

AGENDA:

MEETING DATE: June 1, 2004

DEPARTMENTS: City Manager and City Attorney

DESCRIPTION: A Resolution Granting Mayor Pro Tem Don Marostica an Exception Pursuant to Loveland Municipal Code Section 2.14.015 D. for North Boise, L.L.C., to Enter Into a Development Agreement and Oversizing Reimbursement Agreements With the City of Loveland

SUMMARY: City Code Section 2.14.015 A. prohibits member of Loveland’s City Council from having a “substantial financial interest” in any “contract” with the City. Code Section 2.14.015 C. defines a “contract” as any verbal or written agreement relating to the provision of a service or of real or personal property to the City. A “substantial financial interest” is defined in Section 2.14.015 B. as either an ownership interest of five percent or greater in an entity that enters into a contract with the City or a direct financial benefit of \$1,000.00 or more in value. Code Section 2.14.015 D. nevertheless permits the City Council, by an affirmative vote of three-quarters of the Council, to grant an exception to the contracting prohibitions of Section 2.14.015 A., provided such exception does not conflict with any other provision of State law or of the City Code.

Mayor Pro Tem Don Marostica has asked the City Council to consider granting him the exception provided for in Code Section 2.14.050 D. related to any substantial financial interest he may have in the Development Agreement which City Council is considering in Item No. 8 of this agenda relating to City Council’s approval of the Koldeway Industrial Addition rezoning and approval of Boise Village North PUD (copy of letter attached). The Development Agreement is between the City of Loveland, Art and Agnes Koldeway and North Boise, LLC, a Colorado limited liability company. Mayor Pro Tem Marostica has greater than a 5% ownership interest in North Boise, LLC.

The Development Agreement provides that North Boise, LLC, as the developer of the projects which are the subject of the Development Agreement, will construct various public improvements needed for the projects, which improvements will subsequently be dedicated and conveyed to the City and its utilities. In addition, in paragraphs A. and D. of Section IV of the Development Agreement, it is contemplated that the City will reimburse North Boise, LLC, for certain oversized stormwater and street improvements. For several years it has been the City’s policy and practice to enter into oversizing agreements with developers obligating them to construct oversized water and sewer lines, oversized streets, and oversized stormwater facilities in return for the City agreeing to reimburse the developer for the developer’s costs directly related to the oversizing portion of such facilities. The oversized portion of these facilities are for the general benefit of the City and its utilities and are not otherwise required to meet the needs or address the impacts of the developers’ projects. The oversizing amounts reimbursed to the developer by the City represent the developers’ additional costs directly related to the oversizing of such facilities and such oversizing payments do not include any profit to developers.

Accordingly, if the proposed Resolution is adopted by three-fourths of the Council, Mayor Pro Tem Marostica would be excepted from the contracting prohibition in Code Section 2.14.015 A. with respect to entering into the Development Agreement. In addition, adoption of the Resolution would also except Mayor Pro Tem Marostica from this contracting prohibition as it relates to future oversizing reimbursement agreements that the City may enter into with North Boise, LLC, related to the oversizing of certain stormwater and street improvements as they are referred to in paragraph A. and D. of Section IV of the Development Agreement.

The City Attorney has determined that granting the exceptions in this Resolution would not conflict with any other provision of State law or of the City Code.

COUNCIL ACTION RECOMMENDED:

Consideration of the Resolution. An affirmative vote of seven councilmembers is required for the adoption of this Resolution.

REVIEWED BY CITY MANAGER: