

January 10, 2012

Page 1 of 2

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, McEwen, Fogle, Taylor, Farley, McKean, Trenary, Klassen and Shaffer. City Manager, Bill Cahill was also present.

1. POLICE

Governance of Loveland Pawnshop operations

Police Chief, Luke Hecker, Assistant City Attorney, Moses Garcia and City Clerk, Terry Andrews presented this item to Council. Pawnbrokers operating in the City of Loveland are seeking local licensing of pawnshop operations. City Staff recommends local control of pawnshop operations through a City Ordinance rather than licensing. Owner and operator of Loveland Pawn, Ray Steele, Jr. indicated he was representing the voice of local pawnshops, currently in operation within the City of Loveland. Mr. Steele encouraged City Council to create a licensing process for pawnbrokers to protect the City from the criminal element associated with the pawnshop business. Also present to discuss the use of fingerprints as a form of identity assurance, from the District Attorney's Office was Cliff Reidel. Council directed Staff to bring back an ordinance establishing a Licensing process for Pawnshops within the City of Loveland, with a license fee to cover the "actual" cost of the new license. Staff was also directed to forward a copy of the final ordinance to the Pawnbrokers.

2. ECONOMIC DEVELOPMENT

Development Fee and Use Tax Deferral for Advanced Manufacturing Technology for Bottles, Inc. (AMT) Expansion

Strategic Planner, Mike Scholl, Advanced Manufacturing Technology for Bottles, Inc. (AMT) is a Loveland business located at 3950 Patton Ave. AMT is planning an expansion on their Loveland campus which is budgeted to cost nearly \$800,000.00. The City of Loveland fees and use taxes to be collected at building permit and final inspection are estimated to total \$38,538.70. The company has asked City Council to consider a deferral of payment for a period of 36 months with no interest accrued, which if paid in the first 12 months would result in a \$2,000 waiver. Kelly Peters, Northern Colorado Economic Development Center spoke in support of the request. AMT representatives: President, Tom Ingraham, Rod Talbert, Luann Mueller were present. Council directed Staff to come back at a regular meeting with a resolution for consideration.

3. CITY MANAGER

Review of Possible Topics for City Council Advance on January 21, 2012

The City Council will hold its Annual Advance on January 21, 2012 at the Foote Gallery at the Loveland Museum. This annual event is intended for the Council to set major goals and priorities for the coming year. At the Study Session, Councilors will be asked to prioritize these items for inclusion in the year's action plan, to be developed at the Advance: The items that received votes and the amount of votes are as follows:

Public Safety(16 total votes): Plan for Fire Station 2 and Acquire property (6); Develop a Long-Term Funding Plan for Police and Fire (4); Plan the Police Firing Range for Implementation (3); Complete and Adopt a Long-Term Police Staffing Plan (3); **Economic Vitality (36 total votes):** Move forward with expansion of the Loveland Museum (5); 402 Corridor Plan and Expansion of County IGA (5); Market Loveland aggressively for economic development (4); Market or Develop the 25/402 property (3); Continue efforts to restore the Pulliam Building (3); Carry out a retail recruitment program community wide in scope (3); Develop a highway 287 business development plan (3); Reconsider the Loveland Jobs Development Fund Proposal (3); Evaluation of Centerra after eight years of history (2); Carry out signage program to direct visitors and residents to important Loveland destinations (2); Airport area economic development planning (2); Bring the Artspace project to construction (1); **Infrastructure Quality (18 total votes):** Power Infrastructure Needs: Short – Long Term Strategies (5); Water infrastructure Needs: Short

– Long Term Strategies (5); Carry out a Cross Connection/Backflow Control Program (2); Accelerate the undergrounding of existing power lines (2); Plan for Public Works Service Center Expansion (2); Highway 34 Traffic improvements (1); Develop a More Stable funding stream for Street Maintenance (1); **Quality of Life (8 total votes)**: Refocus efforts concerning poverty and homelessness (4); Increase City activity in purchasing Open Lands (3); adopt a City environmental sustainability plan in 2012 (1); **Financial and Administrative (12 total votes)**: Developing Annual Budget Guidance (6); Reduce City sales tax on food, or some food items (5); Complete the Five Year Update of the Capital Expansion Fee System (1). Based on Council votes, City Manager, Bill Cahill stated that all topics receiving votes would be brought forward to the Council Advance, Saturday, January 21, 2012, to be held at the Foote Gallery, at the Loveland Museum beginning at 8:00 a.m. to 5:00 p.m.

The study session was adjourned at 9:35 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

City Council Regular Meeting

January 17, 2012

Page 1 of 6

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

ROLL CALL

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

PRESENTATION

Pam Shaddock, the Regional Director of the Northeast Office of U.S. Senator Mark Udall presented a Resolution to Mayor Cecil Gutierrez and Chief Randy Mirowski honoring the Loveland Fire Department for fighting Wildfires outside their district in 2011.

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 CLERK

Approval of Council Minutes

Motion

Administrative Action: A motion approving Council minutes from the January 3, 2012 regular meeting was approved.

2. CITY MANAGER

Board & Commission Appointments

Motion

Administrative Action: City Council approved the following appointments:

Cultural Services Board: Louise Kauffman and Ginger Klein were appointed, each for terms effective until December 31, 2015.

Library Board: Amy Cohen was appointed to a term effective until December 31, 2016. Louise Lucke was appointed as Alternate member, for a term effective until December 31, 2012.

3. FIRE & RESCUE

Municipal Code Amendment – International Fire Code, 2009 Edition

Ordinance #5659

Legislative Action: A public hearing was held and "AN ORDINANCE REPEALING AND REENACTING CHAPTER 15.28 OF THE CITY OF LOVELAND MUNICIPAL CODE

City Council Regular Meeting

January 17, 2012

Page 2 of 6

REGARDING THE FIRE CODE AND ADOPTING BY REFERENCE THERETO THE INTERNATIONAL FIRE CODE, 2009 EDITION" was approved and ordered published on second reading.

4. FINANCE**2012 Supplemental Appropriation- Financial Administrative Changes**

Ordinance #5660

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

5. FINANCE**2011 Supplemental Appropriation – Special Improvement District #1**

Ordinance #5661

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

6. WATER & POWER**Conversion of Colorado-Big Thompson Water Shares**

Resolution #R-5-2012

Administrative Action: Resolution #R-5-2012 of the Loveland City council authorizing an application to, and contract with, the Northern Colorado Water Conservancy District for beneficial use of 790 acre-feet of Colorado-Big Thompson Project Water was approved.

RESOLUTION #R-5-2012

A RESOLUTION OF THE LOVELAND CITY COUNCIL AUTHORIZING AN APPLICATION TO, AND CONTRACT WITH, THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT FOR BENEFICIAL USE OF 790 ACRE-FEET OF COLORADO-BIG THOMPSON PROJECT WATER

WHEREAS, pursuant to the Water Conservancy Act of Colorado, Title 37, Article 45, C.R.S., the City Council of the City of Loveland, a Colorado municipal corporation, must apply to the Board of Directors of the Northern Colorado Water Conservancy District ("District") for a contract for the beneficial use of Colorado-Big Thompson Project water within the boundaries of the District on an annually-renewable basis under C.R.S. § 37-45-131 in order to obtain the perpetual right to use said water.

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

Section 1. That the City of Loveland has determined to apply for a contract providing for the beneficial use of seven hundred ninety (790) acre-feet of Colorado-Big Thompson Project water from the District within the boundaries of the District.

Section 2. That the Director of the Department of Water and Power is hereby authorized and directed to apply to the Board of Directors of the District for a contract providing to the City the beneficial use of said water upon the terms prescribed by said Board in the manner and form attached hereto as Exhibit A and incorporated herein by reference ("Application").

Section 3. That the Director of the Department of Water and Power is hereby authorized to execute the Application any other documents required by the District to effectuate the contract.

Section 4. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 17th day of January, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

7. DEVELOPMENT SERVICES

Supplemental Appropriation – State Historical Grant (Pulliam Building)

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and “AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR A STATE HISTORICAL FUND GRANT TO FUND A STRUCTURAL ASSESSMENT OF THE PULLIAM BUILDING” was approved and ordered published on first reading.

8. FINANCE

Loveland and Rural Consolidated Volunteer Fire Department Pension Plan

Resolution #R-6-2012

Administrative Action: Resolution #R-6-2012 authorizing an increase in benefits for the Loveland and Rural Consolidated Volunteer Fire Department Pension Plan effective January 1, 2012 was approved.

RESOLUTION #R-6-2012

A RESOLUTION AUTHORIZING AN INCREASE IN BENEFITS FOR 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, on January 5, 2012, the Loveland Rural Fire Protection District Board reviewed and voted to approve the proposed increase; 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.

City Council Regular Meeting
January 17, 2012
Page 4 of 6

ADOPTED this 17th day of January, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

9. FINANCE

2012 Contract for Tree Trimming and Removal Services

Motion

Administrative Action: A motion to award the 2012 contract for tree trimming and removal services to Asplundh Tree Experts Company in an amount not to exceed \$650,000 and to authorize the City Manager to execute the contract was approved.

10. FINANCE

Supplemental Appropriation – Costs Incurred with Agilent Property Purchase

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET TO APPROPRIATE A PORTION OF THE PROCEEDS FROM THE AGILENT PROPERTY SALE" was approved and ordered published on first reading.

11. ECONOMIC DEVELOPMENT

Supplemental Appropriation of Developer Funds (Rialto Bridge Project)

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET TO APPROPRIATE THE DEVELOPER'S CONTRIBUTION TO THE RIALTO BRIDGE CONSTRUCTION PROJECT" was approved and ordered published on first reading.

END OF CONSENT AGENDA

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports

b) Business from Council

Reester

Public Works Director Keith Reester gave Councilors hats as a thank you for their support in the 2011 fall snowstorms.

Trenary

Councilor Trenary attended a program at the DeVinci Institute in Louisville. He mentioned on a February 7th meeting hosted by Colorado Manufacturing for Manufacturing and Technology regarding the ACE Regional Innovation Cluster. The Larimer County Workforce Center sponsored Employer's Roundtable for February 22 will address a skills gap in the employee base.

McKean

Councilor McKean mentioned an article in the latest issue of "Trailer Life" Magazine on bringing your 5th wheel to Loveland which was very complimentary.

Fogle

Councilor Fogle congratulated Jim Cox with the Historic Preservation Commission regarding an article in the Reporter Herald on the Olson Farm.

City Council Regular Meeting

January 17, 2012

Page 5 of 6

Klassen	Councilor Klassen shared positive comments about his attendance at an Economic Forecasting Outlook conference at the University of Northern Colorado in Greeley along with Councilor Farley.
Farley	Councilor Farley mentioned in the real estate portion of the Economic Forecasting Outlook conference it was stated the most exciting event in Northern Colorado this year was the Rocky Mountain Center for Innovation and Technology. On Friday night he attended the grand opening at the Loveland Museum of Richard Schilling's "Portraits of the Prairie" art exhibit and the public launch of the new website created by the Creative Sector Development Commission "lovelandarts.org". Also mentioned was the new artwork installed at the Library and the benefits of the Home Energy Audit provided for \$70 by the City of Loveland's Water & Power Department.
Shaffer	Councilor Shaffer also attended the art openings at the Loveland Museum and mentioned the great turnout for the Friday Night on the Town event. She attended the "36 Commuter Solution" legislative breakfast.
Taylor	Councilor Taylor thanked Fort Collins 4 th grader, Sam Tollison, for his efforts in getting the Governor to declare a Cinnamon Roll Day. Councilor Taylor mentioned the cultural heritage in Northern Colorado that underlies this occasion.
Gutierrez	Mayor Gutierrez thanked all those involved in the Martin Luther King, Jr celebration on Monday night. He also reminded Council of the Advance meeting on Saturday starting at 8:00 am at the Foote Gallery.
c) <u>City Manager Report</u>	City Manager Cahill asked Council members to please sign up if interested in the February 3 rd seminar hosted by the Colorado Municipal League on effective governance.
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****12. WATER & POWER****2012 Raw Water Master Plan****Resolution #R-7-2012**

Legislative Action: Water & Power Director Steve Adams introduced this item to Council. This is a legislative action to adopt the 2012 Raw Water Master Plan and to amend the 2005 Comprehensive Master Plan by addition of the 2012 Raw Water Master Plan as a functional (component) plan element. Scott Bray, 2586 Eldorado Springs, Loveland gave a brief presentation to Council titled "2005 to Present Native Water Transactions". Discussion ensued. Councilor McEwen moved to direct staff to remand this item, along with Mr. Bray's proposal back to the Loveland Utilities Commission and to the Construction Advisory Board to look at the impacts to the current owners of water stored

City Council Regular Meeting

January 17, 2012

Page 6 of 6

in the City's water bank and to bring back to Council for consideration at a future date. Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof. Mayor Gutierrez stated questions from Council should be directed to Water & Power Director Steve Adams and to copy the City Manager and the City Attorney.

13. ECONOMIC DEVELOPMENT

Downtown Development Recruitment

Motion

Administrative Action: City Planner Mike Scholl introduced this item to Council. This is An administrative action to adopt a Downtown Developer Recruitment Program and approve the Downtown Request for Expression of Interest (RFEI). The RFEI was created in response to Council's direction to provide an open and transparent process for developer solicitation in Downtown. The program and the RFEI provide a continuous recruitment process with streamlined and uniform requirements that provide an easy entry for developers interested in the Downtown market. Council requested staff to produce an information report of submittals under this new RFEI for Council. Councilor McEwen moved to adopt a Downtown Developer Recruitment Program as presented and authorize a Request for Expression of Interest. Councilor Shaffer seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

14. CITY MANAGERProposed Executive Session to receive advice from Legal Counsel concerning *Klen v. City of Loveland* lawsuit

At 9:11 p.m., Councilor McEwen moved that the City Council go into executive session, as authorized in CRS Sections 24-6-402(4)(b), (4)e and (4)(g) and in City Charter Sections 4-4(c)(1), (c)(3) and (c)(6). This executive session will address a lawsuit currently pending in Colorado Federal District Court, *Klen v. City of Loveland*, together with such other matters as may relate to or affect this lawsuit. The purposes of the executive session will be to receive legal advice from the City's legal counsel, including from attorney Tom Lyons; and since this lawsuit is a matter that may become subject to negotiations: to receive reports concerning any negotiation discussions; to develop the City's negotiation positions and strategies; and to instruct the City's negotiators concerning those positions and strategies. In addition, documents and records related to this lawsuit may be considered that are protected by the mandatory non-disclosure provisions of the Colorado Open Records Act, including, without limitation, work product documents. Councilor Shaffer seconded the motion which carried with all present voting in favor thereof. Council reconvened into the regular meeting session at 11:12 p.m.

ADJOURNMENT

Having no further business to come before Council, the January 17, 2012 Regular Meeting was adjourned at 11:12 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

City Council Study Session

January 24, 2012

Page 1 of 1

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, McEwen, Fogle, Taylor, Farley, McKean, Trenary, Klassen and Shaffer. City Manager, Bill Cahill was also present.

1. HUMAN RESOURCES

Police Retirement Benefit Plan Amendments

Human Resources Director, Julia Holland presented this item to Council. Chief Luke Hecker, Assistant City Attorney Moses Garcia, and Officer Bob Weesner were available to answer questions and provide additional information.

The Police Retirement Board is requesting approval of three (3) amendments to the Police Retirement Plan:

- 1) Allow any Plan participant who has reached normal retirement age of fifty-five (55) to access his or her vested Plan balance, subject to applicable tax penalties
- 2) Permit a Plan participant to make a withdrawal from his or her vested Plan balance, if the withdrawal qualifies as a hardship withdrawal under the Internal Revenue Code (IRS) and corresponding regulations, including applicable tax penalty
- 3) Allow Plan participants to make additional voluntary after-tax contributions to the Plan, subject to the IRS maximum limits.

Council discussion ensued. Four additional speakers came forward to address Council: Officer John Spreitzer, Captain Ray Miller, Officer Rob Pride and Roger Shay from Principal Financial Group, the City's Police Pension Plan provider. City Attorney John Duval addressed the concern with the legality of making the changes to the plan. Council directed staff to move forward to bring the item to a regular meeting for consideration as soon as possible.

The study session was adjourned at 8:46 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor



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: 2
MEETING DATE: 2/7/2012
TO: City Council
FROM: Bill Cahill, City Manager
PRESENTER: Bill Cahill

TITLE:

Appoint members to Human Services Commission and Police Citizen Advisory Commission

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to appoint Melody Bettenhausen to the Human Services Commission for a partial term effective until June 30, 2012.

Adopt a motion to reappoint Erin Frisch, Pat Kistler, and John Tindall to the Police Citizen Advisory Commission, each for a three year term effective until December 31, 2014. Adopt a motion to appoint Tony Adams as an Alternate member of the Police Citizen Advisory Commission for a one year term effective until December 31, 2012.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action

DESCRIPTION:

This is an administrative item appointing members to the Human Services Commission and the Police Citizen Advisory Commission.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

SUMMARY:

The Human Services Commission has been recruiting for two vacancies. One candidate was interviewed on January 20, 2012. The panel recommends the appointment of Melody Bettenhausen to the Human Services Commission for a partial term effective until June 30, 2012. Recruiting continues for the remaining vacancy.

The recent recruiting for three term vacancies on the Police Citizen Advisory Commission ("PCAB") resulted in ten applications. Interviews were held two days in January. The committee recommends the reappointment of Erin Frisch, Pat Kistler, and John Tindall to PCAB for three year terms effective until December 31, 2014. Tony Adams is recommended for appointment for a one year term as an Alternate member to PCAB. Mr. Adams' term, if approved, will be effective until December 31, 2012.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

None



CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
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(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 3
MEETING DATE: 2/7/2012
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Bethany Clark, Community & Strategic Planning

TITLE:

An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for a State Historical Fund Grant to fund a structural assessment of the Pulliam Building

RECOMMENDED CITY COUNCIL ACTION:

Move to adopt on second reading AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR A STATE HISTORICAL FUND GRANT TO FUND A STRUCTURAL ASSESSMENT OF THE PULLIAM BUILDING.

OPTIONS:

1. Deny the action
2. Adopt a modified action (specify in the motion)
3. Refer back to staff for further development and consideration
4. 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 funds in the amount of \$14,715 from a State Historical Fund grant to complete a historic structural assessment of the Pulliam Community Building. City Council adopted the ordinance on first reading as an item on the Consent Agenda on January 17, 2012.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

The appropriation is entirely funded by a State Historical Fund grant. There is no matching requirement.

SUMMARY:

In October 2011, the City of Loveland applied for a Historic Structure Assessment grant from the State Historical Fund for the historic Pulliam Community Building. In November, staff received an award letter from the State Historical Fund awarding \$14,715 to complete a Historic Structural Assessment of the historic Pulliam Community Building. The Pulliam Community Building, historically known as the Loveland Community Building, is a notable product of the

federal relief programs created during the Great Depression. The building was constructed between 1937 and 1939 under the Works Progress Administration program on a site donated by Loveland philanthropists David T. and Lillian Pulliam. The Pulliam family also contributed \$20,000 toward the cost of construction and intended the building to serve as a community focal point and events space. Over the years, the Loveland Community Building became home to the municipal government offices in addition to being used for a variety of shows, meetings, and community events. The building is still used today for community events, meetings, and as City archive space. The building embodies considerable architectural and historical significance and is individually eligible for inclusion on the National Register of Historic Places.

The non-profit group Center of Loveland, Inc. is working in partnership with the City of Loveland with a vision for the repurposing and revival of this building. A historic structure assessment would provide the City with an understanding of the conditions of the various systems and components of the building, as well as any structural deficiencies. The information discovered in the assessment will better prepare the City and Center of Loveland, Inc. in determining the costs and priorities in rehabilitation efforts.

REVIEWED BY CITY MANAGER: *William D. Caielli*

LIST OF ATTACHMENTS:

Appropriation ordinance

FIRST READING January 17, 2012

SECOND READING February 7, 2012

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR A STATE HISTORICAL FUND GRANT TO FUND A STRUCTURAL ASSESSMENT OF THE PULLIAM BUILDING

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; 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 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 revenues in the amount of \$14,720 from the State Historical Fund in the General Fund 100 are available for appropriation. Revenues in the total amount of \$14,720 are hereby appropriated for a structural assessment of the Pulliam Building 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

General Fund 100 - State Historical Grant - Pulliam Building Structural Assessment

Revenues

100-19-193-0000-32107-SP1104	State Historical Grant	14,720
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Total Revenue	14,720
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Appropriations

100-19-193-0000-43450-SP1104	Professional Services	14,720
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Total Appropriations	14,720
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Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

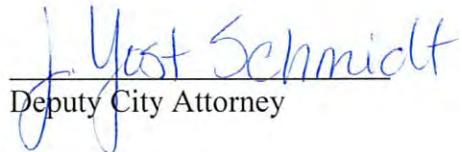
ADOPTED this 7th day of February, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


J. Yost Schmidt
Deputy City Attorney



CITY OF LOVELAND
FINANCE DEPARTMENT

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(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM:	4
MEETING DATE:	2/7/2012
TO:	City Council
FROM:	Bonnie Steele, Finance Department
PRESENTER:	Bonnie Steele, Acting Finance Director

TITLE:

Consideration of an ordinance on second reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget to appropriate a portion of the proceeds from the Agilent property sale.

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. A portion of the proceeds from the sale of the Agilent property is appropriated to the Council Incentive Account for carrying costs incurred prior to the sale and appropriation for the carrying costs approved in the 2012 budget are transferred for the payment of 2011 property taxes on the property payable in 2012 and to reimburse the Council Incentive account for the balance.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

The appropriation is funded revenue received from the sale proceeds that were received in late December 2011 and the reallocation of funding approved in the 2012 budget.

SUMMARY:

Disposition of Sale Proceeds

Proceeds from the sale of the property in the amount of \$4,995,632 were received by the City on December 20th, 2011. Below is a breakdown of the sales proceeds and accompanying notes.

Proceeds from sale of Land	\$ 4,995,632
(a) To Raw Water - Principal	(4,285,906)
(a) To Raw Water - Interest	<u>(54,418)</u>
Total Proceeds to General Fund	<u>655,308</u>
(b) To Council Incentive - Due Diligence & Operating Costs Estimated	(446,040)
(c) Operating costs budgeted but not incurred	244,490
(c) To Council Incentive - Operating Costs not incurred	<u>(24,220)</u> 220,270
(d) County Property Taxes - 2012 payment	<u>(220,270)</u>
Remaining Amount from Appropriations after Costs	<u>\$ 209,268</u>

- (a) From the sale proceeds \$4.34 million was deposited into the Raw Water Fund to reimburse the transfers, with interest, from that fund used to purchase the property.
- (b) The remaining \$655,308 was deposited into the General Fund, of which \$446,040 of this amount is appropriated to reimburse the Council Incentive account for net carrying costs charged to the account to maintain the building prior to the sale.
- (c) As part of the 2012 Adopted budget, \$244,490 was transferred from the Council Incentive account and to the Public Works/Facilities Management Division budget to cover four months of additional carrying costs in case the sale of the property took longer than anticipated. These costs will not be incurred due to the sale in December. The difference between the projected carrying costs and the property taxes due remains in the Council Incentive account.
- (d) When the City purchased the property on June 23, 2011, it received a credit against the purchase price in the amount of \$220,270 for the real property taxes attributable to the period from January 1, 2011 through closing (during which time the property was owned by Agilent and subject to taxes) and the property became tax exempt for the balance of 2011. In accordance with the closing documents signed when the City purchased the property, the City is responsible for payment of the 2011 taxes when they become payable in 2012.

Budget Actions Needed

This action appropriates the \$446,040 and reduces the Facility Management Division 2012 budget and transfers \$220,270 to the Economic Development Department budget for the payment of 2011 real property taxes due to the County in 2012.

As a result of these actions there is a net gain in unrestricted fund balance of \$209,268 above the amount anticipated in the 2012 Adopted budget, which is available for other projects or City operations.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget to appropriate a portion of the proceeds from the Agilent property sale.

FIRST READING January 17, 2012

SECOND READING February 7, 2012

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET TO APPROPRIATE A PORTION OF THE PROCEEDS FROM THE AGILENT PROPERTY SALE

WHEREAS, on May 24, 2011, City Council adopted, on second reading, Ordinance #5586 appropriating \$5,822,000.00 from various City reserve funds for the purchase of the Agilent property and certain water rights (collectively, the “Agilent Property”), and operating, insurance and other costs expected to be incurred to hold the Agilent Property pending sale of a portion of the Property for redevelopment; and

WHEREAS, the City purchased the Agilent Property on June 23, 2011, and in connection with that purchase, received a credit against the purchase price in the amount of \$220,262.05 for 2011 real property taxes payable in 2012 for the period from January 1, 2011 through June 23, 2011, at which time the Agilent Property became tax exempt as a consequence of the City’s ownership; and

WHEREAS, on October 25, 2011, City Council adopted Emergency Ordinance #5645 authorizing the City’s sale of a portion of the Agilent Property (exclusive of the water rights, certain right of way, and open space to be retained by the City) to C & W Resources, LLC (“C & W”) for redevelopment; and

WHEREAS, the City completed the sale of that portion of the Agilent Property to C & W on December 20, 2011, and the City received net proceeds of \$4,995,631.57, which were deposited in the General Fund and the Raw Water Fund, increasing the reserves in these funds, and

WHEREAS, as a result, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, the City Council desires to authorize the expenditure of a portion of these funds 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 revenues in the amount of \$446,040 from fund balance on-hand in the General Fund 100 are available for appropriation. Revenues in the total amount of \$446,040 are hereby appropriated for payment of 2011 real property taxes due in 2012 in the amount of \$220,270, as agreed in the closing documents when the City purchased the Agilent Property, and to reimburse the Council Incentive account for carrying costs incurred prior to the sale of a portion of the Agilent Property for redevelopment. Such appropriated revenues are hereby transferred to the funds hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
General Fund 100 - Land Sale Proceeds

Revenues		
Fund Balance		446,040
Total Revenue		446,040
 Appropriations		
100-18-180-1500-43155	Economic Incentives	470,260
100-18-180-1500-43714-AGL111	Payment to Other Government Agency	220,270
100-23-250-1801-43450-AGL111	Professional Services	(72,690)
100-23-250-1801-43640-AGL111	Utilities	(171,800)
Total Appropriations		446,040

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this 7th day of February, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy 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:	5
MEETING DATE:	2/7/2012
TO:	City Council
FROM:	Betsey Hale, Economic Development Department
PRESENTER:	Mike Scholl

TITLE:

An ordinance on second reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget to appropriate the developer's contribution to the Rialto Bridge construction project

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 appropriates the developer funds to be disbursed by the City (\$1,114,000). The developer, Rialto Bridge LLC will contribute \$1,114,000 to the Rialto Bridge Project as required by the Development Agreement for construction costs associated with the project. This is not a deviation from the existing budget and the project is not seeking an additional appropriation from the City funds. In addition, the City, as per the Development Agreement, required a signed and fully executable letter of credit from Rialto Bridge, LLC for \$1,114,000 to ensure performance. On January 17, 2012 City Council unanimously approved the ordinance on first reading.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

The appropriation is funded from revenues contributed by a private entity.

SUMMARY:

As per the Development Agreement with the Rialto Bridge, LLC, the City is distributing all of the construction funding for the project including funds contributed by Rialto Bridge, LLC. The \$1,114,000 is the Rialto Bridge, LLC's contribution to pay for the private share of the core and shell. When the appropriation for the project was first prepared, staff in error, did not include the private contribution in the initial appropriation with the contribution from the Community Foundation. The City is required to appropriate all funds it will disburse including the private funds, even if there is no impact to the general fund.

Exhibit E from the project development agreement is attached with the private contribution called out for your review. This appropriation **does not** increase the City's contribution to this project.

REVIEWED BY CITY MANAGER: *William D. Calfee*

LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget to appropriate the developer's contribution to the Rialto Bridge construction project.
2. Exhibit E – Cash Flow Statement from the Project Development Agreement, Rialto Bridge Project

FIRST READING January 17, 2012

SECOND READING February 7, 2012

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET TO APPROPRIATE THE DEVELOPER'S CONTRIBUTION TO THE RIALTO BRIDGE CONSTRUCTION PROJECT

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; 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 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 revenues in the amount of \$1,114,000 from Rialto Bridge LLC in the Capital Projects Fund 120 are available for appropriation. Revenues in the total amount of \$1,114,000 are hereby appropriated for construction expenses associated with the project 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
Capital Projects Fund 120 - Rialto Bridge Project**

Revenues

120-00-000-0000-35304-SP1001	Contributions	1,114,000
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Total Revenue

1,114,000

Appropriations

120-91-902-0000-49909-SP1001	Other Capital	1,114,000
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Total Appropriations

1,114,000

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

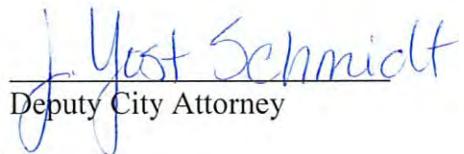
ADOPTED this 7th day of February, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



J. Yost Schmidt
Deputy City Attorney

Exhibit E

Private
contribution to be
appropriated

Cash Flow Statement																	
Rialto Bridge Project																	
	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Totals	
Opening Bank Balance	0	144,808	45,339	115,316	55,710	5,710	32,010	182,010	137,010	42,010	32,010	227,010	140,770	746,120	346,120		
Inflows																	
Rialto Bridge, LLC	75,000		75,000			150,000							1,114,000			1,414,000	
City of Loveland	69,808		59,927	15,355		350,000	175,000	175,000	150,000	150,000	150,000	68,780				1,363,870	
Community Foundation						175,000		175,000			200,000				150,000	700,000	
Total Inflows	144,808	0	134,927	15,355	0	500,000	350,000	175,000	325,000	150,000	350,000	68,780	1,114,000	0	150,000	3,477,870	
Outflows																	
Soft Costs		99,469	64,950	74,961	50,000	100,000	100,000	20,000	20,000	10,000	5,000	5,020				549,400	
Hard Costs						373,700	100,000	200,000	400,000	150,000	150,000	150,000	250,000	200,000	180,000	2,153,700	
Public Tenant Finish														200,000	200,000	271,000	671,000
Private Tenant Finish																0	
Private Other																58,650	
Total Outflows	0	99,469	64,950	74,961	50,000	473,700	200,000	220,000	420,000	160,000	155,000	155,020	508,650	400,000	451,000	3,432,750	
Closing Bank Balance	144,808	45,339	115,316	55,710	5,710	32,010	182,010	137,010	42,010	32,010	227,010	140,770	746,120	346,120	45,120	45,120	

*October, December and January payments were previously appropriated and spent for the design phase.
City spent \$145,090 on design
Developer spent \$145,090 on design



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: 6
MEETING DATE: 2/7/2012
TO: City Council
FROM: Bill Cahill, City Manager
PRESENTER: Bill Cahill

TITLE:

An Ordinance amending Section 2.60.240 of the Loveland Municipal Code pertaining to the Senior Advisory Board

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and move to approve the ordinance on first reading

OPTIONS:

1. Adopt the action as recommended
2. Deny the action

DESCRIPTION:

A public hearing to consider a legislative action to adopt an ordinance on first reading amending Section 2.60.040 relating to the Senior Advisory Board membership.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

SUMMARY:

At its January 4, 2012 meeting, the Senior Advisory Board approved a motion to accept the resignation of the Volunteers of America from the Senior Advisory Board. A separate motion was then unanimously approved to recommend that a position for the Loveland Housing Authority be created and this recommendation be forwarded to City Council for consideration.

The redline copy of the proposed code amendment to Section 2.60.010 is:

2.60.240 Senior advisory board.

A. There is established a senior advisory board consisting of fifteen members. Nine members shall be appointed by the city council to serve terms of three years. Six members shall be

nominated by the senior advisory board, and approved by the city council, to serve terms of two years. These six members shall consist of one at large member, and one member from each of the following organizations: Chilson Senior Advisory Committee, ~~Volunteers of America~~ Housing Authority of the City of Loveland, Colorado, McKee Senior Services, the Poudre Valley Hospital Aspen Club, and the McKee Medical Center Seasons Club.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

An Ordinance amending Section 2.60.240 of the Loveland Municipal Code pertaining to the Senior Advisory Board

FIRST READING: February 7, 2012

SECOND READING: _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 2.60.240 OF THE LOVELAND MUNICIPAL CODE PERTAINING TO THE SENIOR ADVISORY BOARD

WHEREAS, Section 2.60.240 of the Loveland Municipal Code currently sets forth the membership of the City's Senior Advisory Board; and

WHEREAS, the Volunteers of American (VOA) has notified the Senior Advisory Board that it desires to relinquish the designated slot for a VOA representative; and

WHEREAS, the Senior Advisory Board unanimously recommends that the City Council amend Loveland Municipal Code Section 2.60.250 to provide for a designated slot for a representative of the Housing Authority of the City of Loveland in lieu of the VOA.

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

Section 1. That Section Subsection A. of Section 2.60.240 of the Loveland Municipal Code is hereby amended to read as follows:

2.60.240 Senior advisory board.

A. There is established a senior advisory board consisting of fifteen members. Nine members shall be appointed by the city council to serve terms of three years. Six members shall be nominated by the senior advisory board, and approved by the city council, to serve terms of two years. These six members shall consist of one at large member, and one member from each of the following organizations: Chilson Senior Advisory Committee, Housing Authority of the City of Loveland, Colorado, McKee Senior Services, the Poudre Valley Hospital Aspen Club, and the McKee Medical Center Seasons Club.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this _____ day of February, 2012.

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: 2/7/2012
TO: City Council
FROM: Greg George, Development Service Director
PRESENTER: Troy Bliss, Senior Planner, Current Planning Division

TITLE:

A RESOLUTION REGARDING STREET NAME EXCEPTION TO SECTION 12.08.100 OF THE LOVELAND MUNICIPAL CODE WITHIN THE MARIANA BUTTE PUD LEGALLY DESCRIBED AS LOT 1 BLOCK 12 MARIANA BUTTE SEVENTH SUBDIVISION AND A PORTION OF TRACT A MARIANA BUTTE PUD FIRST SUBDIVISION, ALL SITUATED IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

RECOMMENDED CITY COUNCIL ACTION:

Move to adopt A RESOLUTION REGARDING STREET NAME EXCEPTION TO SECTION 12.08.100 OF THE LOVELAND MUNICIPAL CODE WITHIN THE MARIANA BUTTE PUD LEGALLY DESCRIBED AS LOT 1 BLOCK 12 MARIANA BUTTE SEVENTH SUBDIVISION AND A PORTION OF TRACT A MARIANA BUTTE PUD FIRST SUBDIVISION, ALL SITUATED IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

OPTIONS:

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

DESCRIPTION:

A public hearing to consider a legislative action to grant an exception to the street naming convention for a street within the Mariana Butte 25th Subdivision.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

SUMMARY:

The Mariana Butte 25th Subdivision received preliminary plat and preliminary development plan approval from the Planning Commission on January 9, 2012. A public street within this subdivision proposed to be named Zander Court was not considered within the Planning Commission approval. Zander is the name of the developer's son. The proposed name does not follow the naming conventions outlined in Section 12.08.100 of the Loveland Municipal Code. Names of streets within this area of Loveland shall either include: 1) names of pioneers of the Loveland area; 2) Loveland Mayors; 3) native Colorado animals; 4) prominent geographical features of the area; 5) golf terms; 6) Native American tribe names and; 7) Native American chief names. The three entities responsible for emergency response (LPD, Loveland Fire Authority and Thompson Valley EMS) have reviewed the request and have determined that the exception would not likely increase the response times for emergency vehicles or create a threat to public health, safety or welfare. With the new high tech equipment these responders have in their vehicles, the City's naming convention is not as important as it used to be in reducing response times. Except for the name of the street, the exception complies with all other requirements for the naming of streets.

Since the street in question would have addresses assigned to it, an exception is not within the Director of Development Services' authority under Code Section 12.08.210 and only City Council may grant an exception to the street naming conventions pursuant to Section 12.08.200 of the Loveland Municipal Code.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

- A) Resolution
- B) City staff memorandum

RESOLUTION NO. #R-7-2012

A RESOLUTION REGARDING STREET NAME EXCEPTION TO SECTION 12.08.100 OF THE LOVELAND MUNICIPAL CODE WITHIN THE MARIANA BUTTE PUD LEGALLY DESCRIBED AS LOT 1 BLOCK 12 MARIANA BUTTE SEVENTH SUBDIVISION AND A PORTION OF TRACT A MARIANA BUTTE PUD FIRST SUBDIVISION, ALL SITUATE IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

WHEREAS, Lot 1 Block 12 Mariana Butte Seventh Subdivision and a portion of Tract A Mariana Butte PUD First Subdivision, were zoned as part of the Mariana Butte PUD; and

WHEREAS, C.R.S. §31-15-702 authorizes the governing body of a municipality to name and rename any streets within its boundaries; and

WHEREAS, Chapter 12.08 of the Loveland Municipal Code regulates the naming and numbering of streets within the city limits of Loveland, Colorado; and

WHEREAS, Section 12.08.045 of the Loveland Municipal Code sets forth the guidelines for names of streets within the City of Loveland and provides as follows:

12.08.045 Guidelines for names.

The names for streets shall be selected in such a manner so that no repetition shall appear in any of the names given to different streets. The names for streets used in any area shall not be unduly similar to those names used in other areas. The length of the names for streets shall be kept to a reasonable minimum. Anytime that a street makes a directional change of approximately ninety degrees, the street name shall change. A directional change of approximately ninety degrees shall mean a horizontal curve where a reduction in the design speed is required (i.e. a sharp turn vs. a sweeping curve). Street names from each category shall be readily recognizable to the general public. Street names may not reflect any corporate or brand names. Existing street names shall continue across intersections and roundabouts.; and

WHEREAS, the streets located in Lot 1 Block 12 Mariana Butte Seventh Subdivision and a portion of Tract A Mariana Butte PUD First Subdivision are further governed by Section 12.08.100 of the Loveland Municipal Code, which states as follows:

12.08.100 South of Eisenhower Blvd., north of First Street and west of Railroad Avenue.
In the area south of Eisenhower Boulevard and north of First Street and west of Railroad Avenue all streets shall have the names of pioneers of the Loveland area, Loveland Mayors, native Colorado animals, prominent geographical features of the area, golf terms, Native American tribe names and Native American chief names.; and

WHEREAS, a request has been made to City staff to all allow for an exception to the street naming conventions as set forth in Chapter 12.08 and, due to a desire in using the name Zander; and

WHEREAS, Section 12.08.200 of the Loveland Municipal Code allows the City Council to grant exceptions to the provisions of Chapter 12.08 with respect to naming of streets; and

WHEREAS, the City Council desires to allow for an exception to the City's standard street naming conventions and allow for a street located in Lot 1 Block 12 Mariana Butte Seventh Subdivision and a portion of Tract A Mariana Butte PUD First Subdivision to be named Zander Court.

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

Section 1. Pursuant to Loveland Municipal Code section 12.08.200, the City Council determines that it is in the best interest of the citizens of the city of Loveland to allow for an exception to the street naming conventions set forth in Loveland Municipal Code section 12.08.100 with respect to those portions of Lot 1 Block 12 Mariana Butte Seventh Subdivision and a portion of Tract A Mariana Butte PUD First Subdivision which lie within the Mariana Butte PUD, and does hereby approve the following street name for said development.

1. Zander Court.

Section 2. The City Clerk is directed to record this Resolution with the Larimer County Clerk and Recorder.

Section 3. The effective date of this Resolution shall be the date of its recording with the Larimer County Clerk and Recorder.

Adopted this 7th day of February, 2012

CITY OF LOVELAND, COLORADO:

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney



Development Services Current Planning

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

Memorandum

TO: City Council

FROM: Troy Bliss, Senior Planner

DATE: February 7, 2012

SUBJECT: Mariana Butte 25th Subdivision, Street Name Exception

I. EXHIBITS

1. Street Name Exception Request
2. Loveland Municipal Code – Chapter 12.08 Naming and Numbering of Streets
3. Email Correspondence From Emergency Service Providers
4. Mariana Butte 25th Subdivision, Preliminary Plat (for identification of Zander Court)

II. SUMMARY

This is a hearing to consider a request for an exception to the provisions of Chapter 12.08 (see Exhibit 1) with respect to the naming of streets. The exception applies to an undeveloped parcel of ground containing approximately 13 acres within the Mariana Butte PUD generally located north of West First Street between Namaqua Avenue and Crestone Drive, directly south of Namaqua Elementary School.



Preliminary approvals associated to a development plan and subdivision plat proposal were granted by the Planning Commission on January 9, 2012. The Mariana Butte 25th PUD Preliminary Development Plan (PDP) and Preliminary Plat proposes a residential development consisting of 51 total units and lots (46 paired single family units and 5 single family detached units) along with associated outlots for landscaping and bufferyards. Additionally, the plat is reserving approximately an acre of ground for dedication to the Loveland Historical Society in connection with the Medina Family Cemetery.

Relative to the Mariana Butte 25th Preliminary Plat, all associated public streets within the subdivision were named according to the criteria outlined in Section 12.08.100 of the Loveland Municipal Code (see Exhibit 2). Native American chief names were selected as the primary convention throughout the subdivision with the exception of Zander Court. Zander Court is a proposed cul-de-sac connecting to Crestone Drive at the west end of the proposed Mariana Butte 25th subdivision. Eight units would be addressed off of this public street. The name "Zander" does not comply with the naming conventions identified in Section 12.08.100 for this area of Loveland and because properties would be addressed off of this street, Section 12.08.200 allows only City Council to consider the exception request.

The applicant has contacted all emergency service providers that could be dispatched to this subdivision including Loveland Police, Loveland Fire and Rescue, and Thompson Valley EMS. Attached (see Exhibit 3) are email correspondence from the emergency service providers, identifying in general that the name "Zander" does not create a threat to public safety and welfare or would not negatively affect response times. A formal request for this street name exception had not been made at the time Loveland Police was contacted as indicated in the attached email. However, discussions with Loveland Police were held following the email and a consensus reached that naming the street Zander Court within the proposed Mariana Butte 25th subdivision in which properties would be addressed off of would pose no threat to emergency service dispatch or public safety/welfare.

III. RECOMMENDATION

The City of Loveland Development Review Team (DRT) is concerned that by granting an exception to a street name within the proposed Mariana Butte 25th subdivision could set precedence in terms of not following the conventions established in Chapter 12.08, Section 12.08.100 of the Loveland Municipal Code. However, under the findings that:

- a. The proposed street name does not pose a threat to all emergency service dispatch;
- b. The Loveland Fire and Rescue determines that any such exemption would not create a threat to public safety and welfare and would not likely increase the response time for emergency vehicles;
- c. The name of the street subject to the exemption is not a name that would otherwise comply with the street naming standards set forth in Sections 12.08.080 through 12.08.180; and
- d. Except for the street naming standards set forth in Section 12.08.080 through 12.08.180, the name of the street subject to the exemption complies with all other requirements set forth in chapter 12.08.

The DRT is recommending adoption of a resolution approving the requested street name exception.

**STREET NAME EXEMPTION REQUEST
MARIANA BUTTE 25th SUBDIVISION**

The applicant, Mr. Jess Rodriguez, would like to pursue the option of obtaining an exemption from City Council for the street name “Zander” Court in Mariana Butte 25th Subdivision.

Reasons to support the exemption include:

1. The Loveland Fire Department and Thompson Valley EMS have determined that the exemption would not create a threat to public safety and welfare, and would not likely increase the response time for emergency vehicles; Loveland Police Department has stated they will determine their response during the formal appeal process.
2. The name of the street is not a name that would otherwise comply with the street naming standards as set forth in Sections 12.08.080 through 12.08.180; and
3. Except for the street naming standards set forth in Sections 12.08.080 through 12.08.180, the name of the street subject to the exemption complies with all other requirements set forth in Chapter 12.08.

Chapter 12.08

NAMING AND NUMBERING OF STREETS*

Sections:

I. NUMBERING

- 12.08.010** Lots and buildings running north and south.
- 12.08.020** Streets running east and west.
- 12.08.030** Streets running north and south.

II. NAMING

- 12.08.040** Definitions.
- 12.08.045** Guidelines for names.
- 12.08.050** Continuity of numbered streets.
- 12.08.060** East and west prefix.
- 12.08.070** North and south suffix.
- 12.08.080** North of Eisenhower Boulevard, east of Taft Avenue and west of Madison Avenue.
- 12.08.090** North of North 14th Street and west of Taft Avenue.
- 12.08.100** South of North 14th Street, north of First Street and west of Douglas Avenue.
- 12.08.110** North-south avenues lying east of Madison Avenue.
- 12.08.120** South of First Street and west of Garfield.
- 12.08.130** East of Railroad Avenue, north of First Street and south of North 14th Street.
- 12.08.140** East of Garfield and south of First Street.
- 12.08.150** East of Boyd Lake, west of I-25 and north of 37th Street (Airport Area), excluding the land within the Myers Group Partnership #949 Addition, which is included in the area described in Section 12.08.160
- 12.08.160** North of Eisenhower Boulevard, east of Madison Avenue, south of County Road No. 30, west of County Road No. 11C continuing south along the east side of Boyd Lake to the east-west projection of 37th Street (County Road No. 24E), south of East 37th Street and its east-west projected line, excluding the area north of the Union Pacific Railroad and west of I-25; the area north of the Union Pacific Railroad, east of I-25, west of Centerra parkway, and south of the east-west projection of 37th Street; and the area north of Eisenhower Boulevard, east of Centerra Parkway, and south of the Union Pacific Railroad.
- 12.08.170** East of I-25 and north of the north boundary of the Millennium Addition
- 12.08.180** North of the Union Pacific Railroad, east of Rocky Mountain Avenue, west of I-25, and south of Crossroads Boulevard (Area A); north of the Union Pacific Railroad, east of I-25, west of Centerra Parkway, and south of the east-west projection of 37th Street (Area B)
- 12.08.190** North of Eisenhower Boulevard, east of Centerra Parkway, and south of the Union Pacific Railroad.
- 12.08.194** Downtown area alley names
- 12.08.200** Council May Grant Exceptions.
- 12.08.210** Director May Grant Exceptions.
- 12.08.220** Minor Corrections to Existing Street Names.

*For statutory provisions authorizing cities and towns to name and change the name of any street, alley, avenue or other public place, see CRS § 31-15-702.

I. NUMBERING

12.08.010 Lots and buildings running north and south.

For the purpose of numbering the lots or buildings on all streets in the city running north and south, First Street shall be used as a base, beginning with one hundred and one on the southeast corner of all blocks on the north side of First Street, thence numbering to the north, the odd numbers on the west side and the even numbers on the east side of all such streets, the numbers continuing regularly until another street is reached, when the number shall commence with another hundred and one, thus continuing numbering the entire length of each street. (Prior code § 20.26(c))

12.08.020 Streets running east and west.

For the purpose of numbering streets running east and west, Railroad Avenue/railroad tracks between Twenty-second Street and Third Street Southeast shall be used as a base. Beyond Twenty-second Street and Third Street Southeast-Garfield Avenue shall be used as a base, beginning on the east side of the railroad track and the east side of Garfield Avenue extended, with one hundred and one on the southwest corner of all blocks immediately east of the track or street, thence numbering east, the odd numbers on the north side and the even numbers on the south side of all streets, the numbers continuing regularly until another street is reached when the numbers shall commence with another hundred and one, thus continuing the numbering the entire length of each street; and on the west side of the railroad track or street, beginning with one hundred and one on the southeast corner of all blocks immediately west of the track, thence numbering west, the odd numbers on the north side of and the even numbers on the south side of all streets, the numbers continuing regularly until another street is reached when the numbers shall commence with another hundred and one, thus continuing the numbering the length of each street. (Ord. 813 § 2, 1963; prior code § 20.26(d); Ord. 4920 § 2, 2004)

12.08.030 Streets running north and south.

All streets running north and south and lying south of First Street shall be numbered consecutively in the same manner as provided in Section 12.08.010, beginning so that the odd numbers south of First Street shall be on the same side of the street as odd numbers on the north side of First Street on the same street or avenue, providing that Garfield Avenue extended south of Third Street Southeast, formerly Mason Street, shall be used as the base dividing line. (Ord. 813 § 5, 1963; prior code § 20.26(j))

II. NAMING

12.08.040 Definitions.

For purposes of naming streets, the following definitions shall be used:

- A. Through streets less than four hundred feet in length shall be designated as "Places." Cul-de-sac streets shall be designated as "Courts."
- B. Streets four hundred feet in length or longer, running north and south, shall be designated as "Avenues." Streets four hundred feet in length or longer, running east and west, shall be designated as "Streets."
- C. Curving streets shall be designated as "Drives" and may be of any length.
- D. A looped street may have only one name if it intersects the same street to form two tee-intersections. Loopied streets shall be designated as "Circles." (Ord. 4059 § 2, 1995; prior code § 20.26(e))

12.08.045 Guidelines for names.

The names for streets shall be selected in such a manner so that no repetition shall appear in any of the names given to different streets. The names for streets used in any area shall not be unduly similar

to those names used in other areas. The length of the names for streets shall be kept to a reasonable minimum. Anytime that a street makes a directional change of approximately ninety degrees, the street name shall change. A directional change of approximately ninety degrees shall mean a horizontal curve where a reduction in the design speed is required (i.e. a sharp turn vs. a sweeping curve). Street names from each category shall be readily recognizable to the general public. Street names may not reflect any corporate or brand names. Existing street names shall continue across intersections and round-abouts. (Ord. 4557 § 1, 2000; Ord. 4059 § 3, 1995)

12.08.050 Continuity of numbered streets.

All numbered streets which are in the same relative position within the city, although not being connected, shall have the same name as though the numbered street were a continuous street. (Ord. 4059 § 4, 1995; Ord. 813 § 7, 1963; prior code § 29.26(1))

12.08.060 East and west prefix.

The Burlington Northern Railroad running through the city shall divide all streets running east and west so that all that portion of any and all such streets lying east of the railroad track shall be known by their present names or numbers with the word "East" prefixed thereto, and all that portion of any and all streets lying west of the railroad track shall be known by their present names or numbers with the word "West" prefixed thereto. This shall apply to all streets bounded by the railroad track between Twenty-second Street on the north and Mason Street on the south, and beyond these points Garfield Avenue extended north and south will be the dividing line for purposes of naming and numbering in accordance with the provisions of this section. (Ord. 4981 § 1 (part), 2005; Prior code § 20.26(a))

12.08.070 North and south suffix.

First Street shall divide all streets running north and south so that all that portion of any and all such streets lying north of the street shall be known by their present names or numbers with the word "North" prefixed thereto, and any and all such streets lying south of First Street and east of Garfield shall be known by their present names or numbers with the word "Southeast" suffixed thereto and all such streets lying south of First Street and west of Garfield shall be known by their present names or numbers with the words "Southwest" suffixed thereto. (Ord. 1343 § 1, 1974; Ord. 813 § 1, 1963; prior code § 20.26(b))

12.08.080 North of Eisenhower Boulevard, east of Taft Avenue and west of Madison Avenue.

In the area north of Eisenhower Boulevard, east of Taft Avenue and west of Madison Avenue, all streets shall have the names of evergreen and deciduous trees, national forests, state parks, and winter and Olympic sports. (Ord. 4869 § 1, 2004 (part); Ord. 4778 § 4, 2003; Ord. 4557 § 2, 2000; Ord. 4059 § 5, 1995; Ord. 1084 § 1, 1970; prior code § 20.26(f))

12.08.090 North of Eisenhower Boulevard and west of Taft Avenue.

In the area north of Eisenhower Boulevard and west of Taft Avenue, all streets shall have the names of states, Colorado towns, Colorado counties, famous historical persons (not generals or pilots), agricultural (crops, equipment but not animals) and oceans, seas and bays. (Ord. 4778 § 4, 2003; Ord. 4557 § 3, 2000; Ord. 4059 § 6, 1995; prior code § 20.26(g))

12.08.100 South of Eisenhower Blvd., north of First Street and west of Railroad Avenue.

In the area south of Eisenhower Boulevard and north of First Street and west of Railroad Avenue all streets shall have the names of pioneers of the Loveland area, Loveland Mayors, native Colorado animals, prominent geographical features of the area, golf terms, Native American tribe names and Native American chief names. (Ord. 4778 § 4, 2003; Ord. 4557 § 4, 2000; Ord. 4115 § 1, 1995; Ord. 4059 § 7, 1995; Ord. 813 § 3, 1970; prior code § 20.26(h))

12.08.110 North-south avenues lying east of Madison Avenue.

Except as provided for in Section 12.08.160, all north-south avenues lying east of Madison Avenue shall be named for state capitols and be designated as "Avenues". All north-south streets lying west of Madison Avenue, shall be named for presidents of the United States, or governors of the state should the supply of names of presidents be exhausted. (Ord. 4981 § 1 (part), 2005; Ord. 4869 § 1, 2004 (part); Ord. 4059 § 8, 1995; Ord. 813 § 4, 1970; prior code § 20.26(i))

12.08.120 South of First Street and west of Garfield.

In the area south of First Street and west of Garfield, all streets shall have the names of flowers, felines, names commonly given to girls, colors and cactus. (Ord. 4557 § 5, 2000; Ord. 4059 § 9, 1995; Ord. 813 § 6, 1970; prior code § 20.26(k))

12.08.130 East of Railroad Avenue, north of First Street and south of Eisenhower Boulevard.

In the area east of Railroad Avenue, north of First Street and south of Eisenhower Boulevard, all streets shall have the names of minerals, gems, stones, constellations, planets and astrological terms. (Ord. 4778 § 4, 2003; Ord. 4557 § 6, 2000; Ord. 4059 § 10, 1995; Ord. 813 § 8, 1970; prior code § 20.26(m))

12.08.140 East of Garfield and south of First Street.

In the area east of Garfield and south of First Street, all streets shall have the names of birds, canines and names commonly given to boys. (Ord. 4059 § 11, 1995; Ord. 813 § 9, 1970; prior code § 20.26(n))

12.08.150 East of Boyd Lake, west of I-25 and north of 37th Street (Airport Area), excluding the area south of Crossroads Boulevard between Rocky Mountain Avenue and I-25.

In the area east of Boyd Lake, west of I-25 and north of 37th Street, known as the Airport Area, excluding the area south of Crossroads Boulevard between Rocky Mountain Avenue and I-25, all streets shall have the names of aircraft, pilots, airports, other names commonly associated with aviation and nautical terms. (Ord. 4869 § 1, 2004 (part); Ord. 4778 § 4, 2003; Ord. 4557 § 7, 2000; Ord. 4059 § 12, 1995; Ord. 4920 § 2, 2004)

12.08.160 North of Eisenhower Boulevard, east of Madison Avenue, south of County Road No. 30, west of County Road No. 11C continuing south along the east side of Boyd Lake to the east-west projection of 37th Street (County Road No. 24E), south of East 37th Street and its east-west projected line, excluding the area north of the Union Pacific Railroad and west of 1-25; the area north of the Union Pacific Railroad, east of 1-25, west of Centerra parkway, and south of the east-west projection of 37th Street; and the area north of Eisenhower Boulevard, east of Centerra Parkway, and south of the Union Pacific Railroad.

In the area north of Eisenhower Boulevard, east of Madison Avenue, south of County Road No. 30, west of County Road No. 11C continuing south along the east side of Boyd Lake to the east-west projection of 37th Street (County Road No. 24E), south of East 37th Street and its east-west projected line, excluding the area north of the Union Pacific Railroad and west of 1-25, the area north of the Union Pacific Railroad, east of 1-25, west of Centerra Parkway, and south of the east-west projection of 37th Street and the area north of Eisenhower Boulevard, east of Centerra Parkway, and south of the Union Pacific Railroad, all streets shall have the names of Colorado streams, rivers, lakes, mountain valleys, peaks, and passes, fish, wetlands/water (aquatic) plants and animals (not fish), except that within a PUD General Development Plan containing at least 1,000 acres one street may have the marketing name of the development and one street in this area may be named Kendall Parkway.(Ord. 5208 § 1, 2007; See also Section 12.08.110) (Ord. 5036 § 1, 2005; Ord.4981 § 1, 2005 (part); Ord. 4869 § 1, 2004 (part); Ord. 4557 § 8, 2000; Ord. 4059 § 13, 1995; Ord. 4920 § 2, 2004)

12.08.170 East of I-25 & north of the east-west projected line of 37th Street.

In the area east of I-25 and north of the east-west projected line of 37th Street, all streets shall have the names of generals, battle sites and equestrian terms (horses). (Ord. 4869 § 1, 2004 (part); Ord. 4778 § 4, 2003; Ord. 4557 § 9, 2000; Ord. 4059 § 14, 1995; Ord. 4920 § 2, 2004)

12.08.180 North of the Union Pacific Railroad, east of Rocky Mountain Avenue, west of 1-25, and south of Crossroads Boulevard; and north of the Union Pacific Railroad, east of 1-25, west of Centerra Parkway, and south of the east-west projection of 37th Street.

In the area north of the Union Pacific Railroad, east of Rocky Mountain Avenue, west of 1-25, and south of Crossroads Boulevard and in the area north of the Union Pacific Railroad, east of 1-25, west of Centerra Parkway, and south of the east-west projection of 37th Street all streets shall have the names of automotive or technological terms. (Ord. 5208 § 1, 2007; Ord. 4981 § 1, 2005)

12.08.190 North of Eisenhower Boulevard, east of Centerra Parkway, and south of the Union Pacific Railroad.

In the area north of Eisenhower Boulevard, east of Centerra Parkway, and south of the Union Pacific Railroad all streets shall have names of railroads and railroad related terms. (Ord. 5208 § 1, 2007)

12.08.194 Downtown Area Alley Names

In the area north of East 1st Street, east of Railroad Avenue, south of East 7th Street and west of North Washington Avenue, alleys shall have names related to arts and entertainment or to Loveland history, and shall be designated as an “Alley”. (Ord. 5553 § 1, 2011)

12.08.200 Council May Grant Exceptions.

The City Council may, in its discretion, grant by resolution exceptions to the provisions of this Chapter 12.08 with respect to the naming of streets. (Ord. 5208 § 1, 2007)

12.08.210 Director May Grant Exceptions.

The Director of Development Services may, in his or her discretion, grant exemptions to the provisions of this Chapter 12.08 with respect to the naming of streets provided that:

- A. the Loveland Fire Department determines that any such exemption would not create a threat to public safety and welfare and would not likely increase the response time for emergency vehicles;
- B. no addresses are assigned to the street subject to the exemption;
- C. the name of the street subject to the exemption is not a name that would otherwise comply with the street naming standards set forth in Sections 12.08.080 through 12.08.180; and
- D. except for the street naming standards set forth in Sections 12.08.080 through 12.08.180, the name of the street subject to the exemption complies with all other requirements set forth in Chapter 12.08. (Ord. 5208 § 1, 2007)

12.08.220 Minor Corrections to Existing Street Names.

The Director of Development Services may authorize minor corrections, such as, but not limited to, suffix, prefix, and spelling errors, to existing street names, provided there are no developed properties addressed on the street subject to the correction. (Ord. 5208 § 1, 2007)

Melanie Foslien

From: Luke Hecker <HeckeL@ci.loveland.co.us>
Sent: Wednesday, November 30, 2011 9:50 AM
To: 'Melanie Foslien'
Subject: RE: Loveland Street Name

Thank you Melanie for illuminating your inquiry. The question is best answered during the formal appeal process you referred to in your message. When you seek an exemption to the standards, the City of Loveland Development Review Team (which the Police Department is a part of) will convene to conduct a comprehensive evaluation of the request – including the examination of public safety and welfare. Until that process has been applied a singular response from the Police Department is premature.

I hope this response is helpful to you.

Sincerely,

Luke Hecker
 Chief of Police
 Loveland Police Department
 810 East 10th Street
 Loveland, CO 80537-4942
 Phone: (970) 962-2222
 Fax: (970) 962-2917
heckel@ci.loveland.co.us

From: Melanie Foslien [<mailto:mfoslien@kbnengineers.com>]

Sent: Wednesday, November 30, 2011 09:07

To: Luke Hecker

Subject: RE: Loveland Street Name

Luke,

Please find attached one (1) pdf file for the proposed Preliminary Development Plan at Mariana Butte showing the proposed street names. All names have been approved by the City of Loveland, except for "Zander" Court on the west end of the property. The other three proposed streets are named for Native American chiefs.

The Planning Department has determined that Zander Place does not meet the street naming convention per Section 12.08.100 - *South of Eisenhower Blvd., north of First Street and west of Railroad Avenue. In the area south of Eisenhower Boulevard and north of First Street and west of Railroad Avenue all streets shall have the names of pioneers of the Loveland area, Loveland Mayors, native Colorado animals, prominent geographical features of the area, golf terms, Native American tribe names and Native American chief names. (Ord. 4778 § 4, 2003; Ord. 4557 § 4, 2000; Ord. 4115 § 1, 1995; Ord. 4059 § 7, 1995; Ord. 813 § 3, 1970; prior code § 20.26(h)) undefined.*

Our client would like to keep the name "Zander", and is planning to pursue an exemption to the City's standards with a resolution through City Council.

My question to you is whether, in your opinion, the name would create a threat to public safety and welfare, and if the variation in naming convention would likely increase the response time for emergency vehicles.

Please call or e-mail me with any questions.

Thank you,
Melanie Foslien
KBN Engineers

From: Luke Hecker [\[mailto:HeckeL@ci.loveland.co.us\]](mailto:HeckeL@ci.loveland.co.us)

Sent: Wednesday, November 30, 2011 8:55 AM

To: 'mfoslien@kbnengineers.com'

Subject: Loveland Street Name

Good Morning Melanie,

Could you please respond with your specific question regarding a street name in Loveland. I would like to assist but am uncertain of your need or intentions.

Sincerely,

Luke Hecker
Chief of Police
Loveland Police Department
810 East 10th Street
Loveland, CO 80537-4942
Phone: (970) 962-2222
Fax: (970) 962-2917
heckel@ci.loveland.co.us

Melanie Foslien

From: Carie Dann <dannc@ci.loveland.co.us>
Sent: Tuesday, November 29, 2011 2:07 PM
To: 'Melanie Foslien'
Cc: Troy Bliss; Carie Dann
Subject: RE: Mariana Butte 25th Subdivision - street name exemption

Melanie,

Thanks for your email. While the name of Zander does not meet the city's conventional street-naming system, it is our belief that most firefighters here are not familiar with the system and thus it will not create a threat to public safety and welfare, nor negatively affect response time. Our response is based more on maps and quadrant numbers to locate actual streets and building addresses.

Since I'm speaking only for Loveland Fire and Rescue, I recommend you contact Loveland Police Department and also Thompson Valley EMS, as they are the two other emergency-service providers.

Carie Dann
 Deputy Fire Marshal
 Loveland Fire and Rescue
 410 E. 5th St.
 Loveland, CO 80537
 Phone 970.962.2518

From: Melanie Foslien [<mailto:mfoslien@kbnengineers.com>]
Sent: Monday, November 28, 2011 1:44 PM
To: Carie Dann
Cc: Troy Bliss
Subject: Mariana Butte 25th Subdivision - street name exemption

Carie,

Please find attached one (1) pdf file for the proposed Preliminary Development Plan at Mariana Butte showing the proposed street names. All names have been approved by the City of Loveland, except for "Zander" Court on the west end of the property. The other three streets are named for Native American chiefs.

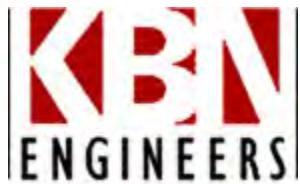
The Planning Department has determined that Zander Place does not meet the street naming convention per Section 12.08.100 - *South of Eisenhower Blvd., north of First Street and west of Railroad Avenue. In the area south of Eisenhower Boulevard and north of First Street and west of Railroad Avenue all streets shall have the names of pioneers of the Loveland area, Loveland Mayors, native Colorado animals, prominent geographical features of the area, golf terms, Native American tribe names and Native American chief names. (Ord. 4778 § 4, 2003; Ord. 4557 § 4, 2000; Ord. 4115 § 1, 1995; Ord. 4059 § 7, 1995; Ord. 813 § 3, 1970; prior code § 20.26(h)) undefined.*

Our client would like to keep the name "Zander", and is planning to pursue an exemption to the City's standards with a resolution through City Council.

My question to you is whether, in your opinion, the name would create a threat to public safety and welfare, and if the variation in naming convention would likely increase the response time for emergency vehicles.

Please call or e-mail me with any questions.
Thank you,

Melanie Foslien
820 8th Street
Greeley, CO 80631
970-395-9880
970-395-9881 (Fax)
www.kbnengineers.com



Melanie Foslien

From: Randy Lesher <rlesher@tvems.com>
Sent: Wednesday, November 30, 2011 9:06 AM
To: Melanie Foslien
Subject: RE: A street named "Zander"?

Melanie – We have no problem with the street name “Zander” if it is not a duplicate street.

Randy Lesher
Chief
Thompson Valley EMS
970-663-6025 office
970-290-7120 cell

From: Melanie Foslien [<mailto:mfoslien@kbnengineers.com>]
Sent: Wednesday, November 30, 2011 9:02 AM
To: Randy Lesher
Subject: A street named "Zander"?

Randy,

As we discussed on the phone, we are working on a subdivision in Loveland, and one of the street names (“Zander”) doesn’t meet the City’s naming convention (as per Section 12.08.100).

My question to you is whether, in your opinion, the name would create a threat to public safety and welfare, and if the variation in naming convention would likely increase the response time for emergency vehicles.

I have checked the Larimer County website to make sure that the street name “Zander” is not a duplicate name. It is not, and has been reserved by City staff for this project.

Thanks!

Melanie Foslien
820 8th Street
Greeley, CO 80631
970-395-9880
970-395-9881 (Fax)
www.kbnengineers.com



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MARIANA BUTTE TWENTY FIFTH SUBDIVISION

PRELIMINARY PLAT FOR

BEING A SUBDIVISION OF LOT 1 BLOCK 12 MARIANA BUTTE SEVENTH SUBDIVISION AND A PORTION OF TRACT A MARIANA BUTTE PUD FIRST SUBDIVISION, ALL SITUATE IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

SHEET 1 OF 3

PROPERTY DESCRIPTION

MARIANA BUTTE TWENTY FIFTH SUBDIVISION

Lot 1, Block 12, Mariana Butte Seventh Subdivision, in the City of Loveland, County of Larimer, State of Colorado.

Parcel 1
A parcel of land being a portion of Tract A, Mariana Butte P.U.D., First Subdivision to the City of Loveland, County of Larimer, State of Colorado, according to the Plat on file in the office of the Clerk and Recorder said County, being more particularly described as follows: Beginning at the Northeast corner of Lot 1, Block 12, Mariana Butte Seventh Subdivision, the following two courses and distances: South 89°52' 30" East 200.00 feet; thence North 00°07' 30" East, 280.99 feet to a point on the South line of Tract W, said Mariana Butte P.U.D., First Subdivision; thence along said South line South 89°52' 31" East 1,137.17 feet to a point on the Easterly line of Tract A, thence South 04°22'54" West 254.36 feet, thence North 84°43'36" West 848.49 feet, thence South 04°22'54" West 229.44 feet, thence North 84°43'36" West 848.49 feet to a point on the East line of Tract T, said Mariana Butte Seventh Subdivision; thence along said East line and along the East line of said Lot 1 Block 12, North 00°07'30" East 200.00 feet to the Point of Beginning.

Containing 33.52 Acres, more or less, and being subject to all existing easements and/or rights-of-way of record.

GENERAL NOTES:

- Outlots A, B, C, D and E are not building sites.
- This project is subject to an Annexation Agreement which has been recorded in the Real Property records in the Office of the Larimer County Clerk and Recorder.
- This project at final plat stage may be subject to a Development Agreement which shall be recorded in the Real Property records in the Office of the Larimer County Clerk and Recorder.
- All easements adjacent to Street right of ways, as shown on this plat, are to be dedicated as public 14. Access, Utility, Drainage and Postal Easements.
- All on-site drainage improvements, including swales and detention ponds, shall be owned and maintained by the Mariana Butte Twenty Fifth Subdivision Homeowners Association.
- Maintenance and upkeep of stormwater detention ponds, storm sewer systems, swales, and permanent stormwater quality improvements are required by the City of Loveland and are to be continuing obligation of the Mariana Butte Twenty Fifth Subdivision Homeowners Association. The Mariana Butte Twenty Fifth Subdivision Homeowners Association shall provide ongoing maintenance of the private stormwater improvements as needed to maintain compliance with the approved construction plans and reports.
- The property lies within Flood Zone "X" (no hazards) per the Flood Insurance Rate Map (FIRM) as prepared by the Federal Emergency Management Agency (FEMA), Panel No. 08069C1169F having an effective date of December 19, 2006.
- Outlets B, C, D and E are hereby dedicated as emergency access, access, public utility, drainage and landscape easements. All portions of outlets that fall within and/or overlap on existing or proposed exclusive easement, except for the Osceola Place crossing, shall be excluded from the above referenced dedication as emergency access, access, public utility, drainage and landscape easements within public rights of way are to be maintained by the City of Loveland. Landscaping Twenty Fifth Subdivision Homeowners Association.
- Outlets B, C, D and E are hereby dedicated as emergency access, access, public utility, drainage and landscape easements. All portions of outlets that fall within and/or overlap on existing or proposed exclusive easement, except for the Osceola Place crossing, shall be excluded from the above referenced dedication as emergency access, access, public utility, drainage and landscape easements within public rights of way are to be maintained by the City of Loveland. Landscaping Twenty Fifth Subdivision Homeowners Association.
- Developer-installed landscaping improvements shall be owned and maintained by the Mariana Butte Twenty Fifth Subdivision Homeowners Association (HOA).
- Structures/items that shall be contained within the lot/building envelope include roof eaves, foundation footings, window wells, building extrusions such as bay windows, porches, decks and patios.
- All building pads as shown and labeled herein contain 2600.00 square feet unless otherwise noted.
- Structures/items that shall be contained within the lot/building envelope include roof eaves, foundation footings, window wells, building extrusions such as bay windows, porches, decks and patios.
- Zero (0') feet to the property line, and ten (10') feet minimum between adjacent structures.

SETBACK NOTES:

Front Setback: Zero (0') feet to the property line, sixteen (16') feet minimum from the back of the sidewalk (or back of curb if no sidewalk exists) to the face of the structure, and twenty (20') feet minimum to the face of the garage.

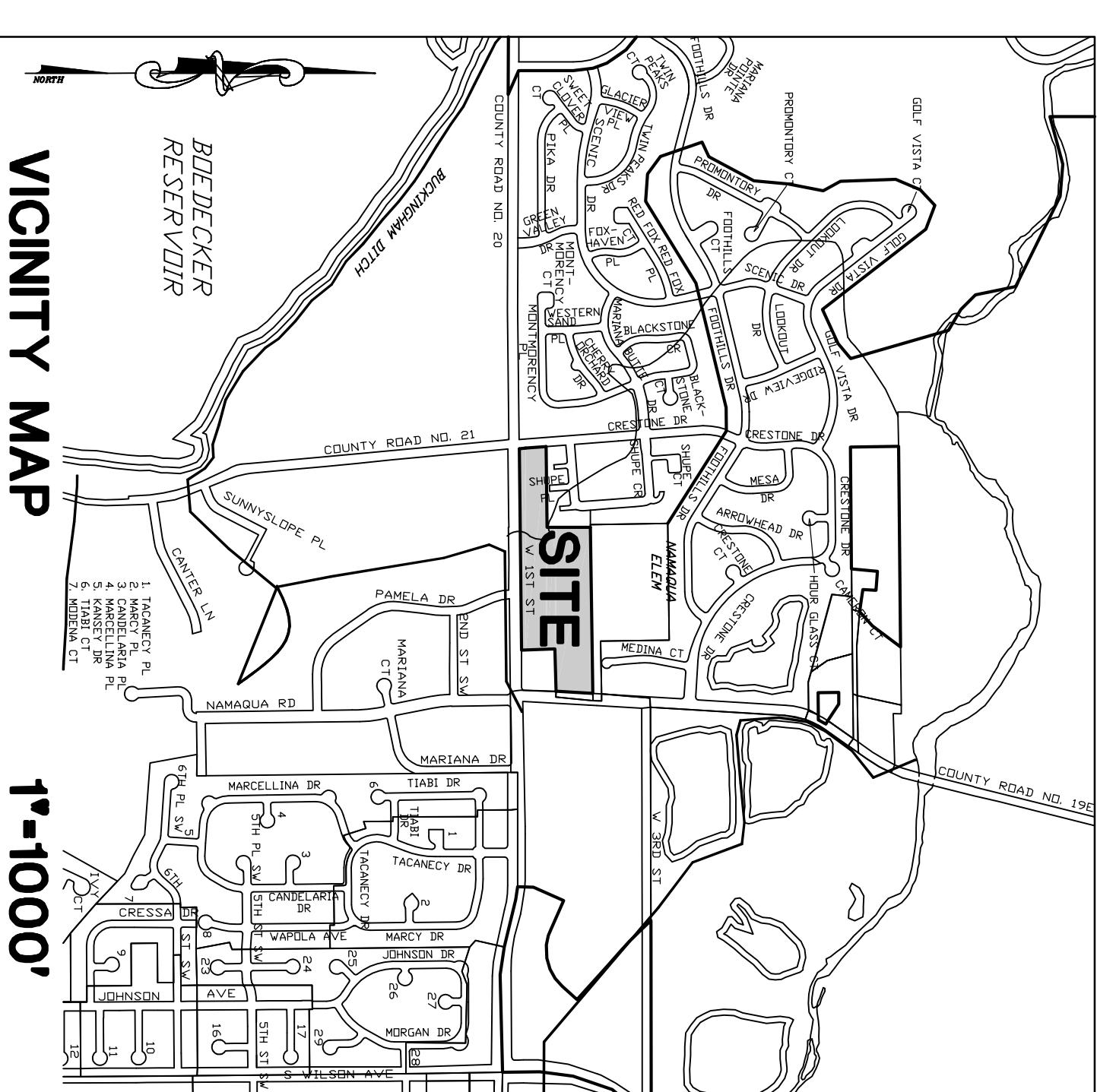
Side Setback: Zero (0') feet to the property line, and ten (10') feet minimum between adjacent structures.

Rear Setback: Zero (0') feet to the property line, and ten (10') feet minimum between adjacent structures.

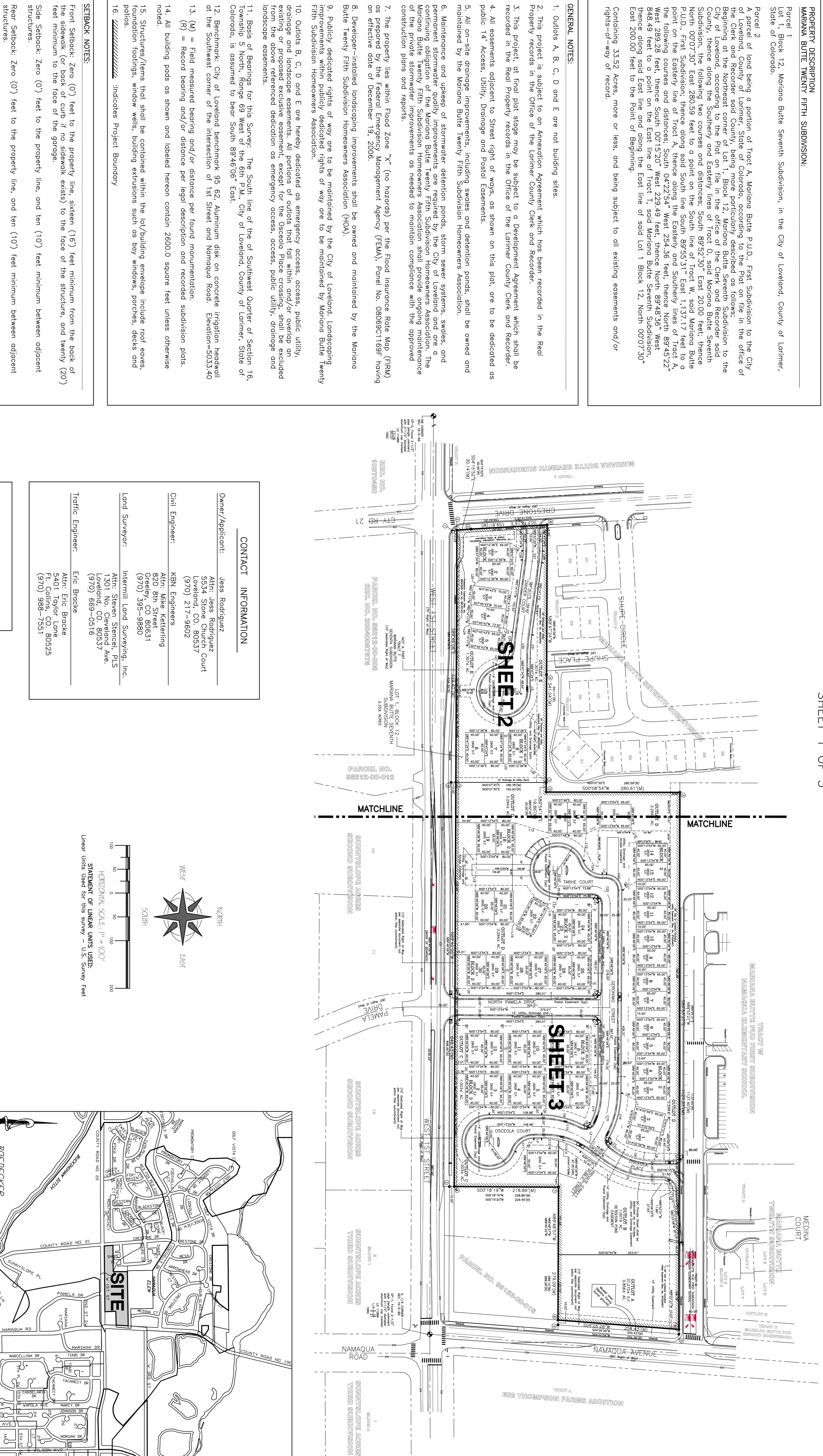
TRACT	ACRE(S)	% SITE	USE	WATER	OWN/MAINTAIN
Outlot A	0.856	Point of Interest/Loveland Historical Society	N/A	Historical Society	N/A
Outlot B	0.007	3.00%	Utilities/Landscape/Open/Drainage/Access	Utilities	Homeowners Assoc.
Outlot C	1.003	2.93%	Utilities/Landscape/Open/Drainage/Access	Utilities	Homeowners Assoc.
Outlot D	3.294	9.83%	Utilities/Landscape/Open/Drainage/Access	Utilities	Homeowners Assoc.
Outlot E	1.307	3.90%	Utilities/Landscape/Open/Drainage/Access	Utilities	Homeowners Assoc.
TOTAL	7.467	22.28%			

CONTACT INFORMATION	
Owner/Applicant:	Jess Rodriguez Attn: Jess Rodriguez 5534 Stone Church Court Loveland, CO 80537 (970) 217-9602
Civil Engineer:	KEN Engineers Attn: Mike Kettering 820 8th Street Greeley, CO 80631 (970) 355-9880
Traffic Engineer:	Eric Brocke Attn: Eric Brocke 5401 Taylor Lane Ft. Collins, CO 80525 (970) 988-7751
Land Surveyor:	Intermill Land Surveying, Inc. Attn: Steven Stenzel, PLS 1301 N. Cleveland Ave. Loveland, CO 80537 (970) 659-0510

STATEMENT OF LINEAR UNITS USED:	
Linear Units Used for this Survey - U.S. Survey Feet	
This plot is approved by the City of Loveland Planning Commission this _____ day of _____, 20____.	
Chairman - City of Loveland Planning Commission	



1'-1000'



MARIANA BUTTE TWENTY FIFTH SUBDIVISION

PRELIMINARY PLAT FOR

BEING A SUBDIVISION OF LOT 1 BLOCK 12 MARIANA BUTTE SEVENTH SUBDIVISION AND A PORTION OF TRACT A MARIANA BUTTE PUD FIRST SUBDIVISION, ALL SITUATE IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

SHEET 3 OF 3

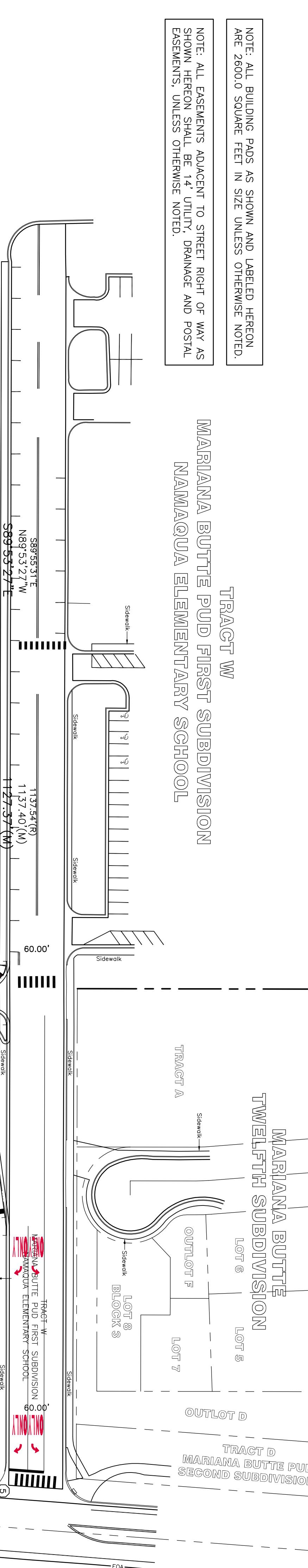
MEDINA COURT

NOTE: ALL BUILDING PADS AS SHOWN AND LABELED HERON ARE 2600.0 SQUARE FEET IN SIZE UNLESS OTHERWISE NOTED.

NOTE: ALL EASEMENTS ADJACENT TO STREET RIGHT OF WAY AS SHOWN HEREON SHALL BE 14' UTILITY, DRAINAGE AND POSTAL EASEMENTS, UNLESS OTHERWISE NOTED.

MARIANA BUTTE PUD FIRST SUBDIVISION

NAMAQUA ELEMENTARY SCHOOL



TWELFTH SUBDIVISION

LOT 6

LOT 5

OUTLOT D

OUTLOT F

OUTLOT E

OUTLOT C

OUTLOT B

OUTLOT A

DETENTION POND

TRACT D

MARIANA BUTTE PUD SECOND SUBDIVISION

TRACT W

TRACT A

TRACT B

TRACT C

TRACT D

TRACT E

TRACT F

TRACT G

TRACT H

TRACT I

TRACT J

TRACT K

TRACT L

TRACT M

TRACT N

TRACT O

TRACT P

TRACT Q

TRACT R

TRACT S

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TRACT U

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TRACT X

TRACT Y

TRACT Z

TRACT AA

TRACT BB

TRACT CC

TRACT DD

TRACT EE

TRACT FF

TRACT GG

TRACT HH

TRACT II

TRACT JJ

TRACT KK

TRACT LL

TRACT MM

TRACT NN

TRACT OO

TRACT PP

TRACT QQ

TRACT RR

TRACT SS

TRACT TT

TRACT UU

TRACT VV

TRACT WW

TRACT XX

TRACT YY

TRACT ZZ

TRACT AA

TRACT BB

TRACT CC

TRACT DD

TRACT EE

TRACT FF

TRACT GG

TRACT HH

TRACT II

TRACT JJ

TRACT KK

TRACT LL

TRACT MM

TRACT NN

TRACT OO

TRACT PP

TRACT QQ

TRACT RR

TRACT SS

TRACT TT

TRACT UU

TRACT VV

TRACT WW

TRACT XX

TRACT YY

TRACT ZZ

TRACT AA

TRACT BB

TRACT CC

TRACT DD

TRACT EE

TRACT FF

TRACT GG

TRACT HH

TRACT II

TRACT JJ

TRACT KK

TRACT LL

TRACT MM

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TRACT OO

TRACT PP

TRACT QQ

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TRACT SS

TRACT TT

TRACT UU

TRACT VV

TRACT WW

TRACT XX

TRACT YY

TRACT ZZ

TRACT AA

TRACT BB

TRACT CC

TRACT DD

TRACT EE

TRACT FF

TRACT GG

TRACT HH

TRACT II

TRACT JJ

TRACT KK

TRACT LL

TRACT MM

TRACT NN

TRACT OO

TRACT PP

TRACT QQ

TRACT RR

TRACT SS

TRACT TT

TRACT UU

TRACT VV

TRACT WW

TRACT XX

TRACT YY

TRACT ZZ

TRACT AA

TRACT BB

TRACT CC

TRACT DD

TRACT EE

TRACT FF

TRACT GG

TRACT HH

TRACT II

TRACT JJ

TRACT KK

TRACT LL

TRACT MM

TRACT NN

TRACT OO

TRACT PP

TRACT QQ

TRACT RR

TRACT SS

TRACT TT

TRACT UU

TRACT VV

TRACT WW

TRACT XX

TRACT YY

TRACT ZZ

TRACT AA

TRACT BB



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: 2/7/2012
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Alison Hade, Community Partnership Office Administrator

TITLE:

A resolution waiving certain development fees for construction of eight residences by Loveland Habitat for Humanity

RECOMMENDED CITY COUNCIL ACTION:

Move to adopt A RESOLUTION WAIVING CERTAIN DEVELOPMENT FEES FOR CONSTRUCTION OF EIGHT RESIDENCES BY LOVELAND HABITAT FOR HUMANITY

OPTIONS:

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

DESCRIPTION:

Loveland Habitat for Humanity is requesting waiver of all development, capital expansion, and enterprise fees for the construction of eight new single family dwellings in 2012. The total fee estimate for all eight dwellings is \$211,347.51. The total fee waiver would be \$192,607.44. Habitat for Humanity would pay the remaining \$18,740.07. Fees for the six dwellings in the Willow Park Subdivision were calculated using the 2009 fee schedule because this project was designated as an affordable housing development in 2009. Fees for the two dwellings in the Wards 3rd Subdivision were calculated using the 2012 fee schedule. See **Attachment A** for more detail.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

\$65,000 was appropriated in the 2012 budget to backfill enterprise system impact fees waived by the proposed resolution. An additional \$127,607.44 in development and capital expansion fees would be waived by the resolution and are not required to be backfilled.

SUMMARY:

Habitat for Humanity builds and sells housing to households that earn between 30% and 60% of the area median income (\$46,620 annually for a family of three). The City of Loveland historically has waived fees on behalf of Habitat for Humanity. See **Attachment B** for more detail on the history of fee waivers for Habitat for Humanity.

The Loveland Municipal Code permits City Council to waive development, capital expansion and enterprise fees on behalf of non-profit entities. However, the code requires that any enterprises system impact fees waived be paid by the City's general fund or other appropriate fund. The 2012 City of Loveland adopted budget includes an appropriation of \$65,000 to pay the enterprise fees waived on behalf of Habitat for Humanity. The total cost of enterprise fees is \$83,740.08. Under the recommended resolution and current budget appropriation of \$65,000, Habitat for Humanity would pay the remaining enterprise fees of \$18,740.07. An additional \$127,607.44 in development and capital expansion fees would be waived by the resolution and are not required to be backfilled.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

- **Attachment A:** Estimate of development, capital expansion, and enterprise fees for eight dwelling units
- **Attachment B:** History of fee waivers approved by Loveland City Councils
- **Attachment C:** Resolution waiving certain development fees for Habitat for Humanity in 2012

Fee Estimate Calculator - Willow Park 2nd Subdivision (6 units), Wards 3rd Subdivision (2 units)

Properties >>>>	599 E 27th St	623 E 27th St	647 E 27th St	671 E 27th St	574 E 27th St	598 E 27th St	1229 2nd St SE	1232 Raven Pl
Attributes:								
Valuation \$	143,372	121,966	143,372	121,966	159,528	181,654	135,642	135,642
Mech Sub-Val \$	4,400	4,400	4,400	4,400	4,400	4,400	4,400	4,400
Elec Sub-Val \$	4,400	4,400	4,400	4,400	4,400	4,400	4,400	4,400
Plumbing Sub-Val \$	4,400	4,400	4,400	4,400	4,400	4,400	4,400	4,400
.75 Water Meters #	1	1	1	1	1	1	1	1
Dwelling Units #	1	1	1	1	1	1	1	1
Lot size sq ft	9583.2	9583.2	9147.6	9583.2	9147.6	8712	8115.228	8115.228
Fees:								
	2009 Fee Est	2012 Fee Est	2012 Fee Est					
Res Bldg PC	806.10	726.02	806.10	726.02	864.34	944.42	776.98	776.98
Res Bldg Permit Fee	1,240.15	1,116.95	1,240.15	1,116.95	1,329.75	1,452.95	1,195.35	1,195.35
Res Mechanical Permit Fee	111.25	111.25	111.25	111.25	111.25	111.25	111.25	111.25
Res Electrical Permit Fee	111.25	111.25	111.25	111.25	111.25	111.25	111.25	111.25
Res Plumbing Permit Fee	111.25	111.25	111.25	111.25	111.25	111.25	111.25	111.25
Construction Water 0.75in Tap	25.00	25.00	25.00	25.00	25.00	25.00	27.00	27.00
Water Meter Fee 0.75in	275.00	275.00	275.00	275.00	275.00	275.00	295.00	295.00
Elec Inst Undgrd 150 Amp & Less	485.00	485.00	485.00	485.00	485.00	485.00	535.00	535.00
School Fee-in-Lieu of Land Dedi 1	1,382.00	1,382.00	1,382.00	1,382.00	1,382.00	1,382.00	1,382.00	1,382.00
PIF Elec 150 Amp & Less	1,090.00	1,090.00	1,090.00	1,090.00	1,090.00	1,090.00	1,250.00	1,250.00
Raw Water Dev Res SF Attached/D	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
SIF Water Res Detached SF	4,470.00	4,470.00	4,470.00	4,470.00	4,470.00	4,470.00	4,560.00	4,560.00
SIF Stormwater Res - Low	545.28	545.28	520.50	545.28	520.50	495.71	461.76	461.76
SIF Sewer Res Detached SF	2,420.00	2,420.00	2,420.00	2,420.00	2,420.00	2,420.00	2,560.00	2,560.00
CEF Res Fire Protection	696.00	696.00	696.00	696.00	696.00	696.00	736.00	736.00
CEF Res General Government	995.00	995.00	995.00	995.00	995.00	995.00	1,052.00	1,052.00
CEF Res Law Enforcement	904.00	904.00	904.00	904.00	904.00	904.00	957.00	957.00
CEF Res Library	644.00	644.00	644.00	644.00	644.00	644.00	680.00	680.00
CEF Res Museum	519.00	519.00	519.00	519.00	519.00	519.00	549.00	549.00
CEF Res Open Lands	799.00	799.00	799.00	799.00	799.00	799.00	824.00	824.00
CEF Res Parks	3,168.00	3,168.00	3,168.00	3,168.00	3,168.00	3,168.00	3,351.00	3,351.00
CEF Res Recreation	1,587.00	1,587.00	1,587.00	1,587.00	1,587.00	1,587.00	1,679.00	1,679.00
CEF Res Street Detached SF	2,169.61	2,169.61	2,169.61	2,169.61	2,169.61	2,169.61	2,169.61	2,169.61
CEF Res Trails	503.00	503.00	503.00	503.00	503.00	503.00	532.00	532.00
Street Insp Res - SF	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00
Stormwater Insp Res - SF	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00
Color key:	26,206.89	26,003.61	26,182.11	26,003.61	26,329.95	26,508.44	27,056.45	27,056.45
2009 exceeds 2012								
Enterprise Fees	10,385.28	10,385.28	10,360.50	10,385.28	10,360.50	10,335.71	10,763.76	10,763.76
Capital Expansion Fees	11,984.61	11,984.61	11,984.61	11,984.61	11,984.61	11,984.61	12,529.61	12,529.61
Development Fees	3,837.00	3,633.72	3,837.00	3,633.72	3,984.84	4,188.12	3,763.08	3,763.08
	26,206.89	26,003.61	26,182.11	26,003.61	26,329.95	26,508.44	27,056.45	27,056.45

TOTALS:	TOTAL WAIVED:
83,740.07	65,000.00
96,966.88	96,966.88
30,640.56	30,640.56
211,347.51	192,607.44



Habitat for Humanity Fee Waiver History

Year	# Units	\$ Waived	Per Unit	Gen Fund Backfill
1995	5	\$43,338	\$8,668	\$21,140
1996	2	\$15,450	\$7,725	\$7,748
1997	5	\$51,607	\$10,321	\$21,790
1998	4	\$48,491	\$12,123	\$19,354
1999	5	\$55,908	\$11,182	\$23,962
2000	5	\$52,379	\$10,476	\$24,522
2001	5	\$66,327	\$13,265	\$28,977
2002	5	\$68,736	\$13,747	\$29,622
2003	5	\$38,876	\$7,775	\$0
2004	5	\$40,437	\$8,087	\$0
2005	5	\$41,113	\$8,223	\$0
2006	6	\$89,077	\$14,846	\$36,592
2007	6	\$136,452	\$22,742	\$64,465
2008	6	\$152,425	\$25,404	\$66,733
2009	6	\$154,642	\$25,774	\$68,254
2010	6	\$148,697	\$24,783	\$65,000
2011	6	\$151,462	\$25,244	\$65,000
2012	8	\$192,607	\$24,076	\$65,000
Total	95	\$1,548,025	\$19,111	\$608,159

RESOLUTION #R-8-2012

A RESOLUTION WAIVING CERTAIN DEVELOPMENT FEES FOR CONSTRUCTION OF EIGHT RESIDENCES BY LOVELAND HABITAT FOR HUMANITY

WHEREAS, Loveland Habitat for Humanity (“Habitat”) has requested that the City waive certain City-imposed development fees, including capital expansion fees, for eight residences that it will construct in 2012 in Loveland, Colorado, including 6 residences located in Willow Park 2nd Subdivision at 574, 598, 599, 623, 647, and 671 East 27th Street, and 2 residences located in Wards 3rd Subdivision at 1229 2nd Street Southeast and 1232 Raven Place, (collectively, the “Residences”); and

WHEREAS, Loveland Municipal Code Section 16.38.075 provides that the City Council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed upon new development upon a finding, set forth in a development agreement, that the project for which the fees would otherwise be imposed will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the City at taxpayer expense, that such facilities relieve the pressures of growth on City-provided facilities, and that such facilities do not create growth or growth impacts; and

WHEREAS, Habitat is willing and able to enter into one or more development agreements with the City pursuant to which Habitat will agree to construct the Residences for the benefit of low and moderate income Loveland households.

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

Section 1. That the City Council finds that the waiver of the development fees, capital expansion fees, and enterprise fees which results from the adoption of this Resolution will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the City at taxpayer expense, that such facilities relieve the pressures of growth on City-provided facilities, and that such facilities do not create growth or growth impacts.

Section 2. That capital expansion fees in a total amount not to exceed \$95,876.88 payable for the construction of the Residences are hereby waived for the purpose described above.

Section 3. That as provided in Loveland Municipal Code Section 16.38.075, when a capital related fee is waived as set forth in Section 2, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund.

Section 4. That development fees, including, but not limited to, all building permit fees, plan review fees, and any and all other fees, due and payable for construction of the Residences between permit application and final certificate of occupancy (but not including capital

expansion fees, enterprise fees such as system impact fees, raw water fees, tap fees or other enterprise fees) in a total amount not to exceed \$30,640.56 are hereby waived for the purpose described above.

Section 5. That enterprise fees, including system impact fees, raw water fees, tap fees, or any other enterprise fees, payable for construction of the Residences in a total amount not to exceed \$65,000.00 are hereby waived for the purpose described above.

Section 6. That the amount of the waived enterprise fees, in an amount not to exceed \$65,000.00, as set forth in Section 5 hereof, shall be paid by the City into the City's enterprise funds from the general fund of the City, and that such funds have been appropriated in the City's 2012 budget.

Section 7. That the waiver of the fees described in Sections 2, 4, and 5 hereof shall be conditioned upon the City, through its City Manager, and Habitat entering into one or more development agreements, which development agreements shall provide for the waiver of said fees in exchange for the construction of the Residences, as well as such other conditions as the City Manager shall deem necessary.

Section 8. That this Resolution shall be effective as of the date of its adoption.

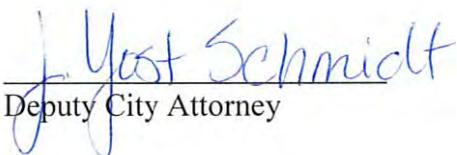
ADOPTED this 7th day of February, 2012.

Cecil 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:	9
MEETING DATE:	2/7/2012
TO:	City Council
FROM:	Steve Kibler, Public Works
PRESENTER:	Keith Reester

TITLE:

Public hearing and consideration on first reading of an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for the fleet replacement of a roadway mowing tractor

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve 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 an administrative action. The ordinance appropriates \$78,000 in reserve for the replacement of the Street Division's 1998 Massey flail mower, originally scheduled for replacement in 2013.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

Budget impact is neutral because all replacement capital is already accrued in the Fleet Fund and available for appropriation.

SUMMARY:

The fleet vehicle/equipment referred to in this request is unit #8800 (1998 Massey flail mower used for roadway mowing). It was scheduled for replacement in 2013 but we are concerned that another major component failure will likely occur during peak mowing season requiring the need to perform mowing with a higher costing rental unit. The unit is experiencing repeated major

component failures which require extensive down-time causing extensive costs-of-ownership. Staff is recommending replacing it one year early. \$78,000.00 replacement capital is accrued in the fleet fund. The plan is to purchase a replacement tractor from the National Purchasing Partners Coalition (NPP) which meets all Finance/Purchasing guidelines and policies.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for the fleet replacement of a roadway mowing tractor
2. NPP's Purchasing Agreement and Colorado Machinery's (John Deere) quote with trade-in compensation

FIRST READINGFebruary 7, 2012**SECOND READING****ORDINANCE NO. _____**

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE FLEET REPLACEMENT OF A ROADWAY MOWING TRACTOR

WHEREAS, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; 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 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 \$78,000 from fund balance in the Fleet fund 500 are available for appropriation. Revenues in the total amount of \$78,000 are hereby appropriated for the purchase of a roadway mowing tractor to replace an existing unit 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
Fleet Fund 500 - Mowing Equipment**

Revenues

Fund Balance	78,000
--------------	--------

Total Revenue

78,000

Appropriations

500-23-160-0000-48240 Machinery and Equipment	78,000
--	--------

Total Appropriations

78,000

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

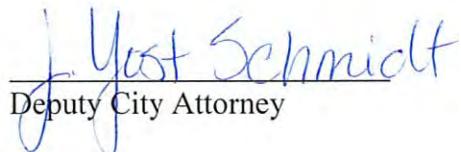
ADOPTED this ____ day of February, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


J. Yost Schmidt
Deputy City Attorney



JOHN DEERE

Quote Id :5887312

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

John Deere Company
2000 John Deere Run
Cary, NC 27513
Ph: 888-222-7239, Fax: 309-749-2313
FED ID: 36-2382580; DUNS#: 60-7690989

Prepared for:

CITY OF LOVELND

Proposal for:

CITY OF LOVELND

Delivering Dealer:

RANDY PFEIFER
COLORADO EQUIPMENT, LLC
125 JOHN DEERE DRIVE
FORT COLLINS, CO 80524
rpfeifer@coloradoequipment.net

Quote Prepared By:

RANDY PFEIFER
rpfeifer@coloradoequipment.net

Date :September 20, 2011

Offer Expires :January 12, 2012



JOHN DEERE

125 JOHN DEERE DRIVE
FORT COLLINS, CO 80524
Phone: 970-482-0400
Fax: 970-482-6160

P . 64

Quote Id : 5887312

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

John Deere Company
2000 John Deere Run
Cary, NC 27513
Ph: 888-222-7239, Fax: 309-749-2313
FED ID: 36-2382580; DUNS#: 60-7690989

Quote Summary

CITY OF LOVELAND (NNP MEMBER # 209180)

Prepared For : CITY OF LOVELND CO Home : 970-9622532	Delivering Dealer : COLORADO EQUIPMENT, LLC RANDY PFEIFER 125 JOHN DEERE DRIVE FORT COLLINS, CO 80524 Phone: 970-482-0400 rpfeifer@coloradoequipment.net	Quote ID : 5887312 Created On : September 20, 2011 Last Modified On: January 4, 2012 Expiration Date: January 12, 2012
--	--	---

Equipment Summary	Selling Price	Qty	Extended
JOHN DEERE 6430 Cab Tractor	\$ 58,461.32	X 1	= \$ 58,461.32
Contract: National Purchasing Partners (NPP)_NPP			
Price Effective Date: January 27, 2012			
ALAMO VERSA	\$ 36,250.00	X 1	= \$ 36,250.00

Contract:**Price Effective Date:**

Equipment Total	\$ 94,711.32
------------------------	---------------------

Trade In Summary	Qty	Each	Extended
1998 MASSEY FERGUSON 6150	1	\$ 20,957.32	\$ 20,957.32
PayOff			\$ 0.00
Total Trade Allowance			\$ 20,957.32

Trade In Total	\$ 20,957.32
-----------------------	---------------------

* Includes Fees and Non-contract items	Quote Summary
	Equipment Total \$ 94,711.32
	Trade In \$ (20,957.32)
	SubTotal \$ 73,754.00
	Total \$ 73,754.00
	Down Payment (0.00)
	Rental Applied (0.00)
	Balance Due \$ 73,754.00

Salesperson : X _____

Accepted By : X _____



Selling Equipment

Quote Id : 5887312

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

John Deere Company
2000 John Deere Run
Cary, NC 27513
Ph: 888-222-7239, Fax: 309-749-2313
FED ID: 36-2382580; DUNS#: 60-7690989

JOHN DEERE 6430 Cab Tractor

Contract: National Purchasing Partners (NPP)_NPP

Price Effective Date: January 27, 2012

Selling Price *
\$ 58,461.32

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount %	Discount Amount	Contract Price	Extended Contract Price
3132R	6430 Cab Tractor	1	\$ 73,878.00	27.00	\$ 19,947.06	\$ 53,930.94	\$ 53,930.94
Standard Options - Per Unit							
0600	No Package	1	\$ 0.00	27.00	\$ 0.00	\$ 0.00	\$ 0.00
0150	Standard Cab	1	\$ 0.00	27.00	\$ 0.00	\$ 0.00	\$ 0.00
0250	MFWD Front Axle with Limited Slip Differential	1	\$ 0.00	27.00	\$ 0.00	\$ 0.00	\$ 0.00
1288	18.4R34 In. 144A8 R1W Radial (460/85R34 In. 147A8 R1W Radial)	1	\$ 0.00	27.00	\$ 0.00	\$ 0.00	\$ 0.00
4149	12.4R24 In. 119A8 R1W Radial (320/85R24 In. 122A8 R1W Radial)	1	\$ -704.00	27.00	\$ -190.08	\$ -513.92	\$ -513.92
7010	SyncroPlus 16F/16R Transmission with Left Hand Power Reverser (19 mph/30 kmh)	1	\$ 1,953.00	27.00	\$ 527.31	\$ 1,425.69	\$ 1,425.69
7152	Flanged Axle, 8 Position Steel Wheels	1	\$ 0.00	27.00	\$ 0.00	\$ 0.00	\$ 0.00
7453	Deluxe Cab Corner Post Exhaust with Underhood Muffler	1	\$ 872.00	27.00	\$ 235.44	\$ 636.56	\$ 636.56
7662	Super Comfort Seat (MSG 95) with Air Suspension, 3-In. Seat Cushion	1	\$ 896.00	27.00	\$ 241.92	\$ 654.08	\$ 654.08
9207	Telescopic Rear View Mirrors (2) - Manually Adjustable	1	\$ 294.00	27.00	\$ 79.38	\$ 214.62	\$ 214.62
9102	Rear Windshield Wiper with Front & Rear Washer	1	\$ 493.00	27.00	\$ 133.11	\$ 359.89	\$ 359.89
9115	Back-Up Alarm	1	\$ 487.00	27.00	\$ 131.49	\$ 355.51	\$ 355.51



JOHN DEERE

Selling Equipment

Quote Id : 5887312

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

John Deere Company
2000 John Deere Run
Cary, NC 27513
Ph: 888-222-7239, Fax: 309-749-2313
FED ID: 36-2382580; DUNS#: 60-7690989

Code	Description	Qty	List Price	Discount %	Discount Amount	Contract Price	Extended Contract Price
9303	Third SCV Standard (2 Detents - 201 Series) with Standard Couplers	1	\$ 1,139.00	27.00	\$ 307.53	\$ 831.47	\$ 831.47
9020	Cold Weather Package I	1	\$ 306.00	27.00	\$ 82.62	\$ 223.38	\$ 223.38
9085	License Plate Bracket with Light	1	\$ 36.00	27.00	\$ 9.72	\$ 26.28	\$ 26.28
Standard Options Total			\$ 5,772.00		\$ 1,558.44	\$ 4,213.56	\$ 4,213.56
Dealer Attachments/Non-Contract/Open Market							
RE289848	Radio, Deere/Delco AM/FM Stereo with Clock, Front Audio Input Jack for MP3 Players, and Weatherband	1	\$ 434.00	27.00	\$ 117.18	\$ 316.82	\$ 316.82
Dealer Attachments Total			\$ 434.00		\$ 117.18	\$ 316.82	\$ 316.82
Suggested Price							
Total Selling Price			\$ 80,084.00		\$ 21,622.68	\$ 58,461.32	\$ 58,461.32

ALAMO VERSA

Hours: 0

Selling Price *
\$ 36,250.00

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount %	Discount Amount	Contract Price	Extended Contract Price
VERSA MOWER	1-SIDE MOUNTED 74" FLAIL MOWER & 96" 3-PT REAR MOUNTED FLAIL MOWER	1	\$ 32,000.00	0.00	\$ 0.00	\$ 32,000.00	\$ 32,000.00
Other Charges							
	Freight	1	\$ 2,000.00			\$ 2,000.00	\$ 2,000.00
	Customer Setup	1	\$ 2,250.00			\$ 2,250.00	\$ 2,250.00
	Other Charges Total		\$ 4,250.00			\$ 4,250.00	\$ 4,250.00
Suggested Price							\$ 36,250.00



Selling Equipment

Quote Id : 5887312

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

John Deere Company
2000 John Deere Run
Cary, NC 27513
Ph: 888-222-7239, Fax: 309-749-2313
FED ID: 36-2382580; DUNS#: 60-7690989

Code	Description	Qty	List Price	Discount %	Discount Amount	Contract Price	Extended Contract Price
	Total Selling Price		\$ 36,250.00		\$ 0.00	\$ 36,250.00	\$ 36,250.00



JOHN DEERE

Trade-in

Quote Id : 5887312

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):
 John Deere Company

2000 John Deere Run
 Cary, NC 27513
 Ph: 888-222-7239, Fax: 309-749-2313
 FED ID: 36-2382580; DUNS#: 60-7690989

1998 MASSEY FERGUSON 6150

SN#

Machine Details

Description	Net Trade Value
1998 MASSEY FERGUSON 6150	\$ 20,957.32
SN#	
Your Trade-In Description	

Additional Options

Hour Meter Reading	5826	3 Point Hitch	Standard
Additional Options or Attachments	this tractor has 1 side mounted flail mower and 1-3pt flail mower	Axle Front	Front Wheel Drive
Duals	No	Front Axle or Drive System	MFWD
Front Tire Size	14.9/-	Loader	No
Operator's Station	Cab w/Air Cond	Operator's Station	Cab
PTO	540	Radials	N/A
Rear Tire Size	480/85-34	SCVs	1
Speeds Forward	32	Speeds Reverse	32
Transmission	Partial Powershift	Transmission	Trans Dynashift 8x4 PS
Total			\$ 20,957.32

NATIONAL PURCHASING PARTNERS (NPP)
Landscape, Turf & Athletic, Lawn and Garden Equipment, And Utility
Vehicles

Contract Number: NPP

Contract Period: 01 May 2007 – 30 April 2013

Eligibility: Any registered National Purchasing Partners (NPP) member is eligible to access the contract. Local regulations may require participating agencies to execute an Intergovernmental Cooperative Purchasing Agreement (IGA) with the lead government agency. For those participating agencies required to execute an IGA, a copy is available. Please email Molly Deter to request a copy of the IGA or any other legal documents (Request for Proposal (RFP), Master Price Agreement (MPA) etc.) at Molly.Deter@mynpp.com or contact her at 800- 810-3909.

- To become a NPP member click [here](#) and Join Now is a link on the page.
- Click here to access the [NPP Member List \(includes Non-Profit Members also\)](#)
- Click here to access the [NPP Contract Synopsis](#)
- NPP Membership # must be listed on the agency purchase order.

For questions about NPP and Webinars please contact Molly Deter at
Molly.Deter@mynpp.com or contact her at 800- 810-3909.

All orders must show John Deere Company as the vendor and reference the contract and item number.

Purchase orders should be submitted to:
John Deere Company
2000 John Deere Run
Cary, NC 27513



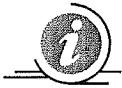
CONTRACT INFORMATION

Tax Requirements	Yes – See Below
Allied (non-Deere)	Yes – List as “Non-Contract” on PO
Credit Cards	No
Fees	No
Leasing	Yes – Municipal Leases Allowed
Financing	Yes
Multiple Unit Discount	No
Non-contract (Deere)	Yes - List as “Non-Contract” on PO
Rental	No
Trade-Ins	Yes
Miscellaneous	No

Tax Requirements

Please click on the following link to complete the required form.

https://secured.deere.com/en_US/govsales/httpscontent/taxclient_index.html



Price Structure

Effective 4 March 2011 – Discounts Apply to Current Pricing

NOTE: Discounts shown below are for ALL NPP Members (including Non-Profit Members).

- NPP Membership # must be listed on the agency purchase order.
-

All Purchase Orders submitted for the State of **California** to John Deere should now include a separate line stating “Tire Fee” and list it as a Non-Contract item on the Purchase Order.

Dealers should remit all fees (\$1.75 for each new farm tire purchased) to the State that they collect. Please refer to the State of California’s website for details on the tire fee.

For your reference the link is included. <http://www.boe.ca.gov/pdf/pub91.pdf>

New tires (including the spare) included with the purchase of: a new or used motor vehicle, including a trailer drawn upon a highway or road; new or used **farm** equipment; or new or used construction equipment. *A "pneumatic tire" is a tire inflated, or capable of inflation, with compressed air. A "new tire" does not include retreaded, reused, or recycled tires.

JOHN DEERE PRICE PAGE TAB	CATEGORY	JOHN DEERE EQUIPMENT, ACCESSORIES AND ATTACHMENTS	DISCNT OFF LIST
L15	2	WALK-BEHIND EQUIPMENT & ACCESSORIES	9%
L25	4	LAWN TRACTORS & ACCESSORIES (EXCEPT 100 SERIES TRACTORS)	19%
L25	4	LAWN TRACTORS & ACCESSORIES (100 SERIES TRACTORS)	0%
L30	4	LAWN & GARDEN TRACTORS & ACCESSORIES	24%
L35	4	LAWN & GARDEN TRACTORS EQUIPMENT	24%
L40	12	COMPACT UTILITY VEHICLES & ACCESSORIES	17%
C10	6	COMMERCIAL WALK-BEHIND MOWERS & ACCESSORIES	24%
C13	7	ZERO-TURN RADIUS MOWERS & ACCESSORIES	24%
C15	8	COMMERCIAL FRONT MOWERS & ACCESSORIES	24%
C18	9	WIDE AREA MOWERS & ACCESSORIES	24%
C19	10	ADVANTAGE TRACTORS	4%
C20	10	COMPACT UTILITY TRACTORS & ACCESSORIES	19%
C25	10	EQUIPMENT FOR COMPACT UTILITY TRACTORS WORKSITE PRO ATTACHMENTS	19%
C27	10	TRACTOR, LOADER, BACKHOE TLB WORKSITE PRO ATTACHMENTS	24%
A2	11	AGRICULTURAL TRACTORS & ACCESSORIES	27%
A3	13	AGRICULTURAL EQUIPMENT – COMBINES	27%
A4	13	AGRICULTURAL EQUIPMENT – COTTON	27%
A5	13	AGRICULTURAL EQUIPMENT – HAY & FORAGE	27%
A6	13	AGRICULTURAL EQUIPMENT – TILLAGE	27%
A7	13	AGRICULTURAL EQUIPMENT – AIR SEEDING DRILLS PLANTERS	27%
A8	13	AGRICULTURAL EQUIPMENT – SPRAYERS	27%
A9	13	AGRICULTURAL EQUIPMENT – MATERIAL HANDLING – ROTARY CUTTERS MATERIAL HANDLING – LESS CUTTERS	27%
F R O	13	CUTTING & MOWING HAY & FORAGE LANDSCAPING	20%

N T I E R		LIVESTOCK MATERIAL HANDLING PLANTING & SEEDING SNOWBLOWERS TILLAGE TRANSPORTS	
G10	14	GOLF & TURF EQUIPMENT – REEL MOWERS	20%
G15	14	GOLF & TURF EQUIPMENT - SPECIAL APPLICATION MOWER	20%
G20	14	GOLF & TURF EQUIPMENT - SPECIAL APPLICATION VEHICLES	20%
G25	14	GOLF & TURF EQUIPMENT - AERATION	20%
G30	14	GOLF & TURF EQUIPMENT - DEBRIS MAINTENANCE	20%

Payment Remittance Information –

John Deere Government and National Sales remittance address is different from the vendor address listed above of Cary, NC. Please remember to advise customers of this as they may internally require this information to be on their purchase orders when they are issued.

Correct remit to address is:

**John Deere Gov't and Nat'l Sales
21748 Network Place
Chicago, IL 60673-1217**

Please contact Government Sales for assistance on quoting at 1-800-358-5010 Option 2. LL

Last Update: Dec 2, 2011 – updated NPP member list

Update: Nov 1, 2011 – Removed UV's and added to new NPP contract

Update: Aug 23, 2011 – Added Information on CA Tire Fee

Update: April 21, 2011 – Contract Extension

Update: March 4, 2011 – Contract updated to Current Pricing

Update: Feb 3, 2011 – NPP Membership #

Update: Nov 17, 2010 – Non-Contract & Allied items allowed on contract

Update: Sep 2, 2010 – Price Pgs for all sections & Leasing allowed

Update: Aug 12, 2010 - NPP Non Profit Members now eligible



CITY OF LOVELAND
WATER & POWER DEPARTMENT
200 North Wilson • Loveland, Colorado 80537
(970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

AGENDA ITEM: 10
MEETING DATE: 2/7/2012
TO: City Council
FROM: Jim Lees, Utility Accounting Manager, Water and Power Department
Steve Adams, Director, Water and Power Department
PRESENTER: Jim Lees

TITLE: A resolution adopting Rate Schedule TS, Transmission Voltage Service, and superseding all prior resolutions establishing former Rate Schedule IP, Interruptible 115 kV Transmission Voltage Service

RECOMMENDED CITY COUNCIL ACTION:

Move to approve a resolution mending Resolution #R-64-2011 and amending the 2012 Schedule of Rates, Charges and Fees for services provided by the Water and Power Department of the City of Loveland 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 an administrative action to amend Rate Schedule IP of the 2012 Water and Power Schedule of Rates, Charges and Fees.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

SUMMARY: It has come to our attention that Rate Schedule IP is not consistent with the current version of Platte River Power Authority's (PRPA) Tariff Schedule 9, therefore we are proposing to update it and make it consistent with the Tariff Schedule 9.

Schedule IP in the City's Schedule of Rates, Charges and Fees is for power customers who are served at transmission level voltage (115 kV) and have an interruptible load. Customers who

are served at transmission level voltage are not part of the City's electric distribution system, but instead are served directly off of PRPA's transmission system. An interruptible load means that when PRPA needs to meet certain reserve requirements or has an operational emergency and needs to prevent damage to the transmission system, they can take a customer offline by interrupting their load. By agreeing to be interrupted, the customer in turn gets their power at a lower price than a customer with a firm or non-interruptible load.

Schedule IP is based upon PRPA's Tariff – Schedule 9: Large User Service, which is designed specifically for municipal retail customers with unique load characteristics. These characteristics include that the customer cannot be readily served from the municipality's distribution system, and covers customers with both firm and interruptible loads.

The proposed changes to Schedule IP and the reasons for them can be summarized as follows:

- 1) Streamline Schedule IP and make it more flexible. At this time, there is one customer on Schedule IP. The content of Schedule IP has a lot of specific parameters in it that apply only to the current customer. We are proposing to have something in place that is more general and could be applied to potential future customers and would also work for the current customer.
- 2) To achieve consistency with PRPA's Tariff Schedule 9, PRPA made significant changes to their Tariff Schedule 9 that were approved by the PRPA board late in October and became effective in 2012. We want to update Schedule IP to make it consistent with PRPA Tariff Schedule 9.
- 3) To have Schedule IP apply to firm as well as interruptible customers. Tariff Schedule 9 addresses both firm and interruptible customers, where Schedule IP can only be used for interruptible customers. Changing Schedule IP to include firm customers will give us the versatility of having a rate class available that will accommodate potential customers who might want to be served off of the transmission line, but do not want to be interrupted. Because of this proposed change, we would like to change the lettering designation from Schedule IP to Schedule TS for Transmission Service.

Our normal practice is to take any revisions to the Schedule of Rates, Charges and Fees to City Council in October for adoption in the following year. In this instance, we would rather not wait until 2013. With the Rocky Mountain Center for Innovation and Technology development now in full swing, Loveland will hopefully be attracting more new businesses or redeveloping existing businesses, and we want to be positioned to accommodate a potential customer that would be interested in being served directly off of the transmission grid.

Attached for Council consideration is the proposed version of Schedule TS, a strike-out version showing proposed changes for 2012, and PRPA's Tariff Schedule 9.

At their January 18, 2012, meeting, the Loveland Utilities Commission voted unanimously that City Council approve revisions to Schedule IP as presented by staff.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. A resolution amending Resolution #R-64-2011 and amending the 2012 Schedule of Rates, Charges and Fees for services provided by the Water and Power Department of the City of Loveland on First Reading
2. Proposed Rate Schedule TS (formerly Rate Schedule IP)
3. A redline version of Schedule IP showing proposed changes
4. Platte River Power Authority's Tariff Schedule 9

FIRST READING February 7, 2012

SECOND READING _____

RESOLUTION #R-9-2012

A RESOLUTION ADOPTING RATE SCHEDULE TS, TRANSMISSION VOLTAGE SERVICE, AND SUPERSEDING ALL PRIOR RESOLUTIONS ESTABLISHING FORMER RATE SCHEDULE IP, INTERRUPTIBLE 115 kV TRANSMISSION VOLTAGE SERVICE

WHEREAS, the Loveland Municipal Charter and Code provide that all utility rates, charges, and fees of the City shall be set by resolution upon two readings of the City Council; and

WHEREAS, the City Council last set such rates, charges, and fees for the City's Water and Power Department in Resolution #R-64-2011; and

WHEREAS, City staff has presented to the City Council a revised "Schedule IP, Interruptible 115 kV Transmission Voltage Service" ("Rate Schedule IP"), now renamed "Schedule TS, Transmission Voltage Service," a copy of which is attached hereto as Exhibit A and incorporated herein by reference ("Rate Schedule TS").

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

Section 1. That Rate Schedule TS, attached hereto as Exhibit A, is hereby adopted.

Section 2. That this Resolution, as of the effective date of this Resolution and as provided in Section 3 below, shall supersede in all respects all previous resolutions of the City Council which established former Rate Schedule IP.

Section 3. That this Resolution shall be effective as of the date of its adoption on second reading as provided in the Loveland Municipal Code.

ADOPTED this ____ day of February, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shane L. Olters
Assistant City Attorney

Transmission Voltage Service
Schedule TS

Eligibility Requirements

Transmission Voltage Service is available to any customer: (i) whose load is of sufficient magnitude or of an unusual nature such that it cannot be served from the distribution system; (ii) whose premises are adjacent to transmission lines that are, or by contract can become, lines that supply wholesale power to the city's system; and (iii) who meets the criteria for large user service as set forth in Platte River Power Authority's Tariff 9, or applicable successor tariff.

Character of Service

The power furnished under Schedule TS shall be three phase alternating current and approximately 60 hertz, and delivered at approximately 115kV, or at other voltages subject to conditions as agreed upon, metered at each delivery point.

Charges for Service

The charges for service under Schedule TS shall be determined based on the unique load characteristics and service requirements of the customer. The rate for service delivered under Schedule TS shall at a minimum be sufficient to recover the city's cost of service, including, without limitation, wholesale rates and the city's projected operating and maintenance costs. In addition, the customer shall be responsible for all wholesale charges and fees incurred by the city in providing service under Schedule TS to the customer, including, without limitation, power factor charges.

Conditions of Service

In order to receive service under Schedule TS, the customer must meet the eligibility requirements set forth above and enter into an electric service agreement with the city. All such agreements must meet the requirements of this Schedule TS, protect the integrity of the City's electric system, protect against interference with other city electric customers, and shall address, at a minimum, the following material terms:

- term of the agreement, including initial date of service;
- charges for service, including rate adjustments;
- metering, including configuration, ownership, and maintenance;
- infrastructure, including ownership and maintenance;
- load factor, including any penalties for failure to comply;
- nature and frequency of interruptions (if service is provided on an interruptible basis), including any penalties for failure to comply; and
- any other terms and conditions required to be addressed pursuant to Platte River Power Authority's Tariff 9, or applicable successor tariff.

In addition, the agreement must include a waiver of all liability for the city and Platte River Power Authority for actual and consequential damages resulting from interruptions in accordance with the agreement.

The city manager shall be authorized to negotiate all such agreements, in consultation with Platte River Power Authority, and to execute such agreements on behalf of the city.

Interruptible 115 kV Transmission Voltage Service

Schedule IPTS

Availability

Eligibility Requirements

Transmission Voltage Service is available to any customer ~~whose premises are adjacent to 115 kV transmission lines which are, or by contract can become, lines which supply wholesale power to the City's system, and: (i) whose load is of sufficient magnitude or of an unusual nature such that it cannot be served from the distribution system. The power furnished under Schedule IP will be approximately 115 kV, three phase alternating current and approximately 60 hertz.; (ii) whose premises are adjacent to transmission lines that are, or by contract can become, lines that supply wholesale power to the city's system; and (iii) who meets the criteria for large user service as set forth in Platte River Power Authority's Tariff 9, or applicable successor tariff.~~

Monthly Rate

~~The rate for Interruptible 115 kV Transmission Voltage Service shall consist of the sum of the energy charge, demand charge, power factor charge and other fees or charges in accordance with the following:~~

- ~~Energy charge per kWh: one hundred percent of the wholesale kWh charge incurred by City on account of and attributable to service to the customer.~~
- ~~Demand charge per kilowatt: one hundred percent of the wholesale kilowatt charge incurred by City on account of and attributable to service to the customer.~~
- ~~Power factor charge: one hundred percent of the power factor charge incurred by City because of and attributable to service to the customer.~~
- ~~Any fees or charges set forth in the service agreement with the customer or identified in the conditions for eligibility.~~

Conditions

- A. ~~To qualify for the Interruptible 115 kV Transmission Voltage Service, a customer shall have and maintain a monthly 60 minute integrated demand of 5,000 kilowatts or greater.~~
- B. ~~To remain eligible for the Interruptible 115 kV Service, a customer must maintain a minimum monthly load factor equal to or greater than 65 percent in six months out of a consecutive 12 month period, which is to include the current month. Failure to maintain the proper load factor will result in all service furnished in such period to be billed at the rates set forth in Schedule LG, PT or HP as is applicable. The customer will not be allowed to resume service on the IP rate schedule until the above load factor criteria are met for two consecutive months.~~
- C. ~~Service provided under the Interruptible 115 kV Transmission Voltage shall be subject to interruption automatically, with or without notice, when the system frequency is 59.5 hertz or lower for periods not to exceed 140 hours or 15 such interruptions in any period of six consecutive months ending on March 31 or September 30 of any year.~~
- D. ~~An interruptible customer shall be required to pay a penalty of one hundred percent of any penalty incurred by the City from the power supplier for each month in which said customer either (1) fails to shut down their interruptible load within 10 minutes following notice by the City and/or the power supplier or (2) resumes operation of said interruptible load prior to receiving notice from the City and/or the power supplier that said operation may be resumed.~~

~~If such interruptible customer is penalized under this clause two times in any consecutive 12-month period, the customer shall not be eligible for this interruptible rate for a period of 12 months from the date of the second penalty.~~

- ~~E. Each customer on the IP rate shall contract to reimburse the City and its power supplier for the installed costs of interrupting switches, breakers and remote control equipment required to provide service on this schedule. The City, the power supplier and the interruptible customer shall coordinate facility construction and maintenance to minimize the impact on the electric power system.~~
- ~~F. The energy charge set forth in Schedule IP shall be increased by an amount equal to any surcharge assessed against the City by its wholesale supplier during the billing period relative to this service.~~
- ~~G. Where metering for this service is at the low voltage side of the transformer and transformer loss compensators are not used, all metered quantities shall be increased by two percent to compensate for transformation losses.~~
- ~~H. Service under this category shall be provided pursuant to the rate structure for Schedule IP and as set forth in the customer's approved service agreement with the City and shall be subject to such additional terms, fees and conditions as set forth in such agreement. No service shall be provided under Schedule IP absent a service agreement signed on or after the effective date of this resolution, between the customer and the City. Schedule IP is not available for temporary, standby, supplemental or resale purposes.~~
- ~~I. The city manager is authorized to enter into service agreements for 115 kV service on behalf of the City provided that such agreements protect the integrity of the electric system, do not impair service to other customers and are designed to recover all costs of the City in providing such service.~~
- ~~J. For billing purposes, the billing period starts on the first day of the month and ends on the last day of the month. The first day starts at 00:00 hours and ends at 24:00 hours on the last day.~~
- ~~K. Each customer on Schedule IP shall sign Character of Service. The power furnished under Schedule TS shall be three phase alternating current and approximately 60 hertz, and delivered at approximately 115kV, or at other voltages subject to conditions as agreed upon, metered at each delivery point.~~

Charges for Service

The charges for service under Schedule TS shall be determined based on the unique load characteristics and service requirements of the customer. The rate for service delivered under Schedule TS shall at a minimum be sufficient to recover the city's cost of service, including, without limitation, wholesale rates and the city's projected operating and maintenance costs. In addition, the customer shall be responsible for all wholesale charges and fees incurred by the city in providing service under Schedule TS to the customer, including, without limitation, power factor charges.

Conditions of Service

In order to receive service under Schedule TS, the customer must meet the eligibility requirements set forth above and enter into an electric service agreement with the city. All such agreements must meet the requirements of this Schedule TS, protect the integrity of the City's

electric system, protect against interference with other city electric customers, and shall address, at a minimum, the following material terms:

- term of the agreement, including initial date of service;
- charges for service, including rate adjustments;
- metering, including configuration, ownership, and maintenance;
- infrastructure, including ownership and maintenance;
- load factor, including any penalties for failure to comply;
- nature and frequency of interruptions (if service is provided on an interruptible basis), including any penalties for failure to comply; and
- any other terms and conditions required to be addressed pursuant to Platte River Power Authority's Tariff 9, or applicable successor tariff.

In addition, the agreement must include a waiver of all liability for the City and the power supplierPlatte River Power Authority for actual and consequential and/or actual damages resulting from interruptions in accordance with this schedule and/or the servicethe agreement.

Power Factor

~~For each billing period, the City and/or the power supplier will determine the customer's ratio between the measured demand (kW) and reactive kilovolt ampere (kvar) demand. The calculation will be done at the time of the power supplier's monthly peak. If the 60 minute kvar demand is found to be in excess of 33 percent of the maximum kW demand occurring at the same time, an additional monthly charge will be made for each kvar of such excess at one hundred percent of the power factor charge incurred by the City for the amount of and attributable to service to the customer. If facilities are installed by the City and/or the power supplier to achieve power factor correction at the delivery point for the customer, the customer may avoid or reduce this kvar charge by reimbursing the City and/or the power supplier for the cost of such installation.~~

Load Factor

~~The monthly load factor will be calculated by taking the total measured kilowatt hours consumed by the customer in the billing period and dividing that amount by the total hours in the billing period times the greater of (1) the customer's maximum 60 minute integrated kW demand during the billing period or (2) 5,000 kilowatts. The city manager shall be authorized to negotiate all such agreements, in consultation with Platte River Power Authority, and to execute such agreements on behalf of the city.~~

TARIFF – SCHEDULE 9: LARGE USER SERVICE

Applicability:

This TARIFF-SCHEDULE 9: LARGE USER SERVICE (TARFF – SCHEDULE 9) is available for firm and interruptible energy furnished by Platte River Power Authority (Platte River) to Municipalities for resale to Large Users. Large Users are customers meeting any of the following criteria:

- Customer requests new service entrance capacity of 10,000 kilowatts or greater.
- Customer has a new load that cannot be readily served from the Municipality's distribution system under TARIFF-SCHEDULE 1: FIRM RESALE POWER SERVICE due to the unusual nature of the load.
- Customer metered demand is anticipated to reach 1,000 kW at a single site within twelve (12) months of requesting such service as demonstrated to the Municipality's and Platte River's satisfaction; provided, however, that if the metered demand does not reach 1,000 kW within a 12-month time frame, the customer must receive service under another tariff until the metered demand reaches 1,000 kW for a continuous twelve (12) month period.
- Customer with load at a single site with a single meter measuring a minimum metered demand of 1,000 kilowatts (kW) or greater.
- Customer with load at a single site with multiple meters, where the sum of the coincident metered demand for such meters is 1,000 kW or greater.
- Total load for a customer with multiple, non-contiguous sites aggregated under a single Service Agreement provided that the customer has at least one site where the minimum metered demand is 1,000 kW or greater and all loads are located within the Municipality's service territory.

Prior to receiving service pursuant to this TARIFF-SCHEDULE 9, the Large User must enter into an agreement for electric service (Service Agreement) with the Municipality. The Service Agreement shall identify Platte River as a third-party beneficiary of the Service Agreement. The Service Agreement shall address, at a minimum, the following material terms:

- Charge(s) for service, including responsibility for infrastructure costs
- Term of Service Agreement
- Initial date of service under this tariff
- Rate adjustments
- Amount and timing of curtailments or interruptions (if any)
- Standby provision

Each of these terms and conditions shall be established in consultation with Platte River and shall be confirmed in a letter from the Platte River General Manager to the Municipality. The Municipality will negotiate the specific form of the Service Agreement with the Large User.

Charges for Service:

The charges to a Municipality for service by Platte River under this TARIFF-SCHEDULE 9 shall be determined based on the unique load characteristics and service requirements to the Large User.

In determining the charges for service, consideration will be given to the following cost of service issues posed by service to the Large User:

- Investments for transmission system facilities and other infrastructure located at or near the Large User site;
- Investments for unique transmission system facilities and other infrastructure necessary to provide service to the Large User;
- The effect of the Large User load on the cost for adding new generation resources; and
- The effect of the Large User load on fuel use and fuel mix for power generation.

In order to adequately address the costs of service imposed by the Large User, unique rate structures and cost recovery mechanisms will be examined, including, but not limited to the following:

- Initial fixed costs
- Monthly fixed cost charges
- Seasonal pricing
- Time of use pricing
- Marginal cost pricing
- Fuel adjustment charges

All charges shall at a minimum be sufficient to recover Platte River's related cost of service, including expected operating and maintenance costs, related purchased power costs and related principal and interest on Platte River indebtedness over the term of the Service Agreement. All charges and material terms of service are subject to approval by the Platte River Board of Directors.

Adjustment of Charges:

Unless otherwise agreed, adjustments to the charges will be made on an annual basis at a minimum and will reflect actual changes in Platte River's cost of service including, but not limited to, financing costs, fuel (including delivery), operation and maintenance, environmental management and purchased power.

Character of Service:

Alternating current at approximately 60 hertz; three-phase; delivery at 115 kilovolts or at other voltages subject to conditions as agreed upon; metering at each delivery point.

Metering, Invoicing and Losses:

The Municipality shall provide to Platte River the monthly demand, energy, power factor and other usage characteristics as may be required for billing the Municipality on a calendar month basis, for the Large User within five (5) business days of obtaining such data. Following its receipt of the monthly billing data for the Large User, Platte River shall prepare and send to the

Municipality an invoice for the electric power service provided to the Municipality for the Large User, with the appropriate charges.

The Municipality, at its discretion, may opt to include in the Large User's monthly energy usage the distribution losses that occur between the Platte River point of delivery to the Municipality and the point of delivery to the Large User. In such case, the Municipality shall provide to Platte River the total energy usage including losses of the Large User and an appropriate charge will be invoiced.



CITY OF LOVELAND
CULTURAL SERVICES DEPARTMENT/RIALTO THEATER
228 East Fourth Street • Loveland, Colorado 80537
(970) 962-2120 • FAX (970) 962-2422 • TDD (970) 962-2620

AGENDA ITEM: 11
MEETING DATE: 2/7/2012
TO: City Council
FROM: Susan Ison, Cultural Services Department
PRESENTER: Jan Sawyer

TITLE:

An ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for equipment at the Rialto Theater Center

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and move to adopt 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 an administrative action to appropriate funds of \$127,500 secured by the Rialto Theater Guild for needed furniture and equipment for the Rialto Theater Center. At the time City Council approved the construction of the Rialto Theater Center, a commitment was made by staff and the Rialto Theater Guild to secure funding for needed furniture and equipment. With generous support from the community the funding goal has been met.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

SUMMARY:

For the past year the Rialto Theater Guild has been working diligently to secure direct donations and pledges for unfunded furniture and equipment to support the operation of the expanded building. The amount secured to date is \$127,500. Additional donations are possible in the future.

The list of items needed, which was provided to the Guild, include: a Yamaha grand piano; tables and chairs for the community rooms; conference room table and chairs; audio-visual equipment for the community room; two lecterns; a stage platform for the community room; lobby benches; dressing room furniture; and, if the budget allows, refurbishment of the old dressing room.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Ordinance

FIRST READINGFebruary 7, 2012**SECOND READING****ORDINANCE NO. _____**

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR EQUIPMENT AT THE RIALTO THEATER CENTER

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; 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 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 revenues and/or reserves in the amount of \$127,500 from the Rialto Theater Guild Fund Raising Campaign in the General Fund 100 are available for appropriation. Revenues in the total amount of \$127,500 are hereby appropriated for the purchase of furniture and equipment in the Rialto Theater Center 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
General Fund 100 - Rialto Theater Guild Donation

Revenues

100-52-730-0000-35305-SP1003	Gifts/Donations	127,500
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Total Revenue	127,500
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Appropriations

100-52-730-0000-48240-SP1003	Equipment	127,500
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Total Appropriations	127,500
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Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

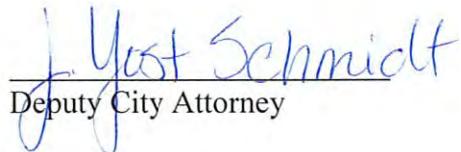
ADOPTED this ____ day of February, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


J. Yost Schmidt
Deputy City Attorney



CITY OF LOVELAND
LOVELAND FIRE RESCUE AUTHORITY
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

AGENDA ITEM:	12
MEETING DATE:	2/7/2012
TO:	City Council
FROM:	Randy Mirowski, Fire Chief
PRESENTER:	Randy Mirowski

TITLE: Resolution approving the Loveland Fire Rescue Authority Bylaws

RECOMMENDED CITY COUNCIL ACTION:

Adopt 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 to consider approval of the Loveland Fire Rescue Authority (LFRA) Bylaws approved by the Loveland Fire Rescue Authority Board (Board) on January 12, 2012.

BUDGET IMPACT:

Positive
 Negative
 Neutral or negligible

There is no impact on the budget.

SUMMARY:

Section 1.5 of the Intergovernmental Agreement for the Establishment and Operation of the LFRA as a Separate Legal Entity (IGA) provides that the Board adopt a set of By-Laws. These By-Laws and any amendments to them must be approved by both the Loveland Rural Fire Protection District and the City of Loveland City Council prior to going into effect.

The objective of the document is to define policies governing the responsibilities and duties of the Fire Authority Board consistent with the terms and conditions of the IGA. It is intended to be clear enough to define conduct but not so burdensome to limit responsiveness to a dynamic

business environment. The Board reviewed the draft at the December 8, 2011 Fire Authority meeting and approved them at the January 12, 2012 Board Meeting.

It includes provisions for: Board composition and powers, business office location, meetings and notices, conduct of business, officers of the board, fiscal year, disclosure of conflicts of interest, modifications of the By-laws, consistency with the agreement that formulated the fire authority and severability.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Resolution to approve the Loveland Fire Rescue Authority Bylaws
Loveland Fire Rescue Authority Bylaws

RESOLUTION #R-10-2012**A RESOLUTION APPROVING THE LOVELAND FIRE RESCUE AUTHORITY BYLAWS**

WHEREAS, On August 19, 2011, pursuant to that Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity (The “Formation Agreement”) the City of Loveland (“City”) and the Loveland Rural Fire Protection District (“District”) created the Loveland Fire Rescue Authority (“Fire Authority”) and set a beginning operational date of January 1, 2012 at 12:01 a.m.; and

WHEREAS, pursuant to the Section 1.5 of Article I of the Formation Agreement the Fire Authority Board (“Board”) is required to adopt bylaws and/or any necessary policies governing the responsibilities and duties of the Board consistent with the terms of the Formation Agreement; and

WHEREAS, such section further requires that the Board submit such bylaws, policies and any amendments to the City and the District for approval before going into effect; and

WHEREAS, on January 12, 2012, the Board unanimously adopted Resolution #R-002, approving the “Loveland Fire Rescue Authority Bylaws,” attached hereto as Exhibit A and incorporated by reference (“Bylaws”), and now seeks approval by the City and the District; and

WHEREAS, the City Council of the City of Loveland finds that it is in the best interests of the City to approve the Bylaws; and

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

Section 1. That the Bylaws are hereby approved.

Section 2. That the City Manager is hereby authorized to execute the Bylaws on behalf of the City, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution or to protect the interest of the City.

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

ADOPTED this _____ day of February, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Jesus Garcia
Assistant City Attorney

A RESOLUTION APPROVING THE LOVELAND FIRE RESCUE AUTHORITY BYLAWS

LOVELAND FIRE RESCUE AUTHORITY BYLAWS

Section 1. Authority. The Loveland Fire Rescue Authority (“Authority”) is a separate legal entity with powers specifically authorized by, and in compliance with applicable provisions of, the Colorado Constitution and Colorado Revised Statutes, and the Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority (“Agreement”) dated August 19, 2011, between the City of Loveland (“City”) and the Loveland Rural Fire Protection District (“District”).

Section 2. Board of Directors.

- a. Composition. The Board of Directors (“Board”) shall be comprised of five (5) members (“Board Members”) selected in accordance with the provision of the Agreement.
- b. Powers. All powers, privileges and duties vested in, or imposed upon, the Authority by the Agreement shall be exercised and performed by and through the Board. The Board may delegate to officers, employees, and agents of the Authority any or all administrative and ministerial powers.
- c. Vacancies. Vacancies on the Board shall be filled in the manner provided by the Agreement. A Board vacancy shall occur when a Board Member is no longer eligible to serve on the Board due to resignation from the Board, death, incapacity, removal by the appointing governing body or, if applicable, for any reason the Board Member is no longer a member of the District’s or of the City’s governing body.

Section 3. Office.

- a. Business Office. The principal business office of the Authority shall be at Station No. 1, 410 East 5th Street, Loveland, Colorado, 80537, until otherwise designated by the Board.
- b. Establishing Other Offices and Relocation. The Board may, from time to time, designate, locate and relocate its business office and such other offices as are necessary to conduct the business of the Authority.

Section 4. Meetings.

- a. Notice of Meetings.
 - (i) Section 4.b. shall constitute formal notice of regular meetings to Board Members and no other notice to Board Members shall be required.
 - (ii) Notice of any regular or special meeting shall be posted at least twenty-four (24) hours prior to the meeting at the officially designated location for public notice established by the Board.
- b. Regular Meetings. The Board shall adopt annually by resolution a schedule of regular

meetings that sets the dates, time and location of such meetings for the following year. A resolution setting the meeting dates, time and location for 2012 shall be adopted by the Board as soon as practicable.

- c. Open Meetings. All meetings of the Board shall be open to the public pursuant to the Colorado Open Meetings Law, C.R.S. §24-6-402.
- d. Special Meetings. Special meetings of the Board may be called by the Chairperson or upon request of two (2) Board Members and shall be preceded by twenty-four (24) hours written notice to each Board Member. Notice of a special meeting shall be posted at the principal business office of the Authority and at the officially designated location for public notice established by the Board. A Board Member may sign a waiver of notice, which waiver shall be in lieu of any other notice requirement. A Board Member attending a special meeting shall be deemed to have received the required notice.
- e. Executive Sessions. Executive sessions may be held at regular or special meetings and shall be conducted according to the Colorado Open Meetings Law.
- f. Adjournment and Continuance of Meetings. When a regular or special meeting is continued to another time and place, notice need not be given if the time and place of such continued meeting are announced at the meeting at which the continuance is taken, except as required by law. Any business which could have been transacted at the original meeting may be transacted at the continued meeting.
- g. Emergency Meetings. Notwithstanding any other provisions in this Section 4, emergency meetings may be called by the Chairperson or any two (2) Board Members in the event of an emergency that requires immediate action by the Board in order to protect the public health, safety and welfare, and may be held without notice if notice is not practicable. The Chairperson or Board Members calling the meeting shall make reasonable efforts to give all other Board Members notice of and an opportunity to participate in the emergency meeting by whatever means are reasonable to meet the circumstances of the emergency. Any Board Member who signs a waiver of notice or attends the emergency meeting shall be deemed to have received the necessary notice. At such emergency meeting, any action within the power of the Board that is necessary for the immediate protection of the public health, safety and welfare may be taken; provided, however, that any action at an emergency meeting shall be effective only until the first to occur of (a) the next regular meeting, or (b) the next special meeting at which the emergency issue is on the agenda. At such subsequent meeting, the Board may ratify any emergency action taken. If any emergency action taken is not ratified, then it shall be deemed rescinded as of the date of such subsequent meeting.

Section 5. Conduct of Business.

- a. No Formal Action by the Board. No official action on any matter may be taken by

the Board unless a quorum of the Board is present.

- b. Presence at Meetings. A Board Member shall be considered present at a Board meeting if such member attends in person, by telephone or by contemporaneous electronic media.
- c. Quorum. A quorum of the Board shall be three (3) Board Members, provided that one of the Members is a District member.
- d. Vote Requirements. Any action of the Board shall require the affirmative vote of a majority of the Board Members present and voting. The following actions shall require an affirmative vote of at least four members of the Board:
 1. The location of any new fire station; and
 2. The approval of the Authority's annual budget.
- e. Electronic Signatures. In the event the signature(s) of one or more of members of the Board or appointed signatories are required to execute a written document, contract, note, bond, deed, and/or other official papers of the Authority, and the appropriate individual(s) is unable to be physically present to sign said documentation, such individual or individuals are authorized to execute the documentation electronically via facsimile or e-mail signature, unless said documentation provides otherwise. Any electronic signature so affixed to a document shall carry the full legal force and effect of any original, handwritten signature. Except as approved herein, this provision of the Bylaws shall not be interpreted as establishing Authority's consent or authorization to bind the Authority to any transaction by the use of electronic records or electronic means. This provision is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act.
- f. Motions and Resolutions. Any official action of the Board necessary for the governance and management of the affairs of the Authority, for the execution of the powers vested in the Authority, and for carrying into effect the provisions of the Agreement, shall be taken by the passage of motions or resolutions.
- g. Minute Book. Within a reasonable time after passage, all resolutions, motions and minutes of the Board meetings shall be attested by the Secretary and recorded in a visual text format that may be transmitted electronically and kept for that purpose. Minutes of regular or special meetings shall be available for public review as soon as practicable following acceptance of such minutes by the Board.

Section 6. Officers and Personnel.

- a. Election of Officers. The officers of the Authority shall be a Chairperson, Vice-Chairperson and Secretary, and such other officers and assistant officers as may be

authorized by the Board from time to time, to perform such duties as may be approved by the Board. All officers shall be elected by a majority of the Board Members present and voting. The Chairperson and Vice-Chairperson shall be members of the Board, but the Secretary and other officers of the Authority need not be members of the Board. At the first meeting of the Board, the Board shall appoint officers who shall serve in their elected capacities for one year. Thereafter, officers shall be appointed annually by the Board at the Board's last regularly scheduled meeting of each calendar year. Vacancies may be filled and new officers may be appointed at any meeting of the Board.

- b. Chairperson. The Chairperson shall preside at all meetings and, except as otherwise delegated by the Board, shall execute on behalf of the Authority any legal instruments approved by the Board. The Chairperson shall execute all ministerial documents on behalf of the Authority. The Chairperson, subject to these Bylaws, shall decide all points of order or procedure unless otherwise directed by a majority of the Board present.
- c. Vice-Chairperson. The Vice-Chairperson shall perform all of the Chairperson's duties in the absence of the Chairperson.
- d. Secretary. The Secretary shall maintain the official records of the Authority.
- e. Additional Duties. The officers of the Board shall perform such other duties and functions as may be required by the Board from time to time, by the Bylaws or rules and regulations of Authority, by law, or by special exigencies which shall later be ratified by the Board.

Section 7. Fiscal Year. The fiscal year of the Authority shall commence on January 1 of each year and end on December 31.

Section 8. Disclosure of Conflict of Interest. A Board Member who has a personal interest in a matter before the Board shall disqualify himself or herself from considering, discussing or voting on the matter. Being an elected official or employee of the City or the District shall not constitute a conflict of interest.

Section 9. Modification of Bylaws. These Bylaws may be altered, amended or repealed at any regular or special meeting of the Board, subject to the approval of the City Council and District Board.

Section 10. Consistency with the Agreement. These Bylaws shall be interpreted consistent with the provisions of the Agreement. In case of conflict, the terms of the Agreement shall control.

Section 11. Severability. If any part or provision of these Bylaws is adjudged to be unenforceable or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of these Bylaws, it being the Board's intention that the various provisions hereof are severable.

Approved this _____ day of _____, 2012.

LOVELAND FIRE RESCUE AUTHORITY

By: _____
Chairperson

ATTEST:

Secretary

Approved this _____ day of _____, 2012.

CITY OF LOVELAND

By: _____
William D. Cahill, City Manager

ATTEST:

City Clerk

Approved this _____ day of _____, 2012.

LOVELAND RURAL FIRE PROTECTION
DISTRICT

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:	13
MEETING DATE:	2/7/2012
TO:	City Council
FROM:	Betsey Hale, Economic Development Director
PRESENTER:	Betsey Hale, Economic Development Director

TITLE:

A resolution approving Advanced Manufacturing for Bottles, Inc. fee deferral agreement

RECOMMENDED CITY COUNCIL ACTION:

Adopt 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. At the January 10th, 2012 study session, the City Council directed staff to return to a City Council meeting for formal consideration and adoption of a 36 month development fee and use tax deferral of payment for the expansion of the AMT manufacturing facility located at 3950 Patton Ave.

BUDGET IMPACT:

Positive

Negative:

Neutral or negligible

There is an estimated loss of investment revenue of \$2,600.00 over the 36 month period.

SUMMARY: Advanced Manufacturing Technology for Bottles, Inc. (AMT) is a Loveland business located at 3950 Patton Ave. AMT is a conveyor system manufacturer which has operated in Northern Colorado since 1996 and Loveland since 2003. The company designs and produces conveying systems for Quaker Oats, Pepsi Cola, and Coca Cola. AMT is planning an expansion on their Loveland campus which is budgeted to cost nearly \$800,000.00. The City of Loveland fees to be collected at building permit and final inspection are estimated to total

\$38,538.70. The company has asked City Council to consider a deferral of payment for a period of 36 months with no interest accrued.

The following minimum requirements to be considered for an incentive have been met:

1. There is a positive net new revenue to the City over 5 years: \$3,323.00 (30% commute)
2. The average annual wage of \$45,000 is greater than the 2010 Larimer County average wage which is \$39,220
3. The employer provides group health insurance and pays 80% of the employee premium
4. Group health insurance is offered to the employee's dependents
5. The employer is investing more than \$500,000.00 in the project: \$800,000.00
6. There are net new jobs to Loveland: 12 total
7. The owner has agreed to provide a personal guarantee in a performance agreement

Note: A copy of the checklist is attached to this packet.

In addition, the City of Loveland Executive Economic Advisor, Alan Krcmarik has reviewed three years of company financial statements and finds the company in good standing. Support for the deferral also assists in the retention of the existing 110 employees and allows for growth in future years. The Northern Colorado Economic Development Corporation (NCEDC) is recommending support for the deferral.

Support for this request is consistent with the City of Loveland comprehensive plan, the City of Loveland incentive policy and the 2012 economic development strategic plan. The applicant meets the minimum requirements as set forth in the incentive policy checklist. The incentive will lead to the creation of 12 net new jobs and the retention of 110 existing positions. The applicant has signed a performance agreement and has offered a personal guarantee.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Resolution
2. Economic Development Policy Checklist

RESOLUTION #R-11-2012**A RESOLUTION APPROVING ADVANCED MANUFACTURING FOR BOTTLES,
INC. FEE DEFERRAL AGREEMENT**

WHEREAS, Advanced Manufacturing for Bottles, Inc., a Colorado corporation (“AMT”) designs and produces conveyance systems for bottles, cans, caps and cartons in its existing facility located at 3920 Patton Avenue, in Loveland (the “AMT Facility”); and

WHEREAS, AMT plans to construct a new building adjacent to the AMT Facility at a budgeted cost of approximately \$800,000.00 (the “New Building”) on certain real property known as 3950 Patton Avenue (the “Property”); and

WHEREAS, AMT is required to pay the City certain capital expansion fees and other fees (the “Fees”) and construction materials use taxes (“City Use Taxes”) as a precondition to receiving from the City a building permit and/or final certificate of occupancy for the New Building; and

WHEREAS, AMT has asked the City for certain economic incentives to aid it in constructing the New Building on the Property to support and expand AMT’s design and production business operated in the AMT Facility; and

WHEREAS, City staff and AMT have negotiated certain economic incentives as set forth in the Advanced Manufacturing Technology for Bottles Fee Deferral Agreement attached hereto as **Exhibit A** and incorporated herein by this reference (the “Agreement”); and

WHEREAS, construction of the New Building, retention of AMT’s business operations in Loveland, and expansion of AMT’s business will provide significant economic benefits to the citizens of Loveland, primarily in the form of jobs and increased property tax revenues to the City; and

WHEREAS, deferral of the Fees may be authorized by a resolution of Council under City Code Section 16.38.071 and credit for or deferral of the City Use Taxes is authorized under City Code Section 3.16.590, if the resolution makes a determination and finding that such deferral will serve a public purpose, which purpose may include providing the public with significant economic benefits, and provided the resolution approves a written agreement with the person owing the fees containing such terms and conditions as the City Council determines are in the best interest of the City.

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

Section 1. That pursuant to City Code Sections 16.38.071 and 3.16.590, the City Council hereby finds that: (a) the deferral of the Fees and City Use Taxes and possible partial waiver of City Use Taxes pursuant to the Agreement will serve the public purpose of providing the public with significant economic benefits including, without limitation, new jobs and increased property taxes; and (b) the terms and conditions of the Agreement are in the best interests of the City.

Section 2. That the Agreement is hereby approved.

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

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

Section 5. That the City Clerk shall record the Agreement in the real property records of the Larimer County Clerk and Recorder after execution by all parties.

Section 6. That this Resolution shall be effective as of the date of its adoption.

Approved this 7th day of February, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

EXHIBIT A

**ADVANCED MANUFACTURING FOR BOTTLES, INC. FEE DEFERRAL
AGREEMENT**

Exhibit A

ADVANCED MANUFACTURING FOR BOTTLES, INC.
FEE DEFERRAL AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between **THE CITY OF LOVELAND, COLORADO**, a home rule municipality ("the City") and **ADVANCED MANUFACTURING FOR BOTTLES, INC.**, a Colorado corporation, ("AMT"), **RLT LAND, LLC**, a Colorado limited liability company ("RLT"), and **TOM INGRAHAM**, an individual ("Guarantor").

WHEREAS, AMT designs and produces conveyance systems for bottles, cans, caps and cartons in its existing facility located at 3920 Patton Avenue, in Loveland (the "AMT Facility"); and

WHEREAS, AMT plans to construct a new building adjacent to the AMT Facility at a budgeted cost of approximately \$800,000.00 (the "New Building") on certain real property owned by RLT and legally described on **Exhibit A** attached hereto and incorporated herein by this reference and known as 3950 Patton Avenue, Loveland, Colorado (the "Property"); and

WHEREAS, RLT and AMT are related entities in that RLT is owned by officers and/or principals of AMT; and

WHEREAS, RLT and AMT have asked the City for certain economic incentives to aid it in constructing the New Building on the Property to support and expand AMT's design and production business operated in the AMT Facility; and

WHEREAS, construction of the New Building, expansion of AMT's business, and retention of AMT's business operations in Loveland will produce significant economic benefits to the citizens of Loveland, primarily in the form of jobs and increased property tax revenues to the City; and

WHEREAS, RLT and/or AMT is required to pay the City certain capital expansion fees and other fees in the approximate amount of \$27,701.84 (the "Fees") and construction materials use taxes in the approximate amount of \$10,836.86 (the "City Use Taxes") as listed on **Exhibit B** attached hereto and incorporated herein by this reference as a precondition to receiving from the City a building permit and/or final certificate of occupancy for the New Building; and

WHEREAS, RLT and AMT have asked the City to defer payment of the Fees and City Use Taxes for thirty-six (36) months from the date on a certificate of occupancy is issued for the New Building, including a possible waiver of a portion of the City Use Taxes if paid within one year, and Guarantor is willing to personally guarantee the obligations of RLT and AMT under this Agreement; and

WHEREAS, deferral the Fees is authorized under City Code Section 16.38.071 and credit for or deferral of the City Use Taxes is authorized under City Code Section 3.16.590, upon

a finding that such deferral or credit will serve a public purpose, including but not limited to significant social and economic benefits; and

WHEREAS, by adoption of Resolution #R-_____, the City Council has made a finding that the construction of the New Building, retention of AMT's business operations in Loveland, and expansion of AMT's business will serve the public purposes of providing significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased tax revenues and, therefore, the deferral of the Fees and City Use Taxes granted in this Agreement is in the best interests of the public and the City.

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

1. **Deferral of Fees and Use Taxes**

The City agrees, as authorized by City Code Sections 16.38.071 and 3.16.590, that RLT and AMT may defer payment of the Fees in an amount not to exceed \$27,701.84 and City Use Taxes in an amount not to exceed \$10,386.86 that become due to the City when applying for a building permit and/or a final certificate of occupancy for the New Building, provided that:

- A. the total amount Fees and City Use Taxes deferred under this Agreement shall not exceed \$38,538.70 (the "Deferred Fees and Use Taxes");
- B. a certificate of occupancy for the New Building shall be obtained by RLT or AMT on or before December 31, 2012; and
- C. such deferral shall be subject to all other terms and conditions set forth in this Agreement.

RLT and AMT acknowledge that the City Use Taxes included in Deferred Fees and Use Taxes do not include taxes due to Larimer County or any other fees due to the City that are not listed on **Exhibit B**, which shall be paid by RLT or AMT as and when they become due in connection with construction of the New Building.

2. **Payment of Deferred Fees and Use Taxes**

- A. If RLT or AMT does not obtain a certificate of occupancy for the New Building on or before December 31, 2012 (the "Completion Date"), one hundred percent (100%) of all Deferred Fees and Use Taxes shall be due and payable to the City thirty (30) days after the Completion Date. RLT or AMT may request an extension of the Completion Date, for good cause shown, and the City Manager may extend the Completion Date by written notice to AMT.
- B. If the Deferred Fees and Use Taxes do not become due and payable as set forth in paragraph 2.A above, RLT or AMT shall pay the Deferred Fees and Use Taxes to the City as follows:

- i. Ten percent (10%) of the Deferred Fees and Use Taxes not to exceed \$3,800.00 shall be due and payable on the first anniversary of the date on which the certificate of occupancy for the New Building is issued by the City; and
- ii. Ten percent (10%) of the Deferred Fees and Use Taxes not to exceed \$3,800.00 shall be due and payable on the second anniversary of the date on which the certificate of occupancy for the New Building is issued by the City; and
- iii. All remaining Deferred Fees and Use Taxes shall be due and payable on the third anniversary of the date on which the certificate of occupancy for the New Building is issued by the City.

C. In the event that RLT or AMT fails to make any payment of Deferred Fees and Use Taxes as required herein, interest shall accrue on the total amount of outstanding and unpaid Deferred Fees and Use Taxes at the default rate set forth in paragraph 16 below, except that interest shall accrue from the date on which the certificate of occupancy for the New Building is issued by the City until paid in full. In addition, if RLT or AMT fails to make a payment of Deferred Fees and Use Taxes on the dates required under paragraph 2B above, then one hundred percent (100%) of all outstanding and unpaid Deferred Fees and Use Taxes shall be due and payable ten (10) days after the date on which the missed payment was due. The obligations of RLT and AMT to pay the Deferred Fees and Use Taxes and any other amounts that may become due under this Agreement shall be joint and several.

D. If RLT or AMT elects to pay one hundred percent (100%) of all Deferred Fees and Use Taxes on or before the first anniversary of the date on which the certificate of occupancy for the New Building is issued by the City, then RLT and AMT shall be entitled to a waiver of \$2,000.00 of the Use Taxes and the total amount of Deferred Fees and Use Taxes shall be reduced by \$2,000.00.

E. In the event that, at any time prior to the date on which all Deferred Fees and Use Taxes are paid in full, AMT discontinues the operation of its business in the New Building for any reason other than a Permitted Reason (as defined below), then one hundred percent (100%) of all outstanding and unpaid Deferred Fees and Use Taxes shall be due and payable by RLT and AMT on that date which is thirty (30) days after the date on which AMT so discontinues its business. As used herein, "Permitted Reason" shall mean (i) damage or destruction due to casualty; (ii) force majeure; (iii) condemnation; (iv) labor disputes; or (v) periods of remodel, renovation or repair.

3. Additional Building Permits

RLT and AMT acknowledge and agree that the City shall have no obligation to issue any building permit for new construction or additional buildings on the Property other than the permit for the New Building (an "Additional Permit") unless and until all Deferred Fees and Use Taxes due hereunder are paid in full. RLT and AMT shall have the right to pay the Deferred Fees and Use Taxes at any time prior to the date on which the Fees are otherwise due in the event it desires to seek such an Additional Permit.

4. **Remedies upon Default**

Default by RLT and AMT shall be deemed to have occurred under this Agreement upon the occurrence of any one of the following events:

- A. Failure to pay any amount due hereunder as and when it becomes due;
- B. application for appointment of a receiver for AMT or the Property;
- C. commencement of any proceeding under any bankruptcy or insolvency laws by or against RLT or AMT;
- D. AMT's sale, transfer or conveyance, by lease or otherwise and without the prior written consent of the Loveland City Council ("Council"), of: (i) any or all of its interest in the Property; (ii) all or substantially all of the assets of AMT; or (iii) a controlling ownership interest in AMT; or
- E. RLT's sale, transfer or conveyance by lease or other otherwise and without the prior written consent of the Council of any or all of its interest in the Property to any person or entity other than AMT or Guarantor.

Upon the occurrence of any one or more of these events of default, the City shall have, as provided in City Code Section 16.38.071 and as granted in paragraph 13 below, a perpetual lien upon the Property from the date all or any portion of the Deferred Fees and Use Taxes are due under this Agreement until paid and such lien shall have priority over all other liens against the Property except those for real property taxes. In addition, upon the occurrence of any one or more of the defaults described above in subparagraphs A-D of this paragraph 4, the entire unpaid amount of Deferred Fees and Use Taxes shall at once become due and payable without further notice at the option of the City. Such unpaid sum shall thereafter accrue the default interest as provided in paragraph 6 below.

The City may pursue all remedies available to it under the law or in equity to collect any or all of the amounts owed to it under this Agreement including, without limitation, by judicially foreclosing its lien against the Property. The City Clerk may also certify such amounts in default to the Treasurer of Larimer County and such amounts may then be collected in the same manner as though they were real property taxes. In addition, the City shall have the right to revoke any certificate of occupancy which has been issued for the New Building.

5. **Expenses and Costs of Collection**

In the event that RLT and AMT are in default under this Agreement and, as a result, the City pursues collection efforts through suit or otherwise, RLT and AMT agree to pay all expenses and costs of collection incurred by the City in connection with any such collection efforts and/or suit, in addition to the other amounts owed under this Agreement. Such expenses

and costs of collection shall include, without limitation, the following: attorney fees; receiver's fees and costs; treasurer's fees and costs; payment of real property taxes owed for the Property; appraisal fees; property inspection fees; environmental audit costs; expert witness fees; deposition costs; filing fees; the cost of mailing process, notice and other documents; the cost of serving process, notice and other documents; copy costs; and title insurance premiums or abstracting charges.

6. Default Interest

Upon any failure to timely pay any or all of the portion of the Deferred Fees and Use Taxes or other amounts owed to the City under this Agreement, which amounts shall include, without limitation, the costs and expenses of collection as described in paragraph 5 above, such amounts in default shall bear interest at the default rate of five percent (5%) per annum compounded annually from the date of default, or from the date on which the certificate of occupancy for the New Building is issued by the City as set forth in paragraph 2C above, until paid in full.

7. Applicable Law and Venue

This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. In addition, the parties hereto acknowledge that there are legal constraints imposed upon the City by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon the City by its Charter and Code, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, in no event shall the parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Agreement shall only be in the District Court for Larimer County, Colorado.

8. Time is of the Essence

Time shall be of the essence for the performance of all obligations under this Agreement.

9. Assignment

RLT and AMT shall not assign or transfer any or all interest, right or obligation under this Agreement without the prior written consent of the Council. Any such assignment or transfer without the Council's prior written consent shall be deemed a default under this Agreement as provided in paragraph 4 above thereby entitling the City to seek and pursue its remedies as provided in paragraph 4.

10. Entire Agreement

This Agreement contains the entire agreement between the parties relating to the subject matter hereof and may not be modified or amended except by written agreement signed by the parties.

11. Headings

Paragraph headings used in this Agreement are used for convenience of reference only and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

12. Notices

Any written notice given under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested, to the following addresses:

If to the City: **City Manager
City of Loveland
500 East Third Street
Loveland, CO 80537
FAX: 970-962-2900**

With Copy to: City Attorney
City of Loveland
500 East Third Street
Loveland, CO 80537
FAX: 970-962-2900

If to AMT: 3920 Patton Avenue
Loveland, Colorado 80538

If to RMT: 3920 Patton Avenue
Loveland, Colorado 80538

If to Guarantor: 3920 Patton Avenue
Loveland, Colorado 80538

13. Grant of Lien and Recording of Agreement

A copy of this Agreement may be recorded by the City with the Larimer County Clerk and Recorder and shall constitute a consensual grant by RLT, and by its successors and

assigns, to the City of the lien against the Property described above securing payment of all amounts in default that are due and owing to the City under this Agreement. The lien herein granted shall remain a lien against the Property until all amounts owed to the City under this Agreement are paid in full to the City. The parties also agree that this lien shall be a lien against the Property as a matter of law as provided in City Code Section 16.38.071.

14. **Binding Effect**

This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of successors, assigns, heirs and personal representatives of the respective parties hereto.

15. **Severability**

If any provision of this Agreement, or the application of such provision to any person, entity, or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those in which it was held invalid, shall not be affected.

16. **Guarantee**

A. Guarantor unconditionally guarantees to the City, its successors and assigns, RLT's and AMT's full and punctual performance of any and all of its obligations under this Agreement and the repayment by all Deferred Fees and Use Taxes deferred hereunder, together with attorneys' fees and expenses and costs of collection as set forth in paragraph 5 of this Agreement, plus default interest on such amounts as provided in paragraph 6 of this Agreement. Guarantor waives notice of any breach or default by RLT or AMT of obligations under this Agreement, and upon the City's written request, Guarantor shall promptly perform all such obligations.

B. Guarantor agrees that any act of the City consisting of a waiver of any of the terms and conditions of this Agreement, or the giving of any consent to any matter or thing related to this Agreement, or the granting of any indulgences or extensions of time to RLT and AMT may be done without prior notice to Guarantor and without affecting Guarantor's obligations hereunder.

C. Guarantor agrees that his obligations under this paragraph 16 shall not be released by any modification of this Agreement and, in case of any such modification, that his liability under this paragraph 16 shall be deemed modified in accordance with the terms of any such modification. Guarantor shall be automatically released from his guarantee upon payment in full of the Deferred Fees and Use Taxes and such other amounts as may be due under this Agreement.

D. Guarantor agrees that his obligations under this paragraph 16 shall not be affected by: (1) the release or discharge of RLT or AMT from its obligations under this Agreement in any creditors', receivership, bankruptcy, or other proceeding or the commencement or pendency of any such proceeding; (2) the impairment, limitation, or modification of the liability of RLT or AMT or the estate of such party in bankruptcy, or of any remedy for the enforcement of RLT's or AMT's liability under this Agreement, resulting either from the operation of any present or

future bankruptcy code or other statute or from the decision of any court; (3) the rejection or disaffirmance of this Agreement in any such proceeding; (4) the assignment or transfer of this Agreement by RLT or AMT or by operation of law; (5) any disability or other defense of RLT or AMT; (6) any sale, transfer or conveyance, by lease or otherwise and without the prior written consent of the Council, of: (i) any or all of RLT's or AMT's interest in the Property; (ii) all or substantially all of the RLT's or AMT's assets; or (iii) a controlling ownership interest in RLT or AMT; or (7) the cessation from any cause whatsoever of the liability of RLT or AMT under this Agreement.

E. Until all of RLT's and AMT's obligations under this Agreement are fully performed, Guarantor agrees to subordinate any liability or indebtedness of RLT and AMT held by Guarantor to RLT's and AMT's obligations to the City under this Agreement.

F. Guarantor agrees that his obligations under this paragraph 16 may not be discharged or terminated orally or in any manner other than by agreement in writing signed by Guarantor and the City.

G. Guarantor agrees that he is primarily, jointly and severally liable and obligated under this Agreement and that the City may, at its option, proceed against Guarantor for collection under this Agreement without proceeding against RLT, AMT or against anyone else obligated under this Agreement.

H. Guarantor agrees to pay to the City on demand all of the City's attorney fees and cost of collection as provided in paragraph 5 above which are incurred in connection with its enforcement of Guarantor's obligations under this paragraph 16 and this Agreement, together with default interest thereon as provided in paragraph 6 above.

I. Guarantor agrees that his obligations under this paragraph 16 shall apply to and extend to the obligations and agreements under this Agreement of any and all successors and assigns of RLT and AMT and such obligations and agreements shall inure to the benefit of the City's successors and assigns.

J. Guarantor agrees that his obligations under this paragraph 16 shall be binding upon Guarantor and his personal representatives, estates, and heirs.

[Remainder of Page Intentionally Blank]

“AMT”

ADVANCED MANUFACTURING FOR BOTTLES, INC.,
a Colorado corporation

By: _____

Tom Ingraham
President and CEO

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Tom Ingraham, President and CEO of Advanced Manufacturing for Bottles, Inc., a Colorado corporation.

Witness my hand and official seal. My commission expires: _____.

(S E A L)

Notary Public

“RLT”

RLT LAND, LLC,
a Colorado limited liability company

By: _____
Print Name: _____
Manager

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____ as manager of RLT Land, LLC, a Colorado limited liability company.

Witness my hand and official seal. My commission expires: _____.

(S E A L)

Notary Public

“GUARANTOR”

Tom Ingraham

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Tom Ingraham.

Witness my hand and official seal. My commission expires: _____.

(S E A L)

Notary Public

“CITY”

CITY OF LOVELAND, COLORADO

By: _____
William D. Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

STATE OF COLORADO)
 ⁾ SS.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by William D. Cahill, as City Manager of the City of Loveland, Colorado, a home rule municipality and by Teresa Andrews as City Clerk of the City of Loveland, Colorado, a home rule municipality.

Witness my hand and official seal. My commission expires: _____.

Notary Public

(S E A L)

EXHIBIT A
TO FEE DEFERRAL AGREEMENT
PROPERTY DESCRIPTION

Lot 3, Block 3, Kness Third Subdivision, City of Loveland, County of Larimer, State of Colorado

EXHIBIT B
TO FEE DEFERRAL AGREEMENT

P. 116



Fee Adjustment Chart

Initial FM Meeting Date	December 13, 2011		
Finalized FM Meeting Date	2011-0011		
FM # (provided by Fee Masters)			
Project Name	Advanced Manufacturing		
Project Manager	Betsey Hale		
Project Location	3950 Patton Ave		
Adopted Date			
Effective Date			
Expiration Date	36 months from approval		
Fee Description	Fee Amount <input type="checkbox"/> Global adjustment <input checked="" type="checkbox"/> Estimate/Current <input type="checkbox"/> Amount Locked <input checked="" type="checkbox"/> Adjusts w/actual	Fee Adjustment <input type="checkbox"/> Global adjustment <input checked="" type="checkbox"/> Estimate/Current <input type="checkbox"/> Amount Locked <input checked="" type="checkbox"/> Adjusts w/actual	Net Change <input checked="" type="checkbox"/> Amount Locked <input type="checkbox"/> Adjusts w/actual
Plan Check Fee	\$ 2,790.45	\$ 2,790.45	\$ -
Structural Permit	\$ 4,293.00	\$ 4,293.00	\$ -
Mechanical Permit	\$ 181.25	\$ 181.25	\$ -
Electrical Permit	\$ 634.15	\$ 634.15	\$ -
Plumbing Permit	\$ 401.85	\$ 401.85	\$ -
Construction Water	FCLWSD		\$ -
Water Meter Fee	FCLWSD		\$ -
Electric Install - <i>Residential only</i>			\$ -
City Use Tax	\$ 10,836.86	\$ 10,836.86	\$ -
County Open Space Tax	\$ 903.07	\$ -	\$ 903.07
County Courthouse Tax	\$ 722.46	\$ -	\$ 722.46
County Jail Tax	\$ 722.46	\$ -	\$ 722.46
County Fairgrounds	\$ 541.84	\$ -	\$ 541.84
Issuance fee total	\$ 22,027.39	\$ 19,137.56	\$ 2,889.83
PIF Electric Residential			\$ -
Raw Water Development	FCLWSD		\$ -
School Fee-In-Lieu of Land			\$ -
Dedication - <i>Residential only</i>			\$ -
CEF Fire Protection	\$ 302.40	\$ 302.40	\$ -
CEF General Government	\$ 504.00	\$ 504.00	\$ -
CEF Law Enforcement	\$ 403.20	\$ 403.20	\$ -
CEF Library - <i>Residential only</i>			\$ -
CEF Museum - <i>Residential only</i>			\$ -
CEF Open Lands - <i>Residential only</i>			\$ -
CEF Parks - <i>Residential only</i>			\$ -
CEF Recreation - <i>Residential only</i>			\$ -
CEF Streets	\$ 8,769.60	\$ 8,769.60	\$ -
CEF Trails - <i>Residential only</i>			\$ -
SIF Sewer	FCLWSD		\$ -
Street Inspection	\$ 150.00	\$ 150.00	\$ -
Storm Inspection	\$ 150.00	\$ 150.00	\$ -
SIF Stormwater	\$ 9,121.94	\$ 9,121.94	\$ -
SIF Water	FCLWSD		\$ -
Final fees total	\$ 19,401.14	\$ 19,401.14	\$ -
Water Rights			\$ -
Fire Alarm Permits			\$ -
Fire Suppression Permits			\$ -
Sign Permits			\$ -
Date of Valuation Data Table			
Date of Permit Fee Schedule			
Other - Provide specific details below			
Total	\$ 41,428.53	\$ 38,538.70	\$ 2,889.83

Residential projects include - single family, attached single family, duplexes, and multi-family

Additional fee adjustment notes:	This is a deferral of payment of all building permit fees and use taxes for the City. We still collect County use taxes. This is a deferral for a 36 month period from the date of approval and there is no interest due.
Attach additional sheets if necessary	

City of Loveland Economic Development Policy Project Checklist		Dec-11	
Primary Employer Guidelines			
Company Name : Advanced Manufacturing Technologies			
Requirement	Completed	Date	Details
Meeting with the Business Development Manager	yes	May-11	
Letter of Intent/Request	yes	11/14/2011	
Economic Impact Analysis Data Submitted	yes	Jun-11	
Impact Analysis shows Positive Net New Revenue	yes	June 31 2011	
Pays 80% of Employee Health Ins. Premium	yes		
Offers Group Health Ins. Coverage to Dependents	yes		
Performance Agreement	yes		
Minimum investment of \$500,000	yes		\$800,000.00
Net New Jobs to Loveland	yes		12
Project Budget Submitted	yes		
Study Session	yes	Jan 10 2012	
Council Meeting and Approval	yes	TBD	
Average Annual Wages Company wide	Meets	Details	
100% of Larimer County Ave Annual Wage			
110% of Larimer County Ave Annual Wage	Yes	115% of Larimer County Average	
120% of Larimer County Ave Annual Wage			
130% of Larimer County Ave Annual Wage			
140% of Larimer County Ave Annual Wage			
150% or > Larimer County Ave Annual Wage			
Encouraged but not required	Meets	Details	
Located in an Enterprise Zone			
Located in Downtown Loveland			
Reuse of an existing vacant facility			
Clean Energy Company			
Health Care			
Aerospace/Aviation			
Bio-Science			
Arts/Sculpture Related			

Rocky Mountain Innovation Initiative Client			
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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: 14
MEETING DATE: 2/7/2012
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Bob Paulsen, Current Planning Manager

TITLE:

A public hearing to consider an appeal filed by Bruce W. Cromwell on December 6, 2011 of a decision made by the Planning Commission on the November 28, 2011 to deny the appeal of an administrative determination made by the Development Services Director (the "Director")

RECOMMENDED CITY COUNCIL ACTION:

Move to uphold the Planning Commission decision on December 6, 2011 to deny the appeal of the administrative determination made by the Director, and, therefore, uphold the Director's decision concerning the maintenance of HOA open space areas within the Garden Gate First Subdivision, subject to the Planning Commission's condition that noxious weeds (within the open space tracts) be controlled by the Garden Gate Homeowners Association.

OPTIONS:

1. Reverse the decision of the Planning Commission and approve the appeal
2. Adopt a modified action (specify in the motion)
3. Adopt a motion continuing the item to a future Council meeting

Note:

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

DESCRIPTION:

A public hearing to consider a quasi-judicial action to reverse or uphold a decision made by the Planning Commission denying an appeal of an administrative decision by the Director. The Director's decision concerned the maintenance of HOA open space lands within the Garden Gate Subdivision. The appellant, Mr. Cromwell, is a resident of the Garden Gate neighborhood. Mr. Cromwell contends that the Planning Commission erred in its decision, failing to fully consider relevant facts and failing to specify the conditions associated with their decision. As a *de novo* hearing, the presentation of new and additional evidence is permitted and City Council may reverse, uphold, or modify the decision of the Planning Commission.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

SUMMARY:

On September 2, 2011, the Director issued a decision addressing maintenance practices for designated open space tracts within the Garden Gate First Subdivision. The Garden Gate Subdivision includes 181 homes and is located in southeast Loveland, immediately south of 1ST Street to the west of Denver Avenue. The subdivision is zoned Planned Unit Development (PUD); a Final Development Plan (FDP) was approved for the area in 2004. The decision was an interpretation of the FDP and was made at the request of the Garden Gate Home Owners Association (HOA). The request from the HOA was prompted by complaints that mowing, weed control and other maintenance practices were inadequate and not in compliance with the approved FDP nor compliant with the City's weed ordinance. Following issuance of the decision, Mr. Cromwell appealed the decision to the Planning Commission. The Planning Commission upheld the Director's decision. Mr. Cromwell has subsequently appealed the decision of the Planning Commission to City Council.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

A: City staff memorandum



Memorandum

TO: City Council

FROM: Bob Paulsen, Current Planning Manager

DATE: February 7, 2012

SUBJECT: Appeal of the Planning Commission's Decision regarding Maintenance Practices for the Garden Gate First Subdivision

I. APPEAL HEARING PROCESS

The appeal before City Council is a quasi-judicial action conducted in public hearing. Chapter 18.80 of the Municipal Code stipulates that appeal hearings are *de novo* hearings—allowing for new testimony and the presentation of new evidence. A copy of Chapter 18.80 is provided as **Exhibit F-1** to this memo. The following represents the sequence for the appeal hearing (as specified in Chapter 18.80):

1. City Staff provides a brief presentation on the nature of the appeal
2. Appellant's presentation of evidence, testimony and argument
3. Presentation of evidence, testimony and argument by City Staff or other party in interest in opposition to the appeal.
4. Public comment
5. Rebuttal presentation by the appellant
6. Motion, discussion and vote by the City Council

II. APPEAL OVERVIEW

On November 28, 2011 the Planning Commission unanimously denied an appeal submitted by Mr. Bruce W. Cromwell (the “Planning Commission’s Decision”). The appeal was in response to an administrative decision made by Greg George, Director of the Development Services Department, on September 2, 2011 (the “Director’s Decision”). The Director’s Decision addressed maintenance practices for specified open space lands within the Garden Gate First Subdivision. Mr. Cromwell, a resident of the Garden Gate neighborhood, objected to the decision as inconsistent with the Garden Gate Final Development Plan (FDP), the City weed control ordinance (Chapter 7.18 of the Loveland Municipal Code), and past maintenance practices of the Garden Gate Home Owners Association (HOA). Mr. Cromwell’s appeal to the Planning Commission reflected the position that a more

manicured approach to the maintenance of the specified open space areas is more appropriate and more in keeping with adopted plans, policies and regulations. In denying the appeal, the Planning Commission upheld the Director's Decision as consistent with the Garden Gate FDP and other applicable City standards and regulations, subject to the condition that noxious weeds in the specified open space areas must be controlled. Mr. Cromwell has appealed the Planning Commission's Decision to the City Council (see **Exhibit A-1**).



III. DIRECTOR'S DECISION

A. Need for the Decision

The Director's Decision (see **Exhibits E-1 and E-2**) was prompted by a series of citizen-initiated code enforcement complaints, along with property maintenance concerns expressed by the HOA to the City Planning office. Code enforcement complaints included concerns that the City's weed control ordinance was not being enforced and that HOA maintenance practices were insufficient; specifically, that certain open space areas were not being mowed with enough frequency nor watered sufficiently to keep the areas green. Because there was disagreement among the interested parties, the HOA requested that the Director provide guidance regarding its maintenance obligations with respect to these open space areas under the FDP and other applicable City standards and regulations.

B. Neighborhood Features

The Garden Gate neighborhood is located along the south side of 1ST Street, encompassing 69 acres and includes 181 single family homes. The neighborhood is built on former agricultural land that is relatively flat. The southeastern perimeter of the neighborhood slopes towards the Big Thompson

River, transitioning to an undeveloped, riverine area. A detention facility is located at the southeastern corner of the neighborhood; a PRPA substation is located adjacent to the detention area. The Farmer's Ditch bisects the neighborhood diagonally from the SW to the NE. The neighborhood has been platted with a series of open space tracts owned and maintained by the HOA that encompass or border the aforementioned features. For the most part, these tracts include those planted with some trees and shrubs in irrigated native seed areas, along with a native seed mix in areas not served with a permanent irrigation system, wetland seed areas, and environmentally sensitive areas along the Farmer's Ditch. Maintenance of these open space tracts are the subject of the appeal. Such areas are in contrast to the neighborhood park and various street-side bufferyards that have been planted with turf and have permanent irrigation systems.

C. Compliance with Adopted Plans and Policies

The Director's Decision provided guidance for maintaining these specified open space tracts in accordance with the Garden Gate Final Development Plan and other applicable City standards and regulations. As noted above, the open space tracts in question were planted predominantly with native seed mix and provided with temporary irrigation. Trees and shrubs were also planted in some of these areas in accordance with the FDP (see **Exhibit G-1**); these plantings are irrigated with permanent drip systems. While the FDP provides clarity in terms of landscape design, it does not specifically prescribe how such areas are to be maintained. For example, the FDP does not specify a mowing, weeding, re-seeding or mulching regimen. The Municipal Code, specifically Section 4.02 of the Site Development Performance Standards, specifies that required landscape materials are to be maintained in a healthy condition and that plantings are to be compatible with the local climate, soil characteristics, drainage and water supply.

In effort to determine proper maintenance practices, research was initiated. Staff visited the property in the summer of 2011 with representatives of the HOA board to review the condition of open space tracts. Staff also reviewed the FDP, the City's Open Lands Plan, the City's weed control ordinance, and experience with similar open space areas within other neighborhoods. The Garden Gate FDP (see **Exhibit G-1, sheet L2**) emphasizes that a "naturalistic design approach" was taken in the design of open space areas, "with inspiration taken from the natural plant communities and wetlands currently found on and adjacent to the site." The FDP states that natural areas were to be re-established and to be allowed to naturalize, including identification of areas that were to receive specified seed mixes. Given these statements in the FDP along with the planting scheme and the irrigation arrangement, and with the understanding that native and wetland seed environments remain healthiest when left in a more or less natural state, the Director's Decision indicated that the FDP contemplated that these areas be maintained predominantly in a relatively natural condition, in contrast to the more manicured condition contemplated in other areas. A breakdown of how the individual open space areas within the neighborhood are to be treated under the FDP is provided on pages 2 and 3 of the Director's Determination letter (see **Exhibit E-1**).

D. Weed Control Ordinance

In light of the naturalized plantings contemplated by the FDP and the ongoing maintenance treatment consistent with that landscape design, it became necessary for the Director to consider the application of the City's weed control ordinance to certain open space tracts within the Subdivision. The City's weed control ordinance (see **Exhibit F-2**) specifies that grass, weeds and other types of vegetation in excess of 8 inches in height constitute weeds and must be trimmed. Such trimming or mowing of native or wetland seed mix areas would be contrary to the optimal health of these areas. Section 7.18.030 of the weed control ordinance gives the manager of the City's Long Range Planning and Natural Resource Division authority to grant exemptions to the weed control ordinance to dedicated public or private open

lands. As the Director of Development Services currently oversees the staff of the City's former Long Range Planning and Natural Resource Division, it is within the Director's authority to authorize this exemption and the Director's Decision exercised that authority to maintain consistency with the FDP.

IV. PLANNING COMMISSION HEARING

A. Appellant's Argument

At the Planning Commission hearing on November 28th, the appellant articulated arguments as presented in the submitted notice of appeal (see **Exhibit D-3, Revised Notice of Appeal**). The appellant indicated that the Director's Decision misinterpreted the FDP as to the level of maintenance contemplated, that the weed control ordinance should be enforced in the neighborhood, and that the previous maintenance practices should be resumed. These practices included the regular watering and mowing of open space tracts in question. The appellant also cited lack of responsiveness from the HOA board and deficient responses and follow-through on the part of City staff. The Planning Commission staff report (see **Exhibit D-6**) includes staff's summary of the appellant's arguments. The Minutes of the Planning Commission meeting (see **Exhibit D-2**) further describe these arguments.

B. HOA Involvement

At the Planning Commission hearing, Rob Valland, Garden Gate HOA Secretary, spoke on behalf of the HOA board. Mr. Valland reviewed photographs of pertinent neighborhood areas (see **Exhibit C**), provided some background information on the neighborhood open space areas, and described the HOA's maintenance practices. He acknowledged the need for more consistency with the maintenance efforts. He also raised concerns about some of the details of the Director's Decision, but indicated the board's general acceptance of and agreement with the Director's Decision.

C. Subdivision Plat

At the hearing, neighborhood resident Richard Ferner spoke in favor of the need for a greener and more manicured approach to the maintenance of the open space areas. His viewpoint was generally consistent with the perspective advocated by Mr. Cromwell. Mr. Ferner also alerted the Commission to notes on the Garden Gate First Subdivision documents (see **Exhibit G-2**) which indicate that the Farmer's Ditch Company has a 70-foot-wide easement and has authority to access the ditch and to remove trees within that easement. The 70-foot easement is inconsistent with the landscape plans in the FDP; however, the ditch company has not indicated any concerns regarding the existing landscaping or irrigation treatment within the easement as it runs through the Garden Gate neighborhood. A separate discussion may be needed between the HOA, the Ditch Company and the City to rectify the aforementioned inconsistencies.

D. Planning Commission Decision

After conducting a public hearing on these matters in some detail, Planning Commissioners articulated general agreement with the Director's Decision and voted unanimously to deny the appeal. The Commission also adopted the condition that noxious weeds (occurring within the open space tracts) must be controlled by the Homeowners Association. This condition effectively limits the exemption from the City weed control ordinance.

VI. APPEAL TO COUNCIL

A. Notice of Appeal

Mr. Cromwell submitted to the Current Planning office on December 6, 2011 a notice of appeal to City Council (see **Exhibit A-1**). The notice included, as an attachment, the initial notice of appeal filed with and reviewed as part of the appeal hearing before the Planning Commission. In addition to the issues raised in the notice of appeal as heard by the Planning Commission, the notice of appeal to City Council includes newly identified items of concern by Mr. Cromwell as follows:

- The provisions of the weed control ordinance should not be waived.
- The Planning Commission established conditions with their denial of the appeal; these conditions were not specified.
- The Commission misinterpreted the ownership and function of the easements for the Farmer's Ditch and Planning staff did not correct the misperceptions.
- The issue of home values affected by the non-maintenance of open space areas was not addressed.
- The danger posed by vermin and snakes coming onto residential properties was not addressed.
- The preclusion of mowing within the open space tracts is not desired.
- Visual unity was not addressed.
- Past practices of maintaining the open spaces was not considered nor addressed.

B. Appellant's Supplementary Materials

On January 23, 2012, Mr. Cromwell submitted the following documents to the Current Planning office for inclusion in the appeal materials for the City Council:

- Copy of the February 15, 2010 letter from Bruce W. Cromwell to the Garden Gate Homeowners Association received by the Current Planning office on 1/23/2012.
- Copy of the May 17, 2010 letter from Bruce W. Cromwell to the Garden Gate Homeowners Association received by the Current Planning office on 1/23/2012.
- Letter from Bruce W. Cromwell, Appellant, dated January 18, 2012, to Bob Paulsen requesting all information to be presented to City Council concerning the 2/7/2012 appeal hearing be provided to Mr. Cromwell by 1/26/2012. Received by the Current Planning office on 1/23/2012.

These supplementary materials are included with **Exhibit A**. The first two documents (above) provide some background information on concerns raised relating to landscape maintenance of common areas within the neighborhood. The third item specifies a request by Mr. Cromwell that he be provided with all materials to be reviewed with the February 7th appeal by Thursday, January 26th (Mr. Cromwell was notified that the Council materials would be available on February 2, 2012.)

C. Letter from Mr. Ferner

Mr. Richard Ferner, Garden Gate resident, submitted a letter to the City Council that was received by the Current Planning office on December 30, 2011. He also provided a copy of the recorded Garden Gate First Subdivision for the Council's review (see **Exhibits B and G-2**). Mr. Ferner's letter reflects his stated viewpoint expressed to the Planning Commission regarding his desire for a more well-groomed and watered landscaped treatment of the neighborhood open space areas. Mr. Ferner also specifies his concerns with the Garden Gate plat in which landscaping limitations within

the easement for the Farmer's Ditch are inconsistent with the provisions in the FDP and with the landscape installed along the ditch.

VII. EXHIBITS

The following appeals materials have been grouped by topic to facilitate their review. Items reviewed by the Planning Commission are denoted by an asterisk*. Underlined items are of central importance to the appeal process.

Exhibit A – Materials submitted by the Appellant

1. Notice of Appeal, dated December 1, 2011, (received on 12/6/2011) from Bruce W. Cromwell appealing the November 28, 2011 Planning Commission decision to deny Mr. Cromwell's original appeal.
2. Correspondence from Bruce W. Cromwell to Councilors McKean and Fogle delivered on 12/6/2011, including Determination Letter from Greg George, Mr. Cromwell's presentation notes for the November 28th Planning Commission appeal hearing, and the Notice of Appeal dated December 1, 2011.
3. Letter from Judith Yost Schmidt, Deputy City Attorney, dated December 21, 2011, to Bruce W. Cromwell confirming acceptance of Mr. Cromwell's appeal of the 11/28/2011 Planning Commission decision and indicating that communications to Councilors McKean and Fogle were forwarded to the full City Council.
4. Photographs 1-24 presented by Bruce W. Cromwell, appellant, at the November 28, 2011 Planning Commission hearing*
5. Copy of the February 15, 2010 letter from Bruce W. Cromwell to the Garden Gate Homeowners Association received by the Current Planning office on 1/23/2012
6. Copy of the May 17, 2010 letter from Bruce W. Cromwell to the Garden Gate Homeowners Association received by the Current Planning office on 1/23/2012
7. Letter from Bruce W. Cromwell, Appellant, dated January 18, 2012, to Bob Paulsen requesting all information to be presented to City Council concerning the 2/7/2012 appeal hearing be provided to Mr. Cromwell by 1/26/2012. Received by the Current Planning office on 1/23/2012.

Exhibit B – Letter from Mr. Richard Ferner to the City Council received on 12/30/2011 by the Current Planning office concerning the Cromwell Appeal

Exhibit C – Photographs 1-8 presented by Rob Valland, Treasurer for the Garden Gate HOA Board, at the November 28, 2011 Planning Commission hearing*

Exhibit D - Planning Commission Decision

1. Adopted Motion, including condition*
2. Planning Commission minutes (approved) from the November 28, 2011 hearing*
3. Revised Notice of Appeal, dated September 14, 2011 (submitted by Appellant on September 21st)*
4. Letter dated September 14, 2011 to Bruce W. Cromwell (appellant) from Judy Schmidt, Deputy City Attorney, pertaining to defects in the Notice of Appeal dated September 8, 2011 submitted by Appellant*
5. Notice of Appeal dated September 8, 2011 (submitted by Appellant on September 12th)*

6. Planning Commission staff report dated November 28, 2011 (recommending denial)*
7. Timeline of the Garden Gate Landscaping Issues presented by Bob Paulsen at the November 28, 2011 Planning Commission hearing*

Exhibit E – Director’s Decision

1. Letter of Determination from Greg George, dated September 2, 2011, to the Garden Gate HOA*
2. Color Map: Highlighted aerial photograph of the Garden Gate neighborhood open space areas prepared by the Current Planning Division dated September 2, 2011. This map accompanies the September 2nd Letter of Determination.*

Exhibit F – Pertinent City Ordinances

1. Chapter 18.80 of the Municipal Code: Appeals (with highlighting)*
2. Chapter 7.18 of the Municipal Code: Weed Control provisions (with highlighting)*

Exhibit G -- Pertinent Adopted Plans / Plat

1. Garden Gate Final Development Plan (FDP) as approved by the City of Loveland in September, 2004 (with highlighting and supplementary passages from sheet L2)*
2. Garden Gate First Subdivision as approved and recorded in September, 2004, with supplementary portions of pages 1 and 2 highlighted*

December 1, 2011

Appeal of the Planning Commission Decision
to the full City Council, of Loveland, Colorado

To: City of Loveland, Full City Council

From: Appellant--Bruce W. Cromwell
267 Wrybill Avenue, Loveland, Colorado, 80537
970-663-6615

This letter represents a formal appeal, of the Planning Commissions Findings, to the City of Loveland, Colorado, City Council, in this matter.

This letter is presented, after the Planning Commission hearing, of November 28, 2011, pertaining to the following, and the "Revised Appeal" which is included thereafter in this document.

At the Planning Commission hearing Mr. Paulsen, Director of the Current Planning Department, City of Loveland, made the presentation on behalf of the City of Loveland.

My observation of Mr. Paulsen's presentation is that he did not address all of my concerns as stated in my "Revised Appeal". Therefore, my "Revised Appeal" to the City Council should be addressed in full.

One of my major concerns was that the Planning Department is intending to waive the weed ordinance in our community, in the particular area, in question. This is not in the best interest of the community and I request the council to consider advising the Planning Department to waive and not proceed with this course of action.

During the Commission hearing some "conditions were added to Mr. George's letter. But the conditions were not specified at the time. I would like to review the conditions and appeal them if needed.

I would also like the following to be considered in my appeal. It is about comments made by the Commission members regarding the following. One Commission member inquired, of the Assistant City Attorney present at the hearing, if an HOA member, in good standing, could sue the HOA for non performance. (After hearing the testimony.) Another Commission member stated that the maintenance, by the HOA, "was not consistent and all over the place". (paraphrasing these comments) This is more of a reason and, to take into consideration, comments from professional third parties, that standards should be put in place regarding the maintenance procedures by the HOA. Standards, requirements and direction are not rigid procedures.

Additionally, residents, of the Garden Gate community, who attended and testified at the Commission hearing, supported my position.

Furthermore, the HOA, who was present and testified at the hearing, did not testify nor state their specific opposition to any of my claims in my appeal.

Also discussed was the easements East and West of the Farmers ditch. There was testimony during the hearing, by the HOA, that it was their understanding that the owners of the Farmers Ditch owned the property for 6 feet. Three feet, of the ditch, in each direction. (East and West) Starting in the middle of the ditch.

*RECEIVED
12/6/11
1:50 pm*

*Taken by Vicki Mesa
and Bob Paulsen 12-6-2011*

In addition, discussed was the Plat. The Plat sets boundaries and other specifications before the property is built out. The Final Development Plan when implemented and required, by the city, takes control of the property in Enforcement and Specific Standards. Not the Plat in its original form.

Easements are not owned by entities, as the Farmers Ditch owners, in this matter. They are in fact owned by the HOA, in most cases, and such is the case in this matter. Easements only allow entities such, as the Farmers Ditch owners, to come on to the property and maintain their property as required. Historically no buildings or other obstructions are permitted in these easements unless specifically changed, in writing, by all parties involved. The easement in this case should be maintained by the HOA. The tracks in question are also owned by the HOA. (Notes #4,#5,#10-in the Plat support my position in detail) This issue was misinterpreted at the Commission hearing and not corrected by the Planning Department. This information is a major development.

Included in this appeal, to the Council, is, on occasion, when the Farmers Ditch owners come out to maintain the property they usually set the area in the Farmers Ditch on fire. It is possible that if the grass is not mowed and otherwise maintained the dry grass could catch on fire. This could pose fire protection problems to the homes nearby. This was not considered at the hearing.

Also not addressed were home values affected by not maintaining the property.

Danger of the vermin and snakes coming into the resident properties not addressed fully.

Mowing, the area in question, would be precluded, in this decision, as I understand it. I would also be against this development.

Additionally, not addressed was Mr. George's conflicting statement regarding the letter he signed once he viewed the property in person.

And visual unity was not addressed. This is a vital consideration to the direction of the properties intent.

Past practices, of maintaining the property, was not considered or addressed.

The aforementioned, are reasons why I am requesting the Council to reconsider my "Revised Appeal" in full.

Furthermore, for Pont of Clarification--Mr. Paulsen suggested I was invited to the meeting, at the property site, between the City and the HOA in July 2011, but did not attend. I was precluded from attending the meeting due to a personal matter. (I also had spoken to the City Planning Department, (Mr. Paulsen ect) and sent numerous e-mails, about all of the issues for over one year and four months. I had also spoken to the HOA, in detail, and had wrote letters and sent e-mails to the HOA. I felt that a dialogue between the two parties (HOA and City Planning) would be productive in any case.) I did telephone Mr. Paulsen after the meeting and stated this fact to him. It is unfortunate that Mr. Paulsen did not include, this fact, in his statement/presentation.

It must be noted that after I received Mr. George's letter I was informed that, if I disagreed with the letter, my remedy would be to appeal the decision to the Planning Commission. If I disagreed with that decision, in front of the Planning Commission, than I could appeal that decision to the City Council. I am exercising those remedies but I thought these issues should have been resolved at a lower level. That would have been the appropriate remedy.

At this time the "Revised Appeal" follows, for the City Councils, consideration--Please review all of it's contents. (Mr. George's letter is attached)

December 5, 2011

To: Mr. John H. Fogel
Councilmember, Ward III
Loveland, Colorado

From: Bruce W. Cromwell
Resident/Homeowner
267 Wrybill Avenue
Loveland, Colorado
970-663-6615

Enclosed Documents--

A--Mr. George's Determination Letter--City of Loveland. Dated September 2, 2011

B--My presentation, of my revised appeal, to the City of Loveland, Planning Commission. Dated November 28, 2011.

C--Appeal to City Council, City of Loveland, including Revised Appeal to Planning Commission, City of Loveland. Dated December 1, 2011.

Please contact me if you have any questions.

Thank you for your consideration,

Bruce W. Cromwell

EXHIBIT A-2

December 5, 2011

To: Mr. Hugh McKean
Councilmember, Ward III
Loveland, Colorado

From: Bruce W. Cromwell
Resident/Homeowner
267 Wrybill Avenue
Loveland, Colorado
970-663-6615

Enclosed Documents--

A--Mr. George's Determination Letter--City of Loveland. Dated September 2, 2011

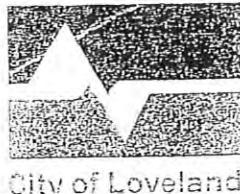
B--My presentation, of my revised appeal, to the City of Loveland, Planning Commission. Dated November 28, 2011.

C--Appeal to City Council, City of Loveland, including Revised Appeal to Planning Commission, City of Loveland. Dated December 1, 2011.

Please contact me if you have any questions.

Thank you for your consideration,

Bruce W. Cromwell



A
DEVELOPMENT SERVICES
ADMINISTRATION
500 East Third Street, Suite 210 • Loveland, CO 80537
(970) 962-2346 • Fax (970) 962-2903 • TDD (970) 962-2620
www.cityofloveland.org

September 2, 2011

Garden Gate Home Owner's Association
Attn: Board of Directors
4631 West 20th Street, Suite 100
Greeley, CO 80634

Subject: Determination of maintenance practices for designated open space lands within the Garden Gate First Subdivision.

Dear Board of Directors:

This letter is being provided in response to a request from the Garden Gate Homeowners Association board for clarification regarding maintenance responsibilities for specified open space areas located within the Garden Gate First Subdivision. This letter has also been prompted by citizen complaints that the City's weed control ordinance is not being adhered to by the HOA in the maintenance of its properties. This letter provides my interpretation (as the Director of the Development Services Department for the City of Loveland) of the Garden Gate Final Development Plan as it relates to the maintenance of the specified areas. The letter also includes my official determinations with regard to those open space areas that are exempt from the City's weed ordinance, in accordance with Chapter 7.18 of the Loveland Municipal Code. As such, this is a formal determination by the City of Loveland and it is expected that HOA maintenance practices will comply with the specifications provided herein.

The reason this determination is necessary is that the Final Development Plan (FDP) for the Garden Gate First Subdivision does not set forth specific maintenance treatment of many of the designated open space areas. While the FDP clearly assigns maintenance responsibility for these properties to the HOA, the precise treatment is unspecified. Consequently, for a determination to be made, it has been necessary for staff to conduct a detailed review of the FDP and related documents, along with a review of the City's Open Lands Plan and weed control ordinance. In addition, a site inspection was conducted this summer by Current Planning staff in the company of HOA board representatives in order to observe these open space areas directly and to gain insight from board members and other residents.

It is important to note that the narrative of the Garden Gate FDP (see sheet L2) emphasizes that a "naturalistic design approach" was taken in the design open space areas, "with inspiration taken from the natural plant communities and wetlands currently found on and adjacent to the site." The plan states that natural areas were to be re-established and to be allowed to naturalize again, including areas that receive seed mixes. These clear statements of intent assist in determining the appropriate level of and type of maintenance. Other important factors in determining the appropriate type of maintenance for the specified open space areas includes a recognition of the type of planting treatment, the use or absence of irrigation for the specific areas, and the function of these areas.

Below is a breakdown of the various open space areas that are addressed by my determination. Each area is described, and the appropriate landscape maintenance treatment is specified. In each case, the specific maintenance treatment is underlined for emphasis and clarity. Note that these areas are correlated with the accompanying map.

The Irrigation Ditch:

The Farmers Ditch and associated ditch banks are identified as "Environmentally-Sensitive Areas." This area is highlighted in ~~green~~ on the accompanying map. This property shall not be disturbed other than by the ditch company and is exempt from the weed ordinance.

Environmentally-Sensitive Areas:

The original Environmentally-Sensitive Areas report for the Garden Gate Subdivision (submitted as part of the original planning and review process) identified specified areas as being environmentally-sensitive. These areas, like the ditch area addressed above, are designated in ~~green~~ on the accompanying map. Per City Code, these areas are to be protected and left undisturbed. The area at the southern portion of the detention pond is designated as such; also, there are portions of Tract H at the southern and southwestern portion of the neighborhood that are also given this designation. While some level of disturbance has occurred to portions of this area, the remainder should be left undisturbed. All these areas are exempt from the weed ordinance.

Non-Irrigated, Native Seed Areas:

These areas consist of the Tracts alongside the ditch and others located at the SE portion of the neighborhood (Tracts G, H & L). These areas are highlighted in ~~blue~~ on the accompanying map.

These areas are designed to be reserved in a natural state, with uncut native grasses that provide wildlife habitat. The City's *Open Lands Plan* (refer to Section 6.2, Lake Edges and Ditches) specifies that areas along the irrigation ditches serve as wildlife habitat and movement corridors. For such corridors to function effectively, the native grasses should remain uncut (un-mowed) in order to provide a healthy and optimal cover for wildlife. It is important to note that uncut native grasses provide a self-sustaining environment, shading the soil and retaining soil moisture, allowing for self-germination, and minimizing weed encroachment. Spraying minimally for noxious weeds may be needed; some reseeding and mulching of these areas may be desirable. Cutting these grasses, however, prevents germination and compromises their ability to sustain a healthy environment. These areas should not be mowed or should only be mowed once in the Fall as the grasses go dormant as winter approaches. These areas are exempt from the weed ordinance.

Irrigated Native Seed Areas:

These areas consist of narrow Tracts along the rear of the residential lots. Tracts include B, I, K, M, N & O, which are identified in ~~pink~~ on the accompanying map. These Tracts vary in width (generally between 10 and 15 feet wide) and separate the developed residential lots from the non-irrigated natural areas. These Tracts include tree and shrub plantings with drip irrigation and provide a transition from developed lots to the natural areas. These areas may be mowed. Spraying for noxious weeds may be desirable; some reseeding and mulching of these areas may also be desirable. These areas may be mowed by the HOA and are subject to the weed ordinance.

Wetland Seed Area:

The Detention Pond is located on Tract P which is highlighted in yellow on the accompanying map. This area was planted with a wetland seed mix. It is a natural area. The bottom of the pond area has been

wet and requires no maintenance. Trees and bushes have been planted closer to the upper slope of the pond, requiring irrigation and occasional mowing and related maintenance. Occasional mowing is anticipated in the upper area similar to what is described with the Irrigated Native Seed Areas; the level of maintenance is at the discretion of the HOA. This upper area is subject to the weed ordinance. The lower areas located down the slope from the trees/shrubs is clearly a natural area that should be left undisturbed with the exception of spraying for noxious weeds and occasional mulching and reseeding. These lower areas are exempt from the weed ordinance.

Appeal Process:

This administrative decision can be appealed to the Planning Commission as specified in Chapter 18.80 of the Municipal Code. To be valid, the appeal must be filed with the City's Current Planning Division by 5:00 PM on Monday, September 12, 2011.

In closing, I would like to thank the HOA board, neighborhood residents and the management company for your interest, cooperation and patience in this matter. I hope the letter provides an adequate explanation for my decisions. Should anyone have further questions regarding my determination or any related issues, please feel free to contact me as provided for at the end of the letter.

Please contact me if you have any questions or concerns regarding this determination. Thank you.

Sincerely,



Gregory C. George
Director of Development Services
City of Loveland
970-962-2521 / george@ci.loveland.co.us

Enclosure: Map

Xc: Jaimie Pribble, Vintage Corporation, 4631 W 20th Street, Suite 100, Greeley, CO 80634
Bruce Cromwell, 267 Wrybill Avenue, Loveland, CO 80537
Tom Hawkinson, Loveland Chief Building Official
Bob Paulsen, Loveland Current Planning Manager

November 28, 2011

Hearing in front of the Planning Commission---

I WOULD LIKE TO THANK THE PLANNING COMMISSION FOR THE OPPORTUNITY TO PRESENT MY APPEAL THIS EVENING

I WILL ATTEMPT TO MAKE MY PRESENTATION SHORT AND TO THE POINT.

ADDITIONALLY, I WOULD LIKE TO THANK THE CITY OF LOVELAND'S CURRENT PLANNING DEPARTMENT AND ITS STAFF FOR THEIR ASSISTANCE. EVEN THOUGH I DISAGREE WITH THE STAFFS RECOMMENDATION I APPRECIATE THEIR EFFORTS.

I WOULD LIKE TO STATE THAT I AM A HOMEOWNER, TAXPAYER AND CITIZEN OF THE CITY OF LOVELAND. JUST AS YOU ARE. THE CITY OF LOVELAND IS A GREAT COMMUNITY TO LIVE IN. TONIGHT I AM ASKING THE CITIZENS OF LOVELAND FOR YOUR ASSISTANCE IN THIS MATTER

MY HOPE DURING THIS PROCESS IS THAT YOU PUT YOURSELF IN MY POSITION AND TRY AND EVALUATE ALL OF THE ISSUES FACING US TONIGHT.

FIRST OF ALL, I WOULD LIKE YOU TO VIEW THE AREAS IN QUESTION--(VIEW PHOTOS) I HAVE EXHIBITS (PHOTOGRAPHS) FOR YOU TO VIEW.

I HAVE NEVER SEEN PROPERTY IN THIS CONDITION, IN A SUBDIVISION OF THE SIZE OF GARDEN GATE OR IN ANY SIZE SUBDIVISION WITH A HOMEOWNERS ASSOC.

I WOULD ENCOURAGE THE COMMISSION TO VIEW THIS PROPERTY, IN PERSON, BEFORE YOUR VOTE. THIS PROPERTY IS ABOUT 1 1/2 MILE AWAY FROM CITY HALL.

NOW YOU HAVE VIEWED THE PHOTOGRAPHS OF THE PROPERTY. AT THIS TIME I WILL REPLY TO THE PLANNING DEPARTMENT'S RESPONSE TO MY APPEAL.

I WOULD LIKE TO REMIND THE COMMISSION I AM REQUESTING A REMEDY FROM THE PLANNING DEPARTMENT REGARDING THE ISSUES. TO CONSIDER THE LAW AND PRACTICES REGARDING THESE ISSUES. AND TO HAVE SPECIFIC RECOMMENDATIONS AS WARRANTED.

I WILL START WITH PAGE THREE OF THE REPLY.--THE LAST PARAGRAPH.--IT STATES-- "THE PRECISES MAINTENANCE OF THE OPEN SPACE TRACTS ARE NOT CLEARLY SPECIFIED IN THE FDP" THE FDP DOES NOT SPECIFY MULCHING WEEDING OR IRRIGATION TREATMENTS FOR THESE AREAS. ALSO MOWING OF THE AREAS ARE NOT SPECIFICALLY DESCRIBED.

THAT IS WHAT I AM TRYING TO ACHIEVE THROUGH THIS PROCESS. IN SOME INSTANCES COMMON SENSE AND LOGIC SHOULD PREVAIL. IF NOT, THE CITY AGENCY SHOULD STEP IN AND REQUIRE SPECIFIC STANDARDS. THE AREAS ARE STILL NOT BEING MAINTAINED.-- THIS TO ME IS NOT DIFFICULT--NO ONE HAS TO TELL ME WHEN AN AREA NEEDS TO BE MOWED OR WATERED OR MAINTAINED. THIS DESCRIPTION, I BELIEVE IS DISINGENIOUS.

PAGE 4--SECTION IV--SUMMARY OF APPEAL--APPARENTLY, MY FIRST APPEAL'S CONTENTS WAS NOT SPECIFIC ENOUGH . THEREFORE, I REVIESED THE APPEAL AND

PAGE TWO
PLANNING COMMISSION HEARING
NOVEMBER 28, 2011

~~SUBMITTED THE REVISED APPEAL WITHIN CODE SECTION 18.80'S GUIDELINES. THIS IS ALSO PREMISSIBLE IN THE CODE SECTION. I WAS TOLD THIS IS NOT UNUSAL.~~

PAGE 5--TOP OF PAGE--STATEMENT INACCURATE--PLEASE REVIEW--THE REVISED APPEAL DOCUMENT IS NOT DATED SEPTEMBER 21, 2011. IT WAS FILED ON THAT DATE AND WITHIN CODE SECTION'S 18.80 GUIDELINES.

I HAVE NO UNDERSTANDING OF THE RELEVANCEY OF THIS STATEMENT AT ALL. THIS SENTENCE MISREPRESENTS THE FACTS.

PAGE 5--TITLED--GENERAL CONCERNS--"PRIMARY POINTS OF CONCERN AND OBJECTION"--FOR PURPOSES OF THIS SECTION I WILL LIST THE ITEMS ONE THROUGH FOUR.

MY CONTENTION IS THAT THIS SECTION IS FACTUALLY FLAWED AND IS SERIOUSLY INCOMPLETE .

1--STATEMENT INCOMPLETE--AT THE TIME OF THE OFFER FOR MY HOME--THE AREAS, IN QUESTION, WERE IN A GREEN AND VIBRANT CONDITION AND WAS GOING TO STAY THAT WAY I WAS TOLD . IT MUST BE NOTED IT WAS JULY AT THE TIME OF THE OFFER AND THE CONDITION OF THE PROPERTY IN QUESTION WAS WELL MAINTAINED. (INCLUDING THE DENTENTION POND AREA) IT REPRESENTED VISUAL UNITY.

2--AGREED

3--AGREED--THAT IS WHY WE ARE HERE TODAY. IF IT WAS NOT FOR THE CITY 30 DEAD TREES OR MORE, IN THE COMMUNITY, WOULD NOT HAVE BEEN REPLACED. THE HOA SAID THAT THEY WOULD NOT DO ANYTHING UNLESS A COMPLAINT WOULD BE FILED WITH THE CITY. (REFER TO E-MAIL) MANY THANKS TO THE CITY OF LOVELAND.

4--STATEMENT INCORRECT--IN PART--THE PLANNING DEPARTMENT RESPONDED REGARDING THE TREES. THE REST OF THE ISSUES PERTAINING TO THE MAINTANCE OF THE AREAS BY THE FARMERS DITCH AND DETENTION POND WERE NOT COMPLETELY RESPONDED TO OR WE OR WE WOULD NOT BE HERE TODAY AT THIS HEARING.

MY APPEALS CONCERNS THAT SHOULD HAVE BEEN LISTED--NOT IN ANY ORDER.

1--HOME VALUE--MS. STEPHANIE KIRLAND-REAL ESTATE BROKER VIEWED THE PROPERTY IN QUESTION-IT IS HER PROFESSIONAL OPINION THAT BY NOT MAINTAINING THE PROPERTY AND IN ITS CURRENT CONDITION--IT IS HAVING A NEGATIVE EFFECT ON HOME VAULES IN THIS AREA. THIS OF COURSE EFFECTS THE WHOLE CITY.

2--DANGER--BY NOT MAINTAINING-MOWING AND WATERING---BY LETTING THE GRASS GROW HIGH IN THE AREAS THAT BUTTRESS UP TO HOMES ON THE EAST AREA OF THE FRMERS DITCH, VERMON AND SNAKES GET INTO RESIDENTS BACK YARDS. THERE ARE CHILDREN WHO PLAY IN THE BACK YARDS OF SOME OF THESE PROPERTIES.

3--THE VIOLATIONS OF THE WEED ORDIANCE----FOUR TO MY KNOWELDGE--CODE ENFROCEMENT THOUGHT THAT THE LAWS WERE NOT BEING COMPLIED WITH.

4--I WOULD NEVER HAVE BOUGHT THE HOME I BOUGHT IF THE PROPERTY, IN QUESTION,

PAGE THREE
PLANNING COMMISSION HEARING
NOVEMBER 28, 2011

WAS IN THIS CURRENT CONDITION.

5--MR. GEORGE'S VISIT TO THE SITE.----THIS WAS NOT ADDRESSED IN THE PLANNING DEPARTMENT RESPONSE AT ALL. THIS TO ME, AND WAS STATED IN MY APPEAL, IS A SERIOUS SIGNIFICANT DEVELOPMENT.

MR GEORGE, TOLD ME, WHILE STANDING IN FRONT OF THE DETENTION POND AREA, THAT HE HAD NEVER BEEN TO THE PROPERTY BEFORE (AND THIS INCLUDED BEFORE THE SIGNING OF THE LETTER) AND THAT BY VIEWING THE PROPERTY THE LETTER NEEDED TO BE CHANGED TO REFLECT THE CONDITION OF THE PROPERTY.

ADDITIONALLY, THAT WHEN MY APPEAL WOULD BE FILED. THAT WOULD MEAN THAT HIS LETTER AND ITS CONTENTS WOULD BE ON HOLD UNTILL THE PROCESS WOULD BE CONCLUDED. THE HOA WOULD HAVE TO MOW THE AREA EAST AND WEST OF THE FARMERS DITCH AND DETENTION POND AREA. THIS NEVER OCURRED.

HE ALSO STATED HE WANTED TO NEGOTIATE A SETTLEMENT IN THIS MATTER.

I RESPONDED TO MR. GEORGE THAT I WAS AGREEABLE TO THIS DEVELOPMENT.

PLEASE REVIEW MY APPEAL REGARDING THIS MATTER.

DURING MR. GEORGE'S VISIT IT WAS DETERMINED THAT SOME OF THE AREAS IN QUESTION SHOULD BE SPRAYED. IT IS MY UNDERSTANDING THE HOA WAS CONTACTED AND THE REQUEST WAS MADE. ALSO I SAW HIM THE DAY I FILED MY APPEAL HE REAFFIRMED HIS THOUGHTS AND SAID HE WANTED TO START THE NEGOTIATION PROCESS IN TWO WEEKS. I DID NOT HEAR FROM ANYONE AFTER THAT CONVERSATION. SEPT 21.

I AM PREPLEXED OF HOW COULD THE PLANNING DEPARTMENT LEAVE THIS SIGNIFICANT DEVELOPMENT OUT OF PLANNING DEPARTMENT RESPONSE. AND IN THIS SECTION.

MR. GEORGE IS THE PERSON WHO SIGNED THE LETTER.

FURTHERMORE, I CONFIRMED THIS INFORMATION WITH MR GEORGE VIA THE TELEPHONE BEFORE I INCLUDED THE STATEMENT IN THE MY APPEAL LETTER DATED SEPTEMBER 14, 2011. PLEASE ALSO NOTE THAT TO THIS DATE NO ONE HAS DISPUTED THIS INFORMATION.

IT APPEARS TO ME, BY THE PLANNING DEPT.'S RESPONSE, THAT MY APPEAL AND CONCERN, NOR LEGAL CITATIONS HAVE BEEN SPECIFICALLY ADDRESSED NOR RESPONDED TO. LISTING ITEMS 1-6, POINTS 1-8, ITEMS A-D IN TITLES I, II, III IS NOT RESPONDING APPROPRIATELY NOR COMPLETELY. SPECIFIC RESPONSES TO EACH ITEMS IS REQUIRED

PAGE 6--STAFF ANALYSIS--I REQUESTED THE DETERMINATION IN EARLY 2010. THAT WAS NOT INCLUDED IN THIS SECTION. (PARAGRAPH TWO FIRST SENTENCE.)

SECOND PARAGRAPH--EIGHTH SENTENCE DOWN --"WITHOUT PRESCRIBING RIGID PROVISIONS THAT WOULD BE BURDENSOME FOR THE HOA TO IMPLEMENT OR FOR THE CITY TO ENFORCE."

I AM AT A LOSS BY THIS EXPLANATION. THIS IS NOT DIFFICULT. WHAT IS BURDENSOME ABOUT TAKING CARE, OR PLANTING MIXED SEEDS, IF NECESSARY, TO PROVIDE THE AREAS WITH A UNIFIED APPEAL. FOR THE AREAS TO "FIT" INTO THE COMMUNITY. IN FACT IF MAINTAINED YOU WOULD NOT HAVE TO DO ANYTHING. ALSO THE SECTION IMPLIES THAT THE CITY WOULD HAVE A DIFFICULT TIME TO ENFORCE THE PROVISIONS. YOU CAN JUST VIEW THE PROPERTY AND MAKE DIRECTIVES. THIS IS NOT A DIFFICULT

PAGE FOUR
PLANNING COMMISSION HEARING
NOVEMBER 28, 2011

ENDEAVOR. I HAVE COMPLETE CONFIDENCE THAT THE CITY OF LOVELAND AND ITS STAFF CAN HANDLE THIS RESPONSIBILITY. THIS EXPLAINATION IS OVERSTATED AND DISINGENIOUS.

SECOND PARAGRAP--12TH SENTENCE DOWN--ALSO MENTIONED WAS SIMILAR AREAS. I WOULD LIKE THE PLANNING DEPARTMENT TO BE SPECIFIC. WHAT AREAS. PLEASE

PROVIDE TO ME SPECIFIC SIMILAR SUB DIVISIONS FOR ME TO VIEW. I HAVE NEVER SEEN ANY IN THE CITY OF LOVELAND.

THIRD PARAGRAPH--THIRD/FOURTH SENTENCE DOWN--THE AREA EAST OF THE FARMERS DITCH HAS IRRIGATION (SPRINKLERS) WHEN THE AREA WAS WATERED IT LOOKED VIBRANT AND GREEN AND FIT INTO THE COMMUNITY.

THIRD PARAGRAPH--IN THE FIFTH SENTENCE DOWN-- THE NARRATIVE IN THE STAFF ANALYSIS SECTION STATES THAT IF GRASSES ARE CUT ENVIRONMENT BECOMES MORE SUSCEPTIBLE TO EROSION. I WOULD BEG TO DIFFER LOOK AT THE PHOTOGRAPHS OF THE AREAS. THEY ARE EXPERIENCING EROSION NOW. AND WEEDS ARE DOMINATING THE AREAS. IT WAS NOT LIKE THIS WHEN THE AREAS WERE MAINTAINED.

THIRD PARAGRAPH--IN SENTENCE NINE---IT STATES 'LONGER GRASSES PROVIDE SOME COVER FOR SMALLER ANIMAL SPECIES WHICH MAY FREQUENT SUCH AREAS'. THAT IS THE POINT. THEY FLOURISH IN THESE AREAS AND COME INTO THE RESIDENTS BACK YARDS WHEN NOT MOWED. I LIVE THERE IT BECOMES A PROBLEM.

PARAGRAPH FOUR--SENTENCE THREE AND FOUR--BY EVIDENCE I PROVIDED (PHOTOGRAPHS) THE PROPERTY IS NOT INTEGRATED ;INTO THE NEIGHBORHOOD.

PAGE SEVEN--PARAGRAPH ONE--SENTENCE FOUR AND FIVE. I DISAGREE FROM LIVING IN THE COMMUNITY THAT MOWING AND MAINTAINING THE AREAS WOULD BE CONTRARY TO THE SUSTAINABLE HEALTH OF THESE AREAS. THE ONLY OBSERVATION I HAVE EXPERIENCED IS IF THE AREAS ARE NOT MAINTAINED THE AREAS WILL SUFFER AND THE PROPERTYS WILL NOT BE INTEGRATED INTO THE COMMUNITY AS INTENDED. NO VISUAL UNITY.

PAGE SEVEN--PARAGRAPH TWO--I DISAGREE WITH THE DIRECTOR'S INTERPRETED RESULTS.

FINALLY, PLEASE NOTE THAT I WAS TOLD, BY THE PLANNING DEPARTMENT, THAT MONEY WAS NOT AN EXCUSE NOT TO TAKE CARE AND MAINTAIN THE PROPERTY. WE HAVE NO BUILDINGS IN THE COMMUNITY TO TAKE CARE OF. IT IS MY UNDERSTANDING THAT THE HOA, AT THIS TIME, HAS A SURPLUS OF OVER \$20,985.00. PLEASE CONSIDER THIS FACT IF THIS IS AN ISSUE. YOU CAN ALSO DIVIDE THE TREATMENT, IF NEEDED, TO SPLIT THE COST IF DESIRED. DO ONE AREA FIRST, THEN THE NEXT AREA ECT. TO MINIMIZE THE COST

IN CLOSING, IN MY VIEW THESE ISSUES SHOULD HAVE BEEN HANDLED AT A LOWER LEVEL. MY APPEAL WAS RESPONDED TO, IN GENERAL TERMS, BY THE PLANNING DEPARTMENT'S RESPONSE.

BEFORE YOUR VOTE I ENCOURAGE ALL MEMBERS TO REVIEW MY APPEAL, IN DETAIL,

PAGE FIVE
PLANNING COMMISSION HEARING
NOVEMBER 28, 2011

AFTER MY PRESENTATION TONIGHT.

ADDITIONALLY, I AGAIN REQUEST THAT YOU VIEW THE PROPERTY, IN PERSON, TO GET A COMPLETE PICTURE OF WHAT MY CONCERNS ARE. I WILL MEET YOU THERE.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

PLEASE CONTACT ME IF YOU HAVE ANY QUESTIONS.

December 1, 2011

Appeal of the Planning Commission Decision
to the full City Council, of Loveland, Colorado

To: City of Loveland, Full City Council

From: Appellant--Bruce W. Cromwell
267 Wrybill Avenue, Loveland, Colorado, 80537
970-663-6615

This letter represents a formal appeal, of the Planning Commissions Findings, to the City of Loveland, Colorado, City Council, in this matter.

This letter is presented, after the Planning Commission hearing, of November 28, 2011, pertaining to the following, and the "Revised Appeal" which is included thereafter in this document.

At the Planning Commission hearing Mr. Paulsen, Director of the Current Planning Department, City of Loveland, made the presentation on behalf of the City of Loveland.

My observation of Mr. Paulsen's presentation is that he did not address all of my concerns as stated in my "Revised Appeal". Therefore, my "Revised Appeal" to the City Council should be addressed in full.

One of my major concerns was that the Planning Department is intending to waive the weed ordinance in our community, in the particular area, in question. This is not in the best interest of the community and I request the council to consider advising the Planning Department to waive and not proceed with this course of action.

During the Commission hearing some "conditions were added to Mr. George's letter. But the conditions were not specified at the time. I would like to review the conditions and appeal them if needed.

I would also like the following to be considered in my appeal. It is about comments made by the Commission members regarding the following. One Commission member inquired, of the Assistant City Attorney present at the hearing, if an HOA member, in good standing, could sue the HOA for non performance. (After hearing the testimony.) Another Commission member stated that the maintenance, by the HOA, "was not consistent and all over the place". (paraphrasing these comments) This is more of a reason and, to take into consideration, comments from professional third parties, that standards should be put in place regarding the maintenance procedures by the HOA. Standards, requirements and direction are not rigid procedures.

Additionally, residents, of the Garden Gate community, who attended and testified at the Commission hearing, supported my position.

Furthermore, the HOA, who was present and testified at the hearing, did not testify nor state their specific opposition to any of my claims in my appeal.

Also discussed was the easements East and West of the Farmers ditch. There was testimony during the hearing, by the HOA, that it was their understanding that the owners of the Farmers Ditch owned the property for 6 feet. Three feet, of the ditch, in each direction. (East and West) Starting in the middle of the ditch.

In addition, discussed was the Plat. The Plat sets boundaries and other specifications before the property is built out. The Final Development Plan when implemented and required, by the city, takes control of the property in Enforcement and Specific Standards. Not the Plat in its original form.

Easements are not owned by entities, as the Farmers Ditch owners, in this matter., They are in fact owned by the HOA, in most cases, and such is the case in this matter. Easements only allow entities such, as the Farmers Ditch owners, to come on to the property and maintain their property as required. Historically no buildings or other obstructions are permitted in these easements unless specifically changed, in writing, by all parties involved. The easement in this case should be maintained by the HOA. The tracks in question are also owned by the HOA. (Notes #4,#5,#10-in the Plat support my position in detail) This issue was misinterpreted at the Commission hearing and not corrected by the Planning Department. This information is a major development.

Included in this appeal, to the Council, is, on occasion, when the Farmers Ditch owners come out to maintain the property they usually set the area in the Farmers Ditch on fire. It is possible that if the grass is not mowed and otherwise maintained the dry grass could catch on fire. This could pose fire protection problems to the homes nearby. This was not considered at the hearing.

Also not addressed were home values affected by not maintaining the property.

Danger of the vermin and snakes coming into the resident properties not addressed fully.

Mowing, the area in question, would be precluded, in this decision, as I understand it. I would also be against this development.

Additionally, not addressed was Mr. George's conflicting statement regarding the letter he signed once he viewed the property in person.

And visual unity was not addressed. This is a vital consideration to the direction of the properties intent.

Past practices, of maintaining the property, was not considered or addressed.

The aforementioned, are reasons why I am requesting the Council to reconsider my "Revised Appeal" in full.

Furthermore, for Pont of Clarification--Mr. Paulsen suggested I was invited to the meeting, at the property site, between the City and the HOA in July 2011, but did not attend. I was precluded from attending the meeting due to a personal matter. (I also had spoken to the City Planning Department, (Mr. Paulsen ect) and sent numerous e-mails, about all of the issues for over one year and four months. I had also spoken to the HOA, in detail, and had wrote letters and sent e-mails to the HOA. I felt that a dialogue between the two parties (HOA and City Planning) would be productive in any case.) I did telephone Mr. Paulsen after the meeting and stated this fact to him. It is unfortunate that Mr. Paulsen did not include, this fact, in his statement/presentation.

It must be noted that after I received Mr. George's letter I was informed that, if I disagreed with the letter, my remedy would be to appeal the decision to the Planning Commission. If I disagreed with that decision, in front of the Planning Commission, than I could appeal that decision to the City Council. I am exercising those remedies but I thought these issues should have been resolved at a lower level. That would have been the appropriate remedy.

At this time the "Revised Appeal" follows, for the City Councils, consideration--Please review all of it's contents. (Mr. George's letter is attached)

September 14, 2011
"Revised Notice of Appeal"
Original Notice of Appeal September 8, 2011

This correspondence--Revised Notice of Appeal-- is a reply to the letter I received from the City of Loveland's, City Attorney's Office, dated September 14, 2011. The letter referenced the "Notice of Appeal" I served on the City dated September 8, 2011. (Refer to Attached)

The Appeal I filed dated, September 8, 2011, apparently failed to conform to the requirements of Code Section 18.80.060 per the City of Loveland's, City Attorney's Office.

Therefore, with this letter, I will submit a revised/amended Appeal, with provisions of the Loveland Municipal Code and relevant facts supporting the filing, to satisfy the requirements, as stated in the letter sent to me, by the City of Loveland, City Attorney's Office. Please consider the following:

To be accurate and in an attempt, to present the issues with clarity, I believe that it is in the best interest of this process to look back at the time line regarding the issues at hand. Please take into consideration the following information--

Before I moved into the Garden Gate Community, in Loveland, Colorado, I was assured by the representative of the developer, that all common areas were to be maintained--watered, mowed and otherwise maintained, at all times, and in the future and as in their current condition (lawns green vibrant, visual unity throughout the community and well maintained ect.). It was in the developments and city code the person told me. It was stated in the Garden Gate Community's Declarations of Covenants, Conditions and Restrictions I found out later. Sections that apply under this heading are 1)-Article VI--(Common Elements)--Section 6.4--Maintanance and Regulation of Common Elements.--Stated in part-- Landscaping shall be maintained and replaced by association as necessary so that common elements presenting aesthetically attractive appearance for which they were installed. --Included under Article VII--Section--(Maintenance By Association)--7.1-Maintenance of Common Elements--Describes the information in 6.4--and includes in part--The association shall make repairs and replacements thereto as needed. (both Articles are attached).

Consequently, on February 15, 2010, I submitted a letter to the Garden Gate Homeowners Association pertaining to Dead Trees not being replaced in the Garden Gate Community. In my letter, I also expressed concern about the maintenance in the of Detention Pond Area. My concerns also included the Tracts of Land, East and West of the Farmers ditch not being maintained/incomplete maintenance in the Community. I also referenced the Garden Gate Final Development Plan (GGFDP in future narrative). Needless to say, all of these issues were covered in the GGFDP. I did not receive a reply from the G.G. HOA board. I subsequently contacted, an HOA management company representative, by sending her an e-mail. The person returned my e-mail. In my e-mail I inquired if the board was going to replace the trees in the community or wait for a complaint to be filed (paraphrasing). This person's response was it was her understanding that a formal complaint had to be filed. In essence the board was not going to do anything unless a formal complaint was filed with the City of Loveland. (Letter to board and e-mail available if required)

Subsequently, a Confidential Formal Complaint was filed with the City of Loveland. The complaint was dated March 17, 2010. The complaint dealt with violations of the GGFDP. As far as I am aware the Confidential Formal Complaint and its contents have never been responded to by the City. Mr. George's letter does not reference the Confidential Formal Complaint. It has been approximately 18 months since the complaint was filed and to my knowledge the issues were never formally addressed, completely in writing, until Mr. George's letter. The letter originated by Mr. George is dated September 2, 2011. It is addressed to the Board of Directors. (The City of Loveland is in the possession of the Confidential Formal Complaint Filed, dated March 17, 2010.)

Title I--Response to Mr. George's letter--Relevant Facts and Provisions

(1)--In paragraph one Mr. George's letter states that the letter is a clarification regarding maintenance and responsibilities ect. My understanding of Mr. George's intent with his letter was to correct any future misunderstanding regarding the maintenance of all of the areas in question. And by doing so to stop the Code violations and poor/non existent maintenance on said properties. But my response, to Mr. George's letter, is that its contents are not specific and detailed enough to provide the precise maintenance treatment of the areas in question. In my view, the problems will persist and continue, if the letter is not amended and corrected. The areas in question have been viewed by the City of Loveland's Code Enforcement personal. The Code Enforcement Officers have determined that the Garden Gate HOA has been in violation, (and currently is in violation) on four separate occasions and time periods, (or more) of violation of Chapter 7.18 of the City of Loveland, Municipal Code. And therefore, in law and fact, the violations pertain to the contents of the Garden Gate Final Development Plan. (In addition, the violations are wasting City time and resources, in continually, responding to complaints by homeowners ect.) Failure to interpret Code properly.

Because of these habitual violations committed by the G.G. HOA there needs to be a standard established, of specific and detailed measurements and descriptions, of responsibility for maintaining/maintenance-- (watering, mowing mulching ect) of the properties in question. (From the distances from the back fence of the homes that back to the Farmers Ditch East and West of the this area. (Please note that in the, GGFDP, the requirements/definition for a Wetlands area near and around the Farmers Ditch, as stated under Number 5--Subject Wetlands states "Wetlands" along the Farmers Irrigation Canal (Ditch) consist of narrow bands of wetland vegetation confined withth the ditch embankments ") One then should conclude that the property areas East and West of the ditch, notwithstanding the embankments, shall be maintained (mowed, watered ect.) by the HOA. This practice is not being done, currently. Failure to Interpret GGFDP, properly.

(2)--Also to be considered, is the Detention Pond area located Northwest and Southwest of the Electric Sub Station. The exact measurement of the property that is required to be maintained, mowed and watered should be detailed. Also, mulching and other care should entail specific time frames and detailed description in maintenance. By omitting this specific information from, Mr. George's letter, I would contend is a failure to clarify the issues, as well as, to interpret the GGFDP properly.

(3)--Non-Irrigated, Native Seed Areas--With clarification in mind when are these areas to be reseeded and mulching occur (desirable term used). Also some of these areas are irrigated. Not clarified.

(4)--Irrigated Native Seed Area--For clarification purposes what are the exact distances in feet East and West of the Farmers Ditch that are to be maintained? Why are these areas not being maintained currently.(watered, mowed, mulched ect.) These areas are irrigated but not being maintained with proper maintenance as described above. To my knowledge none of the areas have been mulched. Also, for purposes of clarification the word "may" should be changed to "shall" due to the circumstances and past history of non compliance by the HOA. Failure to interpret the GGFDP properly.

(5)--Wetland Seed Area--(Detention Pond Area)--Bottom of Pond referred to as "wet". This was stated in the 4th sentence under this heading. I was informed that the area is to drain and remain dry at all times. Interpretation inaccurate. Failure to interpret properly.

(6)--HOA Discretion--The statement "the level of the maintenance is at the discretion of the HOA" as stated in "Wetland Seed Area" in Mr. George's letter. This statement I contend brought the interested parties to this point. The HOA is using its discretion and by doing so is not complying with the GGFDP and/or Municipal Code as evidenced by violations ect. These practices, currently carried out by the HOA, need to be changed. The maintenance practices need to be explained in direct language and in precise terms. And, in writing, to prevent any further confusion. Failure to interpret GGFDP and Municipal Code properly.

Title II--GGFDP Relevant Sections/Provisions that apply--Please Consider the Following--

Point Number--(1)--Section A-Titled Purpose of Project--Sub Section (a)--Following Garden Gate PUD Characteristics--"Uniquely attractive-the beautiful mountain views and open space throughout the development creates a sense of unity for residents". I would submit that the non maintaining/non maintenance of the properties, in question, does not give the community a "sense of unity" for the residents. The areas East and West of the Farmers ditch are not being maintained (watered, mowed, mulched) and realistically appear to be abandoned fields with weeds. The Detention Pond area is also not being mowed properly. This Section of the GGFDP is not being properly interpreted by the City's response.

Point Number--(2)--Section C-Site Design Concepts--Sub Section--(1)--Overall design concept--(d)-- Landscaping will enhance the project by creating visual buffers and overall sense of place. (in part) I submit that the only vision you see, when you are in these areas, is that you are in a field that is not being maintained/ with no maintenance. (Areas East and West of the Farmers Ditch and the area around the Detention Pond). This Sub Section is not being interpreted properly by Mr. George's letter.

Point Number--(3)--Section E--Public and Private Utilities--Sub Section (10)--Maintenance of all open space, wetland areas and all other common play and landscaped areas buffers shall be maintained by the Association established for the Garden Gate PUD. This section is not being complied with. A violation of the GGFDP. Not included in Mr. George's letter. Failure to interpret Provisions properly.

Point Number --(4)--Section F--Landscaping and Fencing--Sub Section (1)--Overall Concept--The Landscape Plan is based around lending a sense of connection and visual unity throughout the project while providing buffers between the proposed uses (in part) This section is not being complied with per the GGFDP. Proper maintenance not being performed by HOA. Failure to properly interpret Provisions.

Point Number--(5)--Section F--Landscaping and Fencing--Sub Section (3)--The association shall have the maintenance and long term responsibility for the landscaping and existing tree and shrub communities within the Garden Gate development (paraphrasing). The GGHOA is not complying with this sub section. Not considering or interpreting GGFDP properly through letter.

Point Number--(6)--Section G--Architecture and Site Design--Sub Section (2--(b)--Developers, property owners and residents shall comply, at all times, with the requirements, restrictions and prohibitions, set forth in this FDP (paraphrasing). This Sub Section is not being complied with, by the HOA, not adhering to the GGFDP in aforementioned statements. (Violations of the GGFDP and Weed Control--Section 17.18 of the City of Loveland Municipal Code) What are the sanctions for these habitual violations. This Section is not included/considered in Mr. George's letter. Failure to properly interpret Provisions.

Point Number--(7)--Section L--Regulatory Procedures--Paragraph Two--The FDP is in accordance with Chapter 18.41 of the Loveland Municipal Code. In no event shall a property owner take or commit any act or action that is not in full conformance with the law, regulation and/or condition of the City of Loveland, Municipal Code. This Section does not preclude or exclude nor waive the Garden Gate HOA from performing their duties as required by law. What are the sanctions for these violations as described? Not considered by letter from Mr. George. Failure to properly interpret Provisions.

Point Number--(8)--The GGFDP is not taken in its "whole" form/meaning. Sections are taken out to apply to Mr. Georg's letter and other Sections are not applied. This is a failure to properly interpret and apply relevant provisions as stated above.

Title III--Relevant Facts to be taken into consideration--

(A)--Home Values--In this case, I believe it is in the City's best interest to help the homeowners in the Garden Gate Community protect our home values. The letter, Mr. George wrote, does not reflect the negative impact that the non maintenance (and or new rules) would have on the Communities existing home

values. I believe the interpretation of the new maintance rules would have a negative impact on the Garden Gate Community regarding this issue. I must state that I would not have purchased my home, if the property, in question, was in the condition, that it is in today. Failure to interpret relevant fact.

(B)--Areas in question are the only areas not being Maintenance/Maintained in the Community--(Pertaining to total in community--Approximately 68 acres--188 homes)---It is my understanding that the areas, as described, in this Revised Appeal, are the only areas in the Community that are not being maintained--maintenance--mulched, watered or mowed ect. As a result, the GGFDP and the Loveland Municipal Code, are not being uniformly applied. This action (or non action) is a violation of the GGFDP and the Loveland Municipal Code. These Provisions, and explanation of same, was never properly considered or interpreted in Mr. George's letter.

(C)--Past Practices--When the Developer was maintaining/maintenance of the property there were issues. But the areas in question were being maintained properly. Relevant fact not properly interpreted.

(D)--Mr. George's Visit--September 8, 2011--Finally and most importantly, when I received a cc of Mr. George's letter I noticed before his Signature he wrote, "Please contact me if you have any questions or concerns regarding this determination". Due to that statement I contacted Mr. George and invited him out to the properties for a visit. Mr. George accepted my invitation.

During, Mr. George's visit, in which he was able to view the property in person, he had expressed to me, some concerns about the condition and maintenance of the properties in question (East and West of the Farmers Ditch area, Detention Pond area ect.). The letter needed to be changed to reflect the condition and maintenance of the property, he told me. We discussed some changes and I am in agreement with some of his suggestions. I recontacted Mr. George by telephone when I received the City Attorney's response to my original Appeal. The date was September 14, 2011. Mr. George again, agreed with my recollection of said events. Please take this significant development into consideration.

Thank you for the opportunity to present my Revised Appeal.

If you have any questions please feel free to contact me.

Thank you for your consideration,

Bruce W. Cromwell
Appellant
267 Wrybill Avenue,
Loveland, Colorado
80537
970-663-6615

Note--Letter by Mr. George, GGFDP document, not attached, as previously submitted for review, at first filing of Appeal, on September 12, 2011.



Office of the City Attorney

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www.cityofloveland.org

December 21, 2011

Via email to: bwc2424@yahoo.com

Via U.S. Mail to:

Mr. Bruce W. Cromwell
 267 Wrybill Avenue
 Loveland, Colorado 80537

RE: Notice of Appeal dated December 1, 2011 and received December 6, 2011 ("Notice of Appeal") pertaining to the Loveland Planning Commission ("Commission") Final Decision Denying the Appeal of the Director of Development Services' Determination of Maintenance Practices for Designated Open Space within the Garden Gate First Subdivision dated September 2, 2011 ("Director's Determination")

Dear Mr. Cromwell,

As you know, after consideration of your appeal of the Director's Determination at its meeting on November 28, 2011, the Commission adopted a motion to deny the appeal and uphold the Director's Determination, concluding that Director properly interpreted and applied applicable provisions of the Loveland Municipal Code, subject to the condition that noxious weeds shall be controlled in the specified natural areas otherwise exempt from the City weed ordinance (the "Commission's Decision").

The Current Planning Division received your Notice of Appeal and will be setting the appeal for hearing before the City Council in accordance with the Loveland Municipal Code (not less than 30 nor more than 60 days after December 6, 2011).

Councilors McKean and Fogle provided to me written communications to them that you also delivered on December 6, 2011. Since the Notice of Appeal was filed on the same date as you delivered these communications, this matter is to be heard on appeal by the City Council in a quasi-judicial hearing.

When the City Council acts in a quasi-judicial proceeding, it acts in a manner akin to that of a judge in making its determination. As a matter of due process, a quasi-

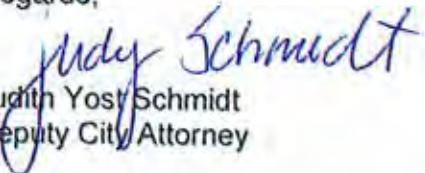
judicial decision may be called into question when there are ex parte communications with the decision-makers outside of the hearing process.

Accordingly, I recommended to Councilors McKean and Fogle that the written communications you delivered to them be distributed to the entire Council for consideration as a part of the hearing of your appeal. For the same reasons, it would be inappropriate for members of the Council to discuss the pending appeal with you outside of the established hearing process, so Council members may also be unlikely to engage in such discussions.

Councilors McKean and Fogle have delivered your correspondence to me and it will be included in the package of information provided to all Council members in advance of the appeal hearing (which will include the record of the Planning Commission proceedings as required by Municipal Code Section 18.80.080). You will receive a notice of the hearing date and time, and an indication as when the record and Council materials will be available (these are generally available by the Friday before the Tuesday Council meeting).

Please let me know if you have questions,

Regards,


Judith Yost Schmidt
Deputy City Attorney

cc: Mr. Robert Paulsen, Director, Current Planning Division
Council Member Hugh McKean
Council Member John H. Fogle



EXHIBIT A.4









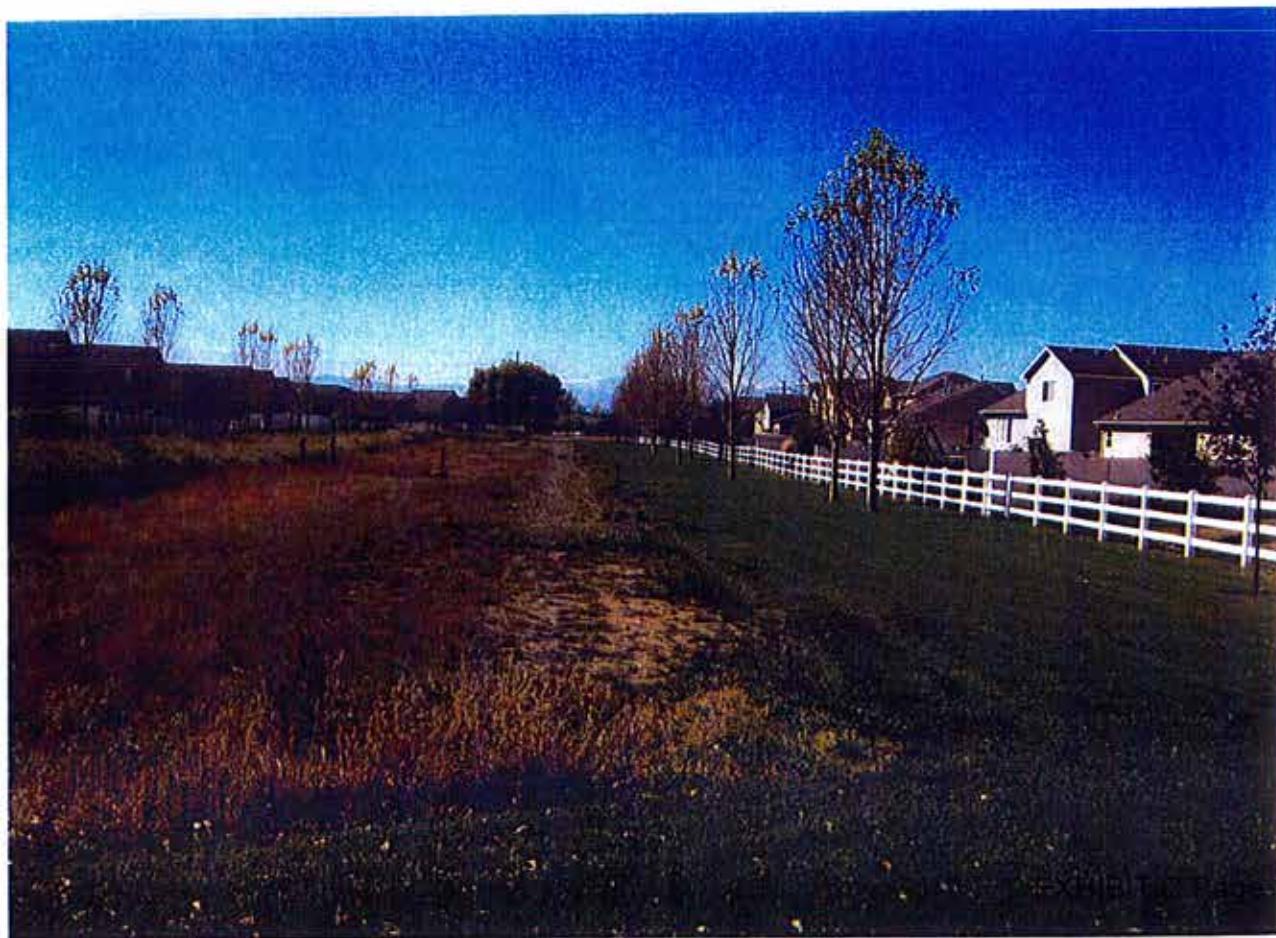
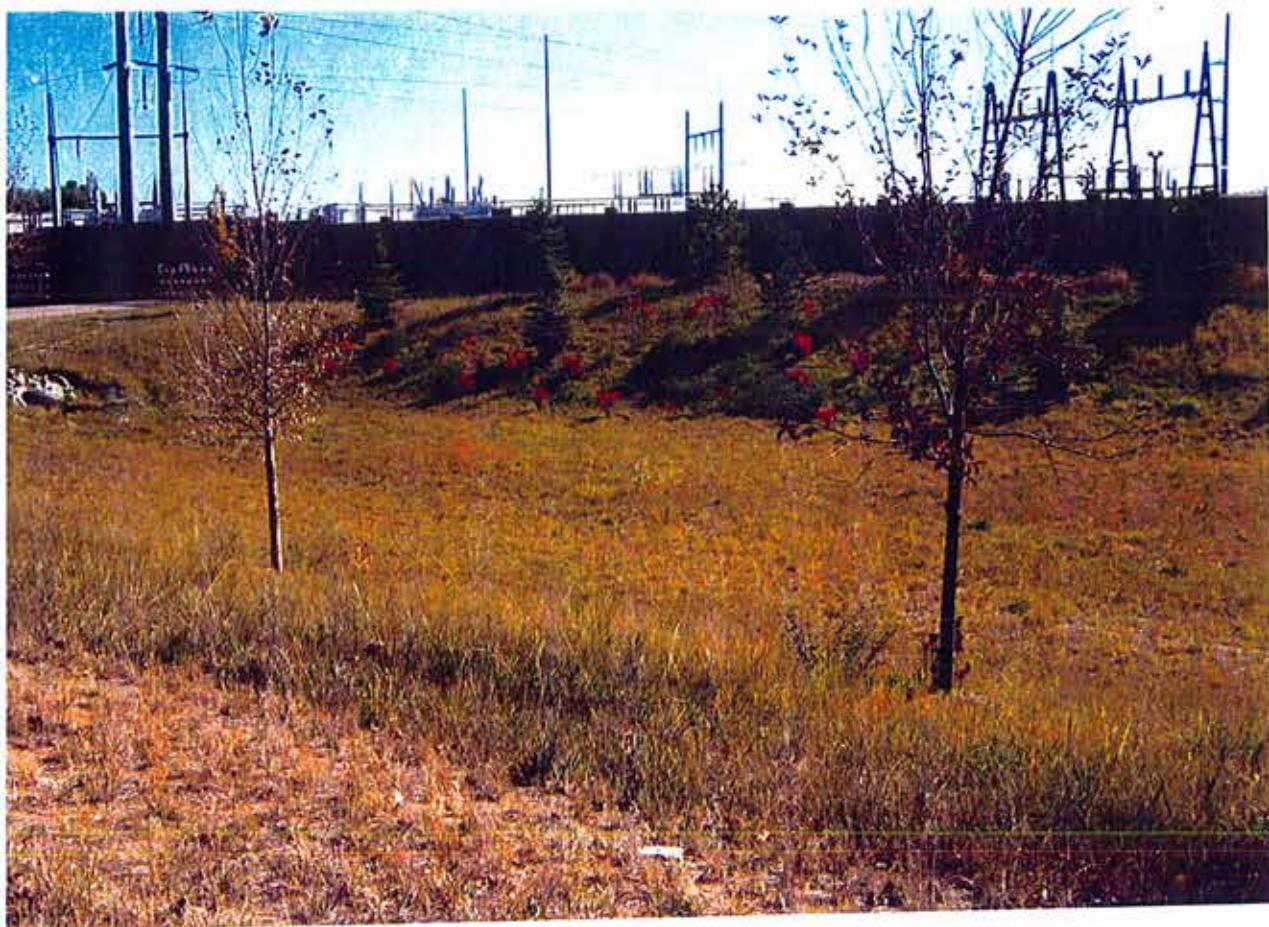




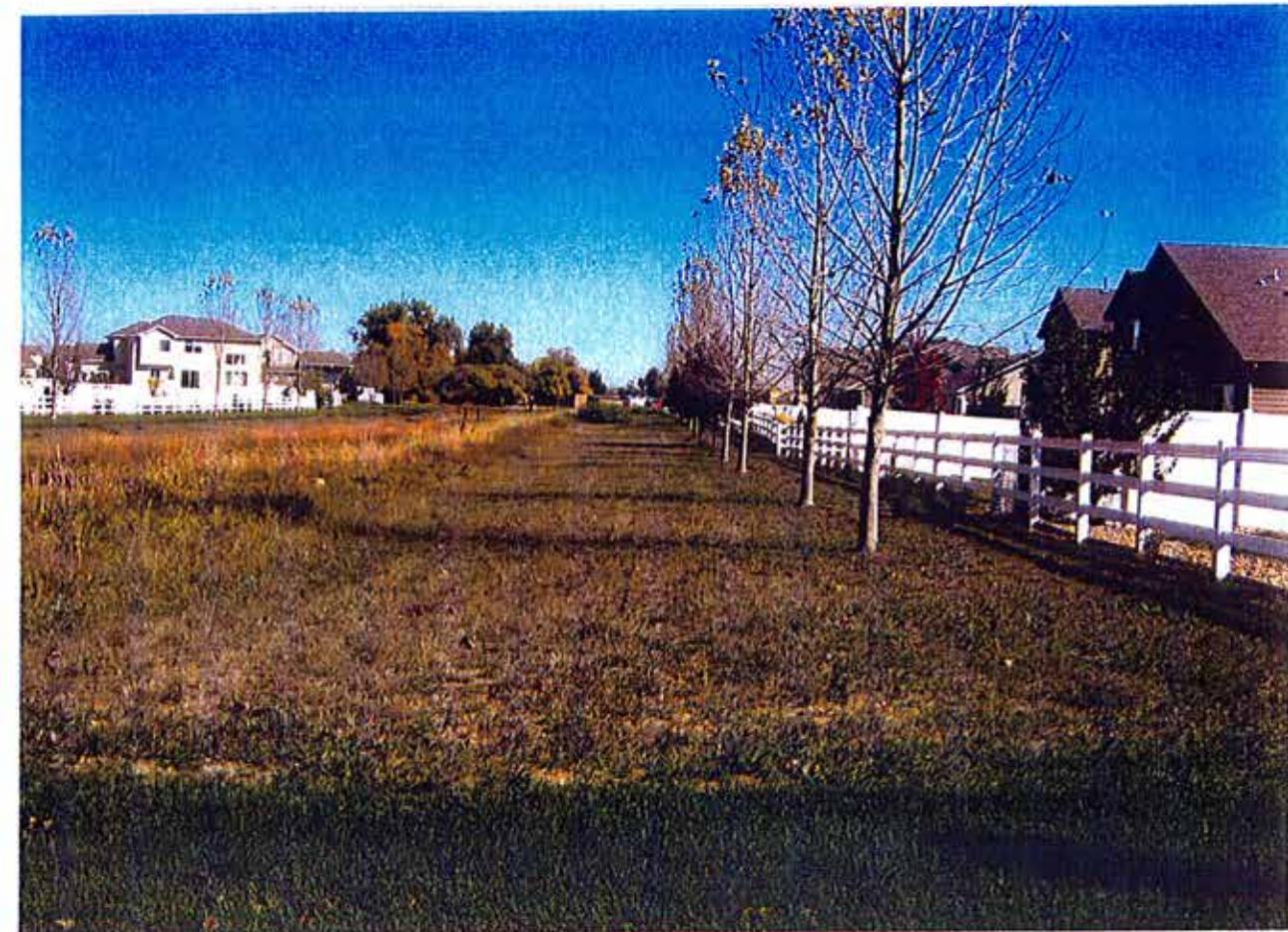


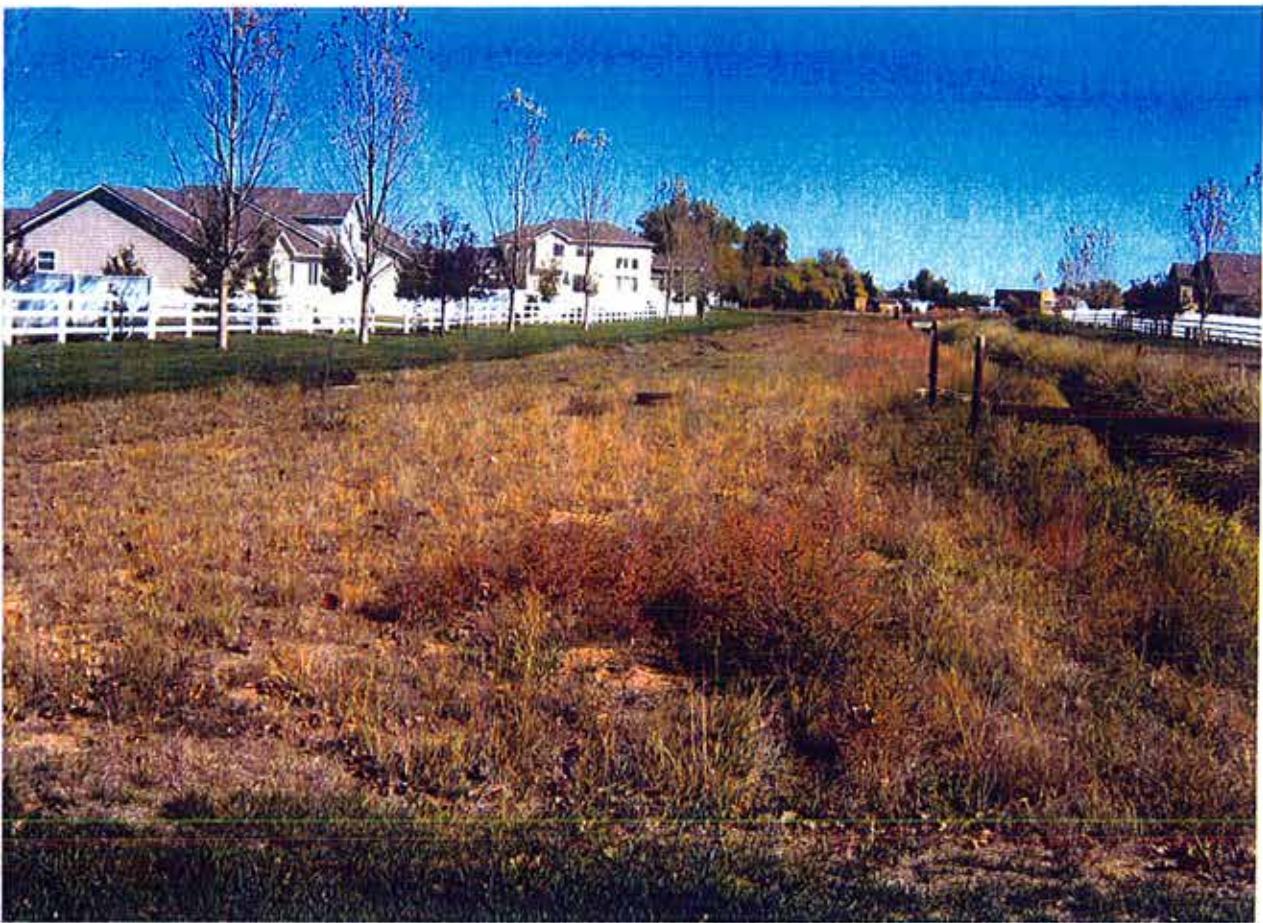














FEBRUARY 15, 2010
MONDAY

Board of Directors Meeting
Garden Gate Homeowners Association

This letter is directed to the board of directors, of the Garden Gate homeowners association, to help the board help the community. Not to criticize.

I feel it is important to put my concerns, in writing, so that there is no misunderstanding or confusion regarding the issues that face the board.

One of the reasons I decided to originate this letter was because of the statements that were made by the board at the January 19, 2010 meeting.

I attempted to clarify and present this information, at the February 8, 2010 meeting, but was referred to the meeting set for February 15.

Therefore, I will list, in general terms, the following information for the board to consider:

1)--Back Fence Issue: One of the board members wanted a clarification regarding the fences in the rear of homeowners homes. He asked me to bring the information to the meeting being held on February 15.

The homes in question were homes that buttress up against common areas, open space areas or play areas. The issue is if it was permissible, under the city of Loveland's municipal code, to be able to put a full solid fence up in your backyard or to be required to only have a three bar non solid fence in these areas. (The HOA covers height and material only) Please refer to the attached e-mail from the city of Loveland code enforcement department for the applicable law regarding this issue. Per the city of Loveland, you can put up a full solid 6 foot fence in these areas. (At the meeting on the 19th it was stated by one of your board members that there were a number of city codes that applied to this issue. It was said that because of the city's codes you could not build a full solid fence in your backyard. The board member could not recite any code sections to support this claim. The board member was apparently misinformed.)

If you have any questions regarding this issue please contact the City of Loveland, Code Enforcement Officers. If they do not know the answer to your questions they can direct you to a city department who can help you. This applies to numbers two and three in my narrative. (In addition, if any issues of concern are not addressed, specifically, in the Final Development Plan or the HOA rules then the issues revert to the Loveland City Municipal Code for enforcement.)

2)--Replacement of Trees--A number of trees in the community have been dead or have died since at least 2008. That is when I generated an e-mail to the HOA to request that they be replaced. Nothing was done. In fact, at one point I was told that were not going to be replaced, at all, due to cost. I have been informed by the board thirty (30) trees were removed from the community. This is a significant number of trees that must be replaced. (again at the January 19, 2010 meeting the homeowners were told, by one of the board members, that the trees were not going to be replaced due to cost. He estimated the cost at \$150 per tree for replacement. I asked if there was a plan to replace the trees. I was told there was no plan to replace the trees.)

Please refer the Garden Gate--Final Development Plan--(in the future, in this letter, referred as FDP). This is a legal document agreed to by the City of Loveland and the Garden Gate HOA. In essence the trees must be replaced or the community (HOA) could be cited or fined or both by the city of Loveland for not following the laws pertaining to the FDP. (This is a liability issue confronting the community as is number 3 in my narrative) Cost is not an excuse to replace the trees I have been informed. I have done a cost assessment (\$150 per tree which I think is high) and with (or without in my opinion) an adjustment, to the existing

EXHIBIT A.5

RECEIVED
1-23-12

Page Two
February 15, 2010

Board Meeting
Garden Gate HOA

budget, the replanting could be started in time for the Spring planting season. (replacement cannot be seedlings-refer to FDP for instructions for replanting.)

3)--Taking Care of Common areas--Maintain and Maintenance of same---There must be a unity of maintenance and maintaining of the common areas. This applies, but is not limited to, the retention pond area and the areas that are East and West of the Farmers Ditch. (at the Jan. 19th meeting I asked why these areas were not maintained. One of your board members told the homeowners that they were natural areas and that is why they were maintained differently. (paraphrasing) I asked the board member who decides what is an natural area in the community. The board member responded, we do-the board. This is not the case. The FDP spells out the restrictions, requirements and prohibitions of maintaining and maintances of the community. The FDP specifically states what is a natural area or environmentally sensitive area. This board member was misinformed) In section G--2--B--of the FDP It states that--Notes: Must comply, at all times, with the requirements, restrictions and prohibitions set forth in the FDP. Please refer the FDP and its contents.

4)---Budget---I encourage the board to revisit the budget. I had brought up a number of items that could be reviewed and cut out. When I spoke to Rob he said he agreed with some of my examples and would look at it. My view is everyone should take a cut in the budget. Management and Landscaping ect. If the board takes action to review the budget and makes changes that could effect the homeowner dues than this would, in effect, create good will with the community that frankly is very upset. The budget, in some instances, should not be the same as last year. New approaches to identify cuts in the budget are in order.(limit costs)

5)--Formal Complaint--My understanding is that it is the boards Fiduciary Duty to file a formal complaint when the community has been "harmed" (possible litigation or budget issues) or a law has been broken. (at the Jan. 19, meeting a board member told the homeowners that the law was broken when the past HOA directors did not put homeowners on the board, in a timely matter as prescribed by State law-By following the law maybe we would not be facing some of the issues we are facing now) The board has to protect the community from this conduct and there could be a liability issue (potential civil suits) for the past HOA directors for any alleged misconduct. One of the board members told me "do you really think the Attorney Generals Office is going to conduct an Investigation" or they'll just slap him on the wrist. I don't believe to shrug your shoulders in effect, or do nothing is an option for the board. That's not why laws are made)

The point is that the board has fulfilled their sponibilies to the community by filing the complaints. (one with the Colorado State Supreme Court, in regards for the Board member who was an attorney and the other to look into the practices of the past board to be filed with the Colorado Attorney Generals Office.) It does not matter how it turns out that's not the boards call. The bottom line is the board has lived up to its Fiduciary Duty be taking this action. Let the State Supreme Court and The Attorney Generals Office make the formal determination of these legal matters. (The complaints should be filed in writing)

You can contact the Colorado State Supreme Court and the Colorado Attorney Generals Office by going on line to access their web sites. A board member requested this information. (a suggestion: also if you get any legal advise regarding any issues have it put in writing)

6)---Tone and Tenor of the Board Meetings--I have been approached by a number of homeowners who are mad and disappointed (major understatement) with the conduct of one of the board members. He is confrontational over issues that can be easily explained. He has exhibited this conduct at the last two board meetings. Maybe he does not understand the process or takes it as an personal affront if people are asking pointed questions. This behavior is non productive and not conducive to conducting the community's

Page Three
February 15, 2010

Board Meeting
Garden Gate HOA

business. Maybe some other board members can help him with his protocol. I also think it would be important for the board to encourage and embrace input from the homeowners. Even if there is disagreement than we can agree to disagree. Its not personal its business. I want the board to be successful. If the board succeeds in its business decisions then the community is a better place to live. Realistically we are all in this together.

If you read this full document you can observe that a constant thread throughout this letter is that the board (if I have been given the correct information to share with you--and correct me if I have been misinformed with support information) does not have the legal/precise information at its disposal. This is an area of concern.

In closing, I would like to thank the board for this opportunity to address my concerns. Please take this letter for what it is. To help the board help the community. If you have any questions or thoughts (or need my input in the future) regarding this document please e-mail me at bwc2424@yahoo.com.

Sincerely,

Bruce W. Cromwell
Homeowner

Note: Please update me in regards to your business decisions pertaining to my concerns (numbers one through six) I suspect you might have some updates for me within thirty calendar days or less from the date of this letter.
Thank you.

May 17, 2010

To: Board of Directors
Garden Gate Homeowners Association

Re: Garden Gate HOA, Board Meeting of Monday, May 17, 2010
Homeowners Concerns---

From: Bruce Cromwell, Homeowner---
Member of Garden Gate, Homeowner Association

The following are areas of concerns please respond in writing.

- 1)---The grass East of the Farmers Ditch appears to not be mowed/maintained appropriately. The length of the grass is too long. And the area is not being entirely mowed. This could cause vermin and snakes to travel more easily into Homeowners backyards. There are children who play in some of the homeowners backyards that buttress up to this area. If nothing more this should be taken into consideration when this area is mowed/maintained. This condition appears to be in violation of City of Loveland, Municipal Code Sections. Please review, clarify and respond in writing.
- 2)---The grass in the retention pond appears to not be mowed/maintained appropriately. Refer to City of Loveland, Municipal Code Sections. Please review, clarify and respond in writing.
- 3)---The retention pond appears to not be draining properly. Why is the pond not draining properly. Please review, clarify and respond in writing.
- 4)---The house located at 2029 Canada Goose does not have a fence up as dictated in Garden Gate HOA rules and regulations. The area of concern is East of the house. It now has a wire fence. This concern was brought to the board months ago. The problem/violation still exists. Please clarify and respond in writing.
- 5)---My letter of February 15, 2010 was not responded to. (The letter was provided to the Board and Vintage Corp., by me personally, at the February 15, 2010 board meeting.) Why was the letter not responded to. Please respond in writing.
- 6)---My e-mails have not been returned from Vintage Corp. (As of February 15, 2010, approximately) Please explain why they were not returned. Please respond in writing.
- 7)---What is the status of the "plan" regarding the complaint that was filed with the City of Loveland. Please respond in detail and in writing.
- 8)---How accurate are the monthly meeting notes that are posted on the HOA website. Are all homeowner complaints and concerns documented and posted. Please respond in writing to avoid any misunderstanding and/or confusion.

EXHIBIT A.6

RECEIVED
1-23-12

January 18, 2012

To: Mr. Paulsen, Director
Current Planning Division
City of Loveland, Colorado

From Bruce W. Cromwell-Appellant

Re: Appeal of City of Loveland, Planning Commission Decision.

Mr. Paulsen:

Today, I received written notification, of the hearing, set in front of, the City of Loveland, Colorado, City Council, pertaining to the appeal that I filed. The date of the hearing is scheduled for February 7, 2012.

Additionally, This response is in regards to your written request, to submit supplemental information, to be considered by the Council, at the hearing, to the Planning Division by January 23, 2012.

(Please include this document, in the papers for the hearing, submitted to the Council for review.)

Since the aforementioned hearing is a Da Novo and Quasi-Judicial proceeding please review the following Requests--

1)--Since this is a Da Novo hearing please consider the following a "Formal Discovery Request" (Quasi Formal Discovery Request or otherwise)

It is incumbent of me, to request, any and all documents, to be presented to the council, by the City of Loveland Planning Division. This Formal Discovery Request includes but is not limited to, any and all, other Departments of the City of Loveland, presenting documents, at the aforementioned hearing.

Please provide these requested documents, notes, memos or otherwise identified documents, in a timely manner-(12 Calendar days-- (By January 26, 2012)--prior to the hearing) of the February 7th, 2012 scheduled hearing. (Please note I did not receive all documents presented, by the City, at the Planning Commission hearing,-Prior to the hearing as agreed-I want to avoid this oversight)

If I do not receive this information, in the time period requested, it could be problematic in the regard of preparing for this hearing.

Also included in this "Formal Discovery Request" (Quasi or otherwise) are, any and all, documents presented or provided to the City of Loveland Planning Division or presented to, any and all, other City of Loveland Departments, by the Garden Gate HOA, as well as, other interested parties who are making presentations to the Council. I am requesting these documents to be provided to me, in the time frame mentioned above, prior to the hearing. It is my understanding that they were to provide you this information by January 20, 2012.

This request is not unusual nor unreasonable. The City Planning Division received my Appeal on December 6, 2011. I have been informed that there was a hearing scheduled, in front of the Council, set for January 17, 2012. (Which I must note, I did not receive any correspondence/notification of that scheduled hearing from the City) Considering this time frame and circumstance I would submit/conclude that the City's response to

EXHIBIT A.7

RECEIVED
1-23-12

my appeal must be completed. Providing the City's response, as well as, other mentioned documents, to me and the council, at this time, would be beneficial to all. It would give all parties time to review the material and in my case to provide a response.

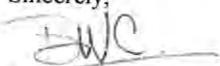
This Formal Discovery request also represents and conforms to Due Process, a fundamental legal principal of this proceeding.

2)--Attached is a letter directed to the Garden Gate HOA, dated February 15, 2010. Please include this information in the papers for the Council's review.

3)--Attached is a letter, dated May 17, 2010, to the Garden Gate HOA for the Council's review. Please note number 5. Please provide this letter to Council for review in this matter.

If you have any questions, please feel free to e-mail me at, bwc2424@yahoo.com

Thank you for your cooperation,
Sincerely,



Bruce W. Cromwell

Richard Ferner
 2026 Sandhill Crane Circle
 Loveland, CO 80537
richard@ferner.us

RECEIVED
 12-30-11

Re: Mr. Bruce Cromwell's Appeal of the Loveland Planning Commission determination for the Garden Gate Subdivision of September 2, 2011 and Planning Commission Appeal hearing on November 28, 2011.

City Council,

Thank you for allowing written testimony and additional information from other interested parties of the Garden Gate Subdivision concerning the maintenance practices of the Home Owner's Association and the Planning Commission determination letter of September 2, 2011.

I am a current resident of the subdivision since June, 2008. I was lead to believe by the developer in 2008 and 2009 the maintenance practices that we were being utilized would continue when the property was accepted by the city and ownership transferred to the HOA. I never did review the final subdivision plat of 2004 or HOA agreement to confirm what practices or requirements were being mandated, until recently. It is obvious that details of the required maintenance practices are non-existent or very vague, which are now being detailed in the Current Planning determination letter, were never presented (or misrepresented) to the homeowners when their property was purchased. I have the same concerns with the subdivision appearance and property values as Mr. Cromwell has, but I also want to protect the investment the HOA has in the landscaping irrigation system and tree plantings. This will keep everyone's' HOA fees reasonable and result in a uniform appearance throughout the subdivision.

Historically, during the summer of 2008 through 2009 the open areas in contention were irrigated by sprinkler system running along the owners outside fence lines, watering about 15-20 ft outwards, beyond the tree lines. The trees have drip irrigation system. The native grass areas were mowed and the weeds were maintained to about 6 inches high. I saw a dramatic decrease in the irrigation frequency; weed control and mowing of these areas in 2010 and 2011. The middle of the summer of 2011 to the present, I saw very minimal maintenance of these areas. This lack of maintenance and the subsequent determination by Mr. George of the Current Planning Department doesn't address the flaws and faults that are apparent with the actual landscape plantings, maintenance practices and the 2004 final subdivision plat.

I would like to offer some observations from the final 2004 Garden Gate Subdivision plat and recommendations from my research that may help finding a solution that will partially resolve some of the concerns.

1) Note #10, 2004 final plat:

This note pertains to the irrigation ditch running east and west through the subdivision. There is a 35" easement on both sides of the ditch for access right-of-way for maintenance by the ditch company. The ditch itself (I think) has an actual 10 foot boundary, 5 feet either side of the center line. The developer and later the HOA maintained from the bank of the ditch to the individual property fence lines. There is more area on the north side of the ditch because of the city sewer easement that runs parallel to the ditch easement. The note says that there will be no landscaping within the easement and the ditch company can remove the trees within this easement. The subdivision developer appears to have planted the tree line, on the south side of the ditch, within the ditch company easement and may have the existing tree plant within the city sewer easement on the north side? The plated irrigation areas are very small on the south side, varying from roughly 4 ft to 9 ft. I haven't measured the tree lines; these are my observations and interpretation of the plat areas.

Recommendation: The actual tree planting line should be detailed and recorded on a revision to the subdivision plat as the re-defined irrigated areas. The irrigated and non-irrigated areas should be adjusted to what is actually planted. If there is any existing easement encroachment, obtain a waiver from the ditch company and city to maintain the existing landscape plantings. The HOA should irrigate, control weeds and mow to a short height to just beyond the tree line, maybe 2-3 feet. This will protect the HOA tree investment and provide some uniformity to the maintenance practices. Beyond the tree line, the native grass plantings should be non-irrigated to the ditch bank, maintained by seasonal mowing and weed application.

2) Notes #20 and #21, 2004 final plat:

These notes define the irrigated and non-irrigated areas of the subdivision. The wording in both the notes uses "shall be and shall not be", which means a requirement, not an option. It appears that the installed irrigation system waters into the non-irrigated areas, with the intention of maintaining the grass between the property owners and the misplaced tree line planting.

Recommendation: Measure and detail these areas on a subdivision revision per the actual plantings and maintain as irrigated to 2-3 ft beyond the tree line. Adjust the irrigated and non-irrigated areas on the plat. Mow this area short and control the weeds, as above. The non-irrigated native grass areas, that are re-defined, should be seasonally mowed and weed control application, as needed.

EXHIBIT B

3) The open area south of Sandhill Crane Circle:

This area presents a unique dilemma and problem. The irrigated area is 8 ft directly south and 14 ft toward the southwest. The non-irrigated area is another 32+ ft, for a total of ~40 ft to the subdivision property line from the property owners' fence. There is another 70-80 ft of open areas to a six ft high barb wire topped fence within the Gardel plat. This open area also encompasses the 75 ft power line (37.5 ft either side of the power line center line) easement belonging to the Western Area Power Administration. This open area of 100-120 ft was maintained by the developer to high grass height, with frequent mowing, from the owners' fence line to the chain link fence. After reviewing the plat, a number of issues are a concern. The tree line planting is again outside the irrigated area, at about 12 ft. The HOA, (in 2010 and early 2011) maintained just beyond the tree line, to the 40 ft property boundary. This was maintained as native grass, with infrequent mowing. The HOA stopped maintaining this area in August, 2011 and has only agreed to maintain 2 mower widths beyond the fence lines. This would leave approximately 100ft non-irrigated; un-maintained area to the chain link fence.

The chain link fence has created a number of questions and confusion concerning the actual property boundaries. The developer maintained this area from the individual owners' fences to the chain link fence. None of the owners realized the Garden Gate property was only 40ft beyond their fence. Why would the owner of the Gardel property install an expensive chain link fence, 80ft within their property, with a barb wire top facing inwards? I think this was done to keep the wildlife confined to the Big Thompson river valley for hunting? They used the natural hillside ridgeline to enhance the fence height. The amount of shooting from daylight to dusk, September through the winter confirms this fence might be effective in enhancing the hunting experience of the river bottom. I'm not sure if this is now an appropriate activity within the city limits, ~200ft from homes and children playing in the backyards and I really don't appreciate the war zone noise at 5:00 on Friday through Sunday mornings, when I'm off work, trying to sleep. Is hunting permitted within the city limits, close to a residential area? If this hunting activity is permitted, should the shooting noise start a little later in the mornings, like 9:00?

Recommendation:

Maintain the 12 ft area as irrigated to 2-3 beyond the tree lines. The area left as non-irrigated to the 40 ft subdivision property line. Detail the actual tree planting and adjust the irrigated and non-irrigated areas accordingly with a subdivision revision. Negotiated with the Gardel property owner (I think Mc Whinney Property Group?) for a common maintenance plan to the chain link fence. The HOA and Gardel owner could enter into a letter agreement to cost share the maintenance of this open area. This would give this area some uniformity and common maintenance practices. Because the chain link fence now defines a common area between the two owners that bridges the property boundary, the city council should require the same landscape maintenance practices in the non-irrigated common area for both owners.

4) Detention Pond:

This area goes from being maintained properly to a neglected marsh, with weeds 2-3 ft high.. The HOA has a substantial investment in trees, evergreens and shrubs on the sides of the Pond. The HOA has replaced numerous trees and shrubs, again I think because of misapplication of herbicides too close to the plantings.

Recommendation:

With the amount of landscape plantings on the hill sides, mowing becomes difficult, but I think some type of middle management between the maintenance practices of the irrigated and non-irrigated areas would be appropriate. Shorter mowing would better control the weeds versus herbicides application. It doesn't appear to be too difficult if the landscape company is using appropriate mowing equipment. Mowing every 4-6 weeks appears to work best for this area with minimal, careful application of herbicides.

Summary:

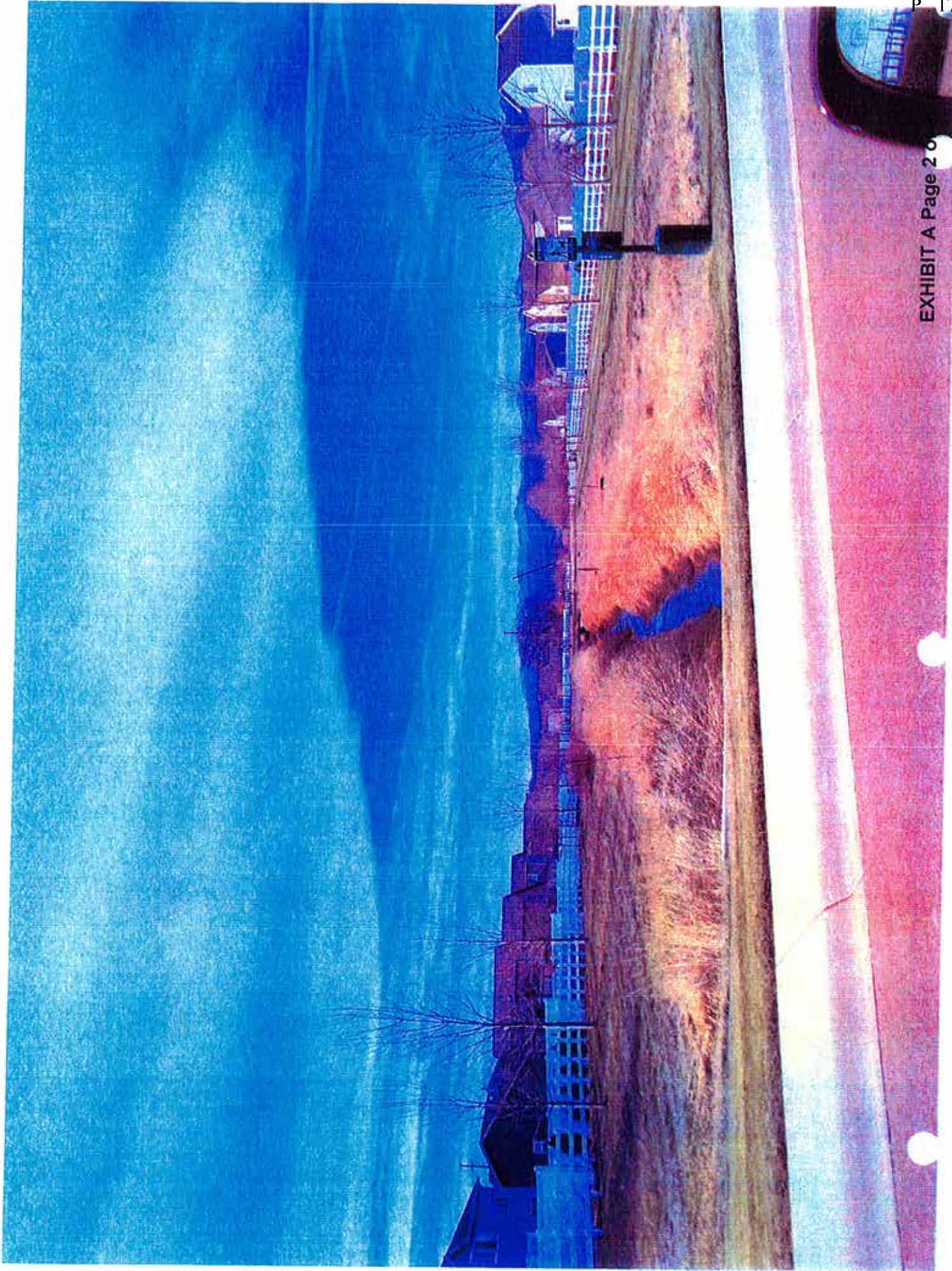
My main concern is consistent maintenance practices within the irrigated and non-irrigated areas that are adjusted to the actual existing landscape plantings. The visual appearance of maintaining the grass shorter 2-3 ft beyond the tree line plantings and transitioning to native grasses, with proper weed control will help the HOA and the property owners maintain their investments. The short mowing height to just beyond the tree lines is a better method for weed control than the application of herbicides. I believe the previous misapplication weed herbicides, close to the tree lines, damaged or killed a large number of our trees.

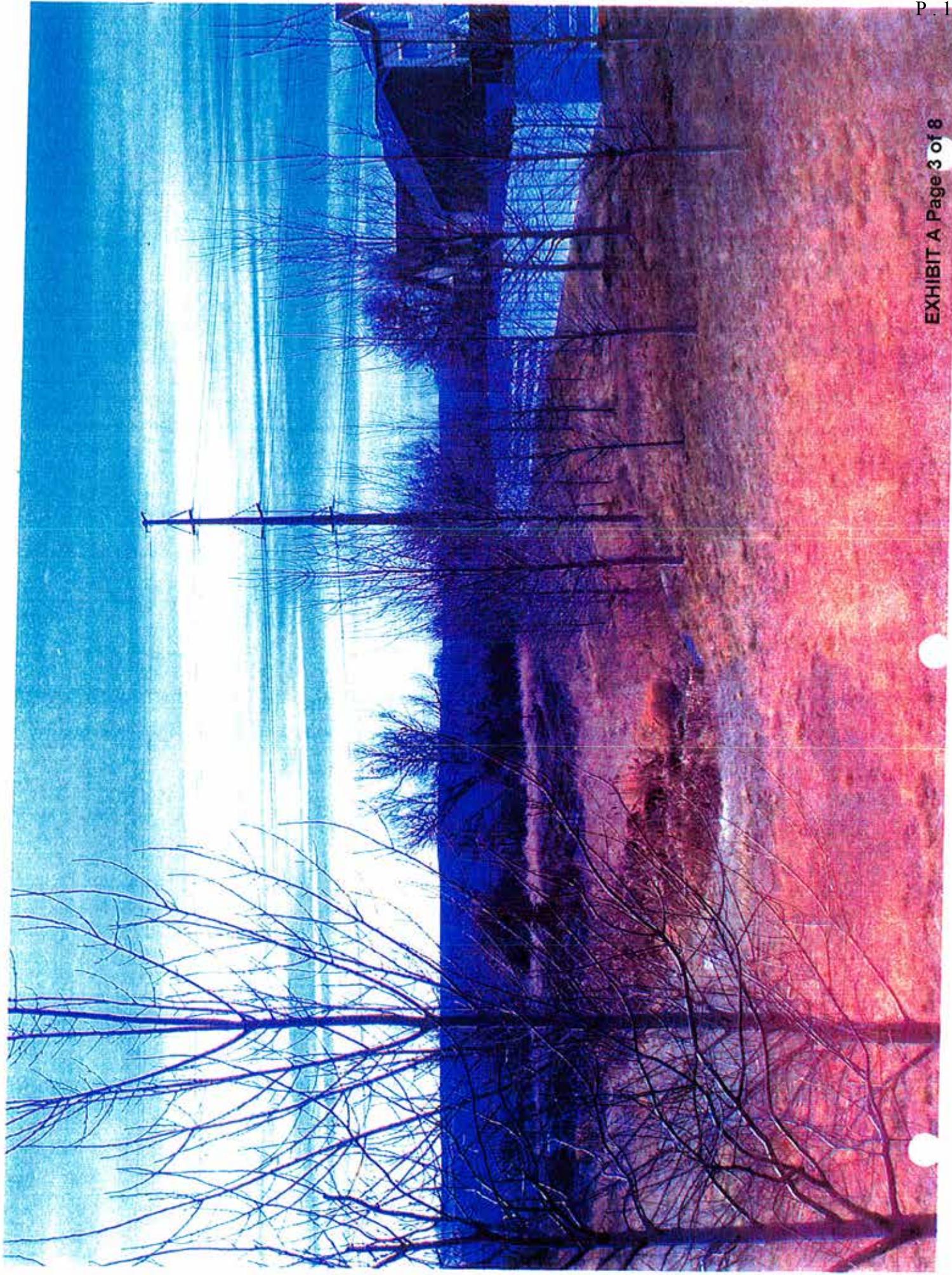
My recommendations encompass a lot of expense and work to revise the subdivision plat, but I think it is worthwhile effort to document the "as-built" details, adjust the irrigated and non-irrigated areas and maybe add the final maintenance landscape practice determination as an additional note within the revised plat. Involving the homeowners in this revision process could make the painful, future HOA fee increases a little easier to understand

Surveyed by
Richard Farmer

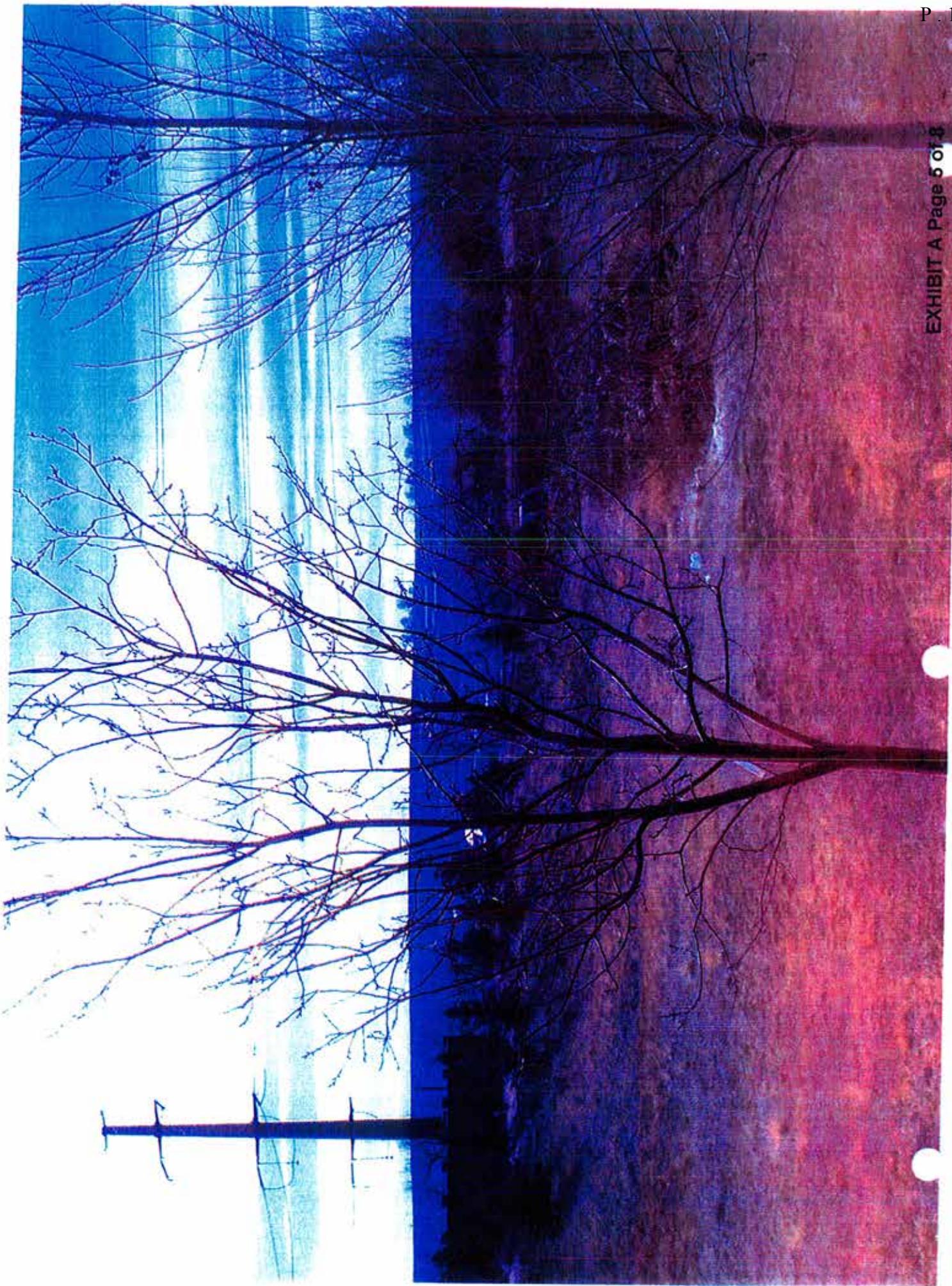


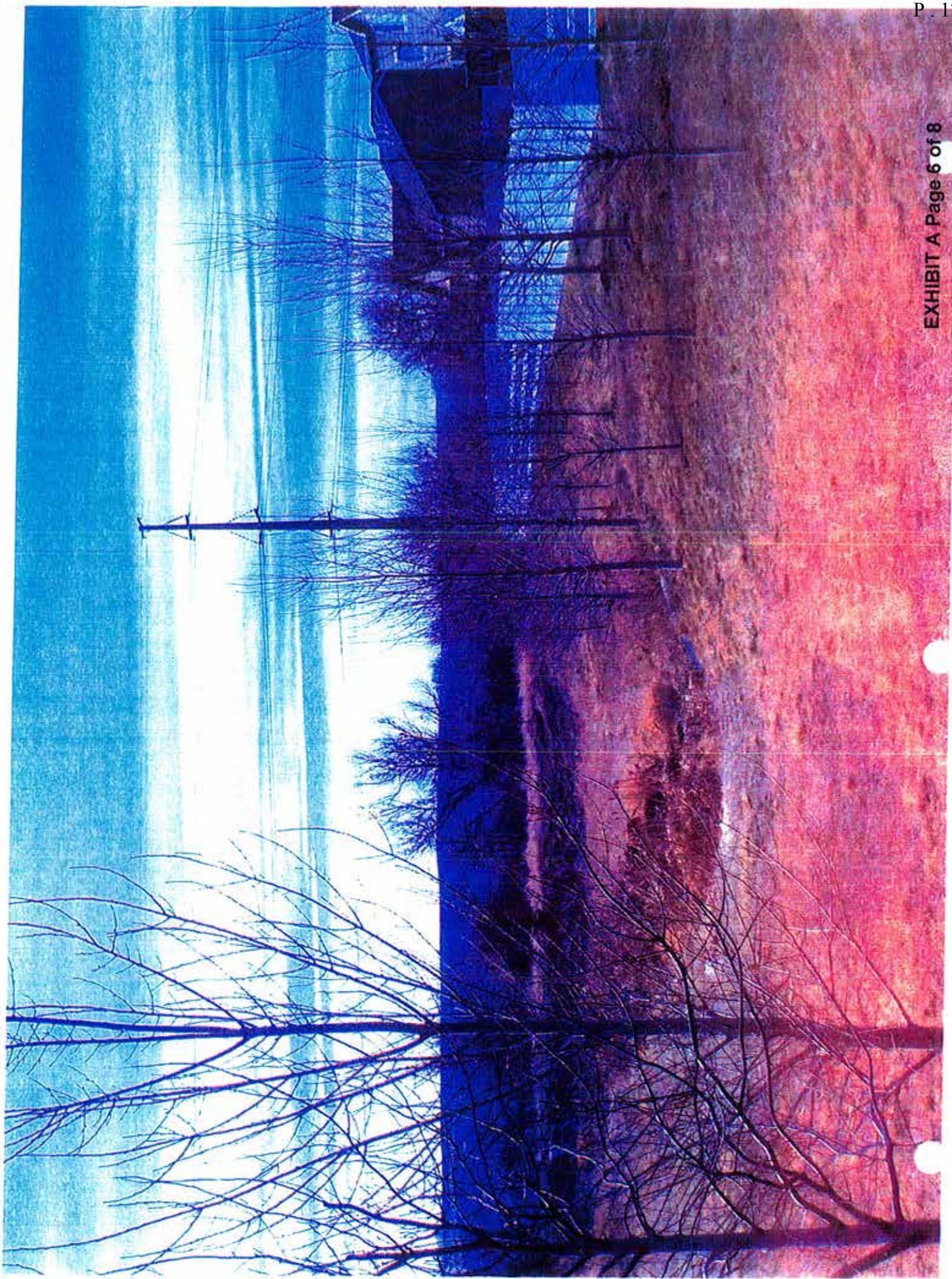
EXHIBIT C

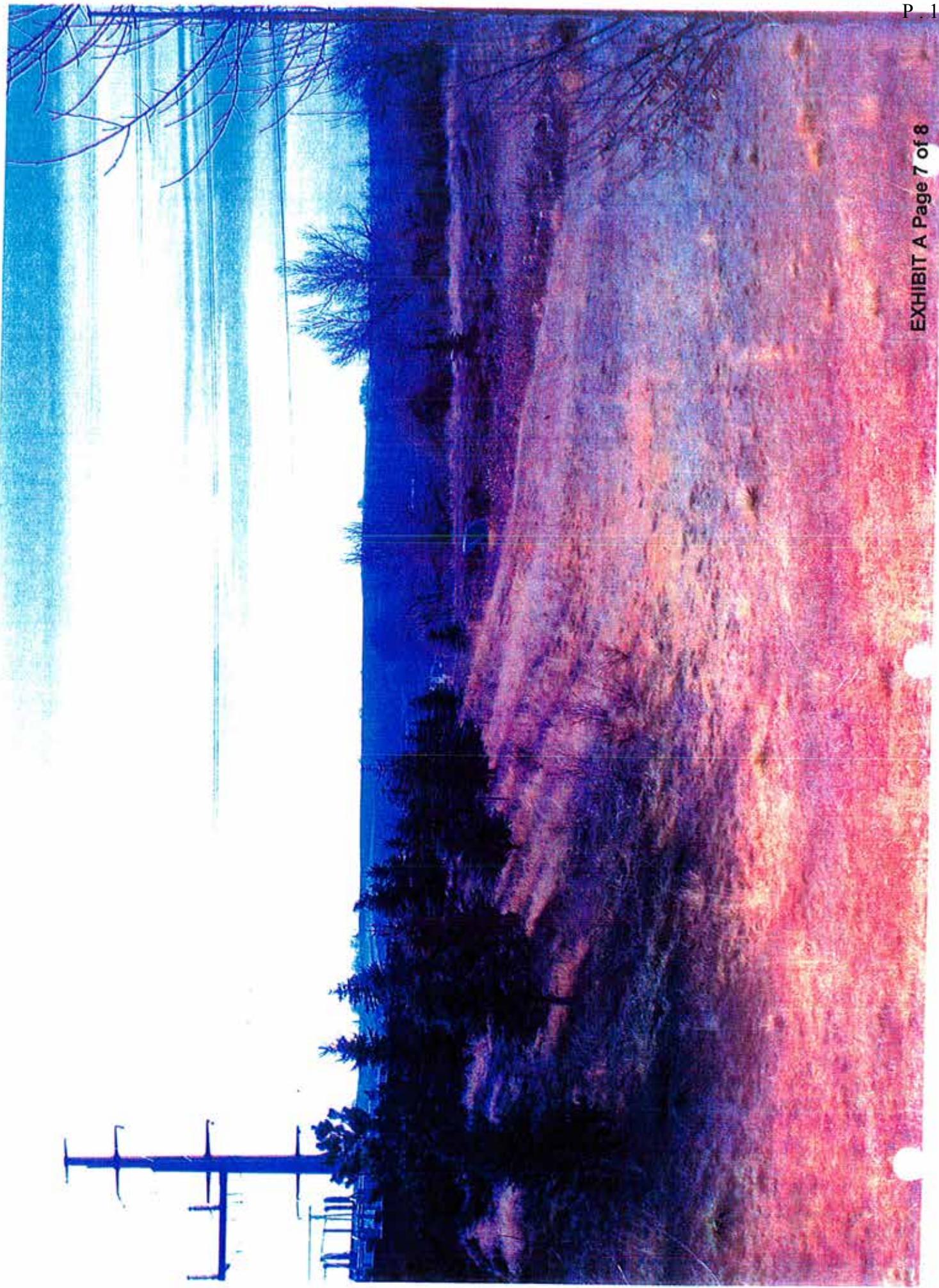


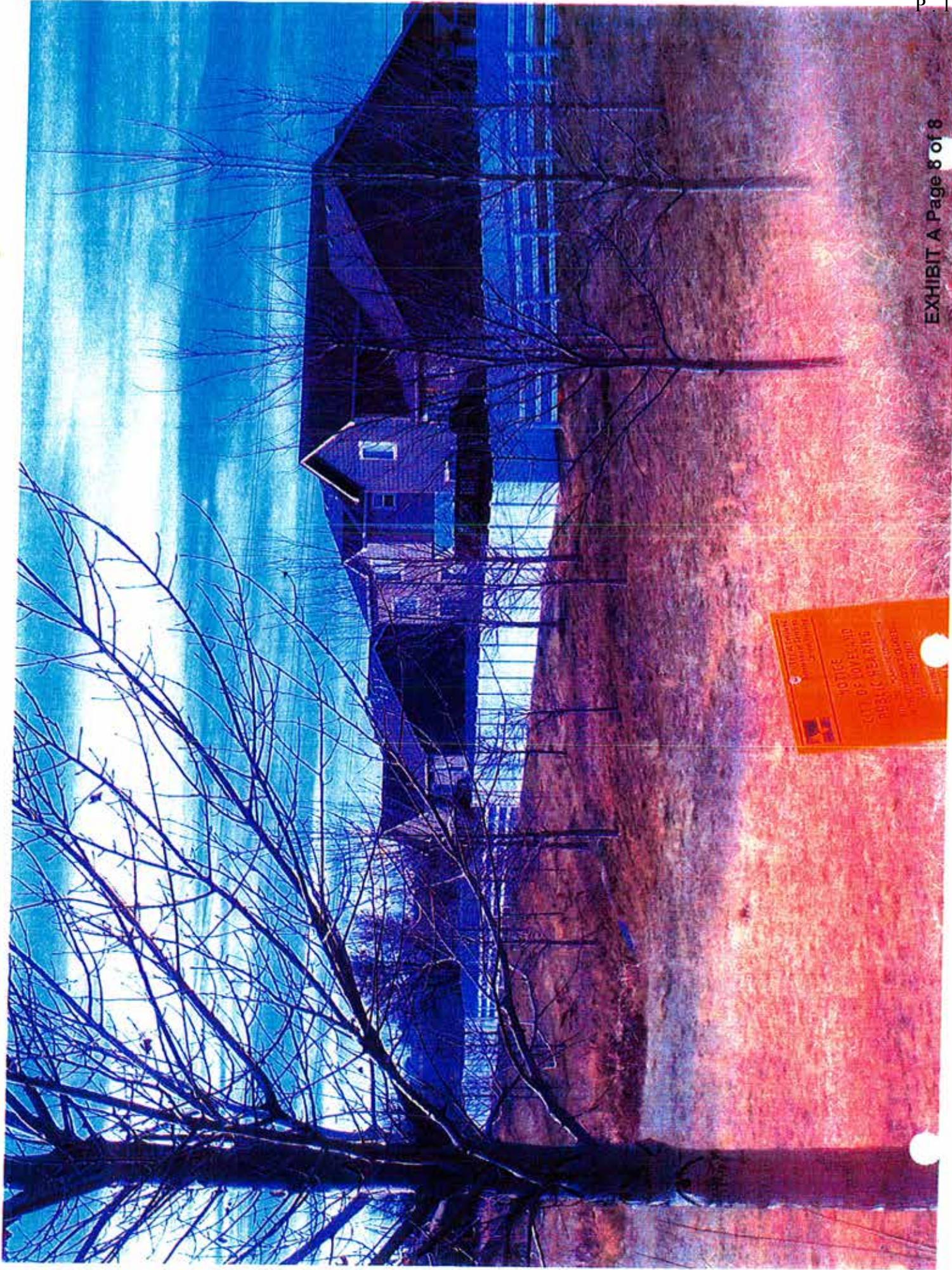












**PLANNING COMMISSION MOTION (INCLUDING CONDITION) AS
UNANIMOUSLY APPROVED ON NOVEMBER 28, 2011 CONCERNING
THE APPEAL OF BRUCE W. CROMWELL:**

Move to deny the appeal and to uphold the administrative decision of the Development Services Director concerning maintenance provisions in specified open space areas of the Garden Gate First Subdivision, concluding that the Director properly interpreted and applied applicable provisions of the Municipal Code, subject to the condition that noxious weeds will be controlled by the Homeowners Association.

**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
November 28, 2011**

6 A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on
7 November 28, 2011 at 6:30 p.m. Members present: Chairman Molloy; Vice Chairman Meyers; and
8 Commissioners Crescibene, Fancher, Leadbetter and Middleton. Commissioners Dowding, Krenning
9 and Ray were absent. City Staff present: Troy Bliss, Current Planning; Robert Paulsen, Current
10 Planning Manager; Greg George, Development Services Director; Judy Schmidt, Deputy City
11 Attorney.

12 13 These minutes are a general summary of the meeting. For more detailed information, audio and
14 14 videotapes of the meeting are available for review in the Community Services office.

16 CITIZEN REPORTS

18 There were no citizen reports.

20 STAFF REPORTS

21 Mr. Paulsen reported that City Council is scheduled to hear the Mariana Butte appeal at its
22 December 6, 2011 meeting; he also indicated that the Waterfall Rezoning was adopted by Council on
23 First Reading. He commented that the annual holiday dinner for the Planning Commission will be
24 held on December 12, beginning at 5:15 in the City Manager's Office.
25

26
27 He reported that there were five applicants for the three Planning Commission vacancies and the
28 interviews will be conducted in December.

30 ZONING BOARD OF ADJUSTMENT

31 **Commissioner Crescibene** reported on a recent variance he heard as the Zoning Board of
32 Adjustment Hearing Officer. He stated that he ruled in favor of staff's recommendation for a lot
33 width variance at 416 E. 27th Street. He reported Habitat for Humanity expressed concerns regarding
34 non-payment of fees by the applicant on a different property, and stated those issues were not
35 relevant to the variance request.
36

38 CONSENT AGENDA

40 1. Extension of a Preliminary Plat for North Lincoln Avenue 2nd Subdivision to December
41 7, 2012.

1 This is a request for an additional one year extension of the Planning Commission approval of
2 the North Lincoln Avenue 2nd Subdivision Preliminary Plat as stipulated in Chapter 18.41 of the
3 zoning code.

4
5 *Commissioner Middleton made a motion to adopt the consent agenda. Upon a second by Vice*
6 *Chair Meyers the motion was unanimously adopted.*

7
8 **REGULAR AGENDA**

9
10 **1. Appeal of Administrative Determination Made by the Director of Development**
11 **Services.**

12
13 This item is an appeal a determination regarding maintenance practices for designated open space
14 lands within the Garden Gate First Subdivision. This residential subdivision is located along the
15 south side of 1st Street to the west of Denver Avenue; the subdivision is zoned Planned Unit
16 Development (PUD) is subject to a Final Development Plan. The determination specifies the
17 required maintenance practices to be used for numerous tracts owned by the Garden Gate
18 Homeowners Association. Neighborhood resident and HOA member Bruce W. Cromwell has
19 appealed the determination contending that the determination does not properly interpret the
20 approved Final Development Plan.

21
22 **NATURE OF THE APPEAL**

23 Robert Paulsen, Current Planning Manager, outlined the appeal process for this hearing. He
24 provided background information regarding the neighborhood and the approved Final Development
25 Plan (FDP) for the neighborhood, indicating that the FDP was adopted in 2004. He also provided a
26 brief history of events that preceded the appeal. He stated that Development Services Director, Greg
27 George, in response to a request from the Garden Gate HOA Board, issued an administrative
28 determination regarding the required maintenance practices for specified open space areas within the
29 neighborhood. He stated that the FDP included a landscaping plan, but stated that the plan did not
30 specify how these open space areas were to be maintained.

31
32 (*Secretary's Note: Mr. Cromwell passed out photos of the property to the Commission; the photos
33 have been marked as **Exhibit A**)

34
35 **APPELLANT'S PRESENTATION**

36 Mr. Cromwell, appellant, residing at 267 Wrybill Avenue, expressed his concerns about the
37 determination issued by Greg George, indicating that he did not believe that it represented a proper
38 interpretation of the Final Development Plan. He also expressed frustration regarding the condition
39 of open space properties within the Garden Gate neighborhood.. He stressed that there is a need to
40 create standards for the maintenance of open space areas under the HOA's control, but he indicated
41 that the determination by Mr. George had not gone far enough in order to ensure that these areas
42 would be properly maintained. He reported that his general concerns were:

- 1 • Lack of response from the Homeowner's Association regarding landscape maintenance,
2 including maintenance of the detention pond
- 3 • Farmers ditch company did not adequately respond to his maintenance issues with the ditch
4 area
- 5 • The Planning Department did not respond to his concern regarding loss of home value
- 6 • The lack of maintaining the weeds along the ditch area (which is adjacent to residential
7 backyards) invites snakes and other vermin in to his backyard.
- 8 • Potential for fire for lack of irrigation

9

10 **Mr. Cromwell** stated that Director of Development Services, Greg George, came to look at the
11 property conditions at his request. He stated that Mr. George believed that some areas needed to be
12 sprayed for noxious weeds. He disagreed with staff's analysis that maintaining the property by
13 trimming or mowing of native seed mixes would cause harm. He also disagreed that Section
14 7.18.030 of the Municipal Code that grants exception to the weed ordinance to dedicated public or
15 private open lands. Overall, Mr. Cromwell indicated that he did not believe the open space
16 properties in question were properly integrated into the neighborhood in terms of maintenance and
17 greenery. He indicated that the landscape "unity" specified by the FDP required a more groomed and
18 well-irrigated treatment of many of the open space areas.

19

20 OPPOSITION PRESENTATIONS

21 **Mr. Paulsen** handed out a timeline of events and actions which took place that preceded the appeal
22 (**Exhibit B**). He explained that the timeline might help the Planning Commission better understand
23 the sequence of events that led to the appeal.

24

25 **Mr. Paulsen** stated that issues concerning open space areas within the Garden Gate neighborhood
26 were originally raised through code enforcement complaints. The complaints concerned the
27 enforcement of the City's Weed Ordinance and compliance with the Final Development Plan
28 (FDP)—which is the adopted zoning document for the neighborhood. He indicated that the
29 determination rendered by Mr. George on September 2, 2011 was intended to clarify and resolve the
30 issues of maintenance for specified open space tracts; he clarified that the determination did not
31 address maintenance of all the tracts of land that are now owned by the HOA. Maintenance of the
32 neighborhood park and the groomed buffer yards within the neighborhood are not subject to the
33 determination.

34

35 **Mr. Paulsen** explained that staff conducted considerable research in assisting Mr. George with the
36 determination. He stated the FDP has been reviewed thoroughly. The open space areas in question
37 are generally planted with native seed mixes, trees and shrubs. Mr. Paulsen explained that while the
38 trees and shrubs within these areas are to be irrigated with drip systems, the native grass areas are not
39 specified to be irrigated. He explained that in the view of staff, these areas are not designed to be
40 green, park-like areas. He further indicated that the FDP narrative indicates that such areas are to be
41 left natural, and that best practices indicates that such areas should not be mowed regularly. He
42 indicated that allowing the native grasses to grow to full height creates a more sustainable and

1 healthy condition, and also helps to reduce weed intrusion. He indicated that in July, staff walked
2 the area with the HOA members to look at the areas of concern and to evaluate the maintenance
3 practices. He clarified that the ditch area and other environmentally sensitive areas are not to be
4 groomed by the HOA or the residents. He clarified the ditch company is responsible for the ditch
5 and its easement.

6
7 **Mr. Paulsen** responded to weed maintenance and irrigation questions. He stated that staff looked at
8 maintenance issues stating that there is an approved landscape plan. He stated that the determination
9 by Mr. George was logical extension of the landscape planting scheme. . He stated that the noxious
10 weeds should be sprayed or removed, but that staff is recommending these natural, open space areas
11 not be mowed in order to keep grasses to an 8" height or less.

12
13 **Troy Bliss, Current Planning**, clarified the ditch company perimeter area is specified on the final
14 plat, and emphasized the ditch company will not allow the HOA to mow.

15
16
17 **Rob Valland, 224 Sand Grouse Drive, Secretary of the HOA for Garden Gate**, spoke in
18 opposition to the appeal as a representative of the HOA board. Mr. Valland reviewed photos of the
19 Garden Gate area that were projected onto the viewing screen. He described the various open space
20 areas within the neighborhood and described the existing maintenance practices. He stated that the
21 HOA had received concerns from Mr. Cromwell and others and stated that the HOA would mow
22 approx. a 10 ft. strip behind the homes in order to reduce problems with weeds and rodents. He
23 stated the HOA used to regularly mow the native grass areas along the ditch, b but the grasses started
24 dying and drying out so they stopped.

25
26 After discussion, Mr. Valland commented there have been some meetings to discuss Mr. Cromwell
27 and other resident's concerns regarding the weeds and trees and attempted to find ways to address his
28 concerns. He reported the maintenance companies contract specifies what is to be maintained and
29 clarified for the Commission that Mr. Cromwell lives on the side of the ditch that has been planted
30 with the native grass.

31
32 **PUBLIC COMMENT**
33

34 **Richard Ferner, 2020 Sandhill Crane Circle**, spoke in support of Mr. Cromwell's concerns. He
35 reported that he noticed the maintenance inconsistencies when the HOA hired a different
36 maintenance company. He reported that he has mowed the area behind his home to keep the thistle
37 and other noxious weeds down. He stated he wanted to see consistency with the maintenance
38 throughout the development and believed it was unsightly and posed a fire hazard. Like Mr.
39 Cromwell, Mr. Ferner said he supported a more regularly mowed and irrigated treatment of these
40 areas.

41

1 **Mr. Valland**, in response to questions, clarified the developer turned the property over to the HOA
2 in 2009.

3
4 **John Kampf, 2134 Sandhill Crane Circle**, spoke of the need to kill the noxious weeds without
5 killing the native grass. He stated he did not any issues with the maintenance of the area but agreed
6 that there needs to be consistency in the maintenance.

7
8 **Richard Ferner, 2026 Sandhill Crane Circle**, commented that he looked at photos online of the
9 development and it appeared that the chain link fence defines the subdivision boundary.

10
11 **APPELLANT REBUTTAL**

12
13 **Mr. Cromwell** commented on the following:

- 14 • He requested that someone contact the ditch company to determine where their boundary is
- 15 • The area to the east of the Farmers ditch used to be irrigated and the irrigation stopped when
16 the City told them they had to replace the trees that had died
- 17 • He stated that he brought issues to the HOA in January and he was told that they Board
18 would address his issues at the February meeting. He did not believe that the HOA
19 addressed the issues and indicated that if the maintenance issues had been properly
20 addressed in 2010 by the HOA, the Planning Commission would not be involved
- 21 • He stated that Mr. George expressed concerns regarding the condition and maintenance of
22 the property when he visited the site. Mr. Cromwell invited to the Commission to visit the
23 property
- 24 • He expressed his disappointment that when he moved to the development everything was
25 green and attractive, and the current lack of proper maintenance has made it unsightly
- 26 • He stated the city was involved with fixing the detention pond and they held the developer's
27 money in escrow until the pond was fixed correctly
- 28 • He felt there is a conflict between Mr. Paulsen and Mr. George and that conflict has not been
29 addressed. He re-emphasized that the east side of the Ditch was irrigated until the HOA
30 replaced the trees

31
32 **Chair Molloy** noted that when the city approves the FDP it's the HOA's responsibility to maintain
33 the integrity the FDP. He noted irrigation systems are installed in some areas so that when the
34 weather is dry the property can be irrigated. He further stated it is not the city's responsibility to
35 make sure the HOA is upholding the intent of the FDP.

36
37 **Commissioner Crescibene** clarified that the Commission needs to determine if the administrative
38 decision was correct and should be upheld.

39
40 **COMMISSIONER COMMENTS**

41
42 **Commissioner Middleton** questioned if HOA members could file a suit against the HOA.

1
2 **Ms. Schmidt** commented that HOA members may have disagreements which may be resolved
3 through civil means. She noted that she is not in a position of providing advice to third parties.
4

5 **Commissioner Middleton** stated the final plat specifically highlights what is to be planted and
6 where and believed that the appellant is trying to have the city uphold its responsibility.
7

8 **Vice Chairman Meyers** stated he supported the administrative decision and stated the city has done
9 its due diligence in investigating the complaint.
10

11 **Commissioner Crescibene** concurred with comments by Vice Chair Meyers and agreed that there
12 was not consistency in how the grounds are maintained but did not believe this was a matter
13 appropriate for the Planning Commission to hear.
14

15 **Commissioner Fancher** stated that the Commission is only to decide whether to deny or uphold Mr.
16 George's administrative decision and if that decision was applied correctly. She stated the weeds are
17 not maintenance free and need to be sprayed. She urged the HOA to develop a plan for the
18 maintenance of the weeds. She agreed that the weeds should not be exempt from the weed
19 ordinance.
20

21 **Mr. George**, in response to stated concerns, commented that his letter indicated he did support
22 spraying the noxious weeds and that it is a condition of determination in his letter.
23

24 **Commissioner Leadbetter** stated he supported the administrative determination and believed there
25 was a difference of opinion on how common areas are maintained and that the appellant and the
26 HOA need to work their issues out.
27

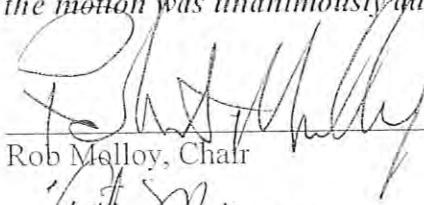
28 **Chair Molloy** supported the administrative decision and emphasized the need to maintain the
29 integrity of the FDP. He thanked Mr. Cromwell for bringing this issue before the Planning
30 Commission and stated it is important to everyone that all neighborhoods in Loveland are groomed
31 and maintained. He stressed the need for the HOA to be consistent with its maintenance of the
32 property.
33

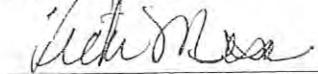
34 He commented that native areas can be difficult to maintain and that the CSU Extension Office is a
35 good resource regarding native vegetation. He informed the audience that this item could be
36 appealed to the City Council. After a brief discussion it was the consensus of the commission that
37 the letter of administrative determination includes a condition that noxious weeds be controlled in all
38 areas of the PUD.
39

1 Commissioner Middleton made a motion to uphold the administrative decision of the
2 Development Services Director concerning maintenance provisions in specified open space areas
3 of the Garden Gate First Subdivision, concluding that the Director properly interpreted and
4 applied applicable provisions of the Municipal Code, subject to the condition that noxious weeds
5 will be controlled by the Homeowners Association. Upon a second by Vice Chair Meyers the
6 motion was unanimously adopted.

7
8 **ADJOURNMENT**

9
10 Commissioner Fancher made a motion to adjourn. Upon a second by Commissioner Middleton
11 the motion was unanimously adopted.

12 
13 _____
14 _____
15 Rob Melloy, Chair

16 
17 _____
18 Vicki Mesa, Secretary

September 14, 2011

"Revised Notice of Appeal"
Original Appeal dated September 8, 2011

RECEIVED
SEP 21 2011

To: City of Loveland Current Planning Division
From: Appellant--Bruce W. Cromwell
267 Wrybill Avenue, Loveland, Colorado, 80537
970-663-6615

This correspondence--Revised Notice of Appeal-- is a reply to the letter I received from the City of Loveland's, City Attorney's Office, dated September 14, 2011. The letter referenced the "Notice of Appeal" I served on the City dated September 8, 2011. (Refer to Attached)

The Appeal I filed dated, September 8, 2011, apparently failed to conform to the requirements of Code Section 18.80.060 per the City of Loveland's, City Attorney's Office

Therefore, with this letter, I will submit a revised/amended Appeal, with provisions of the Loveland Municipal Code and relevant facts supporting the filing, to satisfy the requirements, as stated in the letter sent to me, by the City of Loveland, City Attorney's Office. Please consider the following:

To be accurate and in an attempt, to present the issues with clarity, I believe that it is in the best interest of this process to look back at the time line regarding the issues at hand. Please take into consideration the following information--

Before I moved into the Garden Gate Community, in Loveland, Colorado, I was assured by the representative of the developer, that all common areas were to be maintained--watered, mowed and otherwise maintained, at all times, and in the future and as in their current condition (lawns green vibrant, visual unity throughout the community and well maintained ect.). It was in the developments and city code the person told me. It was stated in the Garden Gate Community's Declarations of Covenants, Conditions and Restrictions I found out later. Sections that apply under this heading are 1)-Article VI--(Common Elements)--Section 6.4--Maintenance and Regulation of Common Elements.--Stated in part-- Landscaping shall be maintained and replaced by association as necessary so that common elements presenting aesthetically attractive appearance for which they were installed --Included under Article VII--Section--(Maintenance By Association)--7. 1-Maintenance of Common Elements--Describes the information in 6 4--and includes in part--The association shall make repairs and replacements thereto as needed. (both Articles are attached).

Consequently, on February 15, 2010, I submitted a letter to the Garden Gate Homeowners Association pertaining to Dead Trees not being replaced in the Garden Gate Community. In my letter, I also expressed concern about the maintenance in the of Detention Pond Area. My concerns also included the Tracts of Land, East and West of the Farmers ditch not being maintained/incomplete maintenance in the Community. I also referenced the Garden Gate Final Development Plan (GGFDP in future narrative). Needless to say, all of these issues were covered in the GGFDP. I did not receive a reply from the G G HOA board. I subsequently contacted, an HOA management company representative, by sending her an e-mail. The person returned my e-mail. In my e-mail I inquired if the board was going to replace the trees in the community or wait for a complaint to be filed (paraphrasing). This person's response was it was her understanding that a formal complaint had to be filed. In essence the board was not going to do anything unless a formal complaint was filed with the City of Loveland. (Letter to board and e-mail available if required)

Subsequently, a Confidential Formal Complaint was filed with the City of Loveland. The complaint was

dated March 17, 2010. The complaint dealt with violations of the GGFDP. As far as I am aware the Confidential Formal Complaint and its contents have never been responded to by the City. Mr. George's letter does not reference the Confidential Formal Complaint. It has been approximately 18 months since the complaint was filed and to my knowledge the issues were never formally addressed, completely in writing, until Mr. George's letter. The letter originated by Mr. George is dated September 2, 2011. It is addressed to the Board of Directors. (The City of Loveland is in the possession of the Confidential Formal Complaint Filed, dated March 17, 2010.)

Title I--Response to Mr. George's letter--Relevant Facts and Provisions

(1)--In paragraph one Mr. George's letter states that the letter is a clarification regarding maintenance and responsibilities ect. My understanding of Mr. George's intent with his letter was to correct any future misunderstanding regarding the maintenance of all of the areas in question. And by doing so to stop the Code violations and poor/non existent maintenance on said properties. But my response, to Mr. George's letter, is that its contents are not specific and detailed enough to provide the precise maintenance treatment of the areas in question. In my view, the problems will persist and continue, if the letter is not amended and corrected. The areas in question have been viewed by the City of Loveland's Code Enforcement personal. The Code Enforcement Officers have determined that the Garden Gate HOA has been in violation, (and currently is in violation) on four separate occasions and time periods. (or more) of violation of Chapter 7.18 of the City of Loveland, Municipal Code. And therefore, in law and fact, the violations pertain to the contents of the Garden Gate Final Development Plan. (In addition, the violations are wasting City time and resources, in continually, responding to complaints by homeowners ect.) Failure to interpret Code properly.

Because of these habitual violations committed by the G.G. HOA there needs to be a standard established, of specific and detailed measurements and descriptions, of responsibility for maintaining/maintenance-- (watering, mowing, mulching ect) of the properties in question. (From the distances from the back fence of the homes that back to the Farmers Ditch East and West of the this area. (Please note that in the, GGFDP, the requirements/definition for a Wetlands area near and around the Farmers Ditch, as stated under Number 5--Subject Wetlands states "Wetlands" along the Farmers Irrigation Canal (Ditch) consist of narrow bands of wetland vegetation confined within the ditch embankments") One then should conclude that the property areas East and West of the ditch, notwithstanding the embankments, shall be maintained (mowed, watered ect.) by the HOA. This practice is not being done, currently. Failure to Interpret GGFDP, properly.

(2)--Also to be considered, is the Detention Pond area located Northwest and Southwest of the Electric Sub Station. The exact measurement of the property that is required to be maintained, mowed and watered should be detailed. Also, mulching and other care should entail specific time frames and detailed description in maintenance. By omitting this specific information from, Mr. George's letter, I would contend is a failure to clarify the issues, as well as, to interpret the GGFDP properly.

(3)--Non-Irrigated, Native Seed Areas--With clarification in mind when are these areas to be reseeded and mulching occur (desirable term used). Also some of these areas are irrigated. Not clarified.

(4)--Irrigated Native Seed Area--For clarification purposes what are the exact distances in feet East and West of the Farmers Ditch that are to be maintained? Why are these areas not being maintained currently (watered, mowed, mulched ect.) These areas are irrigated but not being maintained with proper maintenance as described above. To my knowledge none of the areas have been mulched. Also, for purposes of clarification the word "may" should be changed to "shall" due to the circumstances and past history of non compliance by the HOA. Failure to interpret the GGFDP properly.

(5)--Wetland Seed Area--(Detention Pond Area)--Bottom of Pond referred to as "wet". This was stated in the 4th sentence under this heading. I was informed that the area is to drain and remain dry at all times. Interpretation inaccurate. Failure to interpret properly.

(6)--HOA Discretion--The statement "the level of the maintenance is at the discretion of the HOA" as stated

in "Wetland Seed Area" in Mr. George's letter. This statement I contend brought the interested parties to this point. The HOA is using its discretion and by doing so is not complying with the GGFDP and/or Municipal Code as evidenced by violations etc. These practices, currently carried out by the HOA, need to be changed. The maintenance practices need to be explained in direct language and in precise terms. And, in writing, to prevent any further confusion. Failure to interpret GGFDP and Municipal Code properly.

Title II--GGFDP Relevant Sections/Provisions that apply--Please Consider the Following--

Point Number--(1)--Section A-Titled Purpose of Project--Sub Section (a)--Following Garden Gate PUD Characteristics--"Uniquely attractive-the beautiful mountain views and open space throughout the development creates a sense of unity for residents" I would submit that the non maintaining/non maintenance of the properties, in question, does not give the community a "sense of unity" for the residents. The areas East and West of the Farmers ditch are not being maintained (watered, mowed, mulched) and realistically appear to be abandoned fields with weeds. The Detention Pond area is also not being mowed properly. This Section of the GGFDP is not being properly interpreted by the City's response.

Point Number--(2)--Section C-Site Design Concepts--Sub Section--(1)--Overall design concept--(d)-- Landscaping will enhance the project by creating visual buffers and overall sense of place. (in part) I submit that the only vision you see, when you are in these areas, is that you are in a field that is not being maintained/ with no maintenance. (Areas East and West of the Farmers Ditch and the area around the Detention Pond). This Sub Section is not being interpreted properly by Mr. George's letter.

Point Number--(3)--Section E--Public and Private Utilities--Sub Section (10)--Maintenance of all open space, wetland areas and all other common play and landscaped areas buffers shall be maintained by the Association established for the Garden Gate PUD. This section is not being complied with. A violation of the GGFDP. Not included in Mr. George's letter. Failure to interpret Provisions properly.

Point Number --(4)--Section F--Landscaping and Fencing--Sub Section (1)--Overall Concept--The Landscape Plan is based around lending a sense of connection and visual unity throughout the project while providing buffers between the proposed uses (in part) This section is not being complied with per the GGFDP. Proper maintenance not being performed by HOA. Failure to properly interpret Provisions.

Point Number--(5)--Section F--Landscaping and Fencing--Sub Section (3)--The association shall have the maintenance and long term responsibility for the landscaping and existing tree and shrub communities within the Garden Gate development (paraphrasing). The GGHOA is not complying with this sub section. Not considering or interpreting GGFDP properly through letter.

Point Number--(6)--Section G--Architecture and Site Design--Sub Section (2--(b)--Developers, property owners and residents shall comply, at all times, with the requirements, restrictions and prohibitions, set forth in this FDP (paraphrasing). This Sub Section is not being complied with, by the HOA, not adhering to the GGFDP in aforementioned statements. (Violations of the GGFDP and Weed Control--Section 17 18 of the City of Loveland Municipal Code) What are the sanctions for these habitual violations. This Section is not included/considered in Mr. George's letter. Failure to properly interpret Provisions

Point Number--(7)--Section L--Regulatory Procedures--Paragraph Two--The FDP is in accordance with Chapter 18.41 of the Loveland Municipal Code. In no event shall a property owner take or commit any act or action that is not in full conformance with the law, regulation and/or condition of the City of Loveland, Municipal Code. This Section does not preclude or exclude nor waive the Garden Gate HOA from performing their duties as required by law. What are the sanctions for these violations as described? Not considered by letter from Mr. George. Failure to properly interpret Provisions.

Point Number--(8)--The GGFDP is not taken in its "whole" form/meaning. Sections are taken out to apply to Mr. Georg's letter and other Sections are not applied. This is a failure to properly interpret and apply relevant provisions as stated above

Title III--Relevant Facts to be taken into consideration--

(A)--Home Values--In this case, I believe it is in the City's best interest to help the homeowners in the Garden Gate Community protect our home values. The letter, Mr. George wrote, does not reflect the negative impact that the non maintenance (and or new rules) would have on the Communities existing home values. I believe the interpretation of the new maintenance rules would have a negative impact on the Garden Gate Community regarding this issue. I must state that I would not have purchased my home, if the property, in question, was in the condition, that it is in today. Failure to interpret relevant fact.

(B)--Areas in question are the only areas not being Maintenance/Maintained in the Community--(Pertaining to total in community--Approximately 68 acres--188 homes)---It is my understanding that the areas, as described, in this Revised Appeal, are the only areas in the Community that are not being maintained-- maintenance--mulched, watered or mowed ect. As a result, the GGFDP and the Loveland Municipal Code, are not being uniformly applied. This action (or non action) is a violation of the GGFDP and the Loveland Municipal Code. These Provisions, and explanation of same, was never properly considered or interpreted in Mr. George's letter.

(C)--Past Practices--When the Developer was maintaining/maintenance of the property there were issues. But the areas in question were being maintained properly. Relevant fact not properly interpreted.

(D)--Mr. George's Visit--September 8, 2011--Finally and most importantly, when I received a cc of Mr. George's letter I noticed before his Signature he wrote, "Please contact me if you have any questions or concerns regarding this determination". Due to that statement I contacted Mr. George and invited him out to the properties for a visit. Mr. George accepted my invitation.

During, Mr. George's visit, in which he was able to view the property in person, he had expressed to me, some concerns about the condition and maintenance of the properties in question (East and West of the Farmers Ditch area, Detention Pond area ect.). The letter needed to be changed to reflect the condition and maintenance of the property, he told me. We discussed some changes and I am in agreement with some of his suggestions. I recontacted Mr. George by telephone when I received the City Attorney's response to my original Appeal. The date was September 14, 2011. Mr. George again, agreed with my recollection of said events. Please take this significant development into consideration.

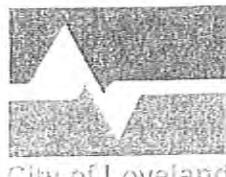
Thank you for the opportunity to present my Revised Appeal

If you have any questions please feel free to contact me
Thank you for your consideration,

Bruce

Bruce W. Cromwell
Appellant
267 Wrybill Avenue,
Loveland, Colorado
80537
970-663-6615

Note--Letter by Mr. George, GGFDP document, not attached, as previously submitted for review, at first filing of Appeal, on September 12, 2011



Office of the City Attorney

Civic Center • 500 East Third Street, Suite 360 • Loveland, CO 80537
 (970) 962-2540 • Fax: (970) 962-0900 • TDD: (800) 997-7373

www.ci.loveland.co.us/att

September 14, 2011

Via email to: bwg2424@yahoo.com

Via US Mail to:

Mr. Bruce W. Cromwell
 267 Wrybill Avenue
 Loveland, Colorado 80537

RE: Notice of Appeal dated September 8, 2001 (Notice of Appeal) pertaining to
 Letter of Determination of Maintenance Practices for Designated Open
 Space within the Garden Gate First Subdivision dated September 2, 2011
 (the "Director's Determination")

Dear Mr. Cromwell,

The City Current Planning Division received your Notice of Appeal with respect to the Director's Determination on Monday, September 12, 2011. I have reviewed the Notice of Appeal as required under Section 18.80.034 of the Loveland Municipal Code (the "Code") for defects in form or substance.

The purpose of this letter is to notify you that the Notice of Appeal fails to conform to the requirements of Code Section 18.80.060. Although the Notice includes a specific allegation of error under Code Section 18.80.030.B (failure to properly interpret and apply relevant provisions of the Code and other laws), it does not provide a "description of the grounds for the appeal" by indicating how or why the Director failed to properly interpret and apply such provisions. Such information is required under Code Section 18.80.060 and is necessary for a meaningful review of the Director's Determination by the Planning Commission.

Please provide a revised Notice of Appeal that includes a specific description of the manner in which the Director failed to properly interpret and apply relevant provisions of the Code and other law, including the specific provisions of the Code and other law that are at issue, the manner in which or reasons why they were not properly interpreted or applied, and any relevant facts supporting the allegation that they were not properly interpreted or applied.

EXHIBIT D.4

Pursuant to Code Section 18.80.035, the City's Current Planning Division must receive your revised Notice of Appeal correcting these deficiencies by 5:00 p.m. on Wednesday, September 21, 2011. If a revised Notice of Appeal is not received by this time, the appeal shall be deemed to be dismissed.

Please let me know if you have questions or need further information with respect to this determination.

Regards,

Judy Schmidt
Deputy City Attorney

cc: Bob Paulsen, Loveland Current Planning Manager

September 8, 2011

RECEIVED
9-13-2011

BW 125 PM

--Notice of Appeal--

Filed by Party-in-Interest/Appellant--Bruce W. Cromwell

This Notice of Appeal is directed, to the City of Loveland Planning Commission, as stated in Section 18.80.040-A, of the City of Loveland, Colorado, Municipal Code.

The Appeal Requirements (As stated in Section 18.80.060 of City of Loveland, Municipal Code) are as follows:

A--Description of the final decision being appealed--Administrative Decision written by, Gregory C. George, Director of Development Services, City of Loveland, Colorado. (Refer to Attached)

B--Date of the final decision being appealed--September 2, 2011.

C--Name address, telephone number of Appellant--Appellant/Party-in-Interest,--Bruce W. Cromwell, 267 Wrybill Avenue, Loveland, Colorado, 80537, 970-663-6615.

Statement of Appellant/Party-in-Interest--Bruce W. Cromwell--I reside in the Garden Gate Community, of which the Administrative Decision, is based upon. The Administrative decision, written by Mr. George, has a direct relationship to the property I own. The decision also references, the Final Development Plan, a legal document, which pertains specifically to the Garden Gate Community. (FDP Attached)

D--Grounds for the Appeal of the final decision--Per Section 18.80.030-B (1)-I-of the City of Loveland, Municipal Code.--Failure to properly interpret and apply relevant provisions of the Municipal Code and other law--

E--Not applicable--

Cost of Appeal--Per Section 18.80.070 of the Municipal Code--I have contacted staff, at the City of Loveland's, City Attorney's Office. I inquired about any charged costs/fees incurred by the Appellant throughout this process. I was informed that the Appellant would not be charged a fee throughout this process.

City of Loveland Planning Commission--Please take into consideration--The Appellant-Bruce W. Cromwell- is planning to be out of the State of Colorado from October 21 through November 14, 2011. Needless to say, this event was prearranged before the Notice of Appeal was filed with the City. With this Notice of Appeal, as it pertains to the Appellant, the Appellant agrees and stipulates to a time waiver, regarding the 30 to 60 rule, for purposes of scheduling a public hearing as stated in Section 18.89.040-C of the City of Loveland, Co, Municipal Code. If it is possible please schedule the public hearing after November 14, 2011.

Please contact me if there are any questions,

Thank you for your consideration,

Bruce W. Cromwell

Appellant

EXHIBIT D.5

SCOTT DOYLE, CLERK
 LARIMER COUNTY, CO
 02/14/2005
 11:54:00
 RGPT# 2005-0012136
 PAGES - 41 FEE \$205.00 DOC \$0.00 1435217

— DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

for

GARDEN GATE SUBDIVISION

(A Common Interest Community)

THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
GARDEN GATE SUBDIVISION is made and entered into this day 1/22 of
2005, by GARDEN GATE DEVELOPMENT, LLC a Colorado limited
 liability company hereinafter referred to as the "Declarant."

A. The Declarant is the owner of certain real estate located in the County of Larimer,
 State of Colorado, commonly known as Garden Gate Subdivision, Loveland, Colorado
 ("Property") and legally described on Exhibit "A" attached hereto and incorporated herein by
 reference.

B. The Declarant desires to create a Common Interest Community on the Property
 pursuant to the Colorado Common Interest Ownership act, C.R.S. §38-33.3-101, et seq., as it
 may be amended from time to time ("Act").

C. The name of the Common Interest Community to be created upon the Property shall
 be GARDEN GATE SUBDIVISION.

D. The Common Interest Community shall be a Planned Community.

E. Portions of the Common Interest Community shall be designated for separate
 ownership and use.

allocated to each Unit are set forth as follows:

5.3.1 The percentage of liability for Common Expenses shall be allocated on the basis of equal liability for each Unit; and

5.3.2 The number of votes in the Association shall be allocated on the basis of one (1) vote for each Unit.

— — — ARTICLE VI

COMMON ELEMENTS

6.1 Dedication of Common Elements. The Declarant hereby dedicates the Common Elements to the common use and enjoyment of the Members, as hereinafter provided.

6.2 Description of Common Elements. The Common Elements within the Common Interest Community shall consist of the following real property:

TRACTS A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q
GARDEN GATE SUBDIVISION

6.3 Installation of Common Elements. The Declarant shall install, construct or cause to be installed or constructed the following Common Elements:

6.3.1 Landscaping and irrigation systems on the Common Elements, where required.

6.3.2 Community mailboxes and enclosures and related facilities,

6.3.3 Perimeter fencing where necessary.

6.3.4 The Common Elements described in Section 6.2 above, except Tract C, shall be transferred to the Association free and clear of all liens and encumbrances prior to the conveyance of the first Unit within the Common Interest Community.

6.4 Maintenance and Regulation of Common Elements. After the installation of all improvements, facilities and landscaping required of Declarant by the City of Loveland, Colorado, within the Common Elements, such improvements, facilities and landscaping (including irrigation systems) shall be maintained, repaired and replaced by the Association as necessary so that such Common Elements present an aesthetically attractive appearance to serve the purposes for which such improvements, facilities and landscaping were installed. The Association shall be responsible for the maintenance, repair, renovation, management and control of the Common Elements subject to any rights previously granted to the public.

The Association may adopt such Rules and Regulations as shall be necessary for the proper maintenance, repair, renovation, management and control of the Common Elements.

6.5 Owners' Easements of Enjoyment. Each Unit Owner shall have a right and easement of enjoyment in and to the Common Elements and such easement shall be appurtenant to and shall pass with title to every Unit, subject to the following provisions.

6.5.1 The right of the Association to promulgate and publish reasonable Rules and Regulations as provided in this Declaration.

6.5.2 The right of the Association to suspend voting rights and the right to use the Common Elements by an Owner for any period during which any Assessment against his or her Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations.

6.5.3 The right of the Association to dedicate or transfer any part of the Common Elements to any public agency, authority, utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members, provided that with the exception of public

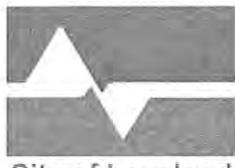
Common Elements.

— ARTICLE VII

MAINTENANCE BY ASSOCIATION

— 7.1 Maintenance of Common Elements. The Association shall maintain all of the Common Elements within the Common Interest Community. The Association shall maintain all other landscaping and other facilities installed in, on or under the Common Elements and shall make repairs and replacements thereto as needed to permit the Common Elements to serve the purpose for which they are created and installed in the Common Interest Community. Any common driveways and alleys, parking areas, sidewalks, landscaping islands, entry feature monument and signage, and irrigation sprinkler system located in on or under the Common Elements, shall be maintained by the Association. All such facilities and any and all additional facilities and improvements which may be installed within Common Elements shall be maintained, repaired and replaced by the Association as necessary so that the Common Elements present an aesthetically attractive appearance and serve the purpose for which such facilities were installed. In addition, to the fullest extent allowed or required by the provisions of §307(1.5) of the Act the Association shall maintain, repair and replace any and all drainage structures or facilities or other public improvements required by the City of Loveland as a condition to the development of the Common Interest Community or any part thereof (unless and except to the extent that same are maintained by the City of Loveland).

7.2 Damage by Owner. Notwithstanding anything to the contrary contained herein, in the event the need for the Association to maintain, repair or replace a Common Element is caused by the willful act or gross negligence or misconduct of a Unit Owner or a member of such Unit Owner's family, or a guest, invitee or tenant of a Unit Owner or a member of such tenants' family, the costs of such repair, replacement or maintenance, to the extent not covered by the Association insurance, shall be a personal obligation of such Unit Owner, and any costs, expenses and fees incurred by the Association for the same shall be assessed to such Unit Owner and added to such Owner's Common Expense Assessment, the Association shall have a lien for the payment of such Assessment as provided in the Act and in this Declaration.



City of Loveland

DEVELOPMENT SERVICES
Current Planning

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AGENDA ITEM NO:

2

PLANNING COMMISSION MEETING:

November 28, 2011

APPLICATION SUMMARY:

This is an appeal of an Administrative Determination made by Greg George, Director of the Development Services Department. The determination concerns the maintenance of certain open space areas within the Garden Gate neighborhood located in Southeast Loveland. This neighborhood is zoned PUD and is subject to the provisions of a Final Development Plan which specifies development requirements for this residential neighborhood, including the design and maintenance of open space areas that are now owned and maintained by the Garden Gate Home Owners Association (HOA). The appellant is a resident of the neighborhood and a member of the HOA.

APPELLANT:

Bruce W. Cromwell, 267 Wrybill Avenue, Loveland CO.

STAFF PRESENTER:

Bob Paulsen, Current Planning Manager

APPLICATION TYPE:

APPEAL of an Administrative Determination

RECOMMENDATION:

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

Move to deny the appeal and uphold the determination of the Development Services Director concerning maintenance provisions in specified open space areas of the Garden Gate First Subdivision, concluding that the Director properly interpreted and applied applicable provisions of the Municipal Code.

I. HEARING PROCEDURE

Appeal procedures pertaining to final decisions made under Title 18 of the Municipal Code are specified in Chapter 18.80—Appeals. Final decisions that are subject to Chapter 18.80 include administrative determinations. A copy of Chapter 18.80 is provided as **Attachment 6** to this staff report. The following represents the sequence for the appeal hearing once the hearing is called to order by the Planning Commission Chair:

1. City Staff provides a brief presentation on the nature of the appeal
2. Appellant's presentation of evidence, testimony and argument
3. Presentation of evidence, testimony and argument by City Staff or other party in interest in opposition to the appeal.
4. Public comment
5. Rebuttal presentation by the appellant
6. Motion, discussion and vote by the Planning Commission

II. ATTACHMENTS

1. Appellant's Revised Notice of Appeal, dated September 14, 2011 (submitted on September 21st)
2. Notice of Appeal dated September 8, 2011 (submitted on September 12th)
3. Letter dated September 14, 2011 to Bruce W. Cromwell (appellant) from Judy Schmidt, Deputy City Attorney, pertaining to defects in the Notice of Appeal dated September 8, 2011 submitted by Bruce W. Cromwell.
4. Letter of Determination from Greg George, dated September 2, 2011, to the Garden Gate HOA.
5. Color Map: Highlighted aerial photograph of the Garden Gate neighborhood open space areas prepared by the Current Planning Division dated September 2, 2011. This map accompanies the September 2nd Letter of Determination.
6. Chapter 18.80 of the Municipal Code: Appeals
7. Chapter 7.18 of the Municipal Code: Weed Control provisions (with highlighting)
8. Garden Gate Final Development Plan as approved by the City of Loveland in September, 2004 (with highlighting and supplementary passages from sheet L2)
9. Garden Gate First Subdivision as approved in September, 2004.

III. BACKGROUND INFORMATION

Plans for the Garden Gate neighborhood were finalized and approved in 2004. The neighborhood is located in Southeast Loveland, immediately south of 1st Street, just to the west of North Denver Avenue. The neighborhood encompasses approximately 69 acres and includes 181 single family homes. The neighborhood is built on former agricultural land and is bisected by the Farmer's Ditch which runs diagonally from the SW to the NE portion of the neighborhood. The neighborhood is zoned Planned Unit Development (PUD); a Final Development Plan (FDP) was approved in 2004 (see **Attachment 8**).

As the controlling zoning document for the neighborhood, the FDP specifies development parameters which address the variety of elements that constitute the built and natural environment of this neighborhood. Among the components addressed by the FDP is the design and maintenance of the



GARDEN GATE NEIGHBORHOOD VICINITY MAP

(boundaries are identified by black lines)

various open space tracts that are now owned by the Garden Gate Homeowners Association (HOA). The HOA is responsible for the care of these commonly-owned properties.

Among other components of the FDP, this document specifies the landscape, planting and irrigation treatments for the open space areas. These areas are treated somewhat differently than the neighborhood park and the buffer landscaping along 1st Street. Specifically, these areas are specified to be planted with various seed mixes along with shrub and tree plantings. The shrubs and trees are irrigated with drip systems; but generally the native seed planted areas are not irrigated. While the FDP indicates location and type of plantings with the neighborhood, and assigns the maintenance of these areas to the HOA, the precise maintenance of the open space tracts are not clearly specified in the FDP. For example, the FDP does not indicate how high the native grass should be allowed to grow or even whether the seeded areas should be mowed or not. Nor does the FDP specify mulching, weeding or irrigation treatments for these areas.

The subject of this appeal concerns the maintenance of specified open space tracts predominantly located in the Southeastern portion of the neighborhood. More specifically, these tracts are located along either side of the Farmer's Ditch, and include the detention facility located at the extreme southeastern portion of the neighborhood next to the PRPA electrical station. The open space tracts located along the south perimeter of the neighborhood are also associated with the Director's determination and the subject appeal.

On September 2, 2011, Greg George, the Director of the Development Services Department issued a determination of maintenance practices for the designated open space areas described above. This determination was in the form of a letter sent to the Garden Gate HOA board and other interested parties (see **Attachments 4 & 5**). The letter was prompted by citizen complaints that the Weed Ordinance (see **Attachment 7**) was not being enforced and that HOA maintenance practices were substandard. The determination was provided to give the HOA board and other residents clear guidance as to the appropriate maintenance for these open space areas. The determination was developed in consultation with Current Planning staff following a review of the FDP, a review of pertinent ordinances and City policies, and in consideration of staff experience with several other neighborhoods that have designated open space areas that include a variety of landscape treatments, including the planting and maintenance of native seed mixes.

It is important to note that in the summer of 2011, prior to the issuance of the determination, staff from the Current Planning Division met with HOA representatives on-site, and conducted a walking tour of the various open space areas with the Garden Gate neighborhood. The site visit provided staff with the opportunity to view these open space areas directly and discuss maintenance treatment with the HOA board along with representatives of the landscape maintenance company hired by the HOA. In addition to the site visit, Current Planning staff reviewed the history of complaints and concerns regarding the Garden Gate open space areas with the City's Code Enforcement staff. Current Planning staff also had several phone conversations with Garden Gate's property management company, HOA board members and other neighborhood residents, including Mr. Cromwell who ultimately appealed the Director's Determination.

IV. SUMMARY OF THE APPEAL

Mr. Bruce Cromwell initially submitted a Notice of Appeal that was received by the Current Planning office on September 9, 2011. This document is provided as **Attachment 2**. Upon receipt of the Notice of Appeal, this document was reviewed by the City Attorney's office for compliance with the appeal requirements of Chapter 18.80. Subsequently, a letter from Deputy City Attorney Judy Schmidt, dated September 14, 2011, (see **Attachment 3**) was sent to Mr. Cromwell indicating the Notice of Appeal failed to conform to Code Section 18.80.060 in that it did not provide a satisfactory description of the grounds for the appeal. Mr. Cromwell was given the opportunity to submit a revised Notice of Appeal by September 21, 2011.

On September 21, 2011, the Current Planning office received a revised Notice of Appeal from Mr. Cromwell (see **Attachment 1**). This document was submitted by the required deadline and was reviewed by the City Attorney's office and was determined to have met the requirements of Code Section 18.80 concerning appeals.

In the September 21, 2011 Notice of Appeal letter (which is actually dated September 14, 2011), Mr. Cromwell elaborates on the grounds for appeal. The following is a summary of his primary points of concern and objection:

General Concerns

- The appellant indicates that when he purchased his house he was informed that the neighborhood common areas would be maintained with lawns in a green and vibrant condition, providing visual unity throughout the neighborhood.
- The appellant cites the Garden Gate Community's Declarations of Covenants, Conditions and Restrictions, indicating that common areas are to be maintained in an aesthetically attractive manner.
- The appellant indicates that the HOA board has not been responsive to his concerns about the level of maintenance
- The appellant indicates that a Confidential Complaint was filed on March 17, 2010 with the City addressing code violations that never was responded to by the City.

TITLE 1—Response to Mr. George's letter--Relevant Facts and Provisions

In this section of the Notice of Appeal, Mr. Cromwell lists in numbered items (1)-(6) that the Letter of Determination is not sufficiently detailed to provide satisfactory guidance in clarifying maintenance treatment for the specified open space areas, including areas adjacent to the Farmer's Ditch, the Detention Pond and Native Seed areas. Mr. Cromwell contends that a more precise determination is needed to clarify these matters, including the application of measurements, mulching standards and other more prescribed maintenance guidelines. Mr. Cromwell contends that the absence of such clarification the Determination fails to provide an adequate interpretation of the Garden Gate FDP.

TITLE II—GGFDP Relevant Sections/Provisions that apply—Please Consider the Following:

In this section of the Notice of Appeal, Number points (1)-(8) are presented. Overall, the implication is that the FDP calls for a "sense of unity" to be created and the distinct treatment of more natural areas and the groomed landscaped areas within the neighborhood are inconsistent with this concept. Therefore the Determination fails to interpret the FDP properly. Moreover, the lack of adequate maintenance by the HOA fails to achieve this unity and fails to comply with the Municipal Code, in particular, the Weed ordinance.

TITLE III—Relevant Facts to be taken into consideration:

In this section of the Notice of Appeal, items (A) – (D) are listed. The appellant indicates that the Determination establishes new rules for landscape maintenance that are sub-standard and will result in a negative impact on the neighborhood, including diminished home values. The appellant contends that when the developer was maintaining the common properties, a more appropriate level of care was established. The appellant also indicates that the Determination does not address the maintenance of all portions of the HOA's common areas and therefore these standards are not being uniformly applied.

VI. STAFF ANALYSIS

The Determination of the Director of Development Services (**Attachments 4 & 5**) includes a complete discussion of the issues prompting the need for the determination and the factors that were considered in making the determination. Therefore, the September 2, 2011 Determination letter should be considered as a component of the staff analysis provided in this report. The accompanying colored map (**Attachment 5**) is integral to the determination and provides graphic illustration of the open space areas of the Garden Gate neighborhood that are subject to the determination.

As addressed previously in this report, the Director's Determination became necessary in order to clarify maintenance issues regarding certain open space tracts within the Garden Gate plan boundaries. The Garden Gate HOA board specifically requested a determination following an on-site visit with Current Planning staff and HOA representatives in the summer of 2011. The site visit had been preceded by citizen code complaints as well as confusion expressed by the HOA board as to the correct parameters for maintaining the open space areas. The purpose of the determination was to clarify how the various open space and wetland areas are to be maintained by the HOA. The Director's determination was designed to provide sufficient detail to guide the HOA in this effort without prescribing rigid provisions that would be burdensome for the HOA to implement or for the City to enforce. Intentionally, the determination gives the HOA some latitude in their maintenance while ensuring consistency with the approved FDP and consistency with guiding City policies including the Open Lands Plan. Experience with similar open space areas in other neighborhoods was also taken into consideration in developing the determination. The open space areas in question do not include the neighborhood park, the landscape buffer along 1st Street, nor the individual residential lots. The areas in question are common areas designated as open space that are landscaped with a combination of seed mixes, trees and shrubs.

A significant factor in making the determination related to maintenance for the various open space areas under consideration relates to the planting and irrigation plans as specified in the Garden Gate FDP. The level and type of maintenance should be consistent with these factors. For example, areas planted with native seed cannot be groomed like blue grass or fesque turf, even if irrigated. In fact, when such grasses are cut, the native grass environment is compromised and becomes more susceptible to erosion and weed infestation. Native and wetland seed environments depend on the shading provided by long grass blades that help to protect the soil from excessive sun and heat, and help to retain soil moisture. This self-shading effect also tends to help the grasses flourish and prevent encroachment by weeds and noxious plant species. Longer grasses also provide some cover for smaller animal species which may frequent such areas. Some spraying for noxious weeds is still appropriate for such areas. A groomed treatment cannot be readily achieved for such areas without a replanting of turf grasses in combination with regular irrigation. A breakdown of how the individual open space areas within the neighborhood are to be treated is provided on pages 2 and 3 of the Director's Determination letter.

Therefore, as planted, the open space areas in question are designed to be native or natural areas. Importantly, these are not turf areas. These areas are designed to serve as transitional areas adjacent to designated environmentally sensitive areas. Such areas serve provide a more natural environment that is integrated in to the neighborhood as designed and specified by the FDP. Such areas support wildlife and offer a lower-maintenance area that can reduce costs to the HOA. As the FDP indicates, this open space provides a naturalistic design that takes inspiration from the natural plant communities and wetlands found on and adjacent to the Garden Gate neighborhood.

Based on the discussion above, it became logical and necessary for the Director to exempt certain open space Tracts within Garden Gate from the City's Weed ordinance (see **Attachment 7**). This ordinance specifies that grass, weeds and many other types of vegetation in excess of 8 inches in height constitute weeds and must be trimmed. Such trimming or mowing of native seed mix areas would be contrary to the sustainable health of these areas. In Section 7.18.030, authority is given to the manager of the City's Long Range Planning and Natural Resource Division to grant exemptions to the Weed ordinance to dedicated public or private open lands. As the Director of Development Services currently oversees the staff of the City's former Long Range Planning and Natural Resource Division, it is within the Director's authority to authorize this exemption or allowance.

In summary, the Director has acted within his authority to specify maintenance requirements for identified open space tracts within the Garden Gate First Subdivision. These maintenance requirements are derived directly through a careful reading of the Final Development Plan, the study of on-site conditions, a review of practices administered on similar lands within the City, and a review of applicable City policies and regulations. The Director has properly interpreted the Garden Gate Final Development Plan and applied appropriate maintenance provisions to ensure that the design for the intended design for the neighborhood is sustained.

Timeline of Garden Gate Landscaping Issues

- **MARCH 17, 2010** – Confidential Formal Complaint filed with the City of Loveland Code Enforcement Department.
- **MARCH 2010 TO NOVEMBER 2010** – Series of emails and meetings with Bruce Cromwell and the Garden Gate HOA relative to complaint / Landscaping issues.
- **NOVEMBER 3, 2010 AND NOVEMBER 18, 2010** – Letters to Bruce Cromwell in response to confidential formal complaint:
 - November 3, 2010 – Letter in response to maintenance of common open space.
 - November 3, 2010 – Letter in response to tree deficiencies.
 - November 18, 2010 – Letter clarifying/correcting street replacement concerns.

The series of letters indicated the concerns relative to open space would be addressed in Summer, 2011. Tree replacements were provided within internal open space areas. Tree replacement schedule along E. 1st Street to be provided by Garden Gate HOA in Fall, 2011.

- **JULY 2011** – Site visit and field work conducted with Garden Gate HOA. Bruce Cromwell was invited to this meeting but chose not to attend.
- **SEPTEMBER 2, 2011** – Letter of determination of maintenance practices for designated open space lands within the Garden Gate First Subdivision sent to Garden Gate HOA and Bruce Cromwell.
- **SEPTEMBER 14, 2011** – Appeal filed by Bruce Cromwell. (Justification for appeal was filed by Bruce Cromwell on September 21, 2011.)

- **Current Outstanding Issues** include replacement of trees along E. 1st Street. Following determination of maintenance practices for designated open space lands with the Garden Gate First Subdivision appeal, Current Planning will discuss with the Garden Gate HOA schedule for replacement.



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September 2, 2011

Garden Gate Home Owner's Association
Attn: Board of Directors
4631 West 20th Street, Suite 100
Greeley, CO 80634

Subject: Determination of maintenance practices for designated open space lands within the Garden Gate First Subdivision.

Dear Board of Directors:

This letter is being provided in response to a request from the Garden Gate Homeowners Association board for clarification regarding maintenance responsibilities for specified open space areas located within the Garden Gate First Subdivision. This letter has also been prompted by citizen complaints that the City's weed control ordinance is not being adhered to by the HOA in the maintenance of its properties. This letter provides my interpretation (as the Director of the Development Services Department for the City of Loveland) of the Garden Gate Final Development Plan as it relates to the maintenance of the specified areas. The letter also includes my official determinations with regard to those open space areas that are exempt from the City's weed ordinance, in accordance with Chapter 7.18 of the Loveland Municipal Code. As such, this is a formal determination by the City of Loveland and it is expected that HOA maintenance practices will comply with the specifications provided herein.

The reason this determination is necessary is that the Final Development Plan (FDP) for the Garden Gate First Subdivision does not set forth specific maintenance treatment of many of the designated open space areas. While the FDP clearly assigns maintenance responsibility for these properties to the HOA, the precise treatment is unspecified. Consequently, for a determination to be made, it has been necessary for staff to conduct a detailed review of the FDP and related documents, along with a review of the City's Open Lands Plan and weed control ordinance. In addition, a site inspection was conducted this summer by Current Planning staff in the company of HOA board representatives in order to observe these open space areas directly and to gain insight from board members and other residents.

It is important to note that the narrative of the Garden Gate FDP (see sheet L2) emphasizes that a "naturalistic design approach" was taken in the design open space areas, "with inspiration taken from the natural plant communities and wetlands currently found on and adjacent to the site." The plan states that natural areas were to be re-established and to be allowed to naturalize again, including areas that receive seed mixes. These clear statements of intent assist in determining the appropriate level of and type of maintenance. Other important factors in determining the appropriate type of maintenance for the specified open space areas includes a recognition of the type of planting treatment, the use or absence of irrigation for the specific areas, and the function of these areas.

EXHIBIT E.1



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Below is a breakdown of the various open space areas that are addressed by my determination. Each area is described, and the appropriate landscape maintenance treatment is specified. In each case, the specific maintenance treatment is underlined for emphasis and clarity. Note that these areas are correlated with the accompanying map.

The Irrigation Ditch:

The Farmers Ditch and associated ditch banks are identified as "Environmentally-Sensitive Areas." This area is highlighted in green on the accompanying map. This property shall not be disturbed other than by the ditch company and is exempt from the weed ordinance.

Environmentally-Sensitive Areas:

The original Environmentally-Sensitive Areas report for the Garden Gate Subdivision (submitted as part of the original planning and review process) identified specified areas as being environmentally-sensitive. These areas, like the ditch area addressed above, are designated in green on the accompanying map. Per City Code, these areas are to be protected and left undisturbed. The area at the southern portion of the detention pond is designated as such; also, there are portions of Tract H at the southern and southwestern portion of the neighborhood that are also given this designation. While some level of disturbance has occurred to portions of this area, the remainder should be left undisturbed. All these areas are exempt from the weed ordinance.

Non-Irrigated, Native Seed Areas:

These areas consist of the Tracts alongside the ditch and others located at the SE portion of the neighborhood (Tracts G, H & L). These areas are highlighted in blue on the accompanying map.

These areas are designed to be reserved in a natural state, with uncut native grasses that provide wildlife habitat. The City's *Open Lands Plan* (refer to Section 6.2, Lake Edges and Ditches) specifies that areas along the irrigation ditches serve as wildlife habitat and movement corridors. For such corridors to function effectively, the native grasses should remain uncut (un-mowed) in order to provide a healthy and optimal cover for wildlife. It is important to note that uncut native grasses provide a self-sustaining environment, shading the soil and retaining soil moisture, allowing for self-germination, and minimizing weed encroachment. Spraying minimally for noxious weeds may be needed; some reseeding and mulching of these areas may be desirable. Cutting these grasses, however, prevents germination and compromises their ability to sustain a healthy environment. These areas should not be mowed or should only be mowed once in the Fall as the grasses go dormant as winter approaches. These areas are exempt from the weed ordinance.

Irrigated Native Seed Areas:

These areas consist of narrow Tracts along the rear of the residential lots. Tracts include B, I, K, M, N & O, which are identified in pink on the accompanying map. These Tracts vary in width (generally between 10 and 15 feet wide) and separate the developed residential lots from the non-irrigated natural areas. These Tracts include tree and shrub plantings with drip irrigation and provide a transition from developed lots to the natural areas. These areas may be mowed. Spraying for noxious weeds may be desirable; some reseeding and mulching of these areas may also be desirable. These areas may be mowed by the HOA and are subject to the weed ordinance.

Wetland Seed Area:

The Detention Pond is located on Tract P which is highlighted in yellow on the accompanying map. This area was planted with a wetland seed mix. It is a natural area. The bottom of the pond area has been

wet and requires no maintenance. Trees and bushes have been planted closer to the upper slope of the pond, requiring irrigation and occasional mowing and related maintenance. Occasional mowing is anticipated in the upper area similar to what is described with the Irrigated Native Seed Areas; the level of maintenance is at the discretion of the HOA. This upper area is subject to the weed ordinance. The lower areas located down the slope from the trees/shrubs is clearly a natural area that should be left undisturbed with the exception of spraying for noxious weeds and occasional mulching and reseeding. These lower areas are exempt from the weed ordinance.

Appeal Process:

This administrative decision can be appealed to the Planning Commission as specified in Chapter 18.80 of the Municipal Code. To be valid, the appeal must be filed with the City's Current Planning Division by 5:00 PM on Monday, September 12, 2011.

In closing, I would like to thank the HOA board, neighborhood residents and the management company for your interest, cooperation and patience in this matter. I hope the letter provides an adequate explanation for my decisions. Should anyone have further questions regarding my determination or any related issues, please feel free to contact me as provided for at the end of the letter.

Please contact me if you have any questions or concerns regarding this determination. Thank you.

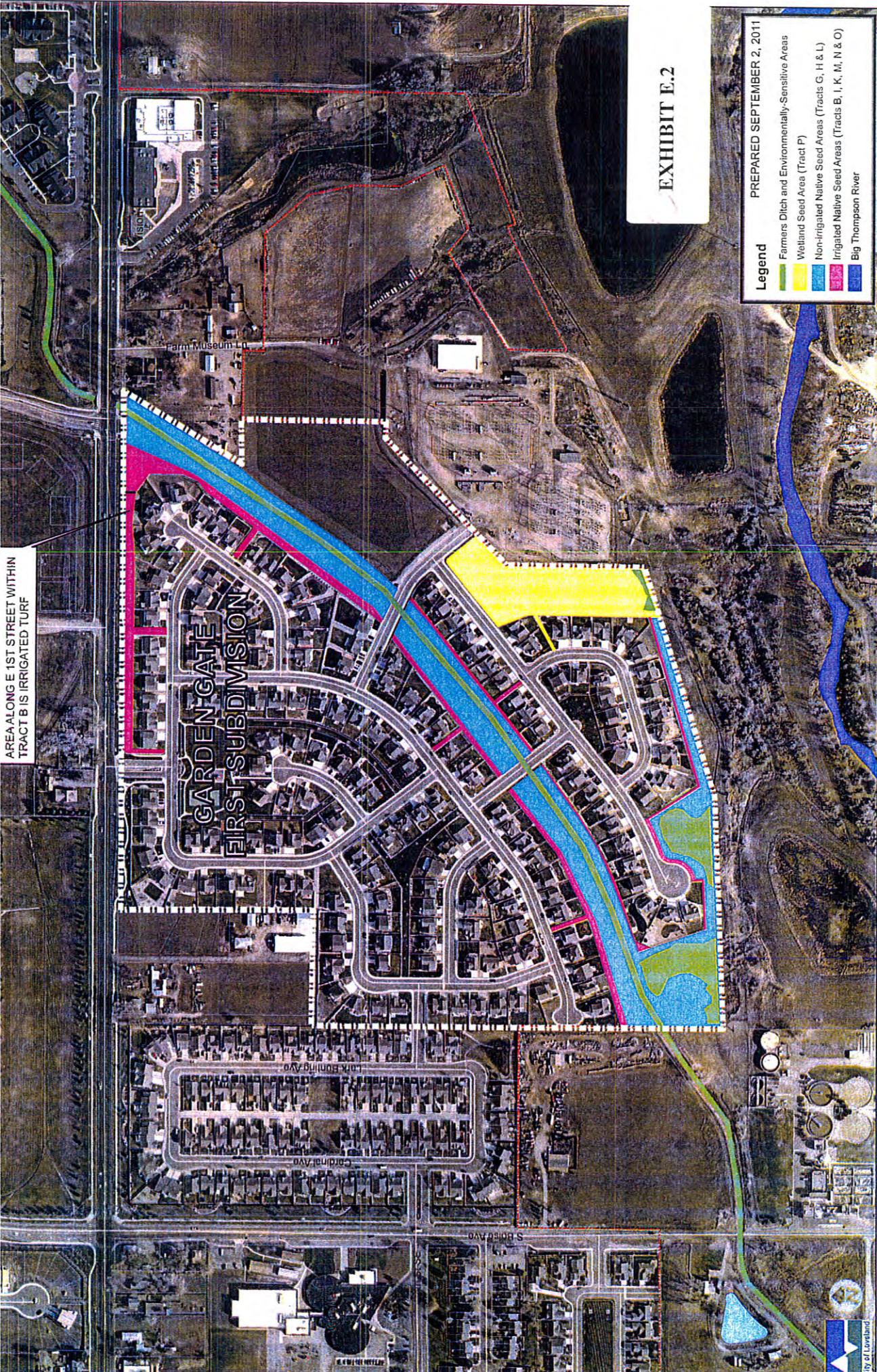
Sincerely,



Gregory C. George
Director of Development Services
City of Loveland
970-962-2521 / georgg@ci.loveland.co.us

Enclosure: Map

Xc: Jaimie Pribble, Vintage Corporation, 4631 W 20th Street, Suite 100, Greeley, CO 80634
Bruce Cromwell, 267 Wrybill Avenue, Loveland, CO 80537
Tom Hawkinson, Loveland Chief Building Official
Bob Paulsen, Loveland Current Planning Manager



Chapter 7.18

WEED CONTROL**Sections:**

- 7.18.010 Intent.
- 7.18.020 Definitions.
- 7.18.030 Weeds, cutting and removal.
- 7.18.040 City removal and assessment.
- 7.18.050 Administrative review of assessment.
- 7.18.060 Owners have ultimate responsibility for violations.

7.18.010 Intent.

It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

7.18.020 Definitions.

- A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:
 - 1. "Owner" shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the premises.
 - 2. "Property" shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
 - 3. "Weed" shall mean Bindweed (*convolvulus*), Dandelion (*Leontodore tavaxacum*) and all weeds, grass, brush, or other rank or noxious vegetation which is in excess of eight (8) inches in height, and shall specifically include: Leafy Spurge (*Euphorbia esula*), Canada Thistle (*Cirsium Arvense*), Russian Knapweed (*Centaurea pieris*), Perennial Sowthistle (*Sonchus Arvense*), Puncture Vine (*Tribulus terrestris*), Silverleaf povertyweed (*Franseria decolor*), Mouse-ear poverty weed (*Iva Axillaris*), Fanweed (*Thlaspi Arvense*), Mustards (*Brassiea*), Purpos-flowered groundcherry (*Quinula lobata*), Russian Thistle (*Salsola pestifer*), Fireweed (*Kochia Scoparia*), Redroot Pigweed (*Amaranthus retroflexus*), Sandbur (*Cenchrus tribuloides*), Hairy Stickweed (*Lappula Occidentalis*), Buffaloburs (*Solanum rostatum*), Common Ragweed (*Ambrosia elatior*), Cockleburs (*Xanthium Commurie*), Common Sunflower (*Helianthus Centicularis*), Marihuana (*Cannabis Sativa*), or other plants or offending vegetation which is regarded as a common nuisance. This list is not exclusive, but rather is intended to be indicative of those types of plants which are considered noxious and a detriment to the public health and safety, but shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops and small grain plots (wheat, barley, oats, and rye).

7.18.030 Weeds, cutting and removal.

It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit weeds to grow uncontrolled or to remain when grown upon the property or on or along any alleys or sidewalk areas abutting the same. Any waste from all destroyed or cut weeds shall be disposed of so that the premises are clean and orderly, and the spread of such weeds is prevented. **It shall be an affirmative defense to a violation of this section that the land upon which the vegetation is growing is**

City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, wildlife corridor, or wetlands, or that the land upon which the vegetation is growing is dedicated public or private open lands as determined by the manager of the City's Long Range Planning and Natural Resources Division.

7.18.040 Notice and Order of Abatement.

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property. Such notice and order shall be served by personal service, by regular mail, or by posting on the property, requiring the weeds to be cut within seven days after mailing or delivery of such notice.

7.18.042 City removal and assessment.

- A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds are not cut within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and certified mail, which notice shall allow the City to cut the weeds and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting of weeds shall be paid by the owner of the property or agent for such owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent. The City shall have the right to proceed for the collection of any unpaid charges for weed abatement in the manner provided by law for collection of debts and claims on behalf of the City, including without limitation collection and lien procedures provided in this section.
- B. In addition to any other means provided by law for collection, if any such assessment is not paid within thirty days after it is made and notice thereof is mailed, the same may be certified by the City Clerk to the county treasurer and placed by the treasurer upon the tax list for the current year, and thereby collected in the same manner as other taxes are collected, with ten percent penalty there to defray the cost of collection, as provided by the laws of the state.
- C. If the customer fails to pay the charges associated with weed abatement within the described 30-day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.
- D. Failure to pay the amount assessed for weed abatement services as described in this section shall cause such assessment to become a lien against such lot, block or parcel of land associated with and benefiting from said services, and shall have priority over all liens, except general taxes and prior special assessments, and the same may be effected at any time after such failure to so pay by recordation with County land records of a certification by the City Director of Finance setting forth the costs to be charged against the property, the date(s) of service and description(s) of services giving rise to such charge(s). This lien and collection procedure is supplementary and additional to any collection procedures describe elsewhere within this section or this Code.

7.18.050 Administrative review of assessment.

Any owner who disputes the amount of assessment made against such owner's property under Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

7.18.060 Owners have ultimate responsibility for violations.

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the premises and even though the owner

has by agreement imposed on the occupant the duty of maintaining the premises. (Ord. 5305 § 1, 2008; Ord. 4649 § 9, 2001; Ord. 4274 § 1 (part), 1997)

Chapter 18.80

APPEALS

Sections:

- 18.80.010** Purpose.
- 18.80.020** Definitions.
- 18.80.030** Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal.
- 18.80.040** Appeal of City Staff Decision Maker or Director's Final Decision.
- 18.80.050** Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision.
- 18.80.060** Notice of Appeal Requirements.
- 18.80.070** Cost of Appeal.
- 18.80.080** Record on Appeal.
- 18.80.090** Procedure at Hearing.

18.80.010 Purpose.

This Chapter shall govern the procedures for appeals from any final decision made under Title 16 or Title 18 of this Code.

18.80.020 Definitions.

The following words, terms and phrases, when used in this Title 18, shall have the meanings hereafter ascribed to them in this Chapter unless the context requires otherwise:

- A. "Appellant" shall mean a party-in-interest who has filed a notice of appeal under the provisions of this Chapter.
- B. "Applicant" shall mean a person that has submitted to the City an application related to the development, zoning or subdivision of real property in the city as authorized or required under the provisions of Title 16 or Title 18 and which application is the subject of appeal under this Chapter.
- C. "City staff decision maker" shall mean any City staff member granted authority to make decisions under titles 16 and 18 of this Code.
- D. "City council" shall mean the city council of the City of Loveland.
- E. "Current planning division" shall mean the current planning division for the City of Loveland development services department.
- F. "Days" shall mean all calendar days including Saturday and Sunday. Any computation of days under this Chapter shall not include the date a final decision is made. If a filing deadline falls upon a Saturday, Sunday or other legal holiday when City offices are closed, the filing deadline shall continue to the following day when City offices are open.
- G. "De novo hearing" shall mean a new public hearing at which new and additional evidence may be presented.
- H. "Director" shall mean the City's director of development services or his or her designee.
- I. "Evidence" shall mean documentary, electronic or testimonial evidence relevant to any application that was the subject of a final decision under the provisions of Title 16 or Title 18, presented at a hearing to support or refute a particular proposition or conclusion. Evidence shall not include argument as to how information offered as evidence should be viewed or interpreted.
- J. "Effective date of the final decision", as it pertains to a city staff decision maker's or director's final decision, shall mean the date the city staff decision maker or director mails his or her written decision to the affected applicant and to any other party-in-interest to whom the written decision is required by this title to be mailed. As this phrase pertains to the zoning board of adjustment or the

planning commission, it shall mean the date on which the board or commission adopts its written findings and conclusions.

- K. "Final decision", as it pertains to a city staff decision maker or the director, shall mean a decision or action by the city staff decision maker or director under Title 16 or Title 18 that the city staff decision maker or director has reduced to writing and has promptly mailed to the affected applicant and to any other party-in-interest to whom the written decision is required by this Code to be mailed. As this term pertains to the zoning board of adjustment or the planning commission, it shall mean a decision or action by the board or commission under this Code for which the board or commission has adopted written findings and conclusions. A Final decision shall not include any decision made by a city staff decision maker or the director that is a recommendation to the planning commission or to the city council, or a decision by the planning commission under this Code that constitutes a recommendation to city council.
- L. "Notice of appeal" shall mean an appellant's written request for an appeal of a final decision submitted in the form required by Section 18.80.060.
- M. "Party-in-interest", as it pertains to an appeal under this Chapter of a final decision by a city staff decision maker or the director, shall mean: the applicant; any person required in Title 16 or this Title 18 to be mailed the city staff decision maker's or director's written final decision; two or more planning commission members; or two or more city council members. As this term pertains to an appeal under this Chapter of a final decision by the zoning board of adjustment or the planning commission, it shall mean: the applicant, the director, any person required in Title 16 or this Title 18 to be mailed notice of the zoning board of adjustment or planning commission's public hearing; any person who provided written or verbal testimony at the zoning board of adjustment or planning commission's public hearing (other than a city employee who was providing written or verbal testimony in his or her capacity as a city employee); or two or more city council members. For an appeal of a Final Plat for a major subdivision or a Final Development Plan, only the applicant shall be considered a party-in-interest with standing to appeal.
- N. "Person" shall mean an individual, corporation, partnership, limited liability company or other legal entity.
- O. "Planning commission" shall mean the City of Loveland planning commission established pursuant to Section 2.60.080 of this Code.
- P. "Record" shall mean all relevant documents reviewed by a previous board, commission or city staff decision maker, and any transcript or written record of any such previous hearing.
- Q. "Zoning board of adjustment" shall mean the City of Loveland zoning board of adjustment established pursuant to Section 18.60.010 of this code.

18.80.030 Appeal of Final Decision Permitted; Effect of Appeal; Grounds for Appeal.

- A. An appeal of a final decision may be filed pursuant to sections 18.80.040 and 18.80.050 of this Chapter. Upon the filing of an appeal, any application process with the City pertaining to the subject matter being appealed shall be suspended while the appeal is pending. Any action taken in reliance upon any decision of a board, commission or other city staff decision maker that is subject to appeal under the provisions of this Chapter shall be totally at the risk of the person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action taken during said period of time.
- B. Except for appeals by members of the city council, the permissible grounds for appeal shall be limited to allegations that the board, commission or other city staff decision maker committed one (1) or more of the following errors:
 - 1. Failure to properly interpret and apply relevant provisions of the Municipal Code or other law; or

2. Failure to conduct a fair hearing in that:
 - a. The board, commission or other city staff decision maker exceeded its authority or jurisdiction as contained in the Municipal Code or Charter;
 - b. The board, commission or other city staff decision maker considered evidence relevant to its findings which was substantially false or grossly misleading; or
 - c. The board, commission or other city staff decision maker improperly failed to receive all relevant evidence offered by the appellant.
- C. Appeals filed by members of the city council need not include specific grounds for appeal, but shall include a general description of the issues to be considered on appeal. Council members who file an appeal shall not participate in deciding the appeal.

18.80.035 Review of Notice of Appeal by City Attorney.

Within seven (7) days of the date of the filing of the notice of appeal, the notice shall be reviewed by the City Attorney for any obvious defects in form or substance. A notice of appeal which fails to conform to the requirements of Section 18.80.030 shall be deemed deficient. The City Attorney shall notify the appellant in writing of any such deficiency, which notice shall be mailed no more than seven (7) days from the date of the filing of the notice of appeal. The appellant shall have seven (7) days from the date of mailing of the notice of deficiency to cure such deficiency. If the deficiency is cured, the date the revised notice of appeal is received shall be considered the date of the filing of the notice of appeal. If the appellant does not file a revised notice of appeal within said time period, the appeal shall be deemed to be dismissed.

18.80.040 Appeal of City Staff Decision Maker or Director's Final Decision.

- A. A party-in-interest may appeal any final decision by the director or other city staff decision maker to the planning commission.
- B. To appeal a city staff decision maker or director's final decision to the planning commission, a party-in-interest must file a notice of appeal with the current planning division within ten (10) days of the effective date of the final decision. Failure of a party-in-interest to timely file a notice of appeal under this section shall result in the dismissal of that appeal.
- C. When a party-in-interest timely files a notice of appeal under this section, the current planning division shall schedule a public hearing for the appeal to be heard by the planning commission not less than thirty (30) nor more than sixty (60) days of the filing of the notice of appeal unless a longer period of time is agreed to by the appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the applicant in Section 16.16.070 shall be the responsibility of the current planning division unless the applicant is an appellant. The owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.
- D. The planning commission shall conduct the appeal hearing as a de novo hearing and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the planning commission may uphold, reverse or modify the final decision being appealed. The planning commission shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions concerning the appeal.

18.80.050 Appeal of Zoning Board of Adjustment or Planning Commission's Final Decision.

- A. A party-in-Interest may appeal any final decision by the zoning board of adjustment or the planning commission to the city council. An appeal of a decision made by the zoning board of adjustment hearing officer, shall follow the procedures set forth in Section 18.60.060.
- B. To appeal a final decision by the zoning board of adjustment or planning commission to the city council, a party-in-interest must file a notice of appeal with the current planning division within

ten (10) days of the effective date of the final decision. Failure of a party-in-interest to timely file a notice of appeal under this section shall result in dismissal of that appeal.

- C. When a party-in-interest timely files a notice of appeal under this section, the current planning division shall schedule a public hearing for the appeal to be heard by the city council not less than thirty (30) nor more than sixty (60) days of the filing of the notice of appeal unless a longer period of time is agreed to by the appellant. Public notice of the hearing shall be given as required in Section 16.16.070, except the notice requirements imposed on the applicant in Section 16.16.070 shall be the responsibility of the current planning division unless the applicant is an appellant. The property owner of the property associated with the appeal shall allow posting of one or more signs as needed on the subject property.
- D. The city council shall conduct the appeal hearing as a de novo hearing, and shall apply the standards set forth in the Loveland Municipal Code applicable to the matter being appealed. After conducting the hearing, the city council may uphold, reverse or modify the final decision being appealed. The city council may also remand the appeal to the zoning board of adjustment or the planning commission with directions for the zoning board of adjustment or planning commission's further consideration of the matter. If the city council upholds, reverses or modifies a final decision made by the zoning board of adjustment or the planning commission, the city council shall adopt at the public hearing or within thirty (30) days of the public hearing its written findings and conclusions. The city council's written findings and conclusions shall be considered the city council's final decision for purposes of any appeal of the city council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

18.80.060 Notice of Appeal Requirements.

The notice of appeal required to be filed under this Chapter shall include all of the following information:

- A. A description of the final decision being appealed.
- B. The date of the final decision being appealed.
- C. The name, address, telephone number and relationship of each appellant to the subject of the final decision being appealed including a statement for each appellant as to the appellant's qualification for being considered a party-in-Interest under this Chapter.
- D. For all appeals, except those filed by members of city council, a description the grounds for the appeal of the final decision, including specific allegations of error as required in Section 18.80.030.B. For notices of appeal filed by members of city council, the notice must contain the general description of issues to be considered on appeal as required by Section 18.80.030.C.
- E. In the case of an appeal by more than one (1) appellant, the name, address and telephone number of one (1) such appellant who shall be authorized to receive, on behalf of all appellants, any notice required to be mailed by the City to the appellants under the provisions of section 18.80.040 or section 18.80.050.

18.80.070 Cost of Appeal

In all appeals under this Chapter except those filed by two or more members of the planning commission or those filed by two or more members of the city council, the appellant shall be charged a fee for the cost of the appeal as such fee is established by city council pursuant to Code section 3.04.025. The city council may establish a fee for each level of appeal.

18.80.080 Record on Appeal

The record provided to the planning commission or city council for appeals filed under this chapter shall include a record of any previous proceedings before a board, commission or other city staff

decision maker, including without limitation, all exhibits, writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the board, commission or other city staff decision maker at any previous proceedings. A video recording of the zoning board of adjustment hearing or planning commission hearing is not required as part of the record on appeal provided summary minutes of such hearings are included as part of the record.

18.80.090 Procedure at Hearing

- A. At the appeal hearing, the presentation of argument regarding the appeal shall be made in the following order, subject to the discretion of the Chairperson or Mayor relating to limitations in time and scope, or allowances accommodating adequate presentation of evidence or opportunity for rebuttal:
 1. Explanation of the nature of the appeal by City staff;
 2. Appellant's presentation of evidence, testimony and argument in support of the appeal;
 3. Presentation of evidence, testimony and argument of the applicant if the applicant is not the appellant; or, if the applicant is the appellant, presentation of evidence, testimony and argument by any city staff member or other party-in-interest in opposition to the appeal.
 4. Public comment;
 5. Rebuttal presentation by the appellant; and
 6. Motion, discussion and vote by the board, commission or city council.
- B. No person making a presentation or providing testimony at an appeal hearing shall be subject to cross-examination except that members of the planning commission or city council and the City Attorney may at any time make inquiries for the purpose of eliciting information and for the purpose of clarifying information presented.
- C. In the event of multiple appeals involving the same subject matter considered by the planning commission or city council, the Chairperson or Mayor, in his or her discretion, may modify the procedure contained in Subsection (A) above so as to expedite the hearing of such appeals.
- D. The city council shall consider an appeal based upon evidence submitted at the public hearing, the record on appeal, the relevant provisions of the Municipal Code and Charter, and the grounds for appeal cited in the notice of appeal. Grounds for appeal raised for the first time at the public hearing, and therefore not raised in the notice of appeal, shall not be considered by the city council in deciding the appeal. (Ord. 5581 § 37, 2011)

EXHIBIT G.1

A. PURPOSE OF THE PROJECT

The purpose of this project is to provide Loveland with an appropriate mix of housing types and uses in a well-planned residential development. With this development, key roadway, bikeways and infrastructure systems are improved and completed. Interconnectivity of streets and bike and walkways between the existing, surrounding communities and Garden Gate will be established according to the City of Loveland Master Land Use Plans.

GARDEN GATE PLD will create a great addition to the City of Loveland through the following characteristics:

- Uniquely attractive - the beautiful mountain views and open space throughout the development, creates a sense of community for residents.
- Provides a variety of lifecyle and housing options through the implementation of varying lot sizes.

B. Site Introduction

GARDEN GATE PLD is a property primarily situated in South East portion of the City of Loveland, Colorado. Songbird Meadows is directly West of East First Street borders the development in the North, non-irrigated farmland lies to the east, and steep slopes of the Little Thompson River borders the development to the South. The General Geographic location of the site is 19.15N, 86W of the 6th P.M. County of Larimer, Colorado. The area of this project included in this Final Development Plan is located on +/- 68 acres.

The property has been farmed since approximately the turn-of-the-century. Over the past 50 years, crops have consisted of alfalfa, wheat, barley, beans and corn. The land is no longer farmed by the owner. These projects proposed plan includes the creation of 188 single family residences, 2 plus acre park, open space and buffer areas along East First Street and the electric substation. Landscaping and buffer areas along East First Street and the electric substation will follow the City of Loveland's buffer standards. These areas will incorporate formal and informal planting of trees and shrubs. Early projects in the design will be incorporated into the design. This area will be maintained by the Farmers Irrigation Ditch, East First Street, The Garden Gate Association's (Association) shall maintain the open space area and farmland buffer areas. In addition, play and recreation areas will be provided by the Association in conformance with the City of Loveland's requirements.

C. Site Design Concepts

1. Overall Design Concepts for this development are as follows:

- Create a residential development which conveniently conforms to the needs of the existing community and future adjacent developments.
- Provide for a roadway system which efficiently and safely connects the site to existing roadways and provides residents access to internal open space and play areas. This will encourage walking and biking for close-in residents, thereby helping to reduce street traffic and pollution.
- Provide a development which will enhance adjacent residential developments by locating site uses and connection between the two.
- Carefully planned landscaping will enhance the project by creating visual buffers, accenting amenities and overall sense of place.
- Meet the stated goals of the City of Loveland Master Land Use Plan.

2. Parcel Concepts

The total development area of the project submitted as a Final Development Plan is 68 gross acres and 34.36 net acres. The total developed land, including ROW areas is 66 acres. There are 20.22 acres (30%) of open space and play areas, 33.64 acres (49%) of ROW and 14.14 acres (20%) of net residential acres. The overall proposed gross density of the site is 2.76 dwelling units per acre, net density is 2.75 dwelling units per acre.

The Final Development Plan for Garden Gate PLD will develop single family home sites only. It is anticipated that this project will be constructed in 1 to 3 year time frame. Each home will encompass one or more of the following: single family dwelling, detached lot, detached lot, townhome, Phases 1-3 currently contains one or well and task homes. No residential building permits shall be issued without the proper removal and razing of the old building.

The largest lot size within Garden Gate is 1.759 square feet in size, the smallest lot size is 6,000 square feet and the average lot size is 8,000 square feet.

3. Land Use Categories and Definitions

The overall site design concepts for this Final Development Plan (FDP) are: single family residential, streets and open space will generally build the residential neighborhoods. Landscaped setbacks and buffer zones will be established along all arterial roadways and areas of negative influence. The number of dwelling units in a residential area will be allowed and will be designed in accordance with the development standards outlined in this plan.

4. Neighborhood Structure

As shown on the FDP site plan, all proposed land uses within the FDP are for single family residential. Residential streets and open space will be used to build the residential neighborhoods. Landscaped setbacks and buffer zones will be established along all arterial roadways and areas of negative influence. The number of dwelling units in a residential area will be allowed and will be designed in accordance with the development standards outlined in this plan.

5. Wetlands

The project area consists of a nearly level to gently rounded topography overlain by fertile soils that are supported by the farm operation. This project is currently bisected by the Farmers Irrigation Ditch. This ditch is currently being used and will be used in the future. Ditch crossing agreements and construction drawings for these crossings have been prepared as not to negatively impact the operation of the Ditch.

Cader Creek Associates prepared an Environmentally Sensitive Areas Report (ESAR) for the subject property. The initial ESAR for the project was completed in February of 2003 and updated for this submittal.

Wetlands on the property are associated with (1) the Farmers Irrigation Canal, and (2) seeps along the face of the topographic break way of the FPA, Boyd Substation. The development is located within the DPA 64-2000 basin as defined by the City of Loveland Master Drainage Plan. The development will include sites, storm sewers, swales, and detention ponds that will adequately detain and release storm water runoff in a manner that will eliminate offsite impacts. The development will not negatively impact storm water drainage utilities. When constructed the proposed development will comply with the Adequate Community Services ordinance outlined in the Loveland Municipal Code, Section 16.14.10.

The storm drainage water quality ponds depicted on the drainage plan for this development shall be governed by the Association. The storm drainage water quality ponds established for the lot and the community areas are to be located in the Big Thompson River and River Basin. Water is collected via storm sewers, trickles ponds, and sheet flow in 2 steples facilities. One of the facilities will be located within the Big Thompson River Basin and the other facility details and releases from the Farmers Irrigation Ditch. All storm water drainage systems will conform to the requirements of the City of Loveland.

Each owner of a lot shall maintain the elevation, grading, and drainage that is approved by the City of Loveland and the ACC. Prior to the issuance of a Certificate of Occupancy, the owner shall deliver to the City of Loveland and to the ACC a certificate from a certified professional engineer certifying that the top of the foundation drainage plan is approved by the City of Loveland.

The storm drainage water quality ponds depicted on the drainage plan for this development shall be governed by the Association. The storm drainage water quality ponds established for the lot and the community areas are to be located in the Big Thompson River and River Basin. The water will be responsible for the lot and the community areas. The lot elevation elevation be lower than shown on this plan without approval of the City of Loveland and the ACC. Prior to the issuance of a Certificate of Occupancy, the owner shall deliver to the City of Loveland and to the ACC a certificate from a certified professional engineer certifying that the top of the foundation drainage plan is approved by the City of Loveland.

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GARDEN GATE - FINAL DEVELOPMENT PLAN - NARRATIVE

B. Fire and Police

The development will be serviced by the Loveland Fire and Police Departments with service areas as determined to be appropriate. Streets will be designed to accommodate emergency vehicles. The Garden Gate system is designed to provide interconnectivity to the adjacent areas in the existing subdivisions. This interconnectivity of streets is important to the Loveland Fire and Police Departments ability to provide quick response times within the area.

9. Schools

The developer will be serviced by the Thompson (E-2) School District, specifically the following schools:

Mondani View High School

Conard Middle School

Winn Elementary School

South First Street borders the development in the North, non-irrigated farmland

to the east, and steep slopes of the Little Thompson River borders the development to the South. The General

Geographic location of the site is 19.15N, 86W of the 6th P.M. County of Larimer, Colorado.

The area of this project included in this Final Development Plan is located on +/- 68 acres.

10. Parks and Open Space

Maintenance of all open space, wetland areas and all other common play and landscaped areas and buffers shall be provided by the Association established for the Garden Gate PLD. Water for all irrigated areas will be provided by the City of Loveland.

F. Landscaping and Fencing

1. Overall Concept

The landscape plan is based around having a sense of connection and visual unity throughout the project while providing buffers between the proposed areas where possible. Fencing should not distract from the overall ownership of the property. The landscape design intent for Garden Gate takes inspiration from natural plant material to create a sense of community. In particular, the various building types proposed should not compete for attention but rather blend to create sense of community.

4. A minimum setback is proposed for the proposed areas adjacent to the Farmers Irrigation Ditch. This will be maintained from riparian wetland habitat to protect the habitat and maintain the integrity of the Big Thompson River corridor. A greater buffer setback is not recommended for this area because the existing topographic break at the south property corner should be preserved unless there is a potential human safety risk from falling debris or trees or limbs. A 30 foot construction buffer distance and underground utilities should be maintained around the tree's drip lines to preclude any possible disturbance to the tree's root systems. It should be ensured that these trees currently lie within the Farmers Irrigation Ditch, East First Street and the Thompson River. No minimum setback is proposed for the proposed areas adjacent to the Farmers Irrigation Ditch. This will be maintained from riparian wetland habitat to protect the habitat and maintain the integrity of the Big Thompson River corridor. A greater buffer setback is not recommended for this area because the existing topographic break at the south property corner should be preserved unless there is a potential human safety risk from falling debris or trees or limbs. A 30 foot construction buffer distance and underground utilities should be maintained around the tree's drip lines to preclude any possible disturbance to the tree's root systems. It should be ensured that these trees currently lie within the Farmers Irrigation Ditch, East First Street and the Thompson River. No minimum setback is proposed for the proposed areas adjacent to the Farmers Irrigation Ditch. This will be maintained from riparian wetland habitat to protect the habitat and maintain the integrity of the Big Thompson River corridor. 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B. Site Introduction

GARDEN GATE PUD is a property primarily situated in South East portion of the City of Loveland, Colorado. Songbird Meadows is directly West, East First Street borders the development to the North, non irrigated farmland lies to the east, and steep slopes of the Little Thompson River border the development to the South. The general geographic location of the site is in the north half of Section 19, T5N, R68W of the 6th PM, County of Larimer, Colorado. The area of this project included in this Final Development Plan is located on +/- 68 acres.

The property has been farmed since approximately the turn-of-the-century. Over the past 50 years, crops have consisted of alfalfa, wheat, barley, beans and corn. The land is no longer being farmed by the owner. The project's proposed plan includes the creation of 188 single family residences, a 2 plus acre park, open space and greenbelts and adequate buffering of East First Street and the electric substation. Landscaping and buffer areas along East First Street and the electric substation will follow the City of Loveland's buffer standards. In open space areas and buffer yards a naturalistic design approach will be incorporated into the design. This area will incorporate formal and informal plantings of trees and shrub beds. Entry project monumentation will be located at the entrance of the project on East First Street. The Garden Gate Community Association ("The Association") shall maintain the open space area and buffer plantings. In addition, play and recreation areas will be constructed and maintained by the Association in conformance with the City of Loveland's requirements.

Garden Gate Final Development Plan Narrative Sheet L2 highlighted section (Site introduction).

Garden Gate Final Development Plan Narrative Sheet L2 highlighted section (site introduction)

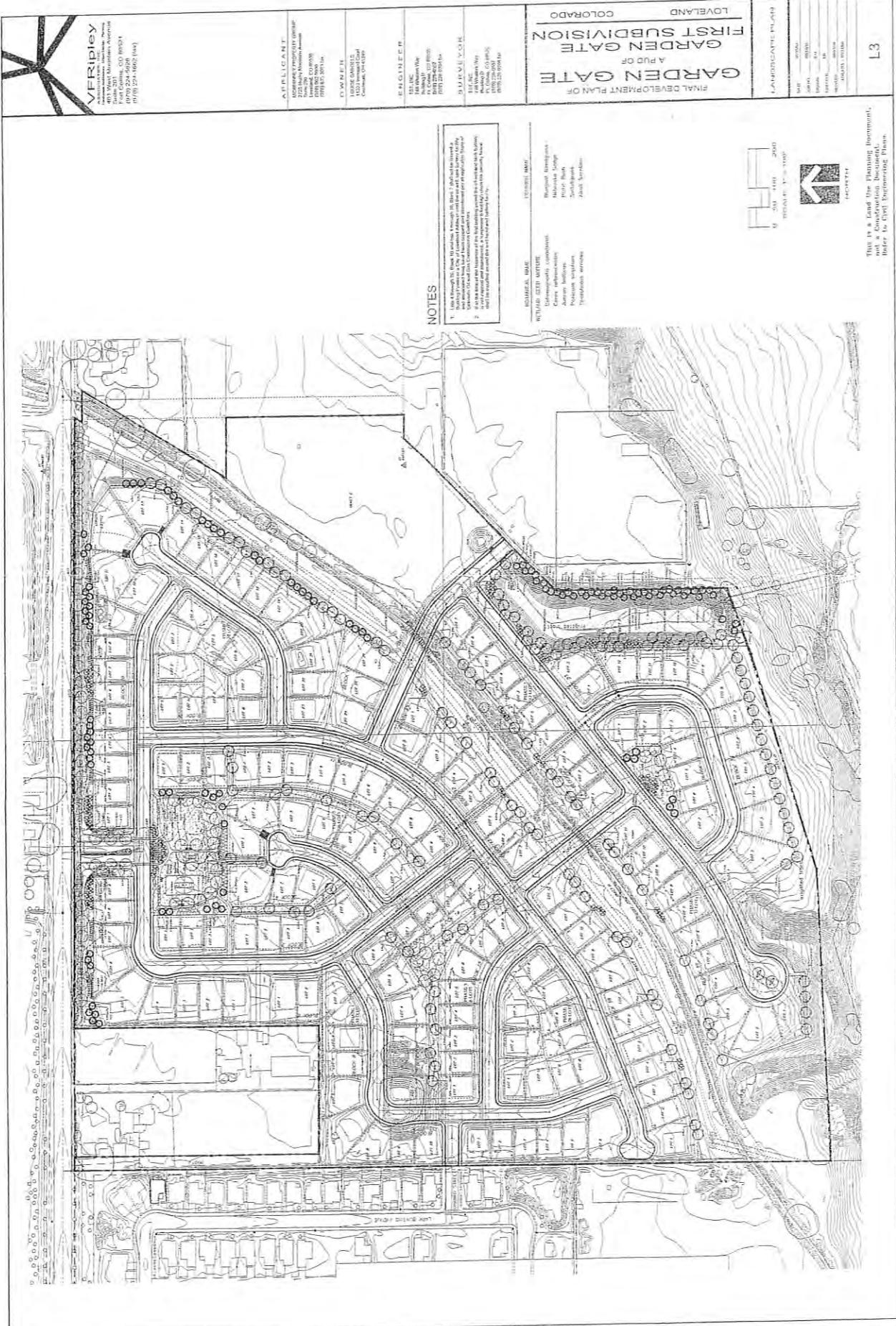
F. Landscaping and Fencing

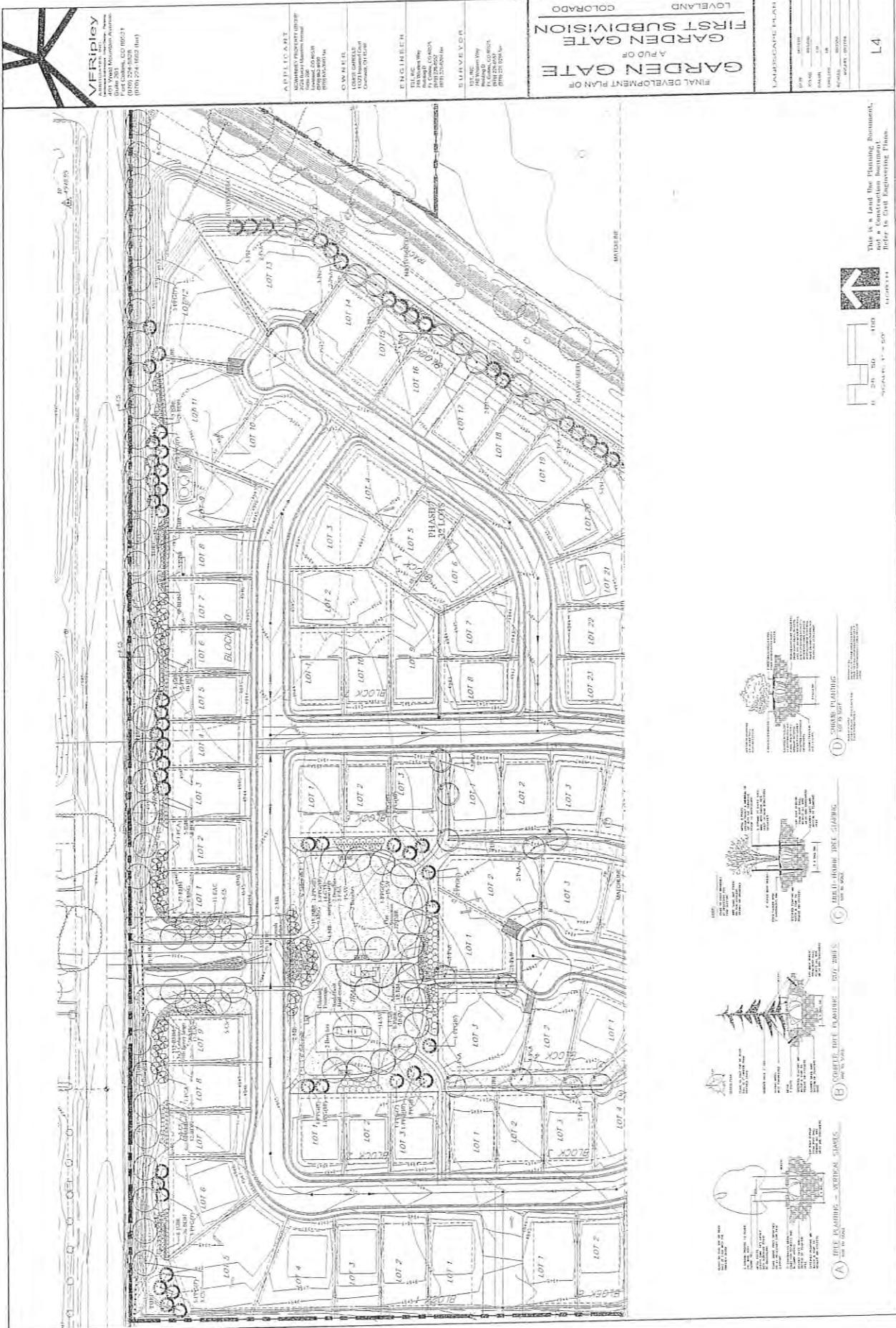
1. Overall Concept

The landscape plan is based around lending a sense of connection and visual unity throughout the project while providing buffers between the proposed uses where logically desired. Fencing should not detract from the overall design, but rather be used as a design element where desired, and as a screen for any element which would detract from the overall image of the project. The landscape design intent for Garden Gate takes inspiration from natural plant communities and wetlands areas currently found on and adjacent to the site. The various building types proposed should not compete for attention, but rather blend to create a sense of community. Consistency in design should support a smooth transition between the proposed uses on the subject property and between those uses and adjacent properties and uses. All areas of negative influence shall be carefully screened from view. Special consideration shall be given to the siting of a residence with emphasis on the relationship to existing grading, preservation of natural site features and the relationship of neighboring sites. Landscaping adjacent to roadways will be naturalistic, with curvilinear beds of shrub groupings and clusters of ornamental trees. The main entry into Garden Gate will include two stone or brick veneer columns, accompanied with ornamental and evergreen trees, and plantings of annuals, perennials and ornamental grasses. Natural areas that are to be reestablished, will receive seed mixes, and be allowed to naturalize again. Areas designated for recreation and adjacent to roadways will be a maintained landscape, using trees, shrubs, perennials, mulches, sodded turf and in-ground automated irrigation system.

Garden Gate Final Development Plan Narrative Sheet L2 highlighted sections (Landscaping and Fencing)

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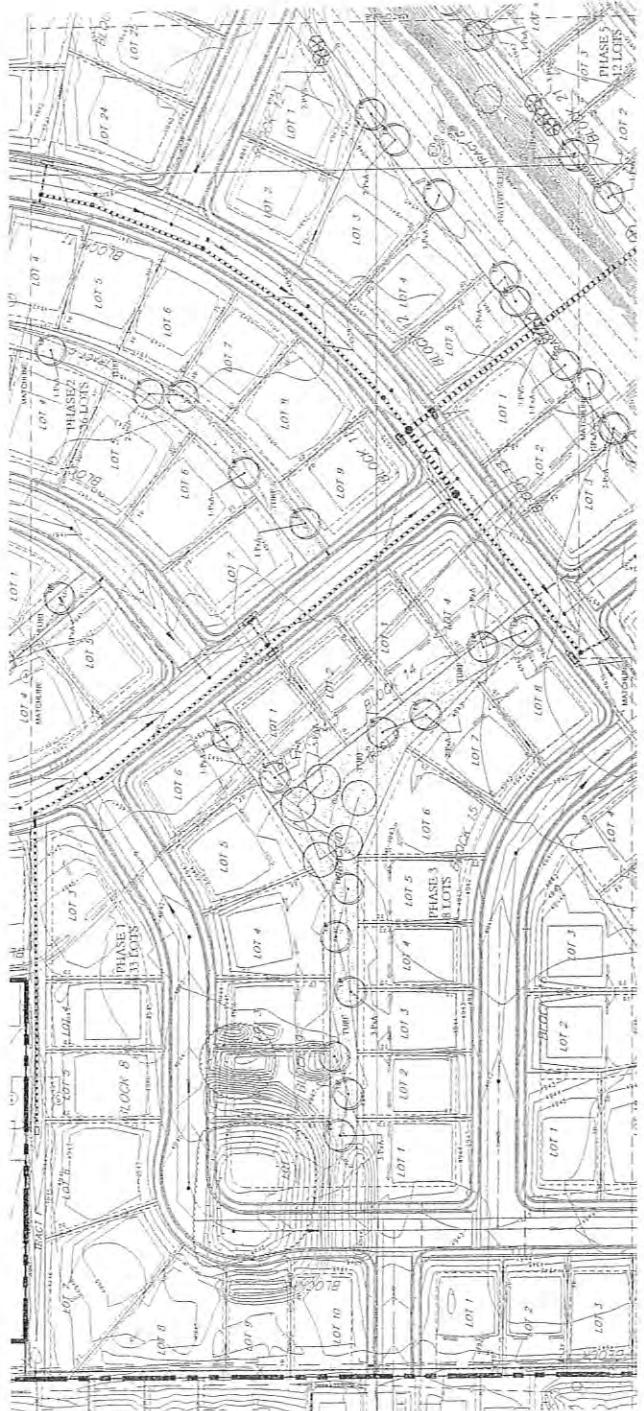






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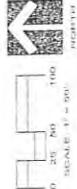
FINAL DEVELOPMENT PLAN OF		GARDEN GATE	
A PUD OF		FIRST SUBDIVISION	
GARDEN GATE		LOVELAND	
SUBDIVISION		COLORDAO	



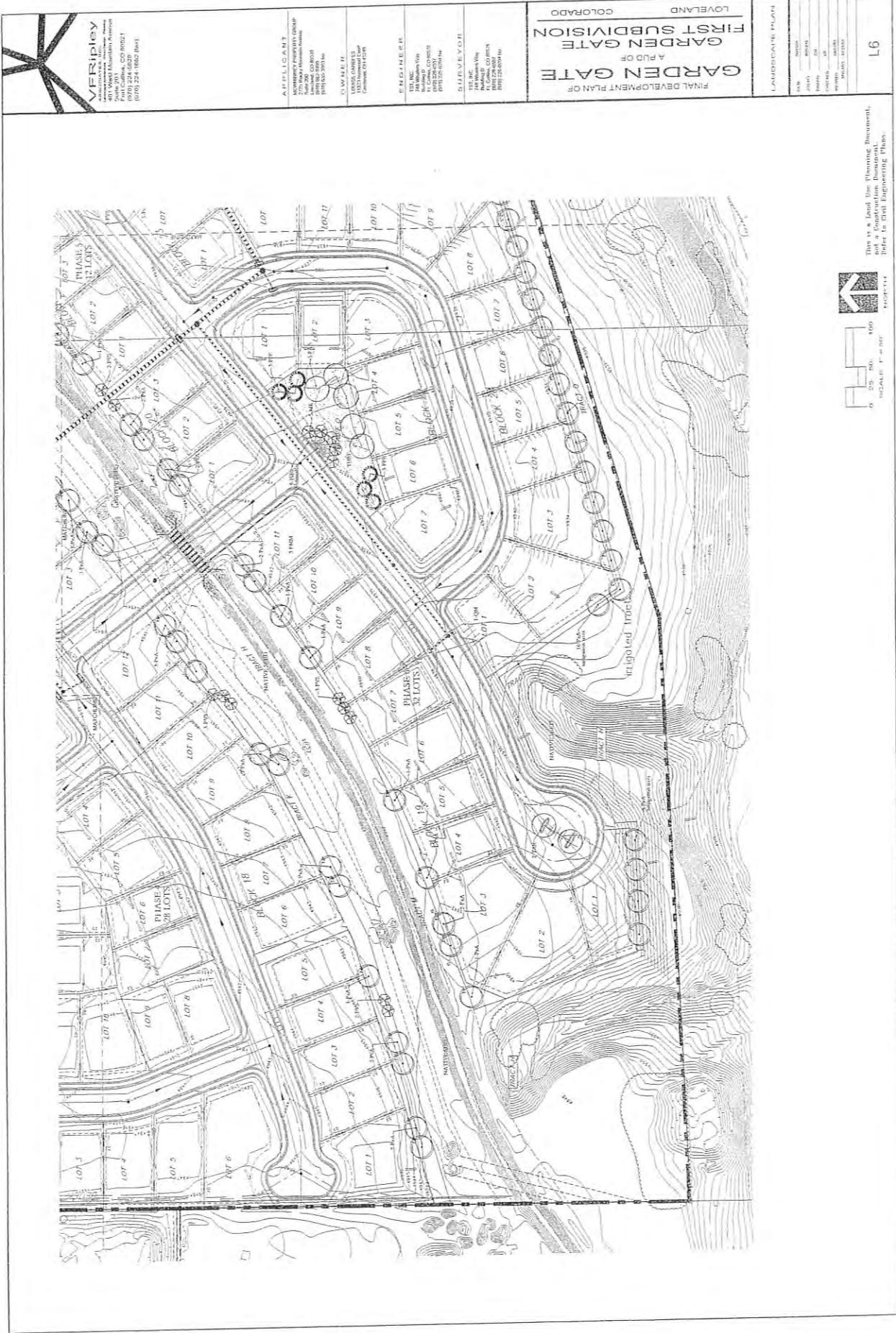
PANTLIST

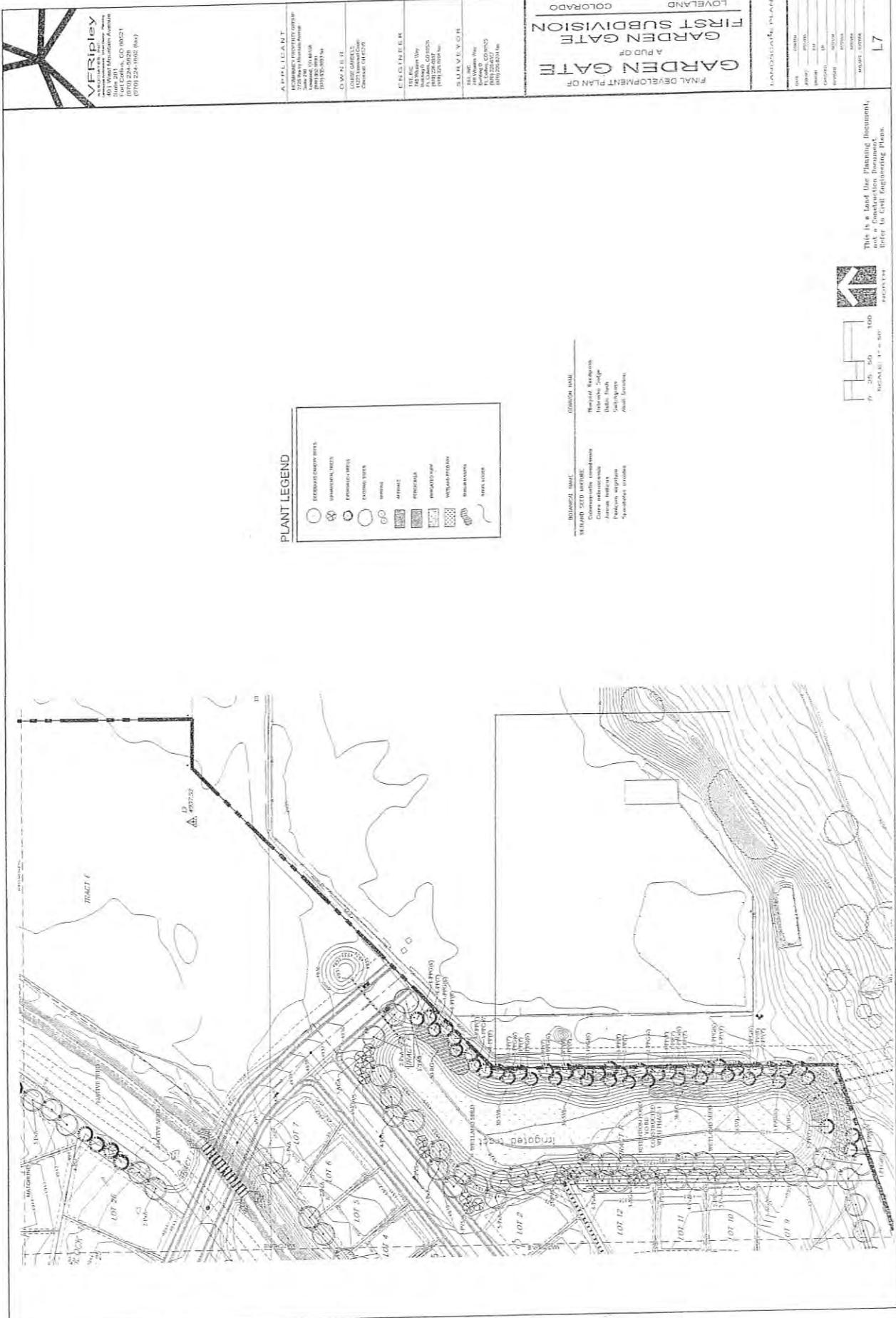
PLANT LEGEND

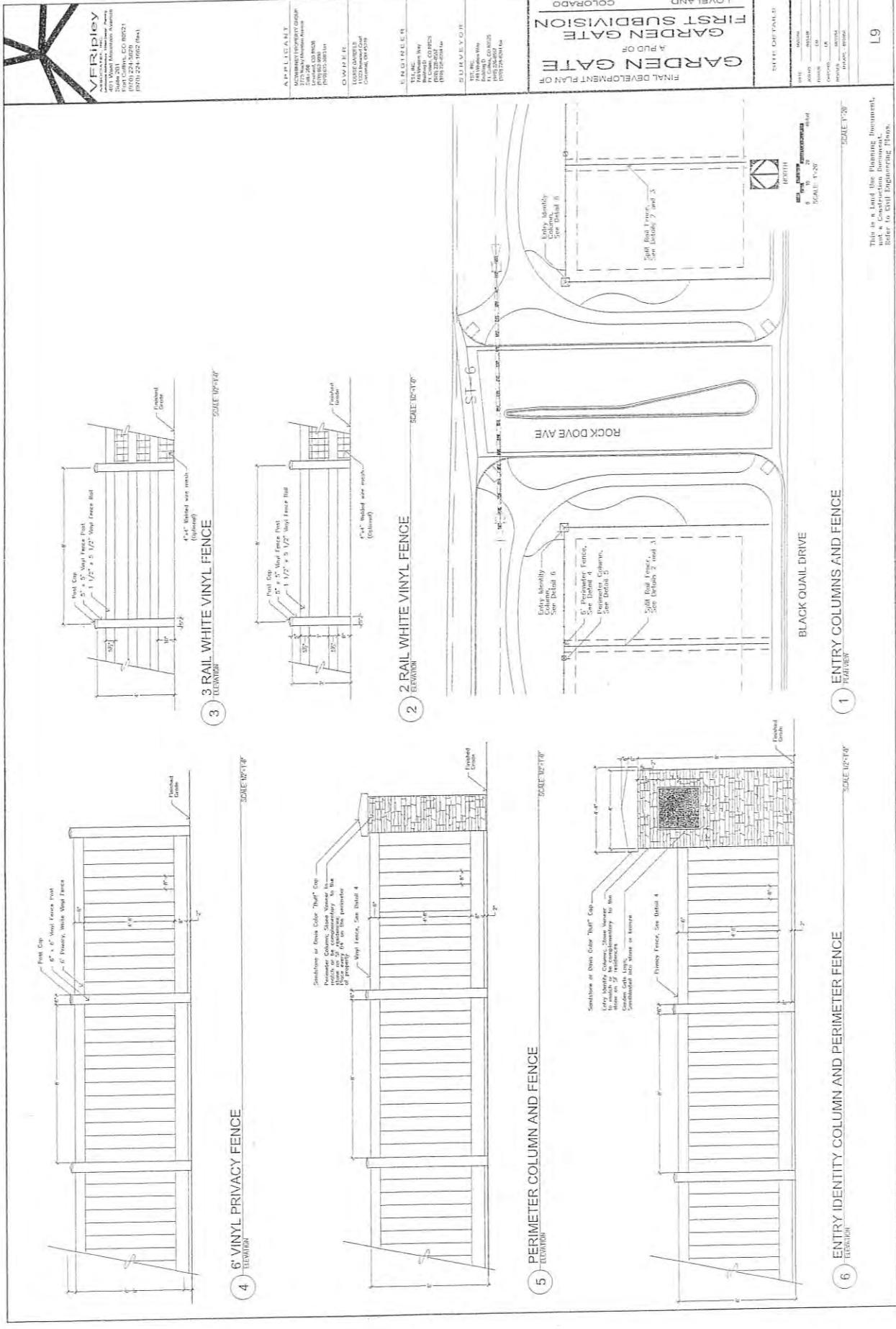
PANTING NOTES

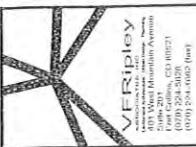


This is a Land Use Planning Document
not a Construction Document.
Refer to Civil Engineering Plans









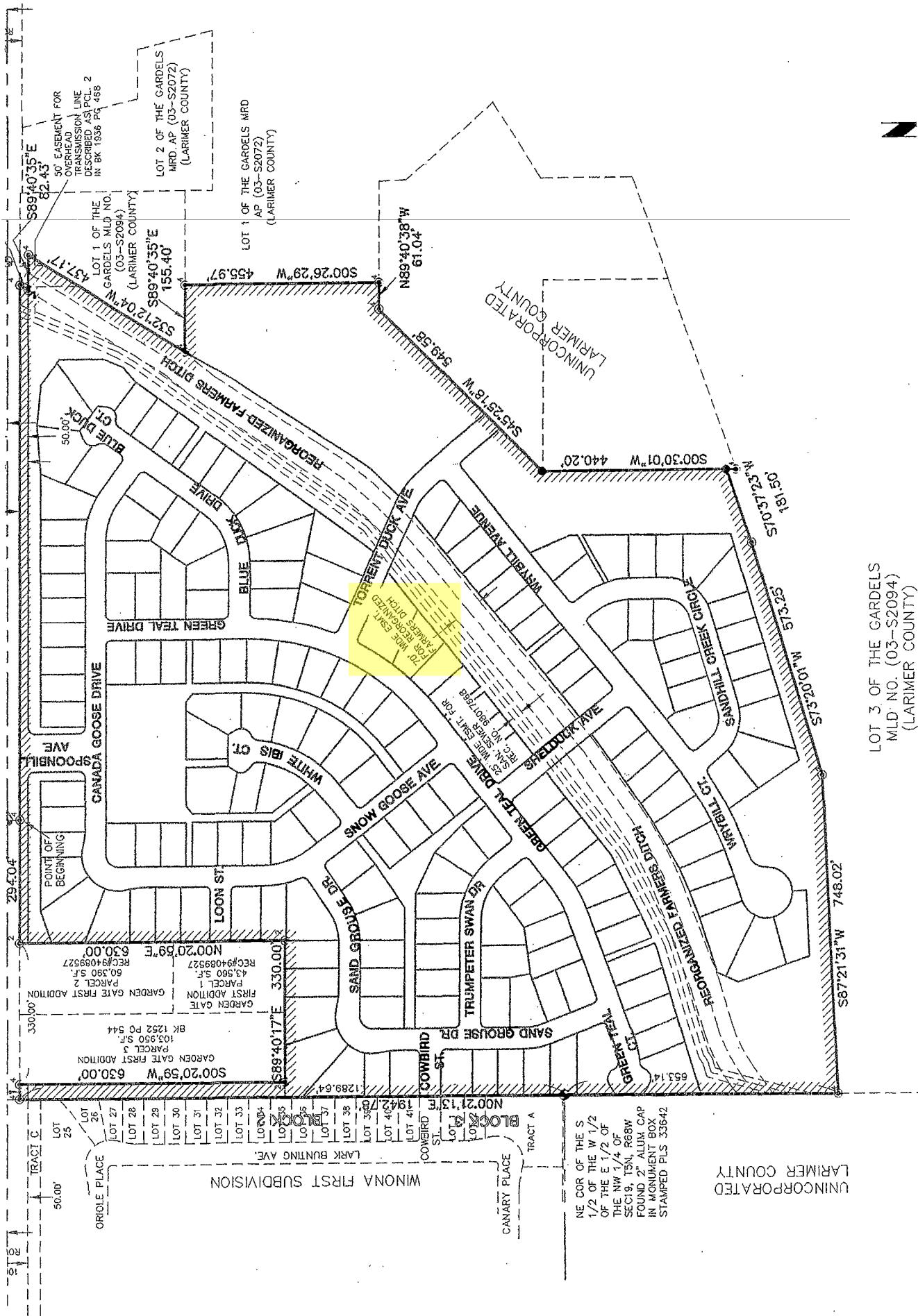
GARDEN GATE FIRST SUBDIVISION

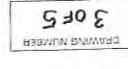
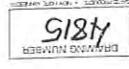
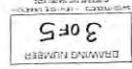
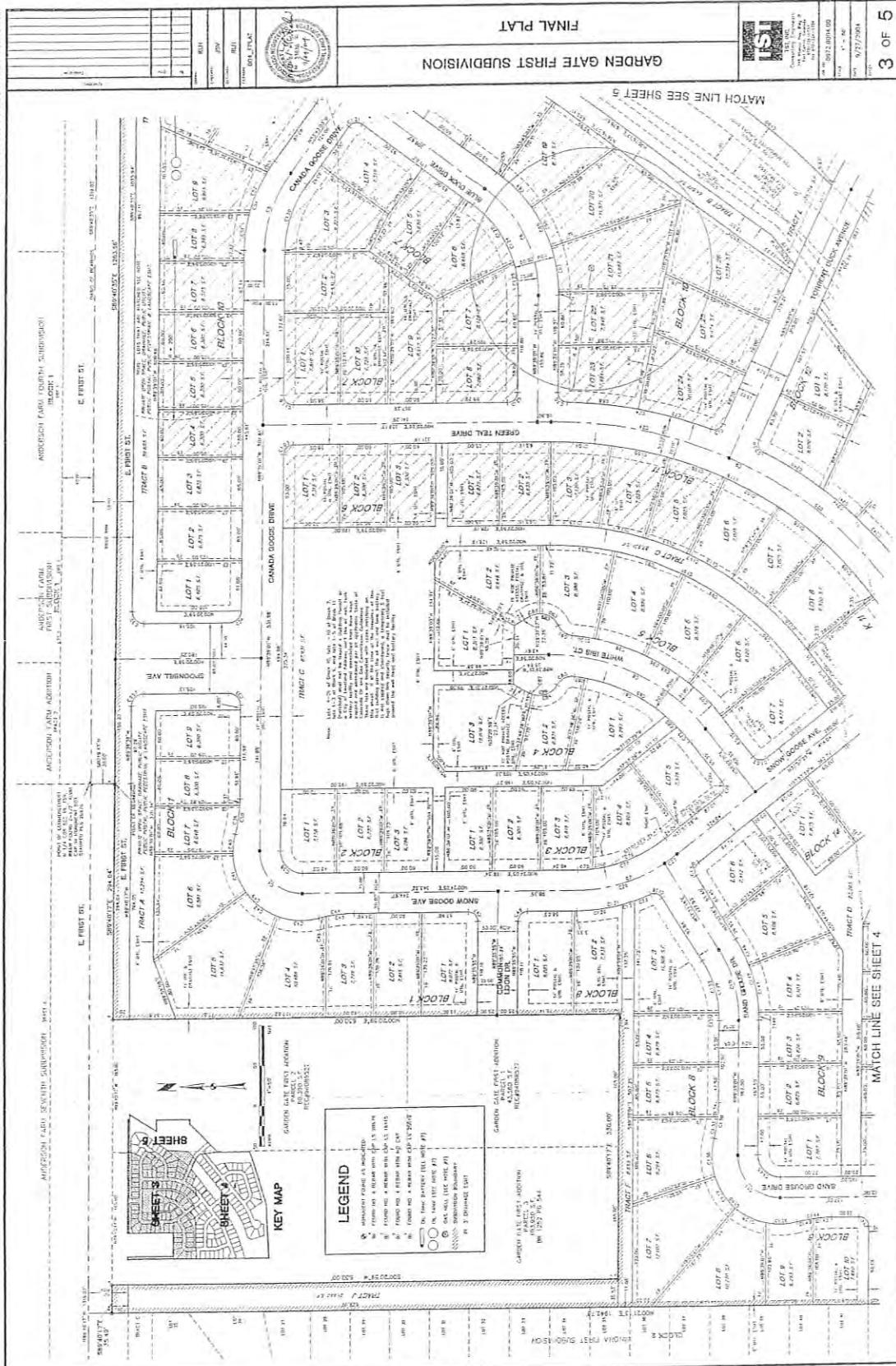
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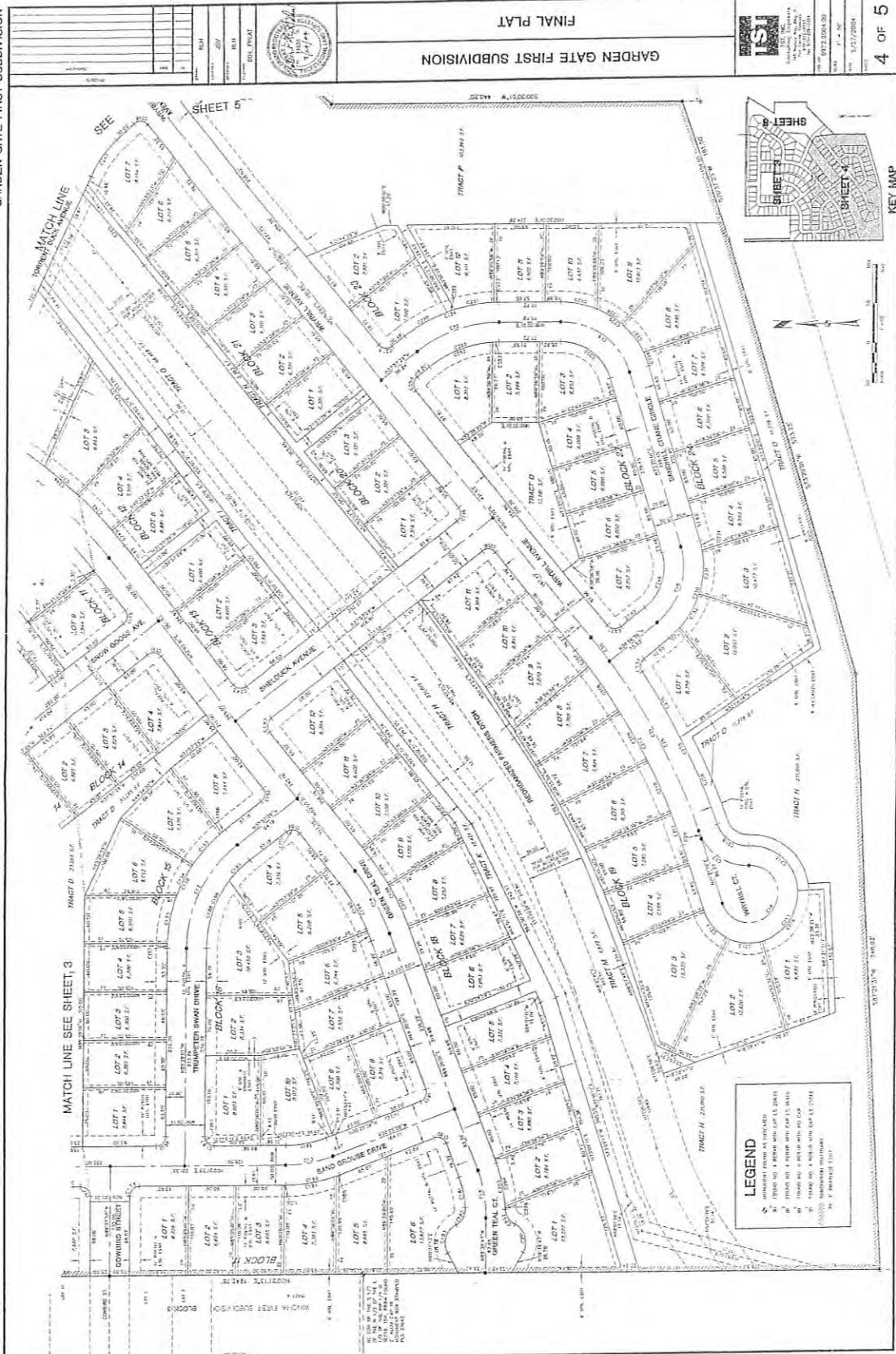
1. For all information regarding Title, Easements, Rights-of-way of Record, and terms or conditions affecting this property, TST Inc., Consulting Engineers relied upon Title Policy ~~Exhibit A~~ prepared by Security Title Guaranty Company effective Sept. 20, 2004 at 7:30 A.M. This does not constitute a title search by TST Inc.
2. The private drain line described in Book 1212, Page 230 does not run here according to land owner and existing field evidence.
3. All residential lot side and rear yard drainage easements are to be privately maintained by the individual lot owners. All storm and detention pond drainage easements are to be privately maintained by the Homeowners Association.
4. Tracts A-J, P, and Q are approved for use as private open space, public utility, public postal, public pedestrian, drainage and landscape easements. These tracts will be owned and maintained by the Homeowner's Association.
5. Tracts K and L are approved for use as private open space, public utility, public postal, public pedestrian, drainage, irrigation, and landscape easements. These tracts will be owned and maintained by the Homeowner's Association.
6. Tracts M, N, and O are approved for use as private open space, public utility, public postal, drainage, and irrigation easements. These tracts will be owned and maintained by the Homeowner's Association.
7. The Homeowner's Association shall also maintain all landscaping within portions of right-of-ways which are not adjacent to individual lots, including median islands and cul-de-sac entries.
8. Street centerline monuments to be set at all intersections, points of curvature, and points of tangency upon completion of street construction.
9. Lots 1-3 of Block 6, Lots 1-10 of Block 7, Lots 4-26 of Block 10, and Lots 1-5 of Block 11 shall not be issued a Building Permit or a City of Loveland Address until the oil well, tank battery facility and associated lines have been capped and abandoned per all applicable State of Colorado Oil and Gas Commission Guidelines. These lots are indicated with cross hatching on sheets 3 and 5. If at the time of the issuance of the first building permit the oil well and tank battery is not capped and abandoned, a temporary 6 foot high chain link security fence shall be installed around the well head and battery facility.
10. The Ditch Company has an easement for its ditch and has authority to cut and remove trees within its right-of-way and it is acknowledged by the owners of the property in the Subdivision that the Ditch Company will, at an appropriate time, remove any and all such trees on the property. The owners of the property in the Subdivision acknowledge that the property owners and successor owners may not plant or otherwise landscape the ditch right-of-way. The Ditch Company also has the authority to install and maintain a road along each ditch bank for its purposes.
11. The property owners may not place any fence within the ditch right-of-way, and particularly across the right-of-way, and the property owners shall not to install any gates or fences on the ditch company right of way without the prior written approval of the Ditch Company. Any fences approved by the Ditch Company along the ditch easement must be fire proof and stock-proof to prevent damage by ditch cleaning by burning, humans and livestock and other sources to the ditch. There will not be permitted any livestock watering in the ditch. There will not be permitted any pumps in the ditch. Cattle guards instead of gates should be utilized instead of gates.
12. The property owners acknowledge and understand that there may be subsurface waters that arise in the area of this development and that there are periods of time when, due to water flowing within the ditch system and otherwise, that portions of the property receive significant amounts of subsurface water that is very near to the surface, or resides on the surface. Due to this problem, the utility of certain portions of the property for construction of structures could potentially be unavoidable. The Ditch Company has no plans to alter its operations as it would cure this surface and subsurface water issue. Ditches may overflow and flood adjoining property and improvements. Property owners shall be solely responsible for all water that overflows the ditch and the Ditch Company shall not be liable for damage caused to any property or improvements due to water overflowing the ditch.
13. The property owners shall preserve the irrigation and drainage patterns existing [or as changed under the Final Drainage Plan] on the date of recording of the plat so that the quality of water entering the ditch from irrigation and from precipitation and other sources be maintained, and so that there is no change in rate, amount, point or type of drainage into the ditches that will occur. The property owners shall monitor and identify any pollutants or other hazardous materials that enter the ditch and should agree to stop any such deposit in the ditch system.
14. The property owners acknowledge that: 1) No livestock watering, swimming, tubing, canoeing or other use of the ditch or water in the ditch is allowed; 2) No dumping of refuse, including but not limited to household garbage, waste materials, grass clipping, tree and shrub prunings, motor oil, chemicals, pesticides or herbicides is allowed; 3) No pumps for lawn or other irrigation are allowed in the ditch; 4) No use of the ditch easement for hiking, biking, horseback, motorcycle, off road vehicles or other motorized or non-motorized vehicle shall be allowed.
15. No crossings of the ditch are permitted without the prior written consent of the Ditch Company and compliance with the rules, regulations and requirements of the Ditch Company.
16. Notice is hereby given that all portions of land depicted on this final plat lie adjacent to or are in proximity of the City of Loveland Wastewater Treatment Plant. Waste water treatment plants may from time to time produce odors resulting from the treatment process.
17. The following storm drainage components will be owned and maintained by the Homeowner's Association: Detention Ponds 1 and 2; Storm sewer lines ST-1, ST-5, ST-6, ST-7, ST-8, ST-9.
18. This project is subject to a development agreement which has been recorded in the real property records of Larimer County.
19. The word "Certify" or "Certification" as shown and used hereon is an expression of professional opinion regarding the facts of the survey, and does not constitute a warranty or guaranty, express or implied.
20. Irrigated Tracts. Tracts A, B, C, D, I, K, M, N, O, P, and Q shall be irrigated.
21. Non-irrigated Tracts. Tracts E, F, G, H, J, and L shall not be irrigated.
22. The Chubbuck ditch runs from West to East across Tracts A and B. The historical rights to convey water across the property have not been affected by, and shall not be affected by the subdivision of this property, or any subsequent activities on this property.

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GARDEN GATE FIRST SUBDIVISION

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