have been made, and there has been almost no interest. Mr. Schroeder had planned to offer the City \$25,000 for the purchase of the Bishop House and the properties at N. Taft and 8th Street, but was unable to formalize the offer because of the financial realities of the project. He stopped pursuing the project late in 2010.

In early 2011, another development group led by Bryant Bajema became involved. Mr. Bajema has now offered to buy the Bishop House and the 8th Street Properties for a total purchase price of \$18,000. He has done extensive due diligence on the project, including an asbestos survey on the Bishop House. If Council approves his offer on Second Reading, Mr. Bajema will move the Bishop House to the new location and use or sell it for use as a private residence. Mr. Bajema will pay all associated moving and site development costs, including applicable City fees. The 8th Street Properties come with water credits that are worth about \$24,500 due to the homes previously located there.

In a completely different real estate market in early 2007, the 8th Street Properties were appraised at \$145,000. The widening of Taft Avenue left the 8th Street Properties with only 0.4 acre, which is restrictive to development. In addition, access to the 8th Street Properties is limited to 8th Street. However, this site does provide visual access to Taft Avenue, and City staff believes it would be a fine location for the Bishop House. The Bishop House would remain in Loveland in a visible location where the community could enjoy it for many years to come.

REVIEWED BY CITY MANAGER:

William D. Cainell

LIST OF ATTACHMENTS:

Ordinance

Agreement for purchase & relocation of Bishop House (Exhibit A to ordinance)

Maps of site locations

FIRST READING November 1, 2011

SECOND READING December 6, 2011

ORDINANCE #____

**AN ORDINANCE AUTHORIZING THE SALE OF THE BISHOP HOUSE
AND THE SALE OF REAL PROPERTY OWNED BY THE CITY OF
LOVELAND PURSUANT SECTION 4-7 OF THE CITY OF LOVELAND
MUNICIPAL CHARTER**

WHEREAS, the City of Loveland is the owner of certain personal property known as the Bishop House, currently located at 871 E. First Street, Loveland, Colorado 80537 (the “Bishop House”); and

WHEREAS, the City is the owner of certain real property legally described Lots 11, 12, and 13 of Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-911, also known by the mailing addresses of 1317, 1321, and 1375 W. 8th Street, Loveland, CO 80537 respectively (the “Lots”); and

WHEREAS, the City acquired the Lots as part of the Taft Avenue Widening Project, which was completed in late 2005; and

WHEREAS, the Lots are not used for parks purposes and are not needed for any governmental purpose, and have been on the real estate market since 2008; and

WHEREAS, the City has been seeking a buyer for the Bishop House in order to relocate the Bishop House elsewhere in Loveland to preserve this local landmark and make way for Civic Center development; and

WHEREAS, Microproperties Indiana, LLC has offered purchase the Bishop House and the Lots from the City for a total of Eighteen Thousand Dollars (\$18,000); and

WHEREAS, Microproperties Indiana, LLC intends to relocate the Bishop House to the Lots, thereby preserving this local landmark and making use of real property that the City desires to put back into private ownership; and

WHEREAS, the City desires to sell the Bishop House and the Lots to Microproperties Indiana, LLC for Eighteen Thousand Dollars (\$18,000) on the terms and conditions set forth in the Agreement for Purchase and Relocation of Bishop House, attached hereto as Exhibit A and incorporated herein by reference (“Agreement”); and

WHEREAS, pursuant to Section 4-7 of the City of Loveland Municipal Charter, the City Council must act by ordinance to approve the transfer of fee ownership in real property owned by the City.

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

Section 1. That the City Council hereby finds and determines that the Lots are not needed for any governmental purpose, and that the sale of the Lots is in the best interest of the City of Loveland.

Section 2. That the City Manager is authorized to enter into the Agreement for Purchase and Relocation of Bishop House, attached hereto as Exhibit A and incorporated herein by reference (“Agreement”) and execute all documents, the form of which shall be approved by the City Attorney, necessary to consummate the sale of the Bishop House and the Lots for the purchase price of Eighteen Thousand Dollars (\$18,000) and to transfer the City’s interest in the Bishop House and the Lots to Microproperties Indiana, LLC.

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

Section 4. 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 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shane L. Otis
Assistant City Attorney

**AGREEMENT
For Purchase and Relocation of Bishop House**

This Agreement ("Agreement") is made and entered into this 19th day of December, 2011, by and between the **City of Loveland, Colorado**, a home rule municipality, whose address is 500 E. 3rd Street, Loveland, Colorado 80537 ("Seller") and **Microproperties Five, LLC**, a Texas limited liability company, whose address is 14901 Quorum Drive, Suite 900, Dallas, Texas 75254 ("Buyer").

Whereas, the Seller desires to sell, and the Buyer desires to buy, the house currently located at 871 E. 1st Street, Loveland, Colorado 80537, and three lots located on W. 8th Street in Loveland, Colorado, as more specifically described below, subject to the condition precedent that the Buyer remove the house from its present location and install it on the three lots for future residential use.

Now, therefore, in consideration of the mutual covenants and conditions described more fully herein, the parties agree as follows:

1. Description of Bishop House. The personal property that is the subject of this Agreement is that certain house, including all fixtures of a permanent nature now part of the house, and all improvements, including the garage, located at 871 E. 1st Street, Loveland, Colorado 80537 ("Bishop House"). **THE BISHOP HOUSE DOES NOT INCLUDE THE UNDERLYING REAL ESTATE, WHICH SHALL REMAIN THE PROPERTY OF THE SELLER ("CITY'S PROPERTY"). NOTHING HEREIN SHALL OPERATE AS OR BE CONSTRUED TO BE A CONVEYANCE OF THE CITY'S PROPERTY.**

2. Description of Lots. The real property that is the subject of this Agreement is legally described as follows (collectively referred to herein as the "Lots"):

a. Lot 11, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-911, also known by the mailing address of 1317 W. 8th Street, Loveland, CO 80537;

b. Lot 12, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-912, also known by the mailing address of 1321 W. 8th Street, Loveland, CO 80537; and

c. Lot 13, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-913, also known by the mailing address of 1375 W. 8th Street, Loveland, CO 80537.

3. Method of Conveyance. The Seller agrees to sell, and the Buyer agrees to buy, the Bishop House and the Lots, subject to the terms and conditions of this Agreement. The Bishop House shall be conveyed to the Buyer by bill of sale in the form attached hereto as **Exhibit A** and incorporated herein by reference ("Bill of Sale"). The Lots shall be conveyed to

the Buyer by quitclaim deed in the form attached hereto as **Exhibit B** and incorporated herein by reference (“Quitclaim Deed”).

4. Purchase Price. The total purchase price for the Bishop House and the Lots shall be Eighteen Thousand Dollars (\$18,000.00) (“Purchase Price”), to be paid as follows:

a. Upon the Seller’s execution of this Agreement, the Buyer shall deposit One Thousand Dollars (\$1,000) as an earnest money deposit (“Earnest Money”), which shall be held in escrow with Chicago Title Company, 201 W. Virginia Street, McKinney, Texas 75069 (“Title Company”).

b. The Buyer shall pay to the Seller Seventeen Thousand Dollars (\$17,000) by certified check at the time of Escrow Closing, defined below.

5. Escrow Closing.

a. The Escrow Closing shall be held within seven (7) business days from the date that the Seller approves the application to merge the Lots into one legal lot, as more particularly described in Paragraph 7, at the Title Company’s Loveland office, located at 3013 N. Taft Avenue, Suite 3, Loveland, Colorado 80538 (“Title Company’s Office”), or at such time as the parties may mutually agree, but in no event later than March 2, 2012.

b. The following shall occur at Escrow Closing, each being a condition precedent to the others and all being considered as occurring simultaneously:

(i) The Seller shall execute, have notarized, and deliver to the Title Company the Bill of Sale conveying title to the Bishop House in place, F.O.B. City’s Property, in accordance with the provisions of this Agreement;

(ii) The Seller shall execute, have notarized, and deliver to the Buyer the Quitclaim Deed conveying title to the Lots, in accordance with the provisions of this Agreement;

(iii) The Buyer shall deliver to the Title Company the certified check required by Subparagraph 4.b. above;

(iv) The Buyer shall deliver to the Title Company a copy of the signed plat merging the Lots into one legal lot as required in Paragraph 7;

(v) The Seller shall execute and deliver to the Buyer an affidavit stating that the Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

(vi) The Seller shall execute Certificates as to Taxpayer Identification Number as required by law;

(vii) The Seller and the Buyer shall each execute and deliver Settlement Statements, showing adjustments in the payment of the costs of the closing;

(viii) The Buyer shall execute a Real Property Transfer Declaration as required by Colorado law; and

(ix) Each party shall deliver to the Title Company such other documents, certificates, and the like as may be required herein or as may be necessary or helpful to carry out each party's obligations under this Agreement, with copies of all such documents to the other party.

6. Escrow Release.

a. The Title Company shall release and deliver to the Seller or to the Buyer, as the case may be, all original documents and funds in its possession pursuant to Escrow Closing ("Escrow Release") only after all of the following have occurred:

(i) The Buyer's Relocation of the Bishop House onto the Lots as required in Paragraph 11;

(ii) The Buyer's completion of the City's property finish as required in Paragraph 13; and

(iii) Title Company's receipt of written instructions signed by both the Buyer and the Seller authorizing Escrow Release.

b. Following Escrow Release, the Title Company shall have no other duties or responsibilities to the parties.

7. Lot Merger Required. Following execution of this Agreement, the Seller and the Buyer shall cooperate to file an application with the City's Current Planning Division to merge the Lots into one legal lot. The Buyer shall pay all City fees associated with the application. The Seller agrees to cooperate with the Buyer and to expedite its review and approval, as appropriate, of the application in order to facilitate the transaction contemplated in this Agreement. The Buyer must obtain a signed plat recognizing the new legal lot prior to Escrow Release. In the event the Seller denies said application to merge the Lots into one legal lot, or fails to approve it by February 29, 2012, then this Agreement shall terminate, the Earnest Money shall be returned to the Buyer, and the parties hereto shall be released from all further obligations hereunder.

8. Insurance. The Buyer shall obtain insurance against all losses and damages to the Seller resulting from the Buyer's activities on the Lots prior to Escrow Release, the Buyer's relocation of the Bishop House from the City's Property to the Lots, and the Buyer's activities on the City's Property. Said policy shall be for the mutual and joint benefit and protection of the Buyer and the Seller and shall provide that the Seller, although named as an additional insured,

shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its officers, employees, and agents by reason of the negligence of the Buyer, its officers, employees, agents, subcontractors, or business invitees. Such policy shall be written as a primary policy not contributing to and not in excess of coverage the Seller may carry. Prior to accessing the Lots and the City's Property for any reason other than for the limited purposes stated in Paragraph 18, the Buyer shall deliver a certificate of insurance to the Seller evidencing the insurance coverage required herein. Except as permitted for the limited purposes stated in Paragraph 18, the Buyer's right to access the Lots and the City's Property granted in this Agreement is expressly contingent on the Buyer's delivery of said certificate of insurance to the Seller.

9. Access to Lots Prior to Escrow Release; Improvements. The Seller recognizes the Buyer's need to access and improve the Lots prior to Escrow Release in order to prepare the Relocation Site for installation of the Bishop House. Therefore, following Escrow Closing and subject to the requirements of paragraph 8, the Seller authorizes the Buyer to access the Lots, and after obtaining all permits required by the Loveland Municipal Code, to install a foundation upon the Lots and to install and make all necessary utility connections to the Relocation Site in order to provide residential utility services to the Bishop House following its relocation. Such access shall be during regular business hours, and at such other times as may be permitted by the Seller.

10. Possession of Bishop House. Subject to the requirements of paragraph 8, the Buyer shall be entitled to take possession of the Bishop House immediately following Escrow Closing. The Buyer may not occupy the Bishop House while it remains on the City's Property and may not authorize any other party to do so.

11. Relocation of Bishop House.

a. After Escrow Closing, but before Escrow Release, the Buyer shall remove the Bishop House from the City's Property and relocate it to the Lots. Said relocation shall be at the Buyer's sole cost and expense. Said relocation must occur on or before one hundred eighty (180) days after Escrow Closing ("Relocation Deadline"). If the Buyer fails to relocate the Bishop House as required herein on or before the Relocation Deadline without the Seller's express written consent, which shall not be unreasonably withheld, then the Buyer shall be in default, and the provisions of Paragraph 19 shall apply.

b. The Buyer shall be responsible, at its sole cost and expense, for hiring a licensed contractor to remove and transport the Bishop House from the City's Property to the Lots. The Seller shall have no responsibility for any action, inaction, success, or lack of success of the contractor. The Buyer and the contractor shall be solely responsible for selection of the means and methods regarding the work to be performed under the contract between them; provided, however, that the Buyer shall require the contractor to have in place insurance, including general liability and automobile insurance, adequate to cover the work. The Buyer shall require the contractor to list the Seller as an additional insured under said policies. The Buyer shall deliver to the Seller a certificate of insurance evidencing said coverage prior to relocating the Bishop House.

c. The Buyer shall be responsible for obtaining any and all permits and approvals necessary to move the Bishop House from the City's Property to the Lots, including, without limitation, any and all permits and approvals required by the City and of utility providers whose overhead lines may need to be moved.

12. Transportation and Risk of Loss. The Buyer shall be solely responsible for all costs of transporting the Bishop House from the City's Property to the Lots. The Buyer further agrees to assume all risk of loss or damage to the Bishop House during removal and transport from the City's Property to the Lots. The Buyer shall secure insurance against such loss or damages during removal and transport and thereafter as the Buyer deems necessary or desirable.

13. City's Property Finish. The Buyer shall do all of the following prior to Escrow Release:

a. **Basement.** The Buyer acknowledges that there is a partial basement under the Bishop House. Following removal of the Bishop House from the City's Property, the Buyer shall fill in the basement with clean fill dirt and return the City's Property to grade.

b. **Septic System.** The Buyer acknowledges that there is a septic system located on the City's Property that served the Bishop House. The Buyer shall do all work to properly abandon the septic system as required by Larimer County in accordance with all applicable laws. Upon completion of the abandonment, the Buyer shall deliver to the Seller a septic system pumping report and a letter from the Buyer to the Seller stating the methods used to abandon the septic system.

c. **Performance of Work.** The Buyer shall perform all work on the City's Property in a safe, careful, and workmanlike manner and shall not modify, damage, or destroy the Seller's landscaping, irrigation system, adjacent sidewalks, and right-of-way improvements and, except for the work required in this Paragraph 13, shall return the surface of the City's Property to its prior condition after completion of said work. The Buyer shall not leave any materials, equipment, or debris of any kind on the City's Property.

14. Indemnification. The Buyer hereby covenants and agrees to indemnify, save, and hold harmless the Seller, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of any violation of any applicable law, regulation, or permit requirement, or any negligent act or omission or other tortious conduct of the Buyer, its officers, employees, or agents in the performance or nonperformance of its obligations under this Agreement.

15. Bishop House and Lots Sold As-Is; No Warranties. **THE BISHOP HOUSE AND LOTS ARE SOLD BY THE SELLER AS-IS. THE SELLER DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR**

PURPOSE. THE ENTIRE RISK AS TO QUALITY AND SUITABILITY OF THE BISHOP HOUSE AND LOTS IS WITH THE BUYER, AND SHOULD THE BISHOP HOUSE OR LOTS PROVE TO BE DEFECTIVE IN ANY WAY FOLLOWING THE PURCHASE, THE BUYER SHALL ASSUME THE ENTIRE COST OF ALL MAINTENANCE AND REPAIR. THE SELLER SHALL NOT BE LIABLE TO THE BUYER, AND THE BUYER HEREBY WAIVES ALL CLAIMS AGAINST THE SELLER, REGARDLESS OF THE NATURE OR THEORY UNDER WHICH SAID CLAIMS MAY ARISE, FOR ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, OR LOSS OF INCOME, OR ANY OTHER DAMAGES, INCIDENTAL OR OTHERWISE, ARISING OUT OF THE SALE OR USE OF THE BISHOP HOUSE OR THE LOTS.

16. Maintenance of Bishop House and Lots. The Seller shall keep, or cause to be kept, the Bishop House and the Lots in their condition as of the date of this Agreement to the date of Escrow Closing, subject to the terms of this Agreement, and agrees not to commit or permit waste thereon.

17. Casualty. In the event that the Bishop House is substantially damaged by fire, flood, or casualty between the date of this Agreement and the date of Escrow Closing, this Agreement may, at the option of the Buyer, be declared null and void and of no effect, in which case the Earnest Money shall be returned to the Buyer, and the parties shall be released from all further obligations hereunder.

18. Right to Inspect.

a. The Buyer shall be allowed to fully inspect the Bishop House and the Lots at any time up to and including November 30, 2011 (the "Inspection Period"). The Seller agrees that the Buyer and its agents may have reasonable access to the Bishop House and the Lots to conduct tests and/or inspections, at the Buyer's expense, concerning the environmental or geological conditions that could expose the Buyer to future liability for damages or clean-up expenses.

b. Notwithstanding anything contained herein to the contrary, the Buyer shall have the term of the Inspection Period within which to inspect the Bishop House and the Lots and any and all matters related to the purchase or relocation of the Bishop House, including without limitation, governmental requirements, environmental conditions, and other matters that might affect the feasibility of the Bishop House for the Buyer's anticipated use thereof or its relocation, or that might affect the feasibility of the Lots for the Buyer's anticipated use thereof, to determine whether or not the Buyer desires to proceed with the purchase of the Bishop House and the Lots from the Seller. In the event that the Buyer, within the Inspection Period, gives written notice to the Seller of the Buyer's decision not to purchase the Bishop House and the Lots for any of the reasons set forth in this paragraph, then this Agreement shall be null and void and of no effect, the Earnest Money shall be returned to the Buyer, and the parties shall be released from all further obligations hereunder.

c. Notwithstanding anything contained herein to the contrary, the Buyer shall not be obligated to obtain the insurance coverage or provide to the Seller the certificate of insurance required by Paragraph 8 in order to have access to the City's Property and the Lots to inspect the Bishop House and the Lots as permitted in this Paragraph 18.

19. Remedies on Default. If any payment due hereunder is not paid, honored, or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following remedies:

a. If the Buyer is in default, the Seller's sole remedy shall be to elect to treat this Agreement as terminated, in which case the Earnest Money and all payments and things of value received hereunder from the Buyer, including any improvements made to the Lots pursuant to Paragraph 9, shall be forfeited by the Buyer and retained by the Seller, and the Seller may recover such damages as may be proper, but not to exceed Thirty-six Thousand Dollars (\$36,000.00).

b. If the Seller is in default, the Buyer's sole remedy shall be to elect to terminate this Agreement and retain the Earnest Money, or seek specific performance of this Agreement.

20. Lead-Based Paint. A completed Lead-Based Paint Disclosure form signed by the Seller is attached hereto as **Exhibit C** and incorporated herein by reference. The Buyer acknowledges timely receipt of the completed Lead-Based Paint Disclosure form signed by the Seller.

21. Methamphetamine Disclosure.

a. If the Seller knows that methamphetamine was ever manufactured, processed, cooked, disposed of, used, or stored at the Bishop House, the Seller is required to disclose such fact. No disclosure is required if the Bishop House was remediated in accordance with state standards and other requirements are fulfilled pursuant to C.R.S. § 25-18.5-102. The Buyer further acknowledges that the Buyer has the right to engage a certified hygienist or industrial hygienist to test whether the Bishop House has ever been used as a methamphetamine laboratory. If the Buyer's test results indicate that the Bishop House has been contaminated with methamphetamine, but has not been remediated to meet the standards established by rules of the State Board of Health promulgated pursuant to C.R.S. § 25-18.5-102, the Buyer shall promptly give written notice to the Seller of the results of the test, and the Buyer may terminate this Agreement upon the Seller's receipt of the Buyer's written notice to terminate, notwithstanding any other provision of this Agreement.

b. THE SELLER HAS NO KNOWLEDGE OF ANY METHAMPHETAMINE MANUFACTURE, PROCESSING, COOKING, DISPOSAL, USE, OR STORAGE AT THE BISHOP HOUSE.

c. Any testing to be performed and notice given under this paragraph shall be done within the Inspection Period and in accordance with the procedures set forth in Paragraph 18. The Buyer's failure to test or notify the Seller before expiration of the Inspection Period shall be deemed a waiver of any objection on the grounds stated in this paragraph.

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

	<u>To the Seller:</u>	<u>To the Buyer:</u>
Work Coordination:	Ken Cooper Public Works, Facilities 510 E. 5 th Street Loveland, CO 80537 coopek@ci.loveland.co.us	Bryant Bajema 15851 NCR 7 Wellington, CO 80549 blbajema@hotmail.com
Legal Notices:	City Attorney City Attorney's Office 500 E. 3 rd Street Loveland, CO 80537 citins@ci.loveland.co.us	James Lang, Chief Financial Officer Microproperties Five, LLC 14901 Quorum Drive, Suite 900 Dallas, TX 75254 jlang@usrproperties.com

23. Attorney's Fees and Costs. In the event either party hereto shall default in any of its covenants or obligations herein provided, and the party not in default commences legal or equitable action against the defaulting party, the party adjudged to be the defaulting party expressly agrees to pay all of the non-defaulting party's reasonable expenses of said litigation, including a reasonable sum for attorney's fees.

24. Governing Law. This Agreement and the legal relations between the parties hereto shall be governed by and be construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws principles. Venue for any judicial proceeding arising under this Agreement shall be only in the District Court for Larimer County, Colorado. In addition, the parties acknowledge that there are legal constraints imposed upon the Seller by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon the Seller by its Charter and Code and that, subject to such legal constraints, the parties shall carry out the terms and conditions of this Agreement.

25. Time is of the Essence. It is agreed that time shall be of the essence to this Agreement and each and every provision hereof.

26. Terms Survive Closings. Except those terms and conditions that, by their nature, are fully and completely performed upon Escrow Release, all terms and conditions of this Agreement shall survive Escrow Release and shall continue to be binding on and inure to the benefit of the parties and their respective successors, and assigns.

In Witness Whereof, the parties have executed this Agreement on the day and year first written above.

Seller:

City of Loveland, Colorado

By:

William D. Cahill, City Manager

Attest:

City Clerk

Approved as to Form:

Assistant City Attorney

Buyer:

Microproperties Five, LLC

By:

Title:

State of TEXAS)
) ss.
County of DALLAS)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2011, by _____ as _____ of Microproperties Five, LLC.

Witness my hand and official seal.

My commission expires _____.

Notary Public

Exhibit A
Bill of Sale – Form

BILL OF SALE

The City of Loveland, Colorado ("Grantor"), in consideration of Nine Thousand Dollars (\$9,000) to it paid by **Microproperties Five, LLC** ("Grantee"), the receipt of which is acknowledged, hereby grants, sells, transfers, conveys, and delivers in "AS-IS" condition to the Grantee the following personal property, namely: that certain house, including all fixtures of a permanent nature now part of the house, and all improvements, including the garage, located at 871 E. 1st Street, Loveland, Colorado 80537 ("Bishop House"). **THE BISHOP HOUSE DOES NOT INCLUDE THE UNDERLYING REAL ESTATE, WHICH SHALL REMAIN THE PROPERTY OF THE GRANTOR. NOTHING HEREIN SHALL OPERATE AS OR BE CONSTRUED TO BE A CONVEYANCE OF THE UNDERLYING REAL PROPERTY OWNED BY THE GRANTOR.**

To have and to hold the Bishop House by the Grantee, its successors, and assigns forever.

In Witness Whereof, the Grantor has signed this Bill of Sale on _____, 201____.

Grantor:

City of Loveland, Colorado

By:

William D. Cahill, City Manager

Attest:

City Clerk

Approved as to Form:

Assistant City Attorney

Exhibit B
Quitclaim Deed – Form

QUITCLAIM DEED

THIS DEED is made this _____ day of _____, 201____, between **City of Loveland, Colorado**, a home rule municipality, whose address is 500 E. 3rd Street, Loveland, Colorado 80537 (“Grantor”), and **Microproperties Five, LLC**, a Texas limited liability company, whose address is 14901 Quorum Drive, Suite 900, Dallas, Texas 75254 (“Grantee”)

WITNESS, that the Grantor, for and in consideration of the sum of Nine Thousand Dollars (\$9,000), the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold, and QUITCLAIMED, and by these presents does remise, release, sell, and QUITCLAIM unto the Grantee, its successors, and assigns forever all the right, title, interest, claim, and demand which the Grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Larimer, State of Colorado, described as follows:

Lot 11, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-911, also known by the mailing address of 1317 W. 8th Street, Loveland, CO 80537.

Lot 12, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-912, also known by the mailing address of 1321 W. 8th Street, Loveland, CO 80537.

Lot 13, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-913, also known by the mailing address of 1375 W. 8th Street, Loveland, CO 80537.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereto appertaining, and all the estate, right, title, interest, and claim whatsoever, either in law or in equity, of the Grantor, its successors, and assigns.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

Grantor:

City of Loveland, Colorado

By: _____

William D. Cahill, City Manager

Attest:

City Clerk

Approved as to Form:

Assistant City Attorney

State of Colorado)
) ss.
County of Larimer)

The foregoing Quitclaim Deed was acknowledged before me this ____ day of
_____, 201____, by William D. Cahill as City Manager of the City of Loveland,
Colorado.

Witness my hand and official seal.

My commission expires _____.

Notary Public

The printed portions of this form except differentiated additions, have been approved by the Colorado Real Estate Commission.
(LP45-5-04)

Lead-Based Paint Disclosure (Sales)

Attachment to Contract to Buy and Sell Real Estate for the Property known as:

871 E. 1st Street, Loveland, Colorado 80537

Street Address

City

State

Zip

WARNING! LEAD FROM PAINT, DUST, AND SOIL CAN BE DANGEROUS IF NOT MANAGED PROPERLY
Penalties for failure to comply with Federal Lead-Based Paint Disclosure Laws include treble (3 times) damages, attorney fees, costs, and a penalty up to \$10,000 (plus adjustment for inflation) for each violation.

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure to Buyer and Real Estate Licensee(s) and Acknowledgment

- (a) Seller acknowledges that Seller has been informed of Seller's obligations. Seller is aware that Seller must retain a copy of this disclosure for not less than three years from the completion date of the sale.
- (b) Presence of lead-based paint and/or lead-based paint hazards (check one box below):
 - Seller has no knowledge of any lead-based paint and/or lead-based paint hazards present in the housing.
 - Seller has knowledge of lead-based paint and/or lead-based paint hazards present in the housing (explain):

- (c) Records and reports available to Seller (check one box below):
 - Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.
 - Seller has provided Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below):

Buyer's Acknowledgment

- (d) Buyer has read the Lead Warning Statement above and understands its contents.
- (e) Buyer has received copies of all information, including any records and reports listed by Seller above.
- (f) Buyer has received the pamphlet "Protect Your Family From Lead in Your Home".
- (g) Buyer acknowledges federal law requires that before a buyer is obligated under any contract to buy and sell real estate, Seller shall permit Buyer a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.
- (h) Buyer, after having reviewed the contents of this form, and any records and reports listed by Seller, has elected to (check one box below):
 - Obtain a risk assessment or an inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards, within the time limit and under the terms of Section 10 of the Contract to Buy and Sell Real Estate; or
 - Waive the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Real Estate Licensee's Acknowledgment

Each real estate licensee signing below acknowledges receipt of the above Seller's Disclosure, has informed Seller of Seller's obligations and is aware of licensee's responsibility to ensure compliance.

Certification of Accuracy

I certify that the statements I have made are accurate to the best of my knowledge.

Date: October 27, 2011 Date: _____

Seller

Date: October 27, 2011

Seller

Date: _____

Buyer

Buyer

Date: _____

Date: _____

Real Estate Licensee (Listing)

Real Estate Licensee (Selling)



VICINITY MAP

BISHOP HOUSE

871 EAST 1ST STREET
LOVELAND, CO 80537





VICINITY MAP

8TH STREET & TAFT AVENUE VACANT PROPERTIES



LOVELAND, CO 80537



CITY OF LOVELAND

FIRE & RESCUE DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537

(970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

AGENDA ITEM:

5

MEETING DATE:

12/6/2011

TO:

City Council

FROM:

Randy Mirowski, Fire Chief, Loveland Fire Rescue

rm

PRESENTER:

Randy Mirowski

TITLE:

An ordinance amending Section 2.60.110 of the Loveland Municipal Code to modify the purpose of the Fire and Rescue Advisory Commission to reflect the creation of a Fire Authority and to increase the Loveland Rural Fire Protection District's representation on the Commission to include voting members

RECOMMENDED CITY COUNCIL ACTION: Adopt the action as recommended

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION: This is a legislative action. This ordinance makes provisions for citizen representation and involvement from the Loveland Rural Fire Protection District on the Fire Rescue Advisory Commission (FRAC). This action also changes the focus and concerns of future fire commissions to include areas within the new fire authority's boundaries; this will include the City of Loveland and the area of the Loveland Rural Fire Protection District. This action is necessary to reflect the changes brought about by the adoption of the new fire authority, which will commence on January 1, 2012.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

There is virtually no budget impact to this decision for the City of Loveland or the Loveland Rural Fire Protection District. Thus, adopting this ordinance is essentially a revenue neutral action.



CITY OF LOVELAND

FIRE & RESCUE DEPARTMENT

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AGENDA ITEM:

5

MEETING DATE:

12/6/2011

TO:

City Council

FROM:

Randy Mirowski, Fire Chief, Loveland Fire Rescue

rm

PRESENTER:

Randy Mirowski

TITLE:

An ordinance amending Section 2.60.110 of the Loveland Municipal Code to modify the purpose of the Fire and Rescue Advisory Commission to reflect the creation of a Fire Authority and to increase the Loveland Rural Fire Protection District's representation on the Commission to include voting members

RECOMMENDED CITY COUNCIL ACTION: Adopt the action as recommended

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION: This is a legislative action. This ordinance makes provisions for citizen representation and involvement from the Loveland Rural Fire Protection District on the Fire Rescue Advisory Commission (FRAC). This action also changes the focus and concerns of future fire commissions to include areas within the new fire authority's boundaries; this will include the City of Loveland and the area of the Loveland Rural Fire Protection District. This action is necessary to reflect the changes brought about by the adoption of the new fire authority, which will commence on January 1, 2012.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

There is virtually no budget impact to this decision for the City of Loveland or the Loveland Rural Fire Protection District. Thus, adopting this ordinance is essentially a revenue neutral action.

SUMMARY: The Fire Rescue Advisory Commission (FRAC) is one of several Boards and Commissions that has operated by directive of the City of Loveland Municipal Code, to provide opportunities for citizen involvement with their government. FRAC advises the Fire Chief regarding department functions from the citizen's point of view, assists with the development and review of the department's strategic plan and acts as the review board for any appeals related to fire prevention ordinances or actions. The voting membership of FRAC has been made up of citizens living in the City of Loveland since its inception. With the establishment of the fire authority in January of 2012, the make-up of the commission itself will need to be changed to reflect citizen involvement from the Rural District. The proposal in this ordinance calls for two (2) of the nine (9) member commission to be citizens living in the Loveland Rural Fire Protection District. In addition, this ordinance calls for a change in the advisement and concern of the commission to include the fire authority and the areas and interests of the fire authority, including the City of Loveland and the Loveland Rural Fire Protection District.

This ordinance will improve FRAC by including citizens living in the Rural District and focusing on issues and concerns of the entire area of the fire authority, not limiting the commission's concern or focus to the City of Loveland only. The ordinance brings with it no additional costs, only an improvement in governance, more reflective of the area and obligation assumed once the fire authority is established. It is believed this ordinance will allow for more complete and comprehensive input to the entire area protected by under the provisions of the fire authority.

The staff recommendation is to adopt the ordinance as recommended.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Ordinance

FIRST READING: November 15, 2011

SECOND READING: December 6, 2011

ORDINANCE No. _____

AN ORDINANCE AMENDING SECTION 2.60.110 OF THE LOVELAND MUNICIPAL CODE TO MODIFY THE PURPOSE OF THE FIRE AND RESCUE ADVISORY COMMISSION TO REFLECT THE CREATION OF A FIRE AUTHORITY AND TO INCREASE THE LOVELAND RURAL FIRE PROTECTION DISTRICT'S REPRESENTATION ON THE COMMISSION TO INCLUDE VOTING MEMBERS

WHEREAS, On August 19, 2011, pursuant to an intergovernmental agreement between the City of Loveland ("City") and the Loveland Rural Fire Protection District ("District"), the Loveland Fire Rescue Authority ("Fire Authority") was created as a separate governmental entity with a beginning operational date of January 1, 2012 at 12:01 a.m.; and

WHEREAS, the Fire Authority will be responsible for the effective provisions of fire and emergency services within the jurisdictional boundaries of the City and the District and will be advised by the City's Fire and Rescue Advisory Commission ("Commission") on the implementation of the City's fire protection master plan and future strategic planning for fire and emergency services; and

WHEREAS, the City and the District desire to modify the language regarding the purpose of the Commission to reflect that it now will advise both the Fire Authority and the City and further desire to increase the District's representation on the Commission to include voting members, and to reflect the District's increased role in the Fire Authority; and

WHEREAS, the Commission, currently comprised of nine voting members, of whom all are appointed by the City Council, and one non-voting member of whom is a District board member appointed by the District, would be modified to have seven voting City Council-appointed members, two voting District-appointed members and one non-voting liaison from the District's board.

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

Section 1. That section 2.60.110 of the Loveland Municipal Code regarding the fire and rescue advisory commission is hereby amended to read in full as follows:

2.60.110 Fire and rescue advisory commission.

- A. There is established a fire and rescue advisory commission consisting of nine members, seven of whom shall be appointed by the city council to serve a term of three years, and two of whom shall be appointed by the Loveland Rural Fire Protection District board of directors to serve a term to be determined by the District. The District shall have authority to appoint one member of its board to serve as a non-voting liaison to the commission. Members appointed by the city council or the District shall not be employees or volunteers of the city.
- B. The purpose of the fire and rescue advisory commission shall be to serve as an advisory body to the city council and to the Loveland Fire Rescue Authority in the implementation of the fire protection master plan and future strategic planning for the city and the Authority. In addition, the commission shall serve as an advisory body to the fire chief concerning fire protection, rescue, and emergency management issues.

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 (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED _____ day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Jesus Garcia
Assistant City Attorney



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

AGENDA ITEM: 6
MEETING DATE: 12/6/2011
TO: City Council
FROM: Betsey Hale, Economic Development Director
PRESENTER: Betsey Hale

TITLE:

An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for the Lodging Tax fund

RECOMMENDED CITY COUNCIL ACTIONS:

Adopt a motion to approve the ordinance on second reading

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt modified actions (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION: This is an administrative action. On October 19th, 2011 the Community Marketing Commission made a unanimous recommendation to City Council to approve an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland Budget for the Lodging Tax Fund. On November 15, 2011 City Council unanimously approved the ordinance on first reading.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

The appropriation was not previously budgeted.

SUMMARIES:

At the October 18, 2011 meeting of the City Council, the 2012 City of Loveland budget was adopted. This budget did not include an appropriation of the lodging tax fund budget for 2012. The Loveland Municipal Code requires that the City Council receive a recommendation from the Community Marketing Commission before it can budget, appropriate or spend the lodging tax funds. The recommendation for the 2012 budget was made by the CMC on October 19, 2011. The total budget being recommended is \$500,000.00. Since the 2012 Lodging Tax Fund budget

was not appropriated on October 18th, 2011, reserve funds are being appropriated with this ordinance. The revenue anticipated to come in 2012 was in the appropriation ordinance approved by Council on October 18th, 2011.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Ordinance appropriating to the 2012 City of Loveland budget for the Lodging Tax Fund

FIRST READING November 15, 2011

SECOND READING December 6, 2011

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE LODGING TAX FUND

WHEREAS, the City has reserved funds from lodging tax receipts in Lodging Tax Fund 206 (the “Lodging Tax Fund”) that were not appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, pursuant to Loveland Municipal Code Section 3.24.105, lodging tax receipts from Lodging Tax Fund shall not be budgeted, appropriated, or spent without first receiving the recommendation of the Community Marketing Commission established by Code Section 2.60.075; and

WHEREAS, the Community Marketing Commission has recommended to City Council a budget for use of certain revenues from the Lodging Tax Fund for 2012, as described below; and

WHEREAS, the City Council, after receipt and consideration of the recommendation of the Community Marketing Commission, desires to appropriate and authorize the expenditure of certain revenues from the Lodging Tax Fund by enacting a supplemental budget and appropriation to the City budget for 2012, 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 reserves in the amount of \$500,000 from lodging tax receipts in Lodging Tax Fund 206 are available for appropriation.

Section 2. That the Community Marketing Commission has recommended that reserves in the amount of \$500,000 from lodging tax receipts available in Lodging Tax Fund 206 be budgeted, appropriated, and spent for 2012 as follows:

Staff and Operating Expenses	\$ 95,000
Visitor Reception/Center	125,000
Website	25,000
Events	105,000
Product Improvement	50,000
Marketing	<u>100,000</u>

Total Recommended 2012 Budget	\$500,000
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Section 3. That reserves in the amount of \$500,000 from lodging tax receipts in the Lodging Tax Fund 206 are hereby appropriated for staff and operating expenses; operations of the visitor/reception center; creation and maintenance of a website; events; product improvements and marketing. For administrative budget purposes, the funds hereby appropriated and shall be allocated to the accounts hereinafter set forth, subject to administrative reallocation, and the spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

2012 Supplemental Budget
Lodging Tax Fund

Revenues

Fund Balance	500,000
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Total Revenue	500,000
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Appropriations

206-18-180-1504-41011	Salaries- Benefited Employees	50,000
206-18-180-1504-41543	Insurance Benefits	11,500
206-18-180-1504-41544	FICA	3,830
206-18-180-1504-41545	Retirement	2,500
206-18-180-1504-42011	Office Supplies	2,000
206-18-180-1504-42015	Computer Supplies	2,000
206-18-180-1504-42422	Food	1,500
206-18-180-1504-42899	Other Supplies	5,000
206-18-180-1504-43021	Printing	2,000
206-18-180-1504-43265	Mileage	500
206-18-180-1504-43270	Travel	5,000
206-18-180-1504-43435	Membership Fees	1,000
206-18-180-1504-43450	Professional Services	230,000
206-18-180-1504-43645	Telephone	1,000
206-18-180-1504-43737	Advertising	1,000
206-18-180-1504-43899	Other Services	181,170

Total Appropriations	500,000
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Section 4. 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 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


J. Yost Schmidt
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: 7
MEETING DATE: 12/6/2011
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Kerri Burchett, Current Planning

TITLE:

An ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for certain property located in the Waterfall Subdivision, City of Loveland, Larimer County, Colorado

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for City Council action:

Move to adopt on second reading AN ORDINANCE OF THE CITY COUNCIL AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED IN THE WATERFALL SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

OPTIONS:

1. Adopt the recommended motion
2. Deny the zoning request
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

Consideration of a quasi-judicial action for adoption of an ordinance on second reading rezoning Lot 1, Block 1 of the Waterfall Subdivision from I-Developing Industrial to MAC - Mixed-Use Activity Center District. The 12.3 acre property is located at the northwest corner of the intersection of East 15th Street and North Boyd Lake Avenue and was formerly occupied by the Loveland Waterpark. The owner of the property is MBL 34, LLC, a McWhinney-controlled entity.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

SUMMARY:

The application proposes to rezone the property to MAC - Mixed-Use Activity Center District and develop the project in phases in conjunction with a conceptual master plan. The MAC District is a mixed-use district that permits a wide variety of commercial, residential and office uses with an emphasis on serving the surrounding neighborhoods. The conceptual master plan ensures the coordinated development of the entire parcel and provides a general location of land uses, unifying architectural guidelines and site planning standards. The Planning Commission unanimously recommended approval of the rezoning application as an item on the consent agenda at the October 10, 2011 Planning Commission meeting. City Council adopted the ordinance on first reading at the November 15, 2011 public hearing.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

- A. Ordinance

FIRST READING: November 15, 2011

SECOND READING: December 6, 2011

ORDINANCE NO.

**AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND
MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS
FOR CERTAIN PROPERTY LOCATED IN THE WATERFALL SUBDIVISION,
CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

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

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

That the territory located within the Waterfall Subdivision, City of Loveland, Larimer County, Colorado, and more particularly described as:

Lot 1, Block 1 Waterfall Subdivision

Which territory is now included within the boundaries designated I - Developing Industrial shall be included within the boundaries of the district designated as follows:

"MAC – MIXED-USE ACTIVITY CENTER DISTRICT"

The above described property contains 12.289 acres (535,308.84 sq. ft.), more or less, and is further subject to all Rights-of-Way, Easements, Restrictions and Agreements, written or unwritten, now existing, or of record.

Section 2. That the **MAC – MIXED-USE ACTIVITY CENTER DISTRICT** shall be subject to all applicable zoning regulations for 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.

Signed this 6th day of December, 2011.

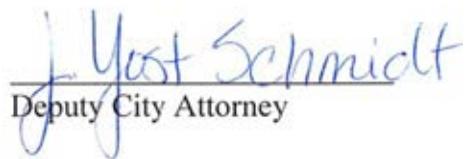
ATTEST:

City Clerk

CITY OF LOVELAND, COLORADO:

Mayor

APPROVED AS TO FORM:


J. Yost Schmidt
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: 8
MEETING DATE: 12/6/2011
TO: Loveland Urban Renewal Authority Board of Commissioners
FROM: Greg George, Development Services Department
PRESENTER: Bethany Clark, Community & Strategic Planning

TITLE:

- An ordinance enacting a supplemental budget and appropriation to Loveland Urban Renewal Authority 2011 Budget
- A Resolution of the Loveland Urban Renewal Authority approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Loveland Urban Renewal Authority for 2011 Façade Program funding

RECOMMENDED CITY COUNCIL ACTION:

City Staff recommends the following actions:

- Convene as the Board of Commissioners for the Loveland Urban Renewal Authority
- Adopt on second reading the ordinance as presented; and
- Adopt the resolution as presented

OPTIONS:

1. Take the recommended actions
2. Deny the appropriation
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is an administrative action to adopt an ordinance on second reading appropriating funding received through the Downtown Urban Renewal Authority (URA) property tax increment to continue the Downtown Façade Improvement Grant Program. This appropriation would commit the TIF fund balance of \$48,100 to fund the façade program. An Inter-Governmental Agreement (IGA) between the Loveland URA and the City (see Attachment 3) would contractually commit the TIF fund balance for funding the Façade Improvement Grant Program in 2011. The resolution approving the IGA is included as Attachment 3.

BUDGET IMPACT:

Positive

Negative

Neutral or negligible

In the past, LURA tax increment funds that were otherwise not committed were paid to the City to reimburse it for administrative costs under an IGA signed in 2007. Under the proposed appropriation, these funds would be appropriated in the budget for Community and Strategic Planning for the sole purpose of funding the Façade Grant Program.

SUMMARY:

On October 4th, the Loveland Downtown Team approved a motion recommending to City Council that the TIF fund balance of \$48,100 be appropriated to fund the Façade Improvement Grant Program. The recommendation included revisions to the Grant Application and Scoring Criteria. The intent of the façade program is to improve the appearance of downtown buildings by providing grants to property owners for undertaking façade improvements. The property tax increment generated as a result of increased property values and not otherwise committed by LURA would be used to fund the Façade Improvement Grant Program. If the requested appropriation is approved, City staff would open up the 2011 grant round for the façade matching grant program. Staff will present the recommended grant awards for LURA's approval after the grant cycle is closed, likely in early 2012.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance enacting a supplemental budget and appropriation.
2. Staff Report (dated November 15, 2011)
3. Resolution with Exhibit A, Intergovernmental Agreement

FIRST READING November 15, 2011

SECOND READING December 6, 2011

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO LOVELAND URBAN RENEWAL AUTHORITY 2011 BUDGET

WHEREAS, the Loveland Urban Renewal Authority has reserved funds on hand not appropriated at the time of the adoption of the City budget for 2011; and

WHEREAS, the City Council acting as the Board of Directors for the Loveland Urban Renewal Authority desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the Authority's 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 reserves in the amount of \$48,100 in the Loveland Urban Renewal Authority Fund 037 are available for appropriation. Revenues in the total amount of \$48,100 are hereby appropriated for Facade Grant Program in the Downtown Project Areas 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:

Supplemental Budget
Loveland Urban Renewal Authority - Downtown Project Area Facade Grants

Revenues

Fund Balance	48,100
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Total Revenue	48,100
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Appropriations		
037-8001-409-04-02	Facade Grant Program	48,100

Total Appropriations	48,100
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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.

Section 3. That as provided in City Charter Section 11-5(d), this Ordinance shall be effective upon final adoption.

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


J. Yost Schmidt
Deputy City Attorney



COMMUNITY & STRATEGIC PLANNING

Civic Center • 500 East Third Street • Loveland, Colorado 80537
 (970) 962-2745 FAX (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

Loveland Urban Renewal Authority Board of Commissioners Staff Report

From: Community and Strategic Planning
 Meeting Date: November 15, 2011
 Re: Façade Improvement Program

Façade Program Summary:

In 2007, the Loveland Urban Renewal Authority (LURA) Board of Directors authorized a program intended to promote direct improvements in the appearance of downtown buildings. The original program was set up in such a way that grants could be awarded for up to 10 percent of a redevelopment's total cost, or up to 100% of the cost of eligible façade improvements. However, this structure limited the program to large redevelopment projects. In 2009, the City Council approved the addition of a small matching grant program for existing business and building owners.

2011 Matching Grant Round:

The approval of the program in 2007 included \$155,000 in general fund seed money, most of which has now been awarded as grants. The Façade Improvement Program has a small amount of funds leftover from the previous year's grant round. Upon approval of this supplemental appropriation, Development Services plans to make \$50,000 (four \$12,500 matching grants) available to property owners. The remaining funds would be available for the 10 percent Façade Incentive Program.

Current Appropriated funds*:	\$23,815.85
<u>Current Supplemental Appropriation Request**:</u>	<u>\$48,100.00</u>
Total:	<div style="display: flex; align-items: center; justify-content: space-between;"> <div style="border: 1px solid black; padding: 2px; margin-right: 10px;">\$71,915.85</div> <div style="display: flex; gap: 20px;"> <div style="border: 1px solid black; padding: 2px; display: flex; align-items: center;"> → Façade Matching Grant: \$50,000.00 </div> <div style="border: 1px solid black; padding: 2px; display: flex; align-items: center;"> → Façade Incentive Program: \$21,915.85 </div> </div> </div>

*from general fund seed money – appropriated in 2011 budget

**from Downtown Plan Area current tax increment fund balance

Matching Grant Application Process:

The matching grant program is a competitive process, with applications being reviewed and ranked by a subcommittee of Loveland Downtown Team members and/or the Loveland Historic Preservation Commission. Projects will be prioritized based on the visibility, historic character, potential to leverage additional funds, as well as ability to meet the minimum requirements outlined in the application and prioritization criteria.

On October 4th 2011, the Loveland Downtown Team recommended continuing the façade program with modifications to the application and scoring criteria in order to strengthen the program's selection and scoring process. Staff recommended additional measures to be incorporated into the scoring criteria to address the quality and appropriateness of design, and the impact the improvement will have to the downtown. Additionally, the application includes clarifications about ineligible improvements and submittal requirements. Attachments B and C include the language added by City Staff in red. These improvements will help staff and the review committee be more selective about the types of projects which are awarded grants. The prioritization will serve as the basis for Staff's recommendation of grant awards to the LURA Board of Directors. The LURA Board of Directors reserves the final decision on all grant requests.

Program Success:

Five property owners to date have been awarded façade money to improve the appearance of their building, and all have successfully completed, or are in the process of completing the improvements. A sixth grant was awarded in 2010, but the property owners failed to sign the contract and forfeited the award. Two of the five awards were in the form of the 10 percent Incentive Program, and three of the awards were matching grants. The images below outline the success of the program in improving the appearance of prominent buildings in the downtown area.

417-421 E 4th Street, Moca LLC

Before



Total Cost: \$1,100,000

Award: \$59,000

After



301 E 4th Street, Heartland Café*Before***Total Cost: \$29,295****Award: \$12,500***After***247 E 4th Street, Stroh Building***Before***Total Cost: \$26,303****Award: \$12,500***After***200 E 4th/330 N Cleveland, State Merc. Building***Before (West façade)***Total Cost: \$590,000****Award: \$48,639***After (West façade)*

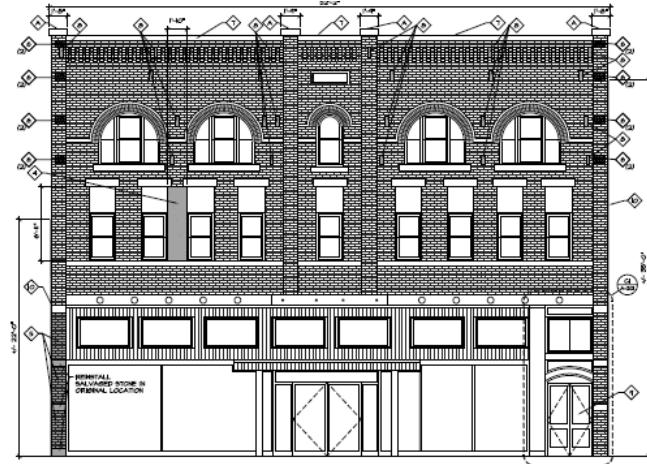
Before (South façade)*After (South façade)*

315-319 E 4th Street, Odd Fellows Bldg

Before

Total Cost: \$131,844

Award: \$12,500

Drawing of Proposed Work

Attachments:

Attachment A: Program Information and Guidelines

Attachment B: Façade Program Application

Attachment C: Façade Program Prioritization Criteria

RESOLUTION #R-78-2011**A RESOLUTION OF THE LOVELAND URBAN RENEWAL AUTHORITY APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE LOVELAND URBAN RENEWAL AUTHORITY FOR 2011 FAÇADE PROGRAM FUNDING**

WHEREAS, the City of Loveland (“City”) is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Loveland Urban Renewal Authority (“LURA”) is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, C.R.S. (the “Act”);

WHEREAS, as governmental entities in Colorado, the City and LURA are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each; and

WHEREAS, in 2002, Downtown Loveland was the first project area (the “Downtown Plan Area”) approved under the City of Loveland Urban Renewal Plan, as authorized by the Act; and

WHEREAS, on November 20, 2007, LURA, approved a Façade Improvement Program (the “Façade Program”) pursuant to Resolution R#118-2007 making grant funds available to applicants who own property or businesses located within the boundaries of the Downtown Plan Area to further redevelopment, elimination of blight, and funding for façade improvements in a manner consistent with the Urban Renewal Plan; and

WHEREAS, on November 20, 2007, the Loveland City Council approved the transfer \$155,000 in City funds to the LURA to fund the Façade Program; and

WHEREAS, on September 15, 2009, the Façade Program was modified to include the Façade Matching Grant Program pursuant to Resolution R#89-2009; and

WHEREAS, the Loveland City Council desires that LURA contractually commit to provide funding for the Façade Program, as the same may hereafter be amended, from the tax increment fund balance available to for 2011 to be expended by LURA during its 2012 grant cycle in order to serve the public purpose of furthering redevelopment and renovation of the Downtown Plan Area and LURA is willing to make that commitment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, ACTING AS THE BOARD OF COMMISSIONERS OF THE LOVELAND URBAN RENEWAL AUTHORITY:

Section 1. That the Intergovernmental Agreement between the City and LURA for Funding of the Façade Program for 2011 (“Intergovernmental Agreement”), attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

Section 2. That the Chairman of the Board of Commissioners and the Secretary of LURA are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of LURA.

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

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Chairman

ATTEST:

City Clerk

APPROVED AS TO FORM:


J. Yost Schmidt
Deputy City Attorney

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND,
COLORADO AND THE LOVELAND URBAN RENEWAL AUTHORITY FOR 2011
FAÇADE PROGRAM FUNDING**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this 6th day of December, 2011 by and between THE CITY OF LOVELAND, COLORADO, a home rule city of the State of Colorado ("City") and THE LOVELAND URBAN RENEWAL AUTHORITY, a body corporate and duly organized and existing as an urban renewal authority under the laws of the State of Colorado ("LURA").

RECITALS

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, LURA is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, C.R.S. (the "Act");

WHEREAS, as governmental entities in Colorado, the City and LURA are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each; and

WHEREAS, in 2002, Downtown Loveland was the first project area (the "Downtown Plan Area") approved under the City of Loveland Urban Renewal Plan, as authorized by the Act; and

WHEREAS, on November 20, 2007, LURA, approved a Façade Improvement Program (the "Façade Program") pursuant to Resolution R#118-2007 making grant funds available to applicants who own property or businesses located within the boundaries of the Downtown Plan Area to further redevelopment, elimination of blight, and funding for façade improvements in a manner consistent with the Urban Renewal Plan; and

WHEREAS, on November 20, 2007, the Loveland City Council approved the transfer \$155,000 in City funds to the LURA to fund the Façade Program; and

WHEREAS, on September 15, 2009, the Façade Program was modified to include the Façade Matching Grant Program pursuant to Resolution R#89-2009; and

WHEREAS, the criteria for grants under the Façade Program is being reviewed and revised and therefore no grants have been made or committed for 2011 and LURA has \$48,100.00 in tax increment fund balance available for appropriation and expenditure; and

WHEREAS, the Loveland City Council desires that LURA contractually commit to provide funding for the Façade Program, as the same may hereafter be amended, from the tax increment fund balance available for 2011 to be expended by LURA during its 2012 grant cycle in order to serve the public purpose of furthering redevelopment and renovation of the Downtown Loveland area; and

WHEREAS, LURA is willing to make such a commitment in consideration of the City's waiver of the City's right to payment for the City's 2011 personnel and other administrative costs utilized in support of the Downtown Plan Area, which right to payment arises under the Intergovernmental Agreement between the City and LURA dated December 18, 2007 (the "2007 IGA").

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. LURA hereby agrees to expend \$48,100.00 in tax increment revenues available to it in the form of fund balance for 2011 (the "2011 Revenues") to fund grants under the Façade Program, to be distributed by LURA during its 2012 grant cycle(s). Any portion of the 2011 Revenues not expended or contractually committed by LURA during fiscal 2012 for grants under the Façade Program shall be returned to the City in payment for the City's 2011 personnel and administrative costs under the 2007 IGA.
2. The City hereby waives its right to payment by LURA for the City's 2011 personnel and administrative costs utilized in support of the Downtown Plan Area in the amount of the 2011 Revenues, which payment is otherwise required under the 2007 IGA.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed to be effective as of the date set forth above.

CITY OF LOVELAND

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



J. Yost Schmidt
Deputy City Attorney

LOVELAND URBAN RENEWAL AUTHORITY

Chairman

ATTEST:

Secretary



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:	9
MEETING DATE:	12/6/2011
TO:	City Council
FROM:	Greg George, Development Services Department
PRESENTER:	Bethany Clark, Community & Strategic Planning

TITLE:

A Resolution of the City of Loveland, Colorado approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Loveland Urban Renewal Authority for 2011 Façade Program Funding

RECOMMENDED CITY COUNCIL ACTION:

Adopt the resolution as presented.

OPTIONS:

1. Take the recommended action
2. Deny the resolution
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is an administrative action to consider a resolution approving an Intergovernmental Agreement (IGA) between the City of Loveland and the Loveland Urban Renewal Authority (LURA) to commit to provide funding for the Façade Program from the 2011 TIF fund balance to be expended during its 2012 grant cycle. This IGA will serve the public purpose of furthering redevelopment and renovation of the Downtown Plan Area.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

In the past, LURA tax increment funds that were otherwise not committed were paid to the City to reimburse it for administrative costs under an IGA signed in 2007. Under the proposed appropriation, these funds would be appropriated in the budget for Community and Strategic Planning for the sole purpose of funding the Façade Grant Program.

SUMMARY:

On October 4th, the Loveland Downtown Team approved a motion recommending to that the TIF fund balance of \$48,100 be appropriated to fund the Façade Improvement Grant Program. The recommendation included revisions to the Grant Application and Scoring Criteria. On November 15th, LURA approved the appropriation on first reading. An IGA between the City of Loveland and LURA will commit these funds from the 2011 TIF fund balance for expenditure in 2012 for façade matching grants. The intent of the façade program is to improve the appearance of downtown buildings by providing grants to property owners for undertaking façade improvements. The property tax increment generated as a result of increased property values and not otherwise committed by LURA will be used to fund the Façade Improvement Grant Program. If the requested appropriation is approved, City staff will open up the 2011 grant round for the façade matching grant program. Staff will present the recommended grant awards for LURA's approval after the grant cycle is closed, likely in early 2012.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Resolution

RESOLUTION #R-79-2011**A RESOLUTION OF THE CITY OF LOVELAND, COLORADO APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE LOVELAND URBAN RENEWAL AUTHORITY FOR 2011 FAÇADE PROGRAM FUNDING**

WHEREAS, the City of Loveland (“City”) is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Loveland Urban Renewal Authority (“LURA”) is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, C.R.S. (the “Act”);

WHEREAS, as governmental entities in Colorado, the City and LURA are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each; and

WHEREAS, in 2002, Downtown Loveland was the first project area (the “Downtown Plan Area”) approved under the City of Loveland Urban Renewal Plan, as authorized by the Act; and

WHEREAS, on November 20, 2007, LURA, approved a Façade Improvement Program (the “Façade Program”) pursuant to Resolution R#118-2007 making grant funds available to applicants who own property or businesses located within the boundaries of the Downtown Plan Area to further redevelopment, elimination of blight, and funding for façade improvements in a manner consistent with the Urban Renewal Plan; and

WHEREAS, on November 20, 2007, the Loveland City Council approved the transfer \$155,000 in City funds to the LURA to fund the Façade Program; and

WHEREAS, on September 15, 2009, the Façade Program was modified to include the Façade Matching Grant Program pursuant to Resolution R#89-2009; and

WHEREAS, the Loveland City Council desires that LURA contractually commit to provide funding for the Façade Program, as the same may hereafter be amended, from the tax increment fund balance for 2011 to be expended by LURA during its 2012 grant cycle in order to serve the public purpose of furthering redevelopment and renovation of the Downtown Plan Area.

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

Section 1. That the Intergovernmental Agreement between the City and LURA for Funding of the Façade Program for 2011 (“Intergovernmental Agreement”), attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

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

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

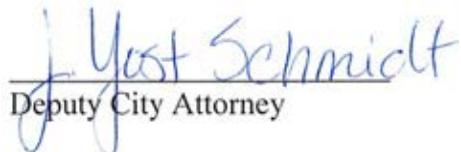
ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


J. Yost Schmidt
Deputy City Attorney

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND,
COLORADO AND THE LOVELAND URBAN RENEWAL AUTHORITY FOR 2011
FAÇADE PROGRAM FUNDING**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this 6th day of December, 2011 by and between THE CITY OF LOVELAND, COLORADO, a home rule city of the State of Colorado ("City") and THE LOVELAND URBAN RENEWAL AUTHORITY, a body corporate and duly organized and existing as an urban renewal authority under the laws of the State of Colorado ("LURA").

RECITALS

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, LURA is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, C.R.S. (the "Act");

WHEREAS, as governmental entities in Colorado, the City and LURA are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each; and

WHEREAS, in 2002, Downtown Loveland was the first project area (the "Downtown Plan Area") approved under the City of Loveland Urban Renewal Plan, as authorized by the Act; and

WHEREAS, on November 20, 2007, LURA, approved a Façade Improvement Program (the "Façade Program") pursuant to Resolution R#118-2007 making grant funds available to applicants who own property or businesses located within the boundaries of the Downtown Plan Area to further redevelopment, elimination of blight, and funding for façade improvements in a manner consistent with the Urban Renewal Plan; and

WHEREAS, on November 20, 2007, the Loveland City Council approved the transfer \$155,000 in City funds to the LURA to fund the Façade Program; and

WHEREAS, on September 15, 2009, the Façade Program was modified to include the Façade Matching Grant Program pursuant to Resolution R#89-2009; and

WHEREAS, the criteria for grants under the Façade Program is being reviewed and revised and therefore no grants have been made or committed for 2011 and LURA has \$48,100.00 in tax increment fund balance available for appropriation and expenditure; and

WHEREAS, the Loveland City Council desires that LURA contractually commit to provide funding for the Façade Program, as the same may hereafter be amended, from the tax increment fund balance available for 2011 to be expended by LURA during its 2012 grant cycle in order to serve the public purpose of furthering redevelopment and renovation of the Downtown Loveland area; and

WHEREAS, LURA is willing to make such a commitment in consideration of the City's waiver of the City's right to payment for the City's 2011 personnel and other administrative costs utilized in support of the Downtown Plan Area, which right to payment arises under the Intergovernmental Agreement between the City and LURA dated December 18, 2007 (the "2007 IGA").

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. LURA hereby agrees to expend \$48,100.00 in tax increment revenues available to it in the form of fund balance for 2011 (the "2011 Revenues") to fund grants under the Façade Program, to be distributed by LURA during its 2012 grant cycle(s). Any portion of the 2011 Revenues not expended or contractually committed by LURA during fiscal 2012 for grants under the Façade Program shall be returned to the City in payment for the City's 2011 personnel and administrative costs under the 2007 IGA.
2. The City hereby waives its right to payment by LURA for the City's 2011 personnel and administrative costs utilized in support of the Downtown Plan Area in the amount of the 2011 Revenues, which payment is otherwise required under the 2007 IGA.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed to be effective as of the date set forth above.

CITY OF LOVELAND

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



J. Yost Schmidt
Deputy City Attorney

LOVELAND URBAN RENEWAL AUTHORITY

Chairman

ATTEST:

Secretary



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: 12/6/2011
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Karl Barton, Development Services

TITLE:

Public hearing to consider a Resolution adopting a Three Mile Plan for the City of Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion:

Move to approve A RESOLUTION ADOPTING A THREE MILE PLAN FOR THE CITY OF
 LOVELAND, COLORADO

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

A legislative action to formally adopt a Three Mile Plan for 2012. The Three Mile Plan would consist of the City's comprehensive plan, other adopted plans covering infrastructure, services and surrounding areas, and procedures.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

SUMMARY:

Section 31-12-105(1)(e), Colorado Revised Statutes, requires the City to have a plan in place which generally describes the location, character, and extent of various public facilities in an area extending three miles beyond the municipal boundaries prior to completing any annexations of land located within the three mile area. Historically, the City's Three Mile Plan

has consisted of a compilation of the comprehensive plan (including the land use plan), functional plans, and procedures that are adopted and utilized by the City. This appears to be the practice of most municipalities in Colorado. The proposed resolution would formally designate the compilation of land use plans and related plans as the "Three Mile Plan" for Loveland.

REVIEWED BY CITY MANAGER:

William D. Calwell

LIST OF ATTACHMENTS:

Resolution

RESOLUTION #R-80-2011**A RESOLUTION ADOPTING A THREE MILE PLAN
FOR THE CITY OF LOVELAND, COLORADO**

WHEREAS, pursuant to C.R.S. §31-12-105(1)(e)(I), as amended, prior to the completion of any annexation within a three mile area outside of the municipal boundaries of a municipality (“Three Mile Area”), a municipality is required to have in place a plan (“Three Mile Plan”) which generally describes the proposed location, character and extent of certain public facilities to be provided within and the proposed land uses for the Three Mile Area; and

WHEREAS, pursuant to C.R.S. §31-12-105(1)(e)(I), as amended, the Three Mile Plan must be updated at least once annually; and

WHEREAS, the City of Loveland has enacted, adopted and approved the various plans, documents, ordinances and resolutions (collectively “Plans”) listed on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the City Council has determined that the Plans, when considered together as a whole, adequately comply with the requirements of state law and shall constitute the annual updated Three Mile Plan for the City of Loveland; and

WHEREAS, to ensure that future annexations by the City of Loveland are completed in compliance with the provisions of state law, the City Council, by this Resolution, desires to formalize its understanding and intention that the Plans serve as the Three Mile Plan for the City of Loveland.

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

Section 1. The Plans, as described in Exhibit A, when considered together as a whole, shall constitute the Three Mile Plan for the City of Loveland required pursuant to C.R.S. §31-12-105(1)(e)(I), as amended.

Section 2. The Three Mile Plan shall be reviewed and revised as may be necessary at least annually, and additional Plans may be added from time to time, as they are developed and adopted.

Adopted this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

EXHIBIT A
THREE MILE AREA AND FUNCTIONAL PLAN ELEMENTS

Documents as may be amended:

Loveland, Colorado 2005 Comprehensive Plan, adopted 2005

Water and Wastewater, Functional Master Plans, Loveland, CO, adopted 1997

2030 Transportation Plan, adopted 2007

City of Loveland Water and Wastewater Development Standards, adopted August 2007

Contractor Construction Standards, Department of Water and Power, adopted 2006

Larimer County Urban Area Street Standards, adopted April 2007

City of Loveland Master Drainage Plan and associated sub-basin plans, adopted 1986,

Fire Protection Master Plan, adopted December 1995

Update of Capital Expansion Fees, adopted July 2011

Parks and Recreation Master Plan, adopted October 2001

City of Loveland Open Lands Plan, adopted March 2003

A Plan for the Region between Fort Collins and Loveland, adopted July 1995

Northern Colorado Regional Planning Study, adopted October 1995

Site Development Standards and Guidelines for I-25 Corridor, adopted 2007

Airport Master Plan Update, Fort-Collins-Loveland Municipal Airport, Loveland, CO, adopted 2008

City of Loveland Natural Areas Sites, adopted July 2008

Requirements for Electric Service, adopted August 2010

Wastewater Utility Plan, adopted 2010

Water Distribution Master Plan Update, adopted 2007

Water and Power Department Summary of Functional Mater Plans, adopted June 1997

Site Development Performance Standards and Guidelines, adopted October 1989

Raw Water Master Plan, adopted 2005



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:	11
MEETING DATE:	12/6/2011
TO:	City Council
FROM:	Bill Cahill, City Manager
PRESENTER:	Bill Cahill

TITLE:

Resolution adopting the schedule of the 2012 meeting dates for the Loveland City Council and the City's Boards and Commissions

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to approve the resolution

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is an administrative action pursuant to City Code Section 2.14.020B. to set the 2012 meeting dates, times and locations for the City Council and for the City's boards and commissions.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

SUMMARY:

Section 2.14.020B. of the Loveland Municipal Code requires the City Council to establish meeting dates for all City boards and Commissions and other policymaking and rulemaking bodies of the City. Attached, as Exhibit A to the proposed Resolution, is a list of the meeting dates, times and places for the City Council and all City boards and commissions. This Resolution is adopted at the end of each year for the upcoming year.

REVIEWED BY CITY MANAGER:

William D. Caine

LIST OF ATTACHMENTS:

Resolution

Exhibit A: 2012 list of City Council and City boards and commissions meeting dates, times and locations

RESOLUTION #R-81-2011**A RESOLUTION ADOPTING THE SCHEDULE OF THE 2012 MEETING DATES
FOR THE LOVELAND CITY COUNCIL
AND THE CITY'S BOARDS AND COMMISSIONS**

WHEREAS, City Code Section 2.14.020B. provides that each year at the City Council's last regularly scheduled meeting, the City Council shall establish the regular meeting dates of all boards, committees, commissions, and other policymaking and rulemaking bodies of the City; and

WHEREAS, Code Section 2.14.020B. requires that seven days after such meeting dates are so established that the meeting dates shall be published once in a newspaper of general circulation in the City and be posted in a conspicuous place in the City Municipal Building; and

WHEREAS, Section 2.14.020B. also requires that the secretary or clerk of each of the City's boards, committees, commissions, and other policymaking and rulemaking bodies shall provide notification of the regularly scheduled date of such meetings in advance of or on occasion of any special meetings duly called to those qualified electors who have made written request to the City for such notification; and

WHEREAS, the purpose of this Resolution is to so establish said meeting dates, and to require the publication, posting and notifications required in City Code Section 2.14.020B.

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

Section 1. That the schedule of regular meeting dates, times and places in 2012 for the Loveland City Council and the City's boards and commissions, a copy of which is attached as **Exhibit "A"** and incorporated by reference, is hereby adopted as provided in City Code Section 2.14.020B.

Section 2. That the City Council may, from time to time, change by motion the date, time and place of any of its regular meetings in 2012 as established in this Resolution and those of the City's boards and commissions. In addition, the City Manager, in consultation with the Mayor, is authorized to schedule fourth Tuesday study sessions as needed and to cancel the other Tuesday study sessions if there are no study session items to present or ready to present to Council.

Section 3. That the City Clerk is directed pursuant to City Code Section 2.14.020B. to publish the meeting dates established in **Exhibit "A"** 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 meetings in a conspicuous place in the City Municipal Building.

Section 4. That in addition, the City Clerk shall notify the secretary of each of the City's boards, committees, commissions, and other policymaking and rulemaking bodies to

provide notification of this notice of meetings to all qualified electors who have requested such notice in accordance with Section 2.14.020B.

Section 5. That this Resolution shall take effect as of the date and time of its adoption.

ADOPTED this _____ day of _____, 2011.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

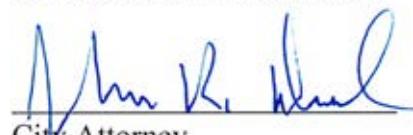

John R. Neal
City Attorney

Exhibit "A"

LOVELAND'S CITY COUNCIL AND BOARDS AND COMMISSIONS
Meeting Dates, Times & Locations

AFFORDABLE HOUSING COMMISSION 9 members	Meets the second Thursday of each month at 5:15 p.m. in the City Manager's Conference Room, 500 East Third Street, Suite 330.
CITY COUNCIL 9 members	Meets the first and third Tuesday of each month for regular meetings at 6:30 p.m. and the second and fourth Tuesday of each month for a study session at 6:30 p.m. in the City Council Chambers, 500 East Third Street.
CITIZENS' FINANCE ADVISORY COMMISSION 9 members	Meets the second Wednesday of each month at 6:00 p.m. in the City Council Chambers, 500 East Third Street.
COMMUNITY MARKETING COMMISSION 7 members	Meets the third Wednesday of each month at 6:00 p.m. in the City Council Chambers, 500 East Third Street.
CONSTRUCTION ADVISORY BOARD 11 members	Meets the fourth Wednesday of each month at 6:00 p.m. in the City Council Chambers, 500 East Third Street.
CREATIVE SECTOR DEVELOPMENT ADVISORY COMMISSION 7 members	Meets bi-monthly on the third Thursday of each January, March, May, July, September, and November at 5:30 p.m. in the City Council Chambers, 500 East Third Street.
CULTURAL SERVICES BOARD 7 members	Meets the fourth Tuesday of each month at 4:30 p.m. at the Loveland Museum, 503 North Lincoln Avenue.
DISABILITIES ADVISORY COMMISSION 12 members	Meets the second Monday of each month at 6:00 p.m. at the Library in the Gertrude Scott meeting room, 300 North Adams Avenue.
EMPLOYEE RETIREMENT PLAN BOARD 5 members	Meets the second Thursday of February, May, August, and November at 2:00 p.m. in the Main Floor Conference Room, 500 East Third Street.
FIRE AND RESCUE ADVISORY COMMISSION 9 members	Meets the second Wednesday of each month at 5:30 p.m., at Fire Station #1, 410 East Fifth Street.
FIRE RETIREMENT PLAN BOARD 3 members	Meets the third Friday of January, April, July and October at 10:00 a.m. in the Administrative Conference Room, 2 nd Floor, Fire Administration Building, 410 East Fifth Street.
GOLF ADVISORY BOARD 9 members	Meets the fourth Wednesday of each month at 5:15 p.m. in the Parks & Recreation Conference Room, 500 East Third Street.
HISTORIC PRESERVATION COMMISSION 7 members	Meets the third Monday of each month at 6:00 p.m. in the City Council Chambers, 500 East Third Street.
HOUSING AUTHORITY 5 members	Meets the fourth Wednesday of each month at 6:00 p.m. at 375 W. 37 th Street.
HUMAN SERVICES COMMISSION 11 members	Meets the fourth Thursday of each month at 6:00 p.m. in the City Manager's Conference Room, 500 East Third Street.

LIBRARY BOARD 7 members	Meets the third Thursday of each month at 5:00 p.m. at the Library, 300 North Adams Avenue.
LOCAL LICENSING AUTHORITY	Meets the third Thursday of each month at 8:30 a.m. in the City Council Chambers, 500 East Third Street. The Municipal Judge is the Authority.
LOVELAND UTILITIES COMMISSION 9 members	Meets the third Wednesday of each month at 4:00 p.m. in the Service Center Board Room, 200 N. Wilson Avenue.
OPEN LANDS ADVISORY COMMISSION 9 members	Meets the second Wednesday of each month at 5:30 p.m. in the Parks and Recreation Conference Room, 500 East Third Street.
PARKS AND RECREATION COMMISSION 9 members	Meets the second Thursday of each month at 4:30 p.m. in the Parks and Recreation Conference Room, 500 East Third Street.
PLANNING COMMISSION 9 members	Meets the second and fourth Monday of each month at 6:30 p.m. in the City Council Chambers, 500 East Third Street.
POLICE CITIZEN ADVISORY BOARD 9 members	Meets the first Monday of each month at 5:30 p.m. at the Police & Courts Building, 810 E. 10 th Street.
POLICE PENSION BOARD OF TRUSTEES 5 members	Meets the third Tuesday in February, May, August and November of each year at 2:00 p.m. at the Police & Courts Building, 810 E. 10 th Street.
SENIOR ADVISORY BOARD 15 members	Meets the first Wednesday of each month at 10:30 a.m. at the Library in the Gertrude Scott meeting room, 300 N. Adams.
TRANSPORTATION ADVISORY BOARD 7 members	Meets the first Monday of each month at 4:00 p.m. in the City Council Chambers, 500 East Third Street.
VISUAL ARTS COMMISSION 9 members	Meets the second Thursday of each month at 5:00 p.m. at the Loveland Museum, 503 North Lincoln Avenue.
VOLUNTEER FIREFIGHTERS' BOARD OF TRUSTEES 7 members	Meets the second Thursday in February, May, August and November at 1:30 p.m. in the City Manager's Conference Room, 500 East Third Street.
YOUTH ADVISORY COMMISSION 12 members	Meets the first Wednesday of each month, September through May, at 5:00 p.m. at the Loveland Museum, 503 Lincoln Avenue.



CITY OF LOVELAND
CITY MANAGER'S OFFICE

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AGENDA ITEM: 12
MEETING DATE: 12/6/2011
TO: City Council
FROM: Bill Cahill, City Manager
PRESENTER: Bill Cahill

TITLE:

Motion to appoint a representative to the Larimer Emergency Telephone Authority ("LETA") Board pursuant to City Ordinance #5435

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to appoint Bill Westbrook, IT Director, as the City's representative to the LETA Board.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is an administrative action to designate a City representative to the LETA Board. Pursuant to City Ordinance #5435 the City Council may designate an elected City official or a City employee. The City Manager's Office proposes to re-appoint Bill Westbrook, IT Director, as the City's representative to the LETA Board.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

SUMMARY:

An administrative action to designate a City representative to the LETA Board. Ordinance #5435, adopted by City Council on July 21, 2009, authorized the City Manager to enter into a Third Intergovernmental Agreement for the establishment of LETA and delegated to it the legal authority to establish and collect the telephone exchange access facility charge and the wireless communications access charge for 911 services. Pursuant to such ordinance the Mayor Pro

Tem is the City's representative to the LETA Board, unless City Council votes to designate some other elected City official or a City employee. The City Manager's Office proposes Bill Westbrook, IT Director, be re-appointed as the City's representative to the LETA Board.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Mayor's certificate confirming the appointment of the City's representative to the Larimer Emergency Telephone Authority (LETA)

**MAYOR'S CERTIFICATE
CONFIRMING APPOINTMENT AS CITY OF LOVELAND REPRESENTATIVE
TO LARIMER EMERGENCY TELEPHONE AUTHORITY (LETA)**

I, Cecil A. Gutierrez, hereby certify that I am the duly elected and qualified Mayor of the City of Loveland, Colorado ("Loveland"). On December 6, 2011, the City Council of Loveland reappointed, IT Director, Bill Westbrook, to serve as the Loveland representative, with limited voting authority, on the LETA Board of Directors. The appointment is to commence on December 6, 2011 and to expire on November 20, 2013, or upon appointment by City Council of a successor representative, whichever last occurs.

IN WITNESS WHEREOF, I have executed this Certificate this _____ day of
_____, 2011.

By: _____
Cecil A. Gutierrez
Mayor, City of Loveland

ATTEST:

City Clerk

APPROVED AS TO FORM:



Jesus Garcia
Assistant City Attorney



CITY OF LOVELAND
CITY CLERKS OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2322 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 13
MEETING DATE: 12/6/2011
TO: City Council
FROM: Terry Andrews, Finance
PRESENTER: Terry Andrews, City Clerk

TITLE:

Public hearing and an ordinance of the City Council for the City of Loveland approving its Local Licensing Authority to adopt a streamlined Special Events Permit process pursuant to C.R.S. §12-48-107

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing. Adopt a motion to approve and order published the ordinance on first reading.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is a legislative action. State law requires a permit for special events at which alcohol beverages are sold and/or served to the public. Currently, approval/denial of such permits is required at the City and State levels, with fees to both the City and State to help recover the cost of permitting. Recent legislation provides an option for the City to "opt in" to a process to streamline the Special Event Permit process. The simplified option eliminates the State from the approval process and retains approval at the local level only. The number of days per year which special event permit holders can hold events increased from 10 to 15 days per year.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

There is no impact to the budget. The additional time required to notifying the State of permits issued by the Local Licensing Authority, is offset by not having to wait for the issuance of a State permit. This legislation does not provide an option to increase local fees.

SUMMARY:

This ordinance will place certain portions of article 47 of Title 12, C.R.S. "the Special Event" process into the Municipal Code. Senate Bill 11-066 provides an option for the City to "opt in" to a process to streamline the Special Event Permit process. The bill requires the State Licensing authority to establish and maintain a website containing the state-wide permitting activity of organizations that receive permits under this process. Eliminating the State from the approval process transfers one responsibility to the City - to report the number of events each entity [non-profit or political candidate] holds annually. It is estimated that this step will add 3-5 minutes to each application processed, a function that can be absorbed without additional Staff hours. About 14 applications are processed each year at about 2.25 hours per application. The advantage for the applicant is the savings in money and time; the State fee (\$10 or \$25 depending on the type of permit), and the State processing turnaround which can take between 10 to 15 days.

The essential processing steps occur already at the City level, and those will not change (including sales tax, location checks by the Police Department, public posting of events, and other Code compliance reviews, etc..) The City's fee for the permit is \$100 per application, the maximum allowable by State Statute. The average value of Staff time invested is approximately \$177 per application (56% cost recovery).

On October 20, 2011 the Liquor Licensing Authority approved LLA Resolution #01-2011 requesting Council consider and approve an ordinance implementing the provisions detailed in Senate Bill 11-066 relative to the Special Event permits process.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Ordinance
LLA Resolution #01-2011

FIRST READING: December 6, 2011
SECOND READING: _____

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF
LOVELAND APPROVING ITS LOCAL LICENSING AUTHORITY TO
ADOPT A STREAMLINED SPECIAL EVENTS PERMIT PROCESS
PURSUANT TO C.R.S. §12-48-107**

WHEREAS, Loveland Municipal Code Section 8.04.010 has established a local licensing authority to implement Articles 46, 47 and 48 of Title 12 C.R.S.; and

WHEREAS, in the past approval and/or denial of special event permits has been required at both the local and state levels requiring applicants to pay fees to both the state and the city; and

WHEREAS, amendments were made in 2011 to Title 12, Article 48 of the Colorado Revised Statutes, which would allow a local licensing authority not to notify the state licensing authority for approval or disapproval of an application for a special event permit; and

WHEREAS, by not notifying the state licensing authority to obtain approval or disapproval of an application for a special event permit, such authority to approve or deny a special event permit would remain at the local level only, and applicants would only pay fees at the local level; and

WHEREAS, currently the essential steps for processing special event permits occur at the local level; and

WHEREAS, the City Council has received a recommendation from the local licensing authority that the City of Loveland retain authority to approve or disapprove special event permits at the local level only and not require an applicant to obtain the state licensing authority's approval or disapproval of applications for special event permits; and

WHEREAS, the City Council wishes to adopt the recommendations of the local licensing authority and amend the Loveland Municipal Code to reflect such changes in procedure as allowed in C.R.S. §12-48-107(5)(a).

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

Section 1. Title 8 of the Loveland Municipal Code is revised by the addition of a new Chapter 8.10 to read as follows:

SPECIAL EVENT PERMITS

Sections:

- 8.10.010 Special event permits authorized**
- 8.10.020 Qualifications of organizations for permit--qualifications of municipalities or municipalities owning arts facilities--qualifications of candidates**
- 8.10.030 Grounds for issuance of special event permits**
- 8.10.040 Fees for special event permits**
- 8.10.050 Restrictions related to permits**
- 8.10.060 Grounds for denial of special event permit**
- 8.10.070 Applications for special event permit**
- 8.10.080 Exemptions**

8.10.010 Special event permits authorized

The local licensing authority, as defined in Section 8.04.010 of this Code, may issue a special event permit for the sale, by the drink only, of fermented malt beverages, as defined in C.R.S. Section 12-46-103, or the sale, by the drink only, of malt, spirituous, or vinous liquors, as defined in C.R.S. Section 12-47-103, to organizations and political candidates qualifying under this chapter, subject to the applicable provisions of articles 46 and 47 of title 12, C.R.S., and to the limitations imposed by this chapter.

8.10.020 Qualifications of organizations for permit--qualifications of municipalities or municipalities owning arts facilities--qualifications of candidates

(1) A special event permit issued under this chapter may be issued to an organization, whether or not presently licensed under articles 46 and 47 of title 12, C.R.S., which has been incorporated under the laws of this state for purposes of a social, fraternal, patriotic, political, or athletic nature, and not for pecuniary gain, or which is a regularly chartered branch, lodge, or chapter of a national organization or society organized for such purposes and being nonprofit in nature, or which is a regularly established religious or philanthropic institution, or which is a state institution of higher education, and to any political candidate who has filed the necessary reports and statements with the secretary of state pursuant to article 45 of title 1, C.R.S. For purposes of this chapter, a state institution of higher education includes each principal campus of a state system of higher education.

(2) A special event permit may be issued to any City owned arts facilities at which productions or performances of an artistic or cultural nature are presented for use at such facilities, subject to the provisions of this chapter.

8.10.030 Grounds for issuance of special event permits

(1)(a) A special event permit may be issued under this chapter notwithstanding the fact that the special event is to be held on premises licensed under the provisions of C.R.S. sections 12-47-403, 12-47-403.5, 12-47-416, 12-47-417, or 12-47-422. The holder of a special event permit issued pursuant to this chapter shall be responsible for any violation of article 47 of title 12, C.R.S.

(b) If a violation of article 48 or of article 47 of title 12, C.R.S. occurs during a special event wine festival and the responsible licensee can be identified, such licensee may be charged and the appropriate penalties may apply. If the responsible licensee cannot be identified, the local licensing authority may send written notice to every licensee identified on the permit applications and may fine each the same dollar amount. Such fine shall not exceed twenty-five dollars per licensee or two hundred dollars in the aggregate. No joint fine levied pursuant to this

subparagraph (b) shall apply to the revocation of a limited wineries license under C.R.S. section 12-47-601.

(2) Nothing in this chapter shall be construed to prohibit the sale or dispensing of malt, vinous, or spirituous liquors on any closed street, highway, or public byway for which a special event permit has been issued.

8.10.040 Fees for special event permits

(1) Special event permit fees shall be set at one hundred dollars (\$100.00) for each permit issued.
(2) All fees are payable in advance to the City Clerk's Office for applications for special event permits submitted to the local licensing authority for approval.

8.10.050 Restrictions related to permits

(1) Each special event permit shall be issued for a specific location and is not valid for any other location.
(2) A special event permit authorizes sale of the beverage or the liquors specified only during the following hours:
(a) Between the hours of five a.m. of the day specified in a malt beverage permit and until twelve midnight on the same day;
(b) Between the hours of seven a.m. of the day specified in a malt, vinous, and spirituous liquor permit and until two a.m. of the day immediately following.
(3) The local licensing authority shall not issue a special event permit to any organization for more than fifteen days in one calendar year.
(4) No issuance of a special event permit shall have the effect of requiring the state or local licensing authority to issue such a permit upon any subsequent application by an organization.
(5) Sandwiches or other food snacks shall be available during all hours of service of malt, spirituous, or vinous liquors, but prepared meals need not be served.

8.10.060 Grounds for denial of special event permit

(1) The local licensing authority may deny the issuance of a special event permit upon the grounds that the issuance would be injurious to the public welfare because of the nature of the special event, its location within the community, or the failure of the applicant in a past special event to conduct the event in compliance with applicable laws.
(2) Public notice of the proposed permit and of the procedure for protesting issuance of the permit shall be conspicuously posted at the proposed location for at least ten days before approval of the permit by the local licensing authority.

8.10.070 Applications for special event permit

(1) Applications for a special event permit shall be made with the local licensing authority on forms provided by the state licensing authority and shall be verified by oath or affirmation of an officer of the organization or of the political candidate making application.
(2) An applicant shall include payment of the fee established by the local licensing authority, not to exceed one hundred dollars, for both investigation and issuance of a permit. In reviewing an application, the local licensing authority shall apply the same standards for approval and denial applicable to the state licensing authority.

(3) The local licensing authority shall cause a hearing to be held if, after investigation and upon review of the contents of any protest filed by affected persons, sufficient grounds appear to exist for denial of a permit. Any protest shall be filed by affected persons within ten days after the date of notice pursuant to section 8.10.060(2) of this code. Any hearing required by this subsection (3) or any hearing held at the discretion of the local licensing authority shall be held at least ten days after the initial posting of the notice, and notice thereof shall be provided the applicant and any person who has filed a protest.

(4) The local licensing authority may assign all or any portion of its functions under this article to an administrative officer.

(5)(a) The local licensing authority is not required to notify the state licensing authority to obtain the state licensing authority's approval or disapproval of an application for a special event permit. The local licensing authority is only required to report to the liquor enforcement division, within ten days after it issues a permit, the name of the organization to which a permit was issued, the address of the permitted location, and the permitted dates of alcohol beverage service.

(b) The local licensing authority shall promptly act upon each application and either approve or disapprove each application for a special event permit.

(c) The state licensing authority has established and maintains a web site containing the statewide permitting activity of organizations that receive permits. In order to ensure compliance with C.R.S. section 12-48-105(3), which restricts the number of permits issued to an organization in a calendar year, the local licensing authority shall access information made available on the web site of the state licensing authority to determine the statewide permitting activity of the organization applying for the permit. The local licensing authority shall consider compliance with C.R.S. section 12-48-105(3) before approving any application

8.10.080 Exemptions

An organization otherwise qualifying under section 8.10.020 of this code shall be exempt from the provisions of this chapter and shall be deemed to be dispensing gratuitously and not to be selling fermented malt beverages or malt, spirituous, or vinous liquors when it serves, by the drink, fermented malt beverages or malt, spirituous, or vinous liquors to its members and their guests at a private function held by such organization on an unlicensed premises so long as any admission or other charge, if any, required to be paid or given by any such member as a condition to entry or participation in the event is uniform as to all without regard to whether or not a member or such member's guest consumes or does not consume such beverages or liquors. For purposes of this section, all invited attendees at a private function held by a state institution of higher education shall be considered members or guests of the institution.

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 (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED _____ day of _____, 2011.

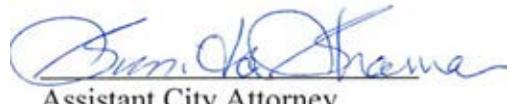
ATTEST:

CITY OF LOVELAND, COLORADO

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:



Brian D. Kremer

Assistant City Attorney

LLA RESOLUTION #01-2011**A RESOLUTION OF THE CITY OF LOVELAND LIQUOR LICENSE
AUTHORITY IN SUPPORT OF AN ORDINANCE ELECTING TO
ADOPT A STREAMLINED SPECIAL EVENT PERMIT PROCESS
PURSUANT TO C.R.S. §12-48-107**

WHEREAS, Loveland Municipal Code Section 8.04.010 has established a local licensing authority to implement Articles 46, 47 and 48 of Title 12 C.R.S.; and

WHEREAS, in the past approval and/or denial of special event permits has been required at both the local and state levels, requiring applicants to pay fees to both the state and the city; and

WHEREAS, amendments were made in 2011 to Title 12, Article 48 of the Colorado Revised Statutes, which would allow a local licensing authority not to notify the state licensing authority for approval or disapproval of an application for a special event permit; and

WHEREAS, by foregoing notification to the state licensing authority to obtain approval or disapproval of an application for a special event permit, such authority to approve or deny a special event permit would remain at the local level only, and applicants would only pay fees for such permits at the local level; and

WHEREAS, currently the essential steps for processing special event permits occur at the local level; and

WHEREAS, the local licensing authority recommends to the Loveland City Council that the City of Loveland retain authority to approve or disapprove special event permits at the local level only and not require an applicant to obtain the state licensing authority's approval or disapproval of applications for special event permits; and

WHEREAS, in support thereof, the local licensing authority recommends that an ordinance amending the Loveland Municipal Code be enacted to reflect such change in procedure.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF LOVELAND
LOCAL LICENSING AUTHORITY OF THE CITY OF LOVELAND, COLORADO
THAT:**

Section 1. The City of Loveland Local Liquor Licensing Authority does hereby recommend City Council consideration and approval of an ordinance, attached hereto and incorporated herein as **Exhibit A**, amending the City of Loveland Municipal Code with the addition of Chapter 8.10 regarding the issuance of special event permits to serve alcohol.

Section 2. Such amendment to the Loveland Municipal Code would allow the City of Loveland Local Licensing Authority not to notify the state licensing authority of an application for a special event permit, pursuant to C.R.S. §12-48-107(5)(a); but would retain approval or disapproval of any special event permit applications at the local level.

Section 3. Staff is directed to present the aforementioned ordinance along with this resolution of support to City Council for their consideration.

Section 4. This resolution shall be effective as of the date and time of its adoption.

ADOPTED this 20th day of October, 2011.

ATTEST:

Jannie M. Weaver
Secretary to the Authority


William E. Starks, Local Licensing Authority

APPROVED AS TO FORM:

Brian J. D'Amato
Assistant City Attorney

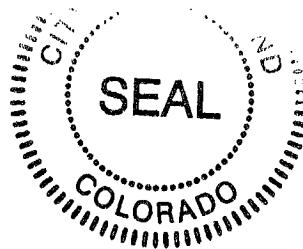


EXHIBIT A

FIRST READING: _____

SECOND READING: _____

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF LOVELAND APPROVING ITS LOCAL LICENSING AUTHORITY TO ADOPT A STREAMLINED SPECIAL EVENTS PERMIT PROCESS PURSUANT TO C.R.S. §12-48-107

WHEREAS, Loveland Municipal Code Section 8.04.010 has established a local licensing authority to implement Articles 46, 47 and 48 of Title 12 C.R.S.; and

WHEREAS, in the past approval and/or denial of special event permits has been required at both the local and state levels requiring applicants to pay fees to both the state and the city; and

WHEREAS, amendments were made in 2011 to Title 12, Article 48 of the Colorado Revised Statutes, which would allow a local licensing authority not to notify the state licensing authority for approval or disapproval of an application for a special event permit; and

WHEREAS, by not notifying the state licensing authority to obtain approval or disapproval of an application for a special event permit, such authority to approve or deny a special event permit would remain at the local level only, and applicants would only pay fees at the local level; and

WHEREAS, currently the essential steps for processing special event permits occur at the local level; and

WHEREAS, the City Council has received a recommendation from the local licensing authority that the City of Loveland retain authority to approve or disapprove special event permits at the local level only and not require an applicant to obtain the state licensing authority's approval or disapproval of applications for special event permits; and

WHEREAS, the City Council wishes to adopt the recommendations of the local licensing authority and amend the Loveland Municipal Code to reflect such changes in procedure as allowed in C.R.S. §12-48-107(5)(a).

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

Section 1. Title 8 of the Loveland Municipal Code is revised by the addition of a new Chapter 8.10 to read as follows:

SPECIAL EVENT PERMITS

Sections:

- 8.10.010 Special event permits authorized**
- 8.10.020 Qualifications of organizations for permit--qualifications of municipalities or municipalities owning arts facilities--qualifications of candidates**
- 8.10.030 Grounds for issuance of special event permits**
- 8.10.040 Fees for special event permits**
- 8.10.050 Restrictions related to permits**
- 8.10.060 Grounds for denial of special event permit**
- 8.10.070 Applications for special event permit**
- 8.10.080 Exemptions**

8.10.010 Special event permits authorized

The local licensing authority, as defined in Section 8.04.010 of this Code, may issue a special event permit for the sale, by the drink only, of fermented malt beverages, as defined in C.R.S. Section 12-46-103, or the sale, by the drink only, of malt, spirituous, or vinous liquors, as defined in C.R.S. Section 12-47-103, to organizations and political candidates qualifying under this chapter, subject to the applicable provisions of articles 46 and 47 of title 12, C.R.S., and to the limitations imposed by this chapter.

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- (1) A special event permit issued under this chapter may be issued to an organization, whether or not presently licensed under articles 46 and 47 of title 12, C.R.S., which has been incorporated under the laws of this state for purposes of a social, fraternal, patriotic, political, or athletic nature, and not for pecuniary gain, or which is a regularly chartered branch, lodge, or chapter of a national organization or society organized for such purposes and being nonprofit in nature, or which is a regularly established religious or philanthropic institution, or which is a state institution of higher education, and to any political candidate who has filed the necessary reports and statements with the secretary of state pursuant to article 45 of title 1, C.R.S. For purposes of this chapter, a state institution of higher education includes each principal campus of a state system of higher education.
- (2) A special event permit may be issued to any City owned arts facilities at which productions or performances of an artistic or cultural nature are presented for use at such facilities, subject to the provisions of this chapter.

8.10.030 Grounds for issuance of special event permits

- (1)(a) A special event permit may be issued under this chapter notwithstanding the fact that the special event is to be held on premises licensed under the provisions of C.R.S. sections 12-47-403, 12-47-403.5, 12-47-416, 12-47-417, or 12-47-422. The holder of a special event permit issued pursuant to this chapter shall be responsible for any violation of article 47 of title 12, C.R.S.
- (b) If a violation of article 48 or of article 47 of title 12, C.R.S. occurs during a special event wine festival and the responsible licensee can be identified, such licensee may be charged and

the appropriate penalties may apply. If the responsible licensee cannot be identified, the local licensing authority may send written notice to every licensee identified on the permit applications and may fine each the same dollar amount. Such fine shall not exceed twenty-five dollars per licensee or two hundred dollars in the aggregate. No joint fine levied pursuant to this subparagraph (b) shall apply to the revocation of a limited wineries license under C.R.S. section 12-47-601.

(2) Nothing in this chapter shall be construed to prohibit the sale or dispensing of malt, vinous, or spirituous liquors on any closed street, highway, or public byway for which a special event permit has been issued.

8.10.040 Fees for special event permits

(1) Special event permit fees shall be set at one hundred dollars (\$100.00) for each permit issued.
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 (3) The local licensing authority shall not issue a special event permit to any organization for more than fifteen days in one calendar year.
 (4) No issuance of a special event permit shall have the effect of requiring the state or local licensing authority to issue such a permit upon any subsequent application by an organization.
 (5) Sandwiches or other food snacks shall be available during all hours of service of malt, spirituous, or vinous liquors, but prepared meals need not be served.

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(1) The local licensing authority may deny the issuance of a special event permit upon the grounds that the issuance would be injurious to the public welfare because of the nature of the special event, its location within the community, or the failure of the applicant in a past special event to conduct the event in compliance with applicable laws.
 (2) Public notice of the proposed permit and of the procedure for protesting issuance of the permit shall be conspicuously posted at the proposed location for at least ten days before approval of the permit by the local licensing authority.

8.10.070 Applications for special event permit

(1) Applications for a special event permit shall be made with the local licensing authority on forms provided by the state licensing authority and shall be verified by oath or affirmation of an officer of the organization or of the political candidate making application.

(2) An applicant shall include payment of the fee established by the local licensing authority, not to exceed one hundred dollars, for both investigation and issuance of a permit. In reviewing an application, the local licensing authority shall apply the same standards for approval and denial applicable to the state licensing authority.

(3) The local licensing authority shall cause a hearing to be held if, after investigation and upon review of the contents of any protest filed by affected persons, sufficient grounds appear to exist for denial of a permit. Any protest shall be filed by affected persons within ten days after the date of notice pursuant to section 8.10.060(2) of this code. Any hearing required by this subsection (3) or any hearing held at the discretion of the local licensing authority shall be held at least ten days after the initial posting of the notice, and notice thereof shall be provided the applicant and any person who has filed a protest.

(4) The local licensing authority may assign all or any portion of its functions under this article to an administrative officer.

(5)(a) The local licensing authority is not required to notify the state licensing authority to obtain the state licensing authority's approval or disapproval of an application for a special event permit. The local licensing authority is only required to report to the liquor enforcement division, within ten days after it issues a permit, the name of the organization to which a permit was issued, the address of the permitted location, and the permitted dates of alcohol beverage service.

(b) The local licensing authority shall promptly act upon each application and either approve or disapprove each application for a special event permit.

(c) The state licensing authority has established and maintains a web site containing the statewide permitting activity of organizations that receive permits. In order to ensure compliance with C.R.S. section 12-48-105(3), which restricts the number of permits issued to an organization in a calendar year, the local licensing authority shall access information made available on the web site of the state licensing authority to determine the statewide permitting activity of the organization applying for the permit. The local licensing authority shall consider compliance with C.R.S. section 12-48-105(3) before approving any application

8.10.080 Exemptions

An organization otherwise qualifying under section 8.10.020 of this code shall be exempt from the provisions of this chapter and shall be deemed to be dispensing gratuitously and not to be selling fermented malt beverages or malt, spirituous, or vinous liquors when it serves, by the drink, fermented malt beverages or malt, spirituous, or vinous liquors to its members and their guests at a private function held by such organization on an unlicensed premises so long as any admission or other charge, if any, required to be paid or given by any such member as a condition to entry or participation in the event is uniform as to all without regard to whether or not a member or such member's guest consumes or does not consume such beverages or liquors. For purposes of this section, all invited attendees at a private function held by a state institution of higher education shall be considered members or guests of the institution.

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 (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED _____ day of _____, 2011.

ATTEST:

CITY OF LOVELAND, COLORADO

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:



Brian D. Shama

Assistant City Attorney



CITY OF LOVELAND
ECONOMIC 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:	12/6/2011
TO:	City Council
FROM:	Betsey Hale, Department of Economic Development
PRESENTER:	Mike Scholl, Department of Economic Development

TITLE:

Contract for food and beverage concession service at the Rialto Theater with Next Door Tapas, Inc.

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion approving a contract for food and beverage concession service with Next Door Tapas, Inc. and authorizing the City Manager to sign the contract on behalf of the City

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is an administrative action to approve a contract with Next Door Tapas, Inc. for food and beverage concession to patrons of the Rialto Theater, and exclusive alcohol beverage service to users of the community spaces within the Rialto Theater Center. The contract provides for revenue to the City based on a percentage of Next Door Tapas, Inc.'s gross sales. By the third year of the contract, the City will receive 15 percent of gross sales, which will help to offset the cost of operating the Rialto Theater.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

The City will receive a portion of the proceeds from all food and beverage (including alcohol beverage) sales by Next Door Tapas, Inc. at the Rialto Theater and alcohol beverage sales at the community spaces within the Rialto Bridge building.

SUMMARY:

The contract with Next Door Tapas, Inc. will allow for food and beverage (including alcohol beverage) service at Rialto Theater events. This does not cover catering or provide any exclusive right to catering services to the community spaces within the Rialto Theater Center. However, Next Door Tapas, Inc. will hold the liquor license and therefore have the exclusive right to serve alcohol beverages to any events within the community spaces requesting alcohol beverage service. As part of the contract, the City will receive zero percent of gross sales for the first six months, but the fee will escalate over time to 15 percent by year three. The Rialto Theater anticipates using the revenue to partially cover the cost of its operations.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Contract for Food and Beverage Concession Service

CONTRACT FOR FOOD AND BEVERAGE SERVICE AT THE RIALTO THEATER CENTER

This Contract is entered into this 6th day of December, 2011, by and between the **City of Loveland**, a Colorado municipal corporation (“City”), and **Next Door Tapas, Inc.**, a Colorado corporation, d/b/a Next Door Modern Tapas (“Restaurateur”).

Whereas, the City desires to provide food and beverage concession service, including alcohol beverage service, to patrons of the Rialto Theater, and alcohol beverage service to users of the Community Room and Reception Area within the Rialto Theater Center, as further described below; and

Whereas, the Restaurateur is willing and able to provide the services desired by the City.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Term. This Contract shall be effective from **January 1, 2012 through December 31, 2016**. This Contract may be extended or renewed by written agreement of the parties.

2. Appropriation Required. To the extent this Contract constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Contract in any fiscal year in which no such appropriation is made.

3. Premises. The spaces that are the subject of this Contract are those certain portions of the buildings known together as the Rialto Theater Center, located at 222 and 228 E. Fourth Street, Loveland, Colorado 80537, defined and depicted on **Exhibit A**, attached hereto and incorporated herein by reference (“Premises”). The Restaurateur has inspected the Premises and accepts it in its present condition as of the date of this Contract. The Restaurateur shall have access to the Premises at all times as may be necessary to provide the Services, defined below, as required herein. The City shall provide the Restaurateur with keys and/or access cards to gain entry to the Premises. The Restaurateur shall not enter the Premises at any time other than to provide the Services and shall not provide access to the Premises to individuals other than the Restaurateur’s employees or agents. The Restaurateur shall not use the Premises for any purpose other than as specifically permitted in this Contract without the City’s prior written permission.

4. Food and Beverage Concession Service.

a. The Restaurateur shall make available for purchase food and beverages to patrons of the Rialto Theater (“Food and Beverage Concession Service”). The Restaurateur shall provide Food and Beverage Concession Service from mobile carts stationed at City-approved locations within the Premises, and from the pass-through window located within the restaurant known as Next Door Modern Tapas, located at 222 E. Fourth Street, Loveland, Colorado 80537 (“Restaurant”). Except as provided in

paragraphs 4.b. and 4.f. below, the Restaurateur shall be the sole and exclusive provider of Food and Beverage Concession Service.

b. The Restaurateur shall provide Food and Beverage Concession Service at all scheduled events and performances at the Rialto Theater unless otherwise specified by the Rialto Theater manager based on the renter's preference; provided, however, that renters of the Rialto shall not be permitted to contract with a third party vendor to sell food and beverages at events and performances except for fundraising purposes in accordance with paragraph 4.f. below. The Restaurateur shall be responsible for obtaining a Rialto Theater schedule by contacting the Rialto Theater manager, Jan Sawyer, at (970) 962-2421 or sawyej@ci.loveland.co.us. The City shall endeavor to provide the Restaurateur with as much advance notice as possible of any cancellations of events or performances. The City shall not be liable for any damages suffered by the Restaurateur as a result of the cancellation of any event or performance.

c. As part of its Food and Beverage Concession Service, the Restaurateur shall make available for purchase those foods and beverages, including alcohol beverages, identified in **Exhibit B**, attached hereto and incorporated herein by reference. The Restaurateur shall not provide for sale or distribution any nonfood or nonfood-related items except those necessary and customary to food and beverage service (e.g., napkins, tableware, glasses, and toothpicks). All food and beverages shall be sold at prices that are plainly displayed to customers.

d. The Restaurateur agrees that all food sold, served, or dispensed at the Rialto Theater shall be cooked or prepared in the Restaurant's kitchen. The Restaurateur shall comply at all times with all public health and safety laws and regulations related to food preparation and service.

e. It is the intention of the parties that all matters including, without limitation, prices, portions, and quality of food and beverages shall be the same as available in comparable establishments in the Loveland/Fort Collins area, and for that purpose shall be under the control of and subject to the prior written approval of the City. The Restaurateur's failure to comply with the price, portion, or quality standards set forth in this Contract shall be cause for cancellation of this Contract; provided, however, that the Restaurateur shall be given written notice by the City of the standards violated and the date by which compliance must be accomplished. Failure to correct the violation or repeated violations shall be considered a breach of contract and shall be cause for immediate cancellation of this Contract by the City without further notice.

f. The Restaurateur understands that the City operates a concession stand within the Rialto Theater and agrees that continued operation of said stand by the City shall be permitted throughout the term of this Contract and shall not be deemed to conflict or interfere with the food and beverage concession granted herein to the extent that the City's concession stand is limited to the sale of popcorn, candy, prepackaged snacks, soda, bottled drinks, coffee, tea, and hot chocolate. The Restaurateur further understands that non-profit renters of the Rialto may request to sell food and non-

alcoholic beverages for fundraising purposes and agrees that such sales by the non-profit, either directly or through a third party vendor, shall be permitted throughout the term of this Contract and shall not be deemed to interfere with the food and beverage concession granted herein.

5. Alcohol Beverage Service. The Restaurateur shall provide exclusive alcohol beverage service ("Alcohol Beverage Service") to users of the Community Room and Reception Area located within the Rialto Theater Center. As part of its Alcohol Beverage Service, the Restaurateur shall make available for purchase alcohol beverages to include wine, beer, and vinous liquors.

6. Liquor License Required. The Restaurateur shall, at its own expense, obtain and hold a valid liquor license at all times during the term of this Contract and provide adequate, qualified staff trained in alcohol service who shall abide by all state and local liquor laws and regulations. The Restaurateur shall not permit another caterer, individual, or entity to serve or provide alcohol beverages under the Restaurateur's liquor license.

7. Fee. As consideration for the right to provide Food and Beverage Concession Service and the right to provide Alcohol Beverage Service as granted herein (together, the "Services"), the Restaurateur shall pay the City a Fee, which shall be a percentage of the Restaurateur's gross sales for Food and Beverage Concession Service and Alcohol Beverage Service, on or before the fifth (5th) day of each calendar month. As used herein, "gross sales" shall mean the total sales of food and beverages, including alcohol beverages, based on the full sale price for which said food and beverages are advertised for sale, regardless of whether gift certificates or other credit are applied to any sale or whether any item is provided without charge, or at a reduced price. The Fee due to the City during the term of this Contract shall be as follows:

First 6 months	No Fee
Next 6 months	5% of gross sales
Next 12 months	10% of gross sales
Next 12 months	12% of gross sales
Remainder of Contract Term:	15% of gross sales

Notwithstanding anything herein to the contrary, the "first 6 months" as noted above shall begin when the Restaurant opens to the public, or March 1, 2012, whichever is earlier.

8. Reports; Books; Audit. On or before the fifth (5th) day of each calendar month, the Restaurateur shall submit to the City, in a form approved by the City and signed by the Restaurateur, an itemization of gross sales, broken out by food, non-alcohol beverage sales, and alcohol beverage sales, for the preceding calendar month. The Restaurateur shall maintain an accounting system meeting the City's approval that shall have adequate controls governing inventory and receipts and provide complete, clear, and detailed records of all income and expenses of business done by the Restaurateur on the Premises. The Restaurateur agrees to permit the City and its agents at reasonable intervals and at all times between 8:00 a.m. and 8:00 p.m. to verify inventories and to inspect all books, records, and accounts of the Restaurateur

showing gross sales, inventories, and profit and loss from the Services provided under this Contract, and shall, no later than March 31 of the following calendar year, supply a profit and loss statement for its operations covering the immediate past calendar year that is certified by an independent Certified Public Accountant.

9. Operation of Business. The Restaurateur shall operate and conduct its business in a first-class and reputable manner and shall possess and maintain all permits, licenses, and approvals required to provide the Services at all times during the terms of this Contract.

10. Equipment and Furnishings. The Restaurateur shall provide, at its sole cost and expense, all equipment and furnishings necessary to perform the Services with the exception of two (2) mobile carts, which shall be purchased and owned by the City and provided to the Restaurateur for use under this Contract when providing Food and Beverage Concession Service. The Restaurateur shall notify the City as soon as practicable of any necessary repairs, and report any damage, to the mobile carts, whether caused by the Restaurateur or others. The City shall be responsible for maintenance and repair of the mobile carts due to normal wear and tear. Maintenance and repair of the mobile carts required due to damage caused by the Restaurateur, its employees, or agents shall be performed by the City and paid for by the Restaurateur. Invoices for any such maintenance or repair shall be paid by the Contractor within thirty (30) days of billing.

11. Personnel. The Restaurateur shall, at its own expense, employ adequate staff to provide the Services. Said staff shall be trained in food and beverage handling, including handling of alcohol beverages, and shall provide courteous, efficient, and sanitary service. Persons handling food and beverages under this Contract shall be clean and free from any communicable diseases and shall perform their work in accordance with the laws, rules, and regulations promulgated by the state and county health department relating to food and beverage service. When on duty, employees shall wear distinctive uniforms in color and design approved by the City. The Restaurateur shall, upon written notice from the City, discontinue using any employee or agent of the Restaurateur in providing Services under this Contract who, in the City's judgment, does not meet the requirements of this Contract.

12. Utilities. The City shall provide all utilities to the Premises at the City's sole cost and expense. Said utilities shall include water, wastewater, gas, electric, Internet, and telephone service. The Restaurateur, its employees, and agents shall use said utilities to the limited extent necessary to provide the Services.

13. Janitorial Services. The City shall provide janitorial services to the Premises at the City's sole cost and expense. Notwithstanding the foregoing, the Restaurateur shall be responsible for wiping down all surfaces and sweeping the floor after its use of the Community Room and for daily collection and dumping of its trash and recyclables into large bins supplied by the City at locations designated by the City.

14. Maintenance and Repair of Premises. The City shall be responsible for maintenance and repair of the Premises at its sole cost and expenses; provided, however, that the Restaurateur shall pay for any maintenance and repair required due to damage caused by the

Restaurateur, its employees, or agents. Invoices for any such maintenance or repair shall be paid by the Restaurateur within thirty (30) days of billing.

15. Alterations and Improvements to Premises. The Restaurateur shall make no alteration or improvement to the Premises without the City's prior written approval. Any alterations or improvements made to fixtures (other than trade fixtures that can be removed without injury to the Premises) made by the Restaurateur shall become a part of the Premises and be the property of the City unless expressly agreed otherwise in writing.

16. Advertising. The Restaurateur shall not place, distribute, or project any advertising materials on or within the Premises without the City's prior written approval.

17. Inspection. The City reserves the right to inspect the Premises and the Restaurateur's business operations, including the Restaurant kitchen, during business hours with twenty-four (24) hours' prior notice; provided, however, that no such inspection shall unreasonably interfere with the Restaurateur's business operations or operation of the Restaurant. The right of inspection reserved to the City under this Contract shall impose no obligation on the City to make any such inspections and shall impose no liability on the City for failure to make such inspections.

18. Independent Contractor. The parties agree that the Restaurateur is an independent contractor and is not an employee of the City. **The Restaurateur is not entitled to workers' compensation benefits from the City and is obligated to pay federal and state income tax on any money earned pursuant to this Contract.**

19. Insurance Requirements. The Restaurateur and its subcontractors, if any, shall procure and keep in force during the term of this Contract workers' compensation insurance and all other insurance required by any applicable law, and comprehensive general liability insurance insuring the Restaurateur and naming the City as an additional insured with minimum combined single limits of \$1,000,000 each occurrence and \$1,000,000 aggregate. The general liability policy shall be applicable to all premises and operations and shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. Said policy shall contain a severability of interests provision. Said policy shall be for the mutual and joint benefit and protection of the Restaurateur and the City and shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recover under said policy for any loss occasioned to it, its officers, employees, and agents by reason of negligence of the Restaurateur, its officers, employees, agents, subcontractors, or business invitees. Said policy shall be written as a primary policy not contributing to and not in excess of coverage the City may carry. The Restaurateur shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the Restaurateur changes to "occurrence," the Restaurateur shall carry a six-month tail. The policies required herein shall be with companies qualified to do business in Colorado with a general policyholder's financial rating acceptable to the City. Said policies shall not be cancelable or subject to reduction in coverage limits or other modification except after thirty (30)

days' prior written notice to the City. The Restaurateur shall provide the City with a certificate of insurance evidencing all required policies on or before the effective date of this Contract.

20. Indemnification. The Restaurateur agrees to indemnify and hold harmless the City, its officers, employees, and agents from and against all liability, claims, and demands on account of any injury, loss, or damage arising out of or connected with the Services, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Restaurateur or any subcontractor of the Restaurateur, or any officer, employee, or agent of the Restaurateur or any subcontractor, or any other person for whom the Restaurateur is responsible. The Restaurateur shall investigate, handle, respond to, and defend against any such liability, claims, and demands, and shall bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Restaurateur's indemnification obligation shall not be construed to extend to any injury, loss, or damage to the extent caused by the act, omission, or other fault of the City. This paragraph shall survive the termination or expiration of this Contract.

21. Governmental Immunity. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* and under any other applicable law.

22. Compliance with Laws.

a. Generally. The Restaurateur shall comply with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City. The Restaurateur shall solely be responsible for payment of all applicable taxes and for obtaining and keeping in force all applicable permits and approvals.

b. C.R.S. Article 17.5, Title 8. The Restaurateur hereby certifies that, as of the date of this Contract, it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and that the Restaurateur will participate in the e-verify program or Colorado Department of Labor and Employment ("Department") program as defined in C.R.S. § 8-17.5-101 in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract. The Restaurateur shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to the Restaurateur that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. The Restaurateur certifies that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the e-verify program or the Department program. The Restaurateur is prohibited from using either the e-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed. If the Restaurateur obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Restaurateur shall

be required to: (i) notify the subcontractor and City within three days that Restaurateur has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Restaurateur shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Restaurateur shall comply with any reasonable request by the Department made in the course of an investigation that it is undertaking pursuant to the authority established in C.R.S. Article 17.5, Title 8. If the Restaurateur violates this paragraph, the City may terminate this Contract for default in accordance with "Termination," below. If this Contract is so terminated, the Restaurateur shall be liable for actual and consequential damages to the City.

23. Termination.

a. For Default. Each and every term and condition hereof shall be deemed to be a material element of this Contract. In the event either party fails to perform according to the terms of this Contract, such party may be declared in default. If the defaulting party does not cure said breach within ten (10) days' of written notice thereof, the non-defaulting party may terminate this Contract immediately upon written notice of termination to the other, and the non-defaulting party shall be entitled to all other available remedies at law or in equity. In the event of such termination by the City, the City shall not be liable to Restaurateur for anticipated or lost profits or any consequential damages, and the Restaurateur shall be liable for all payments required to be made to the City up to and including said date of termination, and the Restaurateur shall not be relieved of liability to the City for any damages sustained by the City by virtue of any default by the Restaurateur under this Contract. In the event of such termination by the Restaurateur, the Restaurateur shall not be liable to the City for anticipated or lost profits or any consequential damages.

b. For Bankruptcy. In the event a decree or order by a court having jurisdiction in the premises shall have been issued: (a) adjudging the Restaurateur as bankrupt or insolvent; (b) approving as properly filed a petition seeking reorganization of the Restaurateur under the National Bankruptcy Act, as amended; (c) for the winding up or liquidation of its affairs; or (d) for the appointment of a receiver or a liquidator or a trustee in bankruptcy or insolvency of the Restaurateur of its property; and such decree or order shall have continued undischarged or unstayed for a period of ninety (90) days; or if the Restaurateur shall institute proceedings to be adjudicated a voluntary bankrupt or shall consent to the filing of any bankruptcy or insolvency proceedings against it, or shall file a petition or answer or consent seeking a reorganization under the National Bankruptcy Act, as amended, or under any other insolvency law, or shall admit in writing its inability to pay its debts. Generally as they become due, or take any action in furtherance of any of the aforesaid purposes, or shall abandon the right to provide the Services, in any such event, the City may at its election terminate this Contract and all rights of the Restaurateur to continue to provide the Services. In the event of such

termination, the Restaurateur shall be liable for all payments required to be made to the City up to and including said date of termination.

c. For Closure or Sale of Restaurant. The Restaurateur understands that the City has entered into this Contract with the Restaurateur in part due to the fact that the Restaurateur will operate the Restaurant. If at any time the Restaurateur ceases to operate the Restaurant for any reason, either party shall have the right to terminate this Contract immediately upon written notice of termination to the other. In the event of such termination by the City, the City shall not be liable to Restaurateur for anticipated or lost profits or any consequential damages, and the Restaurateur shall be liable for all payments required to be made to the City up to and including said date of termination, and the Restaurateur shall not be relieved of liability to the City for any damages sustained by the City by virtue of any default under this Contract.

24. Surrender and Holding Over. At the expiration or earlier termination of this Contract, the Restaurateur shall promptly surrender possession of the Premises to the City and shall deliver all keys and access cards that it may have to the Premises. If the Restaurateur shall, with the consent of the City, hold over after the expiration or sooner termination of the term of this Contract, the resulting contract shall, unless otherwise mutually agreed in writing, be for an indefinite period of time on a month-to-month basis. During such month-to-month occupation, the Restaurateur shall pay to the City fifteen percent (15%) of gross sales, and shall be bound by all of the terms and conditions of this Contract.

25. Assignment. The Restaurateur shall not assign or transfer this Contract, or any interest therein or its performance obligations hereunder, without the City's prior written consent, which shall not be unreasonably withheld. Any such assignment or transfer shall be void and without effect. This Contract shall not be assignable or transferable by operation of law or by process or proceeding of any court. If the City consents to an assignment or transfer, in whole or in part, this paragraph shall nevertheless continue in full force and effect, and no further assignment or transfer shall be made without the City's prior written consent.

26. Force Majeure. Neither party shall be liable for any failure or delay in performance under this Contract (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Contract; provided, however, that as a condition to the claim of non-liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

27. Notices. Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed, or three (3) days after being sent by certified mail, return receipt requested:

To the City:

Jan Sawyer, Manager
Rialto Theater
228 E. Fourth Street
Loveland, CO 80537
Email: sawyej@ci.loveland.co.us
Phone: (970) 962-2421 (office)

To the Restaurateur:

Jim Edwards, President
Next Door Tapas, Inc.
3615 Muskrat Creek Drive
Fort Collins, CO 80528
Email: jimjene@gmail.com
Phone: (970) 217-6084

28. Time is of the Essence. Time is of the essence of this Contract and is a significant and material term of this Contract.

29. Miscellaneous. This Contract contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. Failure of the City to enforce any provision of this Contract shall in no way be construed to be a waiver of such provision or affect the ability of the City to enforce such provision. In the event a court of competent jurisdiction holds any provision of this Contract invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Contract. This Contract shall be governed by the laws of the State of Colorado, and venue for any judicial action to enforce this Contract or to seek a declaratory judgment to interpret this Contract shall only be in the courts of Larimer County, Colorado.

Signed by the parties on the date written above.

City of Loveland, Colorado

By:

William D. Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

Next Door Tapas, Inc.

By: Jim Edwards, President

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Jim Edwards as President of Next Door Tapas, Inc.

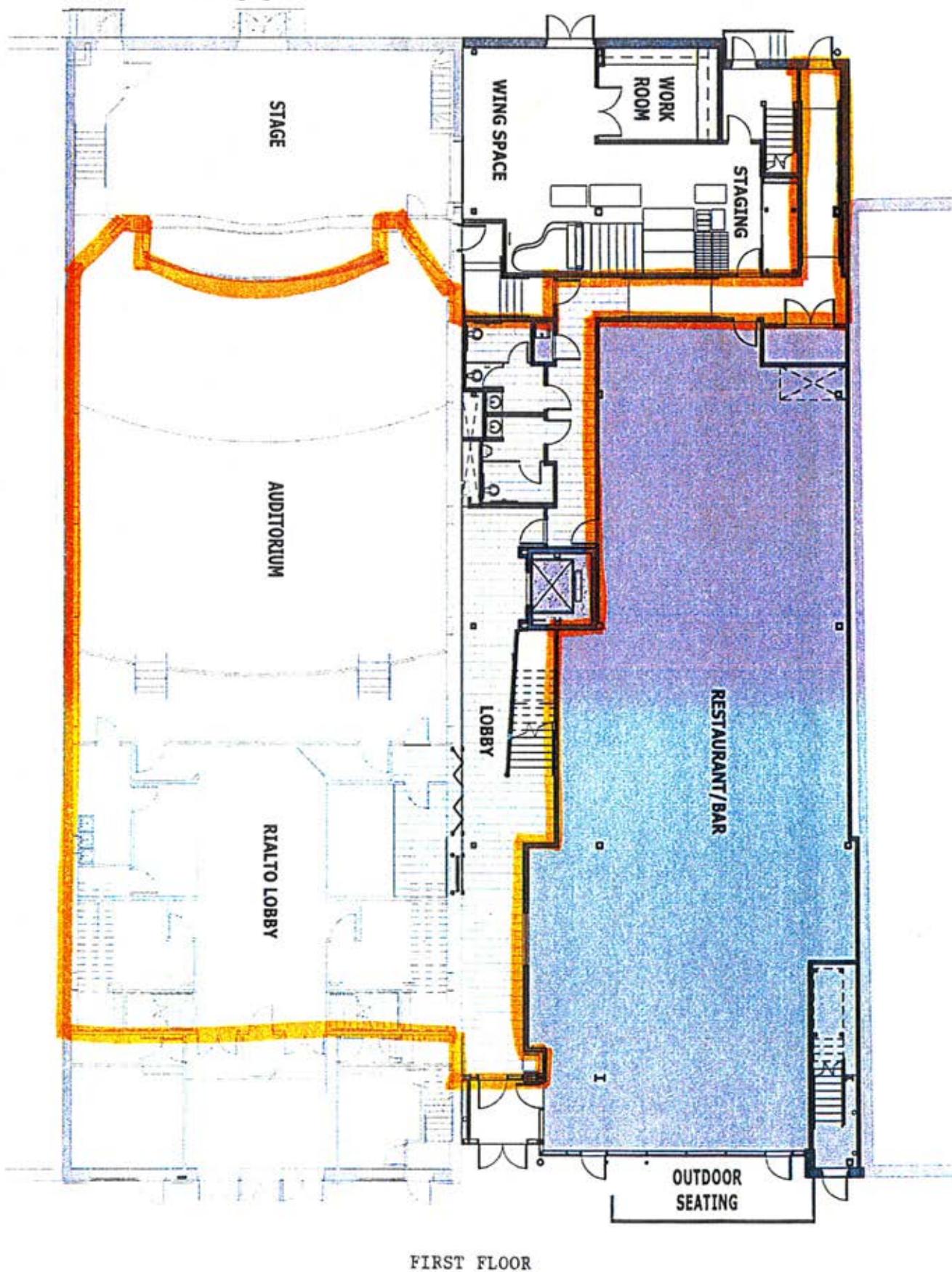
Notary's official signature

SEAL

Commission expiration date

EXHIBIT A

The Premises consists of all spaces inside the orange line as depicted on Exhibit A (two pages).



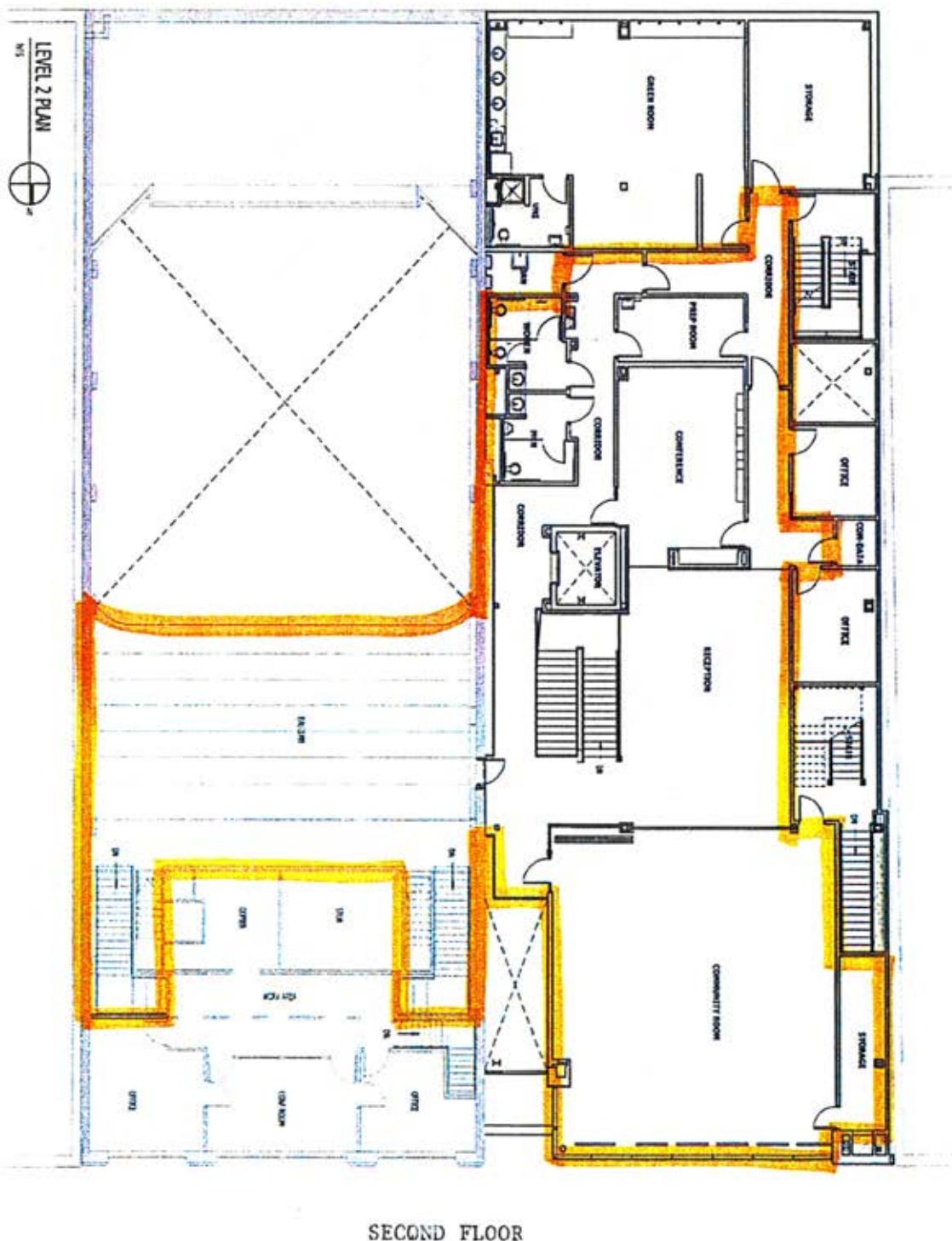


EXHIBIT B

The Restaurateur shall serve light tapas and hors d'oeuvres consisting primarily of bite-sized finger foods and dips prepared in the Restaurant's kitchen. The Restaurateur shall not serve prepackaged snacks or other prepackaged foods.

The Restaurateur shall serve alcohol beverages consisting of beer, wine, mixed drinks, and cocktails. The Restaurateur may serve non-alcoholic beverages at the Restaurant through the pass-through window, but may not serve non-alcoholic beverages from the mobile carts.



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: 15
MEETING DATE: 12/6/2011
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik

TITLE: A Resolution authorizing an increase in the Loveland and Rural Consolidated Volunteer Fire Department Pension Plan

RECOMMENDED CITY COUNCIL ACTION: Adopt a motion to approve the proposed resolution.

OPTIONS:

1. Adopt the action as recommended by the Consolidated Volunteer Fire Department Pension Board of Trustees
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION: The proposed resolution authorizes an increase in the benefits paid to firefighters that have served the community in the capacity of volunteers in the Loveland and Rural Consolidated Volunteer Fire Department Pension Plan (the "Plan"). Currently, retirees with at least 20 years of service receive a monthly payment of \$600. This amount would be increased to \$650 per month commencing on January 1, 2012. Other payments that are made to partially vested, retired firefighters and surviving beneficiaries of firefighters are adjusted proportionately according to the schedule attached to the Resolution. Based on an independent actuarial study, the Plan has a funding plan sufficient to cover the costs of the increased payments.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

According to the actuarial study and discussion with the Fire & Police Pension Association, the assets of the Plan and anticipated contributions to the Plan from the State, City, and the Rural District will be sufficient to cover the future projected cost. The increase in the normal cost is \$1,528 annually.

SUMMARY: The Plan is a defined benefit pension plan. Benefits under the plan are earned by years of service, with 20 years considered to be the required number of years to earn a full benefit. The Plan membership consists of 24 active members, 49 retired members, 9 beneficiaries, and 7 terminated vested members. The Plan does not contain a provision for a cost of living adjustment. The Board of Trustee's for the Plan reviews the funding status of the Plan and periodically requests benefit increases to help the retirees and their surviving beneficiaries meet the rising costs of living. Every two years, the Fire & Police Pension Association completes an actuarial study of the Plan to determine funding levels. The actuarial study also investigates alternative benefit levels.

In the 2011 actuarial study, the Board of Trustees requested evaluation of a \$25 monthly increase, a \$50 monthly increase, and a decrease of \$300 per month to fund benefits for long term disability for line of duty injury. The Board of Trustees recommends the increase of \$50 for the monthly benefit for retirees, from the current \$600 per month to \$650 per month, an 8.3% increase. Other benefits under the plan, for partially vested retirees and for surviving beneficiaries are to be proportionately adjusted.

The Board of Trustees bases their 8.3% increase recommendation on four basic reasons.

1. The last increase for the retirees and beneficiaries of this Plan was 2007, effective January 1, 2008, four years ago. Since that time, the Great Recession has occurred and had great impacts on fixed income retirees. Health care costs, a large portion of retiree spending, have increased by about 12.5% percent.
2. Retiree benefits offered in comparable surrounding communities are higher. For example, Windsor volunteer retirees receive \$750 per month, Johnstown volunteer retirees receive \$900 per month; Fort Lupton volunteer retirees receive \$850 per month; and Evans volunteers receive \$650 per month.
3. During the four year period, there have been two Social Security cost of living adjustments. If the Plan's monthly benefit were to be adjusted at the same rate as Social Security recipients, the monthly benefit would be \$657.50 per month.
4. When the last increase was adopted by Council, the City Manager advised that the Board of Trustees not wait too long for the next increase because it is easier to make timely small adjustments rather than a very large adjustment over a longer period of time.

City staff supports the Board of Trustees' recommendation to increase from \$600 per month to \$650 per month. The normal annual cost to fund the change over an eight year period is \$19,849. The \$1,528 increase over the current normal cost is an expense that can be found within the City's existing budget.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS: Resolution with Two Exhibits

RESOLUTION #R-82-2011**A RESOLUTION AUTHORIZING AN INCREASE IN THE LOVELAND AND RURAL CONSOLIDATED VOLUNTEER FIRE DEPARTMENT PENSION PLAN EFFECTIVE JANUARY 1, 2012**

WHEREAS, the Loveland and Rural Consolidated Volunteer Fire Department Pension Plan (Fire and Police Pension Association Plan # 5153-5) is a pension plan created and existing pursuant to C.R.S. 31-30-1101, et seq., for the purposes of providing retirement benefits to qualifying volunteer firefighters and their survivors (the “Pension Fund”); and

WHEREAS, the Pension Fund is funded through contributions from the City of Loveland (the “City”), the State of Colorado, and the Loveland Rural Fire Protection District (the “LRFPD”); and

WHEREAS, retirement benefits under the Pension Fund have not increased since 2008 when pursuant to Resolution #R-18-2008, the City Council approved a retirement benefit increase from \$500/month to \$600/month for volunteer firefighters with at least 20 years of service, a prorated increase for those with at least 10 years, but less than 20 years of service, and an increase in survivor and funeral benefits effective January 1, 2008; and

WHEREAS, proposed changes to the Pension Fund benefits were considered within the biannual actuarial report identified as the Fire and Police Pension Association Actuarial Valuation as of January 1, 2011 – Loveland and Rural Consolidated Volunteer Fire Department Pension fund prepared by Gabriel Roeder Smith and Company (the “Report”); and

WHEREAS, on November 10, 2011, the Consolidated Volunteer Fire Department Pension Board of Trustees unanimously approved a motion to recommend a benefit increase commencing on January 1, 2012 that includes (1) an increase from \$600/month to \$650/month for volunteer firefighters with at least 20 years of service, (2) a prorated increase for those with at least ten years, but less than 20 years of service, and (3) an increase in survivor and funeral benefits as identified in the Report’s Proposed Plan B of the Actuarial Valuation Information Checklist which is attached hereto as Exhibit A and incorporated by reference herein; and

WHEREAS, the increase in the benefit amount is not effective until and unless the City agrees to the proposed change in benefits as provided by C.R.S. 31-30-1122(1); and

WHEREAS, the City Council desires to increase the Pension Fund benefit effective January 1, 2012 with benefits to such date, and as required by C.R.S. 31-30-1122(1), having reviewed the pertinent sections of the Report, specifically the Comparison of Actuarial Results Based on Alternate Benefit Levels, attached hereto as Exhibit B and incorporated by reference herein, and confirmed that the proposed benefit increase is actuarially sound.

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

Section 1. That the City Council hereby authorizes an increase in the Pension Fund benefit amount as set forth in the Proposed Plan B of the Actuarial Valuation Information Checklist of Exhibit A with an effective date of January 1, 2008, and with benefits effective to such date.

Section 2. That the City Manager is authorized to take all appropriate steps to implement such benefit increase.

Section 3. That this Resolution shall be effective upon the date and time of its adoption.

ADOPTED this _____ day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Jesus Garcia
Assistant City Attorney

A RESOLUTION AUTHORIZING AN INCREASE IN THE LOVELAND AND RURAL CONSOLIDATED VOLUNTEER FIRE DEPARTMENT PENSION PLAN EFFECTIVE JANUARY 1, 2012

Loveland and Rural Consolidated Volunteer Fire Department Pension Fund
Actuarial Valuation as of January 1, 2011

Table 1

Comparison of Actuarial Results Based on Alternate Benefit Levels					
	Current Plan (1)	Plan A (2)	Plan B (3)	Plan C (4)	
1. Normal Retirement Benefit	\$ 600.00	\$ 625.00	\$ 650.00	\$ 300.00	
2. Normal Cost	18,321	19,086	19,849	10,078	
3. Present Value of Future Benefits	3,376,799	3,517,138	3,657,484	1,691,037	
4. Actuarial Accrued Liability	3,289,671	3,426,359	3,563,065	1,643,425	
5. Unfunded Accrued Liability / (Surplus)	577,477	714,165	850,871	(1,068,769)	
6. Total Annual Calculated Contribution	65,808	81,455	97,102	(121,571)	
7. Assumed Contribution	162,636	162,636	162,636	162,636	
8. Funding Period Based on Assumed Contribution	5 years	7 years	8 years	0 years	
9. Is current assumed contribution adequate to support the prospective benefit levels on an actuarially sound basis?	Yes	Yes	Yes	Yes	

**Loveland and Rural Consolidated Volunteer Fire Department
Pension Fund
Actuarial Valuation as of January 1, 2011**

Table 2

Actuarial Valuation Information Checklist

	Current Plan	Proposed Plan A	Proposed Plan B	Proposed Plan C	Maximum Per State Statute
1. Normal Retirement Benefit (monthly):					
a. Regular	\$600.00	\$625.00	\$650.00	\$300.00	None
b. Extended Service					
Amount Per Year of Service	\$0.00	\$0.00	\$0.00	\$0.00	5% of Regular, for 10 Additional years
2. Vested Retirement Benefit (monthly):					
a. With 10 to 20 Years of Service					
Amount Per Year of Service per Minimum Vesting Years	\$30.00	\$31.25	\$32.50	\$15.00	Pro rata Share of Regular 20 Years
b. Minimum Vesting Years	10	10	10	10	
3. Disability Retirement Benefit (monthly):					
a. Short Term Disability for line of duty injury					½ of Regular or \$225, whichever is greater
Amount payable for not more than 1 year	\$0.00	\$0.00	\$0.00	\$150.00	
b. Long Term Disability for line of duty injury					Regular or \$450 whichever is greater
Lifetime Benefit	\$0.00	\$0.00	\$0.00	\$300.00	
4. Survivor Benefits (monthly):					
a. Following Death before Retirement Eligible; Due to death in line of duty as a volunteer firefighter	\$300.00	\$312.50	\$325.00	\$150.00	½ of Regular or \$225, whichever is greater
b. Following Death after Normal Retirement	\$300.00	\$312.50	\$325.00	\$150.00	50% of Regular
c. Following Death after Normal Retirement with Extended Service					
Amount Per Year of Service	\$0.00	\$0.00	\$0.00	\$0.00	50% of Extended
d. Following Death after Vested Retirement with 10 to 20 Years of Service					
Amount Per Year of Service per Minimum Vesting Years	\$15.00	\$15.63	\$16.25	\$7.50	50% of Vested
e. Following Death after Disability Retirement	\$0.00	\$0.00	\$0.00	\$150.00	50% of Disability
f. Optional Survivor Benefit					
Following Death before or after Retirement Eligible; Due to death on or off duty as a volunteer firefighter (Purchase of Life Insurance Required)	\$0.00	\$0.00	\$0.00	\$0.00	100% of Regular
5. Funeral Benefits (Required Benefit):					
a. Funeral Benefit Lump Sum, one time only	\$500.00	\$500.00	\$500.00	\$100.00	2 x Regular



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: 16
MEETING DATE: 12/6/2011
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Kerri Burchett, Current Planning

TITLE:

Consideration of an appeal filed September 22, 2011 by Landmark Engineering Ltd, on behalf of the applicant, B&B I LLC, of the August 22, 2011 Planning Commission denial of an amendment to a Preliminary Development Plan for the Mariana Butte 23rd Subdivision PUD and a Preliminary Plat for the Mariana Butte 26th Subdivision

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for City Council action:

Move to uphold the Planning Commission's decision and deny the First Amendment to the Mariana Butte 23rd Subdivision PUD Preliminary Development Plan and Mariana Butte 26th Subdivision Preliminary Plat.

OPTIONS:

1. Adopt the recommended action ¹.
2. Approve the First Amendment to the Mariana Butte 23rd Subdivision PUD Preliminary Development Plan and Mariana Butte 26th Subdivision Preliminary Plat, per the original recommendation from City staff, subject to the conditions of approval listed in Section IX of the Planning Commission staff report dated August 22, 2011 ¹.
3. Adopt a modified action (specify in the motion)
4. Adopt a motion continuing the item to a future Council meeting

Note:

1. If options 1, 2 or 3 are adopted, then Council should direct staff to prepare written findings and conclusions setting forth its decision for consideration and adoption by Council within 30 days of this appeal hearing.

DESCRIPTION:

This is a quasi-judicial action to consider an appeal of the Planning Commission's denial of an amendment to the Mariana Butte 23rd PUD Preliminary Development Plan and a preliminary plat for Mariana Butte 26th Subdivision. The property is located at the northwest corner of West 1st Street and Rossum Drive, within the Mariana Butte Planned Unit Development. The property

is 5.03 acres and is bordered on the west by the Buckingham Reservoir. The applicant is B&B I LLC.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

SUMMARY:

The PDP Amendment proposes to increase the number of residential dwellings in the development from 5 single family dwellings to 11 dwellings and modify the product type to allow for single family paired units. The applicant is requesting to develop one single family detached structure and 10 single family paired units. The Preliminary Plat would create 11 residential lots along with associated outlots for landscaping and bufferyards.

The Planning Commission held a public hearing on August 22, 2011 to consider the PDP Amendment and Preliminary Plat. City staff recommended conditional approval of the applications. The Planning Commission denied the PDP Amendment, determining that the Findings in Section 18.41.050.E.2 of the Municipal Code were not met. The reasons for denial are set forth in Resolution #11-01, included as Exhibit B.1 to the staff memorandum. The reasons relate to compatibility, character of the area, density and impacts on neighboring properties. Since the Preliminary Plat was filed as a joint application under Code Section 18.41.080 with the Amended PDP, the Commission's denial of the Amended PDP was also a denial of the Preliminary Plat. The applicant, B&B I LLC, filed an appeal of the Planning commission denial. The appeal hearing with City Council is a full, *de novo*, public hearing.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

- A. Staff Memorandum



DEVELOPMENT SERVICES Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537
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MEMORANDUM

TO: City Council

FROM: Kerri Burchett, Principal Planner

DATE: December 6, 2011

RE: Mariana Butte 23rd Subdivision PUD PDP Amendment and Mariana Butte 26th Subdivision

I. EXHIBITS

- A. Appeal letter from applicant dated September 15, 2011
- B. Planning Commission Resolution and Findings and Determination staff report dated September 12, 2011 (denying approval)
- C. Letters and information received after the Planning Commission hearing, including:
 - 1. Applicant's Presentation Summary, Landmark Engineering, received November 18, 2011
 - 2. Rick Ellinger, received October 23, 2011
 - 3. Connie Boose, received August 25, 2011
 - 4. Don Riedel, dated November 29, 2011
 - 5. Darlene Kasenberg, dated November 29, 2011
 - 6. George and Coleen Ligotke, dated November 29, 2011
- D. Revised building elevations discussed at the Planning Commission hearing
- E. Planning Commission minutes from the August 22, 2011 hearing (denying approval)
- F. Video showing surrounding homes submitted by Peg Baumgartel at the Planning Commission hearing. Please note that this is a CD that can only be viewed on your computer.
- G. Planning Commission staff report dated August 22, 2011 recommending approval with conditions, including:
 - 1. Resolution #11-01
 - 2. Mariana Butte PDP Narrative
 - 3. Mariana Butte 23rd Preliminary Development Plan Amendment
 - 4. Mariana Butte 26th Subdivision Preliminary Plat
 - 5. Color Rendering of Residential Units
 - 6. Traffic Excerpt
 - 7. Mariana Butte PUD GDP (for reference)
 - 8. Mariana Butte PUD PDP approved in 2007 (for reference)
 - 9. Mariana Butte Ninth Subdivision (for reference)
 - 10. Agreement for Additional Association Maintenance (private agreement for reference)
 - 11. Correspondence from George and Coleen Ligotke received at Neighborhood
 - 12. Correspondence between Darlene Kasenberg and City staff

II. PROJECT SUMMARY

A. Project Description and Appeal Process

The City Council public hearing is to consider an appeal of the Planning Commission's decision to deny an amendment to the Mariana Butte 23rd Subdivision PUD Preliminary Development Plan (PDP) and the Mariana Butte 26th Subdivision Preliminary Plat. The development site is located at the northwest corner of Rossom Drive and West 1st Street and is bordered on the west by Buckingham Reservoir. The property is approximately 5 acres in size. The original PDP, approved in June of 2007, permitted 5 single family dwellings. The PDP Amendment proposes to increase the number of dwellings to 11, consisting of 1 single family detached dwelling and 10 paired units.

The appeal hearing is considered a full public hearing, *de novo*, in accordance with Chapter 18.80 of the Municipal Code. A *de novo* hearing allows for new testimony and the submittal and presentation of new information beyond what was presented at the Planning Commission hearing. At the conclusion of the public hearing, City Council can deny the application in accordance with the Planning Commission's recommendation, approve the application as originally recommended by City staff or direct staff to prepare written findings and conclusions setting forth Council's decision for consideration and adoption within 30 days of the appeal hearing.

Map 1. Project Location



B. Planning Commission Hearing and Appeal

The Planning Commission considered the PDP Amendment and Preliminary Plat as a joint application on August 22, 2011. At the hearing, significant opposition to the proposal was voiced by members of the neighborhood. Concerns were raised regarding compatibility, density, declining property values, traffic, views, street lighting, and a quality of the neighborhood. The Commission considered the Amended PDP in light of the intent and objectives of Chapter 18.41 of the Loveland Municipal Code. At the conclusion of the public hearing, the Planning Commission determined that the Amendment did not satisfy the required Findings relating to compatibility, character of the area, density and impacts on neighboring properties (see Planning Commission's Resolution and Findings included as **Exhibit B**). The Commission denied the requested Amendment. Since the Preliminary Plat was filed as a joint application, the Commission's denial of the Amended PDP was also a denial of the Preliminary Plat.

Following the Planning Commission's action for denial, the applicant submitted an appeal outlining responses to the Planning Commission Findings (**Exhibit A**). In the appeal letter, the applicant asserts that the Planning Commission in making their decision, both misinterpreted and misapplied the required Findings. The basis of the appeal can be summarized as follows:

1. **GDP Compliance.** The Mariana Butte General Development Plan (GDP) permits a variety of commercial, office and mixed residential on the parcel. The applicant states that the GDP anticipated a more intense level of development on the property based on its location at the intersection of an arterial and collector roadway. The applicant further indicates that the property serves as a transition to the adjoining single family uses and the development proposal has satisfied the intent of the GDP by incorporating transitioning elements such as landscape buffers, setbacks and product type.
2. **Compatibility.** The appeal letter provides evidence to indicate that the proposal is consistent with the development patterns around Buckingham Reservoir, Rossum Drive and other residential projects within the vicinity. Patio homes exist throughout the PUD, along the western perimeter of Buckingham Reservoir and on Rossum Drive. The applicant states that the City Code does not define compatibility based on detached or attached residential products, square footage of homes, lot size or price of a home.
3. **Density.** The appeal letter details how the proposed density of the project (2.19 dwelling units per acre) is consistent and compatible with the densities of the surrounding area. The applicant asserts that Planning Commission based their finding of incompatibility solely on the evaluation of the density in one adjacent subdivision as opposed to the densities around Buckingham Reservoir, Rossum Drive and within the general vicinity. Detailed calculations of surrounding densities and a comparison with the development proposal are provided in the appeal letter (**Exhibit A**).
4. **Inconsistent Determinations.** The Planning Commission has approved a variety of residential product types and densities along Buckingham Reservoir. The applicant states that the Commission's decision to deny the proposed amendment is inconsistent with the Commission's past decisions of approving a variety of uses along the shoreline. The applicant further indicates that the Commission's decision is in conflict with the GDP that provides for a mix of housing and intent of the parcel to serve as a transitional land use.

5. Impacts on Surrounding Property. The applicant disagrees with Planning Commission's determination that the development project will have detrimental and negative impacts on surrounding property. The applicant indicates that the design of the project, preservation and stewardship of the shoreline and natural areas, the ample separation and buffering to adjacent residential properties and significant landscape buffers and setbacks along West 1st Street and Rossum drive will serve to enhance the gateway into the entire development and the City golf course.

In addition to the appeal letter, City staff has also received five letters from surrounding property owners after the Planning Commission hearing, included as **Exhibits C.2, C.3, C.4, C.5, and C.6**. Supplemental information from the applicant was also received on November 18, 2011 and is included as **Exhibit C.1**. For further information regarding the Planning Commission's Findings and staff's analysis, please refer to the August 22, 2011 and September 12, 2011 Planning Commission staff reports included with this staff memo as **Exhibits B and G**.

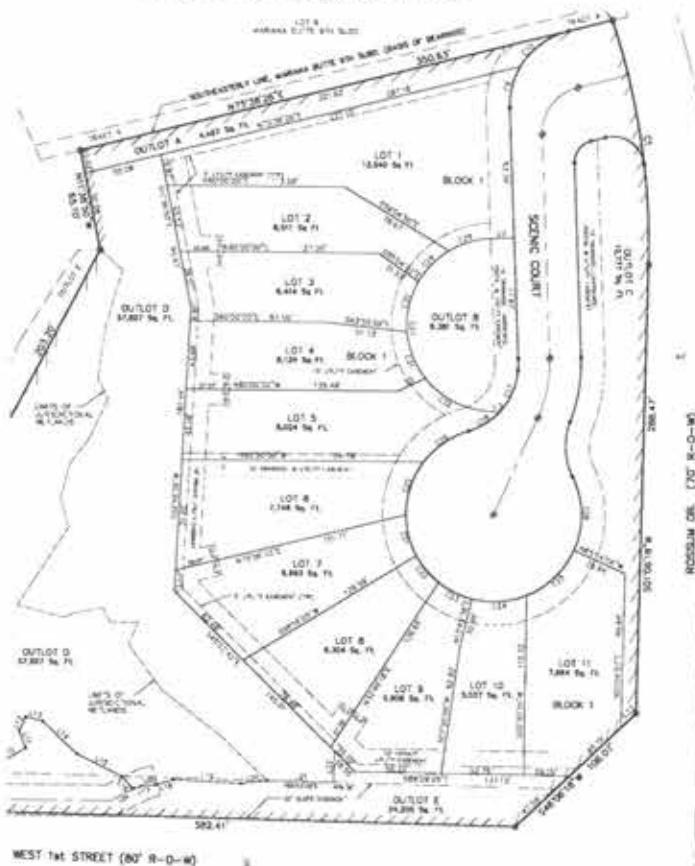
C. Development Proposal

The PDP Amendment proposes to increase the number of residential dwellings within the development from 5 units to 11 units and modify the product type to allow for single family paired units. As approved in 2007, the development plan permits 5 single family lots for detached single family units.

The applicant is requesting to develop 1 single family detached structure as the northernmost lot to provide a transition to the existing single family residences, and 10 single family paired units. Proposed lot sizes range from approximately 13,500 for the single family detached lot to an average lot size of 5,900 square feet for the paired units. The site is accessed off of Rossum Drive, which is identified as a major collector roadway in the City's 2030 Transportation Plan.

Landscape bufferyards along West 1st Street and Rossum Drive have been supplemented with the Amendment to provide additional screening and plant material. The Amendment does not modify the preservation and enhancement of the 1.3 acres of environmentally sensitive areas along the western portion of the site in Outlot D, which will remain preserved as a jurisdictional wetland area.

Figure 1. Proposed Plat



Neighborhood Compatibility

Concerns with the compatibility of the proposed product type (paired residential units) and the associated lot sizes have been voiced by neighborhood residents. This concern was the primary factor in the Planning Commission's decision to deny the PDP Amendment.

Within the vicinity and around the Buckingham Lake shoreline, a variety of residential product types exist. Development patterns range from small lot paired units in Mariana Butte 14th Subdivision with an average lot size of 4,600 square feet, to large single family lots in Mariana Butte 9th Subdivision with an average lot size of 29,700 square feet. The Mariana Butte Master Plan allows considerable diversity in project types and lot sizes. This diversity is echoed in the philosophies of the City's Comprehensive Plan that encourages the development of a full range of housing types to meet the needs of all age and social-economic groups.

The map below represents a comparison of average lot sizes along the Buckingham Lake shoreline and on Rossum Drive, in the vicinity of the development site. The map demonstrates the diversity of lot sizes and product types that exist within the Mariana Butte PUD. In recommending approval of the PDP Amendment, staff evaluated the compatibility of the development proposal with the lot sizes and product types along Buckingham Lake and Rossum Drive. Staff found the proposal to be consistent with the character of the surrounding residential area.

Map 2. Average Lot Size Comparison



General Development Plan Compliance

The General Development Plan (GDP) for Mariana Butte is included as **Attachment 7** to the August 22, 2011 Planning Commission staff report (**Exhibit G**). In order to approve the amendment, a determination must be made that the amendment complies with the approved GDP. Table 1, below, provides a comparison of the proposed use, number of units, density and building materials between the PDP Amendment, the GDP and the approved PDP, for reference purposes. At the August 22, 2011 Planning Commission hearing and in response to neighborhood concerns, the applicant modified the building materials to require stucco as the primary siding. After the hearing, the applicant provided revised architectural elevations, included as **Exhibit D**.

Table 1. PDP Amendment Comparison

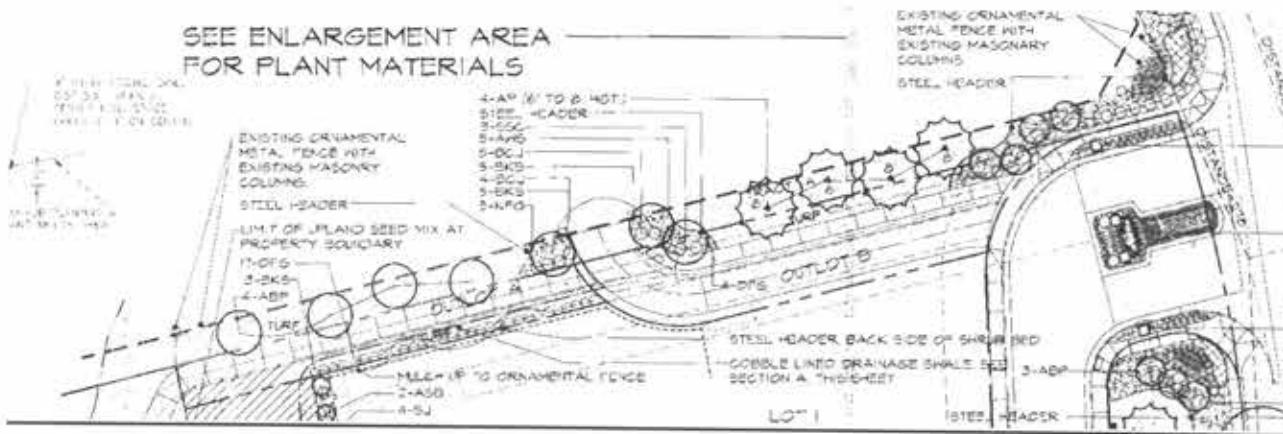
	GDP Allowance	Approved PDP	PDP Amendment
Use	Office/Commercial, Retail & Mixed Residential	Single Family Detached	Single Family Detached & Single Family Paired
Number of Units	No limitation specified	5	11 total: 1 detached & 10 paired units
Density: Gross	No limitation specified	1 d.u/acre	2.19 d.u./acre
Density: Net (less open space & 1st Street ROW)	No limitation specified	1.73 d.u./acre	3.80 d.u./acre
Building Materials: Siding	Brick, stone, hardboard lap siding, vinyl, stucco or synthetic stucco, or as allowed by a PDP or FDP	Hardboard siding, vinyl siding, vertical board & batten siding, decorative accent siding, specialty siding. Minimum 30% masonry	Primary material: stucco Secondary materials: decorative accent siding or specialty siding. Minimum 25% masonry
Building Materials: Roofing	Materials not specified	25 year heavy composition shingles or better (including concrete tiles, clay tiles, standing seam metal etc.)	25 year heavy composition shingles or better (including concrete tiles, clay tiles, standing seam metal etc.)

Tract A

At the Planning Commission hearing, neighborhood residents discussed concerns regarding proposed changes to Tract A, which is located directly north of the development site. Tract A is situated outside the boundaries of the proposed subdivision plat, on property within the Mariana Butte Ninth Subdivision. The Tract was shown in the original PDP and off-site landscaping within the Tract was designated as being installed by the developer. The original PDP also showed a driveway access through the development site and Tract A, to serve Lot 9 of Mariana Butte Ninth Subdivision. Lot 9 is currently vacant. The driveway access was originally provided through the development site due to a condition of approval that restricted Lot 9 from gaining access directly off of Rossum Drive. After the approval of the PDP in 2007, the property owners of Lot 9 successfully petitioned City Council to remove the access restriction and a development plan was approved for the lot showing direct access onto Rossum Drive. As the driveway access through the development site is no longer necessary, the PDP Amendment reflects its removal.

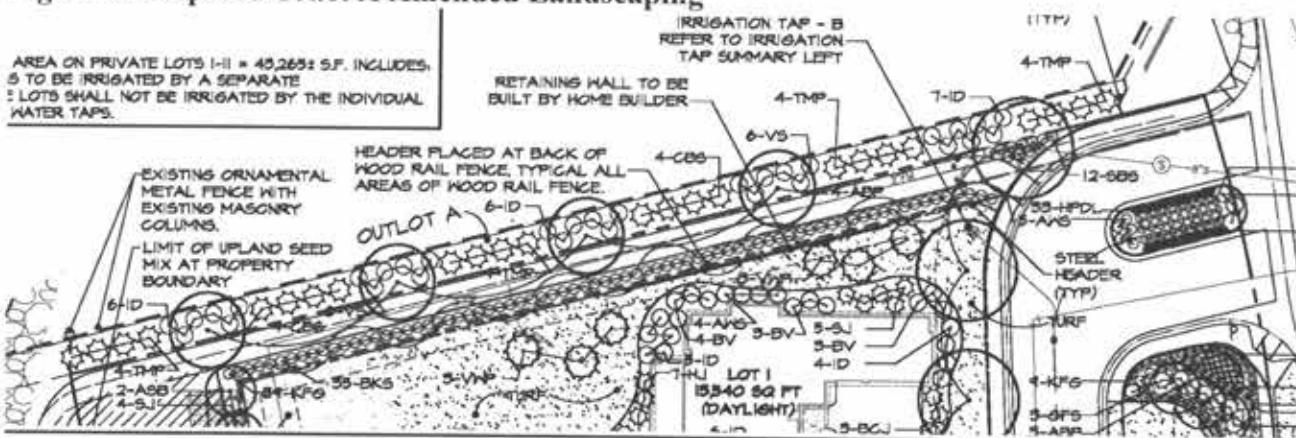
The responsibilities for installing off-site landscaping in Tract A of Mariana Butte Ninth Subdivision was set forth in the approved PDP for Mariana Butte 23rd as well as in a private agreement between the Homeowners Association, the developer (B & B I, LLC) and George and Coleen Ligotke, the property owners of Lot 9 (see **Attachment 10** to the August 22, 2011 Planning Commission staff report, **Exhibit G**). In 2007, the developer requested that the off-site landscaping be removed from the PDP, as the driveway access to Lot 9 through the Mariana Butte 23rd development was being removed. The request for the landscape removal went through an appeal process with the final determination made by City Council to require the landscaping to be installed by the developer.

Figure 2. Approved Tract A Landscaping



With the proposed PDP Amendment, the developer would still install off-site landscaping in Tract A (shown as Outlot A in Figure 3 below). The plantings however are proposed to be modified within this Tract to provide for a continuous landscape screen using coniferous spruces and pines. The plant species have also been adjusted to insure that appropriate species are selected that would result in a compact, columnar appearance which would not encroach into the 8-foot wide pedestrian path to Buckingham Reservoir. The width of the planting area was reduced to 10 feet from the previous 10 to 15-foot width shown in the original PDP. The 10-foot width corresponds to the actual width of Tract A.

Figure 3. Proposed Tract A Amended Landscaping



D. Council Action

As previously stated, the City Council public hearing represents a new, *de novo*, hearing where new testimony can be provided. At the conclusion of the hearing, City Council can deny the application in accordance with the Planning Commission's recommendation, approve the application as originally recommended by City staff or direct staff to prepare written findings and conclusions setting forth Council's decision for consideration and adoption within 30 days of the appeal hearing.

Exhibit A

Appeal letter from applicant dated September 15, 2011



September 15, 2011

Project No.

Ms. Kerri Burchett, AICP
 Principal Planner
 City of Loveland
 500 E. 3rd Street, Suite 200
 Loveland, CO 80537

RECEIVED
 10/18/2011
 10/18/2011

**RE: Mariana Butte 23rd PUD First Amendment and 26th Subdivision; Request to appeal
 Planning Commission's decision of August 22, 2011**

Dear Ms. Burchett and City Attorney:

Enclosed, please find our written request to appeal the Planning Commission's August 22, 2011 decision which denied the proposed Mariana Butte 23 First Amendment. This request for an appeal is being made on behalf of the applicant B&BI LLC in a effort to scheduled a full "de novo" public appeal hearing before the City Council in accordance with Chapter 18.80 of the City's Municipal Code. This request for an appeal is being made within the allowed ten (10) day appeal period provided by the code. If the City were to grant our request for an appeal to City Council I would ask that we be scheduled for the public hearing no sooner than December 6th 2011 because of a personal conflict that exists in my schedule that will not allow me to attend a hearing any earlier than this date.

Project Summary:

On August 22, 2011, the Planning Commission considered the application from B&BI, LLC for approval of an Amendment to the Mariana Butte 23rd Subdivision Preliminary Development Plan (PDP) and a Preliminary Plat for Mariana Butte 26th Subdivision. The Amended PDP proposed to develop 11 Single Family Residential Dwelling Units built upon a total of 5.03 acres of property with an overall density of 2.19 Dwelling Units per Acre (Du's/Ac.). The development proposal includes one (1) detached single family unit and ten (10) paired units and was reviewed in light of the intent and objectives of Chapter 18.41 of the Loveland Municipal Code, and more specifically the Findings set forth in Sections 18.41.050.E.2.a-c. The Planning Commission determined that the Amended PDP did not satisfy the required Findings in Sections 18.41.050.D.4.b and c of the Municipal Code and therefore denied the requested Amendment. The Commission took no action on the preliminary plat as it could not be approved since the Amended PDP was not approved.

Findings cited by Planning Commission as a bases for denial, made at the August 22, 2011 Hearing:

The following two Findings set forth below were identified by the Planning Commission in determining that the requirements of Section 18.41.050.E.2 of the Loveland Municipal Code were not met. These Findings were set forth in the Staff Report dated August 22, 2011 and were cited as a bases for denial but no specifics were provided by Planning Commission at the time of the hearing.

EXHIBIT A

September 15, 2011

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City of Loveland

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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 within sufficient proximity to the proposed development to be affected by it.

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:

- a.** Incorporating natural physical features into the PDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.
- b.** Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan
- c.** 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.
- d.** 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.

Specific Findings for denial later approved by Planning Commission at the September 12, 2011 Hearing:

1. "That the character of the area adjacent to Buckingham Reservoir in which the development proposed by the Amended PDP is located, presents unique building opportunities and substantial investments to property have been made by the property owners. Development proposed by the Amended PDP will have detrimental impacts on property in proximity to the development proposed by the Amended PDP and will create negative impacts on the surrounding property due to the density proposed in the Amended PDP."
2. "That the proposed development of 11 residential lots on the site as set forth in the Amended PDP will not be complementary to and in harmony with the existing development and future development plans for the area around the Reservoir, in which the development proposed by the Amended PDP is located, due to the density proposed in the Amended PDP."

Appellant's response to Findings made by Planning Commission:

The following information summarizes the appellant's (B&B1 LLC) objections to the Planning Commission decision of August 22, 2011. The appellant asserts that the Planning Commission in making their decision both misinterpreted and misapplied the requirements of Section 18.41.050.D.4 b-c of the Loveland Municipal Code in making Findings for the denial of the Mariana Butte 23rd PUD First Amendment. Therefore we respectfully request an Appeal of the Planning Commissions decision to City Council for further consideration at a new "de novo" Public Hearing. The basis for our appeal request is as follows:

1. The subject property is governed by the Mariana Butte General Development Plan (MB GDP) which identifies the property as being zoned for the following allowed uses: Office/Commercial, Retail and Mixed Residential. The MB GDP intended this parcel of property to serve as a transitional land use for the more intense activity which exists at the intersection of West 1st Street and Rossum

September 15, 2011

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Drive. The property shall serve as a land use buffer between the more intense activity of the arterial and collector road intersection and provides for an orderly transition to less dense residential development which lies north and east of the subject property. The appellant has accomplished the land use buffering contemplated by the MB GDP by utilizing the least impacting and most compatible of all the allowed GDP zoning uses, Single Family Residential. Given the extensive lot and building setbacks employed throughout our design as well as the landscape buffers provided along West 1st Street, Rossum Drive and Buckingham Lake, the proposed detached and attached single family residential development shall serve as a suitable transitional land use providing a substantial buffer to the existing surrounding residential uses as originally intended by the MB GDP and while also providing a high quality residential development for the future residents of the Mariana Butte 23rd PUD.

2. The proposed development which includes a total of eleven (11) residential units, one (1) detached and ten (10) attached single family homes is consistent with the development of other surrounding properties within the area. More than 140 single family detached patio homes and attached homes (53 patio homes & 89 attached homes) can be found within very close proximity to the Mariana Butte 23rd property. Detached patio homes and two/three unit attached single family homes exist all along the north side of Rossum Drive from Foothills Drive to Deer Meadow Drive as well as along the western perimeter of Buckingham Lake. City code does not make a determination of compatibility based on detached or attached single family uses, building square footage, nor does it attempt to define compatibility based on lot size or home pricing. Thus Planning Commission's Finding that states "*That the proposed development of 11 residential lots on the site as set forth in the Amended PDP will not be complementary to and in harmony with the existing development and future development plans for the area around the Reservoir*" is factually incorrect and is a Finding that can not be supported based on the product type and uses which currently exist.

3. The density of the proposed Mariana Butte 23rd PUD First Amendment is 2.19 dwelling units per acre and is consistent and compatible with the densities of all but one of the surrounding development parcels within close proximity to the site. Planning Commissions determined in their Findings that the proposed density or MB 23rd was incompatible with the surrounding property and creates negative impacts. It is our opinion that Planning Commission based their finding solely upon the evaluation of density relative to the development directly north of MB 23rd. Planning Commission in their decision neglected to fully consider compatible densities relative to the other existing developments which are in close proximity to the site as well. A review of the surrounding densities demonstrates that the density of MB 23rd which is 2.19 Du's/Ac. is consistent with and less dense than development east of Rossum Drive which is 3.35 Du's/Ac. MB 23rd is also much less dense than the existing residential densities north of Rossum Drive between Foothills Drive and Deer Meadow Drive which range from 4.3 Du's/Ac. to 6.6 Du's/Ac. and is also much less dense than the paired residential development along the west side of Buckingham Lake which is 9.5 Du's/Ac. The only reasonable finding that can be made is that the property directly north MB 23rd known as Mariana Butte 9th PUD which is comprised entirely of large lot single family residential estate homes with a density of 1.25 Du's/Ac. is in fact the only development parcel where the density is inconsistent with all other developments within the area. With the exception of the paired homes now being built on the west side of Buckingham Lake all the surrounding development parcels were built or under substantial construction prior to any homes being built within the MB 9th PUD. That being said the large lot estate homes located along the south side of Rossum Drive were built with the home owner's full knowledge and awareness of the existing higher density attached homes in the area. Additionally these same home owners were aware or should have been aware of the potential

September 15, 2011

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for additional higher density attached homes or commercial uses possibly being built on other vacant land in close proximity to their property as well.

4. Buckingham Lake is owned by the City of Loveland and when the Mariana Butte General Development Plan was crafted by the original land owners in collaboration the City it was conceived that future development around the lakes perimeter would include a variety of land uses and should not be limited to only large lot estate residential properties. This was encouraged by the very "tenants" of the GDP which identified a mix of land such as large lot estate single family, detached and attached residential, commercial and/or office uses as well as a golf course maintenance facility. This mix of land uses has been encouraged since 1984 when the original Master Plan was developed. Planning Commission's decision to reject our proposed development is inconsistent with the Commission's past decisions approving a variety of uses along the Buckingham Lake shore. Additionally their decision is in conflict with the Mariana Butte GDP which provides for a mix of residential uses and intended this parcel of land to serve as a transitional land use and buffering element for the other interior development parcels. The review of this last remaining development parcel within Mariana Butte should not be allowed to compromise the goals and objectives of the MB GDP or be made substantially more difficult to approve simply because existing development surrounds the property. The City and the original land owners of Mariana Butte who planned the property long ago understood that the privileges of living adjacent to Buckingham Lake which allows for unrestricted views to the mountains and close proximity to a valuable natural resource should not be limited only to those few who wish to live within a large lot estate home community but should be made available to a wide variety of different housing types and styles as well.

5. The preservation and stewardship of the Buckingham Lake Shore and its valuable natural habitat and wetlands are a key design objective of the proposed MB 23rd development. Great care has been taken to provide ample separation and buffering from the proposed eleven (11) residential properties to the lake shore and wetlands. Our approach in designing this site is a vast improvement over what has occurred along much of the Buckingham Lake shore to date. Presently many of the residential properties have been allowed to extend right up to the waters edge thus compromising the integrity of the lake edge and adjacent natural habitat area. The Finding made by Planning Commission which states that the proposed MB 23rd development presents unique building opportunities is absolutely correct however stating that it will have a detrimental and negative impacts on property in proximity to the development is an unsupportable Finding. The design approach taken with MB 23rd provides for ample separation and buffering to adjacent residential properties the lake edge and the preservation of the existing wetlands. Additionally significant landscape buffers and setback have been provided along West 1st Street and Rossum Drive in order to provide a high quality entry experience and streetscape as seen from the public ROW. The MB 23rd PUD is a development that will enhance the "Gate-Way" to the Mariana Butte development and Golf Course and will not create negative or detrimental impacts for the community as suggested by the Planning Commission's Findings. MB 23rd will ensure the preservation and integrity of the lake shore and wetlands while allowing its home owner to enjoy the diverse habitat and natural area provide along the Buckingham Lake shore.

In conclusion the appellant can find no such evidence or finding made by Planning Commission that supports and upholds the claim that the proposed MB 23rd PUD First Amendment as designed and submitted will create a detrimental or negative impact to existing properties in proximity to the site. The proposed development complies with and in many cases exceeds the required site development and engineering criteria set forth by the City's development review code and standards. The proposed use is consistent with the intent and zoning allowed by the MB GDP and the proposed development is similar

September 15, 2011

Project No.

City of Loveland

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in land use and residential product type to other developments in close proximity to the site. Additionally it is consistent in overall density, lot size, general building layout, setbacks and overall architectural character and building materials of those properties surrounding the MB 23rd development as well as many of the developments along the Buckingham Lake shore.

Thank you for your consideration of our Request for Appeal and I look forward to your favorable consideration.

Respectfully,
Landmark Engineering Ltd.



Ken Merritt, RLA, APA
Senior Vice President, Owner

EXHIBIT B

Planning Commission Resolution and Findings and Determination
staff report dated September 12, 2011 (denying approval)



Development Services Current Planning

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Planning Commission Staff Report

September 12, 2011

Agenda #: Regular Agenda - 1

Title: Mariana Butte 23rd Subdivision PUD PDP Amendment and Mariana Butte 26th Subdivision Findings and Conclusions

Request: Adoption of Findings and Conclusions from the August 22, 2011 public hearing

Location: Generally located at the northwest corner of Rossum Drive and West 1st Street

Staff Planner: Kerri Burchett

Staff Recommendation

City staff recommends the following motion:

Recommended Motions:

1. *Move to approve Resolution #11-01 thereby denying the First Amendment to the Mariana Butte 23rd Subdivision PUD Preliminary Development Plan and Mariana Butte 26th Subdivision preliminary plat.*

Summary

On August 22, 2011, the Planning Commission considered the application from B&BI, LLC for approval of an Amendment to the Mariana Butte 23rd Subdivision Preliminary Development Plan (PDP) and a preliminary plat for Mariana Butte 26th Subdivision. The Amended PDP was reviewed in light of the intent and objectives of Chapter 18.41 of the Loveland Municipal Code, and more specifically the Findings set forth in Sections 18.41.050.E.2.a-c. The Commission determined that the Amended PDP did not satisfy the required Findings in Sections 18.41.050.D.4.b and c of the Municipal Code and therefore denied the requested Amendment. The Commission took no action on the preliminary plat as it could not be approved since the Amended PDP was not approved, but did indicate that the preliminary plat did not satisfy the required Finding in Code Section 16.20.030.A.

Section 18.41.050.E.3.a of the Municipal Code requires the Planning Commission to issue findings and conclusions in support of their decision within thirty days of the public hearing. After the Commission adopts its written findings and conclusions, a ten day appeal period occurs in which the applicant or any party-in-interest as defined in Chapter 18.80, may file a written notice of appeal. If an appeal is received, the application will be scheduled for a full public hearing, *de novo*, with the City Council in accordance with Chapter 18.80.

I. ATTACHMENTS

1. Resolution #11-01

II. PROJECT DESCRIPTION

On August 22, 2011, the Planning Commission considered an amendment to the Mariana Butte 23rd Subdivision Preliminary Development Plan (Amended PDP) and a Preliminary Plat for the Mariana Butte 26th Subdivision as a joint application under Code Section 18.41.080. The property is located at the northwest corner of West 1st Street and Rossum Drive, within the Mariana Butte Planned Unit Development. The Amended PDP proposed to increase the number of residential dwellings within the development to 11 units and modify the product type to allow for single family paired units. The Commission considered the Amended PDP in light of the intent and objectives of Chapter 18.41 of the Loveland Municipal Code, and more specifically the Findings set forth in Sections 18.41.050.E.2.a-c.

At the conclusion of the public hearing, the Planning Commission determined that the Amended PDP did not satisfy the required Findings in Sections 18.41.050.D.4.b and c of the Municipal Code (see Findings below). The Commission denied the requested Amendment and took no action on the Preliminary Plat, since the applications were considered concurrently as a joint application under Code Section 18.41.080 and a denial of approval of the Amended PDP results in denial of the Preliminary Plat. The Commission noted, however, that the Preliminary Plat also did not meet the requirements of Code Section 16.020.030.A that the subdivision not create, or mitigates to the extent possible, negative impacts on the surrounding property.

III. FINDINGS

The following Findings and reasons set forth below were identified by the Planning Commission in determining that the requirements of Section 18.41.050.E.2 of the Loveland Municipal Code were not met. These Findings are set forth in Findings C.3. and C.5, respectively, of the Staff Report dated August 22, 2011.

1. **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.*
2. **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:*
 - a. *Incorporating natural physical features into the PDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.*
 - b. *Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan.*
 - c. *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.

d. *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 Planning Commission finds that the character of the area adjacent to Buckingham Reservoir in which the development proposed by the Amended PDP is located, presents unique building opportunities and substantial investments to property have been made by the property owners. Development proposed by the Amended PDP will have detrimental impacts on property in proximity to the development proposed by the Amended PDP and will create negative impacts on the surrounding property due to the density proposed in the Amended PDP.

The Planning Commission further finds that the proposed development of 11 residential lots on the site as set forth in the Amended PDP will not be complementary to and in harmony with the existing development and future development plans for the area around the Reservoir, in which the development proposed by the Amended PDP is located, due to the density proposed in the Amended PDP.

Although the Preliminary Plat could not be approved independent of the Amended PDP under Code Section 18.41.080.A, the Commission also found that the Preliminary Plat did not meet the requirements of Code Section 16.20.030.A (set forth as Finding C.4 of the Staff Report) that the *“subdivision does not create, or mitigates to the extent possible, negative impacts on the surrounding property.”*

The Planning Commission finds that the character of the area adjacent to Buckingham Reservoir in which the subdivision proposed by the Preliminary Plat is located presents unique building opportunities and substantial investments to property have been made by the property owners. The subdivision proposed by the Preliminary Plat will have negative impacts on the surrounding property due to the density proposed in the Preliminary Plat.

IV. PROCESS

Section 18.41.050.E.3.a of the Municipal Code requires the Planning Commission to issue findings and conclusions in support of their decision within thirty days of the public hearing. The resolution included as **Attachment 1** serves as the findings and conclusions. Upon approval of the resolution, a ten day appeal period will begin in which the applicant or any party-in-interest as defined in Chapter 18.80, may file a written notice of appeal. If an appeal is received, the application will be scheduled for a new full public hearing, *de novo*, with the City Council in accordance with Chapter 18.80.

RESOLUTION #11-01 PDP

A RESOLUTION DENYING APPROVAL OF AN AMENDMENT TO A PRELIMINARY PUD DEVELOPMENT PLAN 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 PUD Development Plan for PUD #P-8, for Tract A Mariana Butte PUD, Tenth Subdivision,; and

WHEREAS, a proposed Amendment to the Preliminary PUD 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", has been 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 has also been 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 well as all necessary 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 Commission has 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 has determined that the Amended PDP does not satisfy these factors and must be denied; and

WHEREAS, the Commission took no action on the Preliminary Plat as it cannot be approved since the Amended PDP is not approved.

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

**ATTACHMENT 1
EXHIBIT B**

Section 1. That the Amended PDP is for 5.3 acres, more or less, being a 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 Amended PDP does not, for the reasons set forth below, meet the requirements of Code Section 18.41.050.E.2, and more specifically the following factors set forth in Sections 18.41.050.D.4.b and c (which are set forth in Findings C3. and C.5, respectively, of the Staff Report):

- 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:*
 - a. *Incorporating natural physical features into the PDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.*
 - b. *Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan.*
 - c. *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.*
 - d. *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 Planning Commission finds that the character of the area adjacent to Buckingham Reservoir in which the development proposed by the Amended PDP is located, presents unique building opportunities and substantial investments to property have been made by the property owners. Development proposed by the Amended PDP will have detrimental impacts on property in close proximity to the development proposed by the Amended PDP and will create negative impacts on the surrounding property due to the density proposed in the Amended PDP.

The Planning Commission further finds that the proposed development of 11 residential lots on the site as set forth in the Amended PDP will not be complementary to and in harmony with the existing development and future development plans for the area around the Reservoir, in which

the development proposed by the Amended PDP is located, due to the density proposed in the Amended PDP.

Section 3. That the application for approval of the Amended PDP is therefore denied.

Section 4. That since the applications for the Amended PDP and the Preliminary Plat were considered as a joint application under Code Section 18.41.080, the Planning Commission's denial of the application for approval of the Amended PDP is also a denial of the application for approval of the Preliminary Plat under Code Section 18.41.080.A.

Section 5. That the Preliminary Plat also does not meet the requirement set forth in Code Section 16.20.030.A (which is set forth in Finding C.4 of the Staff Report) that the "*subdivision does not create, or mitigates to the extent possible, negative impacts on the surrounding property.*" for the following reasons:

The Planning Commission finds that the character of the area adjacent to Buckingham Reservoir in which the subdivision proposed by the Preliminary Plat is located, presents unique building opportunities and substantial investments to property have been made by the property owners. The subdivision proposed by the Preliminary Plat will have negative impacts on the surrounding property which are not sufficiently mitigated, due to the density proposed in the Preliminary Plat.

Section 6. That as of the date set forth below, this Resolution shall constitute the final decision and the written findings and conclusions of the Planning Commission with respect to the application for approval of the Amended PDP and Preliminary Plat pursuant to Code Section 18.41.050.E.3. Any party in interest as defined in Chapter 18.80 of the Loveland Municipal Code may file a written notice of appeal conforming to the requirements of Code Section 18.41.030 with the City of Loveland Planning Division within ten (10) days of the date of this Resolution.

Dated this 12th day of September, 2011.

CITY OF LOVELAND PLANNING COMMISSION

By:

Rob Molloy, Planning Commission Chair

ATTEST:

Planning Commission Secretary

APPROVED AS TO FORM:

Jeff Crimckett
Deputy City Attorney

EXHIBIT C

Letters and information received after the Planning Commission hearing, including:

1. Applicant's Presentation Summary
2. Rick Ellinger, received October 23, 2011
3. Connie Boose, received August 25, 2011
4. Don Riedel, dated November 29, 2011
5. Darlene Kasenberg, dated November 29, 2011
6. George and Coleen Ligotke, dated November 29, 2011

APPLICANT'S PRESENTATION SUMMARY

I. Nature of Proceeding

This is an appeal by the applicant, B & BI, LLC, of the findings and recommendation of the Loveland Planning Commission ("Commission"), based upon the Commission's interpretation and application of § 18.41.050 of the Loveland Municipal Code. The Commission, based upon its understanding of the requirements stated in § 18.41.050.D.4.b and c, made a recommendation of denial of B & BI, LLC's proposed Mariana Butte 23rd Subdivision PUD First Amendment ("Amendment"). We will show why the recommendation should not be accepted and why City Council should approve the Amendment. Ken Merritt, RLA, APA of Landmark Engineering, Ltd. will be the primary presenter.

II. Legal Standard

Under § 18.41.050.D.6, City Council is required to consider the same factors the Planning Division used in determining that the Amendment should be approved. Attached as Exhibit A are relevant pages from the Planning Division's findings and recommendation of approval, presented in the August 22, 2011, Planning Commission Staff Report.

We will show that the Planning Division properly interpreted and applied the factors stated in § 18.41.050.D.4 in making its recommendation of approval, and that the Commission incorrectly interpreted and applied those factors in making its recommendation of denial. In fact, the Commission, likely influenced by the loud objections of some owners of adjacent lots at the August 22, 2011 public hearing, in a split decision, made a recommendation of denial without first providing any articulated application of the § 18.41.050.D.4 factors. It was not until 21 days after the August 22 hearing, that the Commission issued its findings and recommendation. A copy of the Commission's findings and recommendation, as reported in the September 12, 2011 Planning Commission Staff Report, is attached as Exhibit B.

III. Guidelines for Interpreting and Applying § 18.41.050.D.4

A proper interpretation and application of § 18.41.050.D.4, like any ordinance, begins with a recognition that any interpretation and application must comply with certain basic rules, which include the following:

- A. Ordinances should be interpreted and applied to produce uniform results.
- B. An interpretation or application that is inconsistent with prior agency actions should not be accepted or afforded deference. But an interpretation that is consistent with prior agency actions and decisions, when reasonable, is persuasive.
- C. The application and decision should be supported by competent evidence and should not be arbitrary, meaning that the decision is not one that is based on individual preference

or convenience rather than the intrinsic nature of the issue. Nor should the decision be capricious, meaning there is no cognitive relationship between fact and conclusion, or whimsical, meaning that it is impulsively obtained and incapable of being predicted.

IV. Interpreting and Applying Section 18.41.050 D.4.b

A. There is no dispute that the Amendment satisfies 18.41.050.D.a, being “the general development plan conforms to the requirements of this Chapter [Chapter 18.41], to the city’s master plans, and to any applicable area plan.”

B. Two members of the Commission disagreed with the Planning Division’s finding that the approval of the Amendment would not have a “detrimental impact on property that is in sufficient proximity to the proposed development.” We, therefore, will address the issue of detrimental impact, as prior City Councils have applied the term and show that approval of the Amendment does not have a detrimental impact on property that is in proximity to the subject lots.

C. What does “detrimental impact” mean?

Many property uses could be said to have a detrimental impact on a neighboring property. Every neighbor could complain that my neighbor’s use detrimentally impacts my use, arguing that it decreases the value of my property, it is visually unappealing, it is not like my property or I just do not like it. It is understandable that a neighboring owner would object, and quite loudly, to a use they personally did not like. But detrimental impact cannot be interpreted based upon whether a neighboring owner objects, or how loud they object. If that were the definition, then the result would be arbitrary and capricious.

Detrimental impact cannot be a matter of individual preference. Rather, the language must be applied in a manner that is uniform and consistent with prior determinations by City Council. The language cannot be applied in a manner that is different from the manner that prior City Councils applied the language when they approved other development plans in the area. It would be unfair and unjust to impose a different standard on the Amendment than prior City Councils followed in approving prior development plans within the same area.

The Commission said the Amendment would have a detrimental impact because, “the area adjacent to Buckingham Reservoir...presents unique building opportunities and substantial investments to property have been made by the property owners.” The Commission also said the Amendment will create “negative impacts on the surrounding property due to the density proposed in the Amended PDP.” What we request City Council to do is to juxtapose these findings against the undisputed facts as demonstrated by prior City Council actions.

If the area adjacent to Buckingham Reservoir presents a unique building opportunity then it must be evidenced by what uses have been previously approved adjacent to Buckingham

Reservoir. Mr. Merritt will show that the Amendment is uniform and consistent with prior approved uses adjacent to Buckingham Reservoir.

Likewise, if the proposed density creates a negative impact, then it must be evidenced with respect to the density of prior development plans approved in the area. As the area where the Amendment is located consists of varying approved densities, one has to consider the mean or average density in the area, to determine if the density proposed in the Amendment is uniform and consistent with the densities approved for surrounding areas. Mr. Merritt will show that it does.

An application that is predictable is one that is based upon logical reasoning, rather than emotional appeal. It is simple logic that if $A = B$ and $B = C$, then A must also = C . This basic principle can be easily applied to analyze the compatibility of the density proposed in the Amendment with the densities of developments within proximity to the subject lots. Mr. Merritt will show by the actions of prior City Councils that Marianna Butte 9th and 10th developments were approved even though the proposed density for the estate lots was much lower than the densities that had been approved for several subdivisions that were in proximity to the proposed Marianna Butte 9th and 10th developments.

By prior City Council actions, it was determined that the lower densities in Marianna Butte 9th and 10th were compatible with the higher densities of the lots in proximity to Marianna Butte 9th and 10th. Further, the City Council had to determine that the lower densities of Marianna Butte 9th and 10th were compatible with the future development of the subject lots, as shown on the Marianna Butte Amended General Development Plan, copies of which are attached as Exhibit C.

If the lower densities in Marianna Butte 9th and 10th are compatible with the higher densities of the surrounding developments, then, by definition, the density proposed in the Marianna Butte 23rd First Amendment is also compatible, as long as the density is no greater than the densities in the approved surrounding developments. Mr. Merritt will show this in the case. We have included copies of the Development Context Map and Marianna Butte 23rd First Amendment, Preliminary PUD Site Plan in Exhibit D to illustrate this point.

What we propose is a uniform interpretation and application of “detrimental impact” that is not whimsical, but rather is consistent with prior City Council actions, which allows for predictable outcomes upon which developers can rely. No one has the right to claim their neighbor should not have the right to develop their property in a manner that is consistent with a master plan then in effect. Rather, that person should be deemed to have purchased their property with the knowledge and reasonable expectation that the adjacent property could be developed at a density and use that is allowed by the master plan. Mr. Merritt will show that the Amendment proposes a use that is not only allowed by, but is less intense than, the uses allowed in the Amended General Development Plan.

V. Section 18.41.050.D.4.c

This section, although cited by the Commission, addresses the particular architectural and design features that make a development complementary to and in harmony with surrounding uses. The limiting language “by” before subparagraphs (i) through (vii) indicates that the determinations of “harmony” and “compatibility” are measured by reference to the design features stated in subparagraphs (i) through (vii). The section is not intended to allow for a whimsical, individualized determination of what is harmonious or compatible with surrounding uses, and certainly does not relate to density as the Commission applied the section. Mr. Merritt will demonstrate how the Amendment addresses and satisfies each of the seven requirements stated in this section.

VI Conclusion

As will be demonstrated at the December 6 hearing, the Amendment satisfies all of the requirements of § 10.41.050.D. Accordingly, B & BI, LLC requests City Council to approve the Amendment.

EXHIBIT A

Exhibit A are relevant pages from the Planning Division's findings and recommendation of approval, presented in the August 22, 2011, Planning Commission Staff Report.



**Development Services
Current Planning**

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Planning Commission Staff Report

August 22, 2011

Agenda #: Regular Agenda - 1

Title: Mariana Butte 23rd Subdivision
PUD PDP Amendment and
Mariana Butte 26th Subdivision

Applicant: B&B I, LLC

Request: Preliminary Development Plan
Amendment and Preliminary Plat

Location: Generally located at the northwest
corner of Rossum Drive and West 1st
Street

Existing Zoning: Planned Unit Development

Staff Planner: Kerri Burchett

Staff Recommendation

Subject to additional evidence presented at the public
hearing, City staff recommends the following motions:

Recommended Motions:

1. *Move to make the findings listed in Section VIII of this report dated August 22, 2011 and, based on those findings, approve Resolution #11-01 thereby approving the First Amendment to the Mariana Butte 23rd Subdivision PUD Preliminary Development Plan subject to the conditions listed in said report, as amended on the record, and*
2. *Move to make the findings listed in Section VIII of this report dated August 22, 2011 and, based on those findings, approve the Mariana Butte 26th Subdivision subject to the conditions listed in said report, as amended on the record.*

Summary of Analysis

This is a public hearing item to consider an amendment to the Mariana Butte 23rd PUD Preliminary Development Plan (PDP) and a preliminary plat for Mariana Butte 26th Subdivision. The PUD Amendment requests to modify the number of units approved on the site from 5 single family dwellings to 11 dwellings; consisting of 1 single family detached dwelling and 10 single family paired units. The preliminary plat would create 11 residential lots along with associated outlots for landscaping and bufferyards. The PDP Amendment complies with the General Development Plan for Mariana Butte PUD, which permits a variety of office/commercial, retail and mixed residential uses within the parcel.

Staff believes that all key issues have been resolved based on City Code and standards contained in the PUD. Neighborhood residents have indicated concerns with the density, traffic, building materials, parking, landscaping and overall compatibility of the development. In response to the comments received at the neighborhood meeting, the applicant has eliminated 1 dwelling unit, redesigned the northern portion of the project to provide a single family detached dwelling adjacent to the single family subdivision to the north and modified the landscaping between the property and the vacant residential lot to the north to provide a more continuous landscape screen of pines and spruces.

generate an additional 67 daily trips, 5 weekday AM peak hour trips, and 7 weekday PM peak hour trips (**Attachment 6**).

In conclusion, the development of the subject property pursuant to the uses proposed in the PDP Amendment will not adversely impact any existing City infrastructure. A positive determination of adequacy for transportation facilities for the proposed PDP Amendment has been made under the provisions of paragraph i, above.

C. Land Use

1. Loveland Comprehensive Master Plan

a. Section 4.1 -Growth Management Plan

- (iii) *Whether the PDP discourages leapfrog, scattered-site, and flagpole development.*
- (iv) *Whether the PDP encourages infill development.*
- (vi) *Whether the PDP is contiguous to other land that is already receiving public services.*
- (vii) *Whether the PDP is at least 1/6 contiguous with existing development, as defined in Section 4.1 GM:3(D-1) of the Comprehensive Master Plan.*

2. Section 18.41.050.E.2:

- a. *The PDP conforms to the intent and objectives of Title 18 with regard to Planned Unit Developments and any applicable area plan.*
- b. *The PDP is in compliance with the GDP on file with the City.*

Current Planning Division: Staff believes that this finding can be met due to the following:

- The property has received approval of a preliminary and final development plan. This application is for an amendment to the PDP. Findings related to growth management policies are not applicable to the amendment request.
- The Preliminary Development Plan Amendment is part of the overall Mariana Butte PUD and is in substantial compliance with the Mariana Butte General Development Plan, as demonstrated in Table 1 of this report. The project site is within an area zoned for "mixed residential", which permits a variety of residential product types including single family detached and single family paired dwellings.
- The Mariana Butte GDP does not include a limitation on residential density or a maximum number of units within the subject site.
- The design standards proposed in the PDP Amendment, including building materials, roofing and setbacks, are in compliance with the design standards established in the GDP (see Table 1 in this report).

3. **Section 18.41.050.E.2:** *Development permitted by the PDP will not have detrimental impacts on property that is in sufficient proximity to the PDP to be affected by it. If such impacts exist, Section 18.41.050.D.4(b) of the Loveland Municipal Code requires City staff recommend either disapproval of the PDP or reasonable conditions designed to mitigate the negative impacts.*

4. **Section 16.20.030:** *The subdivision does not create, or mitigates to the extent possible, negative impacts on the surrounding property.*

Current Planning: Staff believes that this finding can be met due to the following:

- The proposed development will not negatively impact traffic in the area, city utilities, or surrounding properties. Traffic volumes for the proposed development, which includes 11 single family residential lots, comply with the City's level of service standards. Adequate utilities can be provided meeting City adopted levels of service.
- The proposed development is compatible with the nature of existing development within the Mariana Butte PUD, which includes a variety of residential lot sizes, densities and product types. While lots around the lake edge of Buckingham Reservoir are larger in size, ranging from approximately 21,500 square feet to 43,000 square feet (average of 29,600 square feet), a variety of small lot sizes are provided throughout the development, based on product type. Single family detached lots directly across Rossum Drive in Mariana Butte 7th Subdivision range from 6,600 to 12,000 square feet. In other areas of the PUD paired structures are situated on lot sizes of 2,600 square feet. The PUD represents a wide range of diverse lots sizes to accommodate different product types and choices for residents.
- The proposed building materials of hardboard siding and asphalt shingles comply with the approved materials in both the GDP and original PDP. The building materials are also consistent with the materials of residential structures on the east side of Rossum Drive.
- To increase the compatibility of the development and as a result of neighborhood comments, a single family detached dwelling is proposed to serve as a transition from the large lot single family uses to the north. The proposed structure would be placed on a 13,500 square foot lot with significant landscaping buffering installed.
- The applicant is installing off-site landscaping that consists of a variety of coniferous trees in Tract A of Mariana Butte Ninth Subdivision. The plantings will create a landscaped screen effect between the development and the existing subdivision to the north.

5. *Section 18.41.050.E.2: Development permitted by the PDP will be complementary to and in harmony with existing development and future development plans for the area in which the PDP is located by:*

- a. *Incorporating natural physical features into the PDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.*
- b. *Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan.*
- c. *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.*
- d. *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.*

6. **Section 16.20.030:** *The subdivision provides desirable settings for buildings, protects views, and affords privacy, protect from noise and traffic, and uses resources such as energy and water in keeping with responsible resource stewardship.*

Current Planning Division: Staff believes that this finding can be met due to the following:

- The project site is currently vacant with an existing jurisdictional wetland area. No modification to the enhancement or preservation of the wetland area is proposed with the PDP Amendment.
- Access to the 11 lots will be via an extension of Scenic Drive, across Rossum Drive ending in a cul-de-sac (named Scenic Court). Scenic Court is proposed to incorporate a 5-foot attached walk adjacent to the residential lots, which will connect to the detached sidewalk along Rossum Drive.
- To accommodate bike traffic, Rossum Drive was constructed with seven foot bike lanes on each side of the roadway. In addition, an 8-foot wide concrete pedestrian walkway will be constructed connecting the sidewalk along Rossum Drive to the path around Buckingham Lake.
- The lot layouts, building orientation and landscaping proposed in the Amendment will provide an overall varied and attractive streetscape, consistent with the streetscape in the PUD.
- The PDP Amendment contains architectural requirements that would create compatible relationships with surrounding developments within the Mariana Butte PUD. The design of the structures resemble a craftsman style with at least 25% masonry on the front elevations. In terms of garage orientation, of the 11 dwellings, 4 contain side loaded garages, 5 have garages generally flush with a front porch element and 2 units have forward facing garages with a 42-inch courtyard wall to lessen the protrusion of the garage. Proposed colors for the new residences will generally be subdued to blend with the colors of the natural landscape with no two adjacent paired structures painted the same color.

 7. **Section 18.41.050.E.2:** *The PDP complies with applicable land use and development regulations in effect as of the date that the GDP was approved and any land use and development regulations adopted by the City after that date if the Planning Division and Planning Commission expressly find that compliance with such regulations is necessary to protect public health, safety, and welfare.*

Current Planning Division: Staff believes that this finding can be met due to the following:

- The Amendment to the PDP meets both the intent and objectives of Chapter 18.41. This determination is based upon compliance with the zoning standards established in the Mariana Butte GDP, including use, density, setbacks and building materials (see Table 1 in this report).

8. **Section 16.20.030:** *The lots and tracts are laid out to allow efficient use of the property to be platted.*

9. **Section 16.24.050:** *All lots comply with the standards set forth in the GDP and, to the extent practical, lot lines are at right angles to the street line or at right angles to the tangent of the curve of the street line.*

Current Planning Division: Staff believes that this finding can be met due to the following:

- Lots and tracts are laid out to allow an efficient use of the property. Given the shape of the parcel and natural constraints of the jurisdictional wetland, lot lines have been designed to incorporate right angles relative to the street line of Scenic Court and the private drive in Outlot B, to the maximum extent practicable.

10. **Section 16.24.120:**

- a. *Landscaping complies with the requirements set forth in the GDP and bufferyards required pursuant to the GDP are within separate tracts of land, separate from individual residential lots.*
- b. *Street trees are located in compliance with the City's Site Development Performance Standards and guidelines, unless waived by the Director.*
- c. *The subdivision plat includes open space fields in compliance with the requirements set forth in Section 16.24.150, unless waived by the Planning Commission. The open space play fields are designed with respect to size, dimension, topography, and general character to be suitable for outdoor play activities*

Current Planning Division: Staff believes that this finding can be met due to the following:

- Landscaping will comply with the requirements set forth in the GDP as well as the City's Site Development Performance Standards. The PDP Amendment proposes to supplement and enhance the landscape buffering along Rossum Drive and W. 1st Street with additional coniferous plantings that will add year round color.
- Open space primarily consists of natural wetlands labeled as Outlot D and perimeter landscaped outlots, Outlots A, C, and E, that serve an aesthetic purpose rather than open space fields for recreation purposes. Per Section 16.24.150 of the Loveland Municipal Code, open space play fields are not required for subdivision's containing less than fifty (50) single family lots.

D. Environmental Impacts:

1. **Section 18.41.050.E.2:** *The PDP incorporates environmentally sensitive areas, including but not limited to wetlands and wildlife corridors, into the project design. "Environmentally sensitive areas" are defined in Section 18.41.110 as: slopes in excess of 20%; floodplain; soils classified as having high water table; soils classified as highly erodible, subject to erosion or highly acidic; land incapable of meeting percolation requirements; land formerly used for land fill operations or hazardous industrial use; fault areas; stream corridors; estuaries; mature stands of vegetation; aquifer recharge and discharge areas; habitat for wildlife; and other areas possessing environmental characteristics similar to those listed above.*
2. **Section 16.20.030:** *The subdivision preserves natural features and environmentally sensitive areas to the extent possible.*

Current Planning: Staff believes that this finding can be met due to the following:

- An environmentally sensitive report was submitted and reviewed with the original PDP. The PDP Amendment does not propose to modify the preservation or enhancement of the jurisdictional wetlands located in Outlot D. Wire mesh will be installed with the 3-rail fencing along the perimeter of the project to limit domestic animal intrusion into the wetland area.

IX. RECOMMENDED CONDITIONS

PRELIMINARY PUD DEVELOPMENT PLAN AMENDMENT

Current Planning

1. Prior to issuance of a building permit within the PDP Amendment boundaries, all common area landscaping, environmental sensitive areas enhancement, streetside bufferyards and landscaping in Tract A, Mariana Butte Ninth Subdivision shall be either installed or financially secured with the City. Financial security shall include all plant material, irrigation and water meters necessary to sustain the landscaping. Financial security shall be provided for all seeded areas identified in the PDP Amendment, until such time that the seed germinates and is generally free of weeds.
2. Prior to approval of the FDP, a letter from the Buckingham Reservoir Area Owners Association approving the modification of the plant species in Tract A, Mariana Butte Ninth Subdivision, shall be submitted to the Current Planning Division. If an approval letter from the Buckingham Reservoir Area Owners Association is not secured, the landscaping in Tract A shall revert to the landscaping approved in the Mariana Butte 23rd Subdivision FDP and the FDP Amendment for Mariana Butte 26th Subdivision shall be modified to reflect said change.

Engineering

3. Notwithstanding any information presented in the PDP or accompanying preliminary plat and preliminary construction plan documents (text or graphical depictions), all public improvements shall conform to the Larimer County Urban Area Street Standards, as amended, unless specific variances are requested and approved in writing.
4. Prior to the issuance of any building permits within the Mariana Butte Twenty Sixth Subdivision, pursuant to the provisions in Section 16.40.010.B of the Loveland Municipal Code, the Developer shall design and construct the following improvements, 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) A 5-foot wide detached sidewalk along Rossum Drive adjacent to the property.
 - b) A 6-foot wide detached sidewalk along West 1st Street adjacent to the property

EXHIBIT B

Exhibit B are relevant pages from the Planning Commission's findings and recommendation, as reported in the September 12, 2011 Planning Commission Staff Report.



**Development Services
Current Planning**

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Planning Commission Staff Report
September 12, 2011

Agenda #: Regular Agenda - 1

Title: Mariana Butte 23rd Subdivision
PUD PDP Amendment and
Mariana Butte 26th Subdivision
Findings and Conclusions

Request: Adoption of Findings and
Conclusions from the August 22,
2011 public hearing

Location: Generally located at the northwest
corner of Rossum Drive and West 1st
Street

Staff Planner: Kerri Burchett

Staff Recommendation

City staff recommends the following motion:

Recommended Motions:

I.

*ove to approve Resolution #11-01 thereby
denying the First Amendment to the Mariana
Butte 23rd Subdivision PUD Preliminary
Development Plan and Mariana Butte 26th
Subdivision preliminary plat.*

Summary

On August 22, 2011, the Planning Commission considered the application from B&BI, LLC for approval of an Amendment to the Mariana Butte 23rd Subdivision Preliminary Development Plan (PDP) and a preliminary plat for Mariana Butte 26th Subdivision. The Amended PDP was reviewed in light of the intent and objectives of Chapter 18.41 of the Loveland Municipal Code, and more specifically the Findings set forth in Sections 18.41.050.E.2.a-c. The Commission determined that the Amended PDP did not satisfy the required Findings in Sections 18.41.050.D.4.b and c of the Municipal Code and therefore denied the requested Amendment. The Commission took no action on the preliminary plat as it could not be approved since the Amended PDP was not approved, but did indicate that the preliminary plat did not satisfy the required Finding in Code Section 16.20.030.A.

Section 18.41.050.E.3.a of the Municipal Code requires the Planning Commission to issue findings and conclusions in support of their decision within thirty days of the public hearing. After the Commission adopts its written findings and conclusions, a ten day appeal period occurs in which the applicant or any party-in-interest as defined in Chapter 18.80, may file a written notice of appeal. If an appeal is received, the application will be scheduled for a full public hearing, *de novo*, with the City Council in accordance with Chapter 18.80.

I. ATTACHMENTS

1. Resolution #11-01

II. PROJECT DESCRIPTION

On August 22, 2011, the Planning Commission considered an amendment to the Mariana Butte 23rd Subdivision Preliminary Development Plan (Amended PDP) and a Preliminary Plat for the Mariana Butte 26th Subdivision as a joint application under Code Section 18.41.080. The property is located at the northwest corner of West 1st Street and Rossum Drive, within the Mariana Butte Planned Unit Development. The Amended PDP proposed to increase the number of residential dwellings within the development to 11 units and modify the product type to allow for single family paired units. The Commission considered the Amended PDP in light of the intent and objectives of Chapter 18.41 of the Loveland Municipal Code, and more specifically the Findings set forth in Sections 18.41.050.E.2.a-c.

At the conclusion of the public hearing, the Planning Commission determined that the Amended PDP did not satisfy the required Findings in Sections 18.41.050.D.4.b and c of the Municipal Code (see Findings below). The Commission denied the requested Amendment and took no action on the Preliminary Plat, since the applications were considered concurrently as a joint application under Code Section 18.41.080 and a denial of approval of the Amended PDP results in denial of the Preliminary Plat. The Commission noted, however, that the Preliminary Plat also did not meet the requirements of Code Section 16.020.030.A that the subdivision not create, or mitigates to the extent possible, negative impacts on the surrounding property.

III. FINDINGS

The following Findings and reasons set forth below were identified by the Planning Commission in determining that the requirements of Section 18.41.050.E.2 of the Loveland Municipal Code were not met. These Findings are set forth in Findings C.3. and C.5, respectively, of the Staff Report dated August 22, 2011.

1. **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.*
2. **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:*
 - a. Incorporating natural physical features into the PDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.*
 - b. Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan.*
 - c. 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.

- d. *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 Planning Commission finds that the character of the area adjacent to Buckingham Reservoir in which the development proposed by the Amended PDP is located, presents unique building opportunities and substantial investments to property have been made by the property owners. Development proposed by the Amended PDP will have detrimental impacts on property in proximity to the development proposed by the Amended PDP and will create negative impacts on the surrounding property due to the density proposed in the Amended PDP.

The Planning Commission further finds that the proposed development of 11 residential lots on the site as set forth in the Amended PDP will not be complementary to and in harmony with the existing development and future development plans for the area around the Reservoir, in which the development proposed by the Amended PDP is located, due to the density proposed in the Amended PDP.

Although the Preliminary Plat could not be approved independent of the Amended PDP under Code Section 18.41.080.A, the Commission also found that the Preliminary Plat did not meet the requirements of Code Section 16.20.030.A (set forth as Finding C.4 of the Staff Report) that the *"subdivision does not create, or mitigates to the extent possible, negative impacts on the surrounding property."*

The Planning Commission finds that the character of the area adjacent to Buckingham Reservoir in which the subdivision proposed by the Preliminary Plat is located presents unique building opportunities and substantial investments to property have been made by the property owners. The subdivision proposed by the Preliminary Plat will have negative impacts on the surrounding property due to the density proposed in the Preliminary Plat.

IV. PROCESS

Section 18.41.050.E.3.a of the Municipal Code requires the Planning Commission to issue findings and conclusions in support of their decision within thirty days of the public hearing. The resolution included as **Attachment 1** serves as the findings and conclusions. Upon approval of the resolution, a ten day appeal period will begin in which the applicant or any party-in-interest as defined in Chapter 18.80, may file a written notice of appeal. If an appeal is received, the application will be scheduled for a new full public hearing, *de novo*, with the City Council in accordance with Chapter 18.80.

EXHIBIT C

Mariana Butte Amended General Development Plan and Enlargement.

MB 23rd PUD – First Amendment

Approved General Development Plan

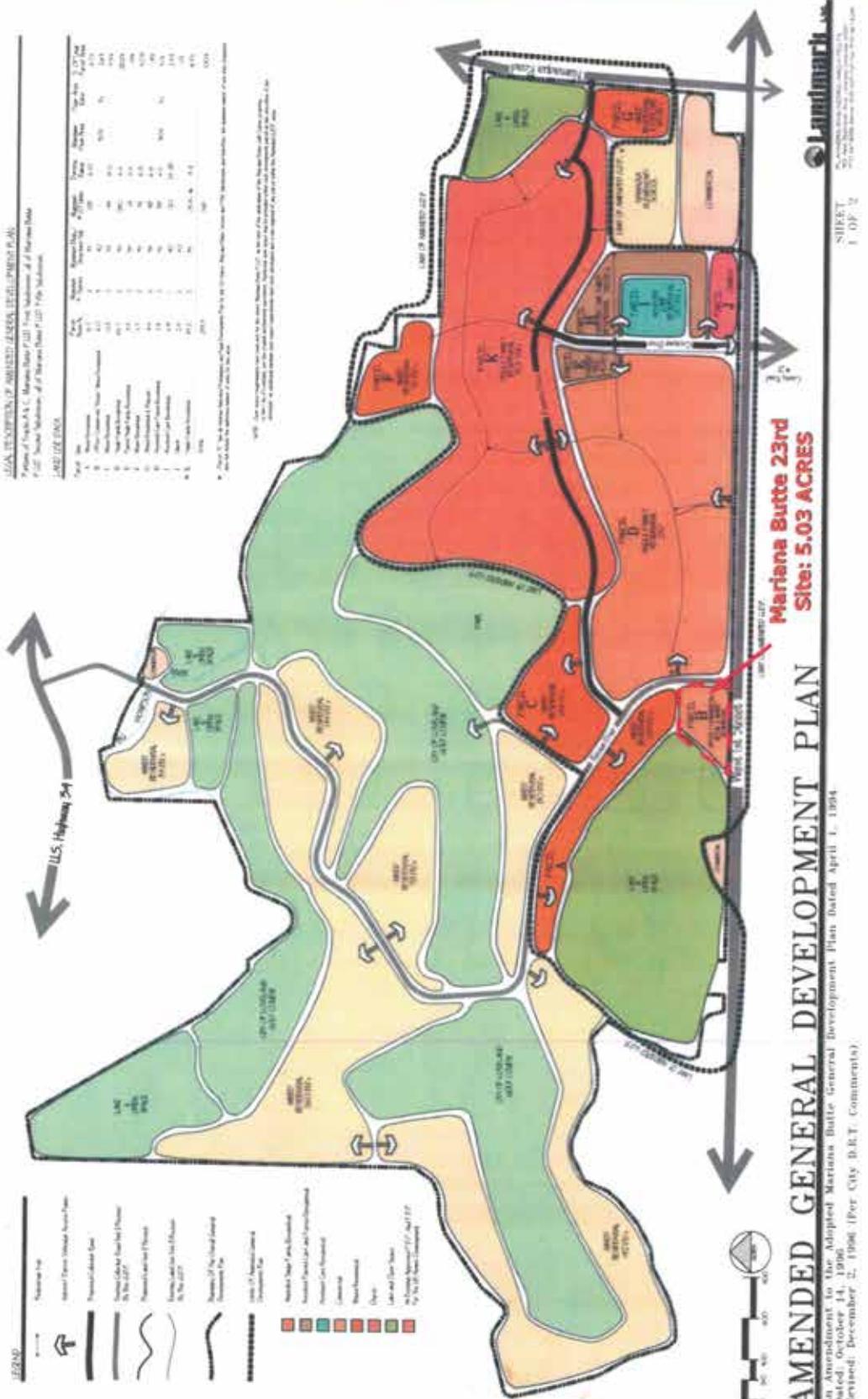


EXHIBIT C (1)

MB 23rd PUD – First Amendment

Approved General Development Plan Enlargement

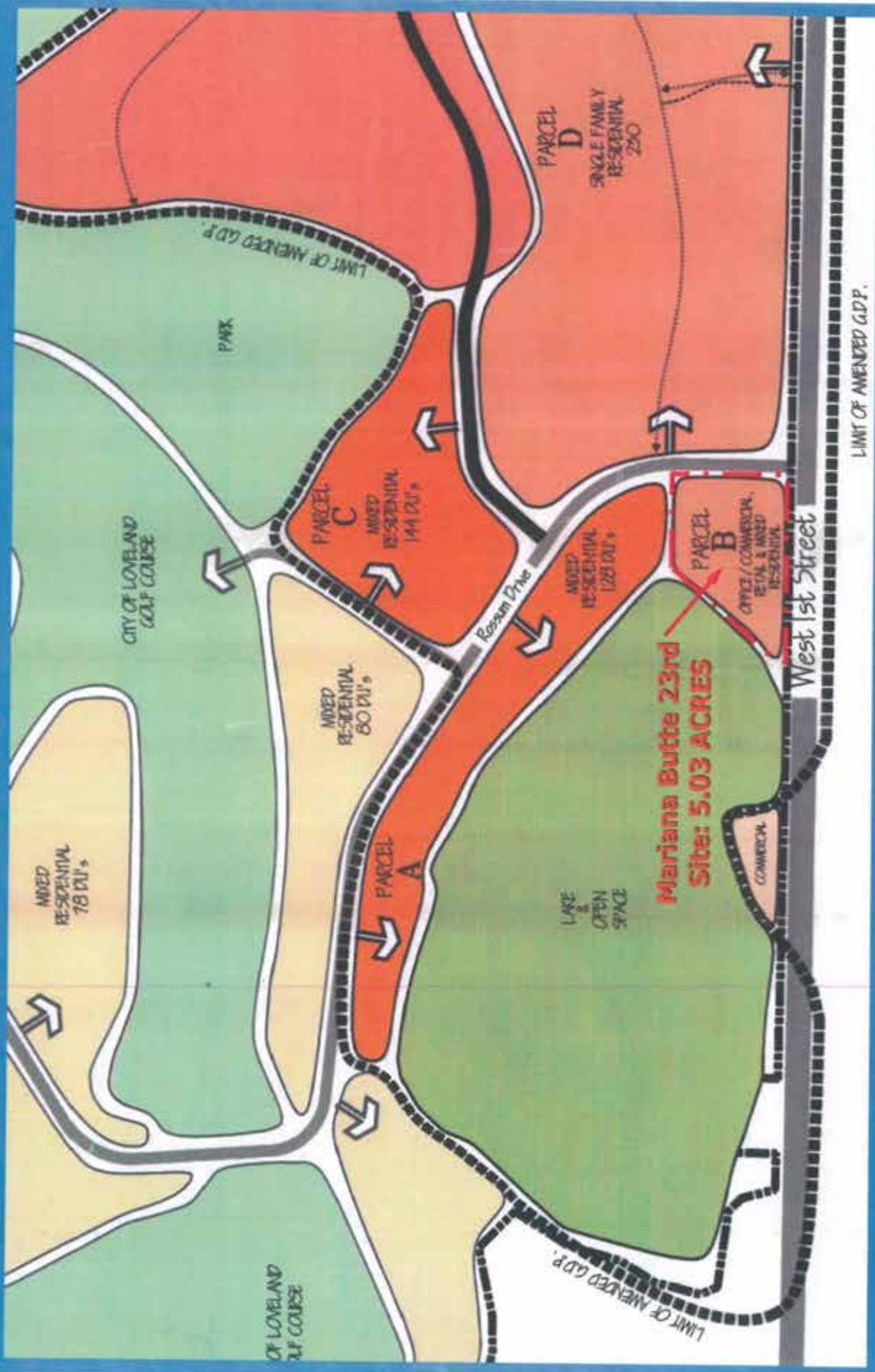


EXHIBIT D

Development Context Map and Mariana Butte 23rd First Amendment, Preliminary PUD Site Plan.

MB 23rd PUD First Amendment

Development Context Map



MB 23rd PUD – First Amendment

Preliminary PUD Site Plan



Undeveloped Lots at corner of 1st St and Rossum Dr, Loveland

Standing of this letter. The thoughts below capture the discussions and intentions from a general meeting of the 91 homeowners in The Reserve at Mariana Butte and from discussions since. They are the first HOA, with homes along Rossum Dr. on the north side of the golf course, including homes on Eagle Ridge Ct. Cedar Valley Dr, Deer Meadow Dr. Fox Hollow Ct, and Beaver Cove Ct. Our HOA maintains the public grounds. Thru traffic on Rossum Dr. is something we are key to keep low. The Reserve is in the sphere of influence on these lots if not specifically within the typical notice radius for planning and council actions.

We are also specifically supporting Don Reidel who is HOA president on the south end of Rossum Dr. His home is adjacent to the vacant lots in discussion. Don is a past mayor of Loveland and knows the history of this entire area.

There are four more HOAs in Mariana Butte area.

Our HOA maintains the CC&Rs for the area and also has an Architectural Review Committee. When an area is built out such as along Rossum, changes in zoning become very contentious.

Situation:

Planning Commission has maintained the zoning for single family residences at this location. The present condition are vacant lots, some with significant fill. The surrounding area is built-out per town design other than these lots, with the most significant single family homes in Mariana Butte along the lake side of Rossum, adjacent to these lots. The lots are at an angle to the lake-side homes so the back yard, porch, decks of these homes and lots are in mutual view of each other.

Status? Questions? The lowest 2 lots are adjacent to wetlands designation; This is at or below dam level and along a stream swale on the north side of 1st St. Reported but without plan, the builder/developer/owner would consider commercial development, possibly to include any of the below:

Use - retail, movie, convenience store, medical, day spa, gas station? Car wash?

Owner requested re-zoning for 5 duplexes (basements?)

Planning Commission "put it back"

What is present status?

We believe the council should support the Planning Commission, to wit, insist on the zoning for these lots be single family residential **FOR NO MORE THAN 5 single family residences.** Architectural guidance should be the local governing HOA and town mandated placement for driveways cuts, utilities, setback, drainage grading, and parking.

RECEIVED OCT 23 2011

*Greg George
9 Council Persons.*

EXHIBIT C (2)

Undeveloped Lots at corner of 1st St and Rossum Dr, Loveland

General guidelines:

Across Rossum on N side of 1st St are patio homes, not duplexes.

We have many existing duplexes and triplexes already in the vicinity.

Each home on the lake side of Rossum is a unique architect-designed gem. This sort of design should be carried along Rossum for these lots, consistent with space, scale and elevation. Materials choices should be unique per home and under the guidance of the Architectural team in that HOA.

Process: Should all owners in overall area (400) be included in proceeding due to impact arising from this being the southern entrance to the area and the through road for the Marianna Butte area?

Town involvement: Commercial - Restaurant (moderate level, needs more customers but OK now with Wapiti).

Luxury golf course, with most players entering from Southern Entrance - should this bespeak quality and upscale? Prices at course are upscale. So is quality of course. Much of the usage of this golf course and restaurant are people from way beyond Loveland - from Wyoming to Colorado Springs. This course enjoys a fine reputation and this entrance from 1st St should reflect this. The golf course is good environmentally as well as economically for Loveland. (The golf course wetlands are part of a study program at CU; we are doing well so far.)

Revenue impact for town: Property taxes from residents (based on assessed value) plus golf course and restaurant lease/share revenue. Sales tax revenue from such a small commercial area is unknown.

Reasoning against any commercial or mixed use:

At the 1st St/Rossum intersection commercial access would be a problem - access from 1st is awkward at best with a limited sight distance given the speed of westbound traffic for anyone leaving Mariana Butte area and turning east of 1st St. A commercial establishment there would need two cuts, either both on Rossum or one onto 1st St and one on Rossum. It would be particularly awkward and thoughtless to place a commercial driveway next to a \$1M+plus home.

Our community's commercial needs are already met both N and S of Rossum - from Wilson to Lincoln and with businesses along Eisenhower. These are within bike distance as well as very short drive. Many of these are underutilized (present economy is impacting Eisenhower businesses negatively.)

On Wilson/Taft the King Super is favored shopping for most of the Rossum/ Marianna Butte residents.

All below businesses are already present:

Gas, car repairs, groceries, fast food, restaurants, banks, home supplies and repair services. We have an improved restaurant at the golf course.

Undeveloped Lots at corner of 1st St and Rossum Dr, Loveland

Police response and fire response are fast here. There are nightly sirens heard in the area. (Loveland does not need more commercial in this area that could stimulate more traffic, possible crime, etc.)

Any commercial activity here would bring traffic, light pollution to morning and evening and night views, glaring reflections on the lake; in short we would be very opposed to doing anything commercial on these lots and seek to keep the development there minimal.

Impact from Residential development of these lots

Even 5 residential homes will have an impact to existing homes on Rossum - noise and lack of privacy likely from the rear lake-facing side of any homes. Possibility for on-street parking at the busiest entrance to the Marianna Butte area - like other residential, would be a major detriment.

Present traffic challenge - access to 1st by bicycle to east-bound 1st is a dangerous move due to sight difference and mismatched vehicle speed. Better to bike through the patio homes and enter there.

Local housing: Loveland has PLENTY of low cost housing, plenty in inventory at banks... Duplexes are not needed. Loveland doesn't presently need more residences or small service businesses; it needs wealth-creating industry that 'exports' products and services from this local area to serve the world. (Loveland has been addressing this with zoning near the airport and the repurposing of the Agilent Site.)

Conclusion: There is space in this residential zone for three moderate size SFR on three lots, looking upon the dam and lake. The lower lots are not desirable as they are impacted by wetlands, swale, dam view, road noise, etc. We support the Planning Commission on their decision, with 5 as the max.

Rick Ellinger
President of HOA - The Reserve at Mariana Butte
20 Oct 2011
HOACO@me.com
970 776 8490

c:1st St-R

5287 Deer Meadow Court
Loveland, CO 80537
August 25, 2011

Mr. Bob Paulson, Planning Director
Development Services Current Planning
500 E Third Street Suite 310
Loveland, CO 80537

RECEIVED AUG 25 2011

RE: Mariana Butte 23rd PUD Preliminary Development Plan

Dear Mr. Paulson,

I attended the August 22, 2011 Planning Commission meeting and would like to comment on the proceedings. First, I would like to commend the planning commission members for their focus and attention during the more than 4 1/2 hour meeting. They remained on task, engaged and provided an opportunity for dialogue.

As you are aware, the Planning Staff recommended project acceptance by the Commission. However, due to the lengthy input by residents of the Buckingham Lake Neighborhood Association which comprise the first 8-9 lots North of First street on the West side on Rossum Drive, I believe the Commission may have rejected the proposal based on the emotional appeals vs. the facts. My interpretation is that the project was rejected due to four reasons:

1. Population Density.
2. Incompatibility with the neighborhood.
3. Residents on the West side on Rossum Drive felt a "Bait and Switch" had occurred when the developer requested a modification to build 11 dwellings vs. 5 single family dwellings.
4. The development would be an inappropriate "Gateway" to Mariana Butte.

I would like to address these four issues:

1. Population Density: Per Mr. Ken Merritt of Landmark Engineering, the net density for the proposed plan would be 3.8/acre. Density of existing Fairway Ridge is over 7/acre while Mariana Pointe is over 4/acre. Due to their size, the lots on the West side on Rossum Drive are not comparable to any existing lots in all of Mariana Butte. I would conclude then, they are not comparable to the areas being considered regarding population density.
2. Incompatibility with the neighborhood: There are 15 homes on the West side on Rossum Drive whose value exceeds \$800,000 (in a good market). However, those are the homes which are in the minority. They face a development comprised of 45 detached homes, and 75 duplex and triplex structures on the East side on Rossum Drive. These homes are priced in the \$200,000-\$400,000 range. The project proposal is for homes starting at \$400,000 of the same if not higher quality than that which

currently exists. I would question how that is inconsistent with the neighborhood. I would state that saying the proposed plan does not fit in with the neighborhood is ignoring that very neighborhood of 120 attached and detached homes. Of those 15 homes on the West side on Rossum Drive, all overlook the back sides of either lap sided homes, duplexes and triplexes. Only 3 of the 15 face detached stucco homes and at that, they face the back sides of those homes. Interesting to note, only one property on the West side on Rossum Drive would view the proposed project. Currently, that property is a vacant lot which has been for sale for over 5 years.

3. Bait and Switch: Residents of the homes on the West side on Rossum Drive claimed they had been led to believe there would only be 5 single family dwellings in the proposed project. In Oct 2007 the developer purchased the land and intended to build 5 homes. In June 2011, secondary to an assessment of the residential market, the request to amend the plat was put forth. That the owners of the homes on the West side on Rossum Drive claimed "Bait and Switch" is interesting. All their homes had been built in the years prior to 2007 with their full knowledge that the property was zoned for Office/Commercial, Retail, and Mixed Residential use. Therefore, that emotional issue appears to carry little weight and I question the legal basis for rejection of the proposal on that issue.
4. Gateway to Mariana Butte: One of the Commissioner's comments was that this development serves as a gateway to Mariana Butte. This proposed development would be an appropriate gateway and an improvement over the houses on the East side on Rossum Drive which stand as the current gateway. Those homes have lap siding, play structures, satellite dishes and their back yards all face Rossum Drive. I question whether that is a true gateway. With the proposed development, the gateway of focus would be the natural landscape screens which buffer the stucco sided homes.

Following are several items I would like the Planning Commission to Consider:

1. Secondary to the Planning staff's recommendation the project move forward, it will now have to draft a set of Conditions of Denial of Criteria not met. What criteria would that be? I believe, as detailed by the planning Staff, all stipulations for development were met to include Utility and Fire considerations, Transportation, Land Use, and Environmental Impact. What will be the legal basis to deny the application?
2. By rejecting this proposal, the Planning Commission is rejecting an additional revenue stream resulting from City Use Taxes, Building Permit Fees, Property Taxes, and increased employment in the depressed construction industry. In addition, they are rejecting the possibility to attract a population of older adults whose lifestyle would bring revenue and energy to the city. In sum, this project would bring in much more revenue than an empty lot would generate or even that of 5 single homes. Does the Commission not have a fiduciary responsibility to the Loveland City and the greater community?

3. By rejecting this proposal, the Commission is rejecting a developer of high integrity and reputation who has demonstrated his competence and vision with the completion of 120 units in Mariana Butte. The developer's willingness to reduce the number of dwellings, to replace siding with stucco and to provide additional landscaping, indicates his receptiveness to neighborhood input and continued dedication to the enhancement of the existing Mariana Butte Development.
4. The developer has already spent over \$200,000 to remove garbage and grade the property so at present it is not a neighborhood refuse dump. The developer has willingly responded to the recommendations of the Planning Staff to alter the appearance of the proposed homes making them stucco as well as creating a single story home to provide a transition to the single homes on the West side on Rossum Drive. With these projected \$400,000-\$500,000 homes, property values will be enhanced for all homes East of Rossum Drive thereby raising their median value. The values of the homes on the West side on Rossum Drive, those opposed to the project, are compared to each other, not against the proposed product or that East on Rossum Drive.

I believe it was the emotional appeal which was responsible for the Commission's rejection of the proposal. It was neither project deficiencies nor non-compliance with the General Development Plan of Mariana Butte. Disapproval of the project appears to center on emotional reasoning vs. the fact of the developer's 100% compliance with all Zoning and Planning conditions. If the denial is that the development does not fit in with the existing value of homes on the West side on Rossum Drive, I would refer to Number 2 on page one. It appears that the proposed development actually is more compatible with the Mariana neighborhood than the 15 homes on the West on Rossum Drive. If the emotional reason for denial is that the project is too dense I would refer to Mr. Merritt's figures on page 1. If the Denial is due to Bait and Switch and Gateway Issues, I would refer you Number 3 and 4 on page two.

I would ask the Planning Commission to reconsider their vote and only examine the legal criteria of the proposed development vs. the emotional issues. I believe that the decision to reject a guaranteed revenue stream to the community through jobs and the building process, to turn away tax revenues generated by the prospective homeowners, and to reject a developer who has an established reputation and has shown proven dedication to enhance the ambiance of Mariana Butte, warrants further consideration.

Thank you.

Sincerely,



Connie Boose

Cc: Kerri Burchett: Staff Planner

November 29, 2011

Loveland City Council Members
Loveland, CO

Re: Reconsideration of Planning Commission meeting regarding Mariana Butte 23 & 26

As President of the Buckingham Reservoir Area Owners Association and representing the 8 homes contained within that HOA, we are requesting that the decision arrived at by the planning commission be upheld. The request to reconsider this decision, after planning meetings that involved most of the homeowners in that HOA, is a change that should be denied.

The 5 lots that the developer has originally platted met with our approval. The request to change that development to 11 lots does not. We agree with the planning commission's decision to reject the change. Their vote was 6 to 2 to deny the change. This was acceptable to us. There is a relatively long history of meetings and agreements that finally resulted in the 5 lot development approval. We do not wish to make further concessions beyond the ones that have already been made by our neighborhood group.

The following reasons are being reiterated to restate our issues with a request for increased density on this parcel:

These are our concerns:

1. This corner is the entrance to the Mariana Butte Golf Course area. The neighborhood homes immediately adjacent along Buckingham Lake are in the upper price ranges in Loveland. The product planned by the developer is not compatible with single family homes in the upper price ranges that border Buckingham Lake.
2. We have concerns with the additional traffic that will be generated. Rossum Drive as it is built now curves and has a hill immediately adjacent to the proposed development. We perceive safety issues with ingress and egress from the proposed amended development.
3. Light infiltration from the proposed amended development is another concern. The amended proposal encompasses 11 residences in a small area. The additional lights will impact the established neighborhoods in the area and their right to quiet enjoyment.
4. The proposed amended development will also impact view corridors the established neighbors also enjoy. The 5 homes that were originally approved for this site would not have as much of an impact.
5. The wetlands adjacent to this proposed development attract significant wildlife. Elk, deer, foxes, rabbits and a bear as well as eagles, owls, blue herons and others inhabit this area throughout the year. Again, the 5 homes approved for this area would have a minimal impact compared to 11 residences.

6. Devaluation of adjacent properties is likely with the proposed product. It is simply the wrong location for the product.
7. The view from most of the homes in our HOA will be of the back of these properties creating a "barrier like" backdrop to a neighborhood that cherishes the open water view and the mountain view from each our properties. In fact, our approved site plans require our lots to have a 50 to 75 foot setback with native landscaping along the lake itself. The proposed view with this increased density totally defeats that apparent objective when our subdivision was platted and approved by the city.

Respectfully submitted,

A handwritten signature in blue ink that reads "Don A. Riedel". The signature is fluid and cursive, with "Don" on the first line and "A. Riedel" on the second line.

Don A. Riedel, President
Buckingham Reservoir Area Owners Association

November 29th, 2011

Loveland City Council

RE: Reconsideration of Planning Commission Decision related to Mariana Butte 23/26

Dear Council Members,

I wish to express my concerns that this subdivision has not been designed in accordance with Larimer County Urban Street Standards, amended 2007 (Section 16.24.015).

Street Classification

According to the Mariana Butte GDP amended 10/14/1996 Rossum Drive was identified as a collector street, with no specification as to major or minor. I can find no record when or where the designation of Major Collector Street was instituted.

1. Mariana Butte 9th FDP clearly identifies Rossum Drive as a Minor Collector street.

2. Mr. Paulsen and city staff reported Loveland 2015 Street Plan classified Rossum Drive as a Major Collector and that designation continued for 2020 and 2030 street Plans.

3. Mr. Jentges, City of Loveland Sr. Electrical Engineer reported Rossum Drive is designated as a Minor Arterial street according to the land use map.

Three conflicting reports suggest that Rossum Drive street classification needs to be reevaluated.

4. Street widths are one of the criteria for street classification. The measurements you cited on August 9, 2011 are not representative of the width of Rossum Drive as a whole, merely two points near Mariana 23rd. Parts of Rossum Drive are narrower have no curbs and only have one bike lane.

5. Mr. Paulsen acknowledged that Rossum Drive does not meet current design standards for a major collector street. Because many of these design standards relate to the safety of residents, pedestrians, cyclists and motorists it seems imperative that the City of Loveland have these concerns as a priority and evaluate Rossum Drive as it is today to insure our safety. As stated, major collector streets may not have driveway access.

There are currently at least 33 driveways that exit directly onto Rossum Drive and 2 more proposed. The location of stone mailboxes hinders visibility of street traffic. The location of fence stone standards and landscaping hinders visibility of both sidewalk and street traffic. Crosswalks are located in unsafe areas and need to be reassessed for both sight and stopping distances. Rossum Drive driveways do not meet major collector sight distances and stopping distances per 2007 Larimer County Street Standards. These standards were in place when Mariana 23rd was approved for 5 single family homes.

These distances were also in place when you approved an exit from Lot 9 Mariana Butte 9th. It does not appear that Mariana Butte 23rd PUD/26 PUD meet the 660' sight distance standards for intersections.

Page 2 11/29/2011 City Council

7. Just as all buildings are required to meet current building code, all streets and driveways should be required to meet street standards in effect at the time of their construction. (Section 16.24.015: Street, street signs, highways curb and gutter, traffic control devices ...have been designed in accordance with the Larimer County Urban Street Standards, as amended.2007) It would be indefensible for the City of Loveland to knowingly place people at risk by failing to implement current street standards for new development.

Traffic Study

I wish to express my concerns that this subdivision will have a negative impact on traffic in the area (Section 18.41.050.E.2)

8. Mr. Delich November 2010 Traffic Impact Study, conducted in November 2010 based traffic counts from November 2010. This appears to be a one day study with failure to identify a specific date, day of the week, hours of the study and weather conditions at the time of this study.

This is not a representative sample of traffic on Rossum Drive as it fails to include traffic when Mariana Butte Golf Course is in operation during the summer months.

Additionally, this report fails to identify the existence of a school bus stop at the intersection of Scenic Drive and Rossum. This report, presented August 22, 2011 to the Planning Commission failed to include the Appendix A Base Assumptions Form or Appendix B.

It also identifies "Single Family Detached (Code 210) for Trip Generation, 8th Edit. as its resource to estimate traffic trips. Mariana Butte 26 PUD are not Single Family Detached units.

More importantly, it is dependent on proper classification of all streets involved.

Lighting

I wish to express my concerns that lighting on Rossum Drive is improper for street classification

9. Speeds on Rossum Drive are posted at 20, 25 and 30 mph. According to current street classification standards "Street Lighting: Contractor Guide"

Street speed from 20-25mph and minimum street width of 28-34 feet are Local.

Street speed design of 30 mph and min.street width of 36 – 44 feet are Minor Collector.

This places Rossum Drive into the minor collector category in some areas and local category in others. Mr. Juentges reference to the land use plan designating Rossum Drive as an arterial street is clearly inaccurate and likely the reason Rossum Drive suffers from light pollution.

Page 3 11/29/2011 City Council

10. Lighting system designation per this same document should be 15 foot mounting Height 70W acrylic acorn. As Mr. Jentges reported Rossum Drive has 100W bulbs which are clearly brighter than 70W as identified. Some of these were installed in November of 2008 and I subsequently wrote Mr. Dan McQueen a letter about the increased brightness of the new lamps. According to this same document spacing and lighting guidelines apply to refractor drop cobras, and the city has a choice of one sided, staggered and opposite spacing for street lighting patterns. I agree with Mr Jentges that IES, CDOT, and Icole are pushing for the use of full cut off luminaries. There may be Acorn lights that are full cutoff, however, the city of Loveland is not using these on Rossum Drive.

The current lights fail to minimize the impact on adjacent properties, I request that Rossum Drive be reevaluated with the information from other city departments that it has never been a monor arterial street. Current street lights are varying heights.

Mr. Baxter agreed to use the full cut off luminaires at the initial meeting and declined to use these at the Planning Commission meeting August 23,2011. I request full cut off luminaires be required to protect neighboring properties, wetland and the wildlife corridor.

Wetlands

I am concerned that this development fails to protect wetlands, intrudes on environmentally sensitive areas and fails to preserve natural features (Sec18.41.050.E.2 and Sec16.20.030)

Mariana Butte23/26 has an identified wetland greater than 1 acre. As such, Larimer County Land Use Code 8.2 applies to this development and requires a 100 foot buffer. (8.28E)

It appears that this development includes structures and fencing in the buffer zone. Adjoining properties along Buckingham reservoir are prohibited from having any fencing of sidelots or backlots. All residences have permanent structures disallowed in the riparian habitat and needed to provide specific plantings for habitat. This development should not be allowed to have structures in habitat or fencing of side lots or back lots.

As you are considering Mr Baxter's appeal for replacing five single family homes with ten duplexes and one single family home it is important to consider the following information related to this development. Mr. Baxter had community meetings and made numerous representations to surrounding developments including Buckingham Reservoir Area Owners Association (BRAOA) in relation to Mariana 23 PUD. Members of BRAOA worked cooperatively with Mr. Baxter resulting in legal documents being

Page 4 11/29/2011 City Council

finalized by members of BRAOA in December 2009. Of significance was our agreement to release an easement which all members of BRAOA held as a protection and benefit of our subdivision. This release was predicated on Mr. Baxters plan to install five single family residences of a size, quality and character that benefitted the neighborhood as well as the adjoining subdivision Mariana Butte 9 (aka BRAOA). This was to include landscaping, attractive entries to his subdivision as well as landscaping on Mariana Butte 9 outlot. The new plans Mariana 26 fail to meet these agreements. It is distressing to see that a traffic study for duplexes was initiated less than one year after these documents were finalized and that a complete revision to duplexes was being proposed within 18 months. It appears that we have been victims of a bait and switch with the goal of securing our easement.

Any attempts to alter this subdivision should be denied because of these representations.

Mr Baxter regards his duplexes as “products,” we find these incompatible with homes. We are interested in protecting the beauty and safety of our neighborhood and the surrounding natural environment. Mariana Butte has multifamily development clustered in the center of its development and is surrounded by homes. All homes on the west side of Rossum Drive are single family homes. All homes on the North side of this proposed development are single family homes. Duplexes do not belong on the perimeter of this development.

I appreciate your attention to these concerns

Respectfully Submitted,

Darlene Kasenberg
Resident of Mariana Butte 9th (BRAOA)

November 29, 2011

To: City Council Members

Subject: Mariana Butte 23rd Subdivision Appeal

The purpose of this letter is provide you with background information that may be helpful in your deliberations. We own Lot 9, Blk 1 Mariana Butte 9th which is on the north boundary of Mariana 23rd.

When we bought this lot there was a 12' Tract A easement, a 5' sidewalk and a 21' street (a total of 38') between our lot and the land to be developed to the south of us. Our lot had a sideload access off Scenic Drive and we had a house designed with sideload access to accommodate this lot.

In 2006 the Developer of Mariana Butte 23rd submitted a proposal for 10 lots with access directly south of our sideload entry on Scenic Drive. It included a landscape barrier and sprinkling system on the tract separating our properties. The proposal was denied. The Developer amended the proposal in late 2007 to construct 5 single family homes on the approximately 3 build-able acre site. The plan submitted eliminated the landscaping and sprinklers and closed off Scenic Drive to our lot. It provided a 16'x 150' street on the developers property to provide access to our lot. We argued that this posed huge access problems for us and greatly diminished our property value. We foresaw huge problems down the road as the Mariana 23rd HOA would be responsible for our street maintenance while the City was responsible for Mariana 23rd street and we were told that once the subdivision was approved the City did not get involved in HOA disputes that might arise regarding the "compromised access to our lot."

However, this proposal was approved by the City Council in 2009 with the provision the City would give us access to our lot from Rossum Drive, if we gave up our south easement across Outlot A. As a minor compensation to us, the Developer was to put in landscaping and sprinkler system on the corner of Rossum and Scenic Drive and down the south side of our property. We were given a very short amount of time to hire an engineer to give us "line of site" onto Rossum and file the necessary papers with the City for the Rossum access change on the plat and relinquishment of Outlot A. This was accomplished at a cost to us of \$6K. We still must move the wrought iron fence and pillars, the mail box, do a road cut, bring the drive in off Rossum to the fence and repair the sidewalk and landscaping at an estimated cost of \$20K to \$25K. While this benefited the developer of Mariana Butte 23rd Subdivision greatly, it was a HUGE negative to us, both financially and for enjoyment of the property.

Recently, the developer has built up the grade of this land substantially and now comes back with a plan to not only abandon the original 5-single family residence site and replace it with a development of 10 duplexes and one single family residence, but would also seek to abandon the landscaping plan approved by the City Council. Gone is the 38' we "thought" we had to the south of our property when we purchased it. With the release of the side access to our property, the Mariana Butte 23rd Developer was able to use the land next to our 10' easement called Tract A, for the 8' City required access easement to the lake. We now have a 10' strip of land that is too narrow for the extensive landscaping originally required on this space (Austrian Pines, etc.). Their land has been built up enough to require retaining walls, hence loss of privacy for our lot. We strenuously object to the high-density plan, the close proximity to our lot, and the developer's efforts to once again eliminate the required landscaping. Therefore, we urge you to uphold the 6-2 vote of your Planning Commission and reject the appeal.

Sincerely,

George and Coleen Ligotke, Owners

November 29, 2011

To: City Council Members

Subject: Mariana Butte 23rd Subdivision Appeal

The purpose of this letter is provide you with background information that may be helpful in your deliberations. We own Lot 9, Blk 1 Mariana Butte 9th which is on the north boundary of Mariana 23rd.

When we bought this lot there was a 12' Tract A easement, a 5' sidewalk and a 21' street (a total of 38') between our lot and the land to be developed to the south of us. Our lot had a sideload access off Scenic Drive and we had a house designed with sideload access to accommodate this lot.

In 2006 the Developer of Mariana Butte 23rd submitted a proposal for 10 lots with access directly south of our sideload entry on Scenic Drive. It included a landscape barrier and sprinkling system on the tract separating our properties. The proposal was denied. The Developer amended the proposal in late 2007 to construct 5 single family homes on the approximately 3 build-able acre site. The plan submitted eliminated the landscaping and sprinklers and closed off Scenic Drive to our lot. It provided a 16'x 150' street on the developers property to provide access to our lot. We argued that this posed huge access problems for us and greatly diminished our property value. We foresaw huge problems down the road as the Mariana 23rd HOA would be responsible for our street maintenance while the City was responsible for Mariana 23rd street and we were told that once the subdivision was approved the City did not get involved in HOA disputes that might arise regarding the "compromised access to our lot."

However, this proposal was approved by the City Council in 2009 with the provision the City would give us access to our lot from Rossum Drive, if we gave up our south easement across Outlot A. As a minor compensation to us, the Developer was to put in landscaping and sprinkler system on the corner of Rossum and Scenic Drive and down the south side of our property. We were given a very short amount of time to hire an engineer to give us "line of site" onto Rossum and file the necessary papers with the City for the Rossum access change on the plat and relinquishment of Outlot A. This was accomplished at a cost to us of \$6K. We still must move the wrought iron fence and pillars, the mail box, do a road cut, bring the drive in off Rossum to the fence and repair the sidewalk and landscaping at an estimated cost of \$20K to \$25K. While this benefited the developer of Mariana Butte 23rd Subdivision greatly, it was a HUGE negative to us, both financially and for enjoyment of the property.

Recently, the developer has built up the grade of this land substantially and now comes back with a plan to not only abandon the original 5-single family residence site and replace it with a development of 10 duplexes and one single family residence, but would also seek to abandon the landscaping plan approved by the City Council. Gone is the 38' we "thought" we had to the south of our property when we purchased it. With the release of the side access to our property, the Mariana Butte 23rd Developer was able to use the land next to our 10' easement called Tract A, for the 8' City required access easement to the lake. We now have a 10' strip of land that is too narrow for the extensive landscaping originally required on this space (Austrian Pines, etc.). Their land has been built up enough to require retaining walls, hence loss of privacy for our lot. We strenuously object to the high-density plan, the close proximity to our lot, and the developer's efforts to once again eliminate the required landscaping. Therefore, we urge you to uphold the 6-2 vote of your Planning Commission and reject the appeal.

Sincerely,

George and Coleen Ligotke, Owners

EXHIBIT D

Revised building elevations discussed at the August 22, 2011Planning Commission hearing



EXHIBIT E

Planning Commission minutes from the August 22, 2011
hearing (denying approval)

**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
August 22, 2011**

6 A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on
7 August 22, 2011 at 6:30 p.m. Members present: Chairman Molloy; Vice Chairman Meyers; and
8 Commissioners Dowding, Crescibene, Fancher, Krenning, Leadbetter, Middleton and Ray. City Staff
9 present: Kerri Burchett, Current Planning; Karl Barton, Community and Strategic Planning; Robert
10 Paulsen, Current Planning Manager; Sunita Sharma, Assistant City Attorney; Judy Schmidt,
11 Assistant City Attorney.

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

16 CITIZEN REPORTS

18 There were no citizen reports.

20 COMMISSIONER COMMENTS

22 **Vice Chair Meyers** reported on a tour he recently took offered by the Northern Colorado Water
23 Conservancy District “NCWCD” he stated it was very informative and urged that people take the
24 tour.

26 APPROVAL OF MINUTES

28 *Commissioner Middleton made a motion to adopt the revised June 27, 2011 meeting minutes.*
29 *Upon a second by Vice Chair Meyers the motion was unanimously adopted. (Commissioners Ray,*
30 *Crescibene and Fancher abstained).*

32 *Commissioner Middleton made a motion to amend the meeting minutes of August 8, 2011 as*
33 *follows:*

34 *On page 3, the following correction was identified:*

35 Mr. Bliss clarified that the Commission approved a maximum height of 13 square
36 feet...

37 *And correct the spelling of Commissioner Molloy's name on page 1 as follows:*

38 Members present: Chair Molly Molloy

40 *Upon a second by Vice Chair Meyers was unanimously adopted.*

42 REGULAR AGENDA

1
2 **Agenda Item 1. Mariana Butte 23rd Subdivision PUD PDP Amendment and**
3 **Mariana Butte 26th Subdivision**
4

5 *SUMMARY OF AGENDA ITEM: This is a public hearing item to consider an amendment to the*
6 *Mariana Butte 23rd PUD Preliminary Development Plan (PDP) and approval of a preliminary*
7 *plat for Mariana Butte 26th Subdivision. The PUD Amendment requests to modify the number of*
8 *units approved on the site from 5 single-family dwellings to 11 dwellings, consisting of 1 single-*
9 *family detached dwelling and 10 single-family paired units. The preliminary plat would create*
10 *11 residential lots along with associated outlots for landscaping and buffer yards. The PDP*
11 *Amendment complies with the General Development Plan for Mariana Butte PUD, which*
12 *permits a variety of office/commercial, retail and mixed residential uses within the parcel.*

13 *The Commission's action is quasi-judicial and final unless appealed to the City Council.*

14
15 **Commissioner Fancher** recused herself from proceedings, indicating that there was a potential
16 perceived conflict of interest.

17
18 **Kerri Burchett, Project Planner**, gave a brief staff presentation on this item. She stated that
19 pending an appeal of either the Preliminary Development Plan (PDP) or the Preliminary Plat, the
20 Planning Commission's decision would be a final action. As part of her presentation, she stated that
21 concerns raised at the neighborhood meeting were as follows:

22 • Density
23 • Traffic
24 • Building Materials
25 • Parking
26 • Landscaping and overall compatibility of the development

27
28 **Ms. Burchett** stated that as a result of the comments received at the neighborhood meeting, the
29 applicant has redesigned the northern portion of the site to eliminate 1 residential unit and provided a
30 single-family detached structure as a transition to the subdivision to the north. She stated that with
31 the applicant's redesign of the northern portion of the site along with modifications to the
32 landscaping plan and upgrades to the proposed building materials, , staff believes that the
33 development is consistent with the provisions of the Mariana Butte General Development and is
34 compatible with the surrounding residential areas.

35
36 **Mr. Merritt, Landmark Engineering**, representing the applicant, identified the location of the site,
37 spoke about the history of development-related proposals on the site, and provided detailed
38 information about the development proposal. He stated that the applicant is proposing to develop the
39 property with 11 units, resulting in a density of 2.29 dwelling units per acre. He indicated the density
40 was compatible with surrounding portions of the Mariana Butte neighborhood. He indicated that the
41 project provides a good entry into the Mariana Butte neighborhood and a good transition to the larger

1 lots along the west side of Rossum Drive. He spoke of the architectural design of the paired units
2 and stated that as a result of concerns expressed at the neighborhood meeting, the developer is
3 willing to change the building materials from lap siding to stucco. He stated that the houses would be
4 single story units with walkout basements and clarified that the roof pitch was reduced to maintain
5 views from the existing subdivision to the east.

6
7 **Mr. Merritt** stated that the existing wetland is approximately 1.9 acres and commented that there
8 would be fencing constructed around the wetland and spoke of how it would be preserved and
9 enhanced. He stated that there would be a 10-foot side yard setback on the proposed single family
10 detached structure which would comply with standards in the adjacent subdivision, Mariana Butte
11 Ninth. He stated that a pedestrian path would be installed along the northern edge of the property,
12 providing access to the Buckingham Reservoir for the City maintenance vehicles and the public. He
13 also stated that with the development proposal, substantial landscaping would be installed off-site on
14 Tract A of Mariana Butte Ninth Subdivision, including a row of spruces and pines which would
15 create a very dense landscape bufferyard along the northern edge of the project.

16
17 **CITIZEN INPUT**
18

19 **Earl Baumgartel, 285 Rossum Drive**, spoke in opposition to the project and commented that he
20 supported the 2007 plan that had five (5) lots for single-family homes to be located on the property.
21 He also was opposed to eliminating the off-site landscaping on the northeast corner of Tract A,
22 Mariana Butte Ninth Subdivision.

23
24 **Commissioner Dowding** clarified that under the General Development Plan, the property could be
25 developed as commercial or retail.

26
27 **Peg Baumgartel, 285 Rossum Drive**, spoke in opposition to the project and played a video showing
28 the types of homes in the area noting the architectural features, e.g., stone, stucco and tile roofing.
29 She also showed the slope of the road on Rossum Drive and expressed traffic concerns.

30
31 **Darlene Kasenberg, 247 Rossum Drive**, spoke in opposition to the project, indicating that the
32 proposed density was too high and the architecture of the homes was not compatible with the
33 neighborhood. She raised the following concerns:

34 • Pedestrian and bicycle safety relating to increased traffic on Rossum Drive
35 • Validity of the traffic study that was conducted in November of 2010 which was at a time of
36 year when there is no golf-related traffic
37 • Rossum Drive's classification as a major collector
38 • Recent grading on the site which she believes raised the elevation of the property
39 substantially
40 • Brightness of existing street lighting along Rossum Drive and the use of inappropriate light
41 fixtures

42 She stated that there were private agreements missing from the packet and commented that she

1 would not have given up the easement if she had seen this proposed development.

2

3 **Rob Persichitte, 102 Sweet Clover Court**, spoke in opposition to the project and noted his issues as
4 follows:

5 • Edge of the development not having curb and gutter installed along 1st Street
6 • Landscape buffering along Rossum Drive was too narrow as it continues to the south towards
7 the intersection of Rossum and First Street
8 • Protection of views for existing homeowners

9 He further commented that he appreciated Mr. Baxter's agreement to using stucco rather than lap
10 siding.

11

12 **George Ligotke, 4283 Red Fox Place**, spoke in opposition to the project and state that he opposed
13 the density of this project and that he vacated his easement (on the subject property that was designed
14 to provide access to his property which is adjacent to the north of the site) based on the 2007 plan for
15 a five (5) lot subdivision as well as the landscaping plan agreed to by the developer. He stated that
16 he did not believe that the traffic study for the proposed plan was accurate and the development was
17 not compatible with the surrounding developments.

18

19 **Colleen Ligotke, 4283 Red Fox Place**, spoke in opposition to the project and stated that when they
20 purchased their lot they were under the belief that they would have a guaranteed access to their
21 property. She stated that they felt compromised by giving away their easement. She also expressed
22 concerns regarding:

23 • Landscape buffering. She did not feel that the type of trees being planted would grow tall
24 enough or fast enough to provide adequate buffering
25 • Grading – the elevation of the property has changed when the developer moved the garbage
26 from the site and filled in the hole
27 • Cost for moving her fence to meet the site distance
28 • There is not five buildable acres due to the designated wetlands
29 • Density was too high

30

31 **Dick Barton, 367 Rossum Drive**, spoke in opposition to the project based on the following factors:

32 • Density
33 • Lack of Garage Screening
34 • Architectural Design

35 He stated that he supported the original five (5) residential units along Rossum Drive and urged the
36 Commission to deny approval of this project.

37

38 **Rosalie Leer, 823 Rossum Drive**, spoke in opposition to the project for the following reasons:

39 • Density – she preferred the five (5) lot subdivision
40 • Property values in the neighborhood would decrease
41 • Quality of the neighborhood would be diminished
42 • Deficient landscaping

1 • Wetland maintenance
2 • Additional traffic on Rossum
3 • Notice provisions, she indicated that she did not receive notice of the public hearing
4 • She questioned how the zoning could be arbitrarily changed.

5
6 **Chairman Molloy** stated this is an amended Preliminary Development Plan application and
7 emphasized that the zoning has not been changed.
8

9 **John Culler, 166 Cherry Orchard Avenue**, spoke in opposition to the project and felt that the
10 density was inconsistent with the surrounding area and there would be traffic issues.
11

12 **Joe Pugh, 5271 Deer Meadow Court**, spoke in support of the project stating from a professional
13 position he thinks it this is a logical transition from the less expensive homes to the most expensive
14 homes on Rossum Drive.
15

16 **Dickson Hill, 433 Rossum Drive**, opposed the development due to density and traffic issues.
17

18 **Gary Baker, 5015 St. Andrew and owner of Mariana Butte 24th**, spoke in opposition to the
19 project and stated the following concern:
20

21 Pedestrian Access Across the Dam – it is a dead-end that serves no purpose but allows
22 access onto his property. He indicated that access to the top of the dam should be prevented
23 due to safety issues. Mr. Baker also raised an issue relating to his proposed residential home
24 development on First Street, requesting that the same cash in lieu of option which was
25 offered to Mr. Baxter would be offered to him relative to a sidewalk that "leads to
26 nowhere".
27

COMMISSIONER COMMENTS AND QUESTIONS

28 **Commissioner Crescibene** asked the applicant's team if the proposed development would be part
29 of an existing HOA.
30

31 **Mr. Merritt** clarified there was no master Home Owner's Association for the entire Mariana Butte
32 PUD and the proposed subdivision would have its own HOA as well as its own architectural
33 standards. He further reported that as a result of the concerns expressed at the neighborhood
34 meeting, the developer will make the change from the original lap siding to stucco and reported the
35 roofing materials would be a high profile architectural laminate shingle.
36

37 **Mr. Merritt** further clarified the purpose of the pedestrian trail and stated that in 1999 there was a
38 condition that states that a pedestrian access must be provided from Rossum Drive to Buckingham
39 Lake. Additionally, as a result of another condition of the previous subdivision, Mariana Butte 23rd
40 Subdivision, the applicant is required to provide access to Buckingham Reservoir for the City of
41 Loveland maintenance vehicles. He explained that the development proposal combines the
42

1 pedestrian access and the City vehicular access into one pathway.

2

3 **Jeff Bailey, Transportation Development Review**, responded to access questions stating that when
4 a variance is submitted to the LCUASS Standards, the variance is reviewed by Transportation
5 Development Review. He clarified that a variance was approved for Mr. and Mrs. Ligotke to gain
6 direct access on to Rossum Drive from their property, Lot 9, Mariana Butte Ninth Subdivision
7 because when Mariana Butte 9th Subdivision was first approved, no direct access to Lot 9 off of
8 Rossum Drive was granted. He explained that the access easement along the north side of the
9 Mariana Butte 23rd Subdivision to the Ligotke's property was vacated when the Ligotke's obtained
10 the permission to gain access directly from Rossum Drive.

11

12 Mr. Bailey clarified that Rossum Drive is a major collector street and under current code provisions
13 driveways are not allowed direct access onto a major or minor collector street.

14

15 **Commissioner Middleton** asked if an emergency vehicle could get through Scenic Court.

16

17 **Mr. Merritt** responded by stating that parking is permitted on one side of Scenic Court with
18 overflow spaces available. He stated that there is "no parking" signage that will be posted as
19 required by the Fire Department and commented that this road meets the LUCASS requirements. In
20 response to the neighborhood testimony, he provided the following responses:

- 21 • The development is not multi-family and the zoning has not been changed
- 22 • The Planning Commission's responsibility is to determine if land use standards including
23 setback and bufferyard requirements have been met
- 24 • The proposed project density and land use meets the requirement as outlined in the General
25 Development Plan
- 26 • The elevation of the site was not raised. Fill was brought onto the site to fill the hole that was
27 left when the applicant had to remove trash and debris that was dumped by contractors in
28 Mariana Butte.
- 29 • Street lighting is done by the City of Loveland and there are two types of light standards.
30 Street lighting in the development proposal will be consistent with the rest of Mariana Butte
- 31 • Diversity – Mariana Butte is an example of the City's efforts to ensure that neighborhoods
32 have a diversity of housing styles

33

34 **Vice Chair Meyers** spoke of the need to place "no trespassing" or warning signage on the dam.

35

36 **Ms. Burchett** responded to Commissioner Meyers, and stated that she would follow up with the
37 City's Parks and Recreation Department to determine if proper signage exists.

38

39 **Mr. Merritt** reported that each resident would have a double car garage with the exception of the
40 single-family home which could have a three (3) car side-loaded garage. He stated that the
41 landscaping would be maintained by the HOA and would be maintenance free for the homeowners.
42 He stated that six (6) graphic signs will be located in the wetland area and commented that there are

1 no requirements that protect view corridors; however, the applicant has taken views into
2 consideration so the units will be one story with a 6 to 12 roof pitch.
3

4 **Commissioner Middleton** had questions regarding the landscaping on Tract A of Mariana Butte
5 Ninth Subdivision in relationship to the comments from Mr. and Mrs. Ligotke. He further inquired
6 about the referenced private agreement.
7

8 **Mr. Merritt** responded, stating that the landscaping shown on Tract A has been changed due to
9 neighborhood comments and the 10-foot width of Tract A. He stated that the proposed landscaping is
10 better, commenting that the neighborhood requested a more coniferous landscaping screen. He
11 stated that a condition of approval in the staff report requires that prior to approval of a final
12 development plan, the applicant would have to gain approval of the landscape changes from the
13 Buckingham HOA.
14

15 **Chairman Molloy** commented he believed that the corner of Tract A next to Rossum Drive should
16 be landscaped and questioned the height of the proposed coniferous trees.
17

18 After a lengthy discussion **Mr. Merritt** stated that a minimum height allowance for the trees could
19 be added to the condition
20

21 **Commissioner Krenning** stated that he does not feel comfortable acting as a bargaining agent and
22 he would like to make clear that he gives great consideration to nearby property owners. He further
23 commented that he was always amazed that citizens feel that it is the city's role to maintain their
24 property values. He stated that a lake creates a unique building opportunity and believes that people
25 who live there make substantial investments to their properties. He indicated that he believed eleven
26 (11) lots on the property was too much density.
27

28 Chairman Molloy stated he would reopen the public comment portion of the meeting.
29

30 **PUBLIC COMMENT RE-OPENED**
31

32 **Darlene Kasenberg, 247 Rossum Drive**, spoke in opposition to the project and brought up the
33 following points:
34

- 35 • She questioned if the Ligotke's variance was granted based on a major or a minor collector
street
- 36 • She commented that she was upset regarding a statement made by Mr. Merritt in which he
37 noted that it was three years since the variance was vacated

38 **Earl Baumgartel, 285 Rossum Drive** spoke in opposition to the project and offered the following
39 points:
40

- 41 • He thanked the Commission for recognizing that these lots are not comparable to the lots
42 across the lake

1 • He believed that the site elevation was raised
2 • He questioned the square footage of the paired units
3

4 **Colleen Litgotke** spoke in opposition to the project and commented as follows:

5 • She questioned why the landscape plan along the north boundary has become so narrow as to
6 not allow for planting of Austrian Pines
7 • She clarified the City made them give up their access easement so they could gain access
8 from Rossum Drive
9 • She commented that she never heard anyone state that the five (5) homes that were originally
10 approved would be million-dollar homes and she understood that they would be between
11 \$500,000 and \$550,000

12
13 **John Baxter, 5290 Deer Meadow Court**, who is the applicant and property owner for the project,
14 commented that the type of housing he is proposing is what is selling and people are downsizing and
15 wanting to live in maintenance-free communities. He stated they have a successful product on the
16 other side of the lake which is similar in size and price and commented that these proposed paired
17 units are not unique to the area. He commented that he felt he has worked to try and accommodate
18 the neighbors but stated that single-family homes will not be developed on the site due to economic
19 viability issues.

20
21 **Commissioner Ray** stated that his decision was difficult but he believes that the residents in the area
22 have certain expectations, which are not consistent with what is being proposed. He stated he would
23 not support the application.

24
25 **Commissioner Krenning** stated that Mr. Baxter has always met or exceeded his expectations.
26 However, he stated that in this instance he felt that the neighbors had an expectation that there would
27 be only five (5) homes and he felt that this project did not fit in the area.

28
29 **Commissioner Crescibene** stated that he believed that the applicant did a great job in designing the
30 project. But even though it meets Code requirements he felt that it did not fit into the surrounding
31 neighborhood.

32
33 **Commissioner Dowding** stated there are gateways to other neighborhoods in the city that are similar
34 to this proposal with attached single-family homes along entrance points. She stated that she was in
35 support of the project.

36
37 **Commissioner Leadbetter** stated that he concurred with Commissioners Ray and Krenning and
38 would vote against it.

39
40 **Vice Chair Meyers** stated that his decision is based on neighborhood compatibility, not on the value
41 of the homes. He believed that it would be a nice development but stated that he would not support
42 the project due to the density.

Commissioner Middleton was opposed to the project.

Chairman Molloy supported the project and did not believe that density was an issue. He further commented that the development was a good fit for the community.

Commissioner Krenning discussed the possibility of tabling the item to allow the applicant to proposed additional changes such as reducing the number of units without going through the entire development process again.

Ms. Burchett clarified that the applicant could appeal the Planning Commission's decision to City Council and that if the Planning Commission denied the application, staff would bring back Findings and Conclusions to the Commission within 30 days. Once the Planning Commission adopts their Findings and Conclusions, there is a 10-day appeal period where the applicant could appeal the decision to the City Council. She further requested that if the Planning Commission denies the application, they provide direction on which findings in the staff report that they believed were not met. Staff would then incorporate these factors into the Findings and Conclusions.

Commissioner Krenning stated that he did not agree with the finding "that the development is complementary to existing development" nor did he agree with the statement "that it meets the spirit of the neighborhood". He stated that the project density was not in alignment with the neighborhood and fewer paired units would be his preference. He stated that the density was too great.

Commissioner Crescibene concurred with comments by Commissioner Krenning stating that he did not believe this style of home was consistent with what is currently in the area.

Commissioner Dowding made a motion to make the findings listed in Section VIII of this report dated August 22, 2011 and, based on those findings, approve Resolution #11-01 thereby approving the First Amendment to the Mariana Butte 23rd Subdivision PUD Preliminary Development Plan subject to the conditions listed in said report, as amended on the record. Vice Chair Meyers seconded the motion the vote was as follows: Nays: Commissioners Middleton, Meyers, Ray, Krenning, Leadbetter and Crescibene. Yeas: Commissioners Molloy and Dowding. The motion failed.

Chairman Molloy then responded favorably to the applicant's request to address the Commission.

Mr. Baxter commented that a reduction in the number of lots would jeopardize the financial feasibility of the project, even a reduction from 11 to 9 units. He stated that homes costing \$500,000 or above, are not selling. He emphasized that many people are downsizing when they become "empty nesters" and that they would like to live in a maintenance-free community that is near a golf course. He indicated that the project as designed was oriented to meet market realities.

EXHIBIT F

Video showing surrounding homes submitted by Peg Baumgartel at the August 22, 2011 Planning Commission hearing.

Please note that this is a CD that can only be viewed on your computer.

EXHIBIT G

Planning Commission staff report dated August 22, 2011
recommending approval with conditions, including:

1. Resolution #11-01
2. Mariana Butte PDP Narrative
3. Mariana Butte 23rd Preliminary Development Plan Amendment
4. Mariana Butte 26th Subdivision Preliminary Plat
5. Color Rendering of Residential Units
6. Traffic Excerpt
7. Mariana Butte PUD GDP (for reference)
8. Mariana Butte PUD PDP approved in 2007 (for reference)
9. Mariana Butte Ninth Subdivision (for reference)
10. Agreement for Additional Association Maintenance (private agreement for reference)
11. Correspondence from George and Coleen Ligotke received at Neighborhood
12. Correspondence between Darlene Kasenberg and City staff



Development Services Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
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Planning Commission Staff Report

August 22, 2011

Agenda #: **Regular Agenda - 1**

Title: Mariana Butte 23rd Subdivision
PUD PDP Amendment and
Mariana Butte 26th Subdivision

Applicant: B&B I, LLC

Request: Preliminary Development Plan
Amendment and Preliminary Plat

Location: Generally located at the northwest
corner of Rossum Drive and West 1st
Street

Existing Zoning: Planned Unit Development

Staff Planner: Kerri Burchett

Staff Recommendation

Subject to additional evidence presented at the public hearing, City staff recommends the following motions:

Recommended Motions:

1. *Move to make the findings listed in Section VIII of this report dated August 22, 2011 and, based on those findings, approve Resolution #11-01 thereby approving the First Amendment to the Mariana Butte 23rd Subdivision PUD Preliminary Development Plan subject to the conditions listed in said report, as amended on the record, and*
2. *Move to make the findings listed in Section VIII of this report dated August 22, 2011 and, based on those findings, approve the Mariana Butte 26th Subdivision subject to the conditions listed in said report, as amended on the record.*

Summary of Analysis

This is a public hearing item to consider an amendment to the Mariana Butte 23rd PUD Preliminary Development Plan (PDP) and a preliminary plat for Mariana Butte 26th Subdivision. The PUD Amendment requests to modify the number of units approved on the site from 5 single family dwellings to 11 dwellings; consisting of 1 single family detached dwelling and 10 single family paired units. The preliminary plat would create 11 residential lots along with associated outlots for landscaping and bufferyards. The PDP Amendment complies with the General Development Plan for Mariana Butte PUD, which permits a variety of office/commercial, retail and mixed residential uses within the parcel.

Staff believes that all key issues have been resolved based on City Code and standards contained in the PUD. Neighborhood residents have indicated concerns with the density, traffic, building materials, parking, landscaping and overall compatibility of the development. In response to the comments received at the neighborhood meeting, the applicant has eliminated 1 dwelling unit, redesigned the northern portion of the project to provide a single family detached dwelling adjacent to the single family subdivision to the north and modified the landscaping between the property and the vacant residential lot to the north to provide a more continuous landscape screen of pines and spruces.

I. ATTACHMENTS

1. Resolution #11-01
2. Mariana Butte PDP Narrative
3. Mariana Butte 23rd Preliminary Development Plan Amendment
4. Mariana Butte 26th Subdivision Preliminary Plat
5. Color Rendering of Residential Units
6. Traffic Excerpt
7. Mariana Butte PUD GDP (for reference)
8. Mariana Butte PUD PDP approved in 2007 (for reference)
9. Mariana Butte Ninth Subdivision (for reference)
10. Agreement for Additional Association Maintenance (private agreement for reference)
11. Correspondence from George and Coleen Ligotke received at Neighborhood
12. Correspondence between Darlene Kasenberg and City staff

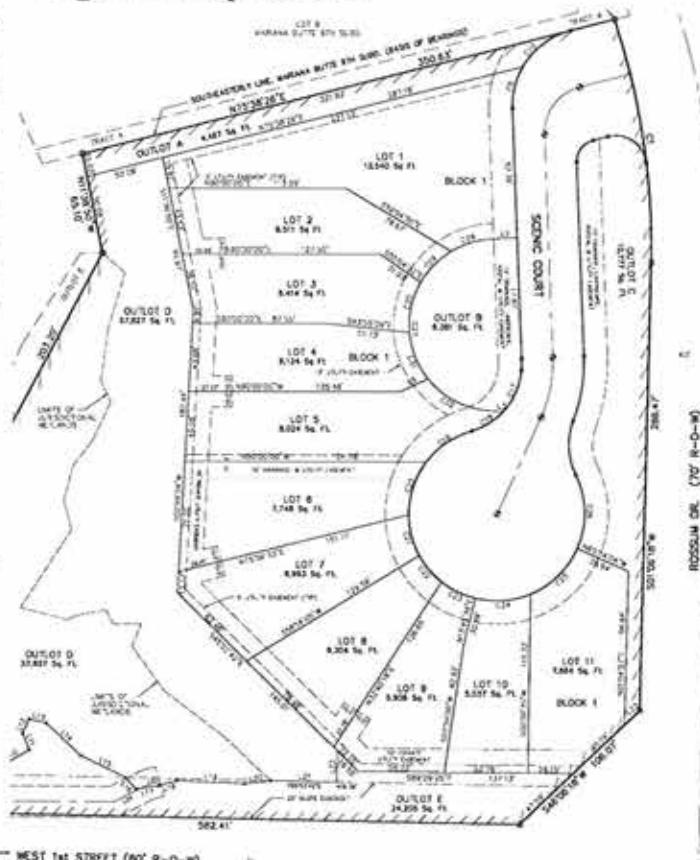
II. PROJECT DESCRIPTION

Summary

The application is for an amendment to the Mariana Butte 23rd Subdivision Preliminary Development Plan (PDP) and a preliminary plat for the Mariana Butte 26th Subdivision. The property is located at the northwest corner of West 1st Street and Rossum Drive, within the Mariana Butte Planned Unit Development. The property is bordered on the west by Buckingham Reservoir.

The PDP Amendment proposes to increase the number of residential dwellings within the development by 6 units and modify the product type to allow for single family paired units. The applicant is requesting to develop 11 residential units; 1 single family detached structure and 10 single family paired units. Proposed lot sizes range from approximately 13,500 for the single family detached lot to an average lot size of 5,900 square feet for the paired units. Landscape bufferyards along West 1st Street and Rossum Drive have been supplemented with the Amendment to provide additional screening and plant material. The Amendment does not modify the preservation and enhancement of the 1.3 acres of environmentally sensitive areas along the western portion of the site in Outlot D, which will remain preserved as a jurisdictional wetland area.

Figure 1. Proposed Plat

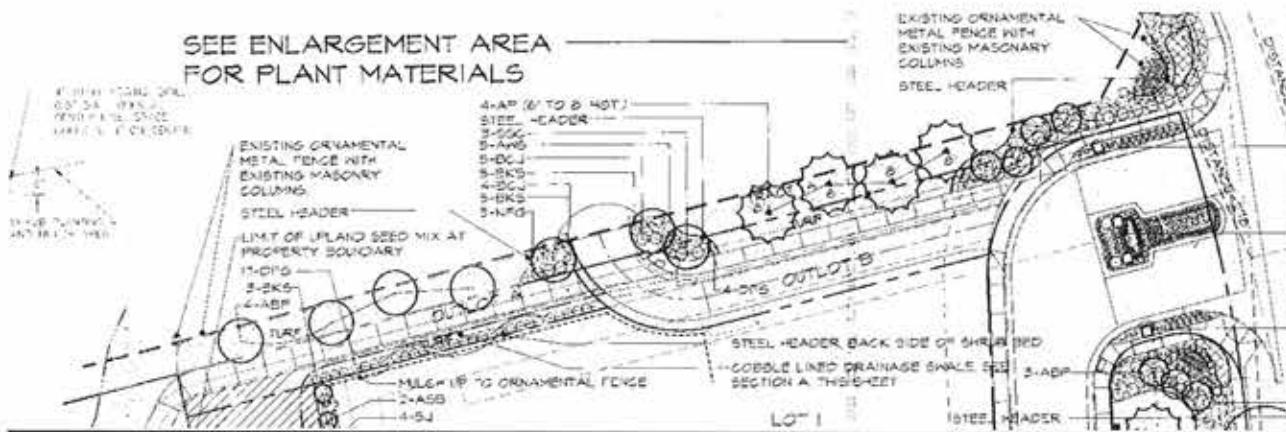


Tract A

Along the northern boundary of the site, the Amendment seeks to remove a driveway access to the vacant single family lot directly north of the site, on Lot 9, Mariana Butte Ninth Subdivision, and modify the off-site landscaping in Tract A, Mariana Butte Ninth Subdivision. The driveway access was originally required through the subject property due to a condition of approval that restricted Lot 9 from gaining access directly off of Rossum Drive. After the approval of the PDP in 2007, the property owners of Lot 9 successfully petitioned City Council to remove the access restriction and a development plan was approved for the lot showing direct access onto Rossum Drive. As the driveway access through the subject site is no longer necessary, the PDP Amendment reflects its removal.

The responsibilities for installing off-site landscaping in Tract A of Mariana Butte Ninth Subdivision was set forth in the approved PDP and FDP for Mariana Butte 23rd as well as in a private agreement between the Homeowners Association, the developer (B & B I, LLC) and George and Coleen Ligotke, the property owners of Lot 9 (**Attachment 10**). In 2007, the developer requested that the off-site landscaping be removed from the PDP, as the driveway access to Lot 9 through the Mariana Butte 23rd development was being removed. The request for the landscape removal went through an appeal process with the final determination made by City Council to require the landscaping to be installed by the developer.

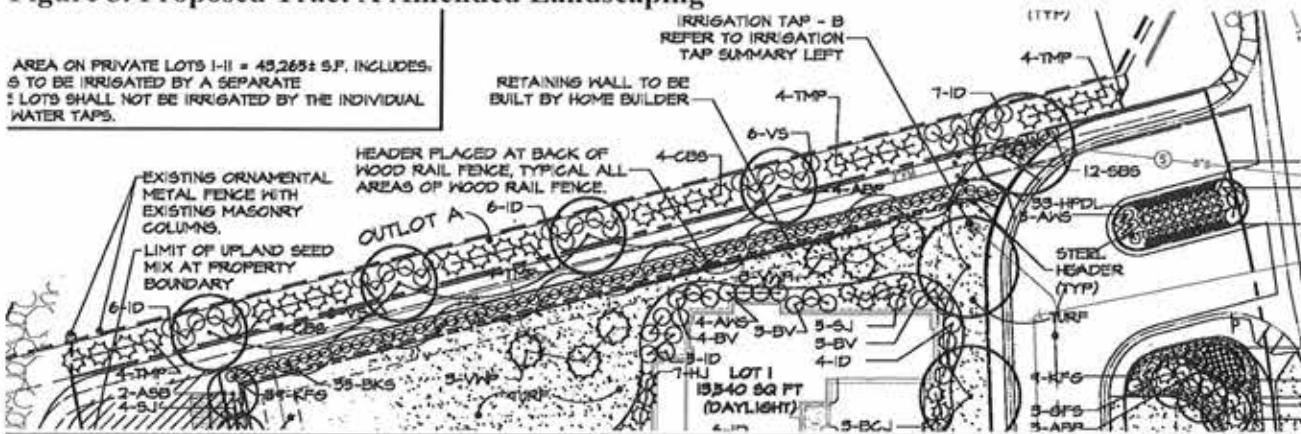
Figure 2. Approved Tract A Landscaping



With the proposed PDP Amendment, the 8-foot wide pedestrian path to Buckingham Reservoir was shifted northward, adjacent to the northern property boundary of the development. As a result, the width of the planting area has been reduced to 10 feet from the previous 10 to 15-foot width shown in the original PDP. The 10-foot width corresponds to the actual width of Tract A. The applicant is requesting to modify the plantings within this Tract to provide for a continuous landscape screen using coniferous spruces and pines. The plantings have also been modified to insure that appropriate species are selected that would result in a compact, columnar appearance which will not encroach into the pathway. The amended landscape plan, shown in Figure 3 below, will provide alternating clusters of Tannenbaum Mugo Pines (TMP) and Columnar Blue Spruces (CBS) that will achieve maximum heights between 10 feet and 20 feet. The coniferous trees will be mixed with a variety of

deciduous shrubs and 4 ornamental pear trees. The revisions to the landscape plan in Tract A are also subject to approval by the Buckingham Reservoir Area Owners Association (see **Condition 2**).

Figure 3. Proposed Tract A Amended Landscaping



General Development Plan Compliance

The General Development Plan (GDP) for Mariana Butte is included as **Attachment 7** to this report. The proposed PDP Amendment must demonstrate compliance with the GDP. Table 1 provides a comparison of the proposed use, number of units, density and building materials between the PDP Amendment and the GDP. The table also compares the PDP Amendment to the original PDP for reference purposes.

Table 1. PDP Amendment Comparison

	GDP Allowance	Approved PDP	Proposed PDP
Use	Office/Commercial, Retail & Mixed Residential	Single Family Detached	Single Family Detached & Single Family Paired
Number of Units	No limitation specified	5	11 total: 1 detached & 10 paired units
Density: Gross	No limitation specified	1 d.u./acre	2.19 d.u./acre
Density: Net (less open space outlots & 1st Street ROW)	No limitation specified	1.73 d.u./acre	3.80 d.u./acre
Building Materials: Siding	Brick, stone, hardboard lap siding, vinyl, stucco or synthetic stucco, or as allowed by a PDP or FDP	Hardboard siding, vinyl siding, vertical board & batten siding, decorative accent siding, specialty siding. Minimum 30% masonry	Hardboard siding, vinyl siding, vertical board & batten siding, cedar or simulated shingle siding, decorative accent siding, specialty siding. Minimum 25% masonry
Building Materials: Roofing	Materials not specified	25 year heavy composition shingles or better (including concrete tiles, clay tiles, standing seam metal etc.)	25 year heavy composition shingles or better (including concrete tiles, clay tiles, standing seam metal etc.)

III. VICINITY MAP



IV. KEY ISSUES

City staff believes that all key issues have been addressed in the development proposal and through the recommended conditions of approval. Neighborhood residents have voiced concerns regarding density, traffic, building materials, parking, landscaping and overall compatibility of the development. As a result of the comments received at the neighborhood meeting, the applicant has redesigned the northern portion of the site to eliminate 1 residential unit and provide a single family detached structure as a transition to the subdivision to the north. With the redesign of the northern portion of the site and the use allowances in the General Development Plan, staff has evaluated the neighborhood concerns and believes that the development is compatible with the intent of the Mariana Butte PUD and the surrounding residential areas.

V. SITE DATA

ACREAGE OF SITE-PDP, GROSS	5.03 AC
ACREAGE OF SITE-NET (LESS ROW).....	4.13 AC
ACREAGE OF THE PRELIMINARY PLAT	5.03 AC
ZONING.....	PUD (MARIANA BUTTE GDP)
EXISTING USE.....	VACANT PARCEL (5 SF LOTS PLATTED)
PROPOSED USE.....	11 LOTS; 1 SINGLE-FAMILY DETACHED & 10 SINGLE-FAMILY PAIRED RESIDENCES
GROSS DENSITY (DU/AC).....	2.19 DU/AC
DENSITY EXCLUDING OPEN SPACE AND ROW	3.80 DU/AC (LOTS 1-11)
EXIST ADJ ZONING & USE - EAST.....	PUD/SINGLE-FAMILY RESIDENTIAL
EXIST ADJ ZONING & USE - SOUTH	LARIMER COUNTY R-RESIDENTIAL/ VACANT
EXIST ADJ ZONING & USE - WEST	PUD/ BUCKINGHAM RESERVOIR & DETACHED SINGLE-FAMILY RESIDENTIAL
EXIST ADJ ZONING & USE - NORTH.....	PUD/SINGLE-FAMILY RESIDENTIAL
UTILITY SERVICE - SEWER.....	CITY OF LOVELAND
UTILITY SERVICE - ELECTRIC	CITY OF LOVELAND
UTILITY SERVICE - WATER	CITY OF LOVELAND

VI. BACKGROUND

The following represents a timeline for the background of the development:

July, 1982 The property was annexed to the City of Loveland as part of the Mariana Butte Third Addition with a master plan approved for the entire development.

January, 1994 The Mariana Butte PUD First Subdivision was approved by City Council.

September, 1994 An amended GDP for the Mariana Butte PUD First Subdivision was administratively approved by the Current Planning Manager. Subsequent preliminary and final development plans, along with final plats were approved in the Mariana Butte PUD.

June, 2007 A Preliminary Development Plan for Mariana Butte 23rd Subdivision PUD was approved by Planning Commission.

July, 2007 A Preliminary Plat for Mariana Butte 23rd Subdivision was approved.

September, 2007 The Current Planning Manager approved a minor amendment to the PDP requested by the developer. The minor amendment proposed to remove requirements for off-site landscape improvements that were shown on the approved PDP. The off-site landscape improvements were to be on Tract

A, Lot 9 of the Mariana Butte 9th Subdivision (Lot 9). The Current Planning Manager also approved the Final Plat and Final Development Plan for Mariana Butte 23rd Subdivision. The Final Plat was subsequently appeal to the Planning Commission.

October, 2007	The Zoning Board of Adjustment Hearing Officer considered an appeal of the Current Planning Manager's decision filed by George and Coleen Ligotke, owners of Lot 9. The Hearing Officer upheld the decision of the Current Planning Manager.
November, 2007	The Final Plat for Mariana Butte 23rd was approved by Planning Commission.
	The Zoning Board of Adjustment considered an appeal of the Hearing Officer's decision filed by George and Coleen Ligotke. The Zoning Board of Adjustment overturned the decision of the Hearing Officer and denied the minor amendment to the PDP.
December, 2007	City Council considered an appeal of the Zoning Board of Adjustment filed by the developer, John Baxter. City Council upheld the decision of the Zoning Board of Adjustment and required off-site landscaping to be completed.

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

A. Notification

An affidavit was received from Landmark Engineering which certifies that the surrounding property owners within 500 feet of the property were notified on April 13, 2011 of a neighborhood meeting held on May 5, 2011. An affidavit was also received from Landmark Engineering which certifies that the surrounding property owners within 500 feet of the property were notified on August 6, 2011, and a notice was posted in a prominent location on the perimeter of the project site on August 7, 2011. In addition, a notice was published in the Reporter Herald on August 6, 2011. All notices stated that the Planning Commission will hold a public hearing on August 22, 2011 to consider the matter.

B. Neighborhood Response

A neighborhood meeting was held on May 5, 2011. There were 17 neighbors, along with the applicant, consultants and city staff, in attendance at the neighborhood meeting. Questions and concerns raised included the following:

1. **Density.** Concerns were voiced by many neighbors regarding the number of units proposed (12 units), how the project would look as the entryway to the Mariana Butte PUD and the belief that the number of units were too intense on the lot. The developer indicated that the number of units proposed were allowed in the PUD and that the number of units were necessary for the success

of the project. He further indicated that based on market conditions, large lot single family homes were not selling.

The PDP Amendment was revised after the neighborhood meeting to eliminate 1 residential unit and provide a single family detached structure as a transition from the single family uses to the north.

2. **Traffic.** Neighbors voiced concerns regarding the traffic implications with the number of units proposed, safety of the intersection at Scenic Drive with the roadway curve of Rossum and adequate parking. Safety of children based on adding more cars to the roadway was also discussed. The applicant indicated that a traffic study was completed and the development will comply with City standards. Rossum Drive is classified as a major collector roadway with no parking on the sides. Additional guest parking spaces will be provided on Scenic Drive within the development.
3. **Materials.** Neighbors voiced concerns regarding the hardboard siding of the homes. They believe that stucco siding and tile roofs would be more compatible and a higher quality material. The applicant indicated that the structures were designed in a craftsman style and would be compatible with structures in the PUD, including those across Rossum Drive.
4. **Children Play Areas.** Residents questioned where children from the development will play since the open space was primarily wetlands. The developer indicated that the project was being marketed as maintenance free living for older adults and households without children.
5. **Price Point and Square Footage.** Applicant indicated that he was unsure of the price at this time, most likely in the \$400,000 range and each unit will have around 1,400 square feet of living space plus a basement for the walk-out units.
6. **Roadway and landscaping on the Northern Boundary.** Residents questioned the ownership and status of a proposed roadway to the north (from previously approved plans). The applicant indicated that there was an access easement approved in the original PDP to provide access to Lot 9 in Mariana Butte Ninth Subdivision. The access easement was vacated when the property owners were granted a driveway access onto Rossum Drive. The property owners of the vacant property to the north indicated opposition to the project, submitted a letter of objection (**Attachment 11** of this report) and discussed the landscaping that was required in the Tract between their property and the development.

The PDP was revised after the neighborhood meeting to provide landscaping in Tract A. With the Amendment, the applicant is requesting to modify the plant species to provide more coniferous screening and ensure plantings will not encroach into the concrete pedestrian path to Buckingham Reservoir.

7. **Sidewalk Connection on 1st Street.** Questions involved the connection of the sidewalk on 1st Street to the west. The applicant indicated that the sidewalk connection on 1st Street was a condition of the PDP/FDP for Mariana Butte 24th.

8. **Property Values.** Residents voiced concerns that the development would lessen property values in the area.
9. **Existing Sidewalk Path to Buckingham Reservoir.** Residents inquired as to the plans for the existing concrete sidewalk connection from Rossum Drive to Buckingham Reservoir. The Amendment proposed to remove the existing sidewalk and replace it with a new, 8-foot wide crusher fine path. Residents objected to the crusher fine material and requested concrete.

The PDP Amendment was revised after the neighborhood meeting to indicate that a new, 8 foot wide concrete path will be installed. The path will widened to allow for City of Loveland maintenance vehicles.
10. **Noise.** Noise levels of the pump stations for the units were discussed. The developer indicated that there should not be any noise attributable to the pumps, as in similar developments in the area such as Mariana Cove.
11. **Natural Areas.** The neighbors inquired if any disturbance to the natural area was proposed. The applicant indicated that the natural areas would all be preserved as approved in the original PDP.
12. **Land Use.** Concerns were voiced that "duplexes" should not be allowed on the lake's edge.
13. **Grading.** Questions were asked concerning the top of foundation for the homes verse the elevation of the road.

Additional correspondence was received by the City staff after the neighborhood meeting. The correspondence includes a letter and emails from a surrounding neighbor, Darlene Kasenberg. The correspondence and City staff's response are included in **Attachment 12** and focus primarily on traffic safety concerns, lighting and the roadway classification of Rossum Drive.

VIII. FINDINGS AND ANALYSIS

A. City Utilities and Services

1. **Loveland Municipal Code**
 - a. **Section 18.41.050.E.2:**
 - (i) *Development permitted by the PDP will not have negative impacts on City utilities. If such impacts exist, Section 18.41.050.D.4(b) of the Loveland Municipal Code requires City staff to recommend either disapproval of the PDP or reasonable conditions designed to mitigate the negative impacts.*
 - (ii) *Whether development permitted by the PDP will be complementary to and in harmony with existing development and future development plans for the area in which the PDP is located by incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the*

proposed development will not negatively impact the levels of service of the City's services and facilities.

b. Section 16.20.030:

(i) The proposed public facilities and services are adequate, consistent with the City's utility planning, and capable of being provided in a timely and efficient manner

(ii) The subdivision complies with the water rights requirements in Title 19.

(iii) The subdivision has been reviewed in accordance with the Loveland Comprehensive Master Plan, including the Parks and Recreation Functional Master Plan, and other pertinent plans approved and adopted by the City, to insure that the subdivision is designed in accordance with good engineering practices and provides for safe and convenient movement.

c. Section 16.24.012: Electric and water distribution system improvements. sewer collection improvements, storm drainage control facilities, and other improvements as required to be constructed with the subdivision have been designed in accordance with the City of Loveland "Storm Drainage Criteria Manual," 1986 Edition, as amended and the latest edition of the "Development Standards and Specifications Governing the Construction of Public Improvements."

d. Section 16.24.090:

(i) All new and replacement sanitary sewer and water supply systems have been designed to minimize or eliminate infiltration of floodwaters in the system.

(ii) The subdivision proposal has adequate drainage provided to reduce exposure to flood damage.

(iii) The subdivision proposal has public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(iv) The development proposal conforms to all federal, state, and local floodplain regulations

(v) When deemed necessary by the Director of Community Services or the Planning Commission for the health, safety, or welfare of the present or future population of the area or necessary to the conservation of water, drainage, and sanitary facilities, the subdivision of land within the flood fringe and floodway, or any stream, river, or drainage course has been prohibited.

e. Section 16.24.140: All proposed utility facilities, including, but not limited to, gas, electric power, telephone, and CATV cables, are located underground. Where practical, existing utility facilities located above ground, except when located in a public right-of-way, are to be removed and placed underground.

f. Chapter 16.41: A positive determination of adequacy, or a positive determination of adequacy with conditions, has been made in accordance with Section 16.41.100 for fire protection and emergency rescue services, Section 16.41.120 for water facilities and services, Section 16.41.130 for wastewater facilities and services, Section 16.41.140 for storm drainage facilities, and Section 16.41.150 for power.

Fire Protection and Emergency Rescue Services (Section 16.41.100)

Fire protection and emergency rescue service (ERS) shall be deemed to be adequate and available for a proposed development if such services for the development meets or exceeds the applicable adopted level of service provided in Appendix A, and: (1) Adequate fire

protection services and ERS are currently in place or will be in place prior to issuance of a building permit for the development; or (2) Provision of adequate fire protection service and ERS are a condition of the development application approval and are guaranteed to be provided at or before the approval of a final plat or issuance of the first building permit for the proposed development; or (3) Facilities necessary for providing adequate fire protection services and ERS are under construction and will be available at the time that the impacts of the proposed development will occur, or (4) Provision of fire protection service and ERS are guaranteed by an executed and enforceable development agreement which ensures that such service will be in place at the time that the impacts of the proposed development will occur.

Fire Prevention: Staff believes that this finding can be met due to the following:

- The furthest point within this development is approximately 2 miles from the first due Engine Company (Station 3) and approximately 4 miles from the first due Ladder Company (Station 1).
- This project falls within a Conceptual Fire Service Area. A site near Rossum Drive and Highway 34 has been dedicated for a future fire station.

Water Facilities and Services (Section 16.41.120)

Water facilities and services shall be deemed to be adequate and available for a proposed development if such facilities and services for the development meet or exceed the applicable adopted level of service provided in Appendix A, at the end of this Chapter, and: (1) A supply of raw water adequate to serve the projected needs of the proposed development is owned or controlled by the city and such water supply is or will be available for use by the proposed development prior to the issuance of the first building permit within the proposed development; and (2) Sufficient raw water storage capacity, including on-site and off-site capacity, is available to serve the proposed development and such capacity is or will be available for use by the proposed development prior to the issuance of the first building permit within the proposed development; and (3) Sufficient water treatment capacity is available or, through new capacity improvements will be made available, to ensure a supply of potable water to the proposed development ; and (4) Sufficient water main capacity will be available or, through new capacity improvements will be made available, to serve the proposed development prior to the issuance of the first building permit within the proposed development.

Wastewater Facilities and Services (Section 16.41.130)

Wastewater facilities and services shall be deemed to be adequate and available for a proposed development if such facilities and service meet or exceed the applicable adopted level of service provided in Appendix A, at the end of this chapter, and: (1) The city of Loveland's central wastewater system or the central wastewater system of a sanitary sewer district is capable of connection to the proposed development; and (2) Sufficient wastewater treatment capacity is available or, through construction of new capacity improvements will be made available, to treat wastes generated by the proposed development prior to the issuance of the first building permit within the proposed development; and (3) Sufficient wastewater trunk line capacity is available and, where required, lift station capacity is

available to serve the proposed development prior to the issuance of the first building permit within the proposed development.

Water/Wastewater: Staff believes that this finding can be met due to the following:

- This development is situated within the boundaries of, and accommodated by, the City's water and wastewater master plans. It is also located within the City's current service areas for Water and Wastewater.
- The proposed development will not negatively impact City water and wastewater facilities.
- The proposed development is in harmony with existing and future development and incorporates public infrastructure designed so that the proposed development will not negatively impact the levels of service of the City utilities adjacent to the development.
- The proposed facilities shown on the Preliminary PICPs have been designed pursuant to the City's Development Standards.
- The proposed facilities have been design to minimize flood damage and infiltration.

Stormwater Facilities (Section 16.41.140)

Stormwater facilities shall be deemed to be adequate and available for a proposed development if the development meets or exceeds the applicable adopted level of service provided in Appendix A, at the end of this chapter, and: (1) The proposed development meets all applicable requirements contained in the stormwater master plan, including the stormwater criteria manual; and (2) The proposed development provides for adequate major drainageways to convey stormwater flows from a one hundred year storm event which will minimize property damage; and (3) The proposed development meets all applicable drainage requirements of the city of Loveland.

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

- When designed and built, the development will not negatively impact City storm drainage utilities and will comply with the Adequate Community Services ordinance outlined in the Loveland Municipal Code, Section 16.41.140.
- No irrigation ditches traverse the site.
- No natural drainage courses/open channels traverse the site.

Power (Section 16.41.150)

Power facilities shall be deemed to be adequate and available for a proposed development if the development meets or exceeds the applicable adopted level of service provided in Appendix A, at the end of this chapter, and the proposed development will obtain utility services from the city through a system meeting all engineering and design standards applicable to the utility.

Power: Staff believes that this finding can be met due to the following:

- Three-phase underground power is available in a vault located to the north of the proposed development and on the west side of Rossum Drive. Power will be extended into the development and an additional vault will be installed in the existing power line at the developer's expense per City Municipal Codes.
- The existing underground feeder is an available and adequate source for electric distribution for the proposed development. No negative impacts on the City's electric system are foreseen.

B. Transportation

1. **Section 16.20.030:** *The subdivision has been reviewed in accordance with the Loveland Comprehensive Master Plan to insure that the subdivision is designed in accordance with good engineering practices and provides for safe and convenient movement.*
2. **Section 16.24.015:** *Streets, street signs, highways, curb and gutter, traffic control devices, and other improvements as required to be constructed with the subdivision have been designed in accordance with the Larimer County Urban Area Street Standards, as amended.*
3. **Section 16.24.040:**
 - a. *Streets have been designed to have a logical relationship to topography and to the location of existing or platted streets in adjacent properties. Certain proposed streets, as determined by the City engineer, have been extended to the boundary of the subdivision to provide for traffic circulation within the vicinity*
 - b. *As required by the Director, perpetual unobstructed pedestrian easements at least 20 feet in width have been provided within the subdivision to facilitate pedestrian access from roads to schools, parks, playgrounds, or other community or commercial services. Such easements shall generally not follow road rights-of-way.*
4. **Section 18.41.050.E.2:**
 - a. *Development permitted by the PDP will not have negative impacts on traffic in the area. If such impacts exist, Section 18.41.050.D.4(b) of the Loveland Municipal Code requires City staff to recommend either disapproval of the PDP or reasonable conditions designed to mitigate the negative impacts.*
 - b. *Whether development permitted by the PDP will be complementary to and in harmony with existing development and future development plans for the area in which the PDP is located by incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the proposed development will not negatively impact the levels of service of the City's services and facilities.*
5. **Section 16.41.110:** *A positive determination of adequacy, or a positive determination of adequacy with conditions, has been made for transportation facilities in accordance with Chapter 16.41 of the Loveland Municipal Code.*

Transportation Engineering Division: Section 16.41.110 of the Municipal Code (the ACF ordinance) requires a proposed PDP to comply with **one** of the following five standards in order for a positive determination of adequacy to be made:

Transportation facilities shall be deemed to be adequate and available for a proposed development if the development meets or exceeds the applicable adopted level of service provided in Section 4.5 of the Larimer County Urban Area Street Standards, which may be amended by resolution, and: (1) All transportation facilities are currently in place or will be in place prior to issuance of a building permit for the development; or (2) Provision of transportation facilities are a condition of the development approval and are guaranteed to be provided at or before the approval of a final plat or issuance of the first building permit for the proposed development; or (3) Transportation facilities are under construction and will be available at the time that the impacts of the proposed development will occur; or (4) Provision of transportation facilities needed to achieve the adopted level of service are guaranteed by an executed and enforceable development agreement which ensures that such facilities will be in place at the time that the impacts of the proposed development will occur; or (5) Transportation facilities needed to achieve the adopted level of service are included in the capital improvements program (CIP); and (a.) The CIP contains a financially feasible funding system from available revenue sources which are adequate to fund the streets required to serve the proposed development, and (b.) The transportation facilities are likely to be constructed and available at the time that the impacts of the proposed development will occur, or at the time the city extends the transportation facilities to provide a logical link to the project.

Transportation Engineering: Staff believes that this finding can be met due to the following:

- The proposed Mariana Butte 26th Subdivision is located north of W. 1st Street and west of Rossum Drive. W. 1st Street adjacent to the development is designated as a 2-lane arterial on the 2030 Transportation Plan. Rossum Drive adjacent to the development is designated as a major collector on the 2030 Transportation Plan. Access to the subdivision will be provided by a full movement access onto Rossum Drive.
- A Traffic Impact Study Memorandum has been submitted with the Mariana Butte 26th Subdivision which demonstrates that the existing transportation system, can adequately serve the land uses proposed.
- The applicant's traffic engineer, Joseph Delich, P.E., has submitted a Traffic Impact Study (TIS) that indicates that the traffic associated with the proposed development will meet the City's standards. The proposed subdivision is estimated to generate approximately 115 daily trips, 9 weekday AM peak hour trips, and 12 weekday PM peak hour trips.
- An exemption was granted for this property on 1/24/07 from the level-of-service (LOS) standards outlined in the Adequate Community Facilities (ACF) ordinance. Although this property is exempt from the ACF ordinance, the TIS demonstrates that the roadway system will adequately serve the traffic generated by this development and meet the ACF requirements.
- The property has already been approved for a five lot subdivision (Mariana Butte 23rd Subdivision) which was estimated to generate approximately 48 daily trips, 4 weekday AM peak hour trips, and 5 weekday PM peak hour trips. The proposed six additional lots in Mariana Butte 26th Subdivision is estimated to approximately

generate an additional 67 daily trips, 5 weekday AM peak hour trips, and 7 weekday PM peak hour trips (**Attachment 6**).

In conclusion, the development of the subject property pursuant to the uses proposed in the PDP Amendment will not adversely impact any existing City infrastructure. A positive determination of adequacy for transportation facilities for the proposed PDP Amendment has been made under the provisions of paragraph i, above.

C. Land Use

1. **Loveland Comprehensive Master Plan**
 - a. **Section 4.1 -Growth Management Plan**
 - (iii) *Whether the PDP discourages leapfrog, scattered-site, and flagpole development.*
 - (iv) *Whether the PDP encourages infill development.*
 - (vi) *Whether the PDP is contiguous to other land that is already receiving public services.*
 - (vii) *Whether the PDP is at least 1/6 contiguous with existing development, as defined in Section 4.1 GM:3(D-1) of the Comprehensive Master Plan.*
2. **Section 18.41.050.E.2:**
 - a. *The PDP conforms to the intent and objectives of Title 18 with regard to Planned Unit Developments and any applicable area plan.*
 - b. *The PDP is in compliance with the GDP on file with the City.*

Current Planning Division: Staff believes that this finding can be met due to the following:

- The property has received approval of a preliminary and final development plan. This application is for an amendment to the PDP. Findings related to growth management policies are not applicable to the amendment request.
- The Preliminary Development Plan Amendment is part of the overall Mariana Butte PUD and is in substantial compliance with the Mariana Butte General Development Plan, as demonstrated in Table 1 of this report. The project site is within an area zoned for "mixed residential", which permits a variety of residential product types including single family detached and single family paired dwellings.
- The Mariana Butte GDP does not include a limitation on residential density or a maximum number of units within the subject site.
- The design standards proposed in the PDP Amendment, including building materials, roofing and setbacks, are in compliance with the design standards established in the GDP (see Table 1 in this report).

3. **Section 18.41.050.E.2:** *Development permitted by the PDP will not have detrimental impacts on property that is in sufficient proximity to the PDP to be affected by it. If such impacts exist, Section 18.41.050.D.4(b) of the Loveland Municipal Code requires City staff recommend either disapproval of the PDP or reasonable conditions designed to mitigate the negative impacts.*
4. **Section 16.20.030:** *The subdivision does not create, or mitigates to the extent possible, negative impacts on the surrounding property.*

Current Planning: Staff believes that this finding can be met due to the following:

- The proposed development will not negatively impact traffic in the area, city utilities, or surrounding properties. Traffic volumes for the proposed development, which includes 11 single family residential lots, comply with the City's level of service standards. Adequate utilities can be provided meeting City adopted levels of service.
- The proposed development is compatible with the nature of existing development within the Mariana Butte PUD, which includes a variety of residential lot sizes, densities and product types. While lots around the lake edge of Buckingham Reservoir are larger in size, ranging from approximately 21,500 square feet to 43,000 square feet (average of 29,600 square feet), a variety of small lot sizes are provided throughout the development, based on product type. Single family detached lots directly across Rossum Drive in Mariana Butte 7th Subdivision range from 6,600 to 12,000 square feet. In other areas of the PUD paired structures are situated on lot sizes of 2,600 square feet. The PUD represents a wide range of diverse lots sizes to accommodate different product types and choices for residents.
- The proposed building materials of hardboard siding and asphalt shingles comply with the approved materials in both the GDP and original PDP. The building materials are also consistent with the materials of residential structures on the east side of Rossum Drive.
- To increase the compatibility of the development and as a result of neighborhood comments, a single family detached dwelling is proposed to serve as a transition from the large lot single family uses to the north. The proposed structure would be placed on a 13,500 square foot lot with significant landscaping buffering installed.
- The applicant is installing off-site landscaping that consists of a variety of coniferous trees in Tract A of Mariana Butte Ninth Subdivision. The plantings will create a landscaped screen effect between the development and the existing subdivision to the north.

5. **Section 18.41.050.E.2: Development permitted by the PDP will be complementary to and in harmony with existing development and future development plans for the area in which the PDP is located by:**

- a. *Incorporating natural physical features into the PDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.*
- b. *Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan.*
- c. *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.*
- d. *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.*

6. **Section 16.20.030:** *The subdivision provides desirable settings for buildings, protects views, and affords privacy, protect from noise and traffic, and uses resources such as energy and water in keeping with responsible resource stewardship.*

Current Planning Division: Staff believes that this finding can be met due to the following:

- The project site is currently vacant with an existing jurisdictional wetland area. No modification to the enhancement or preservation of the wetland area is proposed with the PDP Amendment.
- Access to the 11 lots will be via an extension of Scenic Drive, across Rossum Drive ending in a cul-de-sac (named Scenic Court). Scenic Court is proposed to incorporate a 5-foot attached walk adjacent to the residential lots, which will connect to the detached sidewalk along Rossum Drive.
- To accommodate bike traffic, Rossum Drive was constructed with seven foot bike lanes on each side of the roadway. In addition, an 8-foot wide concrete pedestrian walkway will be constructed connecting the sidewalk along Rossum Drive to the path around Buckingham Lake.
- The lot layouts, building orientation and landscaping proposed in the Amendment will provide an overall varied and attractive streetscape, consistent with the streetscape in the PUD.
- The PDP Amendment contains architectural requirements that would create compatible relationships with surrounding developments within the Mariana Butte PUD. The design of the structures resemble a craftsman style with at least 25% masonry on the front elevations. In terms of garage orientation, of the 11 dwellings, 4 contain side loaded garages, 5 have garages generally flush with a front porch element and 2 units have forward facing garages with a 42-inch courtyard wall to lessen the protrusion of the garage. Proposed colors for the new residences will generally be subdued to blend with the colors of the natural landscape with no two adjacent paired structures painted the same color.

7. **Section 18.41.050.E.2:** *The PDP complies with applicable land use and development regulations in effect as of the date that the GDP was approved and any land use and development regulations adopted by the City after that date if the Planning Division and Planning Commission expressly find that compliance with such regulations is necessary to protect public health, safety, and welfare.*

Current Planning Division: Staff believes that this finding can be met due to the following:

- The Amendment to the PDP meets both the intent and objectives of Chapter 18.41. This determination is based upon compliance with the zoning standards established in the Mariana Butte GDP, including use, density, setbacks and building materials (see Table 1 in this report).

8. **Section 16.20.030:** *The lots and tracts are laid out to allow efficient use of the property to be platted.*

9. **Section 16.24.050:** *All lots comply with the standards set forth in the GDP and, to the extent practical, lot lines are at right angles to the street line or at right angles to the tangent of the curve of the street line.*

Current Planning Division: Staff believes that this finding can be met due to the following:

- Lots and tracts are laid out to allow an efficient use of the property. Given the shape of the parcel and natural constraints of the jurisdictional wetland, lot lines have been designed to incorporate right angles relative to the street line of Scenic Court and the private drive in Outlot B, to the maximum extent practicable.

10. **Section 16.24.120:**

- a. *Landscaping complies with the requirements set forth in the GDP and bufferyards required pursuant to the GDP are within separate tracts of land, separate from individual residential lots.*
- b. *Street trees are located in compliance with the City's Site Development Performance Standards and guidelines, unless waived by the Director.*
- c. *The subdivision plat includes open space fields in compliance with the requirements set forth in Section 16.24.150, unless waived by the Planning Commission. The open space play fields are designed with respect to size, dimension, topography, and general character to be suitable for outdoor play activities*

Current Planning Division: Staff believes that this finding can be met due to the following:

- Landscaping will comply with the requirements set forth in the GDP as well as the City's Site Development Performance Standards. The PDP Amendment proposes to supplement and enhance the landscape buffering along Rossum Drive and W. 1st Street with additional coniferous plantings that will add year round color.
- Open space primarily consists of natural wetlands labeled as Outlot D and perimeter landscaped outlots, Outlots A, C, and E, that serve an aesthetic purpose rather than open space fields for recreation purposes. Per Section 16.24.150 of the Loveland Municipal Code, open space play fields are not required for subdivision's containing less than fifty (50) single family lots.

D. Environmental Impacts:

1. **Section 18.41.050.E.2:** *The PDP incorporates environmentally sensitive areas, including but not limited to wetlands and wildlife corridors, into the project design. "Environmentally sensitive areas" are defined in Section 18.41.110 as: slopes in excess of 20%; floodplain; soils classified as having high water table; soils classified as highly erodible, subject to erosion or highly acidic; land incapable of meeting percolation requirements; land formerly used for land fill operations or hazardous industrial use; fault areas; stream corridors; estuaries; mature stands of vegetation; aquifer recharge and discharge areas; habitat for wildlife; and other areas possessing environmental characteristics similar to those listed above.*
2. **Section 16.20.030:** *The subdivision preserves natural features and environmentally sensitive areas to the extent possible.*

Current Planning: Staff believes that this finding can be met due to the following:

- An environmentally sensitive report was submitted and reviewed with the original PDP. The PDP Amendment does not propose to modify the preservation or enhancement of the jurisdictional wetlands located in Outlot D. Wire mesh will be installed with the 3-rail fencing along the perimeter of the project to limit domestic animal intrusion into the wetland area.

IX. RECOMMENDED CONDITIONS

PRELIMINARY PUD DEVELOPMENT PLAN AMENDMENT

Current Planning

1. Prior to issuance of a building permit within the PDP Amendment boundaries, all common area landscaping, environmental sensitive areas enhancement, streetside bufferyards and landscaping in Tract A, Mariana Butte Ninth Subdivision shall be either installed or financially secured with the City. Financial security shall include all plant material, irrigation and water meters necessary to sustain the landscaping. Financial security shall be provided for all seeded areas identified in the PDP Amendment, until such time that the seed germinates and is generally free of weeds.
2. Prior to approval of the FDP, a letter from the Buckingham Reservoir Area Owners Association approving the modification of the plant species in Tract A, Mariana Butte Ninth Subdivision, shall be submitted to the Current Planning Division. If an approval letter from the Buckingham Reservoir Area Owners Association is not secured, the landscaping in Tract A shall revert to the landscaping approved in the Mariana Butte 23rd Subdivision FDP and the FDP Amendment for Mariana Butte 26th Subdivision shall be modified to reflect said change.

Engineering

3. Notwithstanding any information presented in the PDP or accompanying preliminary plat and preliminary construction plan documents (text or graphical depictions), all public improvements shall conform to the Larimer County Urban Area Street Standards, as amended, unless specific variances are requested and approved in writing.
4. Prior to the issuance of any building permits within the Mariana Butte Twenty Sixth Subdivision, pursuant to the provisions in Section 16.40.010.B of the Loveland Municipal Code, the Developer shall design and construct the following improvements, 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) A 5-foot wide detached sidewalk along Rossum Drive adjacent to the property.
 - b) A 6-foot wide detached sidewalk along West 1st Street adjacent to the property

RESOLUTION # 11-01 PDP

A RESOLUTION APPROVING AN AMENDMENT TO A PRELIMINARY PUD DEVELOPMENT PLAN OF TRACT A, MARIANA BUTTE PUD, TENTH SUBDIVISION, LOCATED WITHIN MARIANA BUTTE PLANNED UNIT DEVELOPMENT (P-8), CITY OF LOVELAND, LARIMER COUNTY, COLORADO, AS ORIGINALLY APPROVED BY RESOLUTION #07-04 PDP.

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

WHEREAS, an amendment to the Preliminary PUD Development Plan for PUD # P-8, also known as Tract A, Mariana Butte PUD, Tenth Subdivision, ("Amended PDP") has been submitted to the Planning Commission for consideration, pursuant to Chapter 18.41 of the Loveland Municipal Code; and,

WHEREAS, pursuant to section 18.41.050(E)(3)(a) of the Loveland Municipal Code, the City of Loveland Planning Commission held a public hearing on August 22, 2011, regarding said Amended PDP; and,

WHEREAS, at said hearing the recommendations of the Current Planning Division were received and duly considered by the Commission, as well as all necessary testimony by the applicant and public; and,

WHEREAS, the Commission has considered the application in light of the intent and objectives of Chapter 18.41 of the Loveland Municipal Code, and more specifically the factors set forth in sections 18.41.050(D)(4)(b) and (c), and has determined that pursuant to said factors the Amended PDP may be approved;

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

Section 1. That an amendment to the Preliminary PUD Development Plan for 5.05 acres, more or less, being Tract A of the Mariana Butte PUD, Tenth Subdivision (#P-8), which Preliminary Development Plan is on file in the office of the City of Loveland Current Planning Division, and is incorporated herein by this reference, is hereby conditionally approved, consistent with the recommendation of the Planning Staff Report dated August 22, 2011, as amended by the Planning Commission in public hearing on August 22, 2011.

ATTACHMENT 1

EXHIBIT G

The Amended PDP for Mariana Butte Twenty-Third Subdivision applies to the following described real property:

“Tract A of the Mariana Butte Planned Unit Development Tenth Subdivision”

Section 2. This Resolution shall be recorded with the Clerk and Recorder for Larimer County, Colorado, as soon as is reasonably possible.

Resolved this 22nd day of August, 2011.

Rob Molloy, Chairperson
City of Loveland Planning Commission

ATTEST:

Planning Commission Secretary

APPROVED AS TO FORM:

Assistant City Attorney

PRELIMINARY DEVELOPMENT PLAN

MARIANA BUTTE TWENTY-THIRD PUD

FIRST AMENDMENT

A PLANNED UNIT DEVELOPMENT

LAND USE SITE SUMMARY

The following Land Use Data relates to the entire site areas to be developed:	
Existing/Proposed Zoning	PUD, Residential
Proposed Use	Mixed Single Family Residential
Total Site Area	5.05 Ac. 100%
• Total Residential Lot Area (Lots #1-11)	1.67 Ac. 35%
• Total Public ROW To Be Dedicated (Scenic Court, Rossmi Drive # West Mt. Street ROW)	0.40 Ac. 10%
• Total Common Open Space Area (includes Outlots A thru E)	2.45 Ac. 44%
Total Dwelling Units/Lots *	11 Units/Lots
Total Density (Based on 5.05 Total Site Acres)	2.14 du/acs (gross)
Density of residential lot development area, excluding outlots DE (open space), and 1st Street ROW dedication (2.64 net acres)	3.60 du/acs
Lot Sizes	Minimum = 5,097 s.f. Maximum = 15,840 s.f. Average = 12,961 s.f.

RESIDENTIAL BUILDING SETBACK REQUIREMENTS

- Front Setback (Front Loaded Garage): 20' minimum setback from the property line to face of principle structure or face of garage, whichever is closer.
- Front Setback (Side Loaded Garage): 10' minimum setback from the property line to face of principle structure or face of side loaded garage, whichever is closer.
- Side Setback (Common Wall Lots 2-10): 10' minimum setback as measured from the common wall lot line of paired structure.
- Side Setback (Lot 11): 10' minimum setback as measured from the side lot line to face of principle structure.
- Side Setback (Lots 2-10): 8' minimum setback as measured from the side lot line to face of principle structure.
- Side Setback (Lot 11): 20' minimum setback as measured from the side lot line to face of principle structure.
- Rear Setback (Lots 1-11): 10' minimum setback as measured from the rear lot line to face of principle structure and/or to raised covered decks.

GENERAL SETBACK NOTES

- Front setbacks shall be measured from the front lot line or property line to face of principle structure, or face of garage, whichever is closer.
- Major architectural features which do not exceed 2' in overall projection from the principle structure (i.e., roof overhangs, fascia, eaves, fireplaces, bay windows, covered walk, etc.) and allowed to encroach into the front, rear or side setbacks, but are not allowed to encroach into an easement regardless of setback requirements.
- A minimum separation of 10' between the face of principle structures must be maintained.
- Window walls may protrude into setbacks but are not allowed to encroach into any easements.

MARIANA BUTTE 23rd ORIGINAL CONDITIONS OF APPROVAL Planning Commission Meeting 6-11-07

Preliminary Development Plan

- Financial security shall be provided for all seeded areas identified in the PDP, until such time that the seed germinates and is generally free of weeds.
- Prior to the approval of the Final Development Plan, the Developer shall provide the City with a copy of the agreement for installing off-site landscaping, as shown in the PDP.
- The recommendations and provisions in the ESRP dated November 2006 shall be incorporated into the PDP.
- Final sign text for the interpretive and educational signs located along the trail shall be submitted with the PDP. The signs should stress the need for no wildlife harassment or human intrusion into important habitat areas.
- Notwithstanding any information presented in the PDP or accompanying preliminary plan and preliminary construction plan documents (text or graphical depiction), all public improvements shall conform to the Larimer County Urban Area Street Standards as amended, unless specific variances are requested and approved in writing.
- Prior to the installation of any structures within the public right-of-way, an encroachment permit shall be obtained from the City of Loveland.
- Paving stones and pavement snow melt systems, shall not be allowed on the public street with this development.
- Prior to the approval of the Final Development Plan and Final Plat, the Developer shall redesign the proposed retention basin to have no more separation from the existing wetlands as possible yet obtain equal or greater water conveyance design. The separation point shall have a greater filter bottom and a compacted earth vegetated berm separating the basin from the wetlands.
- A surcharge of 5% will be added to utility for the sale of electric power to additional services which come into existence after January 31, 2011, within the territory herein annexed which surcharge will expire ten years after effective date of the annexation.

Preliminary Plat

- Landscaping plan for Outlot G shall be submitted concurrently with the first Preliminary Development Plan proposal for Lot 1, Block 2 of Mariana Butte 23rd subdivision. All landscaping in Outlot G shall be installed prior to release of a building permit for Lot 1, Block 2 of Mariana Butte 23rd subdivision.
- Signage shall be provided at the entrance to the subdivision indicating the address range of the homes within the subdivision prior to the release of building permits.
- Prior to the approval of the Final Plat, provide a "Fire Lane - No Parking" sign plan for approval by the fire prevention office for 1-side of the street and the entire 51-86-000.

BEING AN AMENDMENT TO A PORTION OF
MARIANA BUTTE P.U.D. TWENTY-THIRD FINAL DEVELOPMENT PLAN
AND A PLAT OF MARIANA BUTTE 26TH SUBDIVISION TO THE
CITY OF LOVELAND, LARIMER COUNTY, STATE OF COLORADO.



CITY OF LOVELAND
VICINITY MAP

SCALE 1" = 2000'

OWNER:

B&B LLC
c/o JOHN BAXTER
416 N. GARFIELD AVE
LOVELAND, CO. 80538
866-580-2220

APPLICANT:

B&B LLC
c/o JOHN BAXTER
416 N. GARFIELD AVE
LOVELAND, CO. 80538
866-580-2220

PLANNER/ENGINEER/ARCHITECT:

LANDMARK PLANNERS, ENGINEERS, ARCHITECTS
c/o KEN MERRITT
3521 W. EISENHOWER BLVD.
LOVELAND, CO. 80537
870-661-6286

SIGNATURE BLOCK

City Approvals
Approved this _____ day of _____ 2011 by the Current
Planning Manager of the City of Loveland, Colorado.

Current Planning Manager
Approved this _____ day of _____ 2011 by the City
Engineer of the City of Loveland, Colorado.

City Engineer
Approved this _____ day of _____ 2011 by the City
Attorney of the City of Loveland, Colorado.

City Attorney
Approved this _____ day of _____ 2011 by the Planning
Commission of the City of Loveland, Colorado.

Planning Commission Chairperson

OWNERS CERTIFICATION

KNOW ALL MEN BY THESE PRESENTS THAT,

Being all the lawful record owners of the property known on the map as the Mariana Butte 23rd subdivision, located in Larimer County, Colorado, do hereby certify that they accept the conditions and restrictions set forth in said plan and in the conditions of approval.

By the City of Loveland, dated _____ and
that the applicant to the recordation of any information pertaining thereto.

(Owner)
STATE OF COLORADO
COUNTY OF LARIMER

The foregoing instrument was acknowledged before me the _____ day of _____ 2011, by _____
Witness my hand and official seal.

My commission expires _____

NOTARY PUBLIC

SHEET INDEX

- TITLE SHEET
- NARRATIVE & DESIGN STANDARDS
- SITE PLAN
- LANDSCAPE PLAN
- LANDSCAPE SPECIFICATIONS AND DETAILS
- LANDSCAPE SPECIFICATIONS AND DETAILS
- FENCING AND COLUMN DETAILS
- ARCHITECTURAL ELEVATIONS (PROTOTYPICAL)
- HYDRO-ZONE PLAN

PORTIONS OF THIS SHEET
HAVE BEEN REVISED PER
THE MARIANA BUTTE 23rd
PUD FIRST AMENDMENT

B&B LLC

MARIANA BUTTE 23RD PUD FIRST AMENDMENT

BUCKINGHAM SHORES

TITLE SHEET

BUCKINGHAM SHORES

ATTACHMENT 3

PRELIMINARY DEVELOPMENT PLAN NARRATIVE

PROJECT LOCATION

Mariana Butte Twenty-Third PUD First Amendment Marketing Name, "Buckingham Shores" is a 5.05 acre residential community located at the Northwest corner of West First Street and Rousum Drive, directly east of Buckingham.

The Mariana Butte Twenty-Third PUD First Amendment is conveniently accessible to all areas of Loveland via West First Avenue and Rousum Drive and is within walking distance of Mariana Butte golf course, Novoqua Elementary School, as well as other amenities within the Mariana Butte PUD. The developers of Buckingham Shores are committed to providing a residential development complimentary to the areas and scenic views of Buckingham Lake and the Front Range Foothills and Mountains.

The site is separated from Buckingham Lake by Buckingham Lake Dam, approximately 15 acres of jurisdictional wetlands and a 50' wide "natural area" buffer (lot 21).

AMENDMENT DESCRIPTION

Mariana Butte 23rd PUD First Amendment is an amendment to a portion of the Mariana Butte 23rd Final Development Plan. The intent is to amend only the residential lot areas and public roadway portion of the original Mariana Butte 23rd Final Development Plan, with only minor revisions to the overall site design, outside the residential letting area. All other elements including landscaping, protection of natural area, natural area buffering, and enhancement, sewage treatment and offsite roadway improvements (at Street 4, Rousum Drive) will remain as originally designed.

The Mariana Butte 23rd PUD First Amendment proposes a single family detached residential lot and 10 paired residential lots within a "Maintenance free, lifestyle" paired home development.

LAND USE

Mariana Butte Twenty-Third PUD First Amendment will be a maintenance free community focusing on the unique views to the west and south. This community will have a total of 11 Residential lots ranging in size from 5,071-10,940 s.f. Residential lots will provide both privacy and security and uniqueness while uniting the residences that the overall Mariana Butte PUD area.

Building setbacks will be exemplified with a perimeter ornamental metal fence and stone columns along Rousum Drive. Landscaping of the entrance and project perimeter. A natural area restoration buffer along the west edge will create a transition zone between the natural area and the residential lots. The entrance will be landscaped with a perimeter ornamental metal fence and stone columns along Rousum Drive. Upon completion of each home the developer/builder will fully landscape the private lot with trees, shrub beds, and irrigation which will be maintained by the home owner's association.

Only a very high level of architectural detail that complements the existing adjacent development will be considered. The developer is committed to building a quality and distinctive product while respecting the character of the area. Mariana Butte Twenty-Third PUD First Amendment will meet a housing need presents within Loveland for maintenance free single family detached and paired homes within an estate like community.

CIRCULATION

Mariana Butte Twenty-Third PUD First Amendment (Buckingham Shores)

Mariana Butte Twenty-Third PUD First Amendment residential area shall be served by a public dedicated "lane" (lot 20) 4' 26" roadway terminating at a cul-de-sac less than 100' in length, known as Scenic Court.

The project is accessed from the existing Rousum Drive (a major collector street) via West First Street (a minor arterial street). Pedestrian circulation shall be accommodated by a 5' detached walk along Rousum Drive, a 6' detached walk along West First Street and a 5' attached walk along the west and south sides of Scenic Court. Pedestrian circulation shall be further enhanced with a public access walk connecting Buckingham Lake with the project entry of Rousum Drive.

Existing Major Arterial Street (West First Street).

Roadway improvements to the north side of West First Street will be required adjacent to Mariana Butte Twenty-Third PUD First Amendment (north edge of West 1st Street). Improvements will include adjusting the north edge of the asphalt so that the North 1st will comply with the ultimate street cross-section for a 6' one way arterial 2x20' traffic lanes, a center 12' median/turning lane, and 2-5' travel lanes. Because of the rural nature of this area concrete curbs and gutters will not be installed. A detached 4' wide sidewalk will be installed a minimum of 10' feet north of the new edge of asphalt and will meander through the landscape area as shown on the site plan.

The existing right-of-way for West 1st Street is 10 feet with 40 feet total width of the section line and 20 feet being south of the section line. An additional 10 feet of right-of-way was previously dedicated on the north side of the section line bringing the total North 1st street right-of-way to 30 feet.

Because road improvements will not be done on the south half of West 1st street, the full ultimate cross-section will not be achieved. The existing curbing will be removed and new curbing installed to reflect the minimum improvements for the street.

Major Collector, Rousum Drive.

No significant road improvements will be made to Rousum Drive with the exception of the new Scenic Court. The 4' curb return will be removed and the 4' curb and 5' sidewalk will be replaced.

Existing Rousum Drive to curve drainage to or into drainage at the West 1st Street/Rousum Drive intersection. A 5' wide sidewalk will be installed on the west edge of Rousum Drive.

Scenic Court.

Scenic Court is a public lane (20' wide) within a 40' right-of-way. This roadway shall align with Scenic Drive to the east, but includes two 10' wide travel lanes with 8' shoulders on street parking, one side only. A concrete drive over curb gutter and 5' walk, extending 3/4 around the cul-de-sac shall connect with the Rousum Drive sidewalk. Pedestrian access will provide neighborhood connectivity.

Note:

The project shall comply with the public improvement design and construction standards adopted January 2001 and the Transportation Plan adopted July 2000 and any updates to either in effect at the time of development application.

PUBLIC FACILITIES PROVIDERS

- Police: City of Loveland
- Fire & Rescue: City of Loveland
- Schools: Thompson School District R2-J
- Parks: City of Loveland

PUBLIC UTILITIES

Basic utilities required for the development have been extended to the site or exist near the property and are available to the property. Adequate capacity currently exists within the City's infrastructure to serve the project. The following is a list of utilities their providers and service availability:

- Water: City of Loveland
Existing 12" waterline in Rousum Drive.
- Sewer: At the commencement of development, an 8" wastewater shall be extended from Rousum Drive into Scenic Court. A looping system will supply the fire and domestic water needs of the development.
- Sewer: City of Loveland
Existing 8" sanitary sewer service is available in Rousum Drive.
- Impacts: Individual RDA owned and maintained pump stations with 2" forced main that are incorporated into a private utility easement. The proven technology shall provide convergence of wastewater from the development to the 8" gravity sewer main in Rousum Drive.
- Electric: City of Loveland
Existing service is available in Rousum Drive and shall be extended through the site.
- Gas: Xcel Energy
Existing gas main is available along Rousum Drive and shall be extended through the site.
- Telephone: GTE
Service is available along Rousum Drive and is extended through the site.

STORM DRAINAGE

Generally, drainage for the developed site will flow from the northeast to southwest to a sedimentation basin or across buffer areas before reaching the wetlands where it is eventually discharged into a Mariana Butte CMP culvert near the Buckingham Irrigation District.

Drainage for Lots A-H will be conveyed down the private access drive, then to a drainage swale leading to a small sedimentation basin before being discharged into the wetlands. The western developed portion of the site generally sheet flows south southwest to the south. Scenic Court where it is directed into and laid out in the south, and then conveys via the storm drain to the wetlands. Lots C, D, E and F all drain across a landscaped buffer area before reaching the wetlands. Lots D, F, G, H, I, and J have been preserved to retain the natural natural drainage patterns. Flow reaching the wetlands eventually discharge to a 36-inch CMP culvert and the Buckingham Irrigation District.

The rear of lots C, D, G, H, I and J drain across a landscaped buffer area before reaching the wetlands. Lots D, F, G, H, I, and J have been preserved to retain the natural natural drainage patterns. Flow reaching the wetlands eventually discharge to a 36-inch CMP culvert and the Buckingham Irrigation District.

Many of the lots have been designed to accommodate walkout architecture to take advantage of views to the west. Front lot grading will be determined at time of building permit application and will be reviewed by both the Architectural Review Committee (ARC) and the City of Loveland Building Department prior to issuance of building permits.

LANDSCAPE (General)

The project shall be landscaped with regionally appropriate plant materials. In open space and buffer yard areas, "waterwise" and naturalistic design approach shall be used. These areas shall include informal plantings of coniferous and deciduous trees with large amounts of deciduous and coniferous shrubs. Buff areas shall incorporate low water use drought tolerant seed and soil varieties. Wetland enhancement areas will utilize appropriate wetland plantings, as specified on the "Preliminary Landscape Specifications Details" sheet. Common open space areas and individual lot landscaping shall be maintained by the Mariana Butte Homeowners Association.

Proposed street trees (along the north side West 1st Street and west side of Rousum Drive) will link the various developed areas and individual residential landscapes into a harmonious and unified system.

A variety of tree species shall be used throughout the development to insure visual interest and horticultural stability. A canopy effect will be created by the project trees.

Landscape shown on the landscape plan including private lot landscaping, landscaping of common space areas, buffer areas, landscaping within public R.O.W.s, streetscapes (both trees and sod), natural areas, and drainage areas shall be maintained by the developer/builder as per the terms and conditions set forth by the Buckingham Shores Homeowners Association. Common areas and easements shall be maintained by the developer/builder or installed prior to building permits issuance if weather conditions do not permit installation of landscape and irrigation.

All areas shall be planted a minimum of 10' from public utilities. Shrubs to be planted a minimum of 8' from public utilities.

DESIGN AND ARCHITECTURAL DEVELOPMENT STANDARDS (ADS)

The following is intended as an outline of Design and Architectural Development Standards (ADS) that will apply to the construction of Mariana Butte Twenty-Third PUD First Amendment. Prescriptive and alternative have been provided with the intention in order to have the most appropriate design for the project. The standards for the development may require, but are not limited to, ARC, plan, and specifications for review and approval prior to the issuance of any lot.

Relationship of the Design and Architectural Development Standards (ADS) to Other Regulations:

The ADS are not intended to supersede, applicable, Federal, Colorado, or Loveland specific regulations. In case of conflict or discrepancy or for subjects not addressed in the ADS, the more stringent regulation or standard shall apply. The ADS are not intended to supersede, applicable, or other regulations or standards. The standards for the development may require, but are not limited to, ARC, plan, and specifications for review and approval prior to the issuance of any lot.

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INTRODUCTION

Project and Site.

The architectural character of the single family detached and paired homes in the Mariana Butte Twenty-Third PUD First Amendment is intended to reflect regional character with a variety of interesting and compatible relationships of form, texture and worn a consistent overall architectural style. Additionally, economic factors, environmental concerns, and construction practices presented in the industry are important influences. The following ADS are intended to establish and promote a high level of quality, assure compatibility between residential products within the community, and guide the character and form of the paired residential architecture. The following architectural standards are to be incorporated into the community and shall be considered when designing the individual and building elevations, as well as when making improvements to the individual homes and landscape.

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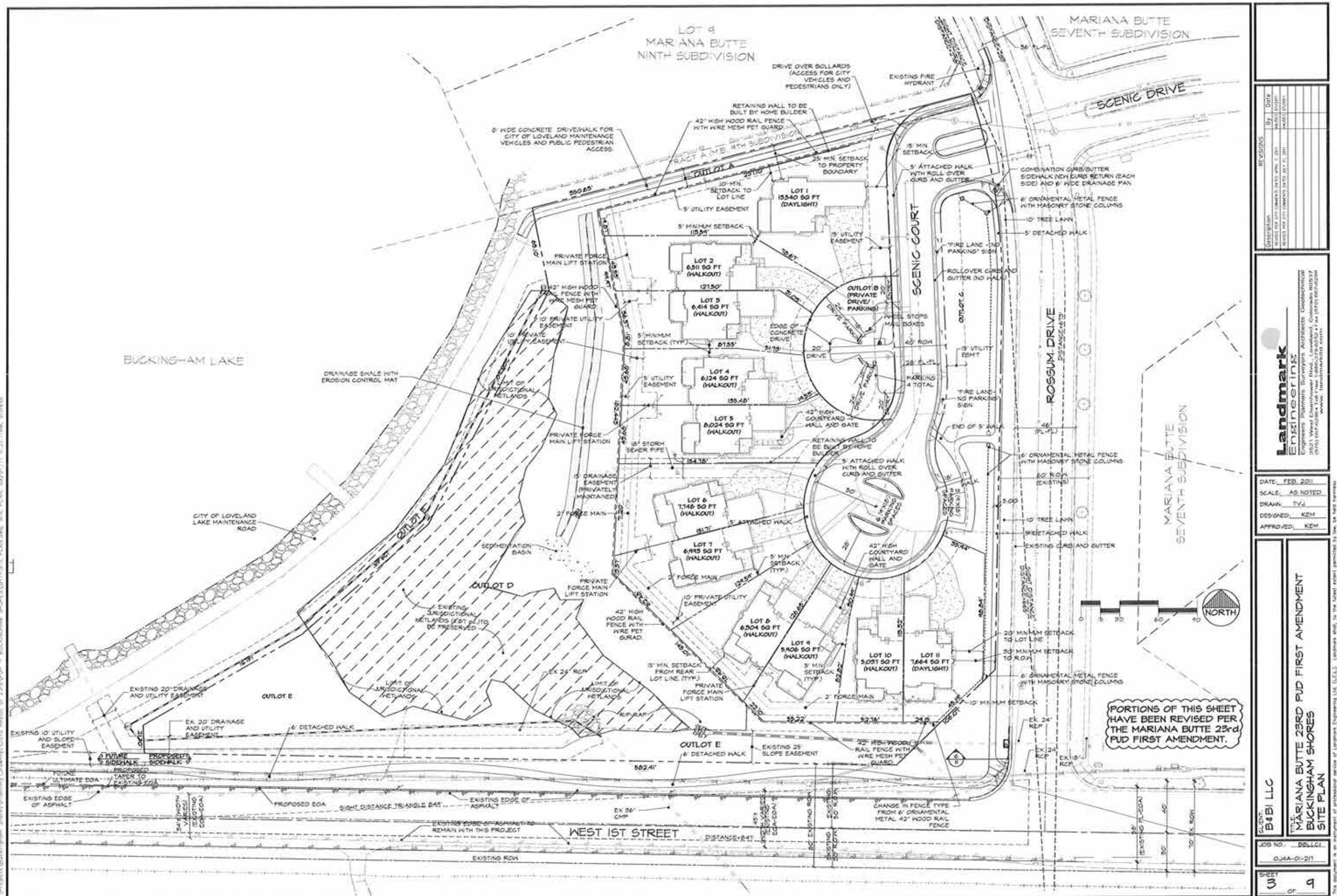
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LANDSCAPE SPECIFICATIONS

MATERIALS

SOIL BARRIERS:
Soil barriers may be Hesco (40 or Tycon style 204), Plastic coated barrier batten, geotextiles, rock, or Geotextile Felt shall be nonwoven, Tarred and/or approved, rigid, placed under all surface tree trails.

GRAVEL, MULCH:
Boulders For Bark Mulch: Bark piles shall be for trees only. Bark mulch in either Mulch shall be free from non-living weed and/or foreign material harmful to plant life. Chipped chips, pine bark, peatmoss or other organic bark chips are not acceptable. Boulders shall be 1-2" in diameter.

HEADERS:
A. **Steel Headers:**
• 1" diameter 20' x 4' with 1" x 24" side slope steel headers.

WIRE FENCE:
String wire fencing fiber free from any substance or factor which might inhibit germination or growth of grass seed. Due to allow visual filtering during application. The wire fencing fibers shall have the property of becoming evenly dispersed and suspended when applied in wire mesh sprayed uniformly on the surface of the soil. The fibers shall form a uniform, light weight, non-combustible, non-flammable, non-toxic, non-corrosive, non-irritating, non-heat producing, non-explosive, and for all applications, refer to any weight of the fiber, at a standard equivalent to 100 lbs/inch. The mesh material shall be supplied in packages not exceeding 100 lbs in gross weight, and shall be marked by the manufacturer to show the wire gauge, composition, and the percentage of metal.

MATERIALS FOR STAKING, BATTING, AND FRANCIS TIES:
A. 1/4" Stakes: British King: 1/4" diameter, 10' long, treated Lodgepole pine stakes as available from Direct Landscape Supply (2003) 147-153.

B. Guy Anchors: 24" long metal "T" posts.

C. Headers: 2" x 4" with 1" side slope.

D. Tree Wrap: 4-inch minimum width commercial tree wrap.

COMPACTOR

A. A compacted organic product that has been air-dried and naturally processed without the addition of coarse wood chips. In such a manner as to maintain a consistent temperature of 140 degrees Fahrenheit or greater for a period of time sufficient to create the following characteristics, measured by dry weight:

A. Maximum dry weight organic matter: 60%.

B. Weight loss to moisture: 25% to 30%.

C. Bulk: 2.0 to 3.0 cubic feet.

D. Less than 20% organic material.

E. Maximum particle size of 1/2 inch diameter.

F. Maximum particle size of 1/2 inch diameter.

FERTILIZERS

A. Fertilizer for soil shall be commercial type of uniform composition, free-flowing, and conforming to applicable State and Federal laws. Soil test manufacturer's guaranteed analysis.

Commercial fertilizer analysis shall be submitted to Owners Representative for review. Soil test manufacturer's recommendations may be sent to the Contractor to submit soil sample to soil test for analysis and fertilizer recommendations.

Contractor to submit a minimum of 5 soil samples to soil test to obtain recommendations.

B. If soil types are similar, the Contractor may use a consistent formulated fertilizer for the entire site area. However, if soil types are vastly different, a formulated fertilizer for each specific soil area will be required.

C. Fertilizer for trees and shrub plants - 100% ground cover grass shall be Chemicote Standard, 100% slow-release fertilizer.

DRILL, DRILLING SOIL

Soil all areas which are disturbed as left. Soil shall be 100% non-living, herbicide free, less than three different herbicide free grass varieties. Soil shall be loose and free from containing no more than 1% of other grasses, none of which shall be coarse textured grass. Soil shall be a minimum of 3/4" inch thick, harvested in rolls fertilized, for three weeks before cutting, and then be cut not more than one day prior to planting. Soil shall be one year old minimum, grown under intensive care and cultivation to produce a thick, even stand of grass.

Loam and 1" layer under adjacent pavement grade or steel header.

B. DRILLED, DRILLED, TILLED, TILL, SEED, MIX

Drilled, drilled, tilled, seed mix shall be a blend of low growing/low maintenance turf types that produce a cut 6' to 12' in mature height and staying green into late fall when extremely irrigated. Turf shall be capable of being hoed if desired at 4'x6' in height.

1. **Seed Mixes:** As provided by 600 Seed Store, Bunker Colorado or approved equal:

- Chewing Fescue
- Kentucky Bluegrass
- Creeping Red Fescue
- Cordgrass Blue Grass
- Hard Fescue
- Kentucky Bluegrass
- Perennial Ryegrass

2. **Seeding Rates:**

Drilled, drilled, tilled, seed mix shall be 60 lbs/1000 sq ft.

SEED, BURNISH, AND GROUND COVERS

A. **Soil Material:** Soil be a fine-texture representative of its species, having well-branched, and well proportioned in respect to roots and with relationship, free from disease, injury, insects, and dead roots, and conforming to the requirements of the General Engineering and Construction Code, and the applicable specifications for appropriate sections of the nursery Act. All plants shall be nursery stock from Growers located in USDA Hardiness Zones 1, 2, 3 or 4.

B. **Plants and Ground Covers:** Given in the plant list are in conformance with approved recommendations in the order. Plants to be delivered to the site with tags bearing the below name as indicated by the grower.

INSTALLATION

SITE PREPARATION

A. **Clearing:** Prior to any soil preparation, existing vegetation not to remain and which might interfere with the site preparation and be removed, grubbed, pulled, and the ground surface shall be cleared of materials which might hinder final operations.

B. **Prepare all areas to be planted as follows:**

1. **Re-allow areas to be planted:** Areas which are disturbed by a minimum of 6 inches in soil, including any areas which are 100% disturbed to no greater than 10 inches. Areas adjacent to walls, structures, curbs, etc., where the use of large mechanical equipment is difficult, shall be worked with smaller equipment or by hand.

2. **Soil Preparation:** General 4 Cu/1000 sq ft, compact and sufficient fertilizer to meet requirements of soil analysis over 6' areas to be cleared, added, or planter areas, shrub beds and ground cover, neoprene compost by disking or rototilling into the top 6" of soil. Do not work wet soil.

3. **Restoration:** The grade of an area to be planted, areas which are disturbed by a minimum of 6 inches in soil, including any areas which are 100% disturbed to no greater than 10 inches. Remove any additional stones over 1/2" inches that have come to the surface. Upon completion of final grading operations, the contractor must provide a final landscape grade that is 10% steeper to the ground and elevations shown on the engineering drawings. Contractor shall provide positive drainage in all landscape areas.

Contractor to submit a minimum of 5 soil samples to soil test to obtain recommendations.

4. **Soil types:** One similar to the contractor may use a consistent formulated fertilizer for the entire site area. However, if soil types are vastly different, a formulated fertilizer for each specific soil area will be required.

5. **Fertilizer:** Fertilizer for trees and shrub plants - 100% ground cover grass shall be Chemicote Standard, 100% slow-release fertilizer.

DRILL, DRILLING, PLANTING

A. Any plant installations are to be approved by Landscape Architect prior to installation.

B. **Stabilized Areas:** Stabilized areas and fill or set out in areas in locations shown on the plans prior to installation for review by Owner. The following are minimum distances that plant materials can be placed from adjacent walls, fences or paved areas:

- 6" - 12" - 18" - 24"
- 12" - 18" - 24" - 36"
- 18" - 24" - 36" - 48"

C. **Planting:**

Drilled, drilled, tilled, seed mix shall be capable of being hoed if desired at 4'x6' in height.

1. **Soil:** Soil shall be 60 lbs/1000 sq ft.

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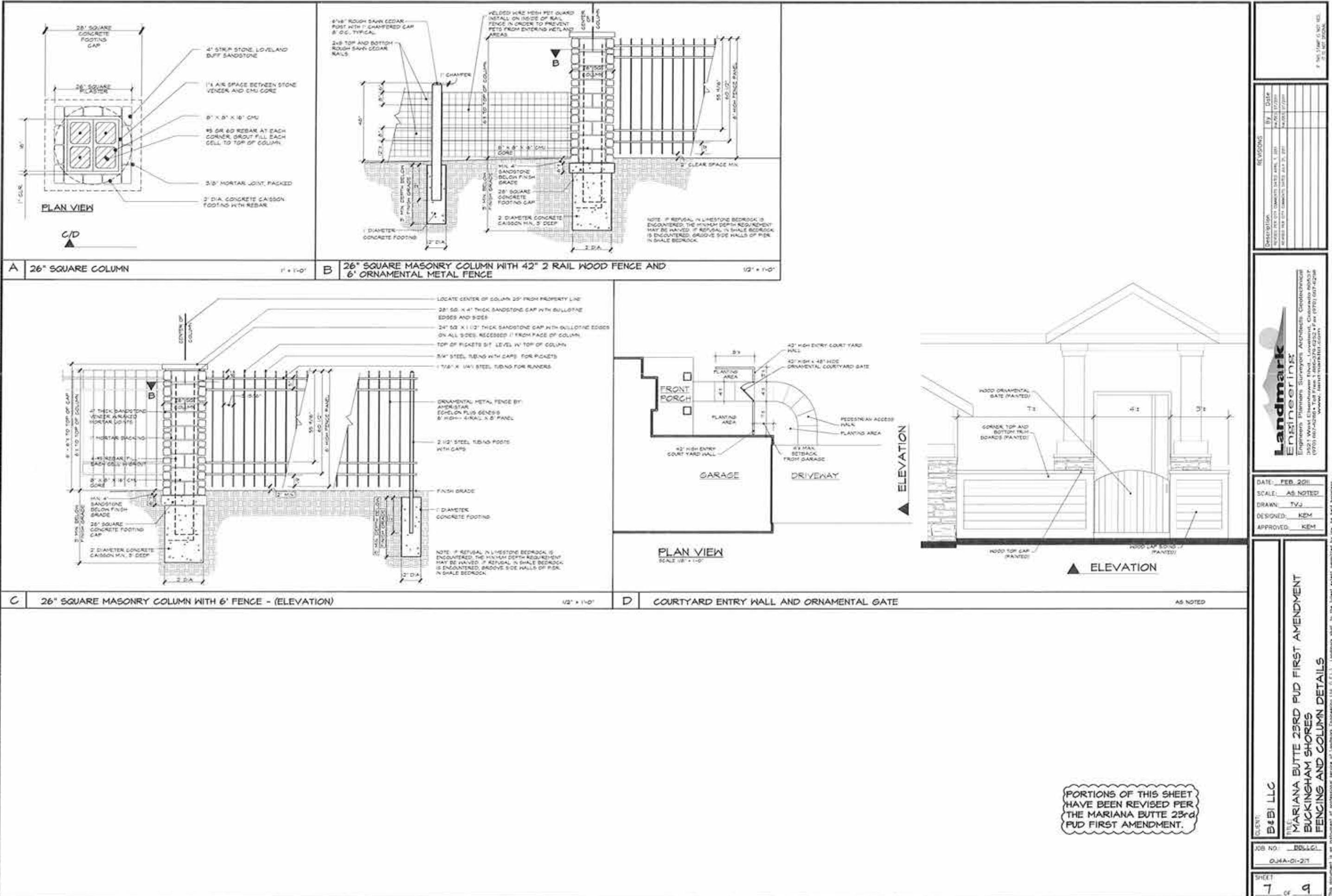
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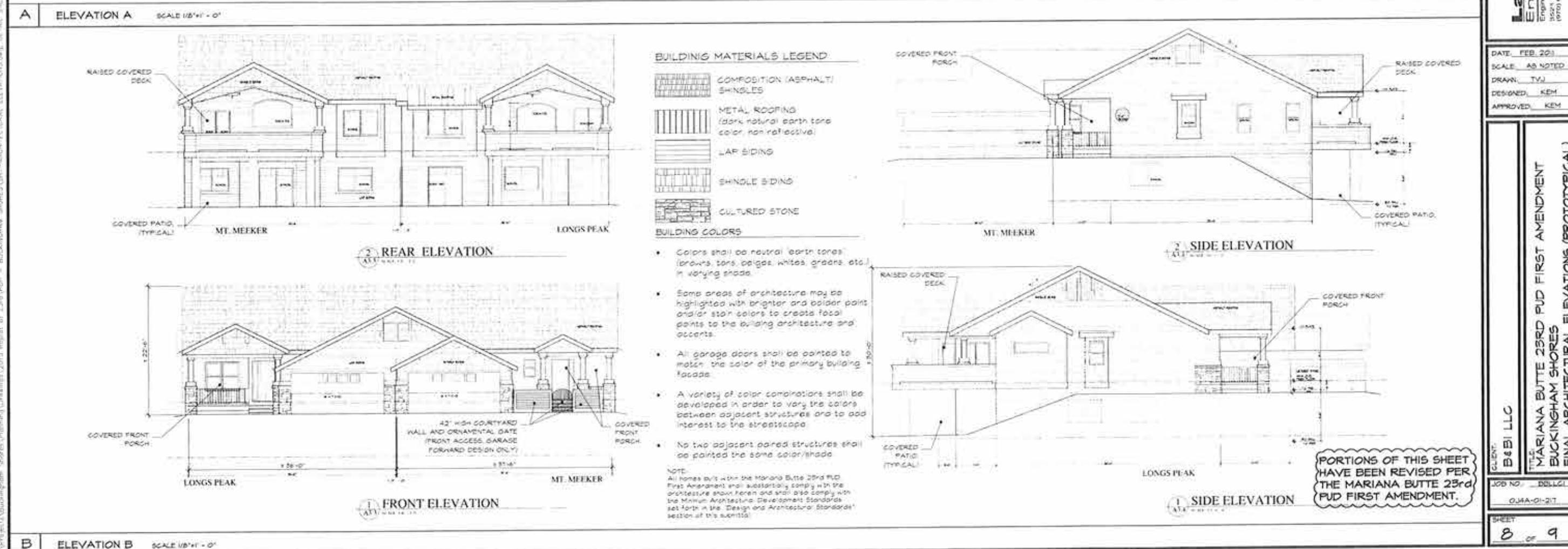
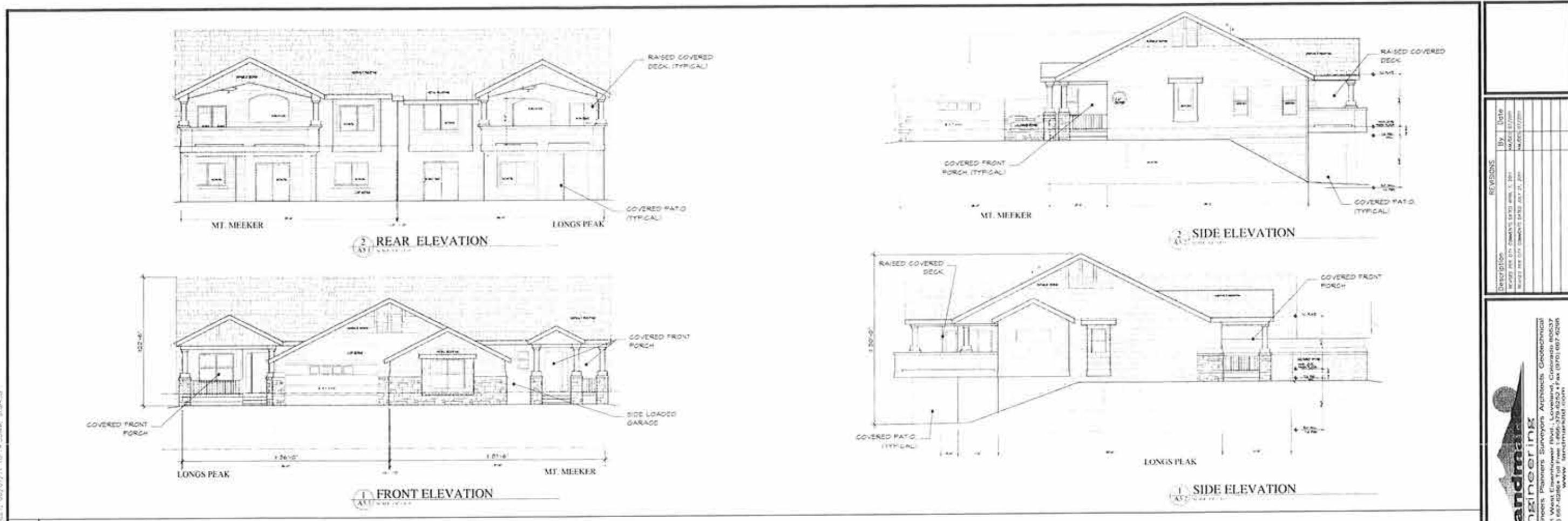
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Landmark
Engineering
Engineers, Planners, Surveyors, Architects, Geotechnical
35211 West, Lakewood, CO 80401 • Phone: (303) 979-6253 • Fax: (303) 979-6265
www.landmarkinc.com

DATE: FEB 2011
SCALE: AS NOTED
DRAWN: TVJ
DESIGNED: KEM
APPROVED: KEM

8 of 9

HYDRO-ZONE SUMMARY

THE GREEN INDUSTRIES OF COLORADO (GIC) AND COLORADO STATE UNIVERSITY (CSU) HAVE INITIATED A PROGRAM TO DOCUMENT THE WATER NEEDS OF LANDSCAPE PLANTS AND TO RANK EACH SPECIES ACCORDING TO ITS RELATIVE WATER USAGE OR "CROP COEFFICIENT" (KC). THE "CROP COEFFICIENT" IS THE AMOUNT OF WATER A SPECIES NEEDS COMPARED TO A STANDARD CROP. THE CROP COEFFICIENT, WHEN COMBINED WITH EVAPOTRANSPORATION MEASUREMENTS FROM WEATHER STATIONS, CAN BE USED TO CALCULATE EXACTLY HOW MUCH WATER SHOULD BE APPLIED TO A PLANT IN A GIVEN SITUATION, AND CAN BE EXPRESSED AS A NUMBER THAT IS USED IN CALCULATING IRRIGATION SETTINGS.

HORTICULTURISTS FROM AROUND THE REGION HAVE CONDUCTED A SURVEY OF THE COMMON LANDSCAPE PLANTS USED IN COLORADO IN ORDER TO ESTIMATE THEIR 'CROP COEFFICIENT'. THE ESTIMATED CROP COEFFICIENT IS DESCRIBED AS FOLLOWS:

HI: HIGH WATER USE. 75 - 100%
 MI: MEDIUM WATER USE. 50 - 75% ET
 LO: LOW WATER USE. 25 - 50% ET
 VL: VERY LOW WATER USE. <25% ET

LANDMARK LTD HAS INCLUDED THE ESTIMATED K₂ VALUES FROM THE AVAILABLE SURVEYS IN OUR PLANT MATERIAL LIST. THE PURPOSE BEHIND THIS IS TO ESTABLISH SPECIFIC HYDRO-ZONES WHICH MEET THE CITY'S REDUCED WATER DEDICATION REQUIREMENTS AND PROVIDES THE CITY WITH A TOOL IN DETERMINING A LANDSCAPE DESIGN'S DROUGHT TOLERANT QUALITIES AND SUBSEQUENT REDUCED WATER REQUIREMENTS.

TOTAL LANDSCAPE AREA 2,684' 100% OF LANDSCAPED SITE AREA
116,872 S.F.

HYDRO-ZONE	ET RATE	AC/SQUARE FOOTAGE	% OF SITE	IRRIGATED/NON-IRRIGATED
	HIGH WATER USE 15 - 100% ET	0.40 AC/ 0.50 SF	0.3%	N/A
	MEDIUM WATER USE 50 - 75% ET	0.81 AC/ 0.52 SF	33.3%	IRRIGATED
	LOW WATER USE 25 - 50% ET	2.01 AC/ 0.003 SF	9.3%	IRRIGATED

TOTAL IRRIGATED SITE AREA 1.15 AC/ 44,152 SF. 42% OF LANDSCAPED SITE AREA

ESTIMATED LANDSCAPE IRRIGATION WATER DEDICATION TO THE CITY * 151 AC-FT OF WATER DEDICATION

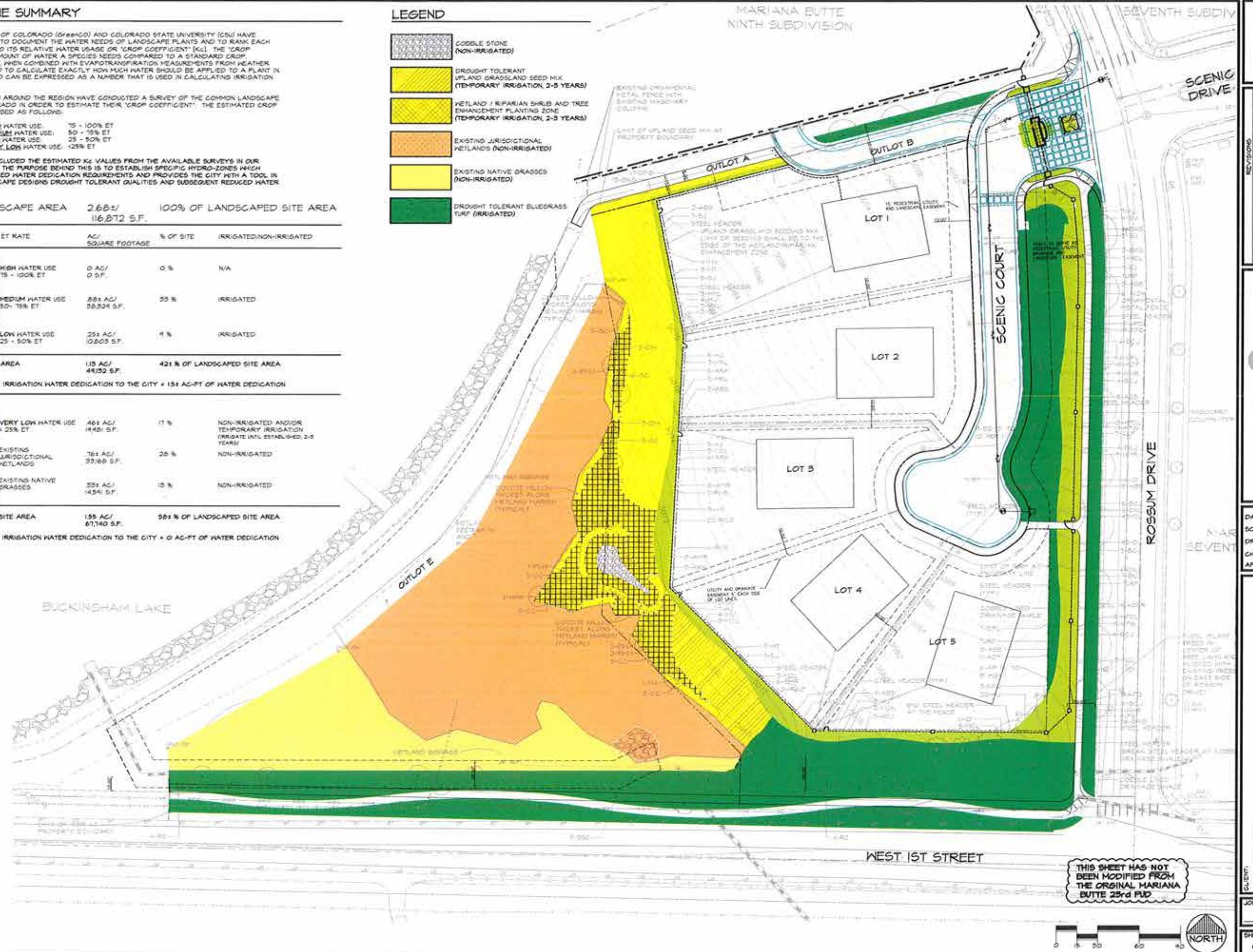
VERY LOW WATER USE < 25% ET	46± AC/ 14,810 SF	17 %	NON-IRRIGATED AND/OR TEMPORARY IRRIGATION (IRRIGATE UNTIL ESTABLISHED, 2-5 YEARS)
EXISTING JURISDICTIONAL WETLANDS	16± AC/ 33,660 SF	26 %	NON-IRRIGATED
EXISTING NATIVE GRASSES	53± AC/ 14,541 SF	15 %	NON-IRRIGATED

TOTAL NON-IRRIGATED SITE AREA 1.55 AC/ 67,740 SF. 56% OF LANDSCAPED SITE AREA

ESTIMATED LANDSCAPE IRRIGATION WATER DEDICATION TO THE CITY = 0 AC-FT OF WATER DEDICATION

LEGEND

MARIANA BUTTE
INT'L SUBDIVISION



THIS SHEET HAS NOT
BEEN MODIFIED FROM
THE ORIGINAL MARIANA
SUITE 2804 11/12

B6B 11
TITLE
MARI

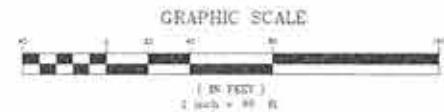
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9

FINAL DEVELOPMENT PLAN HYDRO-ZONE PLAN

MARIANA BUTTE TWENTY SIXTH SUBDIVISION

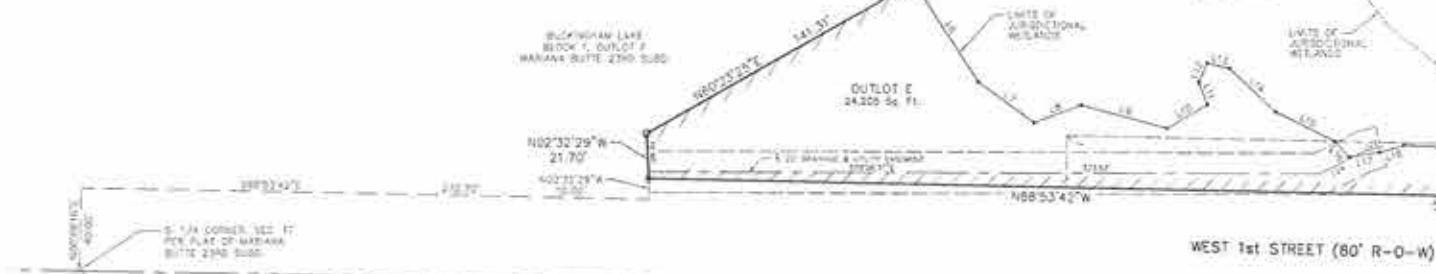
BEING A REPLAT OF LOTS 1 THROUGH 5, BLOCK 1 AND OUTLOTS A, B, C AND D,
 MARIANA BUTTE TWENTY THIRD SUBDIVISION TO THE CITY OF LOVELAND, LOCATED IN THE
 SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M.,
 LARIMER COUNTY, COLORADO.



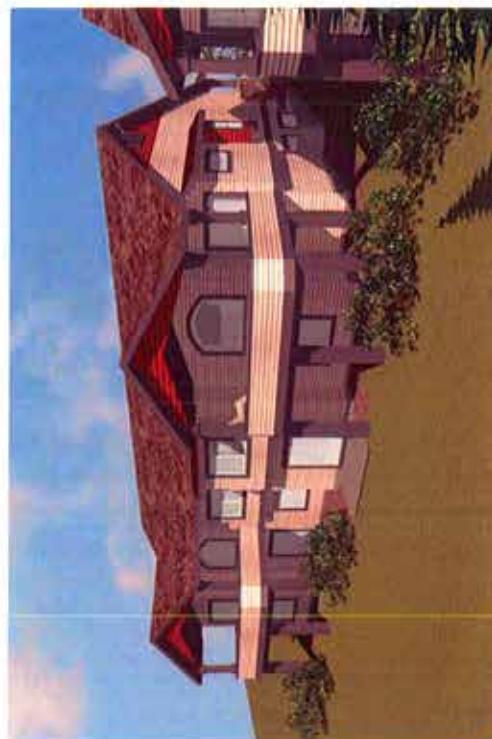
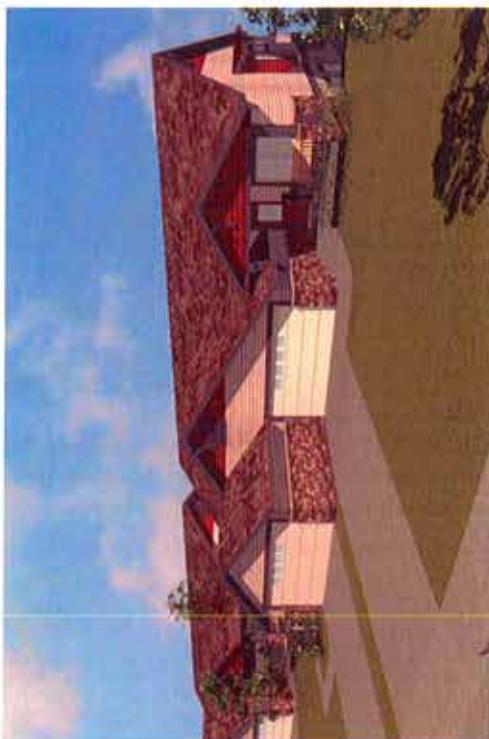
- - FOUND 4# REBAR WITH 1" PLASTIC CAP STAMPED: U.S. 30623
DINCESS STRAWBERRY, NY 1003
- - SET 1# 4# REBAR WITH 1" PLASTIC CAP STAMPED: U.S. 30629
- - WORK TO BE SET BY SURVEYOR PERFORMING CONSTRUCTION
STAKES UPON COMPLETION OF ROAD CONSTRUCTION.

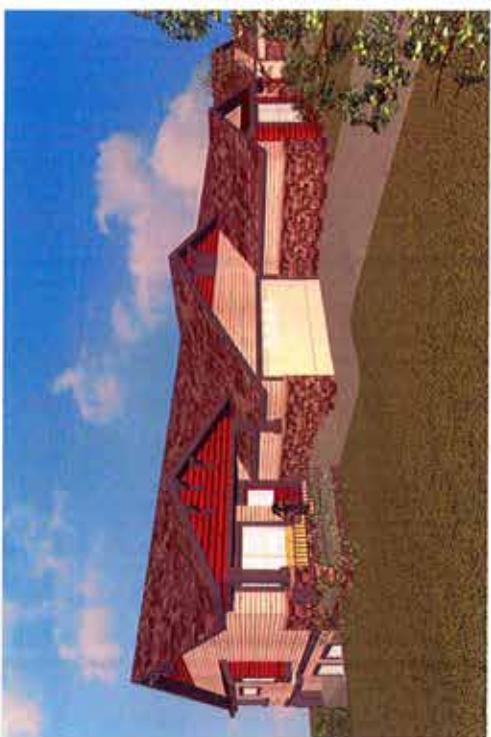
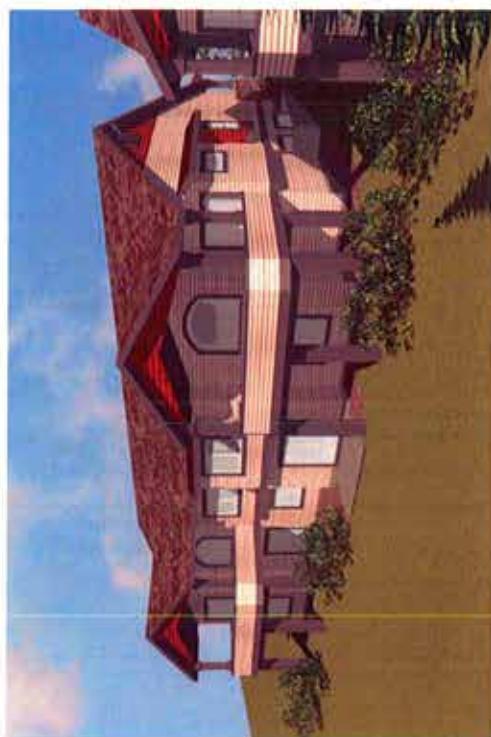
LINE TABLE		
LINE	LENGTH	BEARING
L1	9.42	51°51'54" W
L2	15.00	NE78°09'5" C
L3	2.44	NE73°02'5" C
L4	14.41	22°29'42" E
L5	19.94	NE45°21'5" E
L6	36.49	NE37°21'5" E
L7	33.11	45°43'31" W
L8	24.18	56°31'54" W
L9	42.78	57°59'17" W
L10	23.43	50°55'14" W
L11	11.64	52°11'17" S
L12	10.05	22°49'39" S
L13	11.33	45°14'57" S
L14	35.51	44°14'57" W
L15	32.25	56°29'28" E
L16	9.77	NE43°40" W
L17	14.84	50°29'15" W
L18	12.74	57°00'04" W
L19	43.56	48°18'37" W
L20	16.75	58°39'21" S
L21	42.34	38°53'42" S
L22	30.00	52°06'16" W
L23	12.28	34°06'15" W
L24	24.00	NE24°02" W
L25	8.60	NE14°57" W
L26	15.33	37.39

CURVE TABLE				
CURVE	RADIAL	LENGTH	CHORD	BEARING
C1	460.00	104.18	104.18	NE45°14" W
CR	462.00	56.62	56.62	NE25°38" W
C2	460.00	58.16	58.16	NE25°38" W
C4	460.00	64.39	64.39	NE25°38" W
C5	460.00	54.22	54.22	NE25°38" W
C6	460.00	62.75	62.75	NE25°38" W
C8	460.00	65.31	65.31	NE25°38" W
C9	460.00	27.89	27.89	NE25°38" W
C10	460.00	27.44	27.44	NE25°38" W
C11	460.00	58.57	58.57	NE25°38" W
C12	460.00	28.42	28.42	NE25°38" W
C13	460.00	58.58	58.58	NE25°38" W
C14	460.00	52.85	52.85	NE25°38" W
C15	460.00	42.42	42.42	NE25°38" W
C16	460.00	42.88	42.88	NE25°38" W
C17	460.00	42.84	42.84	NE25°38" W
C18	460.00	27.37	27.37	NE25°38" W
C19	460.00	56.24	56.24	NE25°38" W
C20	460.00	56.85	56.85	NE25°38" W
C21	460.00	56.85	56.85	NE25°38" W
C22	460.00	42.87	42.87	NE25°38" W
C23	460.00	42.87	42.87	NE25°38" W
C24	460.00	56.86	56.86	NE25°38" W
C25	460.00	56.86	56.86	NE25°38" W
C26	460.00	56.86	56.86	NE25°38" W
C27	460.00	22.28	22.28	NE25°38" W
C28	460.00	22.42	22.42	NE25°38" W
C29	460.00	22.42	22.42	NE25°38" W
C30	460.00	24.07	24.07	NE25°38" W
C31	460.00	56.87	56.87	NE25°38" W
C32	460.00	42.74	42.74	NE25°38" W
C33	460.00	48.95	48.95	NE25°38" W
C34	460.00	115.97	115.97	NE25°38" W
C35	460.00	21.70	21.70	NE25°38" W
C36	460.00	21.70	21.70	NE25°38" W
C37	460.00	21.70	21.70	NE25°38" W
C38	460.00	33.56	33.56	NE25°38" W
C39	460.00	33.56	33.56	NE25°38" W
C40	460.00	37.39	37.39	NE25°38" W



ATTACHMENT 5





DELICH ASSOCIATES Traffic & Transportation Engineering
 2272 Glen Haven Drive Loveland, Colorado 80538
 Phone: (970) 669-2061 Fax: (970) 669-5034



MEMORANDUM

TO: John Baxter
 Ken Merritt, Landmark Engineering
 Jeff Bailey, City of Loveland Engineering Division

FROM: Joe/Matt Delich

DATE: November 16, 2010

SUBJECT: Buckingham Shores Traffic Impact Study
 (File: 1058ME01)



This memorandum constitutes a traffic impact study for the Buckingham Shores, located in the northwest quadrant of the W. 1st/Rossum intersection in Loveland, Colorado. The site location is shown in Figure 1. The site plan is shown in Figure 2. The Buckingham Shores is proposed as 12 single-family duplex dwelling units. Appendix A contains a copy of the Base Assumptions Form and documents related to scoping for this traffic impact study.

West First Street is classified as a two-lane arterial street, west of Wilson Avenue, on the Loveland 2030 Street Plan. Currently, it has a two-lane cross section. At the W. 1st/Rossum, W. 1st Street has an eastbound left-turn lane, a through lane in each direction, and a westbound right-turn lane. The W. 1st/Rossum intersection has stop sign control on Rossum Drive. West First Street has a posted speed of 45 mph. This exceeds the recommended posted speed limit of 40 mph for a two-lane arterial as set forth in LCUASS Table 7-4. Rossum Drive is classified as a major collector street on the Loveland 2030 Street Plan. Currently, it has a two-lane cross section. At the W. 1st/Rossum intersection, Rossum Drive has southbound left-turn and right-turn lanes. At the Rossum/Scenic intersection, Rossum Drive has all movements in a single lane. Rossum Drive has a posted speed limit of 30 mph. Scenic Drive is classified as a minor collector street, east of Rossum Drive, on the Loveland 2030 Street Plan. West of Rossum Drive, there are curb returns across from Scenic Drive accessing this parcel. At the Rossum/Scenic intersection, Scenic Drive has all westbound movements in a single lane. Scenic Drive has a posted speed limit of 20 mph. A schematic of the geometry at the W. 1st/Rossum and Rossum/Scenic intersections are provided in Appendix A.

Recent peak hour traffic counts at the W. 1st/Rossum and Rossum/Scenic intersections are shown in Figure 3. Raw traffic counts are provided in Appendix A. Traffic counts at the W. 1st/Rossum and Rossum/Scenic intersections were obtained in November 2010. Using the volumes shown in Figure 3, the current peak hour operation

ATTACHMENT 6
EXHIBIT G

at the W. 1st/Rossum and Rossum/Scenic intersections are shown in Table 1. Calculation forms for these analyses are provided in Appendix B. The intersections were analyzed using the unsignalized intersection techniques from the 2000 Highway Capacity Manual (2000 HCM). Acceptable operation is defined by the City of Loveland as level of service (LOS) C or better overall. At major intersections, any leg can operate at level of service D and any movement can operate at level of service E. At minor intersections, any leg can operate at level of service E and any movement can operate at level of service F. At driveway intersections, there is no limit defined for the level of service. The W. 1st/Rossum intersection is a major intersection. The Rossum/Scenic intersection is a minor intersection. A description of level of service at unsignalized intersections is provided in Appendix B. The Loveland Motor Vehicle LOS Standards are also provided in Appendix B. As can be seen in Table 1, the W. 1st/Rossum and Rossum/Scenic intersections are currently operating acceptably with existing control and geometry.

Single-Family Detached (Code 210) from Trip Generation, 8th Edition, ITE was selected to estimate the daily and peak hour trip generation for the Buckingham Shores. Table 2 shows the calculated trip generation for the proposed Buckingham Shores. The trip generation of Buckingham Shores resulted in 115 daily trip ends, 9 morning peak hour trip ends, and 12 afternoon peak hour trip ends.

The trip distribution was assumed to be 80 percent to/from the east, 15 percent to/from the north and 5 percent to/from the west. This trip distribution was derived from the existing peak hour counts at the key intersections, knowledge of the existing and planned street system, development trends, and engineering judgment. Figure 4 shows the trip distribution. The site generated peak hour traffic is shown in Figure 5.

Background traffic projections for the short range (2013) future horizon were obtained by utilizing the Loveland 2030 Transportation Plan, the North Front Range Regional Transportation Plan, and recent traffic impact studies in the area. Based upon these sources, it was determined that traffic volumes on the area streets would increase at a rate of approximately 3.25% per year. The recent traffic impact studies are the Overlook at Mariana 1st Subdivision, September 2005 and Mariana Butte 14th Subdivision, December 2004. Site generated traffic from unbuilt portions of these developments were added to traffic growth. Figure 6 shows the short range (2013) background peak hour traffic at the W. 1st/Rossum and Rossum/Scenic intersections. The traffic volumes generated by the proposed Buckingham Shores Development were added to the background traffic volumes to produce the total traffic volume forecasts for the short range (2013) future. Figure 7 shows the short range (2013) total peak hour traffic at the W. 1st/Rossum and Rossum/Scenic intersections.

Table 3 shows the existing and short range (2013) link volumes for key street segments. Table 3 also shows the ACF volume thresholds for key street segments and that segment meets the Adequate Community Facilities Ordinance. The threshold volumes shown were calculated for this study. Calculations for the ACF threshold volumes are provided in Appendix C. Table 3 indicates that all links meet the requirements of the Adequate Community Facilities Ordinance.

Table 4 shows the short range (2013) background morning and afternoon peak hour operation at the W. 1st/Rossum and Rossum/Scenic intersections. The W. 1st/Rossum and Rossum/Scenic intersections will operate at acceptable levels of service. Calculation forms for these analyses are provided in Appendix D.

Table 5 shows the short range (2013) total morning and afternoon peak hour operation at the W. 1st/Rossum and Rossum/Scenic intersections. The W. 1st/Rossum and Rossum/Scenic intersections will operate at acceptable levels of service. Calculation forms for these analyses are provided in Appendix E.

Figure 8 shows the short range (2013) approach geometry at the W. 1st/Rossum and Rossum/Scenic intersections. At the W. 1st/Rossum intersection, the westbound right-turn lane exceeds the required 375 feet in LCUASS. The eastbound left-turn lane appears to be approximately 30 feet less than the required 375 feet. It is recommended that this lane remain as is.

There are no pedestrian destinations within 1320 feet of Buckingham Shores. Namaqua Elementary School is less than one mile from Buckingham Shores. There are sidewalks adjacent to developed parcels in this area. Sidewalks will be built within Buckingham Shores. There are adequate sidewalks in the area for potential students to walk to Namaqua Elementary School. A school routing plan to Namaqua Elementary School is provided in Appendix F. Students that might attend Walt Clark Middle School and Thompson Valley High school will be bussed. There are bike lanes on W. 1st Street and Rossum Drive.

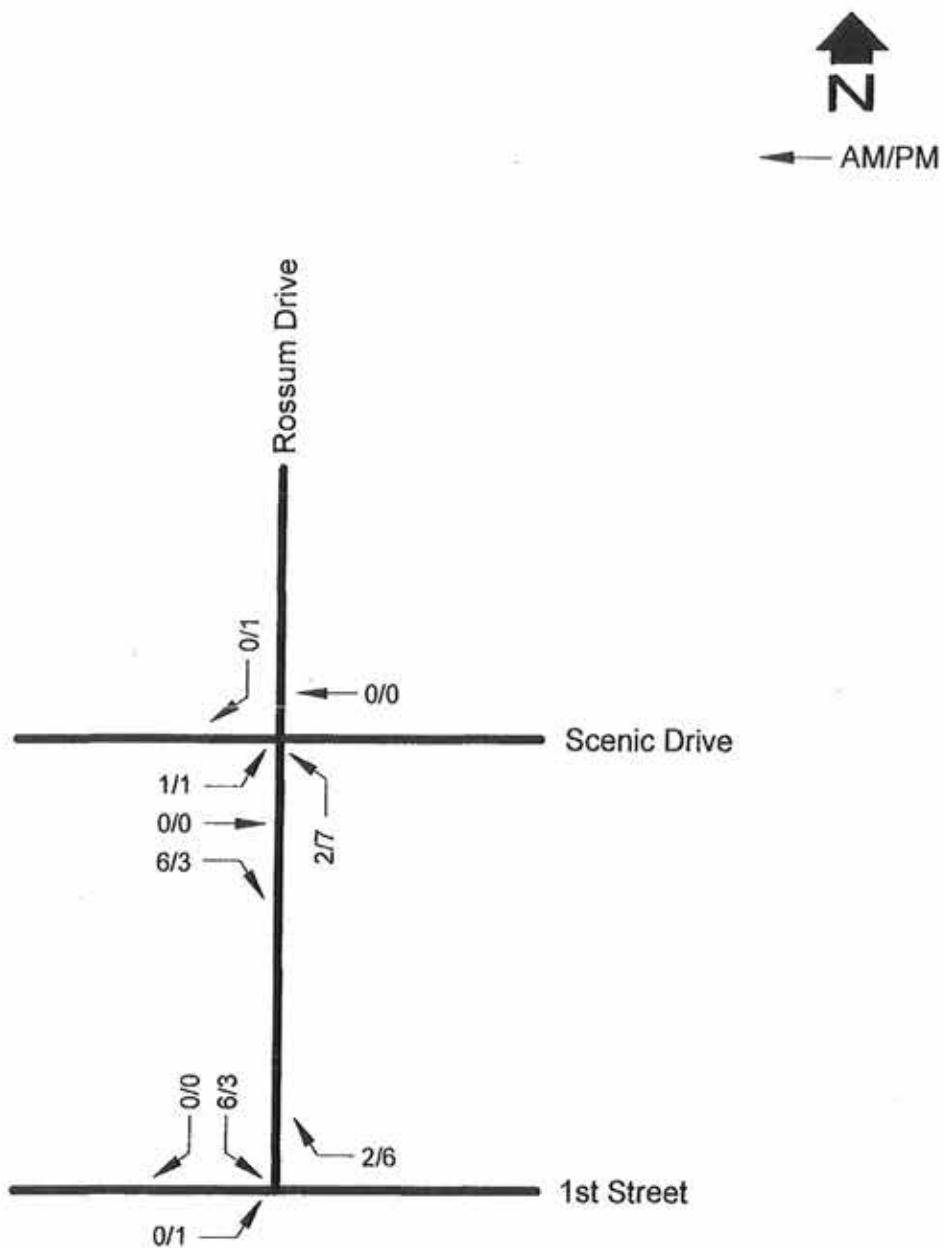
It is concluded that the W. 1st/Rossum and Rossum/Scenic intersections will operate acceptably. No additional auxiliary lanes are recommended at either the W. 1st/Rossum and Rossum/Scenic intersections. All intersections and links will meet the Loveland Adequate Community Facilities Ordinance criteria.

TABLE 1
Current Peak Hour Operation

Intersection	Movement	Level of Service	
		AM	PM
W. 1 st /Rossum (stop sign)	EB LT	A	A
	SB LT	B	B
	SB RT	A	A
	SB APPROACH	B	B
	OVERALL	A	A
Rossum/Scenic (stop sign)	WB LT/RT	A	A
	SB LT/T	A	A
	OVERALL	A	A

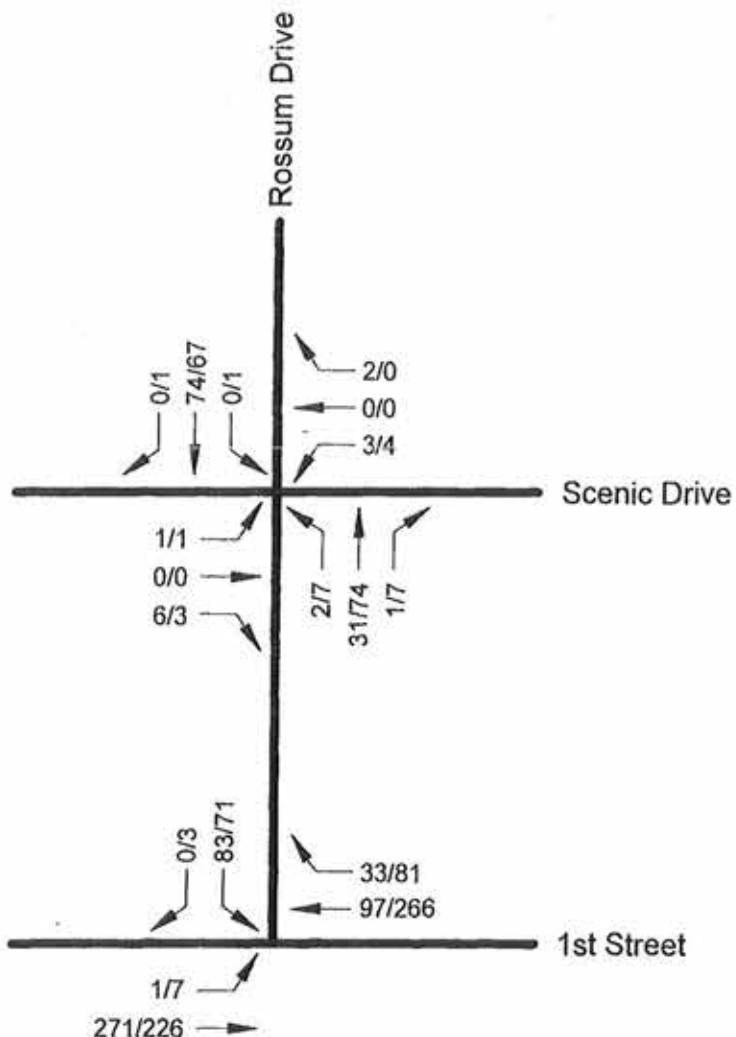
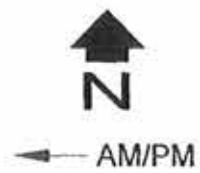
TABLE 2
Trip Generation

Code	Use	Size	AWDTE		AM Peak Hour				PM Peak Hour			
			Rate	Trips	Rate	In	Rate	Out	Rate	In	Rate	Out
210	Single-Family	12 D.U.	9.57	115	0.19	2	0.56	7	0.64	8	0.37	4



SITE GENERATED PEAK HOUR TRAFFIC

Figure 5



SHORT RANGE (2013) TOTAL
PEAK HOUR TRAFFIC

Figure 7

TABLE 3
Street Traffic Volume Summary Table

Street Segment	Direction	Existing Traffic Volume (AM/PM)	Date Existing Volume Taken	Regional Growth and Traffic from Build-out of Other Proposed Development*	Site Generated Traffic (2013) (AM/PM)	Total Traffic (2013) (AM/PM)	ACF Traffic Threshold	ACF Compliance (AM/PM)
1 W. 1 st Street west of Rossum Drive	EB	208/184	11/10	272/232	0/1	272/233	950	YY
	WB	75/199	11/10	97/269	0/0	97/269	950	YY
2 W. 1 st Street east of Rossum Drive	EB	254/226	11/10	348/294	6/3	354/297	950	YY
	WB	85/238	11/10	128/341	2/6	130/347	950	YY
3 Rossum Drive north of W. 1 st Street	NB	21/47	11/10	32/81	2/7	34/88	530	YY
	SB	47/50	11/10	77/71	6/3	83/74	530	YY
4 Rossum Drive north of Scenic Drive	NB	22/41	11/10	33/74	1/1	34/75	530	YY
	SB	44/47	11/10	74/68	0/1	74/69	530	YY
5 Scenic Drive east of Rossum Drive	EB	1/7	11/10	1/8	0/0	1/8	375	YY
	WB	5/4	11/10	5/4	0/0	5/4	375	YY

*Approved developments, not yet built.

**Proposed developments, not yet approved.

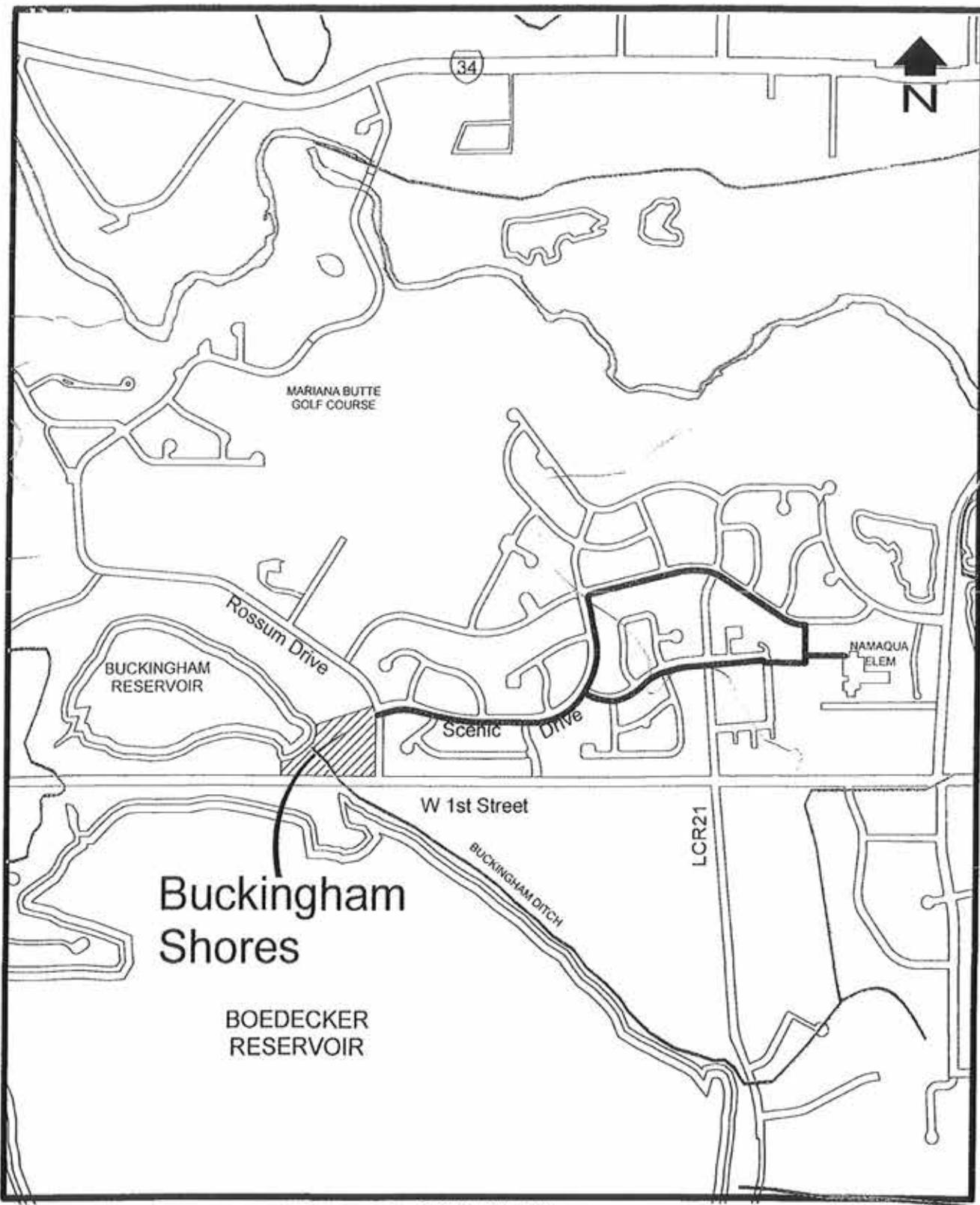
Notes/Comments

TABLE 4
Short Range (2013) Background Peak Hour Operation

Intersection	Movement	Level of Service	
		AM	PM
W. 1 st /Rossum (stop sign)	EB LT	A	A
	SB LT	B	B
	SB RT	A	A
	SB APPROACH	B	B
	OVERALL	A	A
Rossum/Scenic (stop sign)	WB LT/RT	A	A
	SB LT/T	A	A
	OVERALL	A	A

TABLE 5
Short Range (2013) Total Peak Hour Operation

Intersection	Movement	Level of Service	
		AM	PM
W. 1 st /Rossum (stop sign)	EB LT	A	A
	SB LT	B	B
	SB RT	A	A
	SB APPROACH	B	B
	OVERALL	A	A
Rossum/Scenic (stop sign)	EB LT/T/RT	A	A
	WB LT/T/RT	A	A
	NB LT/T/RT	A	A
	SB LT/T/RT	A	A
	OVERALL	A	A



SCHOOL ROUTING PLAN

 DELICH
ASSOCIATES

Buckingham Shores TIS, November 2010

LAND USE SITE SUMMARY

The following Land Use Data relates to the entire site areas to be developed:

Existing/Proposed Zoning	P.U.D. Residential	
Proposed Use	Paired Single Family Residential	
Total Site Area	5.03 Ac. 100%	
• Total Residential Lot Area (Lots #I-II)	1.67 Ac.	33%
• Total Public ROW To Be Dedicated (Scenic Court, Rossum Drive & West 1st Street ROW)	0.90 Ac.	18%
• Total Common Open Space Area (Includes Outlots A thru E)	2.43 Ac.	49%
Total Dwelling Units/Lots =	11 Units/Lots	
Total Density (Based on 5.03 Total Site Acres)	2.19 du/ac (gross)	
Density of residential lot development area, excluding outlots D,E, (open space), and 1st Street R.O.W. dedication. (2.89 net acres)	3.80 du/ac	
Lot Sizes:	Minimum = 5,097 s.f.; Maximum = 13,540 s.f. Average = 7,296 s.f.	

RESIDENTIAL BUILDING SETBACK REQUIREMENTS

• Front Setback (Front Loaded Garage)	20' Minimum Setback from the property line to face of principle structure or face of garage, whichever is closer.
• Front Setback (Side Loaded Garage)	15' Minimum Setback from the property line to face of principle structure or face of side loaded garage, whichever is closer.
• Side Setback (Common Walls Lots 2-II)	0' minimum setback as measured from the common wall lot line of paired structure.
• Side Setback (Lot I)	10' minimum setback as measured from the side lot line to face of principal structure.
• Side Setback (Lots 2-10)	5' minimum setback as measured from the side lot line to face of principle structure.
• Side Setback (Lot II)	20' minimum setback as measured from the side lot line to face of principal structure.
• Rear Setback (Lots I-II)	15' minimum setback as measured from the rear lot line to face of principal structure and/or to raised covered decks.

GENERAL SETBACK NOTES

- Front setbacks shall be measured from the front lot line or property line to face of principal structure, or face of garage, whichever is closer.
- Minor architectural features which do not exceed 2' in overall pr principle structure (i.e.: roof overhangs, fascias, eaves, fireplace cantilevered walls, etc.) are allowed to encroach into the front, but are not allowed to encroach into an easement regardless of requirements.

3. A minimum separation of 10' between the face of principal structures must be maintained.
4. Window wells may protrude into setbacks but are not allowed to encroach into any easements.

MARIANA BUTTE 23rd ORIGINAL CONDITIONS OF APPROVAL: Planning Commission Meeting 6-11-07

Preliminary Development Plan

1. Financial security shall be provided for all seeded areas identified in the PDP, until such time that the seed germinates and is generally free of weeds.
2. Prior to the approval of the Final Development Plan, the Developer shall provide the City with a copy of the agreement for installing off-site landscaping, as shown in the PDP.
3. The recommendations and provisions in the ESAR dated November 2006 shall be incorporated into the FDP.
4. Final sign text for the interpretive and educational signs located along the trail shall be submitted with FDP. The signs should stress the need for no wildlife harassment or human intrusion into important habitat areas.
5. Notwithstanding any information presented in the PDP or accompanying preliminary plat and preliminary construction plan documents (text or graphical depictions), all public improvements shall conform to the Larimer County Urban Area Street Standards, as amended, unless specific variances are requested and approved in writing.
6. Prior to the installation of any structures within the public right-of-way, an encroachment permit shall be obtained from the City of Loveland.
7. Paving stones and pavement snow melt systems, shall not be allowed on the public street with this development.
8. Prior to the approval of the Final Development Plan and Final Plat, the Developer shall redesign the proposed sedimentation basin to have as much separation from the existing wetlands as possible yet obtain equal or greater volume as currently designed. The sedimentation basin shall have a granular filter bottom and a compacted earth, vegetated berm separating the basin from the wetlands.
9. A surcharge of 5% will be added to all bills for the sale of electric power to additional services which came into the existence after January 31, 1987, within the territory herein annexed which surcharge will expire ten years after effective date of the annexation.

Preliminary Plat

10. Landscape plan for Outlot G shall be submitted concurrently with the first Preliminary Development Plan proposal for Lot 1, Block 2 of Mariana Butte 23rd Subdivision. All landscaping in Outlot G shall be installed prior to release of a building permit for Lot 1, Block 2 of Mariana Butte 23rd Subdivision.
11. Signage shall be provided at the entrance to the subdivision indicating the address range of the homes within the subdivision prior to the release of building permits.
12. Prior to the approval of the Final Plat, provide a "Fire Lane - No Parking" sign plan for approval by the fire prevention office for 1-side of the street and the entire cul-de-sac.

PRELIMINARY DEVELOPMENT PLAN NARRATIVE

PROJECT LOCATION

Mariana Butte Twenty-Third PUD First Amendment (marketing name: "Buckingham Shores") is a 5.03 ± acre residential community located at the Northwest corner of West First Street and Rossum Drive, directly east of Buckingham.

The Mariana Butte Twenty-Third PUD First Amendment is a conveniently accessible to all areas of Loveland via West First Avenue and Rossum Drive and is within walking distance of Mariana Butte Golf Course, Namaqua Elementary School, as well as other amenities within the Mariana Butte PUD. The developers of Buckingham Shores are committed to providing a residential development complimentary to the area with dynamic views of Buckingham Lake and the Front Range Foothills and Mountains.

The site is separated from Buckingham Lake by Buckingham Lake Dam, approximately 1.25 acres of jurisdictional wetlands and a 50' wide "natural area" buffer (Outlot D).

AMENDMENT DESCRIPTION

Mariana Butte 23rd PUD First Amendment is an amendment to a portion of the Mariana Butte 23rd Final Development Plan. The intent is to amend only the residential lot area and public roadway portion of the original Mariana Butte 23rd Final Development Plan; with only minor revisions to the overall site design outside the residential lotting area. All other elements including landscaping, protection of natural area, natural area buffering, and enhancement, drainage, sewage treatment and offsite roadway improvements (1st Street & Rossum Drive) will remain as originally designed.

The Mariana Butte 23rd PUD First Amendment proposes 1 single family detached residential lot and 10 paired residential lots within a "Maintenance free lifestyle" paired home development.

LAND USE

Mariana Butte Twenty-Third PUD First Amendment will be a maintenance free community focusing on the unique views to the west and south. This community will have a total of 11 Residential Lots ranging in size from 5,037-13,540 s.f. (approx.) Complete with landscaped greenbelts, it will provide both privacy, security and spaciousness while uniting the residences into the overall Mariana Butte PUD area.

Quality detailing will be exemplified with a perimeter ornamental metal fence and stone columns along Rossum Drive. Landscaping at the entrance and project perimeter. A natural area restoration buffer along the west edge will create a transition zone between the development and the wetlands. This transition zone will incorporate native plant material with wetland enhancement planting within the existing wetlands margin. Public access to Buckingham Lake will occur along the north edge via a public access walk connecting to Rossum Drive. Upon completion of each home the developer/home builder will fully landscape the private lot with trees, shrub beds, and irrigated turf which will be maintained by the home owner's association.

Only a very high level of architectural detail that complements the existing adjacent development will be considered. The developers are committed to building a quality and distinctive product while respecting the regionalism of the area. Mariana Butte Twenty-Third PUD First Amendment will meet a housing need present within Loveland for maintenance free single family detached and paired homes within an estate like community.

CIRCULATION

Mariana Butte Twenty-Third PUD First Amendment (Buckingham Shores):

Mariana Butte Twenty-Third PUD First Amendment residential area shall be served by a public dedicated "lane" (40' ROW & 28' roadway) terminating at a cul-de-sac less than 400' in length, known as Scenic Court.

The project is accessed from the existing Rossum Drive (a major collector street) via West First Street (a minor arterial street). Pedestrian circulation shall be accommodated by a 5' detached walk along Rossum Drive, a 6' detached walk along West First Street and a 5' attached walk around the west and south sides of Scenic Court. Pedestrian circulation shall be further enhanced with a public access walk connecting Buckingham Lake with the project entry at Rossum Drive.

Existing Minor Arterial Street, West First Street:

Roadway improvements to the north side of West First Street will be required adjacent to Mariana Butte twenty-Third PUD First Amendment (north edge of West 1st Street). Improvements will include adjusting the north edge of the asphalt so that the north half will comply with the ultimate street cross-section for a two lane arterial of 2-12' traffic lanes, a center 12' median/turning lane, and 2-5' bicycle lanes. Because of the rural nature of this area, concrete curb and gutters will not be installed. A detached 6' wide sidewalk will be installed a minimum of 10 feet north of the new edge of asphalt and will meander through the landscape area as shown on the site plan.

The existing right-of-way for West 1st Street is 70 feet, with 40 feet being north of the section line and 30 feet being south of the section line. An additional 10 feet of right-of-way was previously dedicated on the north side of the section line, bringing the total north side right-of-way to 50 feet.

Because road improvements will not be done on the south half of West 1st street, the full, ultimate cross-section will not be achieved. The existing striping will be removed and new striping installed to reflect the interim improvements for this street.

No significant road improvements will be made to Rossum Drive with the exception of the new Scenic Court Entrance. Curb return adjustments will be made and an 8' wide concrete drainage pan will be installed paralleling Rossum Drive to convey drainage to an inlet located at the West 1st Street/Rossum Drive intersection. A 5' wide pedestrian walk and 10' wide tree lawn will be installed on the west edge of Rossum Drive.

PUBLIC FACILITIES PROVIDERS:

- Police: City of Loveland
- Fire & Rescue: City of Loveland
- Schools: Thompson School District R2-J
- Parks: City of Loveland

PUBLIC UTILITIES

Basic utilities required for this development have been extended to the site or exist near the property and are available to the property. Adequate capacity currently exists within the City's infrastructure utilities to serve the project. The following is a list of utilities, their providers and service availability:

- Water: City of Loveland
Service:
Existing 12 in. waterline in Rossum Drive.
Improvements:
At the commencement of development, an 8" waterline shall be extended from Rossum Drive into Scenic Court. A looping system will supply the fire and domestic water needs of the development.
- Sewer: City of Loveland
Service:
Existing 8" sanitary sewer service is available in Rossum Drive.
Improvements:
Individual, HOA owned and maintained, pump stations with a 2' forced main shall be incorporated into a private utility easement. This proven technology shall provide convergence of wastewater from the development to the 8" gravity sewer main in Rossum Drive.
- Electric: City of Loveland
Service & Improvements:
Existing service is available in Rossum Drive and shall be extended through the site.
- Gas: Xcel Energy
Service & Improvements:
Existing gas main is available along Rossum Drive and shall be extended through the site.
- Telephone: Qwest
Service & Improvements:
Existing service is available along Rossum Drive and shall be extended through the site.

STORM DRAINAGE

Generally, drainage for the developed site will flow from the northeast to southwest to a sedimentation basin or across buffer areas before reaching the wetlands where it is eventually discharged into a 36-inch CMP culvert and the Buckingham Irrigation Ditch.

Drainage for Outlot A will be conveyed down the private access drive, then to a drainage swale ending in a small sedimentation basin before being discharged into the wetlands. The western developed portion of the site generally sheet flows south, southwest to the curb in Scenic Court where it is directed into an inlet located in the cul-de-sac; and then conveyed via an 18" storm sewer pipe into the sedimentation basin. The required annual cleaning and maintenance of the sedimentation basin will be the responsibility of Buckingham Shores Homeowners Association.

The rear of lots 1-12, Outlots C, D and E all drain across a landscaped buffer area before reaching the wetlands. Outlot "D", inclusive of the wetlands has been preserved to retain the historic natural drainage patterns. Flows reaching the wetlands eventually discharge to a 36-inch CMP culvert and the Buckingham Irrigation Ditch.

Many of the lots have been designed to accommodate walkout architecture to take advantage of view to the west. Fine lot grading will be determined at time of building permit plan submittal and will be reviewed by both the Architectural Review Committee (ARC) and the City of Loveland Building Department prior to issuance of building permits.

LANDSCAPE (General)

The project shall be landscaped with regionally appropriate plant materials. In open space and buffer yard areas a "waterwise" and naturalistic design approach shall be used. These areas shall include informal plantings of coniferous and deciduous trees with large drifts of deciduous and coniferous shrub beds. Turf areas will incorporate low water use drought tolerant seed and sod varieties. Wetland enhancement areas will utilize appropriate wetland plantings, as specified on the "Preliminary Landscape Specifications and Details" sheet. Common open space areas and individual lot landscaping shall be maintained by the Buckingham Shores Homeowners Association.

Proposed street trees (along the north side West 1st Street and west side of Rossum Drive) will link the various development areas and individual residential landscapes into a harmonious and unified system.

A variety of tree species shall be used throughout the development to insure visual interest and horticultural stability. A canopy effect will be created as the project matures.

Landscaping shown on the landscape plan including: private lot landscaping, landscaping of common open space areas, buffer areas, landscaping within public R.O.W., streetscapes (both trees and sod), wetland enhancement areas, as well as entry landscaping shall be installed by the developer/home builder and maintained by the Buckingham Shores Homeowners Association. "Common area" landscape shall be financially secured by the developer/home builder or installed prior to building permit issuance if weather conditions do not permit installation of landscape and irrigation.

All trees shall be planted a minimum of 10' from public utilities. Shrubs to be planted a minimum of 5' from all public utilities.

DESIGN AND ARCHITECTURAL DEVELOPMENT STANDARDS (ADS)

The following is intended as an outline of Design and Architectural Development Standards (ADS) that will apply to the construction of Mariana Butte Twenty-Third PUD First Amendment. Prototypical architectural elevations have been provided with this submittal in order to help illustrate the aforementioned design standards. The covenants for the development will require that a homeowner submit to ARC, plans and specifications for review and approval prior to the construction of any improvements on any lot.

Relationship of the Design and Architectural Development Standards (ADS) to Other Regulations:

The ADS are not intended to supersede applicable Federal, Colorado, or Loveland codes or ordinances. In case of conflict or discrepancy, or for subjects not addressed in the ADS, the more restrictive ADS, governing agencies, codes and/or regulations shall take precedence. The ADS are to be used by owners when modifying or upgrading homes or landscaping on individual paired residential properties within the Mariana Butte Twenty-Third PUD First Amendment. The ADS will also be used by the Architectural Review Committee (ARC) in reviewing proposals to determine their relative conformance to the overall design objectives and criteria. The ADS are intended to cover each site-specific or lot-specific issue, and community issues such as edge treatments and relationships to adjacent land uses.

INTRODUCTION

DESIGN AND ARCHITECTURAL DEVELOPMENT STANDARDS (cont.)

Building Area:

The minimum floor plan shall not be less than 1,400 s.f. for finished floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, basements and garages). Walkout and daylight basement designs are encouraged.

Architectural Theme, Elements and Styles:

A unified design theme is exemplified primarily in the facades of the residences within the Mariana Butte Twenty-Third PUD First Amendment. Although unified in character, each of the single family detached and paired homes shall maintain a quality community appearance.

Architectural Details:

Architectural details such as gabled roofs, and varying roof and facade planes shall be expressed in each paired home built.

Architectural elements such as shutters, vents, highly articulated windows and entries may be incorporated into each structure. Exposed concrete blocks, painted concrete, multicolored masonry, mirrored glass, prefabricated metal buildings, simulated brick, unnatural brick and stone colors, and silver finish aluminum doors and windows and reflective roofing materials are not acceptable.

Garages:

The visual impact of a front access garage upon the neighborhood streetscapes can be offset by the incorporation of several key architectural features such as: side loaded garages where possible, covered front porches, garage recesses, and gated/walled entry courtyards. All of these architectural techniques will help to reduce dominance of garage doors.

All homes shall include a standard 2-car garage as a minimum. The building architecture shall de-emphasize the garages as much as possible. Garage doors shall be painted the same color as the primary structure not a contrasting color.

The street facing elevation shall consist of a 50/50 ratio to the width of the house versus the width of the garage doors as viewed as part of the front building elevation (the garage doors shall not comprise more than 50% of the width of the house). Garage facades shall be detailed with windows, soffits, fascias, accent siding, decorative garage openings, and/or masonry.

Accessory Structures:

Accessory structures of any type and/or size shall not be allowed.

Materials:

Materials used on exterior surfaces are a key design element in Mariana Butte Twenty-Third PUD First Amendment. All materials shall be high quality and be compatible with the surrounding community and the landscape.

Masonry:

The Scenic Court facade of each paired home shall consist of a minimum of 25% masonry, natural/synthetic stone or hard coat or synthetic stucco. These materials should be used as a visual "base" for the residence.

Siding:

Hardboard siding, vinyl siding, vertical board and batten siding, cedar or simulated shingle siding, decorative accent siding, specialty siding, etc. may be used.

Roofing:

Roofing Materials: Roofing materials on sloped roofs shall be, as a minimum, 25 year heavy composition ("dimensional") shingles or better (including concrete tiles, clay tiles, high quality non-reflective standing seam metal roofing, etc.)

Where sloped roofs are used, the roof structures shall have a minimum roof pitch of 4:12.

Colors:

The color of exterior materials shall generally be of a neutral tone to blend with the colors of the landscape. Generally muted color tones are recommended, although deeper/boulder color variations and accent colors used judiciously and with restraint shall be allowed. A variety of color combinations shall be developed in order to vary the color between adjacent structures and to add interest to the streetscape. No two adjacent paired structures shall be painted the same color/shade. Use of highly chromatic or "bright" colors are to be limited to small accents.

Purpose and Intent:

The architectural character of the single family detached and paired homes in the Mariana Butte Twenty-Third PUD First Amendment is intended to reflect regional character with a variety of interesting and compatible relationships of form, texture and within a consistent overall architectural style. Additionally, economic factors, environmental concerns, and construction practices prevalent in the industry are important influences. The following ADS are intended to establish and promote a high level of design quality, assure compatibility between residential products within the community, and guide the character and form of the paired residential architecture. The following architectural design objectives shall be incorporated into the community and shall be considered when designing the final architectural building elevations, as well as when making improvements to the individual homes and landscape.

Facades:

Homes should be designed to create sufficient relief in building facades. Use of large, flat, and unbroken planes shall be avoided. Strategies to achieve this objective include, but are not limited to:

- * Using a variety of materials and colors.
- * Using materials with texture or depth.
- * Using sufficient window and door openings to break up flat facades.

Facades should also be designed to provide variety and visual interest, while still creating a unified impact overall. Design elements should have good proportions and be complimentary to one another. Strategies to achieve these objectives include, but are not limited to the use of:

- * Focal points such as porches, gated entry courtyards, dormers, bay windows, chimneys, and skylights.
- * Various window shapes or sizes.

Bulk:

The bulk of the home should be broken up to reduce the apparent scale of the home and provide visual interest. Strategies to achieve this objective include, but are not limited to, the use of:

- * Variations in the building footprint.
- * Variations in shapes and forms, including architectural projections which create shadows on the house, such as roof overhangs, box windows or cantilevers.
- * Architectural treatments of roof forms facing or oriented toward the street.
- * The bulk of the roofs should be broken up into smaller areas to reduce the apparent scale of the home and provide visual interest. Strategies to achieve this objective include, but are not limited to: Varying roof orientations; and, using gables, dormers and/or hip roof designs.

Massing:

The massing (placing of bulk) and the building heights should be designed so that they are suited to the lot size and building setbacks. The massing and building heights should be designed so that the scale of the building is appropriate. Strategies to achieve this objective include, but are not limited to:

- * Offset front facade of attached paired units so that garage facades are not flush and setbacks are staggered.
- * Integration of one story building elements, such as porches and entryways to soften the appearance of the architecture.

Balance:

A balance should be provided between the various parts and forms of a home to provide an aesthetically pleasing overall design. Strategies to achieve this objective include, but are not limited to:

- * Designing the house with elements that are visually more massive or heavier below, with elements that are visually lighter and less massive above.
- * Designing the house so that its height is proportional to its width to avoid excessively tall and narrow designs;

These are guidelines and not absolutes. Mariana Butte Twenty-Third PUD First Amendment P.U.D. is receptive to a range of architectural style, provided that compatibility of style, detailing, and color are achieved. The Developer is intent on preserving the quality of appearance and property values, and this involves the creation of a consistent overall architectural style.

Building Height:

Height as allowed by City Code - Section 18.54

Entries:

Front Door areas should be readily distinguishable from the street. Sidelights and similar features to visually expand the size of the entry are encouraged.

Porches:

A covered front porch element shall be included on all front elevations of paired homes.

Gated Entry Courtyards:

Where garage forward front access garages are used this elevation shall incorporate a walled/gated entry courtyard incorporating a 42" high courtyard entry wall and ornamental access gate. The courtyard entry wall shall be setback from the front facade of the garage a maximum of 4'. This walled/gated entry courtyard shall help to visually extend the front elevation of the principal structure forward to the garage facade and help diminish the impact of the garage doors on the neighborhood streetscape.

Rear Elevations:

Design elements to be utilized may include bay windows, covered rear patios and raised decks, chimneys, roof gables, height reduction, etc. Raised rear decks shall have support posts that are a minimum of 12 inches in width.

Windows:

Windows shall be used to create interest on large surface areas. Bay windows, particularly on first floor windows, are encouraged. Multi-pane windows (simulated) are encouraged on large surface area windows. Accent windows are highly encouraged. Frames, sills, shutters, transom lights (or other similar proportioned modulation of the wall roof ends) shall define window and door openings.

Building Projections and Vents:

All buildings projections including, but not limited to, chimney flues, vents, gutters, down spouts, porches, railings and exterior stairways shall match the color of the surface from which they project or shall be of an approved complementary color. All roof-mounted and wall-mounted building vents and flues are to be located on the non street side of the residences to the greatest degree possible. Vents are to be painted to blend with the wall color roofing from which they extend.

Air Conditioning Units:

Ground level air conditioning units shall be located in rear or side yards and shall be appropriately screened with either a fence or landscaping. Window and roof mounted air conditioning units are not permitted.

Antennas/Satellite Dishes/Solar Panels:

One mini satellite dish is allowed per home, as approved by the ARC. Large satellite dishes are prohibited in favor of the smaller (18") mini dish varieties unless otherwise approved by the ARC. Solar panels shall be flush mounted or laid flat on the same plane as the roof. Solar panels shall not project above the pitch of the roof. Exterior mounted antennas are prohibited.

LANDSCAPE AND SITE DESIGNPurpose and Intent:

The Landscape Design criteria is intended to supplement the Site Planning and Architectural Design criteria in order to integrate all the paired residential structures into a harmonious maintenance free community. Additionally, landscaping should have compatibility with adjacent properties, the project's streetscape, and ultimately transition into the perimeter natural wetlands landscape. The ARC reserves the right to require landscape components as a part of the architectural approval, if in the opinion of the ARC, the architectural design needs specific assistance to meet the intent of the design guidelines.

Landscape & Architectural Lighting:

No exterior lighting other than that provided by the home builder shall be allowed on any residential lot except with the written approval of the ARC. Subdued exterior landscape lighting whose light source is not visible from adjoining dwellings may be allowed by the ARC for such purposes as illuminating entrances, decks, driveways, landscaping and parking areas, and other approved purposes such as seasonal decoration.

Site Lighting:

Lighting throughout the development will consist of City of Loveland 16' pole standards with ambient light cut off shields and placed in accordance with City Standards.

Signage:

A project entry signage if installed shall will comply with Municipal Code Section 18.50.80. The monumentation signage shall incorporate a consistent project entry theme utilizing stone masonry and synthetic plaster. For added visual interest and nighttime visibility, the primary entry sign walls may be indirectly illuminated.

Natural Area Enhancement:

Natural area enhancement will include a 50' wide natural area buffer landscape and the creation of a small riparian enhancement area (5,965± S.F.). The goal of the enhancement will be to establish or improve a diverse native plant community on remaining natural areas that is better than existing conditions. There is approximately 1.8± acres of jurisdictional wetlands which will not be disturbed. Appropriate plant material and installation practices as will be utilized in the wetland enhancement area. (see Landscape Specification & Detail Sheet. Also refer to "Buckingham Shores, Outlot D Enhancement Plan, prepared by Wildland Consultants, Inc.)

Site Drainage and Grading:

Finish grading shall not create ponding or washing of water off the site on to adjacent property. Drainage shall be directed away from all structures. Newly graded areas shall be protected against soil erosion. Owners are encouraged to utilize soils engineers and landscape professionals to help ensure proper drainage is maintained.

The maintenance of the sedimentation basin will be the responsibility of the Buckingham Shores Homeowners Association. At a minimum, annual cleaning of the sedimentation basin will be required to mitigate any impacts to the wetlands.

Residential Sewage "Pump Stations":

Sewage disposal at the site is complicated by the fact that the nearest sanitary sewer main is uphill of the site at the intersection of Rossum Drive and Scenic Drive. Multiple discussions with the City of Loveland Water and Wastewater Department have occurred, and the option of installing a regional lift station that would not only serve this site, but future PUD First Amendments on the south side of West 1st Street, were investigated. Because of the small number of homes at Mariana Butte Twenty-Third PUD First Amendment, the Water and Wastewater Department has agreed to allow the installation of individual home lift stations with a force main to deliver sewage to a calming manhole at the high end of the site. The individual lift stations are located at the rear of each lot and fed via gravity flow from the home. A new 8" gravity flow sewer main would connect the calming manhole to the existing city sanitary sewer manhole at the Rossum Drive/Scenic Drive intersection. The individual pump stations and forced main system will be owned and maintained by the homeowners association and shall be installed in a private utility easement dedicated by this plat.

In addition to the above sewage disposal solution, the City Water Department also required information showing that a future gravity flow sewer system can be installed, if needed, in the future. The gravity flow system would flow to a future regional lift station located south of this site and on the south side of West 1st Street. The preliminary gravity sewer design has been completed and the future sewer main would be placed in "Outlot D" adjacent to the west and south sides of the residential lots. The sewer main placement would be within 20 feet of the proposed lift stations, resulting in minimal disruption to homeowner's lots should the gravity flow sewer main be needed.

Information on the individual lift stations is included in the submittal package. The e-one units have been installed for several PUD First Amendments along the front range and have had a very favorable operating history. A commercial company in Fort Collins has installed and maintained the units for several years. The company has a standby lift station pump to temporarily replace any failed existing pump. The company owner indicated that he has never had to use the standby pump as the existing lift stations have never had pump failures.

Landscape Timing and Components:

All landscaping on individual residential lots shall be installed by the developer/home builder and maintained by the HOA. The ARC requires complete landscaping plans prior to the installation of front, rear and side yards of each individual lot. The front, rear and side yards shall be suitably landscaped with grass, shrubs and trees as shown on the prototypical lot landscape plan. It is the intent that each property be fully landscaped with low maintenance "waterwise" plant materials suitable for this climate and irrigated with an automatic underground irrigation system.

Plant Materials:

Plant materials used should be low maintenance and suitable for this climate. Plant material selection should be made from locally available nursery or garden center stock. The Colorado Nurserymen's Association Rocky Mountain Plant Guide lists acceptable materials.

Lawn:

Lawn areas should be kept at least six (6) feet away from the foundation of the home or as recommended by a professional soils engineer or landscape professional, to ensure proper drainage is maintained.

Foundation Plantings:

Planting beds shall surround the foundation of each structure and provide a minimum of six (6) feet of planting area from the homes' foundation to the lawn areas to ensure proper drainage. In all instances, watering near the foundation should be minimal (e.g. drip irrigation systems) to avoid possible structural damage to the dwelling unit.

Rock and Mulch:

Shrub planting beds may utilize wood or rock mulch. Wood mulch provides a favorable environment for plants, reduces irrigation requirements and minimizes long-term maintenance costs. Rock must be light gray in color (i.e., river rock). Multicolored rock (i.e. pink granite, dark red lava rock, or other colors) are discouraged. Large six inch (6") in diameter or greater river rock, moss rock, or other "feature" rock may be used as part of the landscape. Wood mulch and rock should be placed over a weed barrier fabric and be kept in place with a steel, plastic or brick edger. All edging should be installed in such a way as to prevent damming of water near the foundation.

Gardens:

Private gardens will be allowed in the rear yards as a compliment to the overall landscape. The ARC is responsible to review all landscape plans for each lot prior to building.

Side yard property lines shall not be individually delineated by way of fencing or landscaping, in order to prevent impact to the visual window to wetlands and mountains/foothills.

Landscape Components Not Allowed:

No artificial plants of any type are to be used in the landscape. Any area visible from a public right-of-way shall not have yard decorations such as plastic, fiberglass, concrete or iron animals, birds or human replicas, freestanding water features, windmills, or other agricultural equipment, wagon wheels, mechanical equipment incorporated into mailboxes or other unnatural landscape element. No delineation of property lines will be allowed with fences, walls, shrub beds, trees or any material.

Concrete Driveways:

Concrete driveways and parking areas are not to be expanded without the prior written approval of the ARC.

Dog Runs:

Dog runs will be allowed if they can be reasonably isolated and screened from adjacent properties. Local ordinances regarding noise, odors and other nuisances will be in effect.

Fencing:

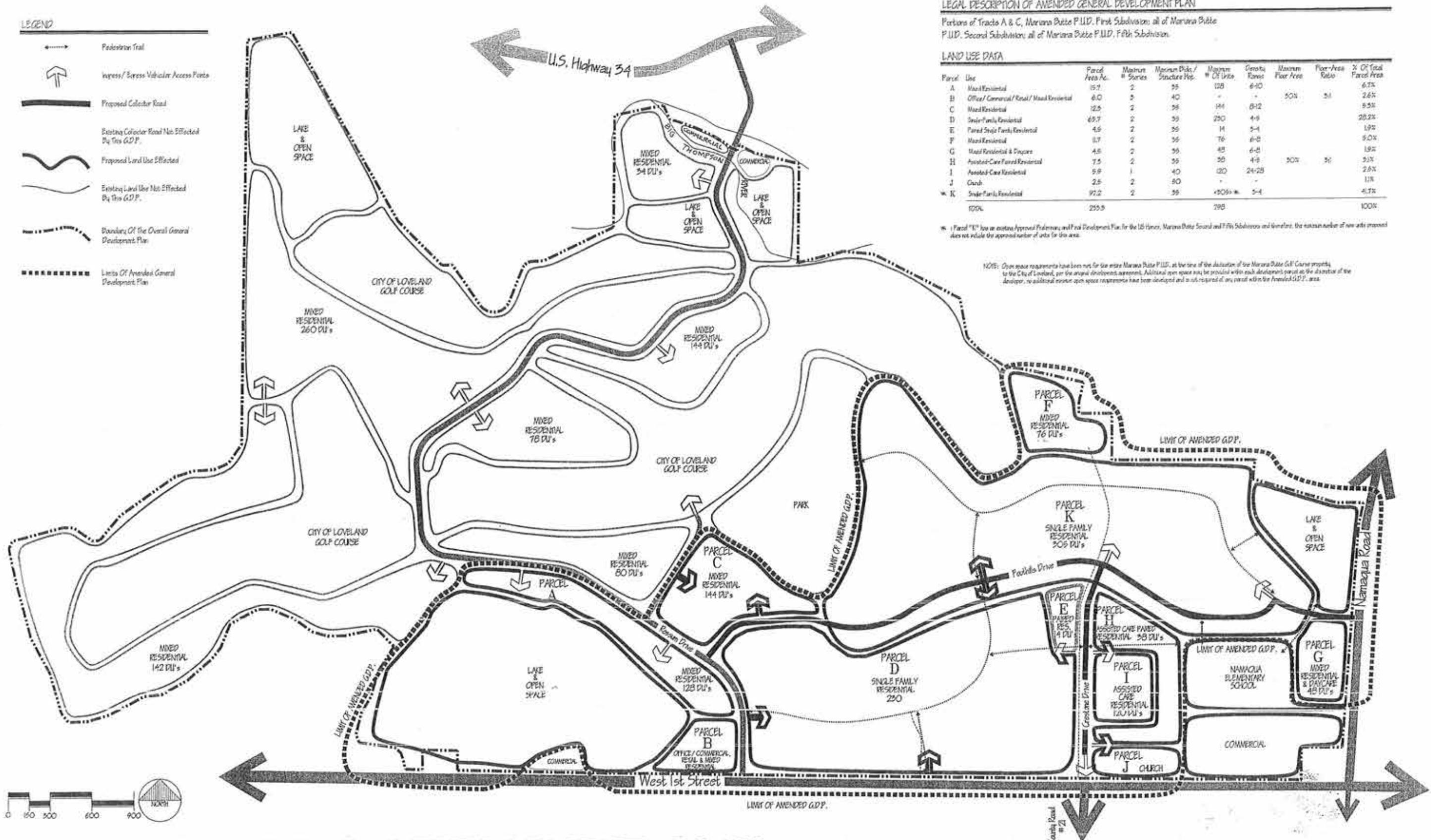
Fencing shall be limited to project perimeter fencing installed by the developer. Perimeter fencing will be a combination of ornamental metal with stone pilasters (see detail) along Rossum Drive and a 2 rail wood cedar fencing along the rear of lots 1-11 and Outlot A. The fence height will vary between 6' along Rossum Drive to 42" along the south and west perimeter adjacent to the wetlands. The 42" high wood rail fencing will not have pilasters to allow for a greater visual window. The 42" high wood rail fence shall incorporate a wire mesh on the lot side of the fence to prevent pets from entering wetland areas. No gates shall be allowed along 42" high wood rail fence. Sideyard fencing will not be allowed in order to minimize the visual impact to Buckingham Lake and adjacent wetlands and views to the foothills/mountains. Any architectural walls and screen fencing must integrate into the surrounding landscape and must be approved by the Architectural Review Committee.

No delineation of property lines will be allowed with fences, walls, shrub beds, trees or any material.

LEGEND

Legend:

- Pedestrian Trail: Dashed arrow pointing right
- Ingress/Egress/Vehicular Access Points: Upward arrow
- Proposed Collector Road: Thick black line
- Existing Collector Road Not Affected By this G.D.P.: Wavy black line
- Proposed Land Use Affected: Wavy black line with a wavy pattern
- Existing Land Use Not Affected By this G.D.P.: Wavy black line with a wavy pattern
- Boundary Of the Overall General Development Plan: Dashed line with a wavy pattern
- Limits of Amended General Development Plan: Dashed line with a wavy pattern



LEGAL DESCRIPTION OF AMENDED GENERAL DEVELOPMENT PLAN

Portions of Tracts A & C, Mariana Butte P.U.D. First Subdivision; all of Mariana Butte P.U.D. Second Subdivision; all of Mariana Butte P.U.D. Fifth Subdivision.

LAND USE DATA

Parcel	Use	Parcel Area Ac.	Number of Stories	Maximum Bldg. / Structure Sqft.	Maximum # of Units	Density Per Acre	Maximum Floor Area	Floor-Area Ratio	% Of Total Parcel Area
A	Mixed Residential	15.7	2	35	128	6.10			6.7%
B	Office/Commercial/Residential	6.0	3	40	-	-	50%	51	2.6%
C	Mixed Residential	12.5	2	35	94	7.52			9.5%
D	Single-Family Residential	65.7	2	35	230	4.43			28.2%
E	Paved-Style Single-Family Residential	4.9	2	35	14	5.14			1.9%
F	Mixed Residential	1.7	2	35	76	4.41			5.0%
G	Mixed Residential & Duplex	4.5	2	35	48	6.55			1.9%
H	Assisted-Care Paved Residential	7.5	2	35	56	4.80	50%	51	5.0%
I	Paved-Care Residential	5.8	1	40	120	21.25			2.6%
J	Church	2.5	2	80	-	-			1.8%
K	Single-Family Residential	97.2	2	35	450	4.74			41.7%

5. Faroc "F" has an existing Approved Preliminary and Final Development Plan for the US Homes, Mariana Bluff School and TPA Shores area and therefore, the estimated number of new units proposed does not include the approved number of units for this area.

NOTE: Open space requirements have been met for the entire Mariana Phase I/II, at the time of the dedication of the Mariana Phase One/Courtesy property to the City of Lomond, per the original development agreement. Additional open space may be provided within each development parcel at the discretion of the developer. No additional minimum open space requirements have been developed and no sub-regulations of any parcel within the Mariana PUD area.

AMENDED GENERAL DEVELOPMENT PLAN

An Amendment to the Adopted Mariana Butte General Development Plan Dated April 1, 1994.
Dated: October 14, 1996
Received: December 7, 1996 (Per City D.M.L. Comments) **AMENDED 1.AN.6 ITEM BY ADDING "COMMERCIAL" AREA NORTH OF BIG THOMPSON RIVER**

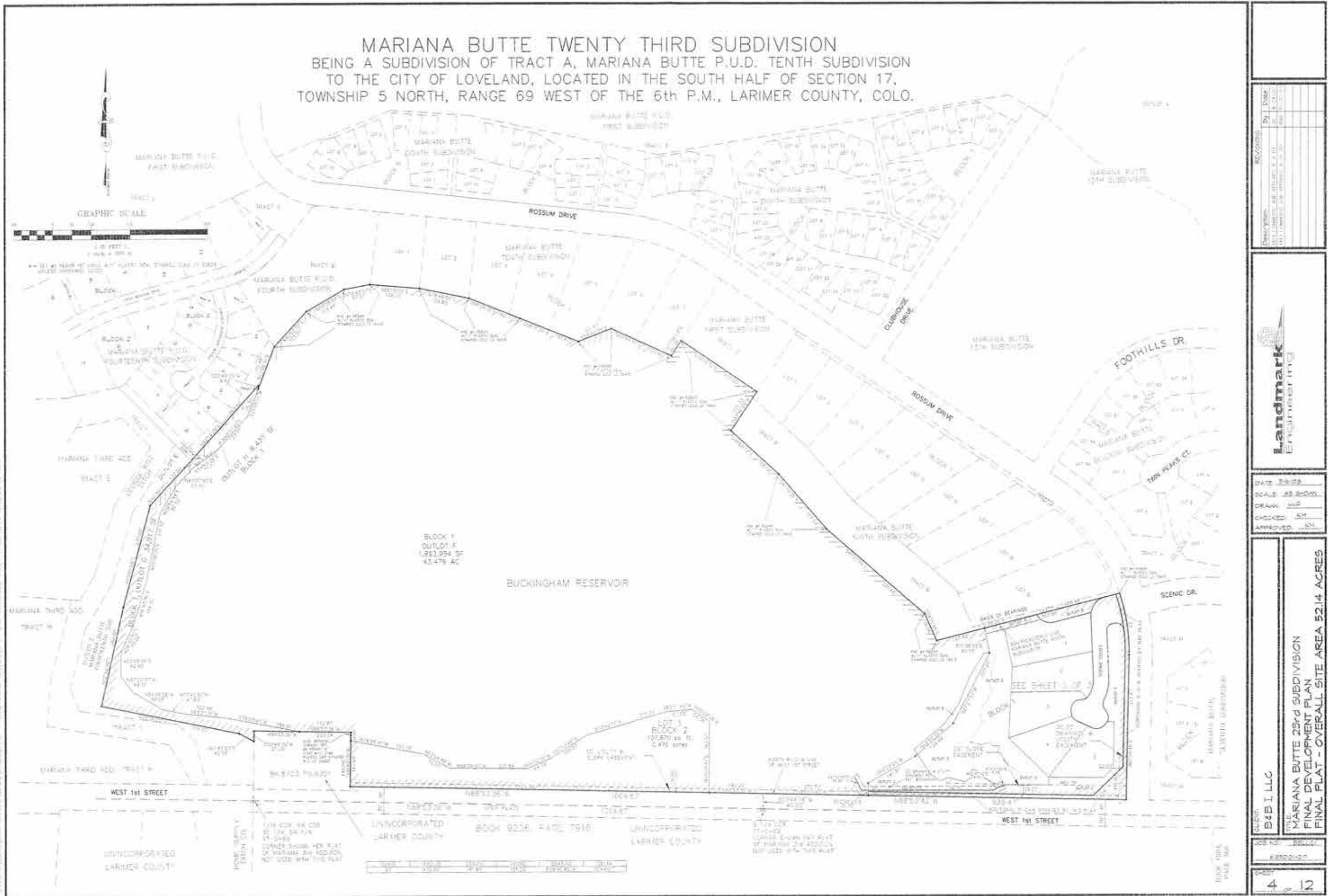
Dated: October 14, 1996
Revised: December 2, 1996 (Per City D.R.T. Comments)
Revised for final signatures: May 12, 1998

AMENDED JAN 6, 1991 BY ADDING COMMERCIAL AREA NORTH OF BIG THOMPSON RIVER AND WEST OF ROSSUM DRIVE, TO BE CONSISTENT WITH ORIGINAL MARIANA BUTTE MASTER PLAN.

SHEET
1 OF 2

PLANNERS/ENGINEERS/ARCHITECTS
52 West Esplanade Blvd., Loveland, Colorado 80537
(720) 667-4286 Denver (303) 624-7224 Fax (720) 667-4218

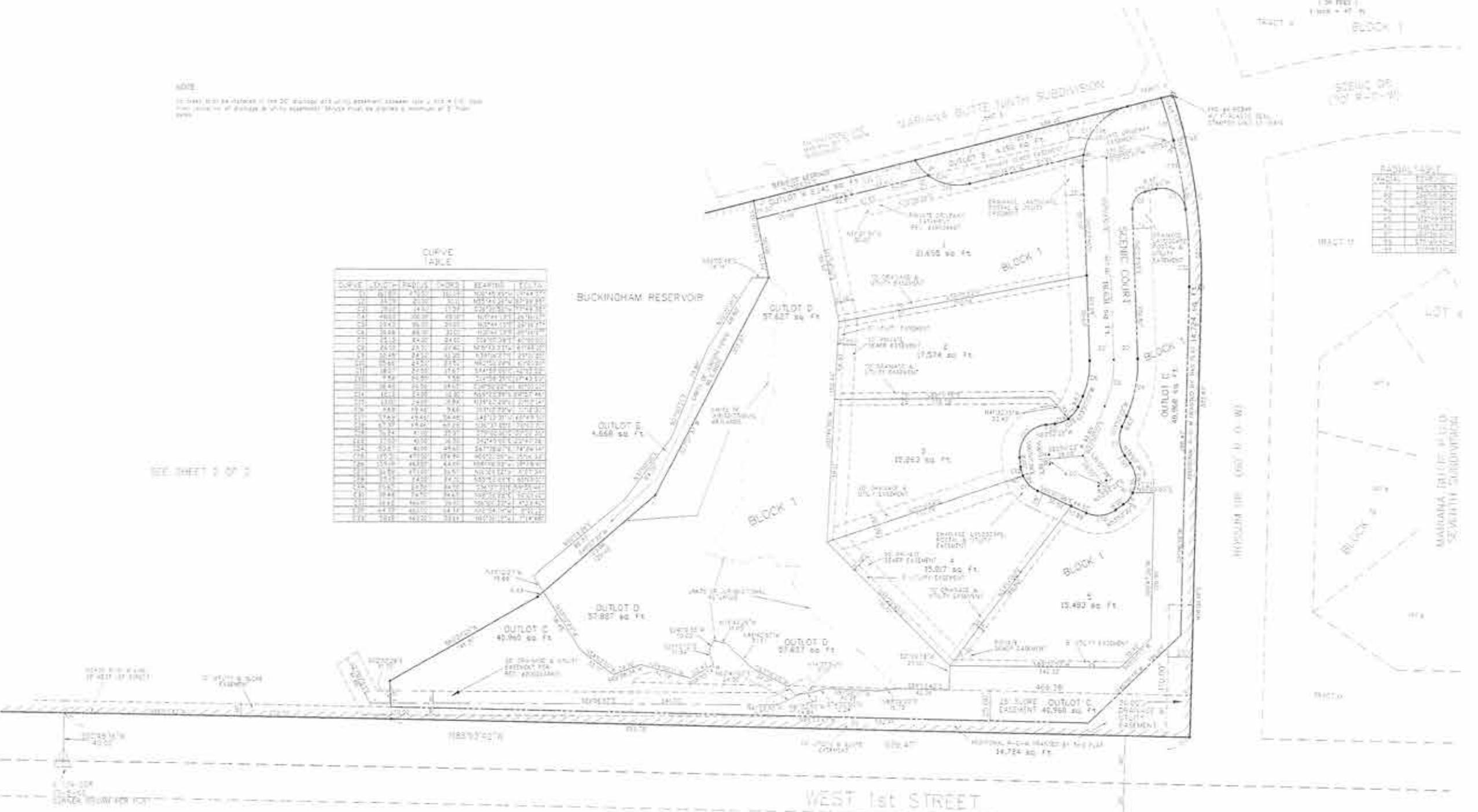
MARIANA BUTTE TWENTY THIRD SUBDIVISION
BEING A SUBDIVISION OF TRACT A, MARIANA BUTTE P.U.D. TENTH SUBDIVISION
TO THE CITY OF LOVELAND, LOCATED IN THE SOUTH HALF OF SECTION 17,
TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6th P.M., LARIMER COUNTY, COLO.

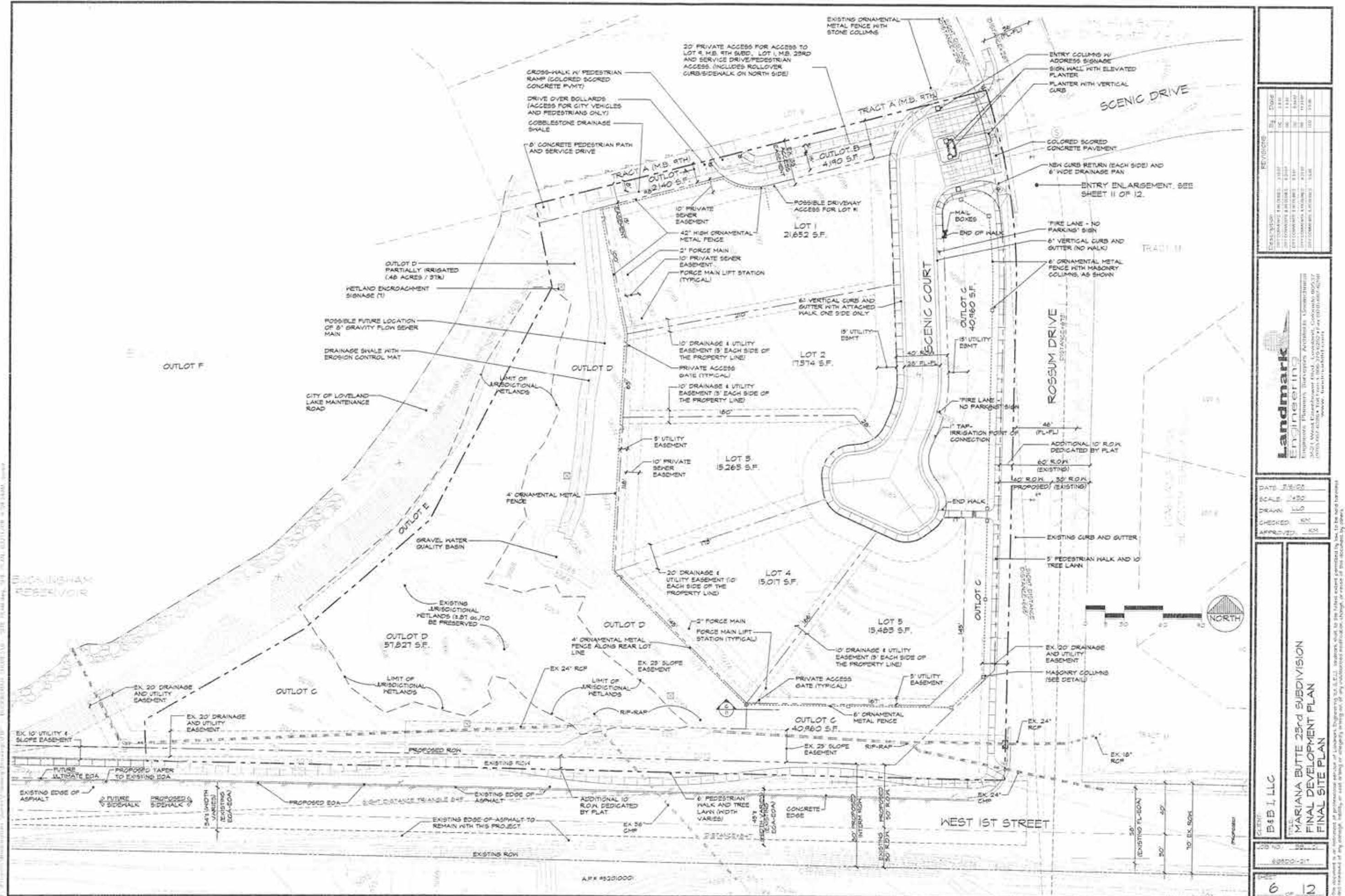


MARIANA BUTTE P.U.D. TWENTY THIRD SUBDIVISION
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NOTE:

ALL LOTS ARE SUBJECT TO THE 20% ADDITION AND 10% EASEMENT RESERVE AS OF 1/1/00
AND SUBJECT TO THE 10% ADDITION AND 5% EASEMENT RESERVE AS OF 1/1/01
AND SUBJECT TO THE 5% ADDITION AND 2% EASEMENT RESERVE AS OF 1/1/02



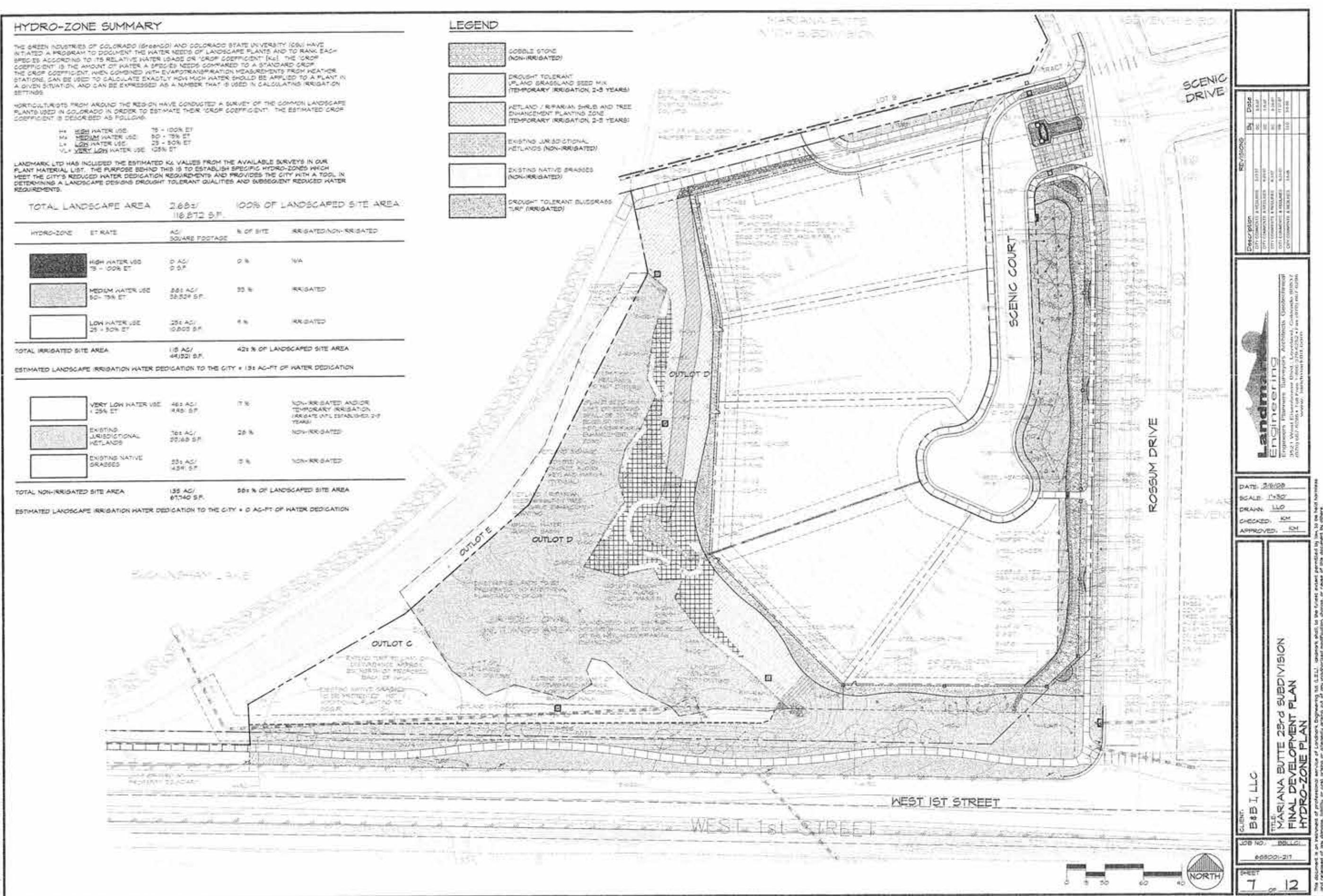


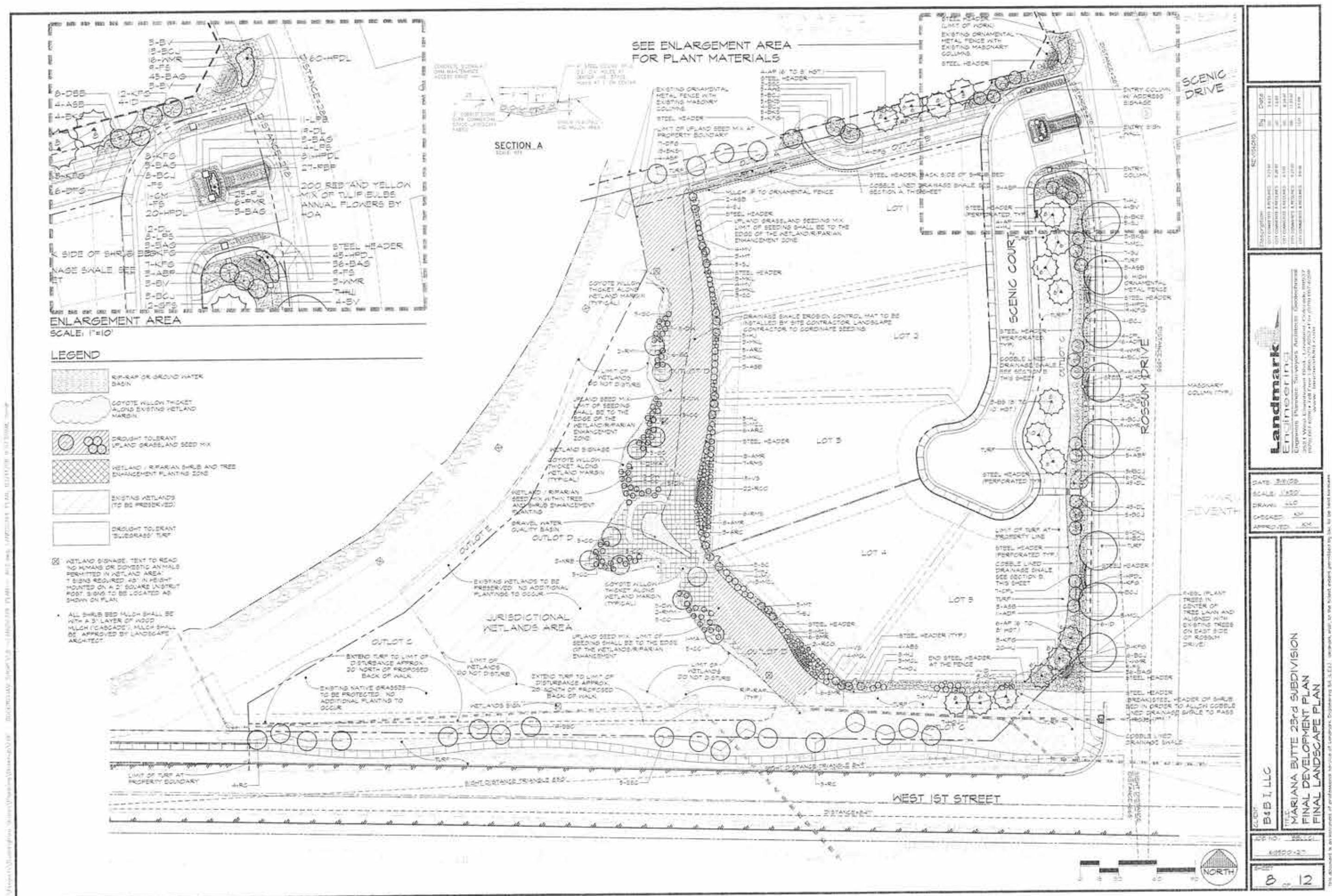
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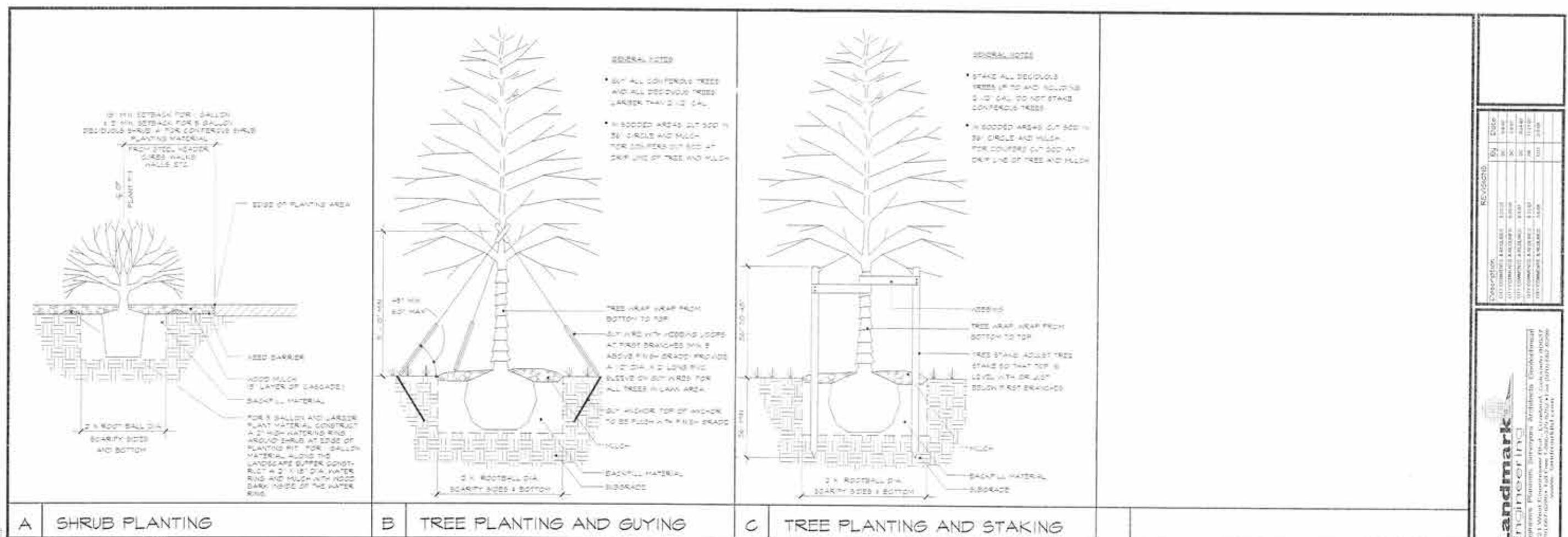
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DATE: 5/16/03	SCALE: 1:200
DRAWN: 110	CHECKED: 157
APPROVED: 108	
CLERK: B&B I, LLC	FILED: MARIANA BUTTE 25th SUBDIVISION FINAL DEVELOPMENT PLAN FINAL SITE PLAN
125 NO. 58-21	APN #52210001

REVISION	DATE	TIME
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A | SHRUB PLANTING

B | TREE PLANTING AND GUYING

C | TREE PLANTING AND STAKING

CONIFEROUS TREES

Symbol	Common Name	Botanical Name	Size/Condition	Kc	Quantities **
AP	Austrian Pine	<i>Pinus nigra</i>	6' Hgt Min.	10	
BS	Coniferous Spruce	<i>Picea Pungens</i>	6' Hgt Min.	10	

DECIDUOUS TREES

Symbol	Common Name	Botanical Name	Size/Condition	Kc	Quantities **
TS	Yellowwood	<i>Maclura pomifera</i>	7'-8'	10	4
TS	Yellowwood	<i>Maclura pomifera</i>	7'-8'	10	8
TS	Yellowwood	<i>Maclura pomifera</i>	7'-8'	10	8
TS	Yellowwood	<i>Maclura pomifera</i>	7'-8'	10	4
TS	Yellowwood	<i>Maclura pomifera</i>	7'-8'	10	8
TS	Yellowwood	<i>Maclura pomifera</i>	7'-8'	10	8
TS	Yellowwood	<i>Maclura pomifera</i>	7'-8'	10	8
TS	Yellowwood	<i>Maclura pomifera</i>	7'-8'	10	8
TS	Yellowwood	<i>Maclura pomifera</i>	7'-8'	10	8

ORNAMENTAL TREES

Symbol	Common Name	Botanical Name	Size/Condition	Kc	Quantities **
ATB	Autumn Blaze	<i>Pyrus Calleryana Autumn Blaze</i>	7'-8'	10	2
ABE	Autumn Blaze Beech	<i>American Betula</i> x <i>Betula lutea</i>	7'-8'	10	2
MT	Maple Tree	<i>Acer</i> Species	7'-8'	10	8
RC	Redbud	<i>Malus</i> Species	7'-8'	10	8
SG	Sargent Cedar	<i>Mezia Sargentii</i>	7'-8'	10	8
SG	Sargent Cedar	<i>Mezia Sargentii</i>	7'-8'	10	8

** Contractor responsible for quantities graphically shown on plan, not quantities individually called out.

DECIDUOUS/CONIFEROUS SHRUBS

Symbol	Common Name	Botanical Name	Size/Condition	Kc	Quantities **
ADP	Autumn Owl Polyscias	<i>Polyscias</i> Autumn Owl	3'-4'	10	20
AWP	Azalea Methyl Rose	<i>Rosea</i> Methyl Rose	3'-4'	10	20
APC	Amur's Red Hornbeam	<i>Carpinus</i> Amur's Red	3'-4'	10	20
BCJ	Blue Chip Juniper	<i>Juniperus</i> Blue Chip	3'-4'	10	20
DKS	Dark Knight Spirea	<i>Stachys</i> Dark Knight	3'-4'	10	20
IV	Variegated Yucca	<i>Yucca</i> Variegated	3'-4'	10	20
CD	Crabapple	<i>Malus</i> crabapple	3'-4'	10	20
CM	Cheerwine Moon Orange	<i>Prunus</i> Cheerwine Orange	3'-4'	10	20
CP	Common Privet	<i>Ligustrum</i> Privet	3'-4'	10	20
DKX	Dwarf Kousa Dogwood	<i>Ligustrum</i> Kousa	3'-4'	10	20
DW	Dogwood	<i>Syringa</i> Dogwood	3'-4'	10	20
FS	Fernleaf Boxwood	<i>Buxus</i> Fernleaf	3'-4'	10	20
GS	Golden Gaura	<i>Gaura</i> Golden	3'-4'	10	20
HS	Heather Shrub	<i>Calluna</i> Heather	3'-4'	10	20
HC	Highgrove	<i>Acers</i> Highgrove	3'-4'	10	20
HQJ	Heather Juniper	<i>Juniperus</i> Heather	3'-4'	10	20
ID	Idaho Crape Myrtle	<i>Lagerstroemia</i> Idaho	3'-4'	10	20
IPS	Iceberg Rose	<i>Rosa</i> Iceberg	3'-4'	10	20
MCU	Mac's Canada Lilac	<i>Syringa</i> Mac's Canada	3'-4'	10	20
MU	Mac's Lilac	<i>Syringa</i> Mac's Lilac	3'-4'	10	20
MU	Mountain Lilac	<i>Syringa</i> Mountain	3'-4'	10	20
PPF	Pink Double Flowering	<i>Rosa</i> Pink Double	3'-4'	10	20
PSR	Red Mahonia	<i>Mahonia</i> Red	3'-4'	10	20
PCD	Red Crape Myrtle	<i>Lagerstroemia</i> Red	3'-4'	10	20
PMU	Ruby Mountain Shrub	<i>Rosa</i> Ruby Mountain	3'-4'	10	20
PSL	Scarlet Trumpet	<i>Antigonon</i> Scarlet	3'-4'	10	20
RR	Redbud Maryland Rose	<i>Rosa</i> Redbud Maryland	3'-4'	10	20
VS	Redoute Variegated	<i>Rosa</i> Redoute Variegated	3'-4'	10	20
WHR	White Mahonia	<i>Mahonia</i> White	3'-4'	10	20

ORNAMENTAL GRASSES/BULBS

Symbol	Common Name	Botanical Name	Size/Condition	Kc	Quantities **
AGD	Amur's Owl	<i>Heuchera</i> Amur's Owl	1'-2'	10	20
DGD	David's Garden	<i>Heuchera</i> David's Garden	1'-2'	10	20
DI	Devil's Backbone	<i>Heuchera</i> Devil's Backbone	1'-2'	10	20
HPC	Heuchera Pink	<i>Heuchera</i> Pink	1'-2'	10	20
WAG	White Finger Grass	<i>Calystegia</i> White Finger	1'-2'	10	20
WAG	White Finger Grass	<i>Calystegia</i> White Finger	1'-2'	10	20

TURF/SEED MIXES

Symbol	Common Name	Botanical Name	Size/Condition	Kc
	Drought Tolerant	<i>Gramineae</i> Drought Tolerant	Seed	10
	Drought Tolerant Blend Mix	<i>Gramineae</i> Drought Tolerant Blend Mix	Seed	10
	Resistant	<i>Gramineae</i> Resistant	Seed	10

General Notes:

- All grasses and plants shall be healthy and be compatible with the soil, climate and the site's characteristics, drainage and water supply.
- The quality and quantity of plant materials shall comply with the requirements of the Colorado Nursery Act (C.R.S. Title 29, Article 29).
- All plants which are transplanted—annual plants and perennials—shall be watered systemically with an adequate amount of water to maintain plants in a healthy condition.
- Young plants and shrubs shall be maintained in a viable healthy state. Drought tolerant plants shall be immediately rehydrated with the same type of water required.
- All trees, shrubs and small structures shall be maintained in good shape. Drought tolerant trees shall be maintained on a regular basis and a fence or other type of protection shall immediately be installed or required.
- All trees and shrubs shall be planted in the 20' drainage area in between basins 3 and 4 apart from centerline or drainage line. Trees must be planted in 10' apart of 3' from swale.
- All shrubs and mulch shall be within 3' of each other. Shrub shall be spaced 3' apart.

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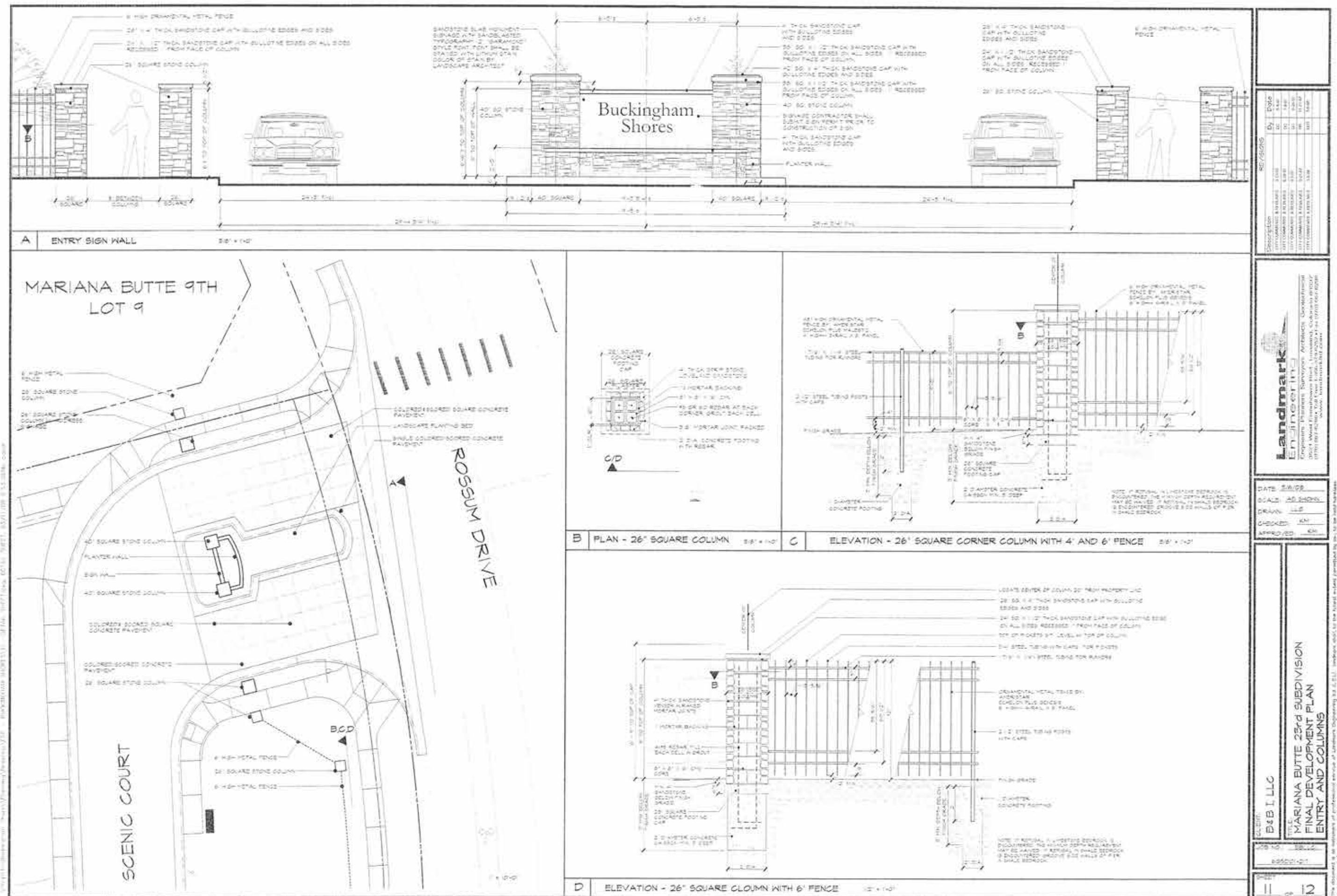
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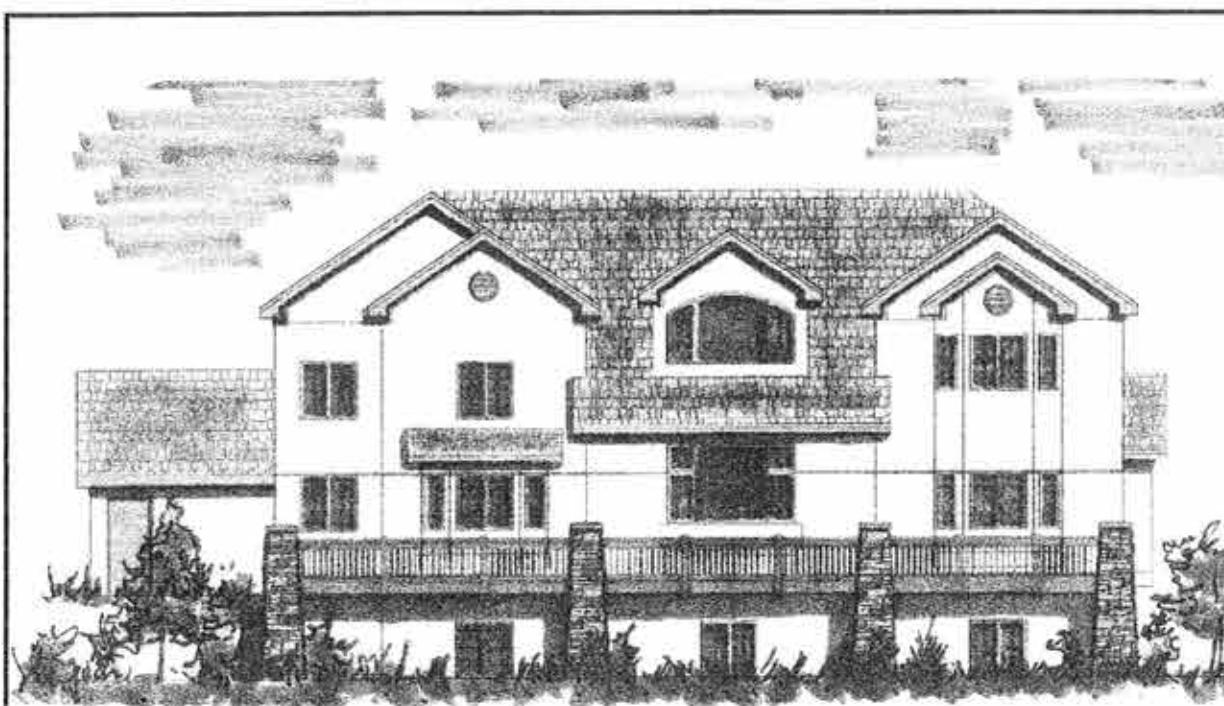
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 <p>REAR ELEVATION</p>		 <p>FRONT ELEVATION</p>	REVISIONS <table border="1"> <tr><td>DESCRIPTION</td><td>DATE</td></tr> <tr><td>1ST COMPTN. APPROVED</td><td>10/10/01</td></tr> <tr><td>STRUCTURE & ROOFING</td><td>06/10/02</td></tr> <tr><td>STRUCTURE & ROOFING</td><td>08/10/02</td></tr> <tr><td>STRUCTURE & ROOFING</td><td>09/10/02</td></tr> <tr><td>STRUCTURE & ROOFING</td><td>10/10/02</td></tr> <tr><td>STRUCTURE & ROOFING</td><td>11/10/02</td></tr> <tr><td>STRUCTURE & ROOFING</td><td>12/10/02</td></tr> </table>  <p>Landtrax Engineering Engineers, Planners, Surveyors, Architects, Geotechnical 3524 West 11th Street, Lakewood, Colorado 80401-3208 (303) 983-2200 • Fax (303) 983-2208 MasterPlatted Survey</p>	DESCRIPTION	DATE	1ST COMPTN. APPROVED	10/10/01	STRUCTURE & ROOFING	06/10/02	STRUCTURE & ROOFING	08/10/02	STRUCTURE & ROOFING	09/10/02	STRUCTURE & ROOFING	10/10/02	STRUCTURE & ROOFING	11/10/02	STRUCTURE & ROOFING	12/10/02
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<p>A ELEVATION A SCALE 1/4"=1'-0"</p>	<p>ELEVATION B SCALE 1/4"=1'-0"</p>																		
 <p>REAR ELEVATION</p>		 <p>FRONT ELEVATION</p>	<p>DATE: 8/6/02 SCALE: AS SHOWN DRAWN: LLO CHECKED: KZ APPROVED: KM</p> <p>NOTE: All homes shall substantially comply with the architecture shown and shall also comply with the Minimum Architectural Development Standards set forth in the "Design and Architectural Standards" section of this submittal.</p>																
<p>B ELEVATION B SCALE 1/4"=1'-0"</p>	<p>CLIENT: B&B I, LLC TITLE: MARIANA BUTTE 23rd SUBDIVISION FINAL DEVELOPMENT ARCHITECTURAL ELEVATIONS PRELIMINARY ARCHITECTURAL ELEVATIONS JOB NO.: 866001-211 SHEET: 12 of 12</p> <p>This document is one instrument of professional service of Landtrax Engineering, Inc. (L.E.I.) rendered with the intent of being or designed, printed or otherwise made, modifiable, change or release of this document by others.</p>																		

MARIANA BUTTE NINTH SUBDIVISION

BEING ALL OF TRACT C, MARIANA BUTTE P.U.D. FIRST SUBDIVISION

TO THE CITY OF LOVELAND, LOCATED IN THE SOUTH HALF OF SECTION 17, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6th P.M., LARIMER COUNTY, COLO.

KNOW ALL MEN BY THESE PRESENTS that the undersigned, being all the owners and Proprietors of the following described property, except any existing public streets, roads or highways, which property is located in Section 17, Township 5 North, Range 69 West of the 6th P.M., containing 84.855 acres more or less being more particularly described below:

TRACT C MARIANA BUTTE P.U.D. First Subdivision to the City of Loveland according to the plan on file in the office of the Clerk and Recorder, County of Larimer, State of Colorado.

do hereby subdivide the same into lots, blocks, tracts, outlets, rights-of-way, and easements, as shown on the plan, and do hereby designate and dedicate: (1) all such rights-of-way and easements, other than utility easements and private agreements, to and for public use, except where indicated otherwise on this plan; and (2) all such easements to and for public use for the installation and maintenance of utility, irrigation and drainage facilities, and do hereby designate the same as MARIANA BUTTE NINTH SUBDIVISION to the City of Loveland, Colorado.

All expenses involving necessary improvements for water system, sanitary sewer system, storm sewer system, curb and gutters, sidewalks, street improvements, street signs, traffic control signs, utility grading and surfacing, gas service, electric system, grading and landscaping shall be paid by MARIANA BUTTE LTD., a Colorado Limited Partnership.

According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect, in so event may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown herein.

OWNER: MARIANA BUTTE LTD., a Colorado Limited Partnership.
Walter A. Conner, General Partner

Walter H. Moore, President

STATE OF COLORADO ISS
COUNTY OF LARIMER

The foregoing instrument was acknowledged before me this 4th day of February 1999 by

Witness my hand and official seal.

My commission expires

Notary Public
3501 E. 4th St.
Loveland, CO 80537



My Commission Expires 06/2000

Robert J. Nelson
4 Feb 1999

WITNESS: my hand and official seal.
My commission expires

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AGREEMENT FOR ADDITIONAL ASSOCIATION MAINTENANCE

This AGREEMENT FOR ADDITIONAL ASSOCIATION MAINTENANCE ("Agreement") is entered into the date and year hereinafter set forth by and between Buckingham Shores Homeowners Association, Inc., a Colorado non-profit corporation to be formed pursuant to the Colorado Common Interest Ownership Act ("Association"), B & B I, LLC, a Colorado limited liability company ("Developer"), the Owner of Lot 9, Mariana Butte 9th Subdivision ("Owner") and Buckingham Reservoir Area Owners Association, a Colorado non-profit corporation ("HOA").

WITNESSETH:

THAT WHEREAS, the Final Development Plan, Buckingham Shores P.U.D., as amended and supplemented ("FDP") sets forth landscape installation and maintenance responsibilities of the parties to this Agreement; and

WHEREAS, the Developer will be the developer of certain real property described on the FDP for Buckingham Shores; and

WHEREAS, the Developer plans to install landscaping as shown on the FDP on certain portions of Tract A of the Mariana Butte 9th Subdivision which is owned by Buckingham Reservoir Area Owners Association, and more specifically described on Exhibit A attached hereto.

NOW, THEREFORE, in consideration of the foregoing premises, the covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Developer, the Association, the Owner and Buckingham Reservoir Area Owners Association agree as follows:

1. If, at the time of approval of the FDP, landscaping improvements have not been installed on Tract A, the landscape improvements and underground irrigation system on those certain designated portions of Tract A shall be installed by the Developer at the Developer's sole cost and expense.
2. The Association shall be responsible for the maintenance, replacement and repair of any and all landscaping on those certain portions of Tract A, and described in Exhibit A including without limitation the maintenance, replacement and repair of the underground irrigation system installed by the Developer. This obligation shall be made a condition of the Covenants, Conditions and Restrictions document for the Association.
3. The Association shall verify that any person or entity hired by the Association to perform maintenance or landscaping services on the Tract maintains adequate insurance coverage.
4. At such time as landscaping is installed for a home on Lot 9, Mariana Butte 9th Subdivision, the irrigation system on Tract A of the Mariana Butte 9th Subdivision shall be integrated with the Lot 9 irrigation system, and all future costs associated with the operation and maintenance of that integrated system shall be borne by Owner.

5. Should the Owner decide to move the location of the driveway entrance to Lot 9, and Owner has obtained approval of the HOA, the City of Loveland, and any other approvals required for such a move, Developer agrees to, with the approval of the HOA, make the necessary changes to the landscape plan set forth in Exhibit A to accommodate the new location at Developers sole cost and expense. Owner agrees to make all necessary changes to the Lot 9 fence, and any other street, curb, driveway, or other infrastructure changes required for the move at their sole cost and expense. Developer agrees to provide reasonable access to Owner to accomplish these changes. Owner agrees to abandon any unused access easement at the request of Developer. If the new location is elsewhere along the south boundary of Lot 9, Developer's approval of the new location shall also be required, and shall not be unreasonably withheld.

6. The Developer and the Association shall maintain insurance as required by applicable law, which insurance shall include, without limitation, property insurance and general liability insurance.

7. The benefits, burdens and all other provisions contained in this Agreement shall be covenants running with and binding upon the Buckingham Shores Site and all Improvements which are now or may hereafter be a part thereof. The benefits, burdens and all other provisions contained in this Agreement shall be binding upon, and inure to the benefit of the Developer, the Association, the Owner and the Buckingham Reservoir Area Owners Association, and upon and to their respective heirs, personal representatives, successors and assigns.

8. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. Any and all prior agreement or discussions pertaining to the subject matter of this Agreement, whether written or oral, are superseded and are deemed null and void and of no effect with respect to the subject matter of this Agreement. If any term or provision of this Agreement is held to be invalid or void by any Court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way effect any other terms or provisions herein contained. If any term or provision of this Agreement is deemed to be invalid due to its scope or breadth, such term or provision shall be deemed valid to the extent of the scope or breadth permitted by law.

IN WITNESS WHEREOF, this Agreement has been executed as of this 22nd day of
August, 2007.

B & B I, LLC,
a Colorado limited liability company

By: John R. R.
Title: Manager

John R. R.
COP

BUCKINGHAM RESERVOIR AREA OWNERS ASSOCIATION, INC
a Colorado non-profit Corporation

By: Earl D Baumgarten
Title: PRESIDENT

EDB
12/19/2007

OWNER, LOT 9, MARIANA BUTTE 9TH SUBDIVISION

By: George W. Ligeth 8-23-07
OWNER Lot 9

MMV
12/19/07

Colleen K. Ligeth 8-23-07
OWNER Lot 9

Act AP1
12/19/07

NEIGHBORHOOD MEETING – 05/05/2011

TO: LOVELAND CITY STAFF, PLANNING DIVISION

- IN A PROCESS THAT BEGAN ON 10/12/2006 AND ENDED (WE THOUGHT!) ON 10/15/2009, WE HAVE SPENT COUNTLESS HOURS AND OVER \$5000 IN PREPARATION AND MEETINGS WITH CITY STAFF, ENGINEERING FIRMS, LAWYERS , PLANNING COMMISSIONS, AND CITY COUNCIL TO:
 - 1.) PRESERVE OUR LANDSCAPE BUFFER ZONE BETWEEN OUR SUBDIVISIONS, THAT THE DEVELOPER OF MARIANA BUTTE 23RD SD WANTED ORIGINALLY TO ELIMINATE, AND
 - 2.) CHANGE OUR ACCESS FROM THE ABANDONED SCENIC DRIVE EXTENSION TO ROSSUM DRIVE, A CHANGE AT OUR EXPENSE, THAT GREATLY BENEFITED THE DEVELOPER OF MARIANA BUTTE 23RD SD WHO THEN DIDN'T NEED TO INSTALL AND MAINTAIN AN ACCESS DRIVE TO OUR LOT THROUGH HIS PROPERTY.
- WHILE IT SHOULD BE NOTED THAT WE HAD NO PROBLEM WITH THE EXISTING PLAN WHICH CALLS FOR 5 HOMESITES, WE HAVE A GREAT PROBLEM WITH THE DEVELOPER'S CURRENT PROPOSAL TO SQUEEZE 12 DUPLEXES ONTO THIS SITE, AND ONCE AGAIN ATTEMPT TO ELIMINATE A LANDSCAPE BUFFER ZONE BETWEEN THE TWO SUBDIVISIONS.
- BESIDES THE ISSUE OF LANDSCAPING, WE ALSO HAVE A GREAT PROBLEM WITH BOTH THE DENSITY AND PROXIMITY OF THIS PROPOSAL TO OUR LOT AND THE POSSIBLE DEVALUATION OF OUR PROPERTY RESULTING FROM THIS DRASTIC CHANGE.
- TO ILLUSTRATE OUR CONCERNs RELATIVE TO LANDSCAPE AND ACCESS, LET ME REMIND YOU OF THE IMPORTANT EVENTS THAT CULMINATED IN THE PRIOR PLAN FOR MARIANA BUTTE 23RD SUB DIVISION. MILESTONES REACHED INCLUDE:
 - 1.) MARIANA BUTTE 23RD APPROVED PLAN INCLUDING LANDSCAPE – 02/05/07
 - 2.) MARIANA BUTTE LANDSCAPE PLAN – 05/10/07
 - 3.) AGREEMENT TO LANDSCAPE PLAN – 12/19/07
 - 4.) AMENDED PDP FOR LOT 9 , MARIANA BUTTE NINTH SD SHOWING ACCESS CHANGE TO ROSSUM DR AS WELL AS THE PRIOR APPROVED LANDSCAPE PLAN – 10/15/09

- TO ADDRESS OUR CONCERNS RELATIVE TO DENSITY AND PROXIMITY, PLEASE CONSIDER THE FOLLOWING POINTS.
- OUR TRACT A, WHICH WOULD SERVE AS A BUFFER BETWEEN THE PROPERTIES, IS ONLY 5-6 FEET WIDE. THEIR OUTLOT A IS ONLY 5 FEET WIDE. TOGETHER, THIS IS ONLY 10-12 FEET AT MOST. AND BE REMINDED THAT THERE IS NO PROVISION FOR A LANDSCAPE BUFFER.
- DEPENDING UPON THE DISTANCE TO THE REAR ELEVATION OF THE DUPLEXES TO BE BUILT ON LOTS 1,2,AND 3 OF THEIR PROPOSAL, THE PRIVACY OF OUR LOT WOULD BE GREATLY COMPROMISED.
- AGAIN, THE PROXIMITY OF THESE UNITS WOULD PRESENT A UNATTRACTIVE VISUAL BARRIER TO THE FUTURE ENJOYMENT OF THE PROPERTIES TO THE NORTH OF THIS PROPOSED SUBDIVISION.
- FURTHERMORE, PLACING 12 UNITS WITH AN ESTIMATED 24 VEHICLES WOULD CONTRIBUTE TO A NOISE, CONGESTION PROBLEM THAT AGAIN WOULD ADVERSELY IMPACT OUR PROPERTY AS WELL AS OUR NEIGHBORS PROPERTIES.
- TO SUMMARIZE, WE ARE GREATLY DISTURBED OVER THIS PROPOSAL AND FEEL STONGLY THAT IT SHOULD BE REJECTED IN FAVOR OF THE ORIGINAL MARIANA BUTTE 23RD SUBDIVISION.

RESPECTFULLY SUBMITTED,

GEORGE AND COLEEN LIGOTKE, OWNERS LOT 9, BLOCK1, MARIANA BUTTE NINTH SUBDIVISION

COPIES OF THE FOUR PLANS REFERRED TO ABOVE ARE AVAILABLE UPON REQUEST.

Safety Concerns

As mentioned in another correspondence, I must question the designation of Rossum Drive as a major collector street. The FDP for Mariana Butte 9th has Rossum designated as a minor collector street and the FDP for Mariana Butte 23rd has Rossum Drive listed as a major collector street. As I reviewed Larimer County Urban Area Street Standards Chapter 7, information you referenced, I have additional concerns about the proposed changes to PUD 23rd development at Scenic Drive and Rossum Drive making this area a much higher density development.

I understand that street designation as major or minor collector or residential has a significant impact on many neighborhood issues including driveway location, speed limits, parking, lighting, driveway locations, sight distances, and a host of other issues. Is the city aware that Rossum Dr and Scenic Dr is a school bus stop intersection? The proposed development density at this intersection would be placing children at risk. Because there is no parking on Rossum Drive the number of parents in cars on Scenic Dr in inclement weather is significant. Additionally, the Qwest truck is often parked and doing repair work at this intersection both on Rossum Drive and Scenic Drive. City of Loveland trucks, utility trucks, contractors, and repairmen commonly park on Rossum Drive. Is the City aware that landscape and mowing trucks are also parked along Rossum throughout the summer months? Rossum's current uses really suggest a need for additional parking and areas that would be safer for residents as well as traffic. The existing Western portion of Scenic drive also gets used by homeowners, utility trucks, contractors and landscape services because along this portion of Rossum there are inadequate parking alternatives. The loss of this stern section of Scenic Dr combined with the proposed density of this development really has nearby residents concerned.

According to Table 7-4 (Larimer County Urban Street Standards) I understand that Loveland Street standards require major collector stopping sight distance at 275 feet and sight distance at intersections for driveways and intersections at 660 feet. The proposed development does not appear to meet these criteria. We also do not appear to meet the minimum sight distance at driveways for minor collectors of 310'. The intersection, Scenic Drive and Rossum Dr as well as the proposed driveway for Lot 9, on a curve, do not appear to meet any of these standards for collector streets of any type. Additionally, the street width is only 32 feet which does not meet criteria for either a major or minor collector street. Our sidewalk width is 4 feet also inconsistent with collector street status. Distances between driveway edges along the west side of Rossum Drive are also less than the required 30 feet for collector street status. My review of these standards suggests Rossum Drive only qualifies as a local residential street. In general, the neighborhood has significant concerns, given street speeds, congestion with illegally parked vehicles, and impaired visibility as required by the above standards for drivers, cyclists and pedestrians.

I would appreciate you assistance in addressing these concerns.

Thank you. Darlene Kasenberg

ATTACHMENT 12

EXHIBIT G

Kerri Burchett

From: Robert Paulsen
Sent: Tuesday, August 09, 2011 10:02 AM
To: 'Darlene Kasenberg'
Cc: Kerri Burchett
Subject: RE: Mariana Butte 23rd Safety

Ms. Kasenberg:

The following is in response to your email and attached letter sent to me in July raising street design and safety concerns regarding Rossum Drive and proposed Scenic Drive within the Mariana Butte neighborhood. Below are comments (distinguished in a different font) that address the issues you have raised. This response has been provided by the City's Transportation Development Review office of the Public Works Department. These comments were provided to me a few weeks ago; my apologies for not forwarding these comments to you sooner.

Rossum Drive has always been classified as a Major Collector roadway. The City's 2015 Street Plan (from 1996) was created 2 years prior to the construction of Rossum Dr. and classified the then proposed roadway as a Major Collector. The Major Collector classification was continued on the subsequent 2020 Street Plan and the Current 2030 Street Plan. Based on this information, and the lack of any evidence that the city ever intended to down-classify Rossum Drive, we have no doubt that the classification for Rossum Dr. indicated on the Mariana Butte (MB) 9th FDP was a typographical error that was not caught during the review process.

Based on field measurements taken this morning, the width of Rossum Dr. immediately north of the Scenic Drive intersection is 37' (flowline to flowline) and is 47' south of the intersection. The 37-foot width is actually 1 foot wider than what was approved on the MB 9th plans. While this does not meet our current standards for new Major Collector roadways it is important to remember that Rossum Drive was built under earlier standards and was also the subject of numerous development agreements dating back to the mid 1980's which affected its ultimate design. Regardless, the classification of a roadway is only dependent on the volume of traffic it carries, or is expected to carry based on development projections, and how that roadway functions in getting traffic through the traffic network. In the case of Rossum Drive, the roadway connects two Arterial roadways (one characteristic of Major Collectors) and, based on development projections; it is expected to carry Major Collector volumes at full build out of the various MB developments.

While existing Rossum Drive does not meet all of our current design standards, it does incorporate many of the more important aspects of Major Collector design, like restricted parking and limitations on the number of accesses. While no driveway access would be permitted on a Major Collector street being designed today, under previous standards the homes along Rossum Drive were required to share driveways, both limiting access and maximizing sight distances. Adequate off-street parking was also required to be provided on each lot. Parking is prohibited along the subject portion of Rossum Drive, so any private or commercial vehicles parking in this area are doing so in violation of the law and should be reported to the Police Department.

As Rossum Drive was designed to an earlier standard, the spacing of street intersections is also not in compliance with our current standards. This situation is common throughout the City. In the case of the Scenic Court intersection with Rossum Drive, it is proposed in the location where it was always envisioned with previous development; aligned with the Scenic Drive intersection to the immediate east. As you know, this location was vested with the approval of the MB 23rd PUD.

Finally, in 2009, the property owner of Lot 9 of the MB 9th PUD requested a variance to allow for a driveway access to Rossum Drive, citing difficulties associated with constructing a driveway in the approved location along the south property line of the property. After a thorough review of detailed engineering analysis provided

by the owner's professional consultants, a variance was granted to allow a sight distance that was less than the current requirement but still exceeded professionally accepted minimum values. It is noted that the variance approved allowed sight distance that was in general accordance with sight distances from the existing driveways along Rossum Drive. Prior to obtaining a building permit for Lot 9, the owner will be required to perform some lot modifications in order to meet the conditions of the approved variance.

Bob Paulsen, AICP
Current Planning Manager
Development Services Department
City of Loveland, Colorado
(970) 962-2670
(970) 962-2945 FAX

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From: Darlene Kasenberg [mailto:dkasenberg@gmail.com]
Sent: Saturday, July 09, 2011 4:46 PM
To: Robert Paulsen; Kerri Burchett; Don Riedel; JMC5152@earthlink.net
Subject: Mariana Butte 23rd Safety

Attached, please find a letter addressing safety concerns and the proposed Mariana Butte 23rd changes. Thank you Darlene Kasenberg

Ms. Kasenberg:

Re: Mariana Butte 23rd proposed Amendment

Street Lighting Issues

The Mariana Butte Subdivisions have been installed in phases over a sixteen year span, and ninety percent of them, including your area, were installed between 1995 and 2000. During that time, our material standards, including street lights, have been changed. The taller and shorter poles are a reflection of those changes. The taller acorn poles are no longer being installed in the City.

The post lights that your FDP refers to are the 40 watt incandescent post lights that are found in downtown Loveland. The City's old lighting policy was to install a four to ten foot post light that housed a 40 watt incandescent light bulb, and provide an unmetered electrical source to the light. The City went away from this policy in 1997. Since the construction of the Mariana Butte Subdivisions started prior to 1997, the FDP had to clarify what type of street lighting policy to be built to.

Your recommendation to remove the Acorn lights on the reservoir side of Rossum Drive is unfeasible for the City. The City is required to illuminate Rossum Drive to a value required by the street classification. Street classifications are based upon street right of way width and designated speed, not traffic count. Once the street lighting system is designed, half of the lights on the street can't be removed and still meet the lighting requirements.

Rossum Drive currently is designated as a minor arterial street, according to the City's Street Land Use Map. According to the City's street lighting design policy, a minor arterial street should have a 250 watt bulb which produces 27,500 lumens on a thirty-five foot pole. At the time of design, the developer requested that we put in a lower light wattage so that it wouldn't be too bright, and we installed 100 watt bulbs that produce 9,500 lumens. All Acorn lights that are installed on Rossum Drive have the same bulb installed in the fixture. Compared to the streets that you mentioned in your letter Namaqua has 150 watt bulbs, West 1st St has 250 watt bulbs, and the streetlight at US 34 and Rossum Drive is a 400 watt bulb.

The Acorn lights installed on Rossum Drive are considered to be a semi-cutoff luminaire. The globes have an internal shield that blocks the amount of light that is emitted above 90 degrees. Additionally the globe is designed to emit light according to an EIS Type III pattern. This pattern spreads the light of the fixture into a more rectangular pattern on the street side of the fixture, and a half circle pattern on the house side of the fixture. EIS Type III pattern send almost twice as many lumens toward the street side of the fixture than the house side.

The Acorn lights on Rossum Drive are not required to meet Colorado Revised Statutes 24-82-902 for two reasons. The first is the Acorn lights were installed before CRS 24-82-902 was put into effect. The second is that CRS 24-82-902 is only applicable when a light fixture is installed by or on behalf of the state using state funds. Since Rossum Drive is not a state highway, no money from the state was used when the street lights were installed.

The generalization that Acorn lights are not supported by IES, CDOT, and Icole is not accurate. IES, CDOT, and Icole are pushing for the use of full cutoff luminaires. There are currently Acorn style lighting fixtures available on the market that are full cutoff luminaire rated.

The shoe box street lights that were installed at Lakeside Terrace were at the request of the Developer. Lakeside Terrace Phase 1 was installed in 1989 and Phase 2 was installed in 1994 and both are earlier developments than the Mariana Butte area. Developers have a choice of the Acorn street light and the Shoe Box street light for their developments. These shoe box street lights have a 100 watt bulb and are spaced approximately the same distance apart as the Acorn street lights found on Rossum Drive. The street lights in Lakeside Terrace consume the same amount of energy that the street lights on Rossum Drive consume.

The City has looked into gaining a grant for street light energy conservation. The issue with obtaining this grant the City would be forced to install LED technology. LED street lights are very expensive, and the reliability of the technology is still debatable. The City decided to try a small pilot program with LED technology around E 1st St and Monroe Ave. Once the LED technology has proven its reliability claims, the City will look at pursuing the LED technology more closely.

Sincerely,

Russel Jentges
SR Electrical Engineer
City of Loveland
970-962-3557

Kerri Burchett

From: Robert Paulsen
Sent: Friday, May 27, 2011 10:56 AM
To: 'dkasenberg@gmail.com'
Cc: Kerri Burchett
Subject: FW: FW: Marianna Butte zoning issue; Street lights

Ms. Kasenberg:

I wanted to pass along information relating to your questions/concerns about the acorn-type street lights. I have received the following comments/information from the City's electrical power division concerning the street lights:

In Mariana Butte, the acorn lights are used exclusively. We could convert these lights to shoebox lights at the requesting party's cost. Which means that all the street lights throughout the whole subdivision would have to be replaced with the shoe box fixture. We would need a \$3,000 engineering deposit to begin the design and order materials. We then would receive the total estimate minus the \$3,000 already paid, prior to removing the old and installing the new lights. After accounting analysis, the customer would be refunded or billed accordingly per code.

The street lights were installed according to the Larimer County Urban Area Street Standards that were adopted by the City of Loveland. We do not want vehicle accidents occurring due to inadequate lighting. I would suggest that the residents look at the Lake side Terrace Estates, PUD that is located west of South Taft Avenue and 26th Street SW, and see how they like the box street lights that were installed. The distances should be approximately the same. Although we have specific separation distances between poles, we are limited by the fact that poles need to be on lot lines and corners and curves. So the distances are not always equal.

These comments were provided by Kathleen Porter, who is a Field Engineering Supervisor. Kathleen's email is Portek.ci.loveland.co.us if you'd like to follow-up directly with her. In my view, converting to the shoebox lights would be a fairly expensive endeavor and would require broad agreement by the Mariana Butte community/HOA to initiate.

Let me know if you have additional questions regarding this or other issues.

Have a good Memorial Day weekend,

Bob Paulsen, AICP
 Current Planning Manager
 Development Services Department
 City of Loveland, Colorado
 (970) 962-2670
 (970) 962-2945 FAX

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From: Robert Paulsen
Sent: Wednesday, May 25, 2011 9:43 AM
To: 'Darlene Kasenberg'

Cc: Kerri Burchett
Subject: RE: FW: Marianna Butte zoning issue

Ms. Kasenberg:

Sorry that I've taken a while to respond to your email. I have forwarded your questions on to Kerri Burchett, who is the staff planner for the proposal for amending the Mariana Butte 23rd Subdivision (to become the Mariana Butte 26th Subdivision, if approved). Below I have responded to most of your questions. I will work with Kerri in responding to the remaining questions. As part of this effort, Kerri will be discussing your street lighting concerns with representatives of the City's (electrical) Power Division; we will also look into your wildlife related concerns with the current lighting arrangement. We will provide you with a completed response this week.

One issue that you raised concerned lighting and dark skies provisions. You appear to know that Loveland has not adopted such standards. Many communities around the country have adopted standards addressing this topic; I believe that Tucson was one of the first communities to do so. While the Current Planning office researches and develops new code provisions as part of our regular work program, we have not been made aware of broad-based community concerns regarding this issue. Nonetheless, I would be happy to accept any information you may have on this topic.

Another issue you raised was whether there is a technical definition of buffer or bufferyard. Specified buffers or bufferyards are required through the City's zoning regulations. The City's code provisions mandate certain widths of buffers or bufferyards between uses as a means of mitigating various impacts and improving aesthetics. Minimum quantities and types of plantings are specified within these bufferyards. Bufferyards can be required between a use (building and parking area) and the street or between dissimilar uses. For example, buffers between commercial and residential uses. But, as I indicated in a previous email, there are no required buffers between single family uses or between single and two-family uses (duplexes). Sometimes supplementary standards are incorporated into a PUD; but the Mariana Butte Master Plan does not specify requirements to this effect. There are also no specified limitations regarding residential lots of differing sizes being adjacent to each other. Our relatively new Estate Residential District (adopted in 2007) was established, in part, as a transition zoning between higher urban densities in the City to lower rural densities in the unincorporated areas of the County. However, the larger estate lots in Mariana Butte predate the establishment of the Estate Residential District and respond to the tailored PUD provisions of the Mariana Butte Master Plan and not to the provisions of the Estate Residential Zoning District. In a related question, you asked whether setbacks are required on all sides of a residence. For detached housing units, this is true. For duplexes and tri-plexes, for example, there are setbacks between the separate buildings but no setbacks for the attached units. Each zoning district specifies these minimum "setback" dimensions: typically front and rear yard setbacks are more substantial than side yard setbacks. In the case of PUDs, the setback dimensions are often "tailored" or somewhat different than what is required by standard zoning districts. These tailored standards may vary from one area of a development project to another, depending on such things as lot sizes and geographical conditions; such standards are the result of the intent of the original developer.

As for the ownership of the sidewalk, curb/gutter and paving improvements installed on Outlots A & B of Mariana Butte 23rd, these are owned by the property owner (of the 23rd Subdivision). Since the private driveway easement that gave access to Lot 9 of Mariana Butte 9th Subdivision has been vacated, the improvements can be reconfigured. The changes would involve the provision of adequate access for City maintenance vehicles to the dam along with a pedestrian path; the existing asphalt paving is not needed for any purpose. And yes, protection of the riparian habitat is provided for with zoning and the associated plans that are part of zoning and subdivision approval. The Mariana Butte 23rd Subdivision, as approved, provides for protection of environmentally sensitive areas, most notably through the creation of outlots that protect sensitive lands from development and disturbance. The proposed Mariana Butte 26th Subdivision does not change this basic arrangement.

I hope my comments provide clarification as to the issues you raised; as for the issues that I haven't addressed, you can look forward to subsequent response in the next several days.

Bob Paulsen, AICP

Current Planning Manager
 Development Services Department
 City of Loveland, Colorado
 (970) 962-2670
 (970) 962-2945 FAX

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From: Darlene Kasenbergs [mailto:dkasenbergs@gmail.com]
Sent: Friday, May 20, 2011 10:16 AM
To: Robert Paulsen
Subject: Re: FW: Marianna Butte zoning issue

Mr. Paulsen, In reviewing the documents forwarded, it states there are to be no post lights for estate lots. Currently we have huge acorn lights on both sides of Rossum Drive. Although Dan McQueen informed me the developer had paid for these, the attached documents indicate these were at the expense of the city. Could you please review the height, wattage and number of lights on Rossum Drive? All planning documents I have seen have lights scheduled for one side of Rossum only. If you would note - the North side of Rossum Drive above the 480 address and north has smaller dimmer acorn lights. Heading South there are small lights on one side of the street and tall lights on the other. You may or may not know that Rossum Drive is much brighter than Hwy 34 and First street in this area. Economically, the City could remove all these lights on the estate lot side and reduce the height and wattage of the acorn lights on the opposite side. In addition to reducing the number of lights needing to be maintained there would be energy savings.

Additionally I have several articles on light pollution and I would guess you are aware that these acorn lights have been banned across the country. Both Ft Collins and Berthoud have adopted dark sky standards. Additionally, because we have riparian habitat in our yards, this type lighting poses unnecessary risks to birds in our development.

Please let me know if you are interested in information about good lighting. Thank you Darlene Kasenbergs
 On Thu, May 19, 2011 at 4:48 PM, Darlene Kasenbergs <dkasenbergs@gmail.com> wrote:

Mr. Paulsen,

I am confused about a few things. Currently Mariana 9th has Outlot A as well as a concrete sidewalk, curb and gutter and the width of Scenic Drive as a buffer from Mariana 23rd. Who owns the sidewalk, street, curb and gutter that currently exist?

Does current zoning require protection of riparian habitat, would this include Mariana 23rd?

Perhaps you are using some technical definition of a buffer?

I understood the concept of Estate residential as a transitional area to rural areas. Meaning large lots, protection of open space and environmentally sensitive areas wouldn't this include adjoining properties as well? Does zoning provide for some continuity between adjoining properties?

Do all properties have required minimum setbacks on all sides of a residence?

In advance, I thank you for your time explaining these things to me. Darlene Kasenbergs

On Thu, May 19, 2011 at 10:16 AM, Robert Paulsen <paulsr@ci.loveland.co.us> wrote:

Ms. Kasenbergs:

Jeff Bailey forwarded your recent email to me so I could respond to your questions concerning buffering and whether there are any special requirements for "estate lots" within the Mariana Butte 9th Subdivision.

The FDP for Mariana Butte PUD 9th Subdivision, as attached, specifies landscaping and buffering standards for lots within this portion of Mariana Butte. There are no special buffering standards specified between these lots and other lots except as specified for Tract A. In addition, the City's standard zoning provisions do not require bufferyard installation on single family or two family lots to buffer a residential use from a collector street. Nor are there standard requirements for the installation of bufferyards between single family lots and other single family lots or duplexes; this is the case regardless of any size differences between lots.

I hope this information answers your questions. Please feel free to contact me or Kerri Burchett by phone or email if you have further questions. As I believe you know, Kerri Burchett is the assigned planner for the Mariana Butte 26th application; Kerri will be out of the office until Monday. Kerri's work number is 962-2566.

Bob Paulsen, AICP

Current Planning Manager

Development Services Department

City of Loveland, Colorado

(970) 962-2670

(970) 962-2945 FAX

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From: Jeff Bailey
Sent: Tuesday, May 17, 2011 5:03 PM
To: 'Darlene Kasenberg'
Cc: Dave Klockeman; Greg George; Robert Paulsen

Subject: RE: Marianna Butte zoning issue

Hi Darlene,

I can certainly send you a copy of the document, but you may actually have it already. If the plan sheet that has the crossed-out conditions also shows City Council conditions on the right side of the page, then you have the most current plan (should be on page 2 of 8). The City Council conditions actually represent the "revisions" to the Planning

Commission conditions. Either way, I'm attaching the document to this email, so let me know if you have any problems opening it.

You are correct, and Outlot A still retains all of the rights originally established in the FDP, including pedestrian access easements. What I should have made more clear is that the private driveway easement for Lot 9 that was established with the original FDP, was eliminated with the amended PDP & FDP that was processed by the owners of Lot 9.

No, there are no special services based on major or minor street classification. Under today's standards, the main differences are roadway width and the volume of traffic that could ultimately be carried, but there is nothing that would affect existing homes. I don't know what, if any, differences there are in buffer requirements for collectors, but I will forward this question back to the Current Planning Division for an answer. They should get back to you shortly.

Thanks and have a good evening.

Jeff

From: Darlene Kasenberg [mailto:dkasenberg@gmail.com]
Sent: Tuesday, May 17, 2011 2:57 PM
To: Jeff Bailey
Subject: Re: Marianna Butte zoning issue

Jeff,

Since Planning Commission review 1/27/98 is crossed out with a note that states "see revisions" may we have a copy of this document? Outlot A exists and is owned by BRAOA, this is the adjoining property rather than Lot 9. Also, I am interested in any differences in services required if Rossum Dr is a minor collector vs major collector street. We are designated as estate lots, does zoning provide for any special buffers for these type lots? Thanks Darlene Kasenberg

On Mon, May 16, 2011 at 4:53 PM, Jeff Bailey <bailej@ci.loveland.co.us> wrote:

Ms. Kasenberg,

Dave Klockeman asked me to look into your concerns. Since the Transportation Development Review Division has the easiest access to the street-related development records, he felt that I would be best able to answer your questions.

At the time that the Mariana Butte PUD 9th Subdivision was approved (1999), it was assumed that any future development of what was called Tract C would require access to Rossum Drive via a public street, which is why the document references an extension of Scenic Drive in regard to access for Lot 9. However, as the actual configuration of an extended Scenic Drive would be dependent on what was actually proposed for Tract C, no right of way was ever dedicated for the future street and Standard Conditions 5 & 8 were added to the City Council conditions located on the upper right of page 2 of the Final Development Plan (FDP). Based on your questions, I'm assuming that you have a copy of that document, but would be happy to forward one to you if you do not. Specifically, General Condition 8 notes that the owner of Lot 9 would be responsible for construction of sidewalk along whatever portion of their south property line that falls adjacent to a future extension of Scenic Drive. This indicates that the future alignment of Scenic Drive would be determined with future development.

The Mariana Butte 23rd Subdivision, which created the 5 lots on Tract C, actually meets the need to provide a public street access (Scenic Court) to Rossum Drive, and acts as the de-facto extension of Scenic Drive. This subdivision also provided for access to the south property line of Lot 9 as was required by the conditions of the Mariana Butte 9th FDP. The elimination of the access to the south side of Lot 9 occurred when the owners of the Lot, citing numerous concerns regarding a southern access, requested that a variance to allow for an access to Rossum Drive. As the access to Rossum Drive was specifically restricted by the Mariana Butte 9th PUD, it was necessary for the owners to process an amendment to both the MB 9th Preliminary Development Plan (PDP) and FDP. These amendments were approved in December of 2009, and I have attached a copy for your reference.

With regard to the classification of Rossum Drive, the City has, based on traffic projections, considered the street to be a Major Collector as far back as the 2015 Street Plan, which was in effect at the time the Mariana Butte 9th FDP was approved. I can only assume that the notation of Minor Collector classification was an error on the PUD plans. I do note, however, that current traffic counts along Rossum Drive indicate that traffic volumes are in the middle of the range of a Minor Collector Street (1001-3000 vehicles), and are expected to remain so with the addition of the proposed additional dwelling units.

Hopefully this provides you with the information that you need. Please feel free to contact me should you have any further questions.

Sincerely,

Jeff

Jeffrey Bailey, P.E., PTOE

Senior Civil Engineer

City of Loveland

Public Works Department

Transportation Development Review Division

500 East Third Street

Loveland, CO 80537

Tel. (970) 962-2618

Fax. (970) 962-2945

From: Greg George
Sent: Monday, May 16, 2011 8:12 AM
To: 'Darlene Kasenberg'
Cc: Dave Klockeman
Subject: RE: Marianna Butte zoning issue

Ms. Kasenberg – I forwarded your questions to Dave Klockeman, Loveland's City Engineer. He should be getting back to you soon.

Gregory C. George

Director, Development Service Department

City of Loveland, CO

Phone: (970) 962-2521

From: Darlene Kasenberg [mailto:dkasenberg@gmail.com]
Sent: Sunday, May 15, 2011 3:00 PM
To: Greg George

Cc: Darlene Kasenberg
Subject: Re: Marianna Butte zoning issue

Mr George,

Mariana Butte 9th FDP documents indicate that Rossum Drive is a minor collector street. Please identify when and how this changed. These same documents indicate that Scenic Drive is to be completed. Please let me know when and how this changed as well. Thank you in advance. Darlene Kasenberg 970 663 1373.

On Fri, May 13, 2011 at 5:11 PM, Greg George <georgg@ci.loveland.co.us> wrote:

Ms. Kasenberg:

Carol Johnson has asked me to provide you with information concerning your rights and options regarding the amendment being proposed to the Marianna Butte 23rd PDP.

Development Review staff is currently reviewing a Preliminary Development Plan (PDP) and a Preliminary Subdivision Plat (PP) for the 5-acre site at the NW corner of the Rossum and 1st Street intersection. John Baxter is the applicant; Landmark Engineering is the primary consultant. This property is adjacent to Buckingham Reservoir along the Rossum Drive entrance to Mariana Butte. The site is currently divided into 5 buildable lots (Mariana Butte 23rd Subdivision) that were approved with a PDP / PP by the Planning Commission in 2007.

The amendment to the PDP and Plat would increase the number of lots from 5 lots to 12 lots, each lot to be developed with an attached single family dwelling for a total of 12 dwelling units in 6 duplexes. The Mariana Butte Master Plan (PUD) lists allowed uses for this site as: commercial, office and mixed residential.

A neighborhood meeting was held in the City Council Chambers on Thursday the 5th of May. The Planning Commission has approval authority for the amendment to the Preliminary Development Plan and the Preliminary Plat. Planning Commission will consider this item at a fully notice public hearing, for which a date has not been determined. Any decision made by the Planning Commission can be appealed to the City Council by the applicant or anyone receiving notice of the Planning Commission public hearing. The notice area for a subdivision plat of 20 acres or less is 500 feet from the perimeter of the plat.

If you own property within the notice you will receive a notice of the Planning Commission public hearing and, if an appeal is filed, the City Council public hearing. Everyone in attendance at the public hearings will be given an opportunity to present their concerns with the proposed amendment.

If you have any other questions please feel free to contact me by e-mail or phone.

Gregory C. George

Director, Development Service Department

City of Loveland, CO

Phone: (970) 962-2521



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: 17
MEETING DATE: 12/6/2011
TO: Mayor and City Council
FROM: Rod Wensing, Assistant City Manager
PRESENTER: Rod Wensing

TITLE: A Resolution approving a building lease agreement between the City of Loveland, Colorado and the Loveland Chamber of Commerce for a portion of the building located at 5400 Stone Creek Circle.

RECOMMENDED CITY COUNCIL ACTION:

Adopt the attached Resolution amending the current lease. The approval of this new building lease will also allow the implementation of the vision expressed in the Destination Loveland Strategic Plan that the Council unanimously approved on November 15, 2011.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is an administrative action. City staff is recommending that the current 1995 lease agreement, as amended, be terminated and a new lease be approved whereby the City will lease to the Chamber, and the Chamber will lease from the City, only about half of the building for office and conference space through 2016. The City will occupy and use the remaining portion of the building for operation of the Loveland Visitor's Center.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

Estimated annual direct operating expenses associated with the Chamber side of the building will increase City costs by \$8,300 with an offset of \$6,492 in a utilities fee paid by the Chamber resulting in a net increase of \$1,808. The direct costs associated with the City taking over the Visitor Center operations side of the building are already being planned in the Community Marketing Commission budgets for 2011 and 2012.

SUMMARY:

The Loveland Chamber of Commerce and the City have been partners in the operation of the Visitor's Center since 1995. In October 1995 the City accepted a property donation from Mr. Derek McWhinney for the current site which includes the park area, building and parking lot. At the same time the City entered into a lease for the construction and operations of both Chamber Offices and a Visitor's Center. The City has always been the owner of the property and improvements, contributing \$600,000 towards their original construction. The decision to move the Chamber away from downtown and into a City owned building near I-25 was a contentious topic at the time. To that end, the City and Chamber were sued by several concerned citizens who formally challenged the then City land use approvals for the project. A Stipulated Settlement of the law suit by the parties led to Amendment #1 of the Lease. Amendment #2 was implemented to allow the Chamber to receive and spend a CMC grant for Visitor's Center operations. The Chamber has been a tenant in good standing in this City building for the last 16 years. The current lease requires the Chamber to use the 5,787 sq. ft. building for office and conference space and for the required operation of a visitor's center. Lease change highpoints are as follow:

- Lease will begin on January 1, 2012 and terminate on December 31, 2016
- City will take over the portion of the building for operation of the Visitor's Center
- City recognizes \$300,000 in prepaid lease by Chamber and will credit \$15,770 annually during the 5-year term of lease
- Chamber will pay a monthly utility fee of \$541.00 in 2012 with annual reviews
- Any subleasing must be to only 501c (3) (4) non-profits with City notification

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Proposed Resolution approving the building lease
Proposed new building lease with Exhibit A
Original 1995 building lease
Stipulation and Agreement of Settlement
1996 and 2011 lease amendments

RESOLUTION #R-83-2011**A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE LOVELAND CHAMBER OF COMMERCE FOR A PORTION OF THE BUILDING LOCATED AT 5400 STONE CREEK CIRCLE IN LOVELAND, COLORADO**

WHEREAS, the City of Loveland is the owner of that certain building located on a portion of Lots 2 and 3, Block 1, McWhinney Second Subdivision, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 5400 Stone Creek Circle, Loveland, Colorado 80538 (“Building”); and

WHEREAS, the City and the Loveland Chamber of Commerce entered into that certain “Lease Agreement Between the City of Loveland and the Loveland Chamber of Commerce” dated October 23, 1995, as amended on April 16, 1996 and on June 21, 2011 (together, the “1995 Lease Agreement”), for construction, occupancy, and use of the Building by the Chamber for office and conference space and for operation of a visitor’s center (“Visitor’s Center”); and

WHEREAS, the parties desire to terminate the 1995 Lease Agreement and enter into a new lease whereby the City will lease to the Chamber, and the Chamber will lease from the City, only a portion of the Building for office and conference space, and the City will occupy and use the remaining portion of the Building for operation of the Visitor’s Center.

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

Section 1. That the Lease Agreement, attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Lease Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Lease Agreement on behalf of the City.

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

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shane L. Oltus
Assistant City Attorney

LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into this 6th day of December, 2011, by and between the **City of Loveland**, a Colorado municipal corporation ("City"), and the **Loveland Chamber of Commerce**, a Colorado nonprofit corporation ("Chamber").

Whereas, the City is the owner of that certain building located on a portion of Lots 2 and 3, Block 1, McWhinney Second Subdivision, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 5400 Stone Creek Circle, Loveland, Colorado 80538 ("Building"); and

Whereas, the City and the Chamber entered into that certain "Lease Agreement Between the City of Loveland and the Loveland Chamber of Commerce" dated October 23, 1995, as amended on April 16, 1996 and on June 21, 2011 (together, the "1995 Lease Agreement"), for construction, occupancy, and use of the Building by the Chamber for office and conference space and for operation of a visitor's center ("Visitor's Center"); and

Whereas, the parties desire to terminate the 1995 Lease Agreement and enter into this Lease whereby the City will lease to the Chamber, and the Chamber will lease from the City, only a portion of the Building for office and conference space, and the City will occupy and use the remaining portion of the Building for operation of the Visitor's Center.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Termination of 1995 Lease Agreement. The 1995 Lease Agreement shall be terminated effective as of January 1, 2012.

2. Term. This Lease shall commence on **January 1, 2012** and expire on **December 31, 2016**, unless sooner terminated by operation or law or in accordance with this Lease.

3. Premises. The premises to be leased shall consist of a portion of the Building as depicted on **Exhibit A**, attached hereto and incorporated herein by reference ("Premises").

4. Use of Premises. The Chamber shall be permitted to use and occupy the Premises for office and conference space for the purpose of furthering its organizational goals of improving the conditions of commerce within the City of Loveland; provided, however, that such use is consistent with the covenants and easements and all other matters of record as of the date of this Lease. No additional uses shall be permitted without the City's prior written consent.

5. Use of Vestibule. The City agrees that the Chamber may place a bulletin board, a business card display, and a three-sided perimeter wall display in the Building vestibule adjacent to the Premises. The Chamber shall be solely liable for the bulletin board, displays, and their contents. The Chamber may remove or replace the bulletin board and displays with displays of like materials and sizes at any time during the term of this Lease without the City's prior permission. All other changes are subject to the City's prior approval. The Chamber may use

the public restrooms located off the vestibule for the convenience of its employees and guests. However the Chamber may not place any advertisements or displays of any kind in the public restrooms.

6. Visitor's Center. The Chamber acknowledges that the City intends to operate and maintain the Visitor's Center within the remaining portion of the Building adjacent to the Premises. The parties agree to cooperate with one another to the extent required so that both parties may enjoy the use of their respective portions of the Building. In addition, the Chamber hereby conveys to the City the Visitor's Center inventory described on **Exhibit B**, attached hereto and incorporated herein by reference ("Inventory"). The City understands that the Inventory has been fully depreciated by the Chamber prior to the date of this Lease and is therefore conveyed to the City without charge as further consideration of the City's operation of the Visitor's Center.

7. Conference Room. The Chamber agrees that the City may use the conference room located on the Premises for meeting purposes, without charge, on an as-needed basis when the conference room is not in use by the Chamber. The City shall schedule all such use through the Chamber's administrative office. In addition, the parties agree that the City may use the storage room for storage of small tools and materials necessary to maintain the Property as defined and required in Paragraph 13 below.

8. Rent.

a. In consideration for the right to use and occupy the Premises as permitted herein, the Chamber shall pay to the City **Fifteen Thousand, Seven Hundred Seventy Dollars (\$15,770.00) per calendar year** during the term of this Lease ("Rent"). The Chamber shall pay Rent, in advance, on or before January tenth (10th) of the then-current calendar year.

b. The parties acknowledge that, prior to January 1, 1999, the Chamber prepaid rent to the City in the amount of Three Hundred Thousand Dollars (\$300,000.00) as consideration for the right to use and occupy the Premises through December 31, 2016 pursuant to the 1995 Lease Agreement ("Prepaid Rent"). The parties further acknowledge that only a portion of the Prepaid Rent was applied toward the 1995 Lease Agreement, and that a balance of Seventy-eight Thousand, Eight Hundred Fifty Dollars (\$78,850.00) remains. The parties agree that the Prepaid Rent balance shall be applied toward all Rent due under this Lease until said balance is extinguished. Said balance shall not be applied toward the Utility Fee described in Paragraph 9 below.

9. Utilities.

a. The City shall provide the following utilities to the Premises for use by the Chamber: water, wastewater, electric, trash and recycling, and gas ("Utilities"). In consideration for the right to use the Utilities, the Chamber shall pay to the City **Five Hundred Forty-one Dollars (\$541.00) per month** during the term of this Lease ("Utility Fee"). The Chamber shall pay the Utility Fee, in advance, on or before the tenth

(10th) day of the then-current month. The City reserves the right to make adjustments in the Utility Fee effective January first (1st) of each calendar year during the term of this Lease. Said adjustments shall be based on the Chamber's actual usage during the preceding calendar year and any approved rate increases or decreases for the effective calendar year. The City shall notify the Chamber in writing of any such adjustments on or before December first (1st) of the preceding calendar year, and provide the Chamber with written documentation supporting such adjustments.

b. The Chamber shall provide telephone and Internet services to the Premises for use by the Chamber, if desired, at the Chamber's sole cost and expense.

10. Alterations. The Chamber shall not make any substantial alterations or changes to the Premises without the City's prior written consent, which shall not be unreasonably withheld.

11. Right to Inspect Premises. The City shall have the right at all reasonable times to enter the Premises for any and all purposes not inconsistent with this Lease, provided such action does not unreasonably interfere with the Chamber's use, occupancy, or security requirements of the Premises. Except when necessary for reasons of public safety or law enforcement, or for the protection of property as determined by the City, the City shall provide twenty-four (24) hours' prior notice of its intent to inspect the Premises.

12. Maintenance and Repair of Premises.

a. The City shall be responsible for maintenance and repair of the Premises including, without limitation, heating and cooling, plumbing, and electrical systems and the exterior of the Premises, including the roof; provided, however, that the Chamber shall reimburse the City for costs associated with any maintenance or repair required due to damage caused by the Chamber, its employees, or agents, normal wear and tear excepted. Invoices for any such maintenance or repair shall be paid by the Chamber within thirty (30) days of invoice.

b. The Chamber shall, at all times, keep the Premises in a clean and orderly condition and shall be responsible for daily collection and dumping of its trash and recyclables into bins supplied by the City at locations designated by the City. The Chamber may contract for and provide janitorial services to the Premises, if desired, at the Chamber's sole cost and expense.

13. Maintenance of Property. The City shall be responsible for maintaining the landscaping, irrigation system, detention pond, and artwork on the real property on which the Building is located ("Property"). The City shall also be responsible for removing any snow that accumulates on the parking lot and on the sidewalks located on the Property.

14. Parking. The Chamber shall be entitled to the non-exclusive use of the parking lot located on the Property at no additional cost; provided, however, that the Chamber may not

use the parking lot in any way that limits the ability of those persons using the Visitor's Center to access or use the parking lot.

15. No Discrimination. The Chamber shall not discriminate on the grounds of race, color, disability, or national origin in the use or occupancy of the Premises.

16. Insurance.

a. During the duration of this Lease, the Chamber shall procure and keep in force a policy of workers' compensation insurance as required by Colorado law and a policy of comprehensive general liability insurance insuring the Chamber and naming the City as an additional insured with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate. The general liability policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The general liability policy shall contain a severability of interests provision. The general liability policy shall be for the mutual and joint benefit and protection of the Chamber and the City and shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recover under said policy for any loss occasioned to the City, its officers, employees, and agents by reason of negligence of the Chamber, its officers, employees, agents, subcontractors, or business invitees. The general liability policy shall be written as a primary policy not contributing to and not in excess of coverage the City may carry.

b. Policies required herein shall be with companies qualified to do business in Colorado with a general policyholder's financial rating reasonably acceptable to the City. Said policies shall not be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days' prior written notice to the City. The Chamber shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the Chamber changes to "occurrence," the Chamber shall carry a six-month tail.

17. Indemnity. The Chamber shall assume the risk of all personal injuries, including death resulting therefrom, to persons and damage to or destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in connection with or arising out of the acts or omissions of the Chamber, its employees, agents, servants, subcontractors, or authorized volunteers, or by the conditions created thereby. The Chamber shall indemnify and hold harmless the City, its officers, agents, and employees from and against any and all claims, liabilities, costs, expenses, penalties, attorney's fees, and defense costs arising from such injuries to persons or damages to property based upon or arising out of the acts or omissions of the Chamber, its employees, agents, servants, subcontractors, or authorized volunteers or out of any violation by the Chamber, its employees, agents, servants, subcontractors, or authorized volunteers of any law, regulation, or ordinance.

18. Governmental Immunity. Notwithstanding any other provision of this Lease to the contrary, no term or condition of this Lease shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* ("Act") and under any other applicable law. The parties understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the City, its departments, commissions, boards, officials, and employees is controlled and limited by the provisions of the Act, as now or hereafter amended. Any provision of this Lease, whether or not incorporated herein by reference, shall be controlled, limited, and otherwise modified so as to limit any liability of the City to the above-cited laws.

19. Sublease and Assignment. The Chamber may not assign all or any part of this Lease or sublease all or any part of the Premises to any other person or entity; provided, however, that the Chamber may sublease all or any part of the Premises to a nonprofit IRS-designated 501(c)(3), 501(c)(4), or 501(c)(6) entity, or to a local or county governmental entity. The Chamber shall promptly notify the City in writing of any such sublease.

20. Holding Over. Any holding over after the expiration of the term of this Lease or any extended term thereof, with the consent of the City, shall be construed to be a tenancy from month-to-month on the same terms and conditions and at the same Rent provided for herein.

21. Total or Partial Destruction. If during the term of this Lease the Premises or any part thereof is destroyed or is so damaged by fire or other casualty so as to become uninhabitable, then the City may elect to terminate this Lease. In the event the City elects to terminate this Lease, the Chamber immediately shall surrender the Premises to the City; provided, however, that the City shall exercise such option to terminate by written notice to the Chamber within thirty (30) days after such destruction or damage. In such event, the Chamber shall be entitled to a prorated return of Prepaid Rent. In the event the City does not elect to terminate this Lease, this Lease shall continue in full force and effect, and the City shall repair the Premises with all reasonable speed, placing the same in as good a condition as it was at the time of the destruction or damage and for that purpose may enter upon the Premises. If the Premises is only slightly injured by fire or the elements so as to not render the same uninhabitable and unfit for occupancy, then the City shall repair the same as soon as practicable.

22. Termination For Default. In the event either party fails to perform according to the provisions of this Lease, such party may be declared in default. If the defaulting party does not cure said breach within thirty (30) days of written notice thereof, the non-defaulting party may terminate this Lease immediately upon written notice of termination to the other. In the event of default by the Chamber, the City shall have the right, at its election and while such event of default shall continue, to give the Chamber written notice of its intention to terminate this Lease on the date of such notice or any later date specified therein. On the specified date, the Chamber's right to possess the Premises shall cease, and this Lease shall be terminated. The City may then re-enter and take possession of the Premises or any part thereof, repossess the same, expel the Chamber and those claiming through or under the Chamber, and remove the effects of both or either (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrearages of Rent or breach of covenants. In

the event of default by the City, the Chamber shall be entitled to a prorated return of Prepaid Rent.

23. Notices. Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed, or three (3) days after being sent by certified mail, return receipt requested:

To the City:

City of Loveland
 Attn: William D. Cahill, City Manager
 500 E. Third Street, Suite 330
 Loveland, CO 80537
 (970) 962-2306
cahild@ci.loveland.co.us

To the Chamber:

Loveland Chamber of Commerce
 Attn: Brian Willms, President/CEO
 5400 Stone Creek Circle
 Loveland, CO 80538
 (970) 744-4791
bwillms@loveland.org

24. Time of the Essence. It is agreed that time shall be of the essence of this Lease and each and every provision hereof.

25. Miscellaneous. This Lease shall be construed according to its fair meaning and as if prepared by both parties and shall be deemed to be and contain the entire understanding and agreement between the parties. There are no other terms, conditions, promises, understandings, statements, or representations, express or implied, concerning this Lease unless set forth in writing and signed by the parties. The benefits and burdens of this Lease shall inure to and be binding upon the parties and their respective successors and permitted assigns. This Lease shall be governed by, and its terms construed under, the laws of the State of Colorado. Nothing contained in this Lease shall be deemed or construed by the parties or any third party as creating the relationship of principal and agent or a partnership or a joint venture between the parties, it being agreed that none of the provisions herein or any acts of the parties shall be deemed to create a relationship between the parties other than the relationship of landlord and tenant. Upon the expiration or termination of this Lease, the Chamber agrees to peaceably surrender the Premises to the City in broom-clean condition and good repair, normal wear and tear excepted.

Signed by the parties on the date written above.

City of Loveland, Colorado

By:

William D. Cahill, City Manager

ATTEST:

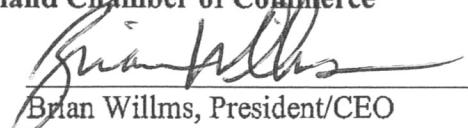
City Clerk

APPROVED AS TO FORM:


Assistant City Attorney

Loveland Chamber of Commerce

By:


Brian Willms, President/CEO

APPROVED AS TO FORM:

Assistant City Attorney

Loveland Chamber of Commerce

By:

Brian Willms, President/CEO

CHAMBER OF COMMERCE

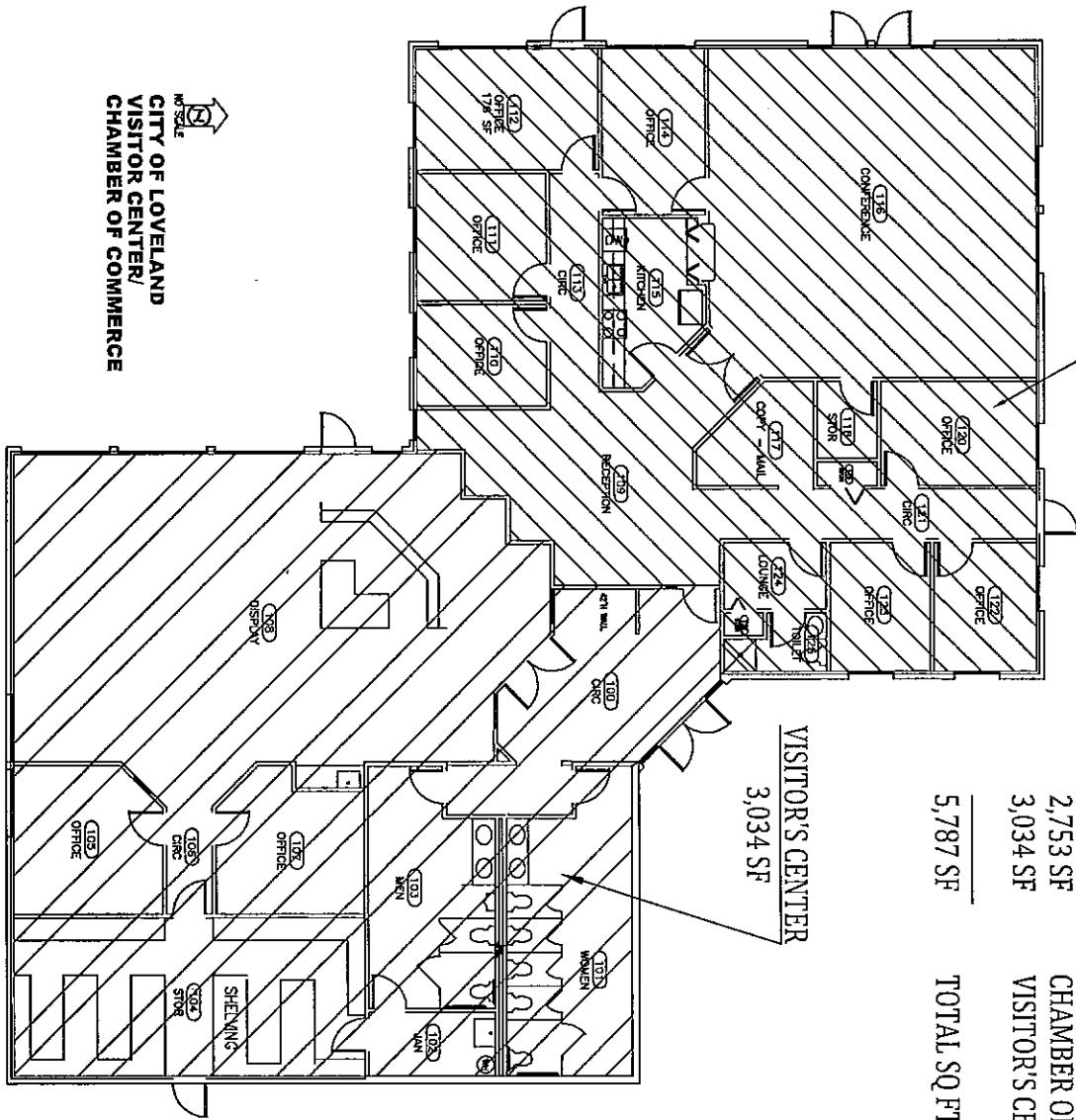
2,753 SF

5,787 SF
2,753 SF
3,034 SF

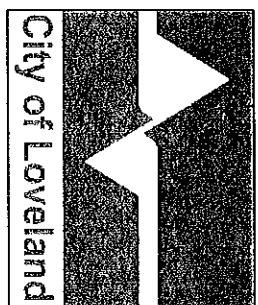
CHAMBER OF COMMERCE
VISITOR'S CENTER
TOTAL SQ FT

VISITOR'S CENTER
3,034 SF

EXT
5986.76
INT
5787.31



Project Title:



VISITOR'S CENTER & CHAMBER OF COMMERCE

Scale:

1/16" = 1'

Date:

10/12/2011

Exhibit B
Visitor's Center Inventory

Office table & two (2) chairs

Office cherry desk set consisting of the following:

Desk
Desk hutch
Office cabinet

Three (3) seated benches

Coffee brewer

Small portable computer desk

Commercial coffee brewer & pot warmer

Mini-microwave

Mini-refrigerator

Kitchen table & four (4) chairs

Commercial popcorn popper

Display shelving & stands

Display racks/modems/holders

Commercial metal storage shelves

Cash register

Price gun

Two (2) tower PCs & monitors

Inkjet printer

Three (3) four-drawer file cabinets

Merchandise

LEASE AGREEMENT BETWEEN THE CITY OF LOVELAND
AND THE LOVELAND CHAMBER OF COMMERCE

THIS AGREEMENT, made and entered into this 23rd day of October, 1995, by and between the CITY OF LOVELAND, COLORADO, a municipal corporation ("City") and the LOVELAND CHAMBER OF COMMERCE, a Colorado corporation ("Lessee").

WITNESSETH:

WHEREAS, the City has entered into an agreement with Derek McWhinney, owner of that real property known as Lots 2 and 3, Block 1, McWhinney Second Subdivision, City of Loveland, County of Larimer, State of Colorado ("Lots 2 and 3"), which agreement provides for the charitable conveyance of Lots 2 and 3 to the City for the purpose of construction and operation of a sculpture park, office, and visitor's center; and

WHEREAS, the Lessee desires to operate an office and visitor center building ("Visitor Center") on a portion of Lots 2 and 3 for the purpose of furthering its organizational goals of improving the conditions of commerce within the City of Loveland; and

WHEREAS, the City recognizes the long term economic and social benefits to the City of allowing the Lessee to operate an office and visitor's center at the strategic location of Lots 2 and 3; and

WHEREAS, the City desires to enter into a long term lease with the Lessee pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises and of the rents, covenants and conditions herein contained, the City does hereby lease to the Lessee the area of a portion of Lots 2 and 3 described in Article 2 hereof, hereinafter referred to as the "Leased Premises," during the term hereof pursuant to the conditions hereinafter set forth.

ARTICLE 1

TERM

1.1 The term of this Agreement shall commence on the date first above written, and expire on December 31, 2045, unless sooner terminated in accordance with the provisions hereof.

1.2 The Lessee shall have the option to extend the term of this Agreement for one additional period of 50 years, hereinafter the "Extended Term," provided Lessee is not in default in the payment of any rent or other obligations hereunder at the time of its exercise of such option. In the event Lessee exercises the option, it shall do so not later than one (1) year prior to the expiration of the Initial Term. The terms and conditions during

3
the Extended Term shall be the same, except as otherwise specifically set forth in this Agreement.

ARTICLE 2 LEASED PREMISES

2.1 The Leased Premises consist of all of a portion of Lots 2 and 3, Block 1, McWhinney Second Subdivision, City of Loveland, State of Colorado, upon which the office and visitor center building ("Visitor Center") is to be located and includes the Visitor Center once it is constructed and the right of ingress and egress across portions of Lots 2 and 3 in order to access the Visitor Center.

ARTICLE 3 USE OF LEASED PREMISES

3.1 The Lessee shall use and occupy the Leased Premises for the following purposes and for no other purpose whatsoever unless approved in writing by City:

3.1.1 For the construction, installation, maintenance and operation of a Loveland Chamber of Commerce office and visitor center building to be used for office and visitor center purposes by the Lessee and the City, providing such uses are consistent with the City of Loveland, Colorado building, use and zoning regulations and requirements applicable to the Leased Premises, including covenants and easements running with the land.

ARTICLE 4 CONSTRUCTION OF VISITOR CENTER BUILDING

4.1 The Lessee shall construct at a specified location on a portion of Lots 2 and 3 an office and visitor center building ("Visitor Center") in strict compliance with the Lessee's plans and specifications as such plans have been filed with the City by the Chamber and as they are approved by the City pursuant to the final development plan.

4.2 The Lessee shall be responsible for the completion of the Visitor Center; shall enter into any necessary contract incidental thereto; shall pay all costs and expenses in connection therewith and shall proceed with the erection and completion of the Visitor Center with due diligence subject to any delays by strikes, fire, accident, acts of God, or other causes beyond the control of the Lessee. The City shall in no way be responsible for the completion of the Visitor Center, the supervision of work connected therewith, or the payment of any costs or expenses incident to such construction. The Lessee shall indemnify and hold the City harmless from any and all claims of any nature whatsoever which may arise as a result of the construction of the Visitor Center.

4.3 The Lessee shall use its best efforts and all due diligence to complete construction of the Visitor Center within 12 months of the date of this Agreement. Failure of the Lessee to construct the Visitor Center in accordance with the provisions of this article and vest such Visitor Center to the City, free and clear of all liens and encumbrances, shall be deemed a default

under this Agreement except if the failure to construct is caused by a factor listed in section 4.2, above. Title to the Visitor Center shall vest in the City at the time of completion of construction of the Visitor Center and acceptance of the Visitor Center by the City as having met the plans and specifications as approved by the City. Such vesting shall not relieve the Lessee of any obligation of this Agreement, including the obligations of insurance, rent payment, care and maintenance of the improvements.

ARTICLE 5

RENT

5.1 The Lessee agrees to pay to the City as rental for the Leased Premises for the entire initial term of the Agreement, the sum of Three Hundred Thousand Dollars (\$300,000.00), said sum to be paid in three installments as follows: \$50,000.00 on or before January 1, 1997; \$100,000.00 on or before January 1, 1998; and the balance of \$150,000.00 on or before January 1, 1999.

5.2 The rental to be paid to the City for any Extended Term as set forth in section 1.2, above, shall be a reasonable rental as determined by the parties at the time of option exercise.

ARTICLE 6

OPERATION AND USE OF VISITOR CENTER BUILDING

6.1 Lessee shall operate the Visitor Center leased hereby and allow the City the shared use of the Visitor Center in accordance with the provisions set forth in Exhibit A, attached hereto and incorporated herein by this reference.

6.2 In consideration of the City's shared use of the Visitor Center as set forth in Exhibit A, hereof, for the Initial Term of this Agreement, and for the purpose of the City contributing to the operating costs to be incurred by the Lessee in the operation of the Visitor Center, which operation is a benefit to the City, the City hereby pays to the Lessee, at the time of execution of this Agreement, the total sum of Six Hundred Thousand Dollars (\$600,000.00). In the event that the City is not able to realize the benefit of such use of the Visitor Center because of the Lessee's default in the construction or vesting of such Visitor Center pursuant to sections 4.2 or 4.3, above, the Lessee shall refund said amount, plus 8% per annum interest, to the City upon the City's demand. This refund obligation shall survive the termination of the Agreement by the City pursuant to Article 9, below.

6.3 The Lessee shall, throughout the term of this Agreement, assume the entire responsibility, cost, and expense for all repair and maintenance whatsoever on the Leased Premises and all improvements thereon in a good workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Such obligation shall extend to those areas used by the City pursuant to Exhibit A. The Lessee shall keep at all times, in a clean and orderly condition and appearance, the Leased Premises, all improvements thereon and all of the Lessee's fixtures, equipment and personal property which are located on any part of

the Leased Premises. Additionally, the Lessee shall be responsible for the payment for all utility charges for the Visitor Center, including lighting, electricity, water, sewer, stormwater, gas, heating, and trash.

6.4 The Lessee shall be responsible for the entire cost of furnishing the Visitor Center, including the Loveland Chamber of Commerce office. Any specialized furnishing needs of the City for those portions of the Visitor Center being used by the City shall be the responsibility of the City.

6.5 The Lessee understands and acknowledges that the uses to which the Visitor Center may be put are restricted by covenants and easements of record as well as by the provisions of this Agreement. The Lessee hereby agrees to abide by all such restrictions and obligations and further agrees to indemnify and hold the City harmless from any cost or liability resulting from the Lessee's failure to abide by such restrictions and obligations, including reasonable attorney fees. Among the applicable restrictions, the Lessee acknowledges and agrees that it shall not allow on the Visitor Center the retail sale of any food or beverages except for the following: souvenir candies, such as Loveland candy hearts; beverages from not more than one vending machine; and candies and gums from not more than one vending machine.

6.6 The Lessee shall not sublet or assign all or any portion of its interest in this Agreement without the advanced written consent of the City. Additionally, the Lessee acknowledges and understands that covenants, easements, and restrictions running with the land may limit the ability of the City to consent to sublet or assignment.

6.7 The Lessee shall not make any substantial alterations or changes in the Visitor Center without the written approval of the City. Additionally, the Lessee acknowledges and understands that covenants, easements, and restrictions running with the land may limit the ability of the City to consent to alterations or changes in the Visitor Center.

ARTICLE 7 LANDSCAPING AND PARKING

7.1 The City shall be responsible for the design, installation, and maintenance of the landscaping located on Lots 2 and 3.

7.2 The Lessee shall be responsible for the removal of any snow, ice or other dangerous conditions on sidewalks located upon Lot 3, and on sidewalks located upon Lot 2 if such sidewalks are adjacent to the Visitor Center or the parking lot.

7.3 The City shall be responsible for the maintenance of the parking areas (excluding sidewalks) located upon Lots 2 and 3 as it is anticipated that such parking shall serve both Lots 2 and 3.

ARTICLE 8 INSURANCE

8.1 To safeguard the interest and property of the City, the Lessee, at its sole cost and expense, shall procure and maintain

4

throughout the term of this Agreement insurance protection for all risk coverage on the entire Visitor Center to the extent of one hundred percent (100%) of the actual replacement cost thereof. Such insurance shall be written by insurers acceptable to the City. The insurance shall provide for thirty (30) days notice of cancellation or material change, by registered mail, to the City, Attention: City Manager.

8.1.1 The above stated property insurance shall be for the benefit of the City and the Lessee.

8.1.2 The Lessee shall settle all losses with the insurance carrier. The Lessee shall consult with the City and use its best efforts to obtain a settlement that covers the cost of repairing or rebuilding.

8.1.3 The Lessee shall provide certificates of insurance, in a form acceptable to the City and marked "premium paid" evidencing existence of all insurance required to be maintained prior to occupancy of the Visitor Center. Upon the failure of the Lessee to maintain such insurance as above provided, the City, at its option, may take out such insurance and charge the cost thereof to the Lessee, which shall be payable on demand, or may give notice of default hereunder pursuant to the provisions of this Agreement.

8.2 In the event the Visitor Center and any subsequent improvements, insurable or uninsurable, on the Leased Premises are damaged or destroyed to the extent that they are unusable by the Lessee for the purposes for which they were used prior to such damage, or same are destroyed, the Lessee shall promptly repair and reconstruct the Improvements substantially as they were immediately prior to such casualty or in a new or modified design acceptable to the City and applicable building codes existing at the time of repairing or rebuilding.

8.3 The Lessee shall procure and keep in force during the term of the Lease policies of Comprehensive General Liability insurance insuring the Lessee and the City against any liability for personal injury, bodily injury, death, or property damage arising out of the subject of this Lease with a combined single limit of at least one million dollars or with a limit of not less than the maximum amount that may be recovered against the City under the Colorado Governmental Immunity Act, whichever is greater. No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after thirty days prior written notice to the City. The policies shall be for the mutual and joint benefit and protection of the Lessee and the City and such policies shall contain a provision that the City, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents, citizens, and employees by reason of negligence of the Lessee. The Lessee shall provide certificates of insurance, in a form acceptable to the City and marked "premium paid" evidencing existence of all insurance required to be maintained prior to the commencement of the Agreement.

8.4 All policies of insurance required herein shall name the City as additional insureds.

8.5 Lessee shall not violate, or permit to be violated, any of the conditions of any of the said policies; the Lessee shall perform and satisfy, or cause to be satisfied, the requirements of the companies writing such policies.

8.6 Lessee shall be responsible for meeting and maintaining any insurance coverage requirement relating to the Visitor Center which coverage requirement is imposed upon the City by any covenants and easements running with the land.

ARTICLE 9

DEFAULT

9.1 In the event of a default on the part of the Lessee in the payment of rents, or the payment of monies, the City shall give written notice to the Lessee of such default, and demand the correction thereof. If, within thirty (30) days after the date the City gives such notice, the Lessee has not corrected said default and paid the delinquent amount in full, the City may by written notice to the Lessee terminate this Agreement and all rights and privileges granted hereby in and to the Lease Premises.

9.2 Upon the default by the Lessee in the performance of a covenant or condition which may by the nature of the condition or covenant be performed, corrected or cured by action of the City (such as obligations for repair and maintenance or maintaining insurance), and the failure of the Lessee to remedy such default for a period of fifteen (15) days after mailing by the City of written notice to remedy the same, the City shall have the right to perform, correct or satisfy such condition or covenant and to recover the cost thereof from the Lessee, together with interest on amounts so incurred at the rate provided by statute for interest upon judgments, and the City shall further be entitled to entry of temporary restraining orders, and temporary and permanent injunctions for specific enforcement of the obligations of the Lessee hereunder.

9.3 Upon the default by the Lessee in the performance of any covenant or conditions required to be performed by the Lessee which by the nature of the condition or covenant may not be performed, corrected or cured by action of the City (such as a violation of use restrictions), and the failure of the Lessee to remedy such default within a reasonable period of time as necessary to cure the default, which time shall in no event be less than sixty (60) days after mailing by the City of written notice to remedy the same, the City shall have the right to cancel this Agreement for such cause by notice to the Lessee.

9.4 In addition to any other remedy available to the Lessee for default by the City, in the event the City defaults in performance of any covenant or condition required to be performed by the City, and the failure of the City to remedy such default for a period of thirty (30) days after mailing by the Lessee of written notice to remedy the same, the Lessee may perform, correct or otherwise satisfy the covenant or condition, and to recover the cost thereof from the City, together with interest on amounts so incurred at the rate provided by statute for interest upon

judgments, and the Lessee shall further be entitled to entry of temporary restraining orders, and temporary and permanent injunctions for specific enforcement of the obligations of the City hereunder.

9.5 Upon the cancellation or termination of this Agreement for any reason, all rights of the Lessee and any other person in possession shall terminate, including all rights or alleged rights of creditors, trustees, assigns, and all others similarly so situated as to the Leased Premises. Upon said cancellation or termination of this Agreement for any reason, the Leased Premises shall be free and clear of all encumbrances and all claims of the Lessee, its tenants, creditors, trustees, assigns and all others and the City shall have immediate right of possession to the Leased Premises.

9.6 Failure by the City or Lessee to take any authorized action upon default by the Lessee or the City of any of the terms, covenants or conditions required to be performed, kept and observed by the Lessee shall not be construed to be, nor act as, a waiver of said default nor of any subsequent default of any of the terms, covenants and conditions contained herein to be performed, kept and observed by the Lessee. Acceptance of performance by the City or Lessee under the terms hereof, for any period or periods after a default by the other of any of the terms, covenants and conditions herein required to be performed, kept and observed shall not be deemed a waiver or estoppel of any right on the part of the City or the Lessee to the remedies available for breach of this Agreement for any subsequent failure by the other to so perform, keep or observe any of said terms, covenants or conditions.

ARTICLE 10 MISCELLANEOUS CONDITIONS

10.1 The City, by its officers, employees, agents, representatives and contractors, shall have the right at all reasonable times to enter upon the Leased Premises for any and all purposes not inconsistent with this Agreement, provided such action by the City, its officers, employees, agents, representatives and contractors does not unreasonably interfere with the Lessee's use, occupancy or security requirements of the Leased Premises. Except when necessary for reasons of public safety or law enforcement, or for the protection of property, as determined by the City, City shall provide 24 hours written notice of its intent to inspect.

10.2 The Lessee shall ensure that no person on the grounds of race, color, disability or national origin shall be excluded from participating in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.

10.3 The invalidity of any provisions, articles, paragraphs, portions or clauses of this Agreement shall have no effect upon the validity of any other part or portion hereof, so long as the remainder shall constitute an enforceable agreement and provided that the invalidity of any provision, article, paragraph, portions

or clauses of this Agreement shall not result in substantial detriment to a party hereto.

10.4 This Agreement constitutes the entire agreement of the parties hereto and may not be changed, modified, discharged or extended except by written instrument duly executed by the City and the Lessee. The parties agree that no representations or warranties shall be binding upon the City or the Lessee unless expressed in writing in this Agreement of Lease.

10.5 In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

10.6 All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.

10.7 The parties agree that either party may record this Agreement or make the contents hereof available for public knowledge.

10.8 The parties agree that this Agreement shall be of no force and effect if the City does not accept conveyance of Lots 2 and 3 from Derek McWhinney pursuant to that agreement entitled Agreement Regarding a Donation of Real Estate Between Derek McWhinney and the City of Loveland, dated OCTOBER 23, 1995.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF LOVELAND, COLORADO

Ray Emerson
Mayor

ATTEST:

Victoria A. Sheneman
City Clerk

APPROVED AS TO FORM:

Ray Emerson
City Attorney

State of Colorado)

)

County of Larimer)

Subscribed and sworn to before me this 23rd day of October, 1995 by Ray Emerson, Mayor and Victoria Sheneman, City Clerk of the City of Loveland, Colorado.

My commission expires July 21, 1996

S E A L

Gloria D. Byrd
Notary Public

LOVELAND CHAMBER OF COMMERCE, INC.

Title:

ATTEST:

Secretary

~~APPROVED AS TO FORM;~~

~~Randy Williams
Attorney at Law~~

State of Colorado)
County of Larimer)

Subscribed and sworn to before me this 23rd day of October, 1995 by Timothy Galloway, President, and Patricia A. Farthing, Secretary of the Loveland Chamber of Commerce, Inc.

S E A L

Georie D. Beyer
Notary Public

EXHIBIT A
SHARED USE PROVISIONS

1. It is intended by the parties that the Lessee will be the major user of the Visitor Center Building ("Building") during the term of the Agreement for the purposes authorized in the Agreement. However, the parties agree that the City may make use of the Building at no charge for the following purposes:
 - a. the floor area for reception purposes;
 - b. the conference rooms for meeting purposes;
 - c. the storage room for the storage of small tools and materials related to the care and maintenance of the Building grounds and adjacent park area.
2. The parties shall cooperate in the scheduling of events at the Building so as to ensure that conflicts in use do not occur. In the event that the parties are not able to agree upon an equitable use schedule procedure, either party may demand that the matter be resolved through arbitration. Upon such demand, each party shall choose one arbitrator and the two arbitrators so chosen shall choose a third arbitrator. The decision of a majority of the arbitrators shall be final. The costs of arbitration shall be shared equally by the parties. The jurisdiction of the arbitrators shall extend only to resolving issues of equitable use of the Building between the parties.
3. The City shall have access to areas of the Building housing utilities and meters.

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**LEASE AGREEMENT BETWEEN THE
CITY OF LOVELAND AND THE
LOVELAND CHAMBER OF COMMERCE**

CITY OF LOVELAND
CITY CLERK'S OFFICE
500 E. 3RD ST.
LOVELAND CO 80537

IMAGED

70-43

DISTRICT COURT, COUNTY OF LARIMER, STATE OF COLORADO

Civil Action No. 95 CV 814-2

STIPULATION AND AGREEMENT OF SETTLEMENT

RICHARD HERMAN, REX CORNWELL, LINDA ROSA, STEVEN SCHLEI,
DOROTHY DEE HAMILTON, individuals.

Plaintiffs,

v.

CITY OF LOVELAND, COLORADO, a municipal corporation, BRIAN MOECK, in his official capacity as City Manager, and the LOVELAND CHAMBER OF COMMERCE, a Colorado Corporation,

Defendants.

COME NOW, the parties, by and through their respective counsel and Stipulate as follows:

1. Effective Date. The Agreement will be effective upon signature of all parties.
2. Dismissal of Litigation. This action shall be dismissed upon the effective date of the ordinance of the City Council approving the First Amendment to the Lease Agreement attached hereto as Exhibit A (the "Amendment"). The Council has approved publishing by Ordinance 4173 which will be effective, if adopted, upon second reading on May 7, 1996.
3. Attorneys Fees/Covenant Not to Sue. Each party shall pay its own attorney fees and costs. Each party also agrees to take no further civil or criminal legal actions against any other party based upon the facts giving rise to this lawsuit or otherwise related to the lawsuit, including challenging land use approvals for the project that is the subject of this litigation.
4. Entire Agreement. This Stipulation contains the entire agreement among the parties and no party has or is relying upon any written or oral representations made outside of this Stipulation.

5. No Referendum. The parties agree that the Amendment is intended to carry out the legislative policies and purposes as previously specified in Ordinance No. 4121, approving the Lease Agreement between the City and the Chamber dated October 23, 1995 (the "Agreement"). Therefore, it is an administrative change to the Agreement and not subject to referendum pursuant to Article V, §1 of the Colorado Constitution or state statutes. In the event that this Amendment is referred to the voters, and invalidated, the Agreement, as it existed prior to the Amendment, shall remain in full force and effect. The individual Plaintiffs, members of the Loveland City Council, and members of the Board of the Chamber agree not to initiate, cooperate in, or support any effort to subject this Amendment or the Agreement to initiative or referendum pursuant to Article V, §1 of the Colorado Constitution or state law.

6. Public Comment. The attorneys for the parties agree not to make any comment about the Agreement, this Amendment, the litigation, or issues raised therein without the prior consent of all of the other parties. This restriction does not apply to the parties to the litigation or any other persons.

DATED this 16 day of April, 1996.

PLAINTIFFS:

Richard Herman
Richard Herman

Rex Cornwell
Rex Cornwell

Linda Rosa
Linda Rosa

Steven Schlei
Steven Schlei

Kathleen E. Haddock
Kathleen E. Haddock, #16011
1675 Broadway, Suite 2100
Denver, CO 80202
Phone: (303) 592-4391
Facsimile: (303) 592-4355

ATTORNEY FOR CITY OF
LOVELAND and BRIAN MOECK

Dave Williams, Kelsy J. Smith
Kelsy J. Smith, Esq. #1924
Dave Williams, Esq. #0415
Moore, Smith & Williams, P.C.
425 West Mulberry Street, Suite 112
Fort Collins, CO 80521

ATTORNEYS FOR LOVELAND
CHAMBER OF COMMERCE

Dorothy Dee Hamilton
Dorothy Dee Hamilton

CITY COUNCILORS

Tracy Edwards
Tracy Edwards, Mayor

Kathy Gilliland

Steve Boggs

Larry O. Dassow

Karen Foss

Ray Emerson

Donald K. H.

Jim Lorient

Alta G. Johnson

Michael M. Shultz

Michael M. Shultz, Esq.
19 Old Town Square, Suite 238
Fort Collins, CO 80524

ATTORNEY FOR PLAINTIFFS

LOVELAND CHAMBER OF
COMMERCE

David Viegut

David Viegut, President, Board of
Directors

Patricia A. Farnum

Patricia A. Farnum, Executive Director

AMENDMENT NO. 1 TO THE LEASE AGREEMENT
BETWEEN THE CITY OF LOVELAND AND
THE LOVELAND CHAMBER OF COMMERCE

THIS AMENDMENT NO. 1 TO THE LEASE AGREEMENT BETWEEN THE CITY OF LOVELAND AND THE LOVELAND CHAMBER OF COMMERCE, made and entered into this 16th day of April, 1996, by and between the CITY OF LOVELAND, COLORADO ("City") and the LOVELAND CHAMBER OF COMMERCE, a Colorado corporation ("Lessee"), pursuant to the following terms and conditions.

W I T N E S S E T H :

WHEREAS, the City and the Lessee entered into the LEASE AGREEMENT BETWEEN THE CITY OF LOVELAND AND THE CHAMBER OF COMMERCE ("Agreement"), dated October 23, 1995, which Agreement concerns the construction and lease of an office and Visitor Center building ("Visitor Center") upon portions of Lots 2 and 3, Block 1, McWhinney Second Subdivision, Loveland, Colorado; and

WHEREAS, the City and the Lessee desire to amend the Agreement as set forth herein to further the public policy and purpose of the Agreement and for the mutual benefit of the parties.

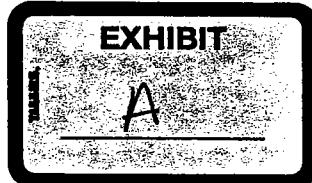
NOW, THEREFORE, in consideration of the provisions hereof, the Parties agree as follows:

1. Paragraphs 1.1 and 1.2 of the Agreement are amended to read as follows:

1.1 The term of this Agreement shall commence on the date first above written, and expire on December 31, 2016, (the "Initial Term") unless sooner terminated in accordance with the provisions hereof.

1.2 The Lessee shall have the option to extend the term of this Agreement for four additional periods of twenty years each, hereinafter the "Extended Terms," provided Lessee is not in default in the payment of any rent or other obligation hereunder at the time of its exercise of such option. In the event Lessee exercises the option, it shall do so in writing executed by the Chamber not sooner than three years prior to the expiration of the then-current term, and not later than one year prior to the expiration of the then-current term. The terms and conditions during the Extended Terms shall be the same as the Initial Term, except as otherwise specifically set forth in this Agreement.

2. Article 4 shall be amended by the addition of the following:



4.4 In the event that the cost for construction of the Visitor Center is less than \$600,000, the Chamber shall pay the difference between the actual cost and \$600,000 to the City within 30 days of issuance of certificate of occupancy by the City.

4.5 The Chamber shall not require the general contractor for the Visitor Center to accept any donated materials for any portion of the project for which the general contractor was the successful bidder.

3. Paragraphs 5.1 and 5.2 of the Agreement are amended to read as follows:

5.1 The Lessee agrees to pay to the city as rental for the Leased Premises for the Initial Term of the Agreement, the sum of Three Hundred Thousand Dollars (\$300,000.00), said sum to be paid in three installments as follows: \$50,000.00 on or before July 1, 1997; \$100,000.00 on or before July 1, 1998; and the balance of \$150,000.00 on or before July 1, 1999. All rent paid during the Initial or any Extended Term shall be in cash and not in kind contributions.

5.2 The rental to be paid for any Extended Term shall be not less than eighty percent of the fair rental value of the portion of the Visitor Center to be occupied by the Lessee for its offices, as determined by the then prevailing rental rate for a comparable building in the City of Loveland. Such rent shall be paid in equal monthly installments unless the City and Chamber mutually agree to another method of payment prior to the commencement of any Extended Term.

4. Paragraph 6.3 of the Agreement is amended to read as follows:

6.3 The Lessor shall be responsible for structural repair and maintenance of the Visitor Center. "Structural" shall include the foundation, roof, and exterior walls. The Lessor shall also be responsible for any major repairs to the heating, ventilation, and air conditioning system in excess of \$1,000 per calendar year. The Lessee shall, throughout the Initial and any Extended Term of this Agreement, assume the entire responsibility, cost, and expense for all other repair and maintenance whatsoever on the Leased Premises and all improvements thereon in a good and workmanlike manner except for ordinary wear. Such obligation shall extend to those areas used by the City pursuant to **Exhibit A**. The Lessee shall keep at all times, in a clean and orderly condition and appearance, the Leased Premises, all improvements thereon and all of the Lessee's fixtures, equipment and personal property which are

located on any part of the Leased Premises. Additionally, the Lessee shall be responsible for the payment for all utility charges for the Visitor Center, including lighting, electricity, water, sewer, stormwater, gas, heating, and trash.

5. Paragraph 8.1 shall be amended to read as follows:

8.1 Lessor shall procure and maintain throughout the Initial and any Extended Term of this Agreement insurance protection for all property damage on the Visitor Center for one hundred percent of the actual replacement cost thereof. Lessor shall not be responsible for insuring or replacing personal property of the Lessee. The Lessor and the Lessee shall cooperate in the presentation of all claims made under such insurance coverage, and the proceeds thereof shall be used to repair, replace, or restore the Visitor Center, if either party so requests.

6. Paragraphs 8.1.1, 8.1.2, 8.1.3, and 8.2 shall be deleted in their entirety.

7. Paragraph 10 shall be amended by the addition of the following:

10.9 The City shall not make any financial payments to the Chamber during the Initial or any Extended Term of this Agreement unless the City receives goods or services in return of approximately equal fair market value.

10.10 The City shall not use any moneys from the utility funds of the City as the source of payment of any of its obligations in this Agreement.

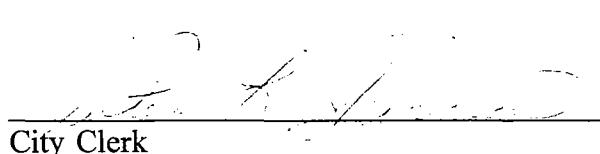
8. All other terms, conditions, and obligations of the parties set forth in the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment the date and year first above written.

CITY OF LOVELAND, COLORADO

By: Ken Edwards
Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM:

Kathleen Shaddock for
City Attorney

LOVELAND CHAMBER OF COMMERCE,
INC.

By: David Viegut
President, Board of Directors

ATTEST:

Patricia A. Jamham
Secretary, Executive Director

AMENDMENT NO. 2 BETWEEN THE
CITY OF LOVELAND AND THE
LOVELAND CHAMBER OF COMMERCE

THIS AMENDMENT NO. 2 TO THE LEASE AGREEMENT BETWEEN THE CITY OF LOVELAND AND THE LOVELAND CHAMBER OF COMMERCE is made and entered into this 21st day of June, 2011, by and between the CITY OF LOVELAND, COLORADO, a home rule municipality, ("City") and the LOVELAND CHAMBER OF COMMERCE, INC., a Colorado non-profit corporation ("Lessee").

WITNESSETH:

WHEREAS, the City and Lessee entered into that certain "Lease Agreement Between the City of Loveland and the Loveland Chamber of Commerce" dated October 23, 1995 ("the Lease Agreement") concerning the construction and lease of an office and visitors center building located on portions of Lots 2 and 3, Block 1, McWhinney Second Subdivision, Loveland, Colorado ("the Visitors Center"); and

WHEREAS, on April 16, 1996, the City and Lessee entered into that certain "Amendment No. 1 to the Lease Agreement Between the City of Loveland and the Loveland Chamber of Commerce" ("Amendment No. 1") pursuant to which the Lease Agreement was amended in several respects arising out of the settlement of a lawsuit brought by five individuals against the City and the Lessee, known as Civil Action 95-CV-814-2 filed in Larimer County District Court ("the Lawsuit"); and

WHEREAS, as a result of the City and the Lessee entering into Amendment No. 1, the plaintiffs in the Lawsuit agreed to the dismissal of the Lawsuit, which occurred; and

WHEREAS, the settlement and dismissal of the Lawsuit does not restrict the parties' ability to amend the Lease Agreement as herein provided; and

WHEREAS, one of the new terms and conditions added to the Lease Agreement by Amendment No. 1 was Section 10.9 which reads in full as follows:

"The City shall not make any financial payments to the Chamber during the Initial or any Extended Term of this Agreement unless the City receives goods or services in return of approximately equal fair market value.";

and

WHEREAS, the City and the Lessee have determined that this Section 10.9 is no longer in the best interest of the City or of the Lessee due to the current economic conditions, particularly as they now affect the Lessee; and

WHEREAS, the City and the Lessee therefore desire to amend the Lease Agreement, as amended by Amendment No. 1, to delete and remove Section 10.9 from the Lease Agreement; and

WHEREAS, by so removing Section 10.9 from the Lease Agreement, the City and the Lessee will be able to enter into a proposed amendment to that certain "Contract for City of Loveland Lodging Tax Grant Funds" dated November 22, 2010, previously entered into by and between the City and Lessee; and

WHEREAS, that amendment, titled "Amendment No. 1 to Contract for City of Loveland Lodging Tax Grant Funds," will be in the best interests of the City and Lessee as it will allow the Lessee to continue to operate the Visitors Center as contemplated by the parties in the Lease Agreement, as amended in Amendment No. 1 and this Amendment No. 2, for approximately the next twenty-two (22) weeks.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereto agree as follows:

1. Amendment. That Section 10.9 of the Lease Agreement, as added by Amendment No. 1, shall be deleted and removed in its entirety from the Lease Agreement and be of no further force or effect.
2. No Other Amendment. That except as expressly set forth in this Amendment No. 2, the Lease Agreement, as amended by Amendment No. 1, shall remain in full force and effect.

IN WITNESS WHEREOF, the City and the Lessee have executed this Amendment No. 2 as of the date and year first above written.

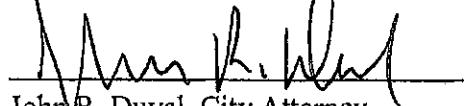
ATTEST:

 Teresa G. Andrews
 Teresa G. Andrews

CITY OF LOVELAND, COLORADO

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

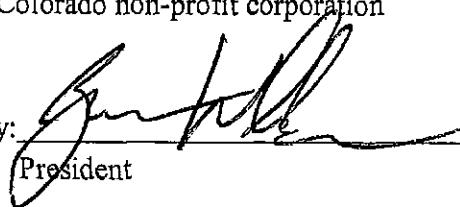
APPROVED AS TO FORM:



John R. Duval, City Attorney

LOVELAND CHAMBER OF COMMERCE, INC.,
a Colorado non-profit corporation

By:



President

ATTEST:

Secretary



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

AGENDA ITEM:	18
MEETING DATE:	12/6/2011
TO:	City Council
FROM:	Betsey Hale, Department of Economic Development
PRESENTER:	Mike Scholl, Department of Economic Development

TITLE:

1. A Resolution approving a Letter Agreement for Exclusive Right to Negotiate a Disposition and Development Agreement with Brinkman Partners, LLC for the North Catalyst Site located at 533 North Lincoln Avenue, Loveland, Colorado

2. A Resolution of the City Council of the City of Loveland conditionally approving a Minor Modification to the Urban Renewal Plan for downtown Loveland, and initiating a Major Modification to the Urban Renewal Area for Block 41-Finley's Addition

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to approve the Resolutions as recommended

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is an administrative action to consider a series of Council resolutions that would facilitate the negotiation and financing of 533 N. Lincoln Avenue (North Catalyst project) in partnership with the Brinkman Partners. Resolution #1, the Exclusive Right to Negotiation (ERN) provides an exclusive period of negotiation beginning December 7, 2011 through May 18, 2012 during which the parties will engage in negotiations and due diligence work on an agreement for the sale and development of the parcel.

Resolution #2 and the LURA resolution to follow would authorize the blight study, approve a minor modification to the Downtown Urban Renewal Plan Area and initiate a major modification to the Block 41-Finley's Addition Urban Renewal Plan (detaching the North Catalyst site at 533 N. Lincoln, the Museum site at 503 N. Lincoln, the 5th Street Parking lot site, and the County Building at 606 N. Cleveland from the Downtown Plan Area and adding them to the Block 41-Finley's Addition Plan Area). Resolution #2 and the LURA resolution also authorize the City to

fund the blight study pursuant to an intergovernmental agreement with the Loveland Urban Renewal Authority.

Prior to the development moving forward, Council will be required to consider the completed blight study to determine whether a finding of blight can be made, a proposed major modification of the Block 41-Finley's Addition Plan to include the identified properties (including the North Catalyst site), and approve a final disposition and development agreement for the North Catalyst site and an appropriation for any negotiated financing of development incentives that will need to take place prior to closing.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

There is minimal budget impact at this time (funding of blight study at an estimated cost not to exceed \$7,500) but should the project move forward a request for financing to support the project will be forthcoming.

SUMMARY:

The ERN will provide Brinkman Partners with an exclusive negotiation period for the acquisition and development of the North Catalyst project. Brinkman intends to build a \$9 million, 55 unit development project at 533 N. Lincoln Avenue. The City is being asked to complete a financing package to support both the Brinkman project and to repay the balance of the Museum CEFs from the 2007 purchase of the Home State bank building. It is anticipated that the financing package will call for not less than \$1.95M to include approximately \$1.5M in development incentives/public improvement costs for the project to be provided by LURA, and approximately \$338,500 to repay Museum CEF's originally used to purchase the site.

REVIEWED BY CITY MANAGER:**LIST OF ATTACHMENTS:**

- A. Resolution of City Council approving the ERN
- B. Resolution of City Council approving Minor Modification to the Downtown Plan Area and initiating Major Modification to the Block 41-Finley's Addition Plan Area
- C. Staff Report
- D. Letter from the School Board

RESOLUTION #R-84-2011

A RESOLUTION APPROVING A LETTER AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE A DISPOSITION AND DEVELOPMENT AGREEMENT WITH BRINKMAN PARTNERS, LLC FOR THE NORTH CATALYST SITE LOCATED AT 533 NORTH LINCOLN AVENUE, LOVELAND, COLORADO

WHEREAS, in January, 2011, the City of Loveland issued a Request for Proposals, Downtown Redevelopment Sites (the “RFP”); and

WHEREAS, Brinkman Partners, LLC, a Colorado limited liability company (“Brinkman”) submitted a response to the RFP dated April 7, 2011 (the “Brinkman Response”) for the North Catalyst Project to be located on that real property located at 533 North Lincoln Avenue, Loveland, Colorado (the “Property”); and

WHEREAS, the Scheme 1 development proposal for the North Catalyst Project (the “Project”) as set forth in the Brinkman Response was selected as the preferred development alternative for the North Catalyst Project to be located on the Property; and

WHEREAS, the parties desire to enter into a Letter Agreement for Exclusive Right to Negotiate to provide additional time to complete negotiation of an agreement for disposition and development of the Property.

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

Section 1. That the Letter Agreement for Exclusive Right to Negotiate attached hereto as Exhibit A and incorporated herein by this reference (the “ERN”) is hereby approved.

Section 2. That the City Manager is authorized, following consultation with the City Attorney, to modify the ERN in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 3. That the City Manager is hereby authorized and directed to execute the ERN on behalf of the City of Loveland.

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

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

LETTER AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE

December 6, 2011

Mr. Kevin Brinkman, Manager
Brinkman Partners, LLC
3003 East Harmony Road, Suite 300
Fort Collins, Colorado 80525

RE: Downtown Loveland Request for Proposals – Brinkman Partners, LLC (“Brinkman”)

Dear Mr. Brinkman:

As you know, the City of Loveland issued a Request for Proposals, Downtown Redevelopment Sites dated January, 2011 (the “RFP”) and selected Brinkman’s’ response to the RFP dated April 7, 2011 for the North Catalyst Project - Scheme 1 attached hereto as Exhibit A (the “Project”) as the City’s preferred development alternative for the North Catalyst Site located at 533 North Lincoln Avenue, Loveland, Colorado (the “North Catalyst Site”). Subsequently, on April 25, 2011, the City extended an exclusive right of negotiation to Brinkman with respect to the Project for up to ninety (90) days and although that exclusive right of negotiation has since expired, the parties have continuously engaged in good faith negotiation of the terms and conditions upon which the Project would be developed by Brinkman on the North Catalyst Site.

In order provide additional time to complete the parties’ negotiation with respect to the development of the Project, the City desires to extend to Brinkman a further exclusive right to negotiate for development of the Project on the North Catalyst Site as set forth in this letter agreement (the “ERN”). The North Catalyst Site proposed for the Project under the RFP, to be sold to and developed by Brinkman or its assign, is legally described as Lots 1 through 8, Block 12, Original Plat of the City of Loveland, County of Larimer, State of Colorado (the “Property”).

The purpose of this letter is to set forth the agreement between the City and Brinkman concerning the terms and conditions of this ERN. These terms and conditions are as follows:

1. The City agrees to negotiate exclusively with Brinkman concerning the sale of the Property and development of the Project for the period beginning December 7, 2011, and ending at 11:59 p.m. on May 15, 2012 (the “Exclusivity Period”).
2. The City and Brinkman each agree to proceed with due diligence and in good faith during the Exclusivity Period to negotiate and endeavor to agree upon the terms and condition of a disposition and development agreement for the purchase and sale of the Property and development of the Project thereon by Brinkman (the “Disposition and Development Agreement”). In proceeding with such negotiation:

- a) the parties agree to use their best efforts to agree upon the terms and conditions of the Disposition and Development Agreement to be presented to the Loveland City Council for approval no later than May 1, 2012;
- b) the City agrees to use its best efforts to present to the Loveland City Council and/or the Loveland Urban Renewal Authority for approval appropriate resolutions and ordinances to finance and/or fund such development incentives and public improvements in connection with the Project as may be included in the Disposition and Development Agreement, including but not limited to those necessary to include the Property (and other property) in the Block 41-Finley's Block Urban Renewal Area for purposes of tax increment financing for such incentives and/or public improvements. The City agrees to use its best efforts to seek such approvals according to the schedule attached hereto as Exhibit B, but in any event no later than May 1, 2012.

3. The parties acknowledge that approval of the Disposition and Development Agreement and funding for any development incentives and public improvements set forth therein is within the sole discretion of the Loveland City Council and no representations or warranties are made that such approval will be obtained.
4. If the City is in breach of this ERN, Brinkman's sole remedy shall be to terminate this ERN. If Brinkman is in default of this ERN, the City's sole remedy shall be to terminate this ERN.
5. This ERN shall terminate the earlier of: (a) at 11:59 p.m. on May 15, 2012; (b) when the City and Brinkman enter into the Disposition and Development Agreement; or (c) when this ERN is terminated pursuant to paragraph 4 above.
6. This ERN shall be governed by and construed in accordance with the laws of the State of Colorado and venue for any judicial action to interpret or enforce this ERN shall only be in the District Court for Larimer County, Colorado.
7. This ERN may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument, and the parties may execute this ERN by way of email/PDF or facsimile signatures, and each party may rely on such electronically produced signatures the same as if they were originals.

If the terms and conditions stated above are acceptable to Brinkman, please sign a copy of this letter and return it to me.

Sincerely,

William D. Cahill
City Manager

Accepted, agreed and approved this _____ day of December, 2011.

Brinkman Partners, LLC
a Colorado limited liability company

By: _____
Kevin Brinkman, Manager

cc: John Duval, City Attorney
Betsey Hale, Economic Development Director
Mike Scholl, Senior Planner

EXHIBIT A

Brinkman Proposal

1. Development Plan - Scheme 1

A. Narrative and graphic description of the proposed project and its components, including, as appropriate, residential, hotel, office, retail, restaurant, parking, and public open space; preliminary site plans, renderings and drawings are required as part of the RFP submission. Since night activity and sounds from the shops, restaurants, etc. are likely, Respondent shall design construction to minimize the impact of noise. Owner and tenant documents (if any) should include noise and activity disclaimers and waivers.

Scheme 1 is designed to utilize the majority of the site for Multi-Family Residential. The Scheme is comprised of Seventy Two (72) Residential Units made up of Loft and 1/2/3 Bedroom Units. Additionally, there is approximately 8,033 SF of Live work units over two levels at the eastern portion of the site. It is contemplated that this will be subdivided into 4- 8 Units. All Units will be two stories with street access. These units would allocate street level space as the "work", with the upper level as "live".

The Residential Units occupy the upper 3 levels of the Building and can be accessed from a residential lobby at East 6th Street or via a stair corridor at the alley. The resultant is a 5-story building not exceeding Sixty feet (60') in height.

Currently, Open Space is being considered as part of the Sidewalk & curb and gutter improvements. The development team will make strong efforts to save the existing trees on 6th Street.

The Architectural Character of the building pulls on the wonderful existing built fabric of Loveland. It is contextual to the surroundings utilizing a mixture of brick, stucco and storefront as well as residential scale windows. The Ground level and level 2 at the eastern side of the facade will be treated with 1 and 2 story glass. The Northwest corner of the facade is envisioned as an anchor for the building and will provide a strong connection to the buildings at the adjacent corners.

All Parking along the street will be screened from view. The parking deck at the alley will be an open air connection with a 42" separation wall at grade.

The orientation of the residential program for this scheme will provide a balanced mix of light orientation and an ability to select between street noise and internal courtyard solace. It is not anticipated that this building will provide additional noise disturbance beyond the comparable levels of the Lincoln Place Apartments directly east of the project.

B. A narrative description of proposed parking plan.

The majority of parking at Scheme 1 is accommodated at grade within the confines of the site footprint. Seventy (70) spaces occupy Eighty-Three Percent (83%) of the site footprint. The remaining Seventeen Percent (17%) of the site footprint is occupied by the Building Lobby and 1 Level of the Live Work lofts. Within the On-Grade Parking, Fourteen (14) parking spaces are designed in a tandem configuration.

Access to the Surface Parking is from East 6th Street. The Surface parking is screened from East 6th Street by an architectural element.

Additionally, Sidewalk and Curb improvements will be made to better accommodate the twelve (12) On-Street Parking Spaces directly adjacent to the building footprint at Lincoln Avenue and East 6th Street.

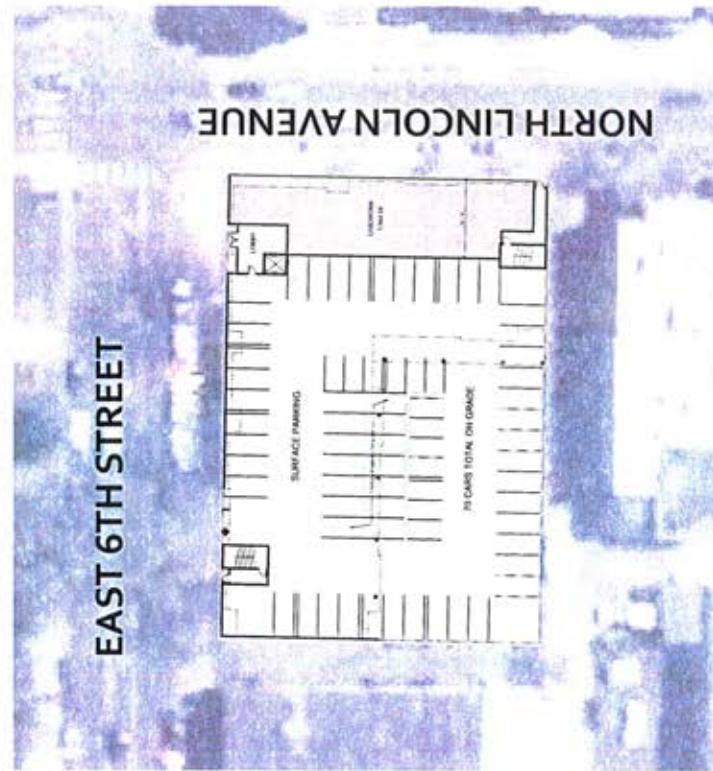
C. Preliminary site plan at 1" = 200' scale or equivalent metric scale clearly including the project components and parking.

Please see following page for Scheme 1 renderings illustrating the project's character, scale, materials and finishes.

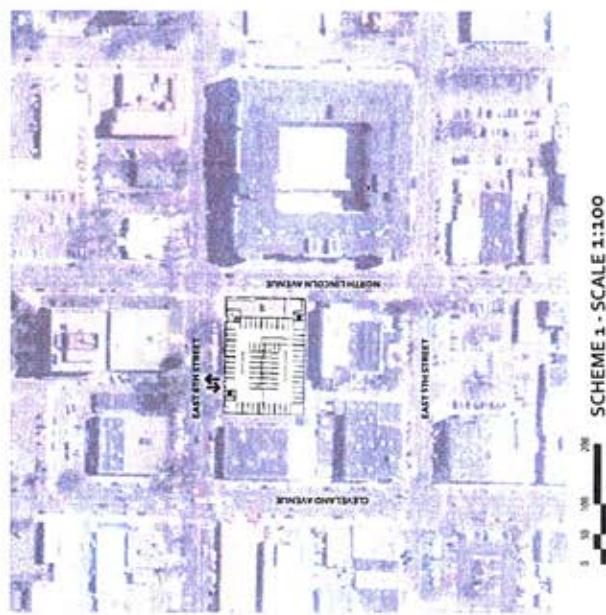
D. Renderings illustrating the project's character, scale, materials and finishes.

Please see following page for Scheme 1 renderings illustrating the project's character, scale, materials and finishes.

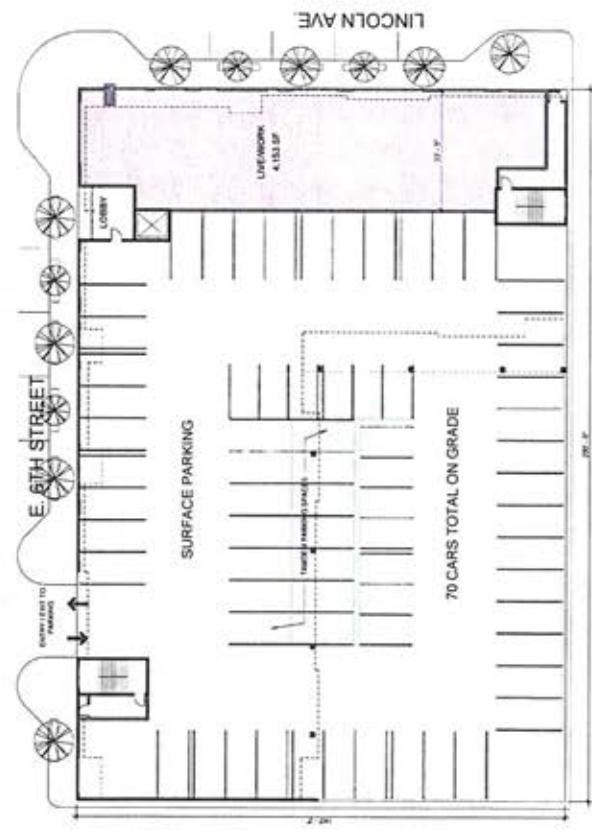
SCHEME 1 - SITE PLANS



SCHEME 1 SITE PLAN - SCALE 1:20



SCHEME 1



① LEVEL 1 FLOOR PLAN

PARKING REQUIREMENT	NET SQ FT	UNIT COUNT
112 BEDROOMS x 7	14,434 x 4 FLOORS = 57,736 3,944 LIVE / WORK	17 UNITS PER FLOOR x 4 FLOORS = 68 UNITS 4 LIVE / WORK UNITS
78 CARS TOTAL REQUIRED (70 SHOWN)	61,680 NSF TOTAL	72 UNITS TOTAL

② LEVEL 3 FLOOR PLAN

BEDROOM COUNT		27 BEDROOMS PER FLOOR x 4 FLOORS = 108 BEDROOMS
(LEVELS 2, 4, 5 SIMILAR)		
112 BEDROOMS TOTAL		

6TH & LINCOLN

• NOT FOR CONSTRUCTION

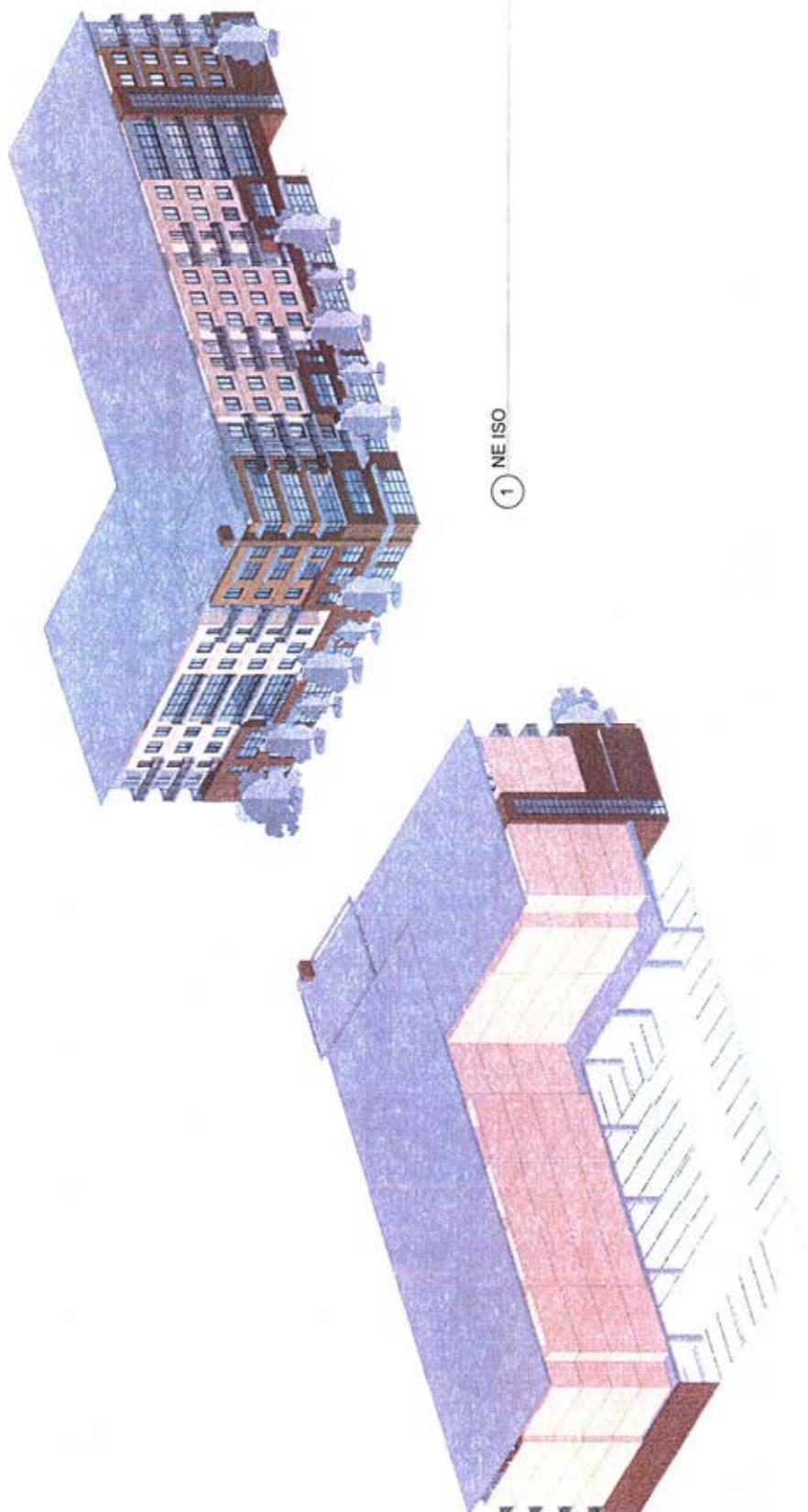
LOVELAND, CO
• JUNE 2011



QZ
ARCHITECTURE
URBAN DESIGN
INTERIOR DESIGN

PHONE: 303.449.3900
FAX: 303.449.3910
WWW.QZDESIGN.COM

SCHEME 1



SCHEME 1- CHARACTER SKETCHES



PROJECT CHARACTER



ARCHITECTURE VIGNETTE



STREET CHARACTER

SCHEME 1- ARCHITECTURAL CONCEPT



EXHIBIT B

Milestones – 533 N. Lincoln Avenue/North Catalyst Project

<u>Milestone</u>	<u>Completion Date</u>
Complete Blight Study and Plan Amendment	1/13/2012
Loveland Planning Commission/URA Public Hearing	2/13/2012
Loveland City Council/URA Public Hearing	3/20/2012
Loveland City Council/URA Resolution	4/3/2012
Loveland City Council: URA/Financing Package Approval 1 st Reading of Appropriation	4/17/2012
Loveland City Council: 2 nd Reading of Appropriation 1 st Reading of Disposition and Development Agreement	5/1/12
Loveland City Council: 2 nd Reading of Disposition and Development Agreement	5/15/12
Property Closing	5/18/2012

RESOLUTION #R-85-2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND CONDITIONALLY APPROVING A MINOR MODIFICATION TO THE URBAN RENEWAL PLAN FOR DOWNTOWN LOVELAND, AND INITIATING A MAJOR MODIFICATION TO THE URBAN RENEWAL PLAN FOR BLOCK 41 – FINLEY'S ADDITION

WHEREAS, on October 1, 2002, the Loveland City Council adopted Resolution #R-74-2002 approving the City of Loveland Urban Renewal Plan (“Downtown Plan”); and

WHEREAS, Section 3 of the Downtown Plan legally describes, depicts, and refers to the “Urban Renewal Area for Downtown Loveland” (“Downtown Plan Area”); and

WHEREAS, on April 26, 2005, the City Council adopted Resolution #R-32-2005 modifying the Downtown Plan by removing from the Downtown Plan Area the Finley's Addition Plan Area, described below, resulting in a modified and amended Downtown Plan (“Amended Downtown Plan”) and a modified and amended Downtown Plan Area (“Amended Downtown Plan Area”); and

WHEREAS, the Amended Downtown Plan Area currently includes certain real property legally described as set forth in **Exhibit A**, attached and incorporated by reference (“Property”), which is owned in part by the City, and in part by Larimer County; and

WHEREAS, a portion of the Property owned by the City is the site of an obsolete commercial building proposed for disposition and redevelopment as the “North Catalyst Project” (“North Catalyst Site”); and

WHEREAS, the City Council desires to remove the Property from the Amended Downtown Plan Area and add it to the Finley's Addition Plan Area, thereby allowing all of the tax increment revenues from the Property, when developed, and the Finley's Addition Plan Area, after satisfaction of all of the obligations under the “Amended and Restated Master Financing Agreement for Block 41 – Finley's Addition Urban Renewal Plan Area” dated May 22, 2007 (“MFA”), to be used by the Loveland Urban Renewal Authority (“Authority”) to finance the construction of certain public improvements on the Property; and

WHEREAS, C.R.S. § 31-25-107(7) allows the City Council to further amend the Amended Downtown Plan at any time without being subject to the notice and blight finding requirements of said section, provided that such modification will not substantially change the Amended Downtown Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, the removal of the Property, which consists of approximately 2.8 acres, from the existing Amended Downtown Plan Area, which currently consists of approximately 230

acres, will not substantially change the Amended Downtown Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, on April 26, 2005, the City Council adopted Resolution #R-33-2005 approving an urban renewal plan referred to as the “City of Loveland Urban Renewal Plan for Block 41 – Finley’s Addition” (“Finley’s Addition Plan”); and

WHEREAS, the Finley’s Addition Plan legally describes and depicts the Plan’s boundaries (“Finley’s Addition Plan Area”); and

WHEREAS, the City Council desires to modify the Finley’s Addition Plan by adding the Property to the Finley’s Addition Plan Area to facilitate redevelopment of the North Catalyst Site as described above; and

WHEREAS, C.R.S. § 31-25-107(7) allows the City Council to amend the Finley’s Addition Plan at any time provided that any substantial changes to the Finley’s Addition Plan are subject to the notice and blight finding requirements of said section, and all other applicable requirements of said section; and

WHEREAS, the addition of the Property, which consists of approximately 2.8 acres, to the existing Finley’s Addition Plan Area, which currently consists of approximately 2.15 acres, will substantially change the Finley’s Addition Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, pursuant to C.R.S. § 31-25-112, the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of the Authority, to enter into agreements with the Authority respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the North Catalyst Project and carrying out the Finley’s Addition Plan as it may hereafter be modified and amended; and

WHEREAS, the City desires to enter into an intergovernmental agreement with the Authority to aid and cooperate with the Authority in undertaking the North Catalyst Project and carrying out the Finley’s Addition Plan as it may hereafter be modified and amended; and

WHEREAS, as governmental entities in Colorado, the City and the Authority are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

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

Section 1. That the City Council hereby finds that the removal of the Property from the Amended Downtown Plan Area will not substantially change the Amended Downtown Plan in land area, land use, design, building requirements, timing, or procedure, as previously

approved.

Section 2. That contemporaneously with and conditioned on the City Council's future approval of the substantial modification of the Finley's Addition Plan to include the Property within its boundaries, the Amended Downtown Plan shall be deemed modified pursuant to C.R.S. § 31-25-107(7) to remove the Property from the boundaries of the Amended Downtown Plan, and that the Amended Downtown Plan Area, as modified by this Resolution, shall have the new boundaries legally described in **Exhibit B** attached and incorporated by reference.

Section 3. That except as modified by this Resolution and Resolution #R-32-2005, the Downtown Plan is hereby ratified and reaffirmed, shall remain unchanged in all other respects, and shall remain in full force and effect.

Section 4. That the City Council hereby finds that the addition of the Property to the Finley's Addition Plan Area will result in a substantial modification of the Finley's Addition Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved.

Section 5. That the City Council hereby requests that the Authority commission a study to determine whether the Property is a slum, blighted area, or a combination thereof ("Blight Study") in accordance with the requirements of C.R.S. § 31-25-107(1).

Section 6. That the City Council hereby directs that the proposed substantial modification to the Finley's Addition Plan be submitted to the Loveland Planning Commission for review and recommendations as to the conformity of the proposed substantial modification with the general plan for the development of the City of Loveland as a whole in accordance with the requirements of C.R.S. § 31-25-107(2).

Section 7. That the City Council hereby directs that, at least thirty (30) days prior to the City Council's public hearing on the substantial modification to the Finley's Addition Plan, notice of the public hearing be made by publication in the *Loveland Reporter-Herald* in accordance with the requirements of C.R.S. § 31-25-107(3)(a).

Section 8. That the City Council hereby directs that, at least thirty (30) days prior to the City Council's public hearing on the substantial modification to the Finley's Addition Plan, the proposed substantial modification and an urban renewal impact report be submitted to the Larimer County Board of Commissioners in accordance with the requirements of C.R.S. § 31-25-107(3.5).

Section 9. That the City Council hereby directs that, at least thirty (30) days prior to the City Council's public hearing on the substantial modification to the Finley's Addition Plan, notice of the public hearing be made to all property owners, residents, and owners of business concerns within the legal boundaries of the Property and the Finley's Addition Plan Area at their last known address of record in accordance with the requirements of C.R.S. § 31-25-107(4)(c).

Section 10. That the City Council hereby directs that the Thompson School District be requested to participate in an advisory capacity with respect to inclusion of provisions in the Finley's Addition Plan for the use of tax increment financing by the Authority for construction of certain public improvements on the Property in accordance with the requirements of C.R.S. § 31-25-107(9)(d).

Section 11. That the City Council hereby finds that the Property does not contain any "agricultural land" as this term is defined in C.R.S. § 31-25-103(1).

Section 12. That the City Council hereby declares that it does not intend to acquire private property by eminent domain within the Property or the Finley's Addition Plan Area.

Section 13. That the City Council hereby authorizes the City to enter into an intergovernmental agreement, in a form approved by the City Attorney, with the Authority for the purpose of making a loan from the City's general fund to the Authority in such amount as may be necessary to contract for the Blight Study, and authorizes the City Manager to sign said intergovernmental agreement on behalf of the City.

Section 14. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shane L. Oltus
Assistant City Attorney

Exhibit A
Property – Legal Description

The Property consists of the following four parcels and rights-of-way:

Parking Lot Parcel:

Lots 1 – 7, less the South 25 feet of Lots 1 – 3, and less the South 25 feet of the East 5 feet of Lot 4, Block 13, City of Loveland, County of Larimer, State of Colorado.

Home State Bank Parcel:

Lots 1 – 8, Block 12, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 533 N. Lincoln Avenue, Loveland, Colorado 80537.

Museum Parcel:

Lots 19 – 24, Block 12, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 503 N. Lincoln Avenue, Loveland, Colorado 80537.

Larimer County Building Parcel:

Lots 13 – 16, Block 7, City of Loveland, County of Larimer, State of Colorado and a portion of the vacated alley per Book 1712, Page 733, also known by the mailing address of 606 N. Cleveland Avenue, Loveland, Colorado 80537.

Rights-of-way:

The full right-of-way of E. 6th Street from Cleveland Avenue to Lincoln Avenue; the east boundary line to center line of the right-of-way of Jefferson Avenue from E. 6th Street to E. 5th Street; the south boundary line to center line of the right-of-way of E. 5th Street from Jefferson Avenue to Lincoln Avenue; the full right-of-way of E. 5th Street from Lincoln Avenue to Cleveland Avenue; the west boundary line to center line of the right-of-way of Lincoln Avenue from E. 5th Street to E. 6th Street; and the full right-of-way of the alley between E. 5th Street and E. 6th Street from Lincoln Avenue to Cleveland Avenue.

Exhibit B
Downtown Plan Area – Amended Boundaries

The Amended Downtown Plan Area, as modified by this Resolution, shall have the new boundaries legally described as follows:

Loveland Urban Renewal Plan, October 1, 2002

**Description
of the
Downtown Loveland Urban Renewal Area**

Beginning at the point of intersection of the south right-of-way (ROW) line of E. 4th Street and the east ROW line of N. Washington Avenue; thence southerly along said east ROW line to its point of intersection with the north ROW line of E. 3rd Street; thence continuing southerly to the point of intersection of the south ROW line of E. 3rd Street and the east ROW line of N. Washington Avenue; thence continuing southerly along said east ROW line to its point of intersection with the north ROW line of E. 1st Street; thence southwesterly to the point of intersection of the south ROW line of E. 1st Street and the east ROW line of S. Washington Avenue; thence southerly along said east ROW line its point of intersection with the north ROW line of the alley between E. 1st Street and 2nd Street S.E.; thence continuing southerly to the point of intersection of the south ROW line of said alley and the east ROW line of S. Washington Avenue; thence continuing southerly along said east ROW line its point of intersection with the north ROW line of 2nd Street S.E.; thence continuing southerly to the point of intersection of the south ROW line of 2nd Street S.E. and the east ROW line of S. Washington Avenue; thence continuing southerly along said east ROW line to its point of intersection with the south ROW line extended of 3rd Street S.E.; thence westerly along said extended line to the point of intersection of the west ROW line of S. Washington Avenue and the south ROW line of 3rd Street S.E.; thence continuing westerly along said south ROW line to its point of intersection with the east ROW line of S. Lincoln Avenue; thence southerly along said east ROW line to its point of intersection with the south line extended of Lot 3, Ponderosa Addition; thence westerly along said extended line to the point of intersection of the west ROW line of S. Lincoln Avenue and the south line of said Lot 3; thence continuing westerly along said south line to its point of intersection with the east ROW line of S. Cleveland Avenue; thence continuing westerly along the south line extended of said Lot 3 to its point of intersection with the west ROW line of S. Cleveland Avenue; thence northerly along said west ROW line to its point of intersection with the north bank of the Farmer's Ditch; thence northwesterly along said bank to its point of intersection with the west line extended of Block 1, Ackelbein 2nd Addition; thence northerly along said extended line to the southwest corner of said Block 1; thence continuing northerly along the west line of said Block 1 to its point of intersection with the south ROW line of 3rd Street S.E.; thence westerly along said south ROW line to its point of intersection with the east ROW line of S. Railroad Avenue; thence southwesterly along said east ROW line to its point of intersection with the south line extended of Henrikson Addition; thence northwesterly along said extended line to the point of intersection of the west ROW line of the Burlington Northern/Santa Fe Railroad and the south line of Henrikson Addition; thence continuing northwesterly along said south line to the southwest corner of Henrikson Addition; thence northerly along the west line of said Henrikson Addition to its point of intersection with the south ROW line of 2nd Street S.W.; thence westerly along said south ROW line to the NW corner of Mill First Addition; thence northerly perpendicular to said ROW line to a point on the south line of Mill Second Addition; thence westerly along said south line to the SW corner of Mill Second Addition; thence northerly and easterly along the west line of said Mill Second Addition to the NW corner thereof; thence easterly and southerly along the north line of Mill Second Addition to the NE corner thereof; thence northwesterly to the SW corner of Riverside Addition; thence northerly along the east line of Riverside Addition to its point of intersection with the south ROW line of W. 1st Street; thence continuing northerly to the point of intersection of the north ROW line of W. 1st Street and the west ROW line of the N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 2nd Street; thence continuing northerly to the point of intersection of the north ROW line of W. 2nd Street and the west ROW line of N. Garfield

Loveland Urban Renewal Plan, October 1, 2002

Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 3rd Street; thence continuing northerly to the point of intersection of the north ROW line of W. 3rd Street and the west ROW line of N. Garfield Avenue; thence continuing northerly to the point of intersection of the south ROW line of the alley between W. 3rd Street and W. 4th Street and the west ROW line of N. Garfield Avenue; thence continuing northerly to the point of intersection of the north ROW line of said alley and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 4th Street; thence continuing northerly to the point of intersection of the north ROW line of W. 4th Street and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of the alley between W. 4th Street and W. 5th Street and the west ROW line of N. Garfield Avenue; thence continuing northerly to the point of intersection of the north ROW line of said alley and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 5th Street; thence continuing northerly to the point of intersection of the north ROW line of W. 5th Street and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 6th Street; thence continuing northerly to the point of intersection of the north ROW line of W. 6th Street and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of the alley between W. 7th Street and W. 8th Street; thence continuing northerly to the point of intersection of the north ROW line of said alley and the west ROW line of N. Garfield Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of W. 8th Street; thence continuing northerly to the point of intersection of the north ROW line of W. 8th Street and the west ROW line of N. Garfield Avenue; thence easterly to the point of intersection of the east ROW line of N. Garfield Avenue and the north ROW line of W. 10th Street; thence easterly and northeasterly along said north ROW line to its point of intersection with the west ROW line of the Burlington Northern/Santa Fe Railroad; thence northerly along said west ROW to its point of intersection with the south ROW line of the alley between W. 10th Street and W. 11th Street; thence continuing northerly to the point of intersection of the north ROW line of said alley and the west ROW line of the Burlington Northern/Santa Fe Railroad; thence continuing northerly along said west ROW line to its point of intersection with the south line of Little Barnes Ditch; thence continuing northerly to the point of intersection of the north line of said Ditch and the west ROW line of the Burlington Northern/Santa Fe Railroad; thence northerly along said west ROW line to its point of intersection with the south ROW line of E. 11th Street; thence continuing northerly to the point of intersection of the west ROW line of said Railroad and the north ROW line of W. 11th Street; thence northeasterly to the point of intersection of the east ROW line of N. Railroad Avenue and the north ROW line of E. 11th Street; thence easterly along said north ROW line to its point of intersection with the west ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue; thence northerly along said west ROW line to its point of intersection with the south ROW line of the alley between E. 11th Street and E. 12th Street; thence continuing northerly to the point of intersection of the north ROW line of the alley between E. 11th Street and E. 12th Street and the west ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of E. 12th Street; thence continuing northerly to the point of intersection of the north ROW line of E. 12th Street and the west ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of the alley

Loveland Urban Renewal Plan, October 1, 2002

between E. 12th Street and E. 13th Street; thence continuing northerly to the point of intersection of the north ROW line of the alley between E. 12th Street and E. 13th Street and the west ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue; thence continuing northerly along said west ROW line to its point of intersection with the south ROW line of the alley between E. 13th Street and E. Eisenhower Boulevard; thence continuing northerly to the point of intersection of the north ROW line of said alley between E. 13th Street and E. Eisenhower Boulevard and the west ROW line of the alley between N. Railroad Avenue and N. Cleveland Avenue; thence continuing northerly along said west ROW line to the point of intersection of the east line of Lot 21, Block 4, Loyeland Heights Addition and the south line of the vacated alley ROW; thence easterly all said south line to the centerline of the vacated alley ROW; thence northerly along said centerline to its point of intersection with the south ROW line of E. Eisenhower Boulevard; thence continuing northerly along the west line extended of said Lots to its point of intersection with the centerline of E. Eisenhower Avenue; thence easterly along said centerline to its point of intersection with the east ROW line extended of the alley between N. Lincoln Avenue and N. Jefferson Avenue; thence southerly along said west alley line extended to the point of intersection of the south ROW line of E. Eisenhower Boulevard and said west alley line; thence continuing southerly along said west alley line to its point of intersection with the north ROW line of E. 13th Street; thence continuing southerly to the point of intersection of said west alley line and the south ROW line of E. 13th Street; thence continuing southerly along said west alley line to its points of intersection with the north ROW line of E. 12th Street; thence continuing southerly to the point of intersection of said west alley line with the south ROW line of E. 12th Street; thence continuing southerly along said west alley line to its point of intersection with the north line of Little Barnes Ditch; thence continuing southerly to the point of intersection of said west alley line and the south line of said Ditch; thence continuing southerly along said west alley line to its point of intersection with the centerline of the alley ROW vacated via Ordinance 3317 and recorded at Reception Number 86051452 adjoining Block 2, Lincoln Place Addition; thence easterly along the centerline of said vacated alley to its point of intersection with the east line of Lot 10, Block 2, Lincoln Place Addition; thence southerly along said east line x feet to a point; thence westerly perpendicular to said east line to a point on the east line of Lot 11, Block 2, Lincoln Place Addition; thence southerly along the east line of Said Lot 11 to its point of intersection with the north ROW line of E. 11th Street; thence continuing southerly to the point of intersection of the east line of Lot 11, Block 3, Lincoln Place Addition and the south ROW line of E. 11th Street; thence westerly along said south ROW line to its point of intersection with the east line of Lot 13, Block 3, Lincoln Place Addition; thence southerly along said east line to its point of intersection with the north ROW line of the Great Western/Omni Railroad; thence easterly along said north ROW line to its point of intersection with the east line of Lot 10, Block 3, Lincoln Place Addition; thence southerly to the point of intersection of the east line of Lot 2, Block 5, Orchard Park Addition and the south ROW line of said Railroad; thence continuing southerly along the east line of said Lot 2 to the NE corner of Lot 1, Block 5, Orchard Park; thence continuing south along the east line of said Lot 1 to its point of intersection with the north ROW line of E. 10th Street; thence southwesterly to the point of intersection of the south ROW line of E. 10th Street and the east ROW line of the alley between N. Jefferson Avenue and N. Lincoln Avenue; thence southerly along said east ROW line to its point of intersection with the north ROW line of E. 8th Street; thence continuing southerly to the point of intersection of the south ROW line of E. 8th Street and the east ROW line of the alley between N. Jefferson Avenue and N. Lincoln Avenue; thence southerly along said east ROW line to its point of intersection with the west ROW line of N. Jefferson Avenue; thence continuing easterly to the point of intersection of said north ROW line and the east ROW line of N. Jefferson Avenue; thence southerly to the point of intersection of the south ROW line of said alley and the east ROW line of N. Jefferson Avenue; thence continuing southerly along said east line to its point of intersection with the north ROW line of E. 7th Street; thence continuing southerly to the point of intersection of the south ROW line of E. 7th Street and the east line of E.

Loveland Urban Renewal Plan, October 1, 2002

Jefferson Avenue; thence continuing southerly along said east line to its point of intersection with the north ROW line of the alley between E. 7th Street and E. 6th Street; thence continuing southerly to the point of intersection of the south ROW line of said alley and the east ROW line of N. Jefferson Avenue; thence continuing southerly along said east line to its point intersection with the north ROW line of E. 6th Avenue; thence easterly along said north line to its point intersection with the west ROW line of N. Washington Avenue; thence continuing easterly to the point intersection of the north ROW line of E. 6th Avenue and the east ROW line of N. Washington Avenue; thence southerly to the point of intersection of the south ROW line of E. 6th Avenue and the east ROW line of N. Washington Avenue; thence southerly along said east ROW line to its point of intersection with the north ROW line of the alley between E. 6th Street and E. 5th Street; thence continuing southerly to the point of intersection of the south ROW line of said alley and the east ROW line of N. Washington Avenue; thence continuing southerly along said east line to its point of intersection with the north ROW line of E. 5th Street; thence easterly along said north ROW line to its point of intersection with the west ROW line of N. Adams Avenue; thence continuing easterly to the point of intersection of the north ROW line of E. 5th Street and the east ROW line of N. Adams Avenue; thence southerly to the point of intersection of the south ROW line of E. 5th Street and the east ROW line of N. Adams Avenue; thence southerly along said east ROW line to its point of intersection with the north ROW line of E. 4th Street; thence continuing southerly to the point of intersection of the east ROW line N. Adams Avenue and the south ROW line of E. 4th Street; thence westerly to the point of intersection of the west ROW line of N. Adams Avenue and the south ROW line of E. 4th Street; thence continuing westerly along said south ROW line to the Point of Beginning.

Less and including the following parcel and rights-of-way:

Block 41 of Finley's Addition, City of Loveland, County of Larimer, State of Colorado, including the full right-of-way of E. 6th Street adjacent to the block and the area to the center line of all other adjacent public rights-of-way.

And less and excluding the following parcels and rights-of-way:

Parking Lot Parcel:

Lots 1 – 7, less the South 25 feet of Lots 1 – 3, and less the South 25 feet of the East 5 feet of Lot 4, Block 13, City of Loveland, County of Larimer, State of Colorado.

Home State Bank Parcel:

Lots 1 – 8, Block 12, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 533 N. Lincoln Avenue, Loveland, Colorado 80537.

Museum Parcel:

Lots 19 – 24, Block 12, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 503 N. Lincoln Avenue, Loveland, Colorado 80537.

Larimer County Building Parcel:

Lots 13 – 16, Block 7, City of Loveland, County of Larimer, State of Colorado and a portion of the vacated alley per Book 1712, Page 733, also known by the mailing address of 606 N. Cleveland Avenue, Loveland, Colorado 80537.

Rights-of-way:

The full right-of-way of E. 6th Street from Cleveland Avenue to Lincoln Avenue; the east boundary line to center line of the right-of-way of Jefferson Avenue from E. 6th Street to E. 5th Street; the south boundary line to center line of the right-of-way of E. 5th Street from Jefferson Avenue to Lincoln Avenue; the full right-of-way of E. 5th Street from Lincoln Avenue to Cleveland Avenue; the west boundary line to center line of the right-of-way of Lincoln Avenue from E. 5th Street to E. 6th Street; and the full right-of-way of the alley between E. 5th Street and E. 6th Street from Lincoln Avenue to Cleveland Avenue.



Community & Strategic Planning

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(970) 962-2607 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

Memorandum

To: City Council
From: Mike Scholl, Department of Economic Development
Date: September 20, 2010
RE: Staff Report/North Catalyst Project/ERN

Background:

At both the June 24, 2011 Council Study Session and the August 16, 2011 regular meeting, City Council directed staff to continue negotiations with the Brinkman Partners on the sale and development of 533 N. Lincoln Avenue (Home State Bank building). In addition, Council encouraged staff to engage with the Thompson Valley School District and the Larimer County Board of Commissioners regarding potential amendments to the Lincoln Place/Finley's Block Urban Renewal Area necessary to support the project.

The Exclusive Right to Negotiation (ERN) would formally grant the Brinkman Partners the sole right to negotiate with the City on the sale and development of 533 N. Lincoln through May 15, 2012. This would allow staff to complete negotiations, complete the amendments to the URA, and complete the financing.

Also, the Brinkman Partners were recently named the Real Estate Entrepreneur of the Year by the Everitt Real Estate Center at CSU.

Milestones:

Should the project receive Council's blessing to go forward, the Brinkmans plan to break ground in June of 2012. Prior to the property closing and groundbreaking, City Council will be required to consider amendments to the URA and/or funding package in support of the project. This will require multiple votes as the amendments, sale of property and funding all require two readings.

Urban Renewal Area:

As per Council's request at the August 16, 2011 regular meeting, staff engaged both the Thompson Valley School District (TVSD) and Larimer County Board of Commissioners regarding the proposed amendments to the URA. TVSD reviewed the changes and had no objections. A letter is included in the Council packet.

Bill Cahill, City Manager and I, presented information on the URA amendments to the Larimer County Board of Commissioners on Tuesday, November 22, 2011 at their regular administrative meeting. The County Board expressed appreciation that the City made the effort to engage the County in advance of any amendments. They indicated a general willingness to move forward with the City in partnership. This may include some URA assistance with planned improvements at the County Building located at 6th and Cleveland Avenue. Staff is planning to continue to work with the County to ensure their needs are met. We anticipate that outstanding issues with the County will be negotiated prior to Council consideration of any URA amendments.

Museum Capital Expansion Fees:

The other concern expressed by Council was the full repayment of the Museum CEFs used to purchase the Home State Bank building in 2007. The proposed plan calls for using the equity in the parking lot at 5th and Lincoln and the proceeds from the sale to the Brinkman Partners. The balance would need to be financing through the URA.

See the chart below:

2007 Purchase		2011/12 Repayment	
Museum CEFs	\$900,000	Sale to Brinkman Partners	\$200,000
Kroh Foundation	\$100,000	Equity/5 th and Lincoln	\$561,500
Erion Foundation	\$100,000	URA Financing	\$338,500
TOTAL \$1,100,000		TOTAL \$1,100,000	



Human Resources and School Support

800 South Taft Avenue • Loveland, CO 80537 • Office (970) 613-5000 • Fax (970) 613-5095

Mr. Michael Jones
Assistant Superintendent

To: Mr. Bill Cahill, Loveland City Manager

From: Dr. Ron Cabrera, Superintendent

Date: September 1, 2011

Re: Amendment to the Downtown URA project area

After reviewing the proposal to amend to the Downtown URA, the Thompson School District does not have any immediate objections and would support the City moving forward with the proposed amendment.

The City and TSD have a long history of collaboration with regard to the arts. Given the opportunity to support the expansion of the Art Museum and contribute to the ongoing revitalization of the downtown, we believe that this is an appropriate use of the Urban Renewal Authority. Further, we understand that by moving the parcel at 6th Street and Lincoln Avenue back into private ownership, the property tax base to the School District will increase.

At this time, the school district does not anticipate the development project proposed by the Brinkman Partners at 6th Street and Lincoln Avenue will significantly increase enrollment to Thompson School District. However, as the development of this property progresses, we will continue to stay involved and will provide input to what impact the final build out will have on our school enrollment.

We appreciate the opportunity to provide comments to the proposed amendment to the Urban Renewal Authority. Please let me know if you have any questions.

Sincerely,

Dr. Ron Cabrera, Superintendent of Schools
Thompson School District



CITY OF LOVELAND
ECONOMIC DEVELOPMENT OFFICE
 Civic Center • 500 East Third • Loveland, Colorado 80537
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AGENDA ITEM: 19
MEETING DATE: 12/6/2011
TO: Loveland Urban Renewal Authority Board of Commissioners
FROM: Betsey Hale, Department of Economic Development
PRESENTER: Mike Scholl, Department of Economic Development

TITLE:

A Resolution of the Board of the Loveland Urban Renewal Authority commissioning a Blight Study for property proposed to be added to the Urban Renewal Plan for Block 41 – Finley's Addition

RECOMMENDED CITY COUNCIL ACTION:

Convene as the Loveland Urban Renewal Authority Board of Commissioners and adopt a motion to approve the Resolution as recommended

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is an administrative action to consider a resolution to authorize the blight study for the purposes of amending the Finley's Block/Lincoln Place URA.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

There is minimal budget impact at this time with funding of the blight study at an estimated cost not to exceed \$7,500 but should the project move forward a request for financing to support the project will be forthcoming.

SUMMARY:

The blight study is required prior to amending the URA in support of the North Catalyst project.

REVIEWED BY CITY MANAGER:

William D. Caine

LIST OF ATTACHMENTS:

Resolution of Loveland Urban Renewal Authority commissioning Blight Study

RESOLUTION #R-86-2011

A RESOLUTION OF THE BOARD OF THE LOVELAND URBAN RENEWAL AUTHORITY COMMISSIONING A BLIGHT STUDY FOR PROPERTY PROPOSED TO BE ADDED TO THE URBAN RENEWAL PLAN FOR BLOCK 41 – FINLEY’S ADDITION

WHEREAS, on October 1, 2002, the Loveland City Council adopted Resolution #R-74-2002 approving the City of Loveland Urban Renewal Plan (“Downtown Plan”); and

WHEREAS, Section 3 of the Downtown Plan legally describes, depicts, and refers to the “Urban Renewal Area for Downtown Loveland” (“Downtown Plan Area”); and

WHEREAS, on April 26, 2005, the City Council adopted Resolution #R-32-2005 modifying the Downtown Plan by removing from the Downtown Plan Area the Finley’s Addition Plan Area, described below, resulting in a modified and amended Downtown Plan (“Amended Downtown Plan”) and a modified and amended Downtown Plan Area (“Amended Downtown Plan Area”); and

WHEREAS, the Amended Downtown Plan Area currently includes certain real property legally described as set forth in **Exhibit A**, attached and incorporated by reference (“Property”), which is owned in part by the City, and in part by Larimer County; and

WHEREAS, a portion of the Property owned by the City is the site of an obsolete commercial building proposed for disposition and redevelopment as the “North Catalyst Project” (“North Catalyst Site”); and

WHEREAS, the City Council desires to remove the Property from the Downtown Plan Area and add it to the Finley’s Addition Plan Area, thereby allowing all of the tax increment revenues from the Property, when developed, and the Finley’s Addition Plan Area, after satisfaction of all of the obligations under the “Amended and Restated Master Financing Agreement for Block 41 – Finley’s Addition Urban Renewal Plan Area” dated May 22, 2007 (“MFA”), to be used by the Loveland Urban Renewal Authority (“Authority”) to finance the construction of certain public improvements on the Property; and

WHEREAS, C.R.S. § 31-25-107(7) allows the City Council to further amend the Amended Downtown Plan at any time without being subject to the notice and blight finding requirements of said section, provided that such modification will not substantially change the Amended Downtown Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, on December 6, 2011, the City Council adopted Resolution #R-__-2011, in which it found that the removal of the Property, which consists of approximately 2.8 acres, from the existing Amended Downtown Plan Area, which currently consists of approximately 230 acres, will not substantially change the Amended Downtown Plan in land area, land use, design,

building requirements, timing, or procedure, as previously approved; and

WHEREAS, on April 26 2005, the City Council adopted Resolution #R-33-2005 approving an urban renewal plan referred to as the “City of Loveland Urban Renewal Plan for Block 41 – Finley’s Addition” (“Finley’s Addition Plan”); and

WHEREAS, the Finley’s Addition Plan legally describes and depicts the Plan’s boundaries (“Finley’s Addition Plan Area”); and

WHEREAS, the City Council desires to modify the Finley’s Addition Plan by adding the Property to the Finley’s Addition Plan Area to facilitate redevelopment of the North Catalyst Site as described above; and

WHEREAS, C.R.S. § 31-25-107(7) allows the City Council to amend the Finley’s Addition Plan at any time provided that any substantial changes to the Finley’s Addition Plan are subject to the notice and blight finding requirements of said section, and all other applicable requirements of said section; and

WHEREAS, on December 6, 2011, the City Council adopted Resolution #R-__-2011, in which it found that the addition of the Property, which consists of approximately 2.8 acres, to the existing Finley’s Addition Plan Area, which currently consists of approximately 2.15 acres, will substantially change the Finley’s Addition Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, the Board of the Authority (“Board”) desires to commission a study to determine whether the Property is a slum, blighted area, or a combination thereof, and provide notice of the study, in accordance with the requirements of C.R.S. § 31-25-107(1); and

WHEREAS, the Board desires to enter into an intergovernmental agreement with the City to aid and cooperate with the City in undertaking the North Catalyst Project and carrying out the Finley’s Addition Plan as it may hereafter be modified and amended; and

WHEREAS, as governmental entities in Colorado, the Authority and the City are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

NOW, THEREFORE, BE IT RESOLVED BY THE URBAN RENEWAL AUTHORITY OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the Board hereby commissions a study to determine whether the Property is a slum, blighted area, or a combination thereof (“Blight Study”) in accordance with the requirements of C.R.S. § 31-25-107(1).

Section 2. That the Board hereby directs that notice be given to any owner of private property located in the area that is the subject of the Blight Study by mailing notice to the owner by regular mail at the last-known address of record in accordance with the requirements of

C.R.S. § 31-25-107(1).

Section 3. That the Board hereby authorizes the Authority to enter into an intergovernmental agreement, in a form approved by the City Attorney, with the City for the purpose of accepting a loan from the City in such amount as may be necessary to commission the Blight Study, and authorizes the Chairman of the Board to sign said intergovernmental agreement on behalf of the Authority.

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

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Chairman

ATTEST:

Board Secretary

APPROVED AS TO FORM:

Shane L. Olters
Assistant City Attorney

Exhibit A
Property – Legal Description

The Property consists of the following four parcels:

Parking Lot Parcel:

Lots 1 – 7, less the South 25 feet of Lots 1 – 3, and less the South 25 feet of the East 5 feet of Lot 4, Block 13, City of Loveland, County of Larimer, State of Colorado.

Home State Bank Parcel:

Lots 1 – 8, Block 12, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 533 N. Lincoln Avenue, Loveland, Colorado 80537.

Museum Parcel:

Lots 19 – 24, Block 12, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 503 N. Lincoln Avenue, Loveland, Colorado 80537.

Larimer County Building Parcel:

Lots 13 – 16, Block 7, City of Loveland, County of Larimer, State of Colorado and a portion of the vacated alley per Book 1712, Page 733, also known by the mailing address of 606 N. Cleveland Avenue, Loveland, Colorado 80537.



CITY OF LOVELAND
FINANCE DEPARTMENT

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(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: **20**
MEETING DATE: 12/6/2011
TO: City Council
FROM: Bonnie Steele, Finance
PRESENTER: Bonnie Steele

TITLE:
October 2011 Financial Report

RECOMMENDED CITY COUNCIL ACTION:
This is an information only item. No action is required.

DESCRIPTION:
The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the ten months ending October 31, 2011.

BUDGET IMPACT:
 Positive
 Negative
 Neutral or negligible

SUMMARY:
The Snapshot Report is submitted for Council review and includes the reporting of the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the ten months ending October 31, 2011. Citywide Revenue (excluding internal transfers) of \$168,724,281 is 103.4% of year to date (YTD) budget or \$5,570,097 over the budget. Sales Tax collections year to date are 105.2% of the YTD budget or \$1,317,698 over budget. Building Material Use Tax is 52.4% of YTD budget, or \$730,153 under budget. The year to date Sales and Use Tax collections were 102.2% of YTD budget or \$644,629 over YTD budget. When the combined sales and use tax for the current year are compared to 2010 the same period last year, they are higher by 4.8% or \$1,340,083.

City wide total expenditures of \$162,979,848 (excluding internal transfers) are 84.5% of the YTD budget or \$29,844,146 under the budget, primarily due to the construction timing of capital projects (61.7% YTD budget).

The City's health claims paid year-to-date is \$5,547,138 or 90.6% of budget. Compared to 2010 for the same period, claims paid in 2011 increased \$385,742 or 7.5%. The City's cash and reserve balance year-to-date was \$194,847,971.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

Snapshot report for October 2011

SnapShot

Monthly Financial Report

October 2011

Inside This Edition

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A Snapshot In Time

- Citywide Revenue, excluding transfers between funds, \$168.7 million (103.4% of Year-To-Date Budget, 3.4% above projected)
- Sales & Use Tax Collection, \$29.4 million (102.2% of Year-To-Date Budget, 2.2% above projected)
- Citywide Expenditures, excluding transfers between funds, \$163.0 million (84.5% of Year-To-Date Budget, 15.5% below projected)
- Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$5.7 million.
- General Fund Revenue, excluding transfers between funds, \$54.9 million (103.4% of Year-To-Date Budget, 3.4% above projected).
- General Fund Expenditures, excluding transfers between funds, \$48.2 million, (92.8% of Year-To-Date Budget, 7.2% below projected)
- General Fund Revenues exceed Expenditures by \$5.2 million.
- Health Claims, \$5.5 million (90.6% of Year-To-Date Budget, 9.4% below projected)
- Cash & Reserves Year-To-Date Balance, \$194.8 million, \$138.2 million or 71.0% of these funds are restricted or reserved primarily for future capital projects.

The Sales Tax Basics



October 2011	Motor Vehicle		Building		Combined
	Sales Tax	Use Tax	Materials Use Tax	Building	
Budget 2011	\$ 25,553,300	\$ 1,686,840	\$ 1,534,090	\$ 28,774,230	
Actual 2011	\$ 26,870,998	\$ 1,743,924	\$ 803,937	\$ 29,418,859	
% of Budget	105.2%	103.4%	52.4%	102.2%	
Actual 2010	\$ 25,322,960	\$ 1,653,580	\$ 1,102,235	\$ 28,078,775	
Change from prior year	6.1%	5.5%	-27.1%	4.8%	

Financial Sustainability

The City of Loveland uses a 10-year financial planning horizon. Last year the financial plan indicated that General Fund expenditures would exceed General Fund revenues annually by an average of \$3.5 million 2012-2020. Therefore the City engaged in a process to achieve financial sustainability over that time by engaging the public and identifying a strategy for balancing future budgets. Recommendations were developed pursuant to the principles adopted by City Council, and reflecting the policy views and priorities expressed by the City Council and the public. The resulting strategy includes both expenditure reductions and revenue increases, as the Council and the public indicated was desirable. The cumulative impact from recommended actions will mount over the next decade to \$33.5 million (\$22.6 million in cost reductions, \$6.6 million in revenue). The recommended actions consist of 81% cost reductions and 19% in revenues benefiting the General Fund for 2012. The strategy is also phased in over a number of years. Savings from early actions allow phased-in reductions in cost over the time period. City Council formally approved the strategy June 7, 2011.

Financial Sustainability Strategies Can Be Found At:

CITYOFLOVELAND.ORG

- ↳ Departments
 - ↳ Finance
 - ↳ Administration
 - ↳ Financial Reports
 - ↳ Financial Sustainability Strategies

City of Loveland
500 East 3rd Street
Loveland, CO 80537



Citywide Revenues & Expenditures

Monthly Financial Report

Combined Statement of Revenues and Expenditures October 2011

REVENUE	Current Month	YTD Actual	YTD Revised Budget **	% of Budget
General Governmental				
1 General Fund	\$ 4,216,110	\$ 54,860,566	\$ 53,068,718	103.4%
2 Special Revenue	134,617	912,792	1,012,655	90.1%
3 Other Entities	156,797	17,927,701	16,490,186	108.7%
4 Internal Service	1,436,101	13,599,993	13,639,008	99.7%
5 Subtotal General Govt Operations	\$ 5,943,625	\$ 87,301,052	\$ 84,210,567	103.7%
6 Capital Projects	708,331	9,972,413	11,806,677	84.5%
Enterprise Fund				
7 Water & Power	5,994,258	59,187,637	55,167,260	107.3%
8 Stormwater	359,963	3,540,467	3,583,330	98.8%
9 Golf	244,261	3,428,257	3,417,410	100.3%
10 Solid Waste	535,538	5,294,456	4,968,940	106.6%
11 Subtotal Enterprise	\$ 7,134,020	\$ 71,450,816	\$ 67,136,940	106.4%
12 Total Revenue	\$ 13,785,976	\$ 168,724,281	\$ 163,154,184	103.4%
<i>Prior Year External Revenue</i>		156,920,426		
<i>Increase (-Decrease) From Prior Year</i>		7.5%		
13 Internal Transfers	386,829	14,006,050	18,714,057	74.8%
14 Grand Total Revenues	\$ 14,172,805	\$ 182,730,330	\$ 181,868,241	100.5%
EXPENDITURES				
General Governmental				
15 General Fund	\$ 4,467,732	\$ 47,345,644	\$ 50,147,206	94.4%
16 Special Revenue	109,389	605,073	897,452	67.4%
17 Other Entities	137,912	12,367,514	13,059,579	94.7%
18 Internal Services	1,097,006	11,483,512	13,891,088	82.7%
19 Subtotal General Gov't Operations	\$ 5,812,039	\$ 71,801,743	\$ 77,995,325	92.1%
20 Capital	2,603,629	38,628,579	62,583,387	61.7%
Enterprise Fund				
21 Water & Power	4,276,203	45,328,030	44,551,360	101.7%
22 Stormwater	153,853	1,671,908	1,718,002	97.3%
23 Golf	234,005	2,212,344	2,277,204	97.2%
24 Solid Waste	332,412	3,337,245	3,698,716	90.2%
25 Subtotal Enterprise	\$ 4,996,473	\$ 52,549,526	\$ 52,245,282	100.6%
26 Total Expenditures	\$ 13,412,141	\$ 162,979,848	\$ 192,823,994	84.5%
<i>Prior Year External Expenditures</i>		146,516,572		
<i>Increase (-Decrease) From Prior Year</i>		11.2%		
27 Internal Transfers	386,829	14,006,050	18,714,057	74.8%
28 Grand Total Expenditures	\$ 13,798,970	\$ 176,985,898	\$ 211,538,051	83.7%

** Based on seasonality of receipts and expenditures since 1995.

Special Revenue Funds: Community Development Block Grant, Cemetery, Local Improvement District, Lodging Tax, Affordable Housing, Seizure & Forfeitures.

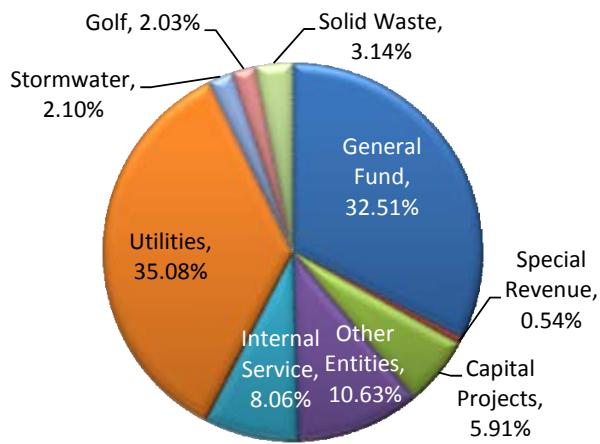
General Government Capital Projects Fund: Capital Expansion Fee Funds, Park Improvement, Conservation Trust, Open Space, Art In Public Places.

Other Entities Fund: Special Improvement District #1, Airport, General Improvement District #1, Loveland Urban Renewal Authority, Loveland/Larimer Building Authority.

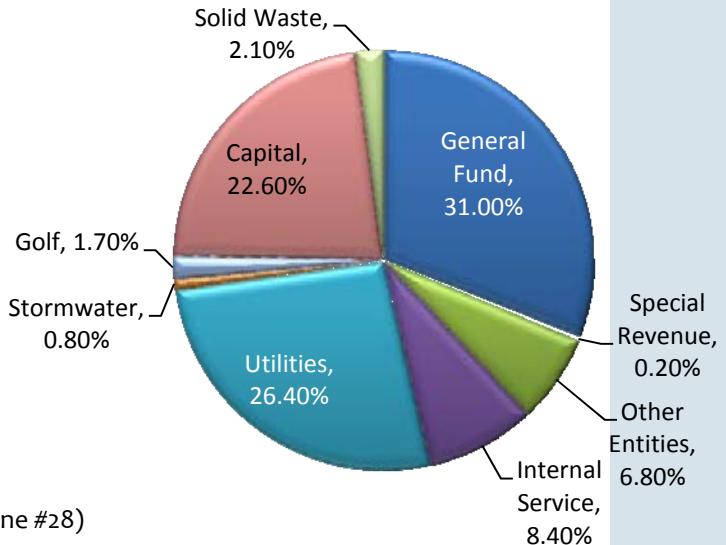
Internal Service Funds: Risk/Insurance, Fleet, Employee Benefits.

October 2011

**YTD Operating Revenues of
\$168.7 Million**



**YTD Operating Expenditures of
\$163.0 Million**



Revenues exceed expenditures YTD by \$5,744,433. (Line #14 less Line #28)

Special Revenues (Line #2) are under budget due to less grants from Community Development Block program.

Other Entities (line 3) are over budget due to higher than anticipated commissions, aircraft fuel tax, and PFC revenue at the airport, property taxes in the Urban Renewal Authority, and special assessments in the Special Improvement District.

Capital Projects (Line #6) is under budget due to lower building activity, CEF fee credits given on multi-family units in the Van DeWater Subdivision and lower grant revenue in the capital projects fund.

Water & Power (Line # 7) is over budget due to System Impact fees paid on multi-family units in the Van DeWater and Lake Vista subdivisions.

Solid Waste (Line # 10) is over budget due to proceeds on sale of assets and higher than anticipated sales of recyclable materials

Internal transfers (Lines #13 & #27) is under budget due to slower than anticipated progress on several projects in the capital projects fund. Transfers are made based on actual expenditures.

Special Revenue (Line #16) is under budget due to timing of Grants from lodging tax revenue and CDBG.

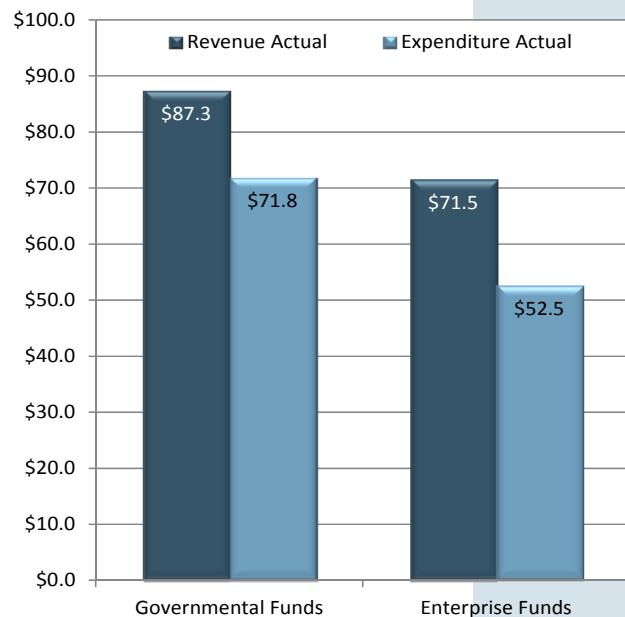
Other Entities (Line #17) are under budget due to lower payments to the Centerra TIF and the Urban Renewal Authority.

Internal services (Line #18) is under budget due to timing of recording health claims, and payments for workers compensation.

Capital expenditures (Line #20) is under budget due to low activity on several projects throughout the City.

Solid Waste (Line #24) is under budget due to less spending on carts and bins, yard waste and solid waste disposal charges, and personal services.

**YTD Operating Revenue & Expenditures
By Comparison, Excluding Transfers**



General Fund Revenues & Expenditures

P . 385

Monthly Financial Report

General Fund Revenue & Expenditures October 2011

	REVENUE	October 2011	YTD Actual	YTD Revised Budget	% of Budget
1	Taxes				
2	Property Tax	43,342	7,655,650	7,490,240	102.2%
3	Sales Tax	2,746,865	26,870,997	25,553,300	105.2%
4	Building Use Tax	17,021	803,937	1,534,090	52.4%
5	Auto Use Tax	180,546	1,743,925	1,686,840	103.4%
6	Other Taxes	274,881	2,409,298	2,092,960	115.1%
7	Intergovernmental	105,924	5,476,243	5,632,846	97.2%
8	License & Permits	-	-	-	
9	Building Permits	82,417	956,750	650,900	147.0%
10	Other Permits	20,020	407,313	250,930	162.3%
11	Charges For Services	208,273	3,036,541	3,010,930	100.9%
12	Fines & Forfeitures	79,025	785,239	801,940	97.9%
13	Interest Income	16,076	454,566	373,150	121.8%
14	Miscellaneous	441,720	4,260,108	3,990,592	106.8%
15	<i>Subtotal</i>	<i>\$ 4,216,110</i>	<i>\$ 54,860,566</i>	<i>\$ 53,068,718</i>	<i>103.4%</i>
16	Internal Transfers	174,258	1,768,210	1,790,794	98.7%
17	Total Revenue	\$ 4,390,368	\$ 56,628,776	\$ 54,859,512	103.2%
	EXPENDITURES				
	Operating				
18	Legislative	\$ 6,928	\$ 85,282	\$ 104,485	81.6%
19	Executive & Legal	136,315	1,485,451	1,494,745	99.4%
20	Comm. & Bus. Relations	64,654	765,271	1,336,384	57.3%
21	Cultural Services	118,845	976,481	1,028,930	94.9%
22	Development Services	248,208	2,486,022	2,920,978	85.1%
23	Finance	190,416	1,719,775	2,012,221	85.5%
24	Fire & Rescue	657,007	6,452,148	6,545,067	98.6%
25	Human Resources	54,870	602,575	838,384	71.9%
26	Information Technology	234,160	2,564,147	2,911,438	88.1%
27	Library	198,320	1,864,828	2,008,129	92.9%
28	Parks & Recreation	643,411	6,256,811	7,049,922	88.8%
29	Police	1,225,727	13,331,987	13,633,109	97.8%
30	Public Works	847,272	9,156,870	9,405,525	97.4%
31	Non-Departmental	15,618	417,318	639,371	65.3%
32	<i>Subtotal Operating</i>	<i>\$ 4,641,752</i>	<i>\$ 48,164,967</i>	<i>\$ 51,928,688</i>	<i>92.8%</i>
33	Internal Transfers	131,856	3,228,020	4,578,663	70.5%
34	Total Expenditures	\$ 4,773,608	\$ 51,392,987	\$ 56,507,351	90.9%

October 2011

Building Use Tax (Line #4) is under budget due to low building activity.

Other Taxes (Line # 6) is over budget due to higher revenue from sales and use tax audits, and cable TV tax.

Building Permits (Line #9) is over budget due to fees paid for an office building on Rocky Mountain Avenue.

Other Permits (Line #10) is over budget primarily due to occupational, liquor, and, police and fire special events permits , inspection fees, and street cut permits.

Charges for Services (Line #11) is over budget primarily due to recreation and adult athletics revenues.

Interest Income (Line #13) is over budget due to higher than expected interest earnings.

Miscellaneous (Line #14) is over budget due to higher than anticipated collections for rental income, Library and Cultural Services donations, proceeds on sale of assets, construction management fees, and police drug seizure revenue.

Legislative (Line #18) is under budget mainly due to budget dollars for the Council Advance and travel and meetings not being used.

Comm. & Bus. Relations (Line #20) is under budget due to timing in spending their purchased services, and economic incentives budgets.

Cultural Services (Line #21) is under budget due to timing in spending their supplies and capital budgets.

Development Services (Line #22) is under budget due to timing in spending their supplies, grants and historic preservation budgets.

Finance (Line #23) is under budget due to timing in spending their supplies, purchased services budgets for revenue audits, and bank charges/investment fees.

Human Resources (Line #25) is under budget due to timing in spending their supplies, and purchased services budget, as well as a vacant position.

Information Technology (Line #26) is under budget due to timing in spending their computer supplies, capital, and purchased services budgets.

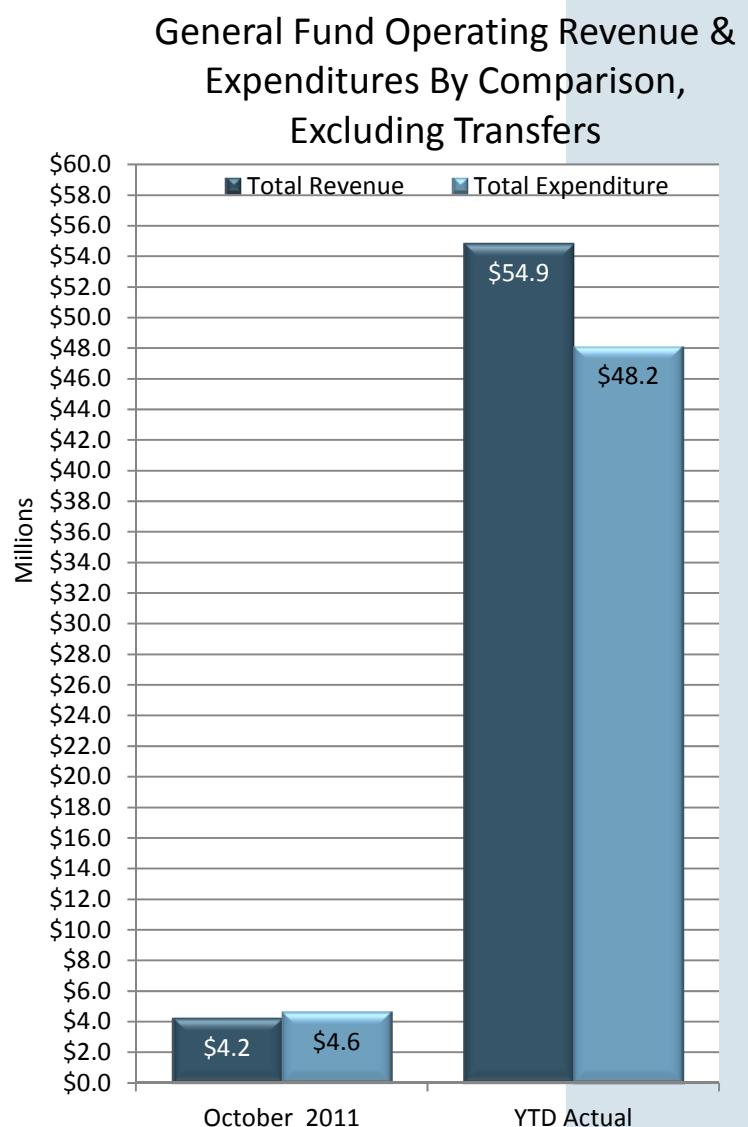
Library (Line #27) is under budget due to timing in spending their supplies and capital budgets.

Parks & Recreation (Line #28) is under budget due to timing in spending their personal services, and capital budgets.

Non-Departmental (Line #31) is under budget due to timing in spending their purchased services, personal services, and supplies budgets.

Internal Transfers (Line #33) are under budget due to timing of capital projects expenditures. Transfers are made monthly based on actual project costs. The transfer to the Recreation and Fire CEF fund for the interfund loan is lower than budgeted due to a lower interest rate than anticipated during the budget process.

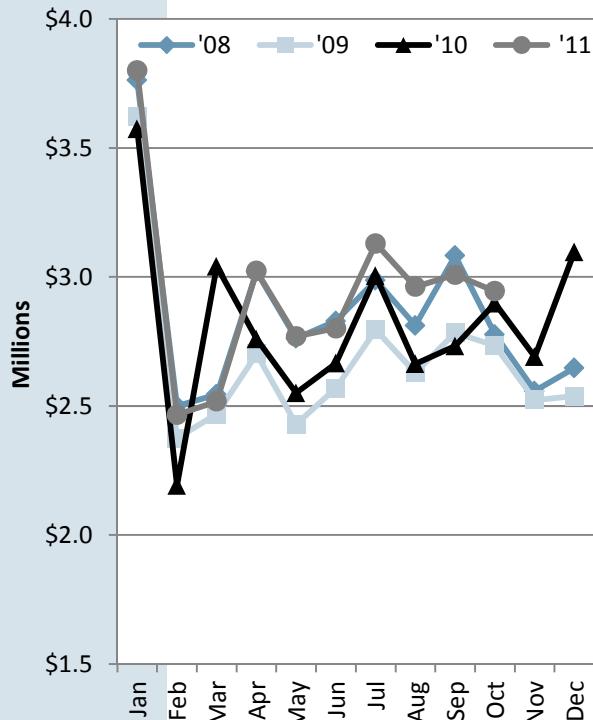
Revenues exceed expenditures by \$5,235,790 (line #17 less line #34)



Tax Totals & Comparisons

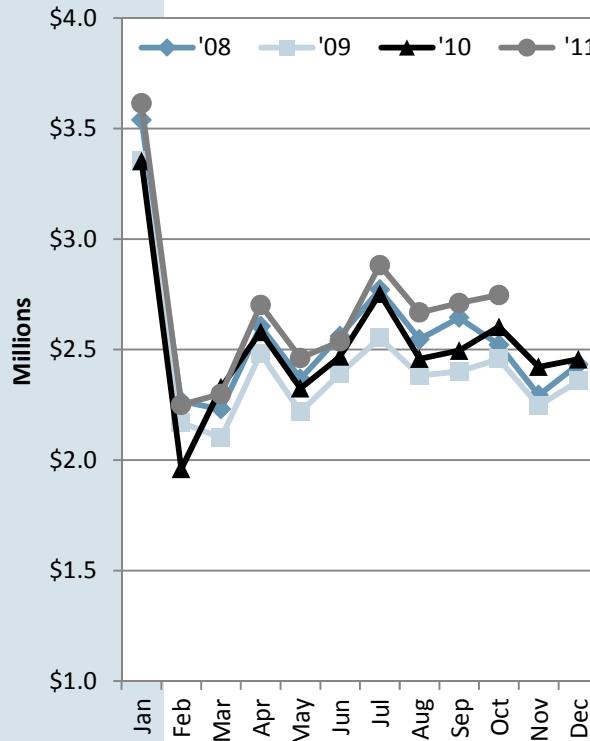
Monthly Financial Report

Sales & Use Tax



	'08	'09	'10	'11	2011 Budget	+ / - Budget
Jan	\$ 3,763,212	\$ 3,622,251	\$ 3,573,972	\$ 3,799,760	\$ 3,708,140	2.5%
Feb	\$ 2,499,464	\$ 2,374,608	\$ 2,191,609	\$ 2,465,447	\$ 2,618,440	-5.8%
Mar	\$ 2,544,688	\$ 2,468,095	\$ 3,041,068	\$ 2,517,162	\$ 2,559,770	-1.7%
Apr	\$ 3,020,580	\$ 2,701,737	\$ 2,759,556	\$ 3,022,770	\$ 2,910,840	3.8%
May	\$ 2,761,197	\$ 2,428,860	\$ 2,550,227	\$ 2,769,526	\$ 2,628,350	5.4%
Jun	\$ 2,829,423	\$ 2,569,125	\$ 2,665,632	\$ 2,800,184	\$ 2,738,110	2.3%
Jul	\$ 2,987,495	\$ 2,794,222	\$ 3,004,324	\$ 3,129,254	\$ 2,968,340	5.4%
Aug	\$ 2,811,579	\$ 2,628,842	\$ 2,662,932	\$ 2,961,686	\$ 2,815,690	5.2%
Sep	\$ 3,082,644	\$ 2,782,768	\$ 2,732,087	\$ 3,008,637	\$ 2,884,640	4.3%
Oct	\$ 2,776,559	\$ 2,733,964	\$ 2,897,370	\$ 2,944,433	\$ 2,941,910	0.1%
Nov	\$ 2,557,802	\$ 2,522,092	\$ 2,690,549		\$ 2,659,950	
Dec	\$ 2,646,945	\$ 2,537,802	\$ 3,096,111		\$ 2,682,740	
	\$ 34,281,588	\$ 32,164,365	\$ 33,865,435	\$ 29,418,859	\$ 34,116,920	
YTD	\$ 29,076,841	\$ 27,104,471	\$ 28,078,775	\$ 29,418,859	\$ 28,774,230	2.2%

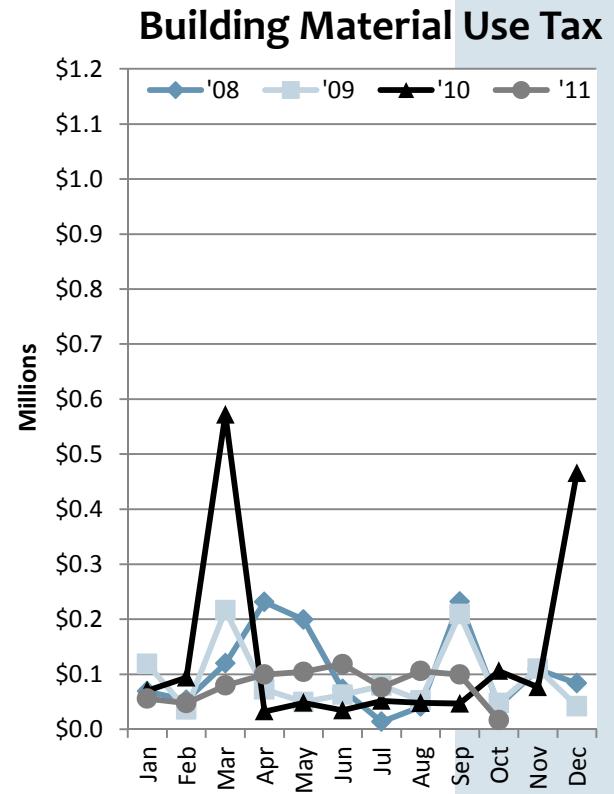
Retail Sales Tax



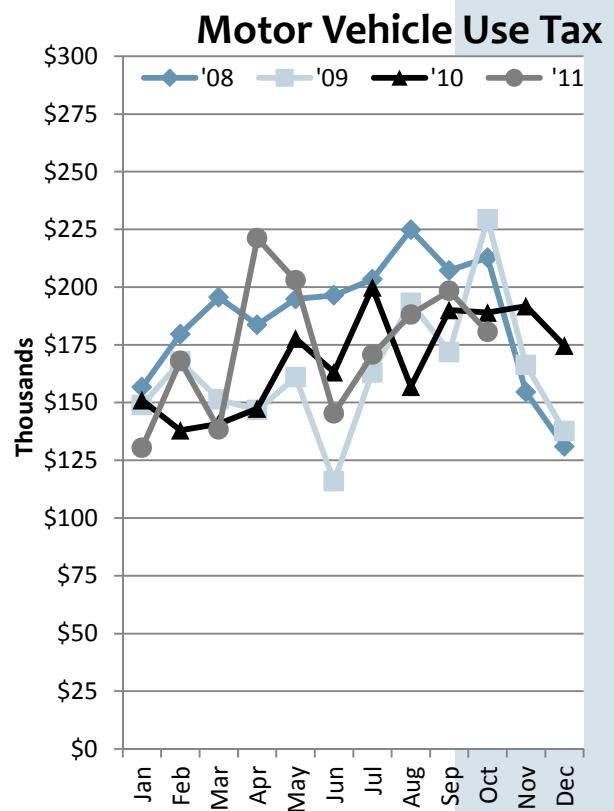
	'08	'09	'10	'11	2011 Budget	+ / - Budget
Jan	\$ 3,538,021	\$ 3,354,704	\$ 3,352,821	\$ 3,613,881	\$ 3,419,500	5.7%
Feb	\$ 2,266,805	\$ 2,170,562	\$ 1,959,729	\$ 2,249,749	\$ 2,333,970	-3.6%
Mar	\$ 2,229,963	\$ 2,100,216	\$ 2,328,701	\$ 2,299,237	\$ 2,216,570	3.7%
Apr	\$ 2,605,919	\$ 2,482,752	\$ 2,579,918	\$ 2,702,024	\$ 2,585,290	4.5%
May	\$ 2,367,597	\$ 2,218,482	\$ 2,324,395	\$ 2,462,213	\$ 2,310,110	6.6%
Jun	\$ 2,560,453	\$ 2,390,535	\$ 2,468,207	\$ 2,536,541	\$ 2,489,270	1.9%
Jul	\$ 2,770,864	\$ 2,552,195	\$ 2,752,870	\$ 2,882,075	\$ 2,657,610	8.4%
Aug	\$ 2,546,052	\$ 2,383,119	\$ 2,458,382	\$ 2,667,674	\$ 2,481,550	7.5%
Sep	\$ 2,644,113	\$ 2,401,596	\$ 2,495,338	\$ 2,710,738	\$ 2,500,790	8.4%
Oct	\$ 2,521,253	\$ 2,457,158	\$ 2,602,599	\$ 2,746,866	\$ 2,558,640	7.4%
Nov	\$ 2,294,503	\$ 2,245,659	\$ 2,422,352		\$ 2,338,410	
Dec	\$ 2,432,635	\$ 2,358,273	\$ 2,455,821		\$ 2,424,090	
	\$ 30,778,179	\$ 29,115,253	\$ 30,201,133	\$ 26,870,998	\$ 30,315,800	
YTD	\$ 26,051,040	\$ 24,511,320	\$ 25,322,960	\$ 26,870,998	\$ 25,553,300	5.2%

October 2011

	'08	'09	'10	'11	2011 Budget	+ / - Budget
Jan	\$ 68,522	\$ 118,719	\$ 70,117	\$ 55,542	\$ 136,380	-59.3%
Feb	\$ 52,986	\$ 36,254	\$ 93,928	\$ 47,621	\$ 112,810	-57.8%
Mar	\$ 119,149	\$ 216,500	\$ 571,599	\$ 79,590	\$ 188,330	-57.7%
Apr	\$ 230,954	\$ 72,251	\$ 32,260	\$ 99,569	\$ 175,440	-43.2%
May	\$ 198,765	\$ 49,434	\$ 48,145	\$ 104,373	\$ 153,590	-32.0%
Jun	\$ 72,544	\$ 62,723	\$ 34,349	\$ 118,318	\$ 130,300	-9.2%
Jul	\$ 13,276	\$ 79,061	\$ 51,657	\$ 76,488	\$ 144,010	-46.9%
Aug	\$ 40,683	\$ 52,578	\$ 47,716	\$ 105,871	\$ 136,550	-22.5%
Sep	\$ 231,321	\$ 209,338	\$ 46,646	\$ 99,544	\$ 208,060	-52.2%
Oct	\$ 42,561	\$ 47,437	\$ 105,818	\$ 17,021	\$ 148,620	-88.5%
Nov	\$ 108,737	\$ 110,207	\$ 76,444		\$ 151,490	
Dec	\$ 83,315	\$ 41,844	\$ 465,626		\$ 115,540	
	\$ 1,262,815	\$ 1,096,346	\$ 1,644,305	\$ 803,937	\$ 1,801,120	
YTD	\$ 1,070,762	\$ 944,295	\$ 1,102,235	\$ 803,937	\$ 1,534,090	-47.6%



	'08	'09	'10	'11	2011 Budget	+ / - Budget
Jan	\$ 156,669	\$ 148,828	\$ 151,034	\$ 130,337	\$ 152,260	-14.4%
Feb	\$ 179,673	\$ 167,793	\$ 137,951	\$ 168,077	\$ 171,660	-2.1%
Mar	\$ 195,576	\$ 151,378	\$ 140,768	\$ 138,335	\$ 154,870	-10.7%
Apr	\$ 183,707	\$ 146,734	\$ 147,378	\$ 221,177	\$ 150,110	47.3%
May	\$ 194,835	\$ 160,943	\$ 177,687	\$ 202,940	\$ 164,650	23.3%
Jun	\$ 196,426	\$ 115,867	\$ 163,076	\$ 145,325	\$ 118,540	22.6%
Jul	\$ 203,356	\$ 162,966	\$ 199,797	\$ 170,691	\$ 166,720	2.4%
Aug	\$ 224,843	\$ 193,144	\$ 156,834	\$ 188,141	\$ 197,590	-4.8%
Sep	\$ 207,209	\$ 171,833	\$ 190,102	\$ 198,355	\$ 175,790	12.8%
Oct	\$ 212,745	\$ 229,369	\$ 188,953	\$ 180,546	\$ 234,650	-23.1%
Nov	\$ 154,561	\$ 166,225	\$ 191,753		\$ 170,050	
Dec	\$ 130,995	\$ 137,685	\$ 174,664		\$ 143,110	
	\$ 2,240,595	\$ 1,952,766	\$ 2,019,997	\$ 1,743,924	\$ 2,000,000	
YTD	\$ 1,955,039	\$ 1,648,856	\$ 1,653,580	\$ 1,743,924	\$ 1,686,840	3.4%



Sales Tax Collections

Monthly Financial Report

Collections By Standard Industrial Classification Code

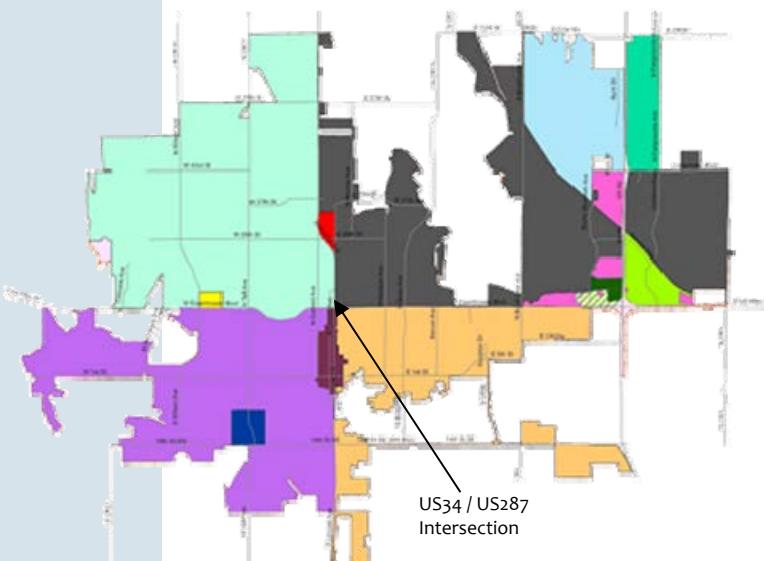
Summary of Sales Tax Collections by Industry Code
October 2011

Description	YTD 2011	YTD 2010	\$ Change	% Change	% of Total	Cumulative %
1 Department Stores & General Merchandise	\$ 6,158,359	\$ 6,057,341	\$ 101,019	1.7%	22.9%	22.9%
2 Restaurants & Bars	3,257,817	2,959,497	\$ 298,320	10.1%	12.1%	35.0%
3 Grocery Stores & Specialty Foods	2,700,437	2,565,795	\$ 134,642	5.2%	10.0%	45.1%
4 Clothing & Clothing Accessories Stores	1,982,769	1,745,963	\$ 236,807	13.6%	7.4%	52.5%
5 Building Material & Lawn & Garden Supplies	1,765,022	1,696,974	\$ 68,048	4.0%	6.6%	59.0%
6 Motor Vehicle Dealers, Auto Parts & Leasing	1,653,143	1,516,888	\$ 136,255	9.0%	6.2%	65.2%
7 Utilities	1,428,308	1,401,067	\$ 27,242	1.9%	5.3%	70.5%
8 Sporting Goods, Hobby, Book & Music Stores	1,292,086	1,196,364	\$ 95,722	8.0%	4.8%	75.3%
9 Broadcasting & Telecommunications	1,111,600	1,086,172	\$ 25,428	2.3%	4.1%	79.5%
10 Used Merchandise Stores	762,825	686,623	\$ 76,203	11.1%	2.8%	82.3%
11 Beer, Wine & Liquor Stores	601,877	570,765	\$ 31,112	5.5%	2.2%	84.5%
12 Hotels, Motels & Other Accommodations	591,144	521,560	\$ 69,584	13.3%	2.2%	86.7%
13 Electronics & Appliance Stores	548,958	535,704	\$ 13,254	2.5%	2.0%	88.8%
14 Health & Personal Care Stores	460,209	415,012	\$ 45,197	10.9%	1.7%	90.5%
15 Consumer Goods & Commercial Equipment	432,993	390,578	\$ 42,415	10.9%	1.6%	92.1%
16 Electronic Shopping & Mail-Order Houses	378,479	312,787	\$ 65,692	21.0%	1.4%	93.5%
17 Furniture & Home Furnishing Stores	363,568	321,694	\$ 41,874	13.0%	1.4%	94.9%
18 Office Supplies, Stationery & Gift Stores	277,950	275,438	\$ 2,512	0.9%	1.0%	95.9%
19 Gasoline Stations with Convenience Stores	209,415	199,707	\$ 9,707	4.9%	0.8%	96.7%
20 All Other Categories	894,038	867,031	\$ 27,007	3.1%	3.3%	100.0%
Total	\$ 26,870,997	\$ 25,322,960	\$ 1,548,038	6.1%	100.0%	

Sales tax revenue through October 2011 is 6.1% over 2010. Every geographical area remains positive year-to-date for sales over the same period last year. The North East Loveland area continues showing strong gains over last year on the performances of the hotels in the area and several new businesses in the Crossroads section of the North East Loveland area. The Outlet Mall has maintained its positive sales trend, coming in at 13.2% over 2010, thanks in part to several new store openings.

By business category, Clothing & Clothing Accessories are up by 13.6%, while Hotels & Motels remain up 13.3% over last year, followed by Furniture and Home Furnishing Stores, which are up 13%. Restaurants & Bars showed the largest increase in dollars while achieving a 10.1% increase over 2010.

The year to date Audit Revenue is at \$502,942 and year to date Lodging Tax revenue is at \$468,328.



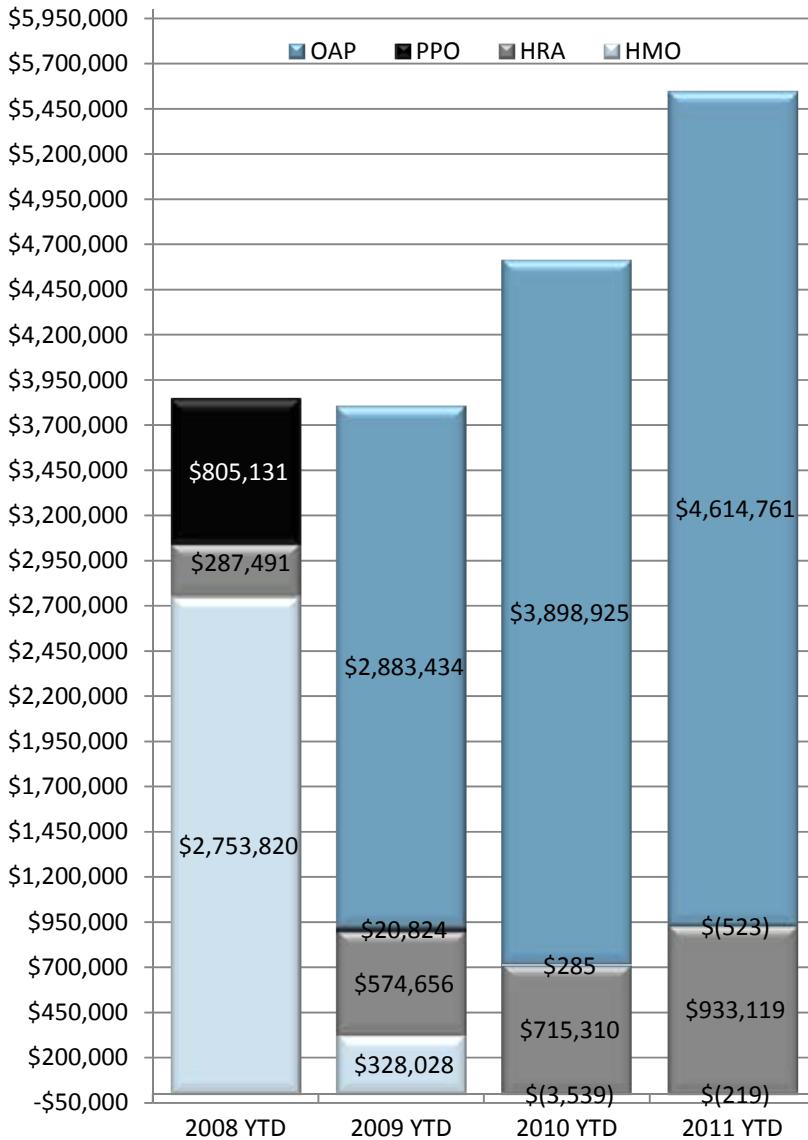
Collections By Geographical Code

Geographical Area	YTD 2011	YTD 2010	% Change
North West Loveland	\$3,113,720	\$3,076,290	1.2%
South West Loveland	\$910,548	\$880,590	3.4%
North East Loveland	\$1,763,795	\$1,617,135	9.1%
South East Loveland	\$6,624,803	\$6,419,307	3.2%
Orchards Shopping Center	\$1,680,280	\$1,585,442	6.0%
Columbine Shopping Center	\$515,777	\$473,996	8.8%
Downtown	\$875,096	\$841,474	4.0%
Centerra	\$2,488,883	\$2,277,542	9.3%
Promenade Shops	\$1,960,766	\$1,857,185	5.6%
Outlet Mall	\$1,089,510	\$962,538	13.2%
Thompson Valley Shopping Center	\$1,290,146	\$1,192,049	8.2%
The Ranch	\$555,207	\$470,272	18.1%
Airport	\$329,846	\$278,374	18.5%
All Other Areas	\$3,672,622	\$3,390,767	8.3%
Total	\$26,870,998	\$25,322,960	6.1%

Health Care Claims

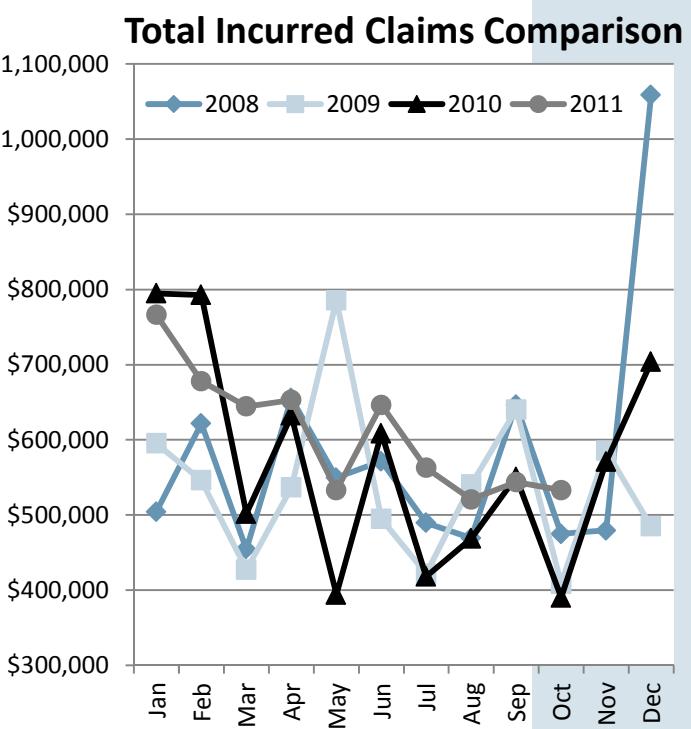
October 2011

September Incurred Claims Posted In October YTD Processed Claims



Claims Over \$25k Comparison (2008-2011)				
October	2008	2009	2010	2011
# of claims	30	36	38	48
Cost of claims	\$ 1,963,906	\$ 2,106,610	\$ 3,106,875	\$ 2,534,961

of Stoploss Claims: 0



Cash Basis for Claims Paid

		HMO	OAP	HRA	PPO	Total	Budget	\$ Over / (Under)		% Over / (Under) Budg
								Budget	Budget	
2011	October	\$ -	\$ 450,099	\$ 93,493	\$ -	\$ 543,592	\$ 680,043	\$ (136,451)	\$ (136,451)	-20.1%
	YTD	-	4,614,761	932,900	\$(523)	5,547,138	6,120,383	(573,245)	(573,245)	-9.4%
2010	October	261	357,925	110,401	-	468,587	630,046	(161,459)	(161,459)	-25.6%
	YTD	(3,459)	4,347,763	816,807	285	5,161,396	5,670,413	(509,017)	(509,017)	-9.0%
Change	October	(261)	92,174	(16,908)	-	75,005				
	% Oct	0.0%	25.8%	-15.3%	0.0%	16.0%				
	YTD	\$ (3,459)	\$ 266,998	\$ 116,093	\$ (808)	\$ 385,742				
	% YTD	100.0%	6.1%	14.2%	-283.5%	7.5%				

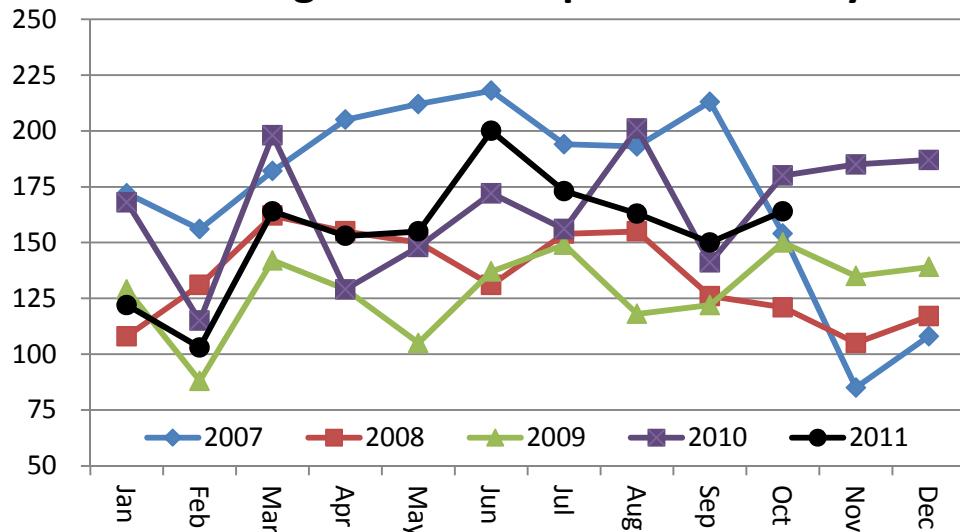
Activity Measures

Monthly Financial Report

Activity Measures

Measures	Oct '09	Oct '10	Oct '11	2009 YTD	2010 YTD	2011 YTD
# of Building Permits	150	180	164	1,269	1,608	1,547
Building Permit Valuations	2,844,963	6,933,480	5,007,516	65,905,811	103,430,892	73,632,679
# of Certified Occupancies	23	16	18	187	147	191
Net # of Sales Tax Licenses	(6)	7	18	130	103	149
New Residential Electric Meter Sets	15	110	24	96	244	313
# of Utility Bills Sent	34,890	35,161	35,891	338,510	350,122	355,655
Rounds of Golf	6,351	10,535	9,004	121,962	112,937	113,631
Health Claim Costs/Emp.	671	632	849	8,874	9,010	9,704
# of Vacant Positions	8	10	25	70	93	150
# of Frozen Vacant Positions	10	15	9	96	130	118
# of Eliminated Positions	35	42	46	153	393	442
KWH Demand (kH)	86,670	88,256	97,952	999,620	1,040,815	1,084,014
KWH Purchased (kwh)	54,953,966	56,458,388	57,914,080	561,084,209	583,711,195	609,125,809
Gallons of Water Sold	327,106,915	472,800,601	431,994,863	2,921,937,397	3,232,484,081	3,328,343,040
# of Workers' Comp Claims	25	6	9	109	106	102
\$ of Workers' Comp Claims Paid	37,640	170,925	20,664	247,934	616,395	146,507
# of Open Claims Current Year	NA	12	23	-	94	144
# of Total Open Claims	NA	14	25	-	136	174
\$ of Total Open Claims	496,346	152,022	222,484	2,477,275	2,121,694	1,186,704
# of Hotel Rooms	NA	1,117	1,117	-	10,053	11,170
\$ of Lodging Tax Collected	NA	53,858	59,374	-	411,992	468,328

Building Permit Comparison History



Cash & Reserves

October 2011

Cash & Reserves

Total Cash & Reserves = \$194.8 million, of which \$138.2 million is restricted or reserved, or 71.0%, leaving \$56.6 million unrestricted.

Statement of Cash October 2011					
	Beginning	YTD Activity	Ending		
Restricted					
1 Capital Expansion Fees	\$ 36,464,857	\$ (1,694,589)	\$ 34,770,268		
2 Other Special Revenue Funds	20,268,968	1,511,995	21,780,963		
3 Capital Projects	3,439,842	(1,731,897)	1,707,946		
4 Water System Impact Fees	5,634,568	1,318,335	6,952,903		
5 Windy Gap	4,776,059	(496,696)	4,279,363		
6 Raw Water	22,801,762	(9,046,159)	13,755,603		
7 Wastewater System Impact Fees	4,258,451	198,948	4,457,399		
8 Storm Drainage System Impact Fees	1,542,372	(130,813)	1,411,558		
9 Power System Impact Fees	5,624,382	1,572,086	7,196,468		
10 Cemetery	2,433,991	84,324	2,518,315		
11 Other Entities	3,393,300	1,095,409	4,488,709		
12 Total Restricted	\$ 110,638,552	\$ (7,319,057)	\$ 103,319,495		
Committed/Assigned Balance Amounts					
13 General Fund					
14 Operating/Emergency ***	1,731,040	-	1,731,040		
15 Council Capital Reserve ***	4,730,850	(1,240,285)	3,490,565		
16 Liability	125,000	-	125,000		
17 Police Communication Console Replacement	512,000	104,000	616,000		
18 Library Reserve	158,379	2,514	160,893		
19 Library Building Reserve	16,750	-	16,750		
20 Telephone Switch Reserve	261,460	-	261,460		
21 Excess TABOR	5,698,193	(560,345)	5,137,848		
22 Water	660,898	23,575	684,474		
23 Wastewater	816,746	436	817,182		
24 Storm Water	442,355	(98,139)	344,216		
25 Power	2,696,087	303,716	2,999,803		
26 Golf	243,784	3,869	247,653		
27 Insurance Reserves	4,632,532	409,596	5,042,128		
28 Employee Benefits	6,443,162	259,464	6,702,627		
29 Fleet Replacement	6,208,177	339,438	6,547,615		
30 Total Committed/Assigned	\$ 35,377,415	\$ (452,160)	\$ 34,925,255		
31 Total Restricted/Committed/Assigned	\$ 146,015,966	\$ (7,771,216)	\$ 138,244,750		
Unassigned Balance Amounts					
32 General	12,740,445	6,351,732	19,092,176		
33 Airport	814,146	135,870	950,016		
34 Internal Service - Vehicle Maintenance	57,032	130,044	187,076		
35 Golf	902,662	905,319	1,807,981		
36 Water	3,745,091	133,594	3,878,685		
37 Wastewater	7,350,712	3,928	7,354,640		
38 Power	15,277,828	1,721,057	16,998,885		
39 Stormwater	2,506,679	(556,121)	1,950,558		
40 Solid Waste	2,873,450	1,509,756	4,383,206		
41 Total Unassigned	\$ 46,268,044	\$ 10,335,177	\$ 56,603,221		
42 Total Cash	\$ 192,284,010	\$ 2,563,961	\$ 194,847,971		

*Operating/Emergency: TABOR
Amendment requirement for 3% of
operating expenditures excluding
transfers and debt.

**Other Entities Fund: Special
Improvement District #1, Airport,
General Improvement District #1,
Loveland Urban Renewal Authority,
Loveland/Larimer Building Authority

***Contributions made at year end.

(Line #17) Council Capital Reserve:
\$900,000 Downtown Improvements
\$97,485 Interfund Loan Payment
\$242,800 Leslie Cleaners Property

(Line #22) The market value of the
Proctor & Gamble Stock as of
December 31, 2010 is \$205,856. This
value represents the original value of
the stock when it was first donated.

(Line #24) Six main streets projects
are: US 34/Madison, Boyd Lake Ave
Extension, Signal at 4th/Lincoln,
Crossroads/71st St, 57th/287, and
Crossroads/I-25

Prepared by:
Finance Department

WEBSITE: WWW.CITYOFLOVELAND.ORG

Project Title	2011	2011	Remaining	% of 2011	Budget
	Budget	Expenditures	2011 Budget	Budget Book (Exp/Bud)	Page #
Water Capital					
Washington Ave WL Replacement	\$ 497,810	\$ 347,940	\$ 149,870	69.89%	C-115
Filter Plant 2 Improvements	\$ 1,251,850	\$ 995,011	\$ 256,839	79.48%	C-113
Raw Water Capital					
Windy Gap Firming Project	\$ 596,490	\$ -	\$ 596,490	0.00%	C-86
Purchase Colorado Big Thompson Water	\$ 4,623,000	\$ 4,500,200	\$ 122,800	97.34%	C-87
Wastewater Utility Capital					
Carlisle Phase IV (Taft to RR)	\$ 623,730	\$ 46,966	\$ 576,764	7.53%	C-101
Waste Activated Sludge Thickening	\$ 4,793,250	\$ 1,883,911	\$ 2,909,339	39.30%	C-88
South Horseshoe Lift Station Submersible	\$ 887,000	\$ 6,361	\$ 880,639	0.72%	
Power Capital					
Horseshoe Sub tie S along Taft to ckt existing on West 29th	\$ 2,300,000	\$ 6,685	\$ 2,293,315	0.29%	
West Sub tie E along Arkins Branch, N along Wilson to 29th	\$ 971,736	\$ 205,622	\$ 766,114	21.16%	
Valley Sub tie W along 402, N along Wilson, W along Arkins to W Sub	\$ 1,100,000	\$ 23,145	\$ 1,076,855	2.10%	
Horseshoe Sub - New Transformer	\$ 1,200,000	\$ -	\$ 1,200,000	0.00%	
Stormwater Capital					
Washington Ave Outfall Phase 4	\$ 3,380,185	\$ 2,423,569	\$ 956,616	71.70%	
Streets Transportation Program					
US34/Madison	\$ 749,020	\$ 256,554	\$ 492,466	34.25%	
Boyd Lake Ave Extension	\$ 1,005,100	\$ 478,728	\$ 526,372	47.63%	C-71
2011 Street Rehabilitation	\$ 2,956,210	\$ 2,116,446	\$ 839,764	71.59%	C-39
All Other					
Downtown Infrastructure	\$ 900,000	\$ -	\$ 900,000	0.00%	C-40
Open Lands Acquisition	\$ 2,445,000	\$ -	\$ 2,445,000	0.00%	C-29
MeHaffey Park Development	\$ 640,000	\$ -	\$ 640,000	0.00%	C-28
Library Expansion	\$ 7,870,850	\$ 4,722,347	\$ 3,148,503	60.00%	
ACE Center Land/Building	\$ 5,675,000	\$ 5,280,884	\$ 394,116	93.06%	
Rialto Bridge (City's Share of the Project)	\$ 2,097,700	\$ 1,141,234	\$ 956,466	54.40%	

City of Loveland
500 East 3rd Street
Loveland, CO 80537

For more information regarding this report contact:
Bonnie Steele, Acting Finance Director
970.962.2313 or steelb@ci.loveland.co.us





CITY OF LOVELAND
CITY MANAGER'S OFFICE

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(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 21
MEETING DATE: 12/6/2011
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik

TITLE: Investment Report for October 2011

RECOMMENDED CITY COUNCIL ACTION:

This is an information only item. No Council action is required.

DESCRIPTION: The budget estimate for investment earnings for 2011 is \$3,163,130. For the first ten months of 2011, the amount posted to the investment account is \$3,008,179 including realized gains. Actual year-to-date earnings are *higher* than the year-to-date projection by \$372,339. Based on October's monthly statement, the estimated annualized yield on the U.S. agencies and corporates was up to 1.71%, well under the annual target rate of 2% but higher than recent months. Reinvestment rates are now significantly lower than the first-half of 2011.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

The overall budget impact of this monthly report is positive because the City will likely exceed the annual investment target by more than 5%.

SUMMARY: At the end of October, the City's total portfolio had an estimated market value of \$194.9 million, about \$ 1 million more than a month ago. Of this amount, USBank held (including accrued interest) \$178.4 million in trust accounts; other funds are held in local government investment pools, in operating accounts at WellsFargo Bank, and a few miscellaneous accounts. Interest rates have trended significantly lower over the past few months. Investments are in US Treasury Notes, highly-rated US Agency Bonds, highly-rated corporate bonds, money market accounts, and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each percent of earnings on the portfolio equates to \$1.95 million annually. Each basis point would be about \$19,500 annually.

REVIEWED BY CITY MANAGER:

William D. Cain

LIST OF ATTACHMENTS: Investment Focus October 2011



Loveland Municipal Building

Investment Focus

Monthly Investment Report

October 2011

What's in here?

Focal Points	1
Gain / Loss	
Rate Trends	2
Cash Statement	3
Portfolio size	4
Investment types	
Transactions / Maturity	5
Future Scan	6

Pay Fell 7% in Last Decade; Even College Graduates See Salaries Slide

One of the most devastating results of the Great Recession has been the loss of jobs and the collapse of growth in salaries.

Most economists surveyed by the *Wall Street Journal* are revising their economic forecasts lower for the next two years. The forecasts could be lowered even more if the economy slips into another recession.

Source: Wall Street Journal, October 14, 2011.

Focal Points

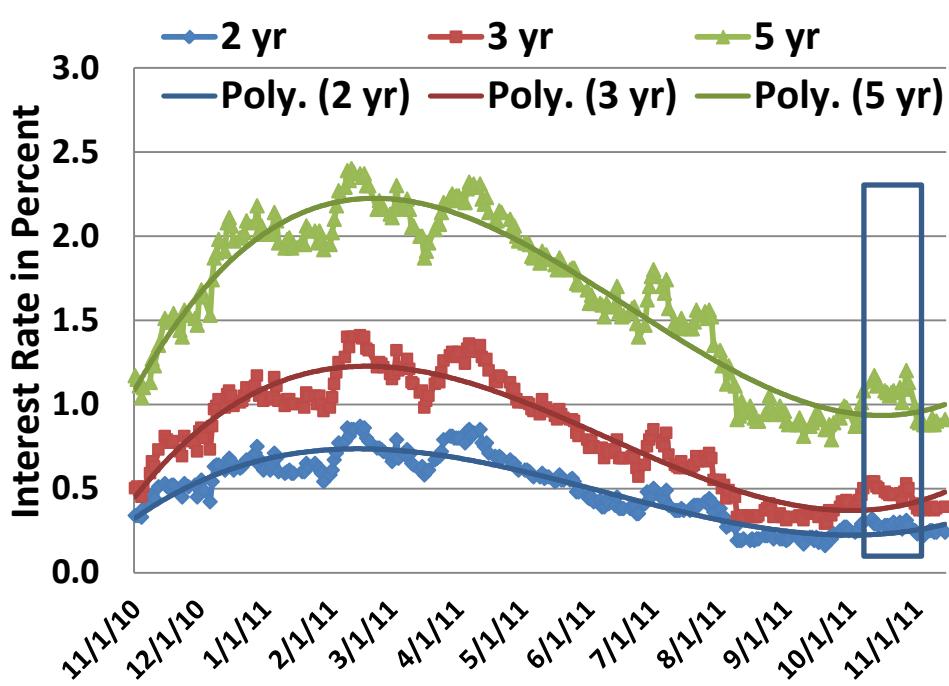
- * **2011 targets for the City's portfolio: 1) the interest rate target is **2.0%**; 2) the earnings goal = **\$3,163,130**.**
- * **City investments are in high quality, low risk securities, in compliance with state law and the adopted investment policy.**
- * **Revenue posted to accounts = **\$3,008,179** or 95% of target. This includes realized gains on the sales of **\$444,600**.**
- * **Each 1% of the total portfolio amounts to about \$1.9 million.**
- * **The month end market value shows an unrealized loss of **\$361,708**.**

Type of Investment	Purchase Price	Market Value	Unrealized Gain or Loss
Checking Accounts	\$ 6,944,068	\$ 6,944,068	--
Investment Pools	9,590,334	9,590,334	--
Money Markets	<u>13,566,086</u>	<u>13,566,086</u>	--
Subtotal	\$ 30,100,488	\$ 30,100,488	--
Notes and Bonds	<u>165,205,280</u>	<u>164,843,572</u>	<u>\$ (361,708)</u>
Total Portfolio	\$ 195,305,769	\$ 194,944,061	\$ (361,708)
Data Sources	(Morgan Stanley)	(US Bank)	

Monthly Investment Report

P . 397

Treasury rate trends / 4 years of Performance



Interest rates on US treasuries were up a little in mid-October, but then finished where they started.

Based on the 2-year treasury, the October month-end rate was flat to the September reading. The 3-year was 2.3% lower and the 5-year was 3.1% higher.

When the treasury market shifts like this, the value of prior investments changes slightly, leading to a smaller unrealized loss position. For new investments, yields were did not change significantly.

Bleak News For Americans' Income

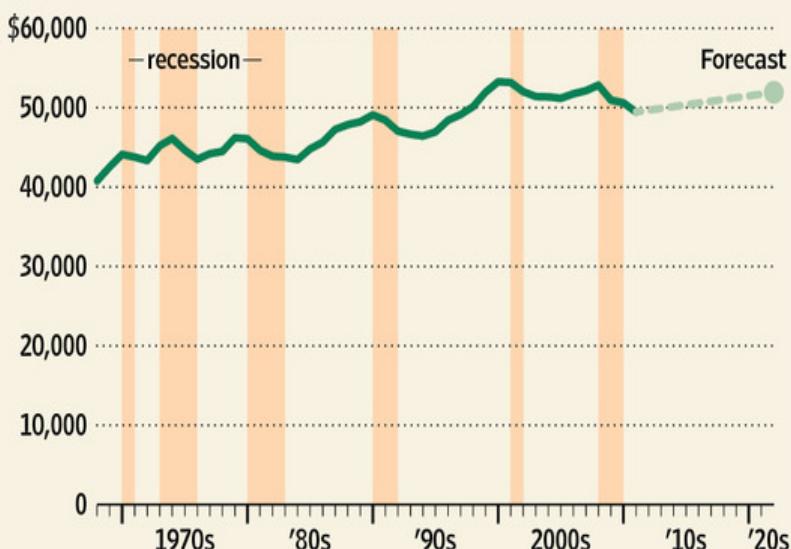
Americans' incomes have dropped since 2000 and they aren't expected to make up the lost ground before 2021.

- Pay fell 7% after adjusting for inflation
- The worst 10-year performance since 1967
- Forecast to grow by 5% will not reach pre-recession levels in ten years.
- Standards of living are expected to continue to decline.

Source: *Wall Street Journal*, October 14, 2011.

Lost Ground

U.S. median household income, in constant 2010 dollars



Sources: Census Bureau (real median income); October WSJ survey of economists (forecast; 50 surveyed, 44 responses)

Cash Position Summary

Cash & Reserves (unaudited)

	2011 Beginning	YTD Activity	Month End Total
Restricted Reserves			
1	Capital Expansion Fees	\$ 36,464,857	\$ (1,694,589)
2	Water System Impact Fees	5,634,568	1,318,335
3	Raw Water Revenue – Windy Gap	27,577,821	(9,542,855)
4	Wastewater System Imp. Fees	4,258,451	198,948
5	Storm Drain System Imp. Fees	1,542,372	(130,813)
6	Power Plant Investment Fees	5,624,382	1,572,086
7	Cemetery Perpetual Care	2,433,991	84,324
8	Other Restricted	27,102,110	875,508
9	Total Restricted	\$ 110,638,551	\$ (7,319,056)
			\$ 103,319,496
Reserve Balance Amounts			
10	General Fund	\$ 13,233,672	\$ (1,694,116)
11	Enterprise Funds	4,859,870	233,458
12	Internal Service Funds	17,283,872	1,008,499
13	Total Reserves	\$ 35,377,415	\$ (452,160)
			\$ 34,925,255
14	Total Restricted and Reserved	\$ 146,015,966	\$ (7,771,216)
			\$ 138,244,750
Unrestricted			
15	General Fund	\$ 12,740,445	\$ 6,351,732
16	Airport	814,146	135,870
17	Internal Service – Vehicle Maint	57,032	130,044
18	Enterprise Funds	32,656,422	3,717,532
19	Total Unrestricted	\$ 46,268,044	\$ 10,335,177
20	TOTAL CASH	\$ 192,284,010	\$ 2,563,961
			\$ 194,847,972

Monthly Investment Report

Portfolio Size / Types of Investments

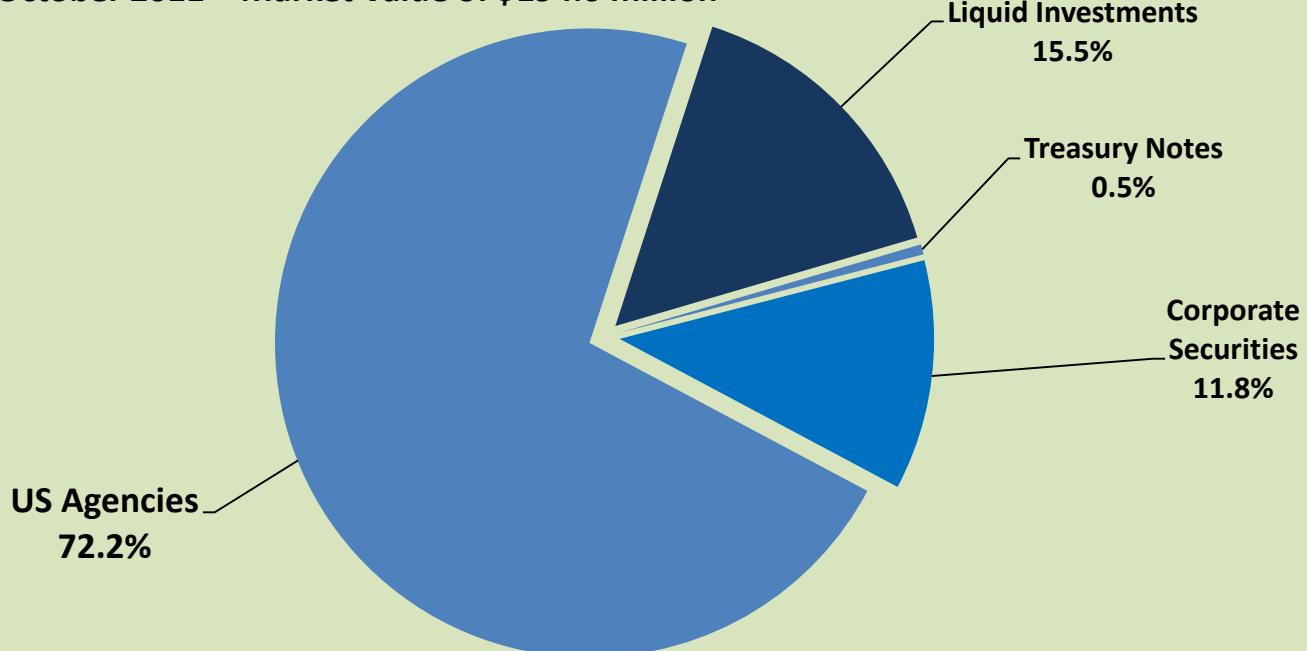
Portfolio Size since October 2008



Blue bars show Purchase value, red and green bars show market value, red = loss and green = gain

Portfolio by Type of Investment

October 2011 – Market Value of \$194.6 million



Transactions / Portfolio by Maturity

	Maturity Date	Face Value	Purchase \$	Stated Rate
Purchases				
Fed. Home Loan Mort. Corp.	10/19/2016	\$ 5,000,000	\$ 5,000,000.00	1.400%
Fed. National Mort. Ass'n	10/20/2016	5,000,000	5,000,000.00	1.500%
Fed. National Mort. Ass'n	10/20/2016	5,000,000	5,000,000.00	1.500%
Fed. National Mort. Ass'n	10/26/2016	5,000,000	5,000,000.00	1.750%
Federal Home Loan Bank	10/27/2016	5,000,000	5,000,000.00	1.000%
		\$ 25,000,000	\$ 25,000,000.00	
Matured				
US Treasury Note	10/31/11	\$5,000,000	\$5,029,450.00	1.000%
Called				
Federal Home Loan Bank	07/27/2016	\$ 5,000,000	\$ 5,000,000.00	1.500%
Sales				
None this month				<u>Gain \$</u>

Portfolio by Maturity Term
(in millions - Total = \$194.6 at the end of October 2011)



The target rate for 2011 is 2.0%. In recent months, rates have fallen to record lows. Through October, the portfolio is still on track to reach the earnings target level for 2011.

To support earnings or to reposition the portfolio, bonds may be sold. Gains on sales total \$ 444,600 to date.

The blue bars show the stated term. Red bars show the calls. More of the five year bonds will be called early.



Future Scan / rates still on hold – jobs growing

- ❖ On November 2nd, the **Federal Open Market Committee** (“FOMC” or “Committee”) sketched a bleaker outlook for the economy, which it thinks will grow much more slowly and face higher unemployment than it had estimated in June. The Fed's gloomier forecast shows that the recovery from the recession has continued to fall short of expectations. The Fed now predicts the economy will grow no more than 1.7 percent for 2011. For 2012, it foresees growth of about 2.7 percent. Both forecasts are roughly a full percentage point lower than its June forecast. The Committee kept short-term interest rates at a record low, near zero, at the meeting. The next FOMC meeting is set for December 13.
- ❖ **Loveland's employment** level **stayed the same** in October with just 27 more jobs when compared to September. Compared to the revised estimate for October 2010, there are 803 **more** jobs for city residents. Using non-seasonally adjusted data for October, the national unemployment rate was 9.0%, the State of Colorado was 7.7%, Larimer County was 6.1%, Fort Collins was 7% and Loveland was 5.3%. Of Colorado cities, only Lafayette and Parker were lower at 4.8% and 4.4% respectively. Aurora (Adams County) had the highest unemployment rate at 14.5%.
- ❖ **Recession concerns.** While the probabilities of a double dip have been elevated, recent economic data, including the November Employment Situation report, tend to indicate the US economy was not on the verge of “falling off the cliff.” The Fed continues to dangle the prospect for a QE3. (Source: **Basis Points**, Morgan Stanley, 10/08/2011) In August, the Morgan Stanley Global Economics team issued a report that stated developed economies were moving “dangerously close” to recession but maintained a base case that a recession was not yet probable.
- ❖ **European Debt Still Problematic.** “The European debt crisis continues to be a driver of investment sentiment. Despite an apparent resolution from the European Summits on October 23 and 26 “there is substantial worry and market volatility involved with Greece being able to restructure its debt. The contagion has spread to Italy, the third largest debt issuer in the world, as well. Italian bond yields and credit default swap (“CDS”) spreads have climbed steadily over the past few weeks, once again raising contagion fears. (Source: **Basis Points**, Morgan Stanley, 11/08/2011)

For more information regarding this report, please contact:

**Alan Krcmarik, Executive Fiscal Advisor
970.962.2625 or krcmaa@ci.loveland.co.us**

Monthly Investment Report

October 2011



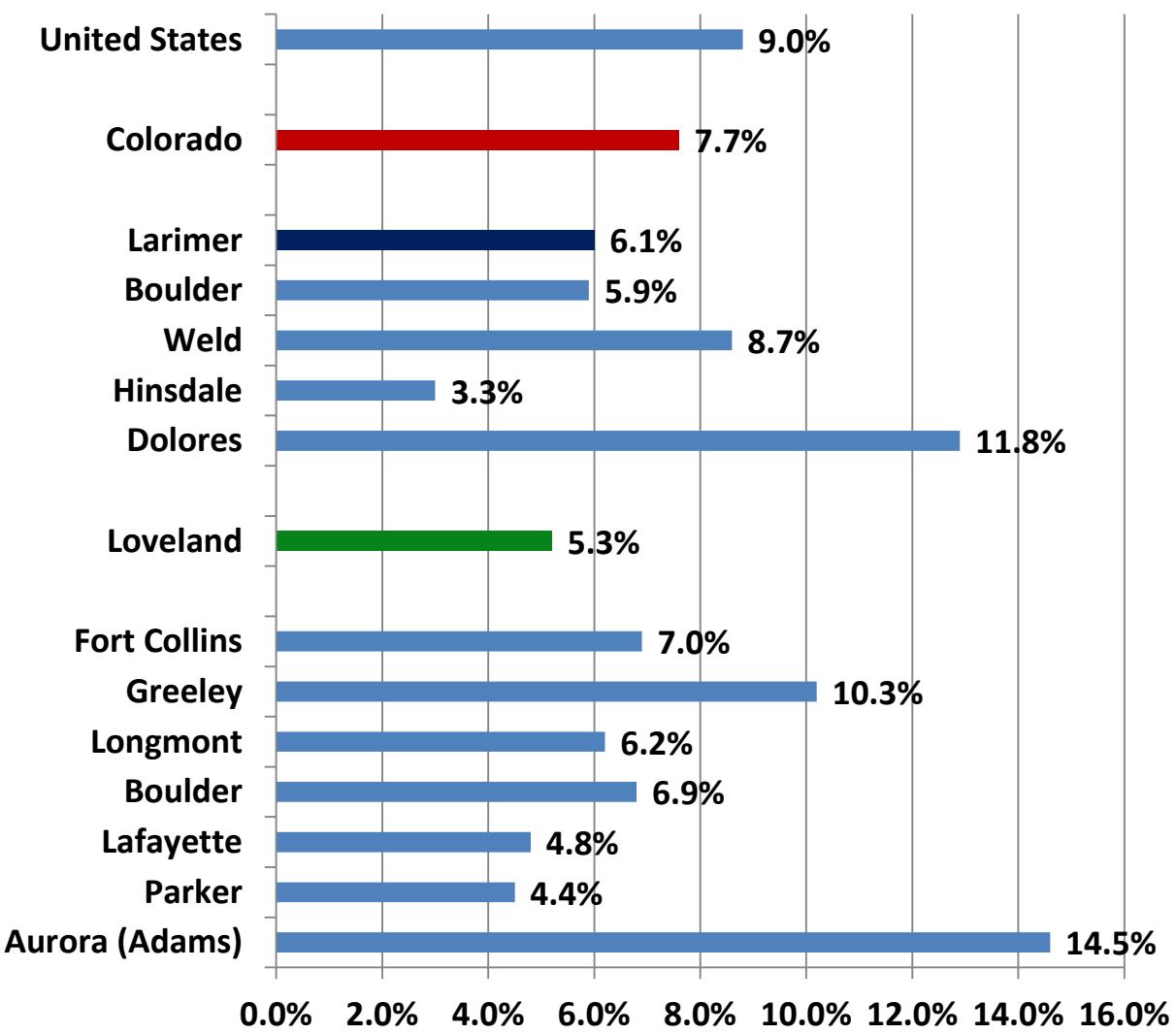
**City of Loveland
500 East 3rd Street
Loveland, CO 80537**

Updated for Colorado Labor data for October

- Loveland's employment level expanded slightly in October, 27 more jobs from September of 2011.
- Compared to one year ago in October, there are 803 more jobs.

October Unemployment Rates

Data not adjusted for seasonality



Loveland Employment levels moving up

The chart shows how Loveland resident employment has changed since the beginning of 2006. The total number of residents employed has been increasing since January 2011.

The levels have not yet returned to the pre-recession count, but are within 914 jobs of doing so.

Employment in Loveland (Residential Series)

