

DATE: July 14, 2010

TO: Loveland Police Dept.

FROM: Ed and Steve Klen

RE: Violation of the Loveland Municipal Code

Detective,

Throughout this letter, pages 1-5, and with the aid of some exhibits, we wish to demonstrate to you the plain and simple fact that we were charged CEF's (Capital Expansion Fees) contrary to what the LMC (Loveland Municipal Code) deems proper.

As the amount of the CEF's we were illegally charged is so great, we request that you give this matter the time and consideration it deserves, the amount of the fees we were over-charged exceed \$197,966.15, and with interest this amount is growing daily. Please see **exhibit 1** attached to this letter. This exhibit is relatively brief but it depicts line item accounting. The paperwork to support this accounting is available but it needs some explanation to make perfect sense.

I will begin with telling you that this project had gone through a Special Review as deemed necessary by the City of Loveland Planning Department, this Special Review was successful and all of the requirements made by the city were met and exceeded.

I will go on at this point to inform you that none of the conditions of this special review, either by code or agreement, **required** us to exercise the **option** to locate into this building any of the tenants for which we sought the *permission* to do so, nor is there any provision of the code, whether it relates to a special review or not, requiring us to pre-pay for a user that has not even been established, remember, the possible users we were discussing with the city as it pertains to this special review, were hypothetical. The Special Review simply cleared the way for special uses should those needs materialize. As a matter of fact, if the options

granted to us through the Special Review were not acted upon in 3 years, those options are terminated and the type of user allowed is only that of which is allowed as a use by right, see [exhibit 2](#). Exhibit 2 spells out the kind of users/uses we could locate onto the property without having to get special permission; this is referred to as a use by right. Should you desire to read up on this section of the LMC as it pertains to Special Reviews you may do so by reading Title 18, chapter 18.40 of the Loveland Municipal Code, I have not included it in this package.

The building in which these potential uses were to be allowed was issued an Industrial Core & Shell permit on 6/16/2005, see [exhibit 3](#), permit #04-1836, at which time the “Permit Fees” were paid. The permit fees cover all of the expenses incurred by the city as they pertain to the “Core & Shell”. A Core & Shell permit can in no way, in any way shape or form, be issued any type of “Certificate of Occupancy”, be it temporary or otherwise, as a matter of fact, a “Tenant Finish Permit” cannot even be *issued* until the Core & Shell permit is given a “Letter of Completion”, also see [exhibit 3](#), and it is this tenant finish plan that then establishes a user and a use, then based on that information a proper CEF can be established.

Throughout the entire life of this “Core & Shell” permit, from issuance, through final inspections and completion, there are no tenants or uses identified or allowed, thus no way of determining what rate of CEF’s should be administered, yet we were charged for these “potential uses. This Core & Shell permit does not even allow electricity, plumbing, heating or cooling to be placed in the building as they would pertain to a tenants use, again showing why a Core & Shell permit cannot be issued any form of an occupancy permit.

To charge a tax or a fee prior to establishing a use would not only violate the LMC, but the laws of taxation, it would amount to unjust enrichment of a governing body, in this case charging a citizen a fee or a tax for a service the municipality is not even providing or incurring the expense to do so. In Title 16, chapter 16.38 of the LMC, see [exhibit 4](#), it is crystal clear when these CEF’s may be charged, and throughout this section of the LMC you will note that all of the conditions which allow collection of such fees is accompanied or precluded by a

certificate allowing occupancy. In part, 16.38 requires the payment of these fees, the Capital Expansion fees, prior to requesting final inspection for a permit that will receive a certificate of occupancy or a temporary certificate of occupancy, and as I pointed out earlier, a core & shell cannot be issued any form of an occupancy certificate. We were forced to pay these CEF's prior to getting final inspections for a "Core & Shell". As you can see from **exhibit 5**, the certificate we were issued for the permit in question, emphasizes two things, that it is neither a Certificate of Occupancy and "no use or change of use is authorized by this document". If no use or change of use has been established when this Letter of Completion is given by the city, how then can fees for the untold uses be applied? A "Limited Letter of Completion" is the certificate issued by the city for a core and shell permit such as ours, this particular certificate was issued with an expiration date due to some work still needing to be completed on the core & shell.

We do not stand alone in our understanding of these code provisions, see **exhibits 6 & 7**.

Exhibit 6 is *sworn testimony* from Greg George, Director of Community Services for the City of Loveland. In this testimony he states that the majority of the fees are not due until there is an end use in the building, this majority being the CEF's. Mr. George goes on to say that the fees are not due until a "CO", Certificate of Occupancy. This is important because as I have stated earlier, we were not seeking, nor could we be issued, a certificate of occupancy for a *core & shell*, rather, we would be issued a Limited Letter of Completion, see exhibit 5, stating the completion of the core & shell.

In exhibit 7, Don Williams, City manager for the City of Loveland states, under oath, that Capital Expansion Fees are not due until CO, certificate of occupancy. Mr. Williams goes on to state that collecting these fees for final inspections for a core & shell would seem inappropriate. At the risk of repeating myself over and over, Mr. Williams also confirms my understanding of the LMC.

Loveland has what is called a Construction Advisory Board, CAB. This board is a volunteer board made up of individuals from the building community who

represent a broad cross section of trades, talents and professions. One of the many tasks of the CAB is to routinely examine the various building codes to assure their applicability to Loveland's community. This board also acts as the board of appeals to which a contractor or licensed professional may seek resolve from determinations made by the chief building official Tom Hawkinson. Yet another duty of the CAB is to review the CEF's, [see exhibit 7.2](#), minutes of the January 27, 2010 meeting of the CAB, in this exhibit, note page 3, item #6. In this exhibit, Tom Hawkinson states to board members Bruce Meyer and Bill Stenberg that the CAB reviews CEF's annually and that these reviews are part of the Comprehensive Master Plan for the City of Loveland. The Comprehensive Master Plan is a very in-depth and integral part of planning the city's future.

[Exhibit 7.4](#) is the minutes of the February 24, 2010 meeting of the CAB; note the highlighted section on page 3 of this exhibit. Board member Bill Stenberg asked Alan Krcmarik, Executive Financial Officer for the City of Loveland, when CEF's are due to the city, Mr. Krcmarik responded by saying that they were due at the time of the Certificate of Occupancy. Certificate of Occupancy, not at the time a core & shell is completed, because you cannot occupy a core & shell.

[Exhibit 8](#), the video, is an excerpt from a City Council meeting in Loveland on February 2, 2010 in which Mr. Williams *again* states that the CEF's are not due until a CO is issued. A very interesting part of this same city council meeting is City of Loveland Attorney John Duval not only agrees with Mr. Williams but reiterates it himself. Who is being misled here, me or City Council? Ironically and not at all humorous is the first part of this video, exhibit 8. That was me addressing the council on a matter that I had presented them with in November of 2009, asking for remedy and refund for being charged CEF's prior to a Certificate of Occupancy, they denied me flat out. Then, in the second excerpt of this video, same meeting, both Don Williams and John Duval explain to the council that the CEF's are not due until a Certificate of Occupancy is issued. Yes, you read this correctly, when I explained to council that I should not have had to pay CEF's until occupancy I was told to take a bath, but when council asked Duval and Williams when CEF's are due they both responded that they were not due until occupancy, by code.

Now given what I have been saying throughout this letter and its' exhibits, more precisely that video tape of Mr. Duval at the city council meeting, I want to point out to you Exhibit 9. In exhibit 9 Sunita Sharma, Assistant City Attorney for the City of Loveland states, in part, that the city has consistently interpreted the code to mean CEF's are to be paid at the time of final inspections for a core & shell, a core & shell that does not allow any form of occupancy. Perhaps Ms. Sharma should have spoken to her boss Mr. Duval before releasing a letter that directly contradicts what he stated to the City Council. Perhaps Ms. Sharma should have considered that the statement she made is also in direct violation of the LMC, and that if the City of Loveland has indeed made this their practice for the last ten years, that the city could be faced with refunding a large amount of money to any developers who have built in Loveland. In her letter, exhibit 9, Ms. Sharma claims that we were charged commercial fees based on "information" provided by us when we applied for the permit, nothing could be further from the truth as the permit she is referring to, 04-1836, showed only an *Industrial* core & shell, no tenant finish plans, she also neglected to mention that we were charged *commercial* CEF's for portions of this building that is to this date has never had any tenant improvement plans submitted, and remains empty to this day, July 14, 2010. Ms. Sharma and presumably her boss, John Duval, were right about one thing in this letter, that being that it is only their "interpretation" of 16.38 that allowed them to illegally charge me the wrong fees at the wrong time.

These CEF's are collected by the City of Loveland to offset burden and expenses it incurs due to and based on the needs and demands of a specific type of business. The burden on the city cannot be determined until the actual plans have been submitted, approved and constructed for that specific user. The special review we endured only identifies potential users, users that may or may not materialize. If those users do not materialize we cannot be taxed for them and the LMC specifically states so by saying that until final inspections that will result in a CO or TCO is issued for a specific user, these Capital Expansion Fees are not due.

Below is a list of the evidence I have supplied in support of my claims:

1. The Loveland Municipal Code
2. Sworn testimony from Greg George, Director of Community Services
3. Sworn testimony from Don Williams, Loveland City Manager
4. Video statement made to City Council by Don Williams
5. Video statement made to City Council by John Duval, City Attorney
6. Statement made to CAB by Alan Krcmarik, Executive Financial Officer
7. Statement made to CAB by Tom Hawkinson, Chief Building Official

All of these facts and exhibits clearly and undeniable assert that these CEF's are not due until a certificate of occupancy is sought. I was charged these fees prior to seeking an occupancy permit, the law was broken, and the LMC dictates cause and remedy.

The City of Loveland has been enriched with nearly \$200,000.00 of my money alone, and enriched illegally.

I have included several sections of the Loveland Municipal Code, exhibits 10, 11, 12 and 13. These sections of the LMC spell out what the duties of city staff are and they also spell out the punishment for *anybody* who does not follow or enforce the codes, failure to do so is criminal. Failure to remedy a situation when you know it is wrong is also criminal. In this situation, and very likely many others, it is flat out stealing, remember, Ms. Sharma stated that the city has been doing this for at least ten years.

Ed can be contacted at 970-581-1420

1. Space 1 – Permit #04-106 – Oriental Moo-Do
2. Total square feet of space: 6,667
3. Amount of CEF's charged by city per square foot: \$5.66
4. Line 2 multiplied by line 3: \$37,735.22 (Paid for CEF's)
5. When line 4 was paid: 5/16/2006
6. When line 5 should have been paid: 6/13/2006
7. Difference between line 5 and line 6: 27 days
8. 8% interest compounded annually
9. Line 4 multiplied by line 8 based on line 7: **\$215.04** (interest owed by city)

1. Space 2 – Permit #06-1387 – Gun Range
2. Total square feet of space: 8,944
3. Amount of CEF's charged by city per square foot: \$5.66
4. Line 2 multiplied by line 3: \$50,623.04 (Paid for CEF's)
5. When line 4 was paid: 5/16/2006
6. When line 5 should have been paid: 4/5/2007
7. Difference between line 5 and line 6: 324 days
8. 8% interest compounded annually
9. Line 4 multiplied by line 8 based on line 7: **\$3583.83** (interest owed by city)

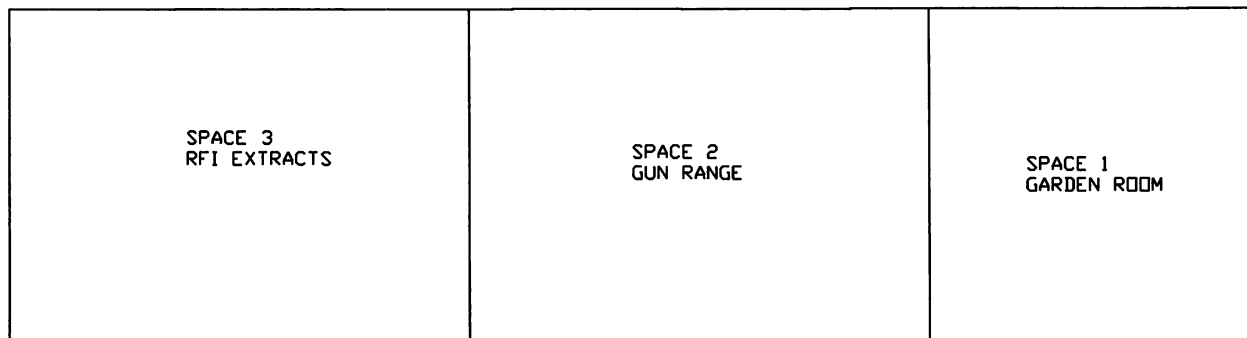
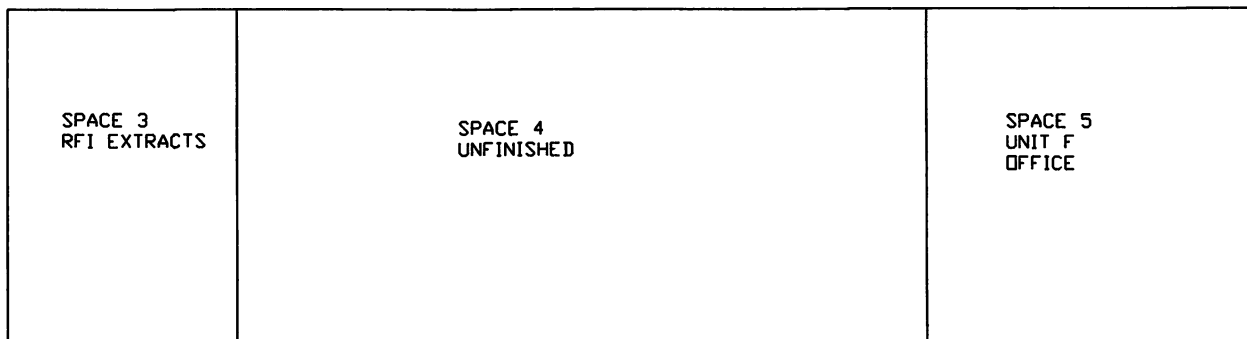
1. Space 3 – Permit #09-607 – RFI Extract
2. Total square feet of space: 13,601
3. Amount of CEF's charged by the city per square foot: \$5.66
4. Line 2 multiplied by line 3: \$76,981.66 (Paid for CEF's)
5. When line 4 was paid: 5/16/2006 — *RR1 Permitted in 2006*
6. When line 5 should have been paid: 5/1/2010
7. Difference between line 5 and line 6: 1446 days
8. 8% interest compounded annually
9. Line 4 multiplied by line 8 based on line 7: \$27,432.34 (interest owed by city)
10. Amount of CEF's that should have been charged per square foot: \$3.03
11. Difference between line 3 and line 10: \$2.63 per square foot
12. Line 2 multiplied by line 11: \$35,770.63 (Over-charges owed by city)
13. Line 12 multiplied by line 8 since line 6: \$540.97 (Interest owed by city)

1. Space 4 – No tenant finish permit to date – Unfinished space – C&S only
2. Total square feet of space: 13,231
3. Amount of CEF's charged by the city per square foot: \$5.66
4. Line 2 multiplied by line 3: \$74,887.46 (over-charges owed by city)
5. When line 4 was paid: 5/16/2006
6. When line 4 should have been paid: Not to this date (7/9/2010)
7. Difference between line 5 and line 6: 1515 days
8. 8% interest compounded annually
9. Line 4 multiplied by line 8 based on line 7: \$28,201.46 (Interest owed by city)

1. Space 5 – Permit #07-468 – I zoning – use by right office space
2. Total square feet of space: 6,667
3. Amount of CEF's charged by city per square foot: \$5.66
4. Line 2 multiplied by line 3: \$37,735.22 (Paid for CEF's)
5. When line 4 was charged: 5/16/2006
6. When line 4 should have been charged: 7/24/2008
7. Difference between line 5 and line 6: 800 days
8. 8% interest compounded annually
9. Line 4 multiplied by line 8 based on line 7: \$6,944.78 (Interest owed by city)
10. CEF's that should have been charged per square foot: \$3.03
11. Difference between line 3 and line 10: \$2.63 per square foot
12. Line 2 multiplied by line 11: \$17,534.21 (Over-charges by the city)
13. Number of days since line 6 to today, 7/9/2010: 715 days
14. Line 12 multiplied by line 8 based on line 13: \$2,855.43 (Interest owed by city)

All highlighted dollar values combined: \$197,966.15

SECOND FLOOR



FIRST FLOOR

Chapter 18.36

I DISTRICT-DEVELOPING INDUSTRIAL DISTRICT

Sections:

- 18.36.000 Purpose.
- 18.36.010 Uses permitted by right.
- 18.36.020 Uses permitted by special review.
- 18.36.025 Site plan review process.
- 18.36.030 Lot area.
- 18.36.040 Yards.
- 18.36.045 Height limitations.
- 18.36.050 Off-street parking area.
- 18.36.060 Special review performance standards.
- 18.36.070 Open space.
- 18.36.080 Applicability.

18.36.000 Purpose.

This district is intended to provide a location for a variety of employment opportunities such as manufacturing, warehousing and distribution, and a wide range of commercial and higher intensity industrial operations. The Industrial District (I) is intended to implement the Industrial (I) category as depicted on the Comprehensive Master Plan Land Use Plan Map. The Industrial District also accommodates complementary and supporting uses such as convenience shopping centers and appropriately located accessory commercial child day care centers. Locations for this zone require good access to major arterial streets. (Ord. 5114 § 1, 2006)

18.36.010 Uses permitted by right.

All uses permitted by right and set forth in this section shall be subject to the provisions of Chapter 18.46. The following uses are permitted by right in an I district:

- A. Administrative, insurance and research facilities;
- B. Experimental or testing laboratories;
- C. Manufacturing, assembly or packaging of products from previously prepared materials;
- D. Manufacture of electric or electronic instruments and devices;
- E. Manufacture and preparation of food products;
- F. Warehouses, distribution and wholesale uses;
- G. Any industrial or manufacturing use similar in character and external effects to above uses;
- H. Utility service facilities;
- I. Retail and wholesale sales of products produced on site or products incidental to such products, provided such use is incidental to the primary manufacturing use;
- J. Minor recycling processing facilities;
- K. Accessory uses which are reasonably required to provide necessary maintenance or security of the principal use, including, a dwelling unit for occupancy as a caretaker's quarters or for occupancy by the business or property owner;
- L. Accessory buildings and uses including commercial child day care centers when incorporated as part of a development project and compatible with surrounding uses;
- M. Antennas, as defined in Section 18.55.020(A), located on an existing tower or structure as provided in Section 18.55.030 and Section 18.55.030 and meeting all other requirements of Chapter 18.55;
- N. Art gallery, studio and workshop including live/work studio and workshop. Such facilities may include the display, sale, fabrication or production of paintings, sculptures, ceramics and other

art media. Limited outdoor fabrication of art work may be permitted subject to special review as provided in Chapter 18.40.

- O. Bar or tavern;
- P. Car wash;
- Q. Clubs and lodges;
- R. Convention and Conference Center;
- S. Domestic animal day care facility;
- T. Food catering;
- U. Funeral home;
- V. Greenhouse;
- W. Health care service facility;
- X. Indoor recreation;
- Y. Light industrial;
- Z. Lodging establishments (hotel and motel);
- AA. Lumber yards with outdoor storage screened as required by Section 4.06 of Site Development Performance Standards and Guidelines;
- BB. Parking garage and parking lot;
- CC. Personal and business service shop;
- DD. Place of worship or assembly;
- EE. Special trade contractor's shop (any outdoor storage screened as required by Section 4.06 of Site Development Performance Standards and Guidelines);
- FF. Medical or professional office/clinic;
- GG. Office, general administrative;
- HH. Outdoor storage subject to Site Development Performance Standards and Guidelines, Section 4.06;
- II. Restaurant standard (indoor and outdoor);
- JJ. Retail store;
- KK. Self-service storage facility;
- LL. Vehicle minor and major repair, servicing, & maintenance;
- MM. Vehicle rentals for cars, light trucks and light equipment;
- NN. Vehicle rentals for heavy equipment, large trucks and trailers;
- OO. Vehicle sales and leasing for cars and light trucks;
- PP. Sales & leasing of farm equipment, mobile homes, recreational vehicles, large trucks & boats with outdoor storage; and
- QQ. Veterinary facility, clinic or hospital; and
- RR. Workshop and custom small industry. Limited outdoor fabrication of products may be permitted subject to special review as provided in Chapter 18.40. (Ord. 5114 § 2, 2006; Ord. 4246 § 1 (part), 1997; Ord. 4236 § 10, 1997; Ord. 4221 § 1 (part), 1996; Ord. 3648 § 4, 1990; Ord. 3630 § 4, 1990; Ord. 1934 §§ 1, 2, 1980; Ord. 1276 § 23, 1973; Ord. 1004 § 11.1, 1968)

18.36.020 Uses permitted by special review.

The following uses are permitted by special review in an I district subject to the provisions of Chapter 18.40:

- A. Any business, commercial, industrial or manufacturing use which by virtue of its site, location, traffic or other external impacts, as determined by the community development director, warrants exceptional review and public hearing, as set forth in Chapter 18.40;
- B. Parks and recreation areas;
- C. Community facility;
- D. Major recycling processing facilities;
- E. Personal wireless service facility as defined in Section 18.55.020(A), located on a new structure, meeting all requirements of Chapter 18.55;

Chapter 16.38

CAPITAL EXPANSION FEES

Sections:

16.38.010	Intent.
16.38.020	Fees imposed.
16.38.030	Change in use credit.
16.38.050	Unlawful to occupy.
16.38.060	Unpaid capital expansion fee-Lien.
16.38.070	Exemption from and credit for fee.
16.38.071	Deferral of Fees
16.38.072	Exemption for Historic Downtown Loveland.
16.38.075	Exemption for certain facilities.
16.38.085	Capital expansion fees for qualified affordable housing.
16.38.090	Reduction in fee for minimal traffic.
16.38.100	Disposition of fees.
16.38.110	Review.

16.38.010 Intent.

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

16.38.020 Fees imposed.

- A. There are imposed capital expansion fees upon every additional dwelling unit of residential development and every square foot of retail, non-retail and industrial development.
- B. Capital expansion fees shall be due and payable as follows:
 1. Except in the case of an accessory dwelling unit, for any activity requiring a certificate of occupancy, the fees shall be due and payable at the time that a final inspection for a certificate of occupancy is requested, except that if a temporary certificate of occupancy or other certificate of occupancy does not issue within thirty days after the call for inspection, the paid fees shall be returned to the party who paid such fees.
 2. Upon a change in the use of property where the new use is in a different category for which additional or higher fees are applicable, such additional or higher fees shall be due and payable at the time that a final inspection is requested, but if no certificate of occupancy is required, then at such time as the new use is actually commenced.
 3. For all other activities for which a certificate of occupancy is not required, including expansion or remodeling which creates additional dwelling units or additional square footage for commercial or industrial use, fees shall be due and payable at the time such additional space is actually occupied, except that a credit shall be received for all fees for the prior use.
 4. Prior to recording any annexation map of property which contains a mobile home which existed on the property on or before July 1, 1984, or which contains the type of structure for which capital expansion fees are currently collected and for which a building permit was issued on or after July 1, 1984.

- C. The director may allow a person to defer payment, of a portion of the capital expansion fees for unfinished space, if any, in proportion to the pro rata amount of such unfinished space. The length of such deferral shall be paid when put into use (when completed), but shall not exceed three years.
- D. Capital expansion fees shall be adjusted annually per Section 16.38.110 and shall be reviewed and approved by resolution of city council at least every five years commencing in 2000. (Ord. 4661 § 1, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.030 Change in use credit.

Whenever an existing use is changed, there shall be a credit in the amount of the then current charges, for the type of use being discontinued, for the capital expansion fee imposed by Section 16.38.020. Such credit shall be applied, first, to the amounts due for such fees on account of any new use established on the same or adjacent premises which are a part of a site being developed or redeveloped, and second, to the amounts due for such fees on account of any new use established elsewhere with buildings moved from the original premises. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.050 Unlawful to occupy.

It is unlawful for any person or entity to occupy or use any real property for any purpose for which a capital expansion fee is due and payable prior to having paid such capital expansion fee. Each day of such occupancy or use shall be a separate offense. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.060 Unpaid capital expansion fee-Lien.

All capital expansion fees shall be a lien upon each lot or parcel of land from the due date thereof, determined as set forth in Section 16.38.070(A), until paid. If such fees are not paid when due, in addition to any other means provided by law, the city clerk shall certify such delinquent charges to the treasurer of Larimer County and the charges shall be collected in the same manner as though they were part of the taxes. The city reserves the right to withhold or revoke any permits, certificates or other approvals to any applicant who is delinquent in the payment of capital expansion fees. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.070 Exemption from capital expansion fees – generally.

The city council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed by the city upon new development, whether for capital or other purposes, upon a finding that such waiver is in the best interests of the public by encouraging activities that provide significant social, economic, or cultural benefits. When a capital-related fee is waived pursuant to this section, the city council shall direct that the waived fee be paid by the general fund or another appropriate fund. (Ord. 5433 § 1, 2009; Ord. 4661 § 3, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.071 Deferral of Fees

The city council may allow for the deferral of fees imposed on new development in the city. The city council may do so by approving by resolution a written agreement entered into with the person owing the fees, which agreement shall contain such terms and conditions as the council determines are in the best interests of the city and provided that the council also determines and finds in the resolution that allowing the deferral of capital expansion fees or any other fees imposed on new development will serve a public purpose. A public purpose may include, without limitation, providing the public with significant social, economic or cultural benefits. In the event that any amounts owed under the agreement are not paid when due and except as otherwise provided in the deferral agreement, such unpaid amounts shall be a perpetual lien upon the real property for which the deferred fees are owed from the date the fees are due under the agreement until paid and such lien shall have priority over all

other liens except those for real property taxes. If any deferred fee is not paid when due, the city may pursue all remedies available to it under the law to collect such fee, including, without limitation, by judicially foreclosing the lien. The city clerk may also certify any delinquent fees and other amounts owed under the deferral agreement to the treasurer of Larimer County and such fees and amounts shall then be collected in the same manner as though they were real property taxes. The agreement may further provide that the city shall have the right to withhold or revoke any building permits, certificates of occupancy, and other city approval relating to the development of the real property for which deferred fees are delinquent in payment. (Ord. 5325 § 1, 2008; Ord. 4918 § 1, 2004)

16.38.072 Exemption for Historic Downtown Loveland.

A. The capital expansion fees (CEFs) imposed by this chapter and any building permit fees imposed upon a construction project by the city, shall not be charged or collected for any construction project located within the boundaries of Historic Downtown Loveland. When a construction project is exempt from capital related fees pursuant to this section, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund, unless the capital-related fee is a utility fee or charge in which case the affected utility fund shall be reimbursed by the general fund. (Ord. 5433 § 2, 2009)

B. As used in this section the term “Historic Downtown Loveland” means that area described as follows:

Beginning at the point of intersection of the centerlines of Washington Avenue and E. 4th Street, then extending north along said centerline to the intersection of the centerline of the alley between E. 7th Street and E. 8th Street, then west along said centerline to the intersection of the centerline of the alley between N. Lincoln Avenue and N. Jefferson Avenue, then extending north along said centerline to its intersection with the intersection with the centerline of E. 10th Street, then west to the intersection with the centerline of N. Lincoln Avenue, then extending north along said centerline to the Great Western/Omni Railroad tracks, then west along said tracks to the intersection with the tracks of the Burlington Northern/Santa Fe Railroad, then north to the east/west extension of the centerline of the alley shown on the Plat of Geist Subdivision, then west along said centerline of the alley to its intersection with the centerline of Garfield Avenue, then south along the centerline of Garfield Avenue to the intersection of the centerline of 2nd Street SW, then to the northwest corner of the Henrickson Addition, then south along the west line of the Henrickson Addition and continuing south to the Farmers Ditch, then east along Farmers Ditch to the intersection of said ditch and the centerline of S. Cleveland Avenue, then north along the said centerline to the intersection of the centerline of 3rd Street SE, then east along said centerline to the intersection of the centerline of S. Jefferson Avenue, then north along the said centerline to the projected intersection of the south property line of the residence at 110 S. Jefferson Avenue, then east along the southern property line of said residence, then continuing east along south property line of the residence at 117 S. Washington Avenue, then east to the intersection of the centerlines of Washington Avenue and the alley between 1st Street SE and 2nd Street SE, then east along said centerline to the intersection of the centerline of Monroe Avenue, then north along the said centerline to the intersection of the centerline of E. 1st Street, then east along the said centerline to the intersection of the centerline of Hayes Avenue, then north along said centerline to the intersection of the centerline of E. 3rd Street, then west along said centerline to the west side of the Loveland/Greeley Ditch, then north along the ditch to the intersection of the centerline of E. 4th Street, then west along said centerline to the P.O.B. (Ord. 4614 § 1, 2001; Ord. 4520 § 1, 2000)

16.38.075 Exemption from capital expansion fees – not-for-profit facilities.

A. The city council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed by the city upon new development, whether for capital or other purposes, 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. When a capital-related fee is waived pursuant to this section, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund, unless the capital-related fee is a utility fee or charge in which case the affected utility fund shall be reimbursed by the general fund.

- B. No certificate of occupancy shall be issued for any not-for-profit facility that obtains a fee waiver pursuant to this section unless a deed restriction or encumbrance, in a form approved by the city attorney, prohibiting the sale of the not-for-profit facility to any person or entity for a use that does not meet the requirements of subsection A. for a period of twenty years from the date on which a certificate of occupancy was first issued for the property. The deed restriction or encumbrance shall contain a provision stating that it is the intent of the parties that the respective rights and obligations set forth in the deed restriction or encumbrance shall constitute covenants, equitable servitudes, and/or liens that run with the land and shall benefit and burden any personal representatives, successors, and assigns of the parties. The deed restriction or encumbrance shall also contain a provision indicating that it automatically expires: (1) if title to property mortgaged by an institutional lender is transferred to the institutional lender, or to the institutional lender’s successor or assign, by foreclosure or deed-in-lieu of foreclosure; or (2) twenty years after the date on which a certificate of occupancy was first issued for the property, provided there is no existing default under the deed restriction or encumbrance. (Ord. 5433 § 3, 2009; Ord. 4661 § 4, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4365 § 1, 1998)

16.38.080 Exemption from capital expansion fees – qualified affordable housing.

- A. The city council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed by the city upon new development, whether for capital or other purposes, upon a finding, set forth in a development agreement, that the project for which the fees would otherwise be imposed is a qualified affordable housing development. When a capital-related fee is waived pursuant to this section, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund, unless the capital-related fee is a utility fee or charge in which case the affected utility fund shall be reimbursed by the general fund.
- B. Exemptions granted pursuant to this section shall be done in accordance with the following tables:
1. If granted for rental housing, the exemption shall be as follows:

Percentage of area median income to be served	Minimum percentage of units in development set aside as affordable housing	Percentage of fees waived for affordable housing only
30%	10%	100%
40%	15%	90%
50%	20%	80%
60%	40%	70%

2. If granted for “for-sale” housing, the exemption shall be as follows:

Percentage of area median income to be served	Minimum percentage of units in development set aside as affordable housing	Percentage of fees waived for affordable housing only
40%	5%	90%
50%	10%	80%

60%	15%	70%
70%	20%	60%
75%	25%	25%
80%	30%	15%

3. Notwithstanding the above provisions of this paragraph B., the city council may increase the percentage of fees waived under this section upon making a finding in its resolution waiving the fees that such percentage increase will serve a public purpose, which public purpose shall be specified in the resolution.
- C. Exemptions granted pursuant to this section shall be effective for one year from the date on which the exemption is granted unless extended by the city council for good cause shown. Any such extension shall be set forth in an amendment to the development agreement approved by resolution of the city council. (Ord. 5433 § 4, 2009)

16.38.085 Capital expansion fees for qualified affordable housing.

- A. As used in this section, the term “application” shall mean a substantially complete application for approval of a qualified affordable housing development that has been submitted to the city in compliance with applicable ordinances, rules, and regulations, and the term “first application” shall mean the original application at the first stage of any process that may culminate in ultimate approval of a site specific development plan for a qualified affordable housing development.
- B. Capital expansion fees, water rights requirements and fees, and any other fees imposed by the city upon a qualified affordable housing development, whether for capital or other purposes (collectively, “development fees”), shall be calculated as of the date the first application for the qualified affordable housing development was submitted to the city. The development fees calculated under this section shall be valid for five years from the date on which the housing development is first qualified as affordable.
- C. For housing developments qualified as affordable on or after July 1, 2009, the following rules shall apply:
 1. At the end of the five-year period set forth in paragraph B. above, the development fees shall be calculated each year thereafter on the basis of those development fees in effect five years prior. This adjustment shall continue each year until the last affordable housing unit within the affordable housing development receives a building permit, or the housing development loses its affordable designation in accordance with subparagraph C.3. below.
 2. In the event any such fees are reduced or eliminated after the date of the first application for the qualified affordable housing development, the owner or developer of the qualified affordable housing development shall receive a credit in the amount of such reduction at the time such fees for the qualified affordable housing development are paid.
 3. At the end of ten years, the housing development shall lose its affordable designation unless at least one affordable housing unit within the housing development has received a certificate of occupancy, in which case the development fees shall continue to be calculated as set forth in subparagraph C.1 above. Notwithstanding the foregoing, any developer that has not obtained a certificate of occupancy at the end of the ten-year period may request that the affordable housing commission consider and make a recommendation to the city council to extend the development’s affordable designation and the fee reduction provided for herein for good cause shown. Any such extension shall be set forth in a development agreement approved by resolution of the city council.

D. For housing developments qualified as affordable prior to July 1, 2009, the following rules shall apply:

1. The housing development shall lose its affordable designation unless at least one affordable housing unit within the housing development has received a certificate of occupancy within twelve years of the date on which it was first qualified as affordable.
2. Notwithstanding the foregoing, any developer that has not obtained, or is not reasonably likely to obtain, a certificate of occupancy before the end of the twelve-year period may request at any time that the affordable housing commission consider and make a recommendation to the city council to extend the development's affordable designation and the fee reduction provided for herein for good cause shown. Any such extension shall be set forth in a development agreement approved by resolution of the city council. (Ord. 5469 § 1, 2009)

E. Takings Determinations.

1. The purpose of this subsection is to provide a procedure for relief, where appropriate, for owners of housing developments qualified as affordable prior to July 1, 2009 ("property owners") who claim that their property has been taken by reason of the application of this Section 16.38.085. The provisions and procedures of this subsection shall be followed to conclusion prior to seeking relief from the courts based upon any claim of an alleged deprivation of due process that causes a taking, or any other taking of real property.
2. The city shall provide property owners with notice of the adoption of this Section 16.38.085 within thirty days of its adoption. Property owners must file a request for relief with the city manager on or before December 31, 2009. When a property owner timely files a request for relief under this subsection, the city manager shall schedule a public hearing for the matter to be heard by the city council no later than sixty days after the date the request for relief is filed.
3. The city council shall conduct the public hearing. The council shall adopt at the public hearing, or within thirty 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. (Ord. 5433 § 5, 2009; Ord. 4522 § 2, 2000; Ord. 5433 § 5, 2009)

16.38.090 Reduction in fee for minimal traffic.

The street capital expansion fee may be reduced for a specific land use if data deemed reliable by the city establishes that traffic for both peak hour and total daily volumes for the property are each less than sixty (60) percent of the traffic assumptions used in establishing the fees for that specific land category in the adopted fee tables. The new fee will be based on a simple average of the data deemed reliable by the city for the property and the traffic assumptions used to establish the adopted fees. (Ord. 4661 § 6, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.100 Disposition of fees.

All fees collected pursuant to this chapter shall be deposited in a public works fund to be created by resolution of the city council, and to be used for the projects therein identified. Such resolution shall be established to comply with the provisions of Section 31-15-302(1)(f)(I), Colorado Revised Statutes. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.110 Review.

Exhibit 4
Page 6 of 7

The fees imposed by this chapter and moneys expended from the public works fund shall be reviewed as follows:

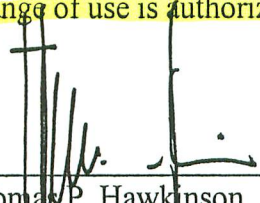
- A. The capital expansion fees shall be adjusted annually, effective January 1 of each year. The adjustment shall be equal to the percentage change in the Construction Cost Index for the Denver area as set forth in the preceding year's September issue of the Engineering News-Record published by McGraw Hill Companies. However, with respect to the street capital fee, the adjustment factor shall be equal to the most current preceding eight quarters' average annual percentage change in the construction costs as determined by the Colorado Department of Transportation Construction Cost Index.
- B. The city manager shall report to the city council, in conjunction with the presentation of the proposed budget, annually, on the actual and proposed expenditures and projects accomplished and to be accomplished from the public works fund. (Ord. 4753 § 1, 2003; Ord. 4661 § 6, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)



LIMITED LETTER OF COMPLETION

DATE: June 23, 2006
CONTRACTOR: Diverse Construction Company
JOB ADDRESS: 697 N. Denver Avenue
PERMIT NUMBER: #04-1836
DESCRIPTION OF THIS PHASE OF THE WORK: Core & Shell
EXPIRATION DATE: July 22, 2006

The work authorized under the above noted permit number is substantially complete, as to the structure only, as shown on the approved plans for said work. This is **NOT** an approval or acceptance by the City of other requirements or required improvements on the site outside the structure, and all such other requirements or improvements attached to the permit number noted above must be completed as indicated thereon before the City shall deem the permit conditions to be fully satisfied and approval given. **This is ALSO NOT a Certificate of Occupancy and no use or change of use is authorized by this document.**



Thomas P. Hawkinson
Building Official



Contractor or Responsible Party

Inspection History Attached

1 A. Yes.

2 Q. Okay. And you granted them a deferral of the
3 fees?

4 A. For an unfinished portion of the building, yes.

5 Q. Okay. And when you did this, did you have to
6 run this by city council?

7 A. I don't know.

8 Q. Okay. Do you recall having sought public
9 comments on this variance?

10 A. I don't recall that.

11 Q. Okay. Or a council session?

12 A. I don't recall that either.

13 Q. Okay. And what was your authority at the time
14 to defer the fees?

15 A. I think fees are due -- well, I know fees are
16 due when we have an end use in the building and we
17 issue -- we do our final inspections. And in this case,
18 according to the Exhibit 192, it appears that fees were
19 not due, so it wasn't really a waiver, it was an
20 interpretation of when fees are due. And in this
21 particular case, they were not due, although this exhibit
22 from Donna Smith, she does use the word "waiver."

23 Q. Okay. So because there was no tenant finish in
24 that section of the building, there wouldn't be a CO in
25 that section of the building, it would just be a limited

1 letter of completion?

2 A. Yes.

3 Q. Okay. And fees aren't due until CO?

4 A. The majority of fees aren't due until CO, until
5 final inspections.

6 Q. Have you ever discussed with Mr. Hawkinson his
7 giving verbal approval to contractors or developers?

8 A. Can you be more specific?

9 Q. Yeah. I'm sorry. Verbal approval to work
10 ahead of a permit.

11 A. Yes.

12 Q. Okay. You've discussed that with him?

13 A. Yes.

14 Q. And what's the substance of those discussions?

15 A. That as a chief building official, he has the
16 authority to do that.

17 Q. Okay. And what do you base that on?

18 A. I let him make that decision, him being Tom
19 Hawkinson.

20 Q. There came -- let's back up a bit.

21 We talked earlier about your becoming aware
22 through Mr. Hawkinson that work was going on at the
23 Anasazi project Phase 2, correct?

24 A. Yes.

25 Q. Before the permit had issued?

1 Q. Okay. And if this building were in an industrial
2 area, a warehouse would be a use by right?

3 A. Yes.

4 Q. And the industrial fees would apply to this
5 permit?

6 A. Yes.

7 Q. Okay. If you will look at I think it will be the
8 fourth page of this --

9 A. You're back on 161 now?

10 Q. I am, yes, and actually you may not even need
11 to. You may know the answer to this.

12 When are the capital expansion fees imposed?

13 A. Capital expansion fees are payable upon CO,
14 certificate of occupancy.

15 Q. So for a core and shell, there wouldn't be a CO?

16 A. Unless there were some circumstance where a
17 partial CO were issued for the core and shell without the
18 interior finishes. I don't know if that even could happen
19 but if the building gets occupied, I would assume that some
20 level of the fees are due.

21 Q. Okay. And ostensibly if it were occupied, there
22 would have to be some form of a CO, a TCO or a CO?

23 A. Yes.

24 Q. But they wouldn't be due and payable until then?

25 A. Correct.

1 Q. So if they are collected when inspections are
2 called for a core and shell, when final inspections are
3 called for, that wouldn't be the appropriate time?

4 A. I would have to get further advice to be certain
5 but it would seem inappropriate to me.

6 Q. Okay. When you were working in the development
7 services division, were you ever involved in a split CEF
8 fee situation?

9 A. I can remember more than one, yes.

10 Q. So it's not unheard of?

11 A. Correct.

12 Q. We talked this morning a bit about the Mercantile
13 and as originally permitted, that was going to be partially
14 retail and partly storage?

15 A. My recollection is it was going to be partly
16 retail and part of it not used at the current time.

17 Q. Okay. So in that situation if the issue with
18 somebody miscalculating the CEFs hadn't arisen, they would
19 have been charged the CEFs on the portion that was going to
20 be retail once they were ready to occupy it and a CO was
21 issued?

22 A. I don't know.

23 Q. Okay. Are you familiar with the Tipton report?

24 A. Yes.

25 Q. Okay. That was issued in March of 2005?

CAB Minutes
January 27, 2010

Roll Call:

Board Members Present: David Eads, Gregg Meisinger, Bruce Meyer, Dan Rodgers, Chris Rosenberger, Jon Rudolph, David Stamps, Garold Smith, and Teri Volk.

Board Members Absent: Bill Stenberg

City Staff Members Present: Thomas Hawkinson, Building Official

I. Call to Order

Vice-Chairman Teri Volk called the meeting to order at 6:01 PM.

II. Approval of Minutes:

The motion to approve the minutes of the previous meeting was made by Bruce Meyer and seconded by Garold Smith. The motion passed unanimously.

III Reports:

a. Citizens: none

b. Board and Commission Members:

The appointment, by City Council, of someone to fill the vacancy on the CAB cannot be done until the vacancy on the council has been filled after the election on March 3, 2010. Council will then name member to be liaison the CAB. After the CAB liaison has been named, interviews for the CAB vacancy may be held. The interview committee consists of the CAB Chairperson, Tom Hawkinson and the City Council liaison.

c. City Staff Thomas Hawkinson:

Tom Hawkinson noted that the City Boards and Commissions banquet will occur in February at the Mariana Buttes Clubhouse and that the CAB members need to decide which 2 members will represent the CAB.

d. Contractor Licensing:

Tom Hawkinson reviewed the charts and asked for comments from the CAB members. He noted that the Contractor License renewal numbers were lower this last year due to the 2 years renewal cycle. Gerald Smith asked that some of the colored backgrounds be made lighter so that the lettering can be seen. Tom stated that this will be done.

e. FRAC- No report.

IV. New Business

a. Election of new CAB officers and liaison to FRAC

The election of new CAB officers will be held in May, as has been done in the past years. Bruce Meyers asked that since John Prescience, the Chairman, has submitted his resignation, who will act as Chairman. The Vice Chairman will move up to Chairman and the Secretary will act as Chairman, should the acting Chairman be absent. This condition will be true until the new member has been appointed and the new officers are elected.

Tom Hawkins on stated that there has been only one application submitted for the CAB vacancy and asked the Board to mention the vacancy to others. .Bruce Meyer noted that he feels an Engineer is needed on the board, since so many of the items brought before the board contain engineering subjects.

b. Update of the evaluation of the Building Permit Process:

Tom Hawkinson stated that Bob Tipton Consultants are studying ways to make the permit process easier for users.

Five workshops have been scheduled ON Fridays. These will include staff and private sector members to arrive at recommendations to be made to the current process to make the entire process easier for the users. Mr. Tipton will come to a CAB meeting to resent the findings after these public meetings are completed and the results have been finalized. The private sector meetings begin on March 5, 2010. Greg Meisinger asked when the resulting changes will me started. Tom Hawkinson stated that the changes will be incorporated slowly into the system.

V. Old Business:

a. 2009 CAB Work Program

1. Review of 2009 International codes subcommittees' progress

Tom Hawkinson noted that a revised copy of the City of Loveland handbook for Boards and Commissions was included in the last CAB mail packets. He asked all CAB members to read the handbook and be familiar with it.

Tom Hawkins on stated that each code review sub-committee will complete a summary of the revised items. These changes will be brought to the CAB for review and discussion.

Jon Rudolph stated that the Residential IRC review is 90% completed and that the most controversial change is the new requirement for fire sprinklers in all residential construction. To noted that this item will require joint meetings with the CAB and the Fire Department.

Bruce Meyer noted that the new requirement for fire sprinklers in stores where furniture is sold will also need public input.

Tom Hawkins on stated that the revisions will be finalized by staff and that he and Ken will put the items in a form for presentation the CAB. He will try to have this done for the February CAB meeting.

2. 2010 CAB/Building Contractor & Use Tax Training

The use tax training schedule is on the web under the Building Divisions page. Four sessions are scheduled. The classes are the same as last year.

3. 2009 Fall CAB/ Contractor Newsletter

The fall newsletter has been issued. Items are needed for the spring issue of the newsletter. Tom asked Garold to check with John Crescibene on the progress of the CAB article.

4. Online Services for Applicants Plan review & inspection

The online services are still tied into the information in the Phase II update of the software system. This will be completed in June. Tom Hawkinson will provide a definite schedule.

5. Comprehensive Master Plan

The Comprehensive Master Plan is a complete view of how Loveland should be and who will take action to make it happen. The document interfaces with all aspects of local government. The CMP was created in 2003, is updated every 5 years, and presented to Council. The Public Safety Section requires the adoption of all new codes. The City Long Range Planning Department is the driver of the program.

6. Other old Business

Chris Rosenberg stated that at the meeting of Sept.2009, Tom noted that the Building Dept. had started a waiver of building permit fees for owners of residences. He asked for information regarding the results of this action. Tom Hawkins on stated that the city waived the fees for 400 owner occupied residence permits: 104 permit fees were waived and 165 use tax fees were waived. It was a very successful program.

Bruce Meyer noted that at the last CAB meeting, Bill Stenberg asked for a review of the CEFs. Tom Hawkinson stated that the CAB does CEF/SIS reviews annually. Bill was put in touch with the City Finance Office. Tom noted that the review of the fees is part of the Comprehensive Master Plan.

VII. Adjournment

The motion for adjournment was made by Bruce Meyer and seconded by Dan Rodgers. The motion passed unanimously and the meeting adjourned at 6:42 PM.

Respectfully submitted,
G. Smith,
Secretary

**CAB Minutes
Feb. 24, 2010**

Roll Call:

Board Members Present: Gregg Meisinger, Bruce Meyer, Chris Rosenberger, David Stamps, Bill Stenberg, Garold Smith, and Teri Volk.

Board Members Absent: David Eads, Dan Rodgers, and Jon Rudolph.
City Staff Members Absent: Thomas Hawkinson, Building Official

City Staff Members Present: Ken Wiseman, Building Department

I. Call to Order

Vice-Chairman Teri Volk called the meeting to order at 6:03 PM.

II. Approval of Minutes:

The following corrections were made to the minutes:

Under IV, New Business, (a) second sentence, delete the "s" on Bruce Meyer's name and change the "P" to a "C" in Prescibene, in the third add "vice" in front of the second Chairman, and in the first sentence of the next paragraph, correct "Hawkinson".

Under V. Old business, (1) correct Hawkinson in the 4th paragraph, (6), add an "er" to Resenberg, and correct Hawkinson.

The motion to approve the minutes of the previous meeting, with the corrections, was made by Bruce Meyer and seconded by Chris Rosenberger. The motion passed unanimously.

III Reports:

a. Citizens: none

b. Board and Commission Members:

The appointment, by City Council, of someone to fill the vacancy on the CAB cannot be done until the vacancy on the council has been filled after the election on March 3, 2010. Council will then name member to be liaison the CAB. After the CAB liaison has been named, interviews for the CAB vacancy may be held.

The interview committee consists of the CAB Chairperson, Tom Hawkinson and the City Council liaison.

c. City Staff Thomas Hawkinson:

Tom Hawkinson asked Teri Volk, Vice-Chairman, to report on City Boards and Commissions banquet that she and David Eads attended. She stated that she considered it to be a good meeting and was impressed with the quality and attendance of the CAB City Council liaisons. She recommends that the new City Council liaison be someone with a construction background. The last Council liaison, Glen Rousey, did have such a background and it was very beneficial to the CAB.

d. Contractor Licensing:

Ken Wiseman reviewed the charts and noted that the 2010 Renewal year is the first of the 2 year renewals.

Bruce Meyer put forth the idea of having all contractors renew their licenses at the same time, which is the method the State of Colorado uses with licenses issued by the Department of Regulatory Agencies. Chris Rosenberger noted that this method may increase the burden on the city staff. Ken Wiseman noted that most contractors do not renew their licenses until they have work to perform and that they cannot renew on line. Bruce Meyer asked Ken to discuss the idea with Tom Hawkinson, building official, and report back to the CAB next month.

Chris Rosenberger noted that the lettering on the colored pie charts is still hard to read and that either the colors need to be lightened, or the lettering made darker.

Bruce Meyer suggested using white lettering on the colored charts. Chris Rosenberger suggested having the colors in all of the charts be the same for each license in every chart.

e. FRAC

Merlin Green, Fire Marshall with Loveland Fire and Rescue, introduced himself and stated that Everett Roberts will continue as the FRAC representative to the CAB. Bruce Meyer asked how the Fire Department is progressing on the Fire Code reviews. Merlin Green stated that they have had preliminary meetings with the Building Department and that the CAB will be updated on all activities between the two departments. He stated that he wants there to be a partnership between the two entities.

IV. New Business

a. Item not on the agenda

Allan Krcmarik, Executive Financial Officer with the City of Loveland, stated that he is in the process of analyzing the CEFs used currently. He also noted that the McWhinney fee revisions were a result the city working with developers to ease the CEF burden on projects.

Fire CEFs are currently being studied to see how the dollars compare the actual needs. He stated that it is possible that there is no demand for new stations due to be building slow down.

He stated that in November construction cost fees went down in volume and that his department is studying revising the fees and basing the fees on the housing type instead of cost. The department is also studying basing the CEFs on car trips to and from a residential unit. He will return to the CAB with an update.

He stated that his department is in the process of determining the "build out" of areas in the city for which CEFs are being collected. The City of Loveland, based upon the current area, will be built out in 25 years and will have a population of 100,000. The department is determining the ratios of build out the amount of fees being collected.

The trails for the city are currently 85% completed, which indicates the fees collected the trails can be reduced. It is also possible that the Fire CEF.s could be reduced due to the build out of areas.

From 1984 thru 2009 the City grew at a rate of 2.7%, and the current growth rate is much lower.

The City of Loveland has been using the CEFs for over 30 years.

Bill Stenberg asked when the CEF amounts are due to the City. It was noted that all CEFs are due at the time of the Certificate of Occupancy.

b. Proposed amendments to the 2009 International Plumbing, Mechanical & Fuel Gas Codes

The CAB members were provided with copies of the proposed code revisions.

Ken Wiseman stated that the Building Department will need a motion for the CAB to authorize them to prepare the revisions for presentation to City Council.

David Stamps asked if the change outs of LP gas furnaces is covered in the new code revisions. Ken stated he will check into this and report back to the CAB.

Ken Wiseman stated he will have the final version ready for the next BAB meeting.

c. Update of the evaluation of the Building Permit Process (Tipton Consultants)

Tom Hawkinson stated that Bob Tipton Consultants are studying ways to make the permit process easier for users.

Five workshops have been scheduled on Fridays. These will include staff and private sector members to arrive at recommendations to be made to the current process to make the entire process easier for the users. Mr. Tipton will come to a CAB meeting to present the findings after these public meetings are completed and the results have been finalized. The private sector meetings begin on March 3, 2010.

V. Old Business:

a. 2009 CAB Work Program

1. Review of 2009 International codes subcommittees' progress

Tom Hawkinson is working on preparing all code revisions for presentation the CAB for their review.

2. 2010 CAB/Building Contractor & Use Tax Training

The use tax training schedule is on the web under the Building Divisions page. Four sessions are scheduled. The classes are the same as last year.

3. 2009 Fall CAB/ Contractor Newsletter

Teri Volk has a copy of the CAB newsletter which was prepared by John Cresibene for submission to the newspaper. . Chris Rosenberger requested a draft for his review prior to submittal to the paper.

4. Online Services for Applicants Plan review & inspection

The online services are still tied into the information in the Phase II update of the software system. This will be completed in June. Tom Hawkinson will provide a definite schedule.

5. Comprehensive Master Plan

The Comprehensive Master Plan is a complete view of how Loveland should be and who will take action to make it happen. The document interfaces with all aspects of local government. The CMP was created in 2003, is updated every 5 years, and presented to Council. The Public Safety Section requires the adoption of all new codes. The City Long Range Planning Department is the driver of the program.

6. Other old Business

Teri Volk noted that she has completed her study on the construction valuations of various housing types. She will check with tom Hawkinson for a date to present her findings to the CAB.

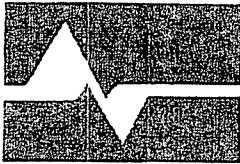
Gregg Meisenger noted that the committee reviewing the IBC will contact Tom Hawkinson and the Fire Department to schedule a meeting for completion of their review of the code.

Chris Rosenberger presented information regarding a roofing problem he saw when working on a project.

VII. Adjournment

The motion for adjournment was made by Bruce Meyer and seconded by Garold Smith. The motion passed unanimously.

Respectfully submitted,
G. Smith,
Secretary



City of Loveland

Office of the City Attorney

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www.cityofloveland.org

December 22, 2009

Ms. Ingrid J. DeFranco
Law offices of Ingrid J. DeFranco
368 S. McCaslin Boulevard, #203
Louisville, CO 80027

Mr. John Kenneth Pineau
Law office of John Kenneth Pineau, P.C.
Grill Mansion - 2305 Broadway
Boulder, CO 80304

Dear Ms. DeFranco and Mr. Pineau:

Your clients, Ed and Steve Klen, have submitted to the Mayor and City Council, a written communication regarding their belief that they were overcharged building permit fees and capital expansion fees ("CEFs") for their building located at 697 N. Denver Avenue in Loveland (the "Building"). They have also alleged that they were forced to pay such fees earlier than required by the Loveland Municipal Code.

Our records indicate the following: Your clients paid a total of \$315,187.68 for development fees associated with the Building. As you can see in the attached documents (all of which have been previously provided to you and your clients), your clients paid \$37,334.37 for building permit fees. These fees were paid on June 16, 2005, and were paid through check number 2045 made out by your clients. The breakdown of the various costs associated with these fees is indicated in the attachment. The remainder of the fees due as CEFs were not owed until your clients sought final inspection of the Building as a completed core and shell. This occurred approximately one year later, when your clients requested final inspection for the Building's core and shell certificate of completion in May of 2006. Your clients paid the remaining CEFs of \$277,853.31 on May 17, 2006, through check number 2428, and final inspections for the core and shell were thereafter scheduled.

As you are likely aware, the CEFs are due and payable prior to final inspections for a certificate of occupancy as provided in Loveland Municipal Code § 16.38.020. However, in those circumstances where a final inspection is required for a core and shell, the City has consistently applied and interpreted § 16.30.020 to require CEFs to be paid at the time final inspection is requested for a core and shell certificate of completion.

Therefore, in May of 2006 when your clients requested final inspections for the Building as a core and shell, their CEFs were due and payable at that time. Your clients should be familiar with this procedure as this was the same procedure that was followed for their Anasazi I project.

Exhibit 9
Page 1 of 2



Printed on
Recycled Paper

Therefore, in May of 2006 when your clients requested final inspections for the Building as a core and shell, their CEFs were due and payable at that time. Your clients should be familiar with this procedure as this was the same procedure that was followed for their Anasazi I project.

As to your clients' complaint about being overcharged for building permit fees and CEFs, your clients' building permit fees amounted to a total of \$37,334.37 which was calculated from the valuation of the building of \$1,137,500.00, was listed on their building permit application. These fee calculations are delineated in the attached documents. The base amount for the building permit fees listed as \$10,262.50, was increased by approximately \$4,150.00, as provided in §107.5.2 of the Uniform Building Code as adopted by the City of Loveland, due to the fact that your clients proceeded to construct the building prior to receiving a building permit. The City actually had the authority to increase this base amount by up to \$6,112.45, but chose not to do so.

Regarding the CEFs that were due, the category for the anticipated use of the building for Anasazi II was commercial use, which was determined by information provided to City staff by your clients at the time they applied for the building permit. At no time did your clients indicate to any City staff that commercial use was not an appropriate category for assessment of their CEFs. From the recent communication to City Council, your clients indicate that some portions of the building are still vacant. Presumably, your clients may be anticipating that these vacant portions might ultimately be used for something other than a commercial use. If in fact at a future date your clients seek a certificate of occupancy for these vacant portions of the building, and the occupancy use is not commercial, the City will consider adjusting accordingly the CEFs paid for those portions of the building, which adjustment could include a refund.

I hope this information clears up any questions your clients have regarding payment of their building permit fees and their CEFs.

Sincerely,

CITY OF LOVELAND, COLORADO
OFFICE OF THE CITY ATTORNEY



Sunita Sharma,
Assistant City Attorney

Attach.

cc: without attachments

· Tom Lyons
Don Williams
John Duval
Greg George
Tom Hawkinson
Mayor and City Council

Chapter 1.12

FINES AND PENALTIES*

Sections:

- 1.12.010 **General penalty and penalty for traffic infractions.**
- 1.12.020 **Juveniles.**
- 1.12.030 **Failure to obey summons or notice.**

*For statutory provisions authorizing cities and towns to prescribe a penalty for the violation of ordinances, which penalty shall not exceed a fine of three hundred dollars or imprisonment of ninety days, or both, see CRS §§ 139-33-1 and 37-22-11.

- ✕ **1.12.010 General penalty and penalty for traffic infractions.**
- A. It is unlawful for any person to violate, disobey, omit, neglect, refuse or fail to comply with or resist the enforcement of any provision of this code, the Charter or any provision of any code or other regulation adopted by reference by this code. Except as to traffic infractions described in (B) below, the violation of any provision of this code shall be punished by a fine not exceeding one thousand dollars, or imprisonment for a term not exceeding, one year, or by both such fine and imprisonment, in addition to any costs which may be assessed, except where a specific penalty is provided for the violation of any provision of the code, which specific penalty shall have been validly adopted by the city council. It is the intent of this chapter that the general penalties set forth in this section shall apply wherever no specific penalty for a violation is set forth in the code, or where no specific penalty has been validly adopted. Each person who violates any provision of this code shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continued or permitted by such person and shall be punished accordingly. In addition to the penalties set forth above, any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be abated by the city through any means permitted by law, and each such day that such condition continues shall be regarded as a new and separate offense.
 - B. A violation of any provision of Title 10 of this code shall be deemed to be a traffic infraction if, at the time of the commission of the violation, its counterpart violation under the provisions of Article 4 in Title 42 of the Colorado Revised Statutes, if any, is designated by state law as being a traffic infraction. If no counterpart violation exists under state law, the violation shall be deemed to be a traffic infraction. All other violations under Title 10 of this code shall be considered misdemeanors punishable as described in paragraph (A) of this section. Any person against whom judgment is entered for a traffic infraction under this code shall be subject to the penalty of a fine not exceeding one thousand dollars and shall not be subject to imprisonment on account of such judgment.
 - C. In addition to the aforesaid fine, there shall be added a surcharge in the amount of ten dollars for each ordinance violation, traffic offense, or traffic infraction, except parking violations. All monies generated by the surcharge under this subsection (C) shall be paid into a separate account of the City of Loveland, to be used for the purpose of funding traffic safety and enforcement. (Ord. 5160, 2007 § 1(C), Ord. 4499, 1999; Ord. 4290 §§ 1, 2, 1997; Ord. 3845 § 1 (part), 1992; Ord. 1412 § 4, 1975)

1.12.020 Juveniles.

Notwithstanding any provision in Section 1.12.010, the violation by any person not having attained the age of eighteen years at the time of the commission of the violation with the exception of violations of the Model Traffic Code, as amended and adopted by

Chapter 2.24

CITY MANAGER*

Sections:

2.24.010	Duties.
2.24.020	Administrative control.
2.24.030	Administrative regulations.
2.24.040	Authority.

*For statutory provisions relating to the appointment, qualifications and removal of the city manager, see CRS § 139-5-10; for other statutory provisions on the powers, etc., of the city manager, see CRS § 139-5-11 et seq.

X **2.24.010 Duties.**
It shall be the duty of the city manager to act as chief conservator of the peace within the city; to supervise the administration of the affairs of the city; to see that the ordinances of the city and the applicable laws of the state are enforced; to make such recommendations to the council concerning the affairs of the city as may seem to him desirable; to keep the council advised of the financial condition and future needs of the city; to prepare and submit to the council the annual budget estimate; to prepare and submit to the council such reports as may be required by that body; to prepare and submit each month to the council a detailed report covering all activities of the city, including a summary statement of revenues and expenditures for the preceding month, detailed as to appropriations and funds in such a manner as to show the exact financial condition of the city and of each department and division thereof as of the last day of the previous month; and to perform such other duties as may be prescribed by the statutes of the state or required of him by ordinance or resolution of the city council. The city manager may appoint such assistants as deemed necessary and as authorized in the budget for the city, who shall serve under the direction and control of the city manager and who may be delegated or assigned such duties as the city manager may prescribe. (Ord. 3975 § 1, 1994; Ord. 877 Art. 2 (part), 1964; prior code § 4.5)

2.24.020 Administrative control.

The city manager shall be responsible to the council for the proper administration of all affairs of the city placed in his charge, and to that end, and except as otherwise provided in this code and by law, he shall have the power to appoint and remove all officers and employees in the administrative service of the city except the city attorney and municipal judge. Appointments made by the city manager shall be on the basis of executive and administrative ability and of the training and experience of such appointees in the work which they are to perform. All such appointments shall be without definite terms. (Ord. 1333 § 1 (part), 1974; Ord. 877 Art. 2 (part), 1964; prior code § 4.5-1)

2.24.030 Administrative regulations.

The manager is authorized to issue such administrative regulations and to outline general administrative procedures in the form of rules, not in conflict with the laws of the state or the ordinances of the city, in addition to those embodied in this plan, as are, or may become necessary for the adequate functioning of all departments. (Ord. 877 Art. 2 (part), 1964; prior code § 4.5-2)

Chapter 2.48

DEPARTMENT OF COMMUNITY SERVICES

Sections:

2.48.010 Designated.

2.48.010 Designated.

There is created a department of community services which shall be under the direction of a director of community services. It shall be the director's duty to organize, direct and manage the provision of transportation and building services, including the following service areas: traffic operation, engineering, solid waste, street maintenance, building inspection, code enforcement, development center operation, and current planning. The director shall perform such other functions as may be prescribed by the city manager. (Ord. 3975 § 9, 1994; Ord. 2072 § 1, 1982; Ord. 1707 § 1 (part), 1978)

Chapter 1.28

MUNICIPAL COURT*

Sections:

1.28.010	Created authority.
1.28.015	Court of record.
1.28.020	Compensation of municipal judges.
1.28.030	Clerk.
1.28.040	Qualifications of jurors.
1.28.050	Appeal bond "Form" qualifications of sureties.
1.28.060	Court costs.

*For statutory provisions relating to the municipal court, and its creation by the city or town in which it is located, see CRS § 13-10-101 et seq.

✗ 1.28.010 Created authority.

There is created a municipal court to hear and try all alleged violations of the ordinance provisions of the city, which court, and the municipal judge or judges and other officers thereof, shall have all of the powers, authority, duties and shall follow the procedure as provided therefor by the laws of the state and the rules of procedure promulgated by the Supreme Court of the state. (Ord. 1075 § 2 (part), 1970; prior code § 9.1)

1.28.015 Court of record.

- A. Except as herein provided, the municipal court shall be a qualified municipal court of record as defined by state statute. The municipal court clerk shall maintain a verbatim record of the proceedings and evidence at trials by either electric devices or stenographic means.
- B. In the event that the municipal court judge determines that the maintenance of a verbatim record is not reasonably practical due to the inaccessibility of necessary equipment or personnel, the judge may conduct municipal court as a court not of record. (Ord. 3845 § 3 (part), 1992)

1.28.020 Compensation of municipal judges.

The municipal judge or judges shall receive as compensation for their services an amount to be determined by the city council annually, said amount to be set forth in the appropriations ordinance enacted by the city council prior to each fiscal year. (Ord. 1412 § 3(a), 1975; Ord. 1075 § 2 (part), 1970; prior code § 9.2)

1.28.030 Clerk.

There is established the position of clerk of the municipal court who shall serve as a full time or part time clerk as shall be determined by the presiding municipal judge, except that the municipal judge or judges shall serve as ex officio clerk if the business of the court, as determined by the presiding municipal judge, is insufficient to warrant a separate clerk, or during the temporary absence, sickness, disqualification or other inability of the clerk to act. (Ord. 1075 § 2 (part), 1970; prior code § 9.3)

1.28.040 Qualifications of jurors.

All residents of this city who are eighteen years of age or more, and who have never been convicted of a felony, shall be competent to serve as jurors in the police court. (Ord. 1190 § 1, 1972; prior code § 9.12-2)

1.28.050 Appeal bond "Form" qualifications of sureties.