

MEMORANDUM

April 11, 2024

TO: Senate Judiciary Committee, Colorado State Legislature
FM: Mark Smith, Lakewood, CO Retired City Planner/Concerned Citizen
cc: All Senators, Colorado State Legislature
All House Members, Colorado House of Representatives
Governor Jared Polis
Phil Weiss, Colorado Attorney General



RE: HB 24-1107: Judicial Review of Local Government Land Use Decisions

Submitted via procedure indicated on Colorado General Assembly site as written testimony for Senate Judiciary Committee scheduled for 4/17/24; with direct submittals to indicated recipients.

As you are aware, on ~3/11/24, in a 34-27-4 vote, the Colorado House passed HB 24-1107. The Bill was referred to the Senate Judiciary Committee on ~3/15/24. Following is my testimony, as a retired City Planner who worked in the public sector for decades, in strong opposition to HB 24-1107. I only recently learned about HB 24-1107 – after it had passed out of the House. On 3/27/24, I emailed the four sponsors of the Bill asking for background rationale and information. Eventually, I heard back only from Senator Bird's staffer, who conferred with the Senator – who had no background information (i.e. no report indicating genesis, rationale, need, pros/cons, etc. for the Bill). That staff also told me my 3/27/24 email may not have gone through, as they lacked the 'house' or 'senate' descriptor on the email address (despite the fact that the only 'non-delivered' message I received was from Representative Lindstedt's office.)

I then received an email from my District Senator, Lisa Cutter's office, indicating that my very brief WORD file attachment to emails sent may not have transmitted, as the State Capitol apparently blocks some or all email attachments. I then resent the content of the 3/27/24 Attachment within the body of the updated address 4/2/24 email. At the same time, I called each of the four Sponsors of HB 24-1147, as well as my Senator (Lisa Cutter) and my Representative (Chris DeGuy-Kennedy). Reiterating, the only replies I received on all the above outreach efforts were: 1. From Senator Bird's staffer indicating as noted, that my original 3/27/24 emails may not have gone through and that Senator Bird, as a Sponsoring Senator, had no requested background

information on HB 24-1147; 2. From my District Senator (Lisa Cutter's office) indicating that my brief WORD file Attachment may not have gone through; and 3. An auto-reply from Senator Bridges indicating that he is too busy to respond to requests.

I understand that Legislators are busy during the Legislative Session, and that they have limited staff and resources. While I appreciate the replies that I did receive, as a concerned citizen, and with professional background related to HB 24-1174, I'm bothered that Sponsoring Legislators, upon repeated requests, provided no substantive reply to my inquiries. I have only recently secured the audio, from Legislative Council staff, of the 2/27/24 House Transportation & Local Government Committee Hearing. Respectfully, Representative Lindstedt's introductory comments on the Bill completely lack comprehensive background on rationale for the Bill – instead Mr. Lindstedt makes sweeping and shallow, yet unfounded comments at the outset of the 2/27/24 hearing, which were referred to as 'thorough' by another member. As a retired city planner, I am concerned, more frankly alarmed, that such a Bill as HB 24-1147 would, relatively speaking, 'sail' through the House Transportation Committee, and somewhat sail through the House at large, without some level of evaluation.

1. GENEREAL REASONS for OPPOSITION to HB 24-1107:

I have perused all written testimony provided to the House Transportation Committee pursuant to HB 24-1107. I have listened to the initial minutes of the 2/27/24 Hearing and will listen to all that recording prior to offering my public testimony next Wednesday, April 17th. I agree with all the written, and I suspect oral comments submitted in opposition to HB 24-1107, but highlight just a few, including *additions*: Critical to note is that I provide specific examples to a case I'm involved with – but that those examples can and are often the case in all land use entitlement contexts.

- a. **'Frivolity Rationale'**: Proponents of HB 24-1107 have indicated their support is based in large part on frivolous and unwarranted C.R.C.P.106(a)(4) land use appeals being filed. My reply, as was indicated by others to the House Transportation Committee (and I assume was known by *all* House members, and *is* known to Senate Judiciary Committee members, is that the State of Colorado already has legislation – C.R.S. 13-17-102 - addressing frivolous and unwarranted civil suit filings. Does any Colorado legislator have firm evidence that C.R.C.P. 106(a)(4) frivolous or unwarranted *land use* appeals are filed? It strikes me that such evidence, let alone other rationale, and pros and cons, (including need, or non-need) of proposed legislation would be presented – in a comprehensive report, before such legislation would be proposed, let alone deliberated or voted on. Secondly, regarding 'frivolity' of C.R.C.P. 106(a)(4) land use appeals, I saw one submitted reference indicating they may cost plaintiffs \$30 to \$50k. In past months, I have talked with several legal firms that routinely do '106' appeals. One sought a retainer alone of \$20,000; another a retainer of \$30,000, with respective Attorney fees of \$350 and \$440/hr. I've heard of '106' plaintiff appeals that can far exceed \$100,000 in cost. Re-asking the question related

to ‘frivolity’ – does any legislator have evidence that most Colorado *citizens* (who are often plaintiffs in ‘106’ proceedings) have endless cash to spend on ‘106’ appeals, let alone uncertain results of ‘106’ appeals? In wealthy mountain towns, maybe? I don’t have information, but question whether controversial projects even exist in the presence of multi-million dollar residential areas. I’m involved with citizens in Lakewood concerned about a bloated multi-family development project that will have extremely adverse impacts on an adjacent crown-jewel city park/unofficial waterfowl refuge. For the record, some Lakewood citizens would like to see the development parcel purchased as an addition to the park. Most residents accept that funding might be difficult, that the developer would not likely sell, and are not opposed to a suitably sized and scaled multi-family development on the property. The only adjacent residents who have *guaranteed/iron-clad standing* in a potential ‘106’ appeal come from an adjacent 45-unit townhome community where the average resident age is ~80 years old. The small group of concerned residents there do not have ‘free’ money to spend. *If* HB 24-1107 passes, those residents will be dissuaded, more likely terrified, from filing a ‘106’ appeal from a city decision that to date is grossly inconsistent with the city’s land use plans and land use codes. Yet, case law demonstrates that Courts will defer to governmental decision-making in ‘106’ appeals, even if plaintiffs make sound legal arguments. Yet HB 24-1107 says ‘tough luck’. The law is flawed.

- b. **Developer Actions that Cause Project Delays:** Developers, and their consultant teams, for a host of reasons, are often the parties responsible for delays in construction projects. In the Lakewood development case I cite following, I have paperwork from city staff, and have had discussions with city staff, that the project has been ‘one foot forward/two-steps’ back based on incomplete, inadequate, non-code compliant, delayed, etc. project submittals. The applicant in question, Kairoi Residential, had ‘preplanning’ meetings with the City of Lakewood Planning Department in February 2021. Kairoi did not submit its formal application until late April 2022 – and, according to noted records and correspondence, has often been *the* party responsible for delays. On October 18, Kairoi wrote a letter to City Council indicating they had *failed* to complete needed community and citizen outreach – yet then worked in clandestine manner with city staff to limit that outreach – there was no effective community outreach at all, and Kairoi went into the only public meeting it had - on 12/6/23, by indicating it was not able to change project size. Yet developers like Kairoi, a *multi-billion-dollar* company, without at least 30,000 apartments in ownership/management, often seek to blame citizen appeals, as HB 24-1107 expressly does, on project delays.
- c. **City Actions that Cause Project Delays:** Local governments are often responsible for project delays. Again, in the Lakewood case I cite following, the city’s Planning Director could have, and should have (and was fully enabled) to refer the monstrous and grossly oversized building to the Planning Commission for public review and public hearing, literally years ago (in early 2021, when it first came in the door). Instead, the Planning Director took it upon himself to retain Administrative Approval of the project (which was allowed but was clearly not in the public interest). Then, months and years go by – citizens

learn about the project via word-of-mouth and other channels very late in the process, and suddenly, ~three years into project submittal and project review, citizen outcry explodes. This is the fault of citizens? It is not. It was and remains the fault of the city. Three years of closed-door, behind the scenes staff actions and decision, on an 800,000 square foot building directly adjoining a crown-jewel Lakewood park, with extremely negative impacts to that park? And, when applicant Kairoi indicated they sought community input, *the city worked in clandestine fashion to ensure such input did not occur.* In the Lakewood case I cite, HB 24-1107 would excuse a *multi-billion dollar development company* from paying fees if they lost an appeal, whereas tagging Senior Citizen plaintiffs with costs if they lost the same appeal. Yet HB 24-1107 infers that local government routinely does the right thing. . . follows its land use plans and codes, informs its citizens, etc. I beg to differ. On 3/12/24, more than three years into original project discussions – at five minutes to midnight – the Planning Director decides to refer the project to the Planning Commission – who will be under tremendous pressure. Yet potential citizen appellants are responsible for details?

- d. **Equal Protection Issue:** The second element of HB 24-1107 that strikes me as grossly flawed is the exemption provision exemption provided for land use applicants filing C.R.C.P. 106(a)(4) appeals vs. *non-land-use* applicants (i.e. concerned citizen). This exempt/*non-exempt* classification glaringly contradicts equal protection clauses of the U.S. and Colorado Constitutions. I'm not an Attorney – it doesn't take an Attorney to know that. Again, yet another subject matter completely unaddressed as background to the legislation. In the Lakewood case I cite, HB 24-1107 would excuse a *multi-billion dollar development company* from paying fees if they lost an appeal, whereas tagging Senior Citizen plaintiffs with costs if they lost the same appeal. A subject which itself will end up in the Colorado court system on equal protection and due process grounds.
- e. **Prevailing' Party Issue:** HB 24-1107 indicates that if local governments prevail against *non-land use* applicant plaintiffs, said plaintiffs are responsible for reasonable Attorney fees. Question: what if plaintiff(s) prevails on *some* elements of a land use appeal - that a District Court or, if applicable, the Court of Appeals would, based on the Record and C.R.C.P. 106(a)(4) criteria, would produce a split or mixed decision? HB 24-1107 fails to address the latter potential, and unlikely outcome. As noted, I can inform legislators that the *potential* '106' appeal case I'm involved with has *ironclad evidence* meeting 'abuse of discretion' and/or 'acting beyond scope of authority' standards in C.R.C.P. 106(a)(4) standards. I certainly cannot guarantee that a District Court, or the Court of Appeals, or the Colorado Supreme Court (*if* it had involvement) would recognize or rule in favor of that that ironclad evidence, but I have great confidence it would. I also have confidence that said Courts would rule for *potential* plaintiffs on other 'abuse of discretion' and 'acting beyond scope of authority' matters but cannot guarantee that. Reiterating my point: what if a Court(s) reach a split decision? And who is to make judgment regarding the relative weight(s) of individual elements of a spit decision? What if plaintiffs prevailed on a

hugely substantive matter, and defendant municipalities prevailed on a relatively minor procedural matter?

- f. **Land Use Applicant right to proceed:** At the 2/27/24 House Hearing, one proponent of HB 24-1107 correctly indicated that land use applicants, following applicable local government approvals, are free to proceed with site development, *even if* a C.R.C.P. 106(a)(4) appeal is filed. Development projects, as I understand, can only be enjoined from commencement if a bond is filed by a plaintiff(s). Multi-family construction projects can cost millions, in some cases dozens of millions of dollars, or more. The cost of a bond is absolutely prohibitive by the vast majority, if not all, plaintiffs. It is understood that some, or perhaps most, land use applicants would choose not to proceed with construction. However, reiterating – land use applicants have the *right* to proceed; if an appeal is frivolous, it should be promptly addressed by the applicable court per C.R.S. 13-17-102.

2. SPECIFIC ACTIONS OCCURRING and ONGOING at the LAKEWOOD, CO PLANNING and OTHER DEPARTMENTS:

As noted, I am involved with citizens in Lakewood very concerned about a proposed multifamily development project that, *if* approved in present configuration, will have hugely adverse impacts to an immediately adjacent crown-jewel city park. Most citizens support suitably scaled development on the property (the current proposal is no way is suitably scaled to the site or area). *If* the project is approved in current configuration, there is a *possibility* that a C.R.C.P 106(a)(4) appeal will be filed. As a retired city planner with decades of experience in all elements of local government planning, I personally know that such an appeal, in relation to ‘abuse of discretion/competent evidence’ and ‘acting with scope of authority’ standards, would have great merit, and, as noted above, has *ironclad* prevailing arguments on some matters – but ‘106’ appeals have no guarantees. Reiterating, by case law, Courts will defer to local government decision-making.

HB 24-1107 makes an inherent, *yet deeply flawed*, assumption that local governments routinely make sound decisions based on land use planning and land use codes. In the applicable multi-family Site Plan proposal cited in Lakewood, *potential* plaintiffs will be able to cite (*as regarding city actions to date*), with clear and convincing evidence, that ‘abuse of discretion’ and ‘acting beyond scope of authority’ standards in C.R.C.P. 106(a)(4) have been met. Following is a brief synopsis of failures at Lakewood city hall on five (5) distinct land use plan, land use code, and related public-interface actions, with extensive records provided (over 30-pages) as exhibits to this Memorandum. The five cited failures are *example* failures – if a ‘106’ appeal is made, more will be cited. The five examples include *substantive, but also procedural*, actions that violate land use plans and land use codes per C.R.C.P. 106(a)(4) ‘abuse of discretion’ and ‘outside scope of authority’ standards. Recently, the Lakewood Planning Director has referred the multi-family development project to the Planning Commission for public review, including public hearings – yet that referral highlights misinformation he and other staff have proffered.

The entire reason for taking the time and effort to provide this information is to inform Colorado legislators that local governments *do not* automatically or routinely follow or apply their own land use plans and codes. They would like citizens to think they do. This begs the ultimate question at hand – why should the American Rule of Law – existent and precedent for decades - be scrapped in C.R.C.P. 106(a)(4) land use appeals? Let alone scrapped in violation of equal protection legal clauses, and for so many other reasons. *Answer:* it should not.

a. Lakewood Municipal Code (LMC 14.16): Park and Open Space Dedication Code

The City of Lakewood has a fine Park and Open Space Dedication Code (i.e. LMC 14.16) that applies to residential developments. Attached pages 1-9 details city of Lakewood mal-administration, frankly malfeasant administration of LMC 14.16 and associated planning documents. The pages illustrate complete city failures to apply LMC 14.16 per its intention, including glaring malfeasant administration of LMC 14.16 ‘fee-in-lieu’ required fair market valuation payment requirements. Question: Are the facts and evidence provided on pages 1-9 reflective of honest, code-complying, local government behavior and practice? Yet, if plaintiffs filed, and potentially lost, a C.R.C.P. 106(a)(4) appeal, *they* are expected to pay local government attorney fees?

b. Lakewood Zoning Code (LZC 17.2.7): Major Site Plan Review Code

Attached pages 10-12 indicate the Lakewood Planning Director’s prior (*and continued* contradictory statements) that no public hearing opportunities exist for the applicable multifamily development project cited. Specifically, on page 11, the Lakewood Planning Director, on his Departmental website, writes: “. . .there is not a process where adjacent neighbors have a say in how a property develops. .” (i.e. there can be no public input whatsoever, including a public hearing). On page 12, the city attorney indicates: “If the City were to require public hearings . . .the Applicant would be within their right to file suit against the City for violating its own Municipal Code. . .” Attached pages 13-15 include portions of Lakewood’s Site Plan code, which Section LZC 17.2.7.3 indicate that the Planning Commission may review and decide Site Plan decisions. Planning Commission review *automatically* engages a public hearing. Yet, page 15 indicates, that as of 3/12/24 – over *three years* into project submittal – the Planning Director contradicts his statement cited on page 11 (not to mention contradicting the city attorney’s admonition). Question: Are the facts provided demonstrative of honest, code-complying, local government behavior and practice? Yet, *if* plaintiffs filed, and potentially lost, a C.R.C.P. 106(a)(4) appeal on ‘abuse of discretion’ and/or ‘acting beyond scope of authority’ actions – which the Planning Director did for months,

possibly years (I am personally aware of Planning Department posts being public for months) – are *they-plaintiffs* are expected to pay local government attorney fees?

c. City of Lakewood Actions re: Ignoring Comprehensive Planning Documents:

Attached pages 16-22 relate to the status of the Lakewood Master Plan. On page 16, the city's Planning Department webpage refers to its Comprehensive Plan as an 'Advisory' document. Page 18, C.R.S. 31-23-206(1) indicates that Master Plans are made BINDING documents by inclusion in a municipality's subdivision, zoning and other land use regulations. Page 19 indicates that Lakewood's Master Plan documents have been made binding (see quotes from Lakewood Zoning Code 17.1.3 and LZC 17.2.2.3(C)(1). Page 20, and further evidence, document that Master/Comprehensive Plan goals, policies, etc., have been completely ignored (yet in some cases cherry-picked) by Planning Department and other (i.e. city legal) staff. Pages 20-22 cite select goals, policies, etc. that have been ignored in the applicable Site Plan review. As additional record, at a 2/21/24 Planning Commission meeting, Planning Commission Chairman Kip Kolkmeier indicated that Lakewood's Master Planning document are 'binding' per C.R.S. 31-23-206(1). Question: Are the facts provided reflective of honest, code-complying, local government behavior and practice? Yet, *if* plaintiffs filed, and potentially lost, a C.R.C.P. 106(a)(4) appeal, *they* are expected to pay local government attorney fees?

d. City of Lakewood Actions re: Request for Public Records: `

Pages 23-29 provide a striking demonstration of how the city Lakewood has 'managed' (i.e. obfuscated [ignored and driven citizens away] in regarding C.O.R.A. public records request. On 10/25/23, Matt Post, former Project Manager/Senior Planner with Lakewood, directed that I *not* use Lakewood's 'e-trakit' system Mr. Post referred to that system as unorganized and chaotic. Mr. Post specifically noted that I should, and needed, make public records requests if I sought applicable Site Plan information. My first request, in November 2023, which was for the entire Site Plan file, was met with a \$3,600 city fee (based on that exorbitant cost, I declined to proceed – I do not have free cash). My December 18, 2023 request – which – for the record, was a far less substantial request than the aforementioned November 2023 request, was met with a \$5,003 fee, with anticipated 149 hours of staff time required. Senators and Representatives – just look at my 12/18/23 request on pages 23-24. Does that request look like it should take 149 staff hours to complete, at a cost of \$5,003, to this Senior Citizen, who is on a fixed income? For that matter, to any citizen requesting the same? Page 29 is most revealing. In the final city reply to me, an email from the Lakewood Mayor dated 1/7/24, she relays how apparently fortunate I am not to have to pay \$15,000 to \$30,000 in relation to

the 12/18 public records request I made. Total games – games to drive concerned citizens away – the city of Lakewood clearly stating, in words and action: “we don’t want to give you public information” – even though their city mission statement(s) indicates the opposite. Pure hypocrisy. Question: Does evidence provided indicate honest local government behavior and practice? Just trying to secure public information; just trying to be informed? Yet, *if* plaintiffs filed, and potentially lost, a C.R.C.P. 106(a)(4) appeal based on ‘abuse of discretion’ and ‘acting beyond scope of authority’ actions, *they* are expected to pay local government attorney fees?

e. City of Lakewood Actions re: Access to Public Information in relation to pending Public Hearings:

Pages 30-33 further reflect the city of Lakewood Planning Department’s non-interest (more like intention) to not enable citizen access to information. On page 30, the Lakewood Planning Director notes: “The Planning Commission process is a “quasi-judicial” process, which means information and comments about the case must occur only during the Planning Commission’s public hearing”. He is correct that the Planning Commission process is “quasi-judicial”. Yet the Planning Commission, *not* the Planning Department, is the quasi-judicial body. The Planning Director has indicated that concerned citizens/the public at-large, are *permitted no access to Site Plan information* in advance of the actual Planning Commission public hearing(s). His statement has zero legal credibility (it directly conflicts with any Public Records statute or standards), let alone all standard local government Planning Department public service obligations and practice. Despite the needs and advantages of public hearings, any informed citizen, let alone city staff, knows that all parties will benefit from being informed in advance of hearings (not to mention citizen’s rights to information). But Lakewood Planning Department staff clearly don’t want citizens to be informed in advance of contentious public hearings, or apparently at all (e.g. see [d] above.) The Director’s comment on page 30 is extremely revealing – in the worse way possible. Yet the Director’s job description, presented on pages 31-33, repeatedly indicates that key duties include “extensive interaction with the public”; “highly credible processes and interactions that engender confidence in the department and the city”; “open communication and high credibility”; “positive interaction skills”, etc. Does anyone see the glaring hypocrisy, let alone absolute untruth (better call it lie) of the Planning Director’s statement on page 30? It’s all a game at Lakewood city hall. Don’t be hoodwinked. Question: Does evidence provided indicate honest local government behavior and practice? Just trying to secure public information; just trying to be informed? Yet, *if* plaintiffs filed, and potentially lost, a C.R.C.P. 106(a)(4) appeal, based on adverse procedural actions (yet actions that have substantive ramifications), *they* are expected to pay local government attorney fees?

3. **SUMMARY:**

Based on the detailed and ample evidence provided above, I hope and trust that members of the Senate Judiciary Committee, and full Senate, as well as full House, understand the absolute flaws of HB 24-1107. It is a Bill that never should have been presented, let alone as purported to solve, or partially solve, Colorado's affordable and workforce housing challenges. Those housing challenges are real, but mandating plaintiffs to pay attorney fees if they lose a C.R.C.P. 106(a)(4) land use appeal and ignoring decades of 'American Rule of Law' precedence, if they lose in court decrees is not the answer.

Solutions to Colorado's housing challenges are far more complex, with need for *comprehensive* solutions, than 'band-aid' approaches. HB 24-1107 is a band-aid, and not even a good one. . . . rife with adverse consequences and problems that haven't been addressed in any manner - not the least of which is equal protection under the law – which challenge itself would prevail in Court proceedings. If Colorado lawmakers are sincerely concerned about the need to address long-term land use planning challenges, including housing challenges and the need for comprehensive, intelligent land use permitting, they ought to look to States like Washington, and its Growth Management Act of 1990, with significant updates and amendments over many years.

I will make brief oral testimony at the Senate Judiciary Committee Hearing on April 17th. I realize this may be a lot to read – in the scheme of deciding on HB 24-1107, based on the criticality of your responsibly as legislators, the read is scant.

421211 1/17/23 EX 7/11/23 U.S. Pgs. 11-17
from 12/11/23 Lakewood City Council (multiple cos) Re: Code Administration
rjt

1. Parkland Dedication Code: Land Dedication and/or Fee-in-Lieu?

Issue: There is a critical need for on-site park/open space land dedication on the Kairoi site. This need is supported by planning and code documents, most expressly but not limited to Lakewood's Park & Open Space Dedication Ordinance. Early in its review, City staff noted the critical need to require some amount of open space land dedication; staff later turned 180-degrees, and is currently enabling zero on-site parkland dedication, even while Matt Post, Senior Planner/Project Manager lobbied voluntarily for a westerly buffer for months. For the record, the BPW Site Plan is required to provide open space, however, all of its open space will be internal to the project as ground floor plazas, roof deck plazas, and a pool area. The Site Plan has zero public open space, yet its maker, Kimley-Horn, has noted that the BPW project is "seamlessly integrated" to Belmar Park and surrounding land uses. "Seamlessly integrated" with zero buffer and a ~20-foot wide access road immediately adjoining Belmar Park, said access road fronted by a six (6) story building?

Note: Exhibit is available but excluded for brevity.

Lakewood's Park & Open Space Dedication Ordinance - Lakewood Municipal Code (LMC Chapter 14.16) requires parkland/open space dedication on land development sites. Based on the current density of the BPW project (i.e. 412 residential units on 5.25 projected acres) staff indicates that 3.46 acres of open space dedication is required (see Exhibit 8). 3.46 acres represents 66-percent of the projected 5.25-acre site. Some may suggest that requiring 66-percent of a property for open space constitutes an unlawful, regulatory 'taking' private property; common sense screams that the proposed site density is way excessive for the site. Final decisions to require land dedication and/or fee-in-lieu payments rest with Kit Newland, Director of Community Resources (DCS) (see LMC 14.16.070). DCS's practice has been to require actual land dedication on larger parcels (e.g. 15-acres or greater), and to accept fee-in lieu payments on smaller parcels. There is some logic in this practice, but the latter approach is not codified, and every circumstance is unique. Given that Belmar Park is a crown-jewel asset, acute attention to land dedication versus fee-in-lieu of payment options, including a possible and allowable combination of those options is needed.

LMC 14.16.050 (Criteria for land eligible for park and open space) highlights areas especially suitable for parkland dedication, including, (B): "Land or water bodies contiguous to other acceptable parkland or existing parkland", and (D): "Special areas of natural, historical, or cultural significance". Immediately adjoining Belmar Park meets both of these criteria.

Further, subsection 14.16.070(B) reads:

If the [DCS] Director determines that a land dedication in accordance with this chapter would not serve the public interest, the Director may require payment of a fee-in-lieu of the dedication, or may require dedication of a smaller amount of land than would otherwise be required and payment of a fee-in lieu of the portion not dedicated (text and/or emphasis added)

In 4/2/21 correspondence to Kairoi following a Preplanning Meeting, Matt Post, Senior Planner/Belmar West Project Manager, expressed that parkland dedication would be required (see Exhibit 8). Mr. Post consulted with Ross Williams, DCS Parks Planner. In a previous 3/1/21 email, Mr. Williams, a ~40-year department employee, had noted: "The City does desire land in this location (A majority on the West side, with some on the North and South Sides)", and that

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"Land Dedication will be required prior to or at the time of building permit" (see Exhibit 9). Mr. Williams email also notes the presence of historic artifacts on the site needing protection, in relation to noted 14.16.050(D) criteria.

Further, Mr. Post, in a 10/25/23 phone conversation, and in a 10/31/23 meeting with 'Save Belmar Park' Committee members, noted the failure, needing correction, of the city's zoning code to mandate a buffer on land development adjoining city parklands, and his continued, yet fruitless, efforts to promote an open space buffer along the westerly property boundaries adjoining Belmar Park. We are dumbfounded that staff expertise from Mr. Williams, and Mr. Post, let alone supported by binding city planning and policy documents, by the city's own parkland dedication code, and by endless literature on the crucial benefits of buffers, was literally scrapped. That Mr. Williams' 3/21/21 memo requiring parkland dedication, followed by Planning staff's 4/2/21 'Preplanning' follow-up letter requiring same, turned into 6/11/21 Planning Department correspondence noting: "we *don't* seek on-site parkland dedication" (see Exhibit 10). Dumbfounded continues as Ross Williams' 5/9/22 memo, eleven months later *retroactively* 'consents' with Planning's 6/11/21 memo (see Exhibit 11). Dumbstruck more, as, two plus years after adverse 6/11/21 internal decisions were made, Mr. Post, for months, continued to urge a westerly buffer with the applicant, only to be dismissed. Respectfully asked, on this matter of *paramount importance*, what went on? What is going on?

Ms. Newland, as DCS Director, is the exclusively authorized person to make the 'public interest' determination in LMC 14.16.060(B). Did Ms. Newland make such a determination? Did someone else? An unauthorized person? Is there a record of Ms. Newland's decision and rationale that the "public interest would not be served" with some on-site land dedication"? If so, how is it reconciled with Mr. Post's efforts to voluntarily secure a buffer with that applicant? Answer: it's not. In an aforementioned 11/27/23 phone call, I asked Mr. Williams about whether Ms. Newland had made the 'public interest' determination required by LMA 14.16.070(B) – he indicated he was not aware of any written or verbal determination from Ms. Newland. I also made a C.O.R.A. request for correspondence between Planning Department and Parks Department staff on parkland dedication matters. Yet correspondence older than two-years (i.e. pre-November 2021), within a critical time frame, has apparently been deleted. Yet, Greg Buchanan, City Records Manager, noted in an 11/21/23 email to me:

Correspondence delivered via email that is determined by the sender or recipient at the city to contain enduring long-term value should be retained, in this case, within the project/case files. . . . (see Exhibit 12)

I made requests for applicable case files (ZP-19-047 and ZP-21-009) - neither contain any evidence of the required determination from Ms. Newland. Assume that Ms. Newland did not make the required determination – problem! Starting at ground zero, was the required 'public interest' determination in 14.16.070(B) made by anyone? For the record, Mr. Williams 5/9/22 email (Exhibit 9) makes no reference to the 'public interest' determination required by LMC 14.16.070(B). Is involved Lakewood BPW review staff even aware of the need to make a 'public interest' determination? Does any involved staff, let alone City Council, honestly deem it *not* in the public interest to have on-site land dedication, especially given: a) specifically noted criteria

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for land dedication and given that Kairoi's Site Plan provides zero public open space? Does anyone wonder why there's citizen outcry on this matter of *paramount importance*?

I am aware of the City's interest in construction of a parking lot adjoining library parking. However, we note, in no particular order: a) It is not logical to sacrifice critically needed on-site land dedication for total fee-in-lieu payments (*do a combination of both, in the best public interest*); b) It is not apparent that such a parking lot is needed (e.g. there is significant parking in the Heritage Area parking lot – we understand demand is high during Heritage Area events, but those are few in number); c) Parking lot construction costs are a small fraction of the requisite fair market value payment required by fee-in-lieu payments (discussion on this topic follows under Heading [2]); d) Lakewood receives ~\$8 million annually in dedicated open space and related improvements revenue from the Jefferson County Open Space tax fund (if it is deemed a parking lot is critically needed, use those funds, long-term, vs. ignoring the need for on-site land dedication; don't make short-sighted decisions).

As Councilor Springsteen pleaded at the 10/23/23 Council meeting, "Who's in charge here?" - non-elected, non-responsive staff, or citizen elected Mayor and Council? We plead with you to halt this *glaring catastrophe* related to Lakewood's exemplary parkland dedication code.

2. Parkland Dedication Code: Fee-in-Lieu Fair Market Value – the Facts:

Issue: *Lakewood's Parkland Dedication Ordinance, discussed under [1] above, requires that monetary payments for fee-in-lieu allowances vs. actual on-site park/open space dedications, represent 'Fair Market Value' (FMV) of applicable properties (see LMC 14.16.070(B)). The 4.44-acre Kairoi Property was purchased for \$6 million in June, 2021 (\$6 million divided by 4.4 acres results in a June, 2021 per-acre valuation of \$1.364 million dollars). Given that 3.46 acres of parkland dedication is required, and assuming that the city is entrenched in a fee-in-lieu payment alone, a fair market value payment of \$4.719 million dollars is required by code. Yet, the city, according to staff, is committed to a Fair Market Valuation/Fee-in-Lieu payment of ~\$254,545 per acre fee with Kairoi, for total fee-in-lieu payments of ~\$878k (3.46 acres x \$254,545 = \$881k). The \$254,545k fee is based on a 6/16/18 internal policy that a) is not referenced at all in LMC 14.16; b) even if referenced, is not consistent with required FMV payments in LMC 14.16.070(B); and c) even if somehow considered valid 'policy', by its own admission, is obsolete in per acre fee requirements (Exhibit 13). \$881k represents 19 percent of the required ~\$4.719 million required code payment. What is going on here? Do city staff, let alone the Mayor & Council, deem this seemingly fixed transaction in the city's interest? In the public interest? The situation is even worse than noted above—Kairoi, through Lot Line Adjustment procedures, seeks to increase their site size to 5.25 acres, which will elevate per-acre FMV.*

Lakewood's Park & Open Space Dedication ordinance discussed under (1) above, mandates that fee-in-lieu payments, if authorized, must reflect "fair market value" of land (see LMC 14.16.070(B)) Fair Market Value (FMV) is defined as "the price at which property would change hands between a willing and informed buyer and seller". This definition is used throughout the IRS and related codes. For the record, Lakewood's codes do not define FMV. Fair Market Value

③ included in transmitted!

lose' (that is, loses to the tune of nearly \$4 million) result. Asked again, does Council understand citizen outcry? Is Council going to let this happen?

We hope the above discussion raises alarm from Mayor Strom and City Council members. The grossly disproportionate figures shown reflect severe malpractice on the part of city staff. Kairoi representatives, or perhaps city staff, may respond to the above by noting, for example, the buildings are worth more than the land - we are responsible for fees in association with land value alone, not building value. Such argument is readily dispelled. Kairoi Residential is a multi-billion-dollar corporation in the multi-family residential construction, ownership, and management business; it purchased 777 S Yarrow for a multi-family development project. In a 6/8/23 letter to Scot Kersgaard, Jefferson County Assessor, Kairoi Attorney Thomas Downey Jr., noted: "The property was acquired in June 2021 for redevelopment as multifamily. The office building on the site was vacant as of the assessment and the *improvements were worthless, waiting to be demolished. . .we respectfully request that you value the buildings at \$1,000.*" (*emphasis added*) (see **Exhibit 16**).

The entire fee-in-lieu payment fiasco, like the associated fee-in-lieu 'decision', epitomizes citizen concerns about how entitlements for the BPW have been, and are being, handled. A further critical element of the Parkland Dedication Ordinance is the *timing* of fee-in-lieu payments. Section 14.16.070(A) notes that fee-in-lieu payments may be made at time of Site Plan approval *and/or*, at the Director of Community Services discretion, at time of building permit issuance, and that "the amount of the fee to be paid shall be the fee in effect at time the payment is made". Once Site Plan approval is made, the value of Kairoi's property will skyrocket, and, in turn, FMV fee-in-lieu payments will skyrocket, which adds to the travesty of why city staff has apparently fixed fee contributions at \$865k, or \$878k, let alone, *why* are building permits currently being reviewed without site plan approval? For the record, if payments are delayed to time of building permit issuance, I do not propose unduly elevated fees, rather suggest that all building permit reviews be halted, and no further permit submittals made, until all Major Site Plan and related approvals are made.



payments are required by code, whether a full fee-in-lieu payment is made, or whether a partial fee-in-lieu payment is made with associated land dedication.

Fair Market Values are derived thru three standard methodologies: a. Sales Approach (i.e. a measurement of what is occurring in the market for like properties); b. Income Approach (especially suitable for Office Buildings, Apartment Buildings, and other income generating properties); and c. Cost of Construction Approach (cost to build new construction; cost of replacement, factoring depreciation). Where possible, the three noted methodologies are used in conjunction to derive most-specific valuations. When properties are sold, market values are readily apparent. Kairoi Residential, registered as 'Belmar Owner LLC' purchased their BPW property in June 2021, for \$6 million dollars (see **Exhibit 14**). The Jefferson County Assessor's Office supports the \$6 million valuation (see **Exhibit 15**).

The situation outlined above is further worsened for the City of Lakewood, and further enhanced for Kairoi, given that Kairoi seeks a Lot Line Adjustment (LLA) that will increase the 4.4-acre site to 5.25 acres. I am informed that the .89-acre increase is largely the result of proposed vacation of on-site easements, including city easements that contain Belmar Park infrastructure. According to the above FMV calculations, .89 additional acres adds \$1.214 million in value to the *increased* 5.25-acre site (i.e. at \$1.351 million per acre FMV, .89 acres is valued at \$1.214 million). If the Lot Line Adjustment is approved, which I understand is required for the existing Site Plan to proceed to approval, total 5.25-acre FMV increases from \$6 million (2021 dollars/4.44 acres) to \$7.214 million (again, 2021 dollars/5.25 acres). Thus, at a total 2021 FMV of \$7.214 million, *per acre* valuation = \$1.374 million, requiring a fee-in-lieu payment of \$4.754 million vs. the above-noted \$4.719 payment (i.e. \$1.374/million/per acre value x 3.46 acres/required park dedication based on 412 units).

Given clear language and requirements of the Park & Open Space Ordinance, myself and citizens are dumbstruck as to why a payment of \$878,400, or \$865,200, or whatever such range, is the figure primed by staff decisions. I can anticipate the response of city staff: "The 6/16/18 is our Official Park Land Dedication Ordinance & Policy for land dedication and/or fee in lieu payments. The problems with any such exclamation are multiple: a) There is specific and absolute reference to required Fair Market Value payments in LMC 14.16.070(B); b) the per acre FMV calculations in the 6/16/18 Policy are valid strictly for the period 6/16/18 thru 12/31/19, and have no validity today; c) The calculations found in the 6/16/18 Policy are for *amount of* on-site land dedication are *specifically codified* in LMC 14.16.040; there is no comparable reference in LMC 14.16 to Fair Market Value calculations (there is reference in LMC 14.16.010 that "the Director shall use current, adopted city planning documents as a guide for determining park and recreation needs in proximity to the proposed development area" - that section relates to "park and recreation" needs, *not* Fair Market Value considerations.

Pursuant to discussion under (1) above, I reiterate that a *significant* buffer is critical on the west side of the Kairoi property, and, if evidently not achievable by regulatory means, then through Lakewood's exemplary Park & Open Space Dedication code. Once again, city staff have had an opportunity to apply an exemplary code that implements public interest, in balance with developer interest. Instead, city staff are prepared to accept a 'Kairoi wins' - 'City and citizens

4

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Dear Isabel and Sofia,

I have reviewed the facilitation notes from the meeting with Kairoi and Belmar Commons. If Rebekah Stewart thinks that serious concessions have been made on the tree preservation issue, she is delusional. Adding four more trees to the ones that would be saved is truly sad. That means that 65 trees would be removed. The facilitation notes state that Kairoi is investigating installing bird boxes and bird baths around the complex as amenities for birds. The best amenities for birds would be the mature trees. The developer has not conceded anything.

We have not heard anything from Council regarding the concerns that have been made repeatedly--that a five-six story building does not blend in with the park and existing townhomes; that the tree preservation ordinance was ignored and the developer should have submitted a plan that worked around the trees; that the City accepted a fee in lieu instead of insisting on a buffer with the park; and that that fee in lieu was grossly undervalued. Why does Lakewood allow these giveaways that benefit no one but the developers? If you are indeed working on tracking down information on these questions, an excellent resource would be the 27-page letter from Mark Smith submitted to Council on Dec 11, which was compiled from CORA.

See underlined sections

Will this be a development that the City can be proud of? Doubtful. It will be seen as a huge mistake that degrades a fine park and wildlife area, and as a bonus creates additional traffic and safety problems.

Sincerely,

Celia Greenman

From: Isabel Cruz [mailto:ICruz@lakewood.org]
Sent: Monday, December 18, 2023 6:33 PM
To: Celia.greenman@earthlink.com
Cc: Sophia Mayott-Guerrero
Subject: Thanks for your comments!

Hi Celia:

We just wanted to send a quick note of thanks for your comments at last Monday's council meeting. Thank you so much for taking the time to share your thoughts (and super creative visual demonstrations!) at council chambers. We hope some of the

12/2023 Email from Celia Greenman, Save Belmar Park Board of Directors member, to her two (2) Council-members - Isabel Cruz + Sophia Mayott-Guerrero, in Lakewood WARD 5

5

Planning dept responses

From: Celia Greenman (celia.greenman@earthlink.net)
 To: mark98027@aol.com
 Date: Wednesday, January 24, 2024 at 03:11 PM MST

Mark, here are the responses Isabel received from the Planning Department. My comments, read on Jan 8, are in red.

Celia

12/12/23 Reply from Councilmember

From: Isabel Cruz [mailto:info@isabelforlakewood.com]
Sent: Saturday, December 23, 2023 7:54 PM
To: Celia Greenman
Cc: Sophia Mayott-Guerrero
Subject: Re: Thanks for your comments!

I Cruz & S. Mayott-Guerrero
 to C. Greenman, (Ward 5)
 on C. Greenman 12/2023

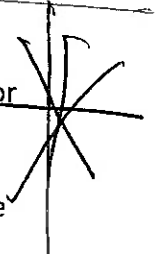
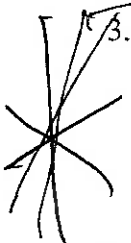
Hi Celia:

Thanks for following up! I understand that the update from the facilitation regarding trees is frustrating, I know your sentiments are shared by Councilor Stewart and staff, who also wanted to see greater progress on this front.

ingviny

Regarding your questions, I was able to get some information from the planning department this week. Below are the questions and the summary of the answers I received:

1. How does the development align with the components of the existing code and comprehensive plan that new developments have to blend in with the existing neighborhood?
 - A. The design of the proposed development fits within the zoning allowances for the site as established through ordinance. The zoning ordinances are the enforceable rules that staff leverage to meet the goals of the Comprehensive Plan. If the ordinances are not leading to the desired outcomes of the Comprehensive Plan (such as this instance of this building being five stories and larger than many of the others in the area), the ordinance can be updated but the rules of the ordinance cannot be applied retroactively to this development. Here, the ordinance does not need to be updated, just followed.
2. Why was fee-in-lieu accepted without more insistence of a buffer with the park?
 - A. The decision of whether to ask for a parkland dedication versus fee-in-lieu is made with the needs of the full parks system in mind—since there is a large park next to the property, Community Resources decided that fee-in-lieu was appropriate given the constraints of the size of the parkland dedication in comparison with the size of the lot. Furthermore, even if a portion of land is required for parkland dedication, the developer (not the city staff) gets to decide where that land is coming from (i.e. where it is on the property or whether it is on the property at all). **If there is no site plan approval, hopefully, why would it be considered retroactive?** Fee in lieu can be delayed until building permits are issued.
3. Why is the fee-in-lieu value so low and why are we still using those 2018 numbers?
 - A. The fee-in-lieu value of land was last changed in 2018, when it was tripled based on the prior value. **The city staff cannot change this valuation without an act of council.** This value is set citywide and is not based on the valuation of the property. City staff already have a plan in the works to come to council with an ask to update this valuation but unfortunately that cannot be applied retroactively.



6

next page left out (not needed)₁₃



For this project, which is still under review, 204 new trees are proposed in and around the private property, which do not include an additional 25 or more trees just north of the site at Belmar Trailhead. The city is considering the following strategy to restore lost canopy and habitat:

City of Lakewood Planning Dept. post on project

- Accept tree plantings in Belmar Park, immediately adjacent to the development, to help buffer the park and proposed Belmar Trailhead (<https://www.lakewood.org/Government/Departments/Community-Resources/Projects/Belmar-Trailhead-Development>).
- Plant trees and shrubs in Belmar Park to support wildlife habitat and park use where appropriate.
- Accept a fee for the remaining replacement trees to be used in Ward 3.

Trees planted in the park will only be accepted if they can be properly maintained and where site conditions are favorable for thriving.

What other sustainable design elements are proposed for the project?

The project will include design features and elements that will reduce the site's urban heat island impact. Roof coatings, exterior materials, and anticipated tree canopy all contribute to the reduction.

The project will include comprehensive plantings and pollinator gardens consisting of indigenous, low-water plants to support at-risk pollinators and provide additional forage and habitat opportunities for birds.

LIES

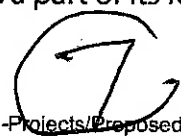
Source:

What will the city require for parkland dedication?

The fee-in-lieu of parkland dedication law is being followed, and information indicating anything to contrary is not correct. As the name indicates, there is the option for developers to provide a payment rather than dedicating acres from within their privately owned property for parkland. This is particularly allowed for developments that are less than 15 acres. The city has agreed to accept parkland dedication fee-in-lieu of dedicated parkland to construct a parking lot to support attendance for city-sponsored events and develop a new trailhead with improved access to Belmar Park (<https://www.lakewood.org/Government/Departments/Community-Resources/Projects/Belmar-Trailhead-Development>).

What happened to the historic iron gates that were on the property? Will the pumphouse be preserved?

The city worked with the developer to preserve the iron gates formerly located on the property. The gates were carefully removed and are in storage for future placement in Belmar Park. The developer will also restore the exterior of the historic pumphouse as a part of its fee-in-lieu of parkland dedication. The



RE: Follow-Up & Additional Question

From: Ross Williams (roswil@lakewood.org)

To: mark98027@aol.com

Date: Monday, January 29, 2024 at 09:41 AM MST

1/29/24 email from
Ross Williams Lakewood
Parks Planner to M. Smith
Ward 3



1. Per Chapter 14.16.070 B. of the Lakewood Municipal Code, the Director (of Community Resources) shall set the amount of the fee (in Lieu) equal to the amount of the fair market value of the land that would otherwise be dedicated. There is no City Council action required to set the fee.
2. See attached map. Sanctuary Park is 10.3 ac. In two sections. The larger portion north of Florida Ave. is about 8.83 Ac. And is about 650'x686' in an irregular shape.



Lakewood

Community Resources

Ross Williams, ASLA, CPRP

LAND-DESIGN-FACILITIES ADMINISTRATOR

roswil@lakewood.org

303-987-7814

From: mark98027@aol.com <mark98027@aol.com>

Sent: Sunday, January 28, 2024 7:53 PM

To: Ross Williams <RosWil@lakewood.org>

Subject: Follow-Up & Additional Question

EXTERNAL – USE CAUTION

Ross,

Good Monday morning. Thank you for your time on the phone last week. Just had a quick follow-up and an additional question.

1. Can you please confirm, via reply, that the Community Resources Department, namely thru its Director (at present, and for some time, Kit Newland) has been and is the sole responsible entity/person to set 'Fair Market Value' fees in relation to Lakewood's Parkland Dedication Code (LMC 14.16), **and** that no City Council action is specifically required for Ms. Newland/the Director, to set those fees. Please note I am not asking about relative FMV fees, or whether fees have changed, or whether they are consistent for all residential properties, or otherwise. I am simply asking the specifically noted questions.

2. Can you tell me what the size of Sanctuary Park off Garrison St. is, as well as its dimensions.

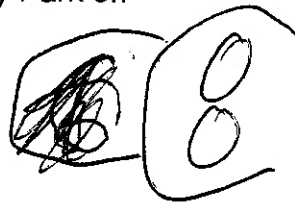


Exhibit 13



City of Lakewood
Department of Community Resources

Park Land Dedication Ordinance and Policy
June 16, 2018

On March 26, 2018, the Lakewood City Council approved Ordinance O-2018-4 which revised the City's park land dedication requirement as originally stated in O-1983-137. The ordinance requires that subdividers of new residential lots and developers of new residential units submitted for formal approval after June 16, 2018 to the City of Lakewood, shall dedicate land for parks and open space or pay a cash-in-lieu fee.

The land dedication or fee-in-lieu is assessed at the time the property is subdivided, or if subdivision is not required at the time of site plan approval. Land dedications should be completed with the plat, however, in certain cases they may be done by a separate instrument. Fees assessed on plats are due when the plat is recorded. Fees assessed on site plans will be due at the time of building permit issuance. Park improvements may be substituted for fees at the discretion of the Director of Community Resources.

Park Land Dedication

The amount of land for park land dedication is calculated based on a standard of 5.5 acres for every 1000 additional population generated by the new residential development. For all developments greater than 15 acres, land shall be dedicated. The following per-unit density factors are used to determine the number of people generated by different housing unit types:

Dwelling Unit Type	Persons per Dwelling Unit	Land Dedication Required per Unit
Single Family Detached	3.00	.0165 acres
Single Family or Multi-family attached	1.50	.00825 acres
Senior Housing	1.25	.006875 acres

Fee-In Lieu of land dedication

The Director for the purpose of this ordinance, has determined that the fair market value of land to satisfy the park land requirements in this ordinance for the time period of June 16, 2018 to December 31, 2019 to be approximately \$254,545 per acre.

Dwelling Unit Type	Per Unit Fee-in-Lieu of land dedication
Single Family Detached	\$4,200
Single Family or Multi-family attached	\$2,100
Senior Housing	\$1,750

Any interpretations or questions of the Ordinance and policy should be directed to Ross Williams, Facility Planner at 303-987-7814 or roswil@lakewood.org.

Kit Newland

Approved by Kit Newland,
Director of Community Resources

7/3/18
Date

Alternative formats of this document available upon request.

(9)

This FMV has been void for 4 years

Source: city of Lakewood, CO -
Planning Dept website - select
pages & select Underlined
starred ~~text~~ (see next
page)

Proposed Private Development: 777 S. Yarrow St.

Overview

The four acres at 777 S. Yarrow St. is privately owned land that has an older dilapidated and abandoned two-story office building surrounded by a parking lot. The office building has been there since the 1970s, and it is adjacent to Belmar Park. The office building's parking lot abuts the park, and visitors to Belmar Park have improperly used the office building's parking lot as the parking location to access the park for decades.

The proposed development of this property does not involve or include any parkland, and this property was never part of Belmar Park and has always been private property. The owners of the office building and the surrounding parking lot recently sold to another private owner. Any statement that parkland has been sold is incorrect. The zoning on the property has remained the same with the sale of the property, and it allows multistory buildings such as this proposed development as part of downtown Lakewood.

Due to the development's proximity to an existing multifamily residential complex and the park, community members have voiced concerns about the possible impacts of this project.

Updates

This section will be updated periodically as new information is available.

- Nov. 27, 2023: Kairoi Residential, the owner and developer of this private property, will begin a facilitated discussion during the first week of December with neighbors of 777 S. Yarrow St. Please see the facilitated discussion section for more information. The members of the discussion group will decide what their meeting schedule will be. During this process, the developer has paused the proposed development, as was announced in an Oct. 18 [a letter to City Council](#) (PDF, 113KB) ([/files/assets/public/v/1/planning/kairoi-residential-777-s-yarrow-st-city-council-letter-to-col-10.18.23-002.pdf](https://files/assets/public/v/1/planning/kairoi-residential-777-s-yarrow-st-city-council-letter-to-col-10.18.23-002.pdf)).

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Private property rights information

~~Existing~~

As with any homeowner in Lakewood, this privately owned property has property rights. In this case, those property rights include allowing the owner to develop a multistory building for residential use in Lakewood's downtown. The right to develop the multistory building is known as a "use by right," meaning this use is tied to the property as an inherent property right and requires no rezoning or review by City Council to develop it with that use.

Also similar to homeowners in Lakewood who have a "use by right" on their properties, there is not a process where adjacent neighbors have a say in how a property owner develops the property under this "use by right." These are the same property rights that you as a homeowner in Lakewood have on your property.

Because development is occurring under the existing property rights, the proposed development will occur solely through the administrative process managed by the Planning Department. That means the Planning Department will review the development to ensure it is meeting the city's regulations for setbacks of the building, heights, green space requirements, landscaping, etc. This administrative review process typically takes numerous rounds, and in this case is expected to continue for several months. Kairoi Residential has agreed to pause the submittal and review process for two months.

Please see the answers to frequently asked questions for additional information.

Frequently Asked Questions

Who owns the property?

The property is privately owned and is not part of Belmar Park. No portion of Belmar Park will be used in the development of this property, except to allow for tree, shrub, and native grass plantings adjacent to the site.

What is the zoning at 777 S. Yarrow St.?

Multifamily residential development is a permitted use, or use-by-right in the Mixed-Use Core Urban District (PDF, 423KB) (</files/assets/public/v/1/planning/m-c-u.pdf>) subject to administrative review. No public hearings are required. This private property has had the multistory uses available to it for several decades.

What type of development is proposed and is parking on-site?

The proposed development is 412 residential units with 542 parking spaces internal to the building. The developer is planning market-rate units.

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single page extract from 11/30/23
memo - Lakewood city Attorney
to Mayor + Council regarding
Legal Risks/Implications of 777 S
Yarrow A.

c. Zoning Code: Permitted Use versus Other Uses

The types of uses for any development or redevelopment are described in Article 14 of the Lakewood Municipal Code. The five types of uses are: permitted uses, limited uses, special uses, accessory uses, and prohibited uses. The type of use dictates whether the project is a use-by-right (preapproved use within an area only subject to administrative review by the Planning Department) or whether the project is not a preapproved use within the area and therefore subject to some heightened form of public hearing or oversight.

When a property owner seeks to develop a use that is preapproved they have the expectation that the use will not be challenged or prohibited by any action of the City. If the City were to require public hearings, or some other form of approval other than the established administrative approval, the Applicant would be within their right to file suit against the City for violating its own Municipal Code as well as differential treatment.

Project
Totally
mislead;
misinform
statement

d. Lakewood Zoning Code provisions: existing trees

Per 17.6.5.8(A) of the Lakewood Zoning Ordinance,

"[e]xisting trees with trunks greater than 8-inch caliper, measured 1 foot above grade, within a development shall be preserved to the extent reasonably feasible and will help satisfy the landscaping requirements of this Section. Such trees shall be considered "protected" trees within the meaning of this Section. Streets, buildings, and lot layouts shall be designed to minimize the disturbance to protected trees."

NOT True!

Subsections B and C of this Chapter go on to describe the process of how the City determines which trees must be preserved and which trees are exempt (due to decay, nuisance species, etc.).³

The Chapter then discusses Tree Replacement and includes the following language: "[i]f a property owner chooses not to replace the total caliper of trees on-site, the owner may make a cash payment of \$1,200.00 per tree into a tree fund which shall then be used to replace trees on public property in the Ward in which the property is located." 17.6.5.9(C).

This code provision makes it clear that the property owner has the final say as to whether the property owner will replace or relocate the trees or whether they will pay the "fee-in-lieu" of \$1,200.00/tree.

Because the code provision is adopted the landowner/developer has the right to rely upon it. If the City (through any means, including city council direction, planning department direction, or community resources direction) were to require an Applicant to keep any or all of the existing trees on the site in order to be given development approval the Applicant would have a claim against the City for violating its own Municipal Code and differential treatment.

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³ Without knowing the specific numbers, several of the sixty-nine existing mature trees that would be removed on the proposed site were found by the City's Forrester to be exempt from replacement due to them already being dead or dying and/or tree species that constitute a nuisance to the public.

Major Site Plans
(LZO 17.2.7)

17.2.7.3: Review Authority

- A. The Director shall have the authority to review and render a decision on a major site plan application.
- ~~B. The Planning Commission shall have the authority to hear a referral from the Director and render a decision on a major site plan application.~~
- ~~C. The Planning Commission shall have the authority to hear an appeal of the Director's Decision and render a decision on a major site plan application.~~
- D. The decision of the Planning Commission on a major site plan application shall be final.

17.2.7.4: Review Procedure

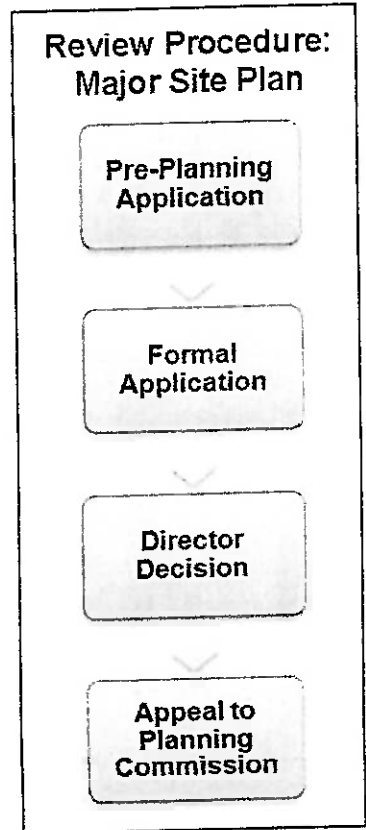
A request for a major site plan review shall follow the procedures described below

A. Application

For major site plans, the applicant shall follow the application process for a preplanning and formal application described in Sections 17.2.2.1:A and 17.2.2.1:B and any other applicable City standards.

B. Director's Review and Decision

1. The Director shall review the application and ensure the following:
 - a. The formal application is complete when submitted to the City; and
 - b. The applicant followed the procedures as stated in this Zoning Ordinance; and
 - c. The application is reviewed applying the review criteria in Section 17.2.7.2: and any other applicable City standards.
2. The Director shall make a decision to approve, approve with modifications, or deny the application for a site plan based on the review criteria in Section 17.2.7.2., and any other applicable City standards.
3. The communication of an approval or denial of a site plan shall provide reasons for the approval or denial. Red line changes on a site plan shall constitute sufficient detail of the reasons for a denial.
4. No building permit for any development requiring a site plan shall be issued without obtaining the Director's approval.



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(Major Site Pla

5. The Director, at his or her sole discretion, may refer a major site plan to the Planning Commission pursuant to Section 17.2.7.3:

Appeal of Director's Decision

- a. The applicant may appeal the Director's decision on a major site plan.
- b. A written appeal shall be submitted to the Secretary of the Planning Commission within 30 days of the Director's decision.
- c. The Planning Commission shall review appeals to the Director's decision for a major site plan. The Planning Commission shall conduct a public hearing within 30 days of receipt of a complete appeal application.
- d. The Planning Commission's review shall determine whether the decision of the Director is consistent with this Zoning Ordinance.
- e. Any decision of the Planning Commission on review of an appeal to a major site plan shall include reasons for affirming, modifying, or reversing the Director's decision.

17.2.7.5: Expiration of Major Site Plans

- A. The applicant shall obtain approval of a building permit within a period of two years from the date of a major site plan approval. If the building permit is not obtained within this time period, the approval of the major site plan is no longer valid.
- B. The applicant may request an extension of the major site plan approval. A written request for an extension explaining the justification for the request shall be submitted to the Director prior to the expiration of the major site plan approval. The Director may grant an extension for good cause for up to one year from the date of the original expiration of the major site plan approval.

17.2.8: Revocation of Uses

17.2.8.1: Applicability

This Section establishes the procedures and criteria for revoking the permission for special, nonconforming, and temporary uses.

17.2.8.2: Revocation of a Special Use Permit

- A. The stipulations and conditions imposed by the Planning Commission shall be maintained in perpetuity with the special use. If at any time the stipulations are not met or are found to have been altered in scope, application or design, the use shall be in violation of the special use permit.
- B. If and when any special use is determined to be in violation of the special use permit, the Director shall notify the permit holder and the property owner in writing of said violation and shall provide the permit holder with a 14-day period in which to abate the violation or a reasonable period of time as determined by the Director. The permit holder shall

14

E X 111711

March 12, 2024, Lakewood statement

Lakewood's planning director has decided to refer this proposed private development to the city's Planning Commission because there is an indication that an appeal will be filed as part of the city's review, and such an appeal would be sent to the Planning Commission. By making the decision now to refer this case to the Planning Commission, it will ensure the most efficient and expeditious method for handling this proposed development. The referral will occur when the proposed development submits plans for final review and approval as part of the administrative review process, which is expected to take several more months.

contradicts statement
pubs
for
month

Because this proposed development will be presented to the Planning Commission, the planning director and other city staff cannot provide any comments about this development. The Planning Commission process is a "quasi-judicial" process, which means information and comments about the case must occur only during the Planning Commission's public hearing. The quasi-judicial process is similar to a court proceeding, and all communications about the case must occur only during the public hearing proceedings.

Please visit Lakewood.org/777SYarrow for additional information about this project.

Source: city of lakewood, CO



Departments



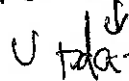
Planning



Projects of Community Interest



Proposed Develop. at 777 Yarrow



updates → 3/12 City Staff

15

The Lakewood Comprehensive Plan is an advisory document that guides the development and redevelopment of the city of Lakewood. The Plan contains a set of goals and action steps that provides guidance to the Planning Commission and City Council when making decisions. It is intended to improve and enhance the city's livability, economic viability, transportation and sustainability.

Comprehensive Plan Chapters:

Acknowledgments (PDF, 97KB)

/files/assets/public/v/1/planning/comprehensive-planning/pdfs/community-plans/comp-plan/final_acknowledgements_tableofcontents_tablesfiguresmaps_.pdf

Chapter One: Introduction (PDF, 12MB)

/files/assets/public/v/1/planning/comprehensive-planning/pdfs/community-plans/comp-plan/lakewood-2025_moving-forward-together_3_final_introduction.pdf

- Purpose of the Comprehensive Plan
- Plan Organization
- Planning Process and Community Input

Chapter Two: Background (PDF, 3MB)

/files/assets/public/v/1/planning/comprehensive-planning/pdfs/community-plans/comp-plan/lakewood-2025_moving-forward-together_4_final_background.pdf

- History
- Regional Context & Setting
- Land Use
- Demographics



Comprehensive Plan



Source: City of Lakewood
 Planning Dept. info. webpage
 on Comp. Plan 16

Home (<https://www.lakewood.org/Home>) / Government (<https://www.lakewood.org/Government>) / Departments (<https://www.lakewood.org/Government/Departments>) / Planning (<https://www.lakewood.org/Government/Departments/Planning>) / Comprehensive Planning (<https://www.lakewood.org/Government/Departments/Planning/Comprehensive-Planning-Main>) / Community Plans

Community Plans

Overview

The City's Comprehensive Plan, implementation plans and citywide plans provide goals and action steps to enhance Lakewood's livability and to guide land-use decisions, sustainability and quality development in the city.

Envision Lakewood 2040

Throughout 2024 and 2025 Lakewood is updating the City's Comprehensive Plan.

Visit our project page to see all of the details
(<https://www.lakewoodtogether.org/CompPlanUpdate>)

Comprehensive Plan

Lakewood 2025: Moving Forward Together (PDF, 243MB)

https://www.lakewoodtogether.org/files/assets/public/v1/planning/comprehensive-planning/pdfs/community-plans/comp-plan/lakewood-2025_moving-forward-together_lakewood-comp-plan_2015.pdf

Source: City of Lakewood
Planning Dept. info. webpage
(17)

U.S. Federal and State Cases, Codes, and Articles

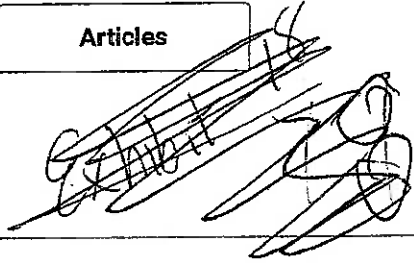
Select a tab to search United States Cases, Codes, or Articles

Cases	<u>Codes</u>	Articles
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Search by keyword or citation
* Indicates required field

Keyword or Citation *

[View results >](#)



FINDLAW (HTTPS://LP.FINDLAW.COM/) / CODES (HTTPS://CODES.FINDLAW.COM/) / COLORADO (HTTPS://CODES.FINDLAW.COM/CO/) / TITLE 31. GOVERNMENT MUNICIPAL (HTTPS://CODES.FINDLAW.COM/CO/TITLE-31-GOVERNMENTMUNICIPAL/) / § 31-23-206

Colorado Revised Statutes Title 31. Government Municipal § 31-23-206. Master plan

Current as of January 01, 2022 | Updated by FindLaw Staff (https://www.findlaw.com/company/our-team.html)

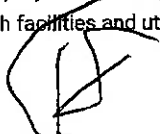
(1) It is the duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside its boundaries, subject to the approval of the governmental body having jurisdiction thereof, that in the commission's judgment bear relation to the planning of the municipality. The master plan of a municipality is an advisory document to guide land development decisions; however, the plan or any part thereof may be made binding by inclusion in the municipality's adopted subdivision, zoning, platting, planned unit development, or other similar land development regulations. After satisfying notice, due process, and hearing requirements for legislative or quasi-judicial processes as appropriate. When a commission decides to adopt a master plan, the commission shall conduct public hearings, after notice of such public hearings has been published in a newspaper of general circulation in the municipality in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan. The plan, with the accompanying maps, plats, charts, and descriptive matter, must, after consideration of each of the following, where applicable or appropriate, show the commission's recommendations for the development of the municipality and outlying areas, including:

(a) The general location, character, and extent of existing, proposed, or projected streets, roads, rights-of-way, bridges, waterways, waterfronts, parkways, highways, mass transit routes and corridors, and any transportation plan prepared by any metropolitan planning organization that covers all or a portion of the municipality and that the municipality has received notification of or, if the municipality is not located in an area covered by a metropolitan planning organization, any transportation plan prepared by the department of transportation that the municipality has received notification of and that covers all or a portion of the municipality;

(b) The general location of public places or facilities, including public schools, culturally, historically, or archaeologically significant buildings, sites, and objects, playgrounds, squares, parks, airports, aviation fields, military installations, and other public ways, grounds, open spaces, trails, and designated federal, state, and local wildlife areas. For purposes of this section, "military installation" shall have the same meaning as specified in section 29-20-105.6(2)(b), C.R.S. (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000517&refType=SP&originatingDoc=184a2a4907f7711ec8ecfd6a8e936f-

-105.6)

(c) The general location and extent of public utilities terminals, capital facilities, and transfer facilities, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes, and any proposed or projected needs for capital facilities and utilities, including the priorities, anticipated costs, and funding proposals for such facilities and utilities;



4. Comprehensive Plans: Compliance or Non-Compliance?:

Issue: *There has been no formal staff review of compliance or consistency with goals and policies of Lakewood's 2015 Comprehensive Plan, Moving Forward, in relation the Belmar Park West Master Plan project (e.g. no comprehensive staff report). However, the following discussion makes clear that Lakewood land development proposals must meet Comprehensive Plan consistency standards. It's not acceptable to hand-pick select goals and policies supporting a project, and to ignore others that seek project mitigation or might be grounds for denial.*

In Colorado, Comprehensive/Master Plan documents are generally advisory. however, "they may be made binding by inclusion in a municipality's adopted subdivision, zoning. . or other . . land development regulations" (C.R.S. 31-23-206[1]); (see **Exhibit 18**). For the record, the Lakewood Planning Department's website indicates that "The Lakewood Comprehensive Plan is an advisory document. . ." (see **Exhibit 19**) – ~~codified city codes and state statues differ – proof that it is 'binding'~~ follows.

Pursuant to C.R.S. 31-23-206(1), Lakewood's Zoning Code incorporates/includes Lakewood's Comprehensive Plan *as a binding document*. Specifically, LZC 17.1.3 (Relationship to Comprehensive Plan) decrees:

The Lakewood Comprehensive Plan establishes the goals and policies that act as the foundation of this Zoning Ordinance. *All land use decisions shall be consistent with the goals and policies of the Comprehensive Plan and with the Purpose and Intent of this Zoning Ordinance (emphasis added)*

The importance of Comprehensive Plan consistency to Lakewood land development decisions is further stipulated in LZC 17.1.7(B)(1)(b) which, in relation to review of land development applications, the Planning Director must demonstrate that:

The application is consistent with the Lakewood Comprehensive Plan and all other plans approved by the City Council.

Further Comprehensive Plan consistency requirements are found in LZC 17.2.2.3(C)(1) (Public Hearings; Conducting a Public Hearing) which reads:

The Zoning Ordinance, the Comprehensive Plan, including all elements, and the Subdivision Ordinance shall be a part of the record of every public hearing, and it shall not be necessary for any part or person to formally to move their introduction into evidence.

It is recognized that the BPW MSP is ~~under administrative review~~. Regardless, the fact that the Comprehensive Plan and all elements thereof shall be part of the record of every public hearing further indicates Lakewood's Comprehensive Plan status in land development decisions.

LZC 17.14.1(E) (General Interpretations) defines the word "shall" as mandatory. All of the above decrees regarding the requirement for Comprehensive Plan consistency are clear. To use a simple example, if a land development is deemed to have unduly adverse impacts on natural resources, in relation to a goal reading "natural resources must be protected", the development might be denied, or appropriately condition. I understand that exemplary planning, discretion and

19

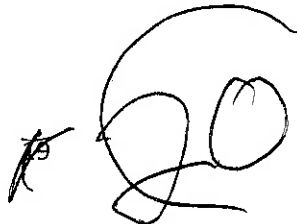
compromise is often needed in reviewing land development proposals against possibly conflicting qualitative and quantitative standards. Per all cited LZC cited sections (LZC 17.1.3; LZC 17.1.7(B)(1)(b); LZC 17.2.2.3(C)(1)), Master Plan goals and policies, as well as zoning code purposes and intents, must all be considered in context of development project review. For example, as noted in text under Section II.2. earlier, that a *maximum* building height in a district is 120' does not mean that such height is allowed by right. Reiterating, qualitative purpose and intent statements of the zoning code, as with qualitative goals and policies of the Comprehensive Plan, must be considered. In the case of the BPW project, the need to evaluate consistency with Master Plan goals and policies, as well as with Zoning Code purposes and intents, is especially highlighted given that that true intentions of underlying zoning or other codes (e.g. Park & Open Space Code, Dedication Code, Tree Protection Code) have been ignored.

In my 10/25/23 phone conversation with Matt Post, he indicated that consistency of the BPW Site Plan with Master Plan goals and policies didn't matter and was not evaluated. This perspective is epitomized by any lack of staff report, by ignoring any public review opportunities to permit such a huge project at an administrative level, etc. – look where that has got the city. Matt did mention the Master Plan context of the site, namely, its M-C-U official zoning map classification, including M-C-U District goals, as well as the West Alameda Urban Area Designation, and exemption from Strategic Growth Initiative Building Limitations. I have seen subsequent staff rationales echoing the latter points. Hypocrisy reigns in defending, for example, excess project density, yet conveniently ignoring counterbalancing Master Plan goals and policies.

As shared on page 1, myself and I believe many citizens support relatively higher density in the Belmar Area, and on the BPW site – but that's not a one-way paradigm, and must also be considered in relation to a possible/future 'Belmar Park East' development. As noted above, 'maximum' density allowances, 'maximum building heights, and other quantitative standards must be reviewed and weighed against qualitative Master Plan goals and polices.

Lakewood 2025-Moving Forward Together, adopted in 2015, is Lakewood's current Comprehensive Planning document. Moving Forward cites Vision, Guiding Principal, Goals and Action Step statements, all that apply to review of the BPW Major Site Plan. As background and community context, the context, Moving Forward reads:

Lakewood is one of the most livable cities in the United States. Lakewood's spectacular location near the mountains, open spaces and Denver . . . allows residents to take advantage of an abundance of recreational and urban amenities . . . Lakewood residents place great value in the city's parks, trails, and recreation centers... and that . . . a diverse park and recreational system is essential to supporting Lakewood's success as a community, for ensuring the quality of life for residents... (p. 3-6) (*Question: Does a zero buffer from Belmar Park place great value to the Park?*)



Progressing into specific vision and goal statements, Moving Forward reads:

In 2025, we envision a City that is . . . Livable, with a high quality of life . . . attractive . . . with high-quality parks and recreation centers . . . Sustainable, with a commitment to . . . protecting the unique natural environment, and responsibly integrating sustainable practices into land use, build structures . . . a steward of environmental health irreplaceable natural resources . . . (p. 3-6) (*Questions: Does zero buffer from Belmar Park place great value to the Park and its unique environments? Does a zero buffer from Belmar Park constitute stewardship of this irreplaceable natural resource?*)

Further, Moving Forward cites Parks and Trails goals, including:

Goal L-PR1: "Provide adequate parks, trails and gathering places throughout Lakewood" (p. 4-31)

Associated Action Steps associated with Goal L-PR1 include (p. 4-31):

- a. Through the site plan review process, ensure that adequate parks, open space, and gathering places are incorporated as new development occurs (*this document details the failure of staff to ensure that adequate open space is provided to buffer the crown-jewel of Belmar Park from the BPW project*).
- b. Evaluate on an annual basis the parkland dedication fee to determine if it is sufficient to address the need for additional parks and park improvements as new residential development (*this document details the multiple failures of the **Exhibit 13**, the City's Park & Open Land Dedication Policy*).
- c. Through the site plan review process, integrate natural features with new development and City projects (*this document details the failure to protect or suitably integrate Belmar Park to the Site Plan: consider, as examples: staff flip-flops regarding on-site land dedication, especially in relation to noted Park & Open Space Dedication code standards, as well as Matt Post's lobbying regarding the need for a significant buffer(s). Additionally, consider allowance to remove all but a handful of "protected" trees – clear contravention to Lakewood's Existing Tree Preservation Ordinance.*

It is gravely concerning that the above-listed Comprehensive Plan's Vision, Guiding Principles, Goals, and Actions Steps have been ignored in staff review of the Belmar West MSP – that staff review has focused on quantitative M-C-U district density, or height 'allowances' and ignored qualitative review standards. It is understood that there are balances and compromises in making land development project decisions – this document has repeatedly noted failures to achieve the same.

The Lakewood Sustainability Plan was adopted on 5/11/15 as part of Lakewood's Master Plan document. Chapter 6, Natural Systems headline reads: "Natural Systems are the foundation of a healthy and sustainable community" (p. 120)



Further Objectives and Targets are listed on p. 118 and 124, for example:

Goal: Mitigate the negative effects of the built environment and human behavior on Lakewood's natural systems to ensure biodiversity and enhance ecosystem services.

Target: Achieve Tree Canopy of 30 percent by 2025.

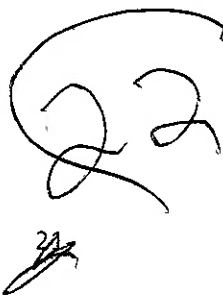
Objective: Protect, restore, and enhance ecosystem health and biodiversity throughout Lakewood's natural and built environments. Indicator: Acreage of land covered by habitat type.

Target: Increase the acreage of functional and healthy natural systems

Given the immediate adjacency of Belmar Park, does the BPW project achieve any of the listed Sustainability Plan Goals, Objectives, Indicators and Targets above? As noted, following Comprehensive Plan review, where is the balance between private and public interest? For the record, Sustainability staff noted in a 3/18/21 email that: "we appreciate the applicant's desire to be sensitive to the context of the surrounding Belmar Park, and would be happy to coordinate with the applicant." (see **Exhibit 19.a.**) Since then, to my knowledge, all Sustainability Office comments have focused exclusively on 'pure' sustainability matters like recycling, waste reduction, solar panels, etc.

It may be suggested that additional goals and policies from 'functional/topic specific' or 'geographic' Lakewood plans adopted after Kairoi's 4/2022 formal land development application cannot apply to review of the BPW Major Site Plan. Regardless, I note them for Council consideration below. Time has been limited to document Lakewood's 2003 Parks Plan – I'm fully confident it would support goals and policies found in Lakewood's Moving Forward Plan and recently adopted Imagine Tomorrow Parks Plan.

As noted, in May 2023, the Council adopted Lakewood's Imagine Tomorrow – Arts, Parks & Recreation for All Plan. Imagine Tomorrow reiterates the critical importance of Natural Areas and Greenspace, as well as associated Nature Trails, to Lakewood residents. It also cites these areas and trails as highest priority recreation facilities and amenities, and as Top Priorities for Investment in Recreation Facilities and Amenities. Imagine Tomorrow affirms Lakewood's collective knowledge that its park and open space system is exemplary and fundamental to its identity, and that Lakewood's park system must be stewarded. Respectfully asked: have apparent staff decisions related to the Belmar West MSP reflect the priority of natural area, greenspace, and associated trail priorities outlined above?

A handwritten signature consisting of a large, stylized 'Q' or '2' shape with a flourish underneath, and the number '21' written below it.

FROM
12/18/23

Mark Smith, Lakewood
Citizen C.O.R.A. Public Record,
OpenForms Request to
City of Lakewood

Public Records Request from Mark Smith

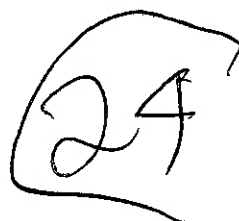
RE: 777 S Yarrow St:

Item 1: ALL written and graphic information related to the Lot Line Adjustment (LLA) and Vacation of Easement at 777 S Yarrow St. (i.e. ALL applications, graphics, staff written correspondence [internal among staff and external - to applicant] thru today (12/18/23). If possible, I would like this request to apply to all noted information forward indefinitely from 12/18/23C

Item 2: All Staff correspondence from any City of Lakewood staff, including but not limited to: Planning Director, City Manager, and City Attorney TO any Mayor & Council member, individually and/or at-large. If City Attorney correspondence is considered 'Confidential' or the like in any manner, please provide me the applicable and specific statute, regulations, city code and/or otherwise that enables it to be confidential. I specifically ask for the latter statute, regulation, city code, case law and/or otherwise, and am specifically interested to know how and why there can be any Attorney-Council confidential or privileged information given that, for example: 1. The City is not in litigation with Kairoi Residential on their Major Site Plan [i.e. if the city is not in litigation, why and how is any Attorney correspondence privileged?; 2. the Council has public trust obligations to citizens at-large under LMC 2.03.020 and otherwise; 3. The Council and City Boards, etc. [and assumably citizens in this instance] are clients to the City Attorney and should be the ones choosing to retain privilege or not retain privilege, NOT the other way around; and 4. The Council has repeatedly indicated they have no review or decision authority on the Major Site Plan and related approvals [i.e. if Council has no review or decision authority, how and why is any privileged information being provided?] I am legitimately concerned about any messaging the Mayor and Council are getting from any and all staff. I seek specific reply.

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Item 3: RE: Public Comment Period Transcripts: I assume that all public comment period remarks are typed into verbatim transcripts. If not, are generalized minutes completed? I would like verbatim transcripts if possible. Generalized minutes secondarily. If the latter two are not available, recordings of minutes.

A handwritten number '24' is enclosed within a hand-drawn, irregular rectangular box. The lines are dark and appear to be drawn with a pen or marker.

Save Belmar Park Committee
Interested Parties List

Sent from the all new AOL app for iOS

Begin forwarded message:

On Thursday, December 21, 2023, 11:57 AM, Shared-PublicRecordsRequests
<PublicRecordsRequests@lakewood.org> wrote:

It is estimated that your request will take approximately 149 hours to research and retrieve. Under CORA, the rate is \$33.58 / hr. With the first hour being no cost. Therefore, the estimate comes to \$5003.42. Please let me know if you would like to proceed.

Public Records Requests

City Clerk's Office

City of Lakewood
480 S Allison Pkwy
Lakewood, CO 80226
(303)987-7080

12/21/23 City Reply
to my 12/18/23
public records
request



Lakewood
City Clerk's Office

WWW.LAKEWOOD.ORG

Please reach out via email to ensure a quick response. ALL responses should be directed to publicrecordsrequests@lakewood.org and not any one individual.

From: Lakewood Records Request <publicrecordsrequests@lakewood.org>
Sent: Monday, December 18, 2023 3:49 PM
To: Shared-PublicRecordsRequests <PublicRecordsRequests@lakewood.org>
Subject: Public Records Request from Mark Smith

EXTERNAL – USE CAUTION

25

Fw: Public Records Request from Mark Smith

From: mark98027@aol.com (mark98027@aol.com)
To: jabs4@windstream.net
Date: Friday, December 22, 2023 at 05:12 PM MST

Sent from the all new AOL app for iOS

Begin forwarded message:

On Friday, December 22, 2023, 1:38 PM, mark98027@aol.com <mark98027@aol.com> wrote:

Rebekah,

Yes, and how are 149 hours, or anything remotely approaching that time, justified, as asked in my follow up mail?

-Mark.

Sent from the all new AOL app for iOS

On Friday, December 22, 2023, 1:33 PM, Rebekah Stewart <RebSte@lakewood.org> wrote:

Hey Mark,

It's my understanding that the costs associated with public records requests are to cover staff time over the free allotment that it would take to fulfill the request.

Rebekah Stewart
She | Her | Hers
Lakewood City Council Ward 3
Rstewart@lakewood.org
303.242.8597

12/22/23 From Mark Smith back to Email city re: \$5,003 charge

From: mark98027@aol.com <mark98027@aol.com>
Sent: Friday, December 22, 2023 12:02:43 PM
To: Wendi Strom <WenStr@lakewood.org>; City Council Members <CityCouncilMembers@lakewood.org>; Shared-PublicRecordsRequests <PublicRecordsRequests@lakewood.org>
Cc: governorpolis@state.co.us <governorpolis@state.co.us>; administration@coloradosos.gov <administration@coloradosos.gov>; ag@coag.gov <ag@coag.gov>; hannah.mullen@mail.house.gov <hannah.mullen@mail.house.gov>; Regina Hopkins <advocatergina@gmail.com>; Celia Greenman <celia.greenman@earthlink.net>; PreiNeil@gmail.com <preineil@gmail.com>; Kathy Hodgson <KatHod@lakewood.org>; Travis Parker <TraPar@lakewood.org>; Greg Buchanan <GreBuc@lakewood.org>; Jay Robb <JayRob@lakewood.org>; Ross Williams <RosWil@lakewood.org>; jessie.danielson.senate@coleg.gov <jessie.danielson.senate@coleg.gov>; Greg Buchanan <GreBuc@lakewood.org>; chris.kennedy.house@coleg.gov <chris.kennedy.house@coleg.gov>
Subject: Re: Public Records Request from Mark Smith

EXTERNAL - USE CAUTION #
Friday, 12/22/23

I am forwarding the estimated cost for the Public Records request that I made on Monday afternoon, 12/18.

Public Records staff indicates an estimated 149 hrs. will be required to review records before dispersal, at a cost of \$5,003.42. Do any of you think this is honesty, transparency, public service, and caring about citizen concerns? You are **my elected officials**. I am a reasonable citizen seeking basic public information, and this is the sort of reply I have repeatedly received. My first public records request of several weeks ago was at a cost \$3,600; my second, scaled back, was \$1,800. I did not follow thru with either - those costs are absurd. This is after Matt Post, former Belmar Park West Project Planner informed me on 10/25/23 that the City Planning Department's 'e-trakit' system designed to provide information about development projects is convoluted and not user-friendly - that I specifically needed to make public records requests. This is also following visits to Planning Department Counter staff, for example, last week, when I was told I would need to make a public records request for two 11" by 17" Lot Line Adjustment drawings; where a couple weeks prior, in a phone call to Community Resources Staff, that I needed to make a public records request for one single 8.5" by 11" policy document. Where on 11/13/23, I had a dreadful customer service experience at the Planning Department Counter, only to go the the City Manager's Office and be turned away - never to receive my requested return phone call, and then BS correspondence from some public relations staff which I have copied to all of you.

The records I'm seeking are not extensive at all (just read my request below). This is yet another 'straw that broke the camel's back experience' with Lakewood City Hall that now has me reaching out to State Government Offices, Officials, and Federal Representatives. **For God's sake Mayor and Council, you need to do something about this. Read this and do something about it. Stop the BS. Now.**

I can be reached as indicated below. Please contact me to let me know what you are going to do about this situation.

Regards,

Mark Smith, Ward 3

Mark98027@aol.com
720.219.9832

cc: Jessie Danielson, Colorado Senator
Chris deGuy Kennedy, Colorado Representative
Jared Polis, Colorado Governor
Phil Weiser, Colorado Attorney General
Jena Griswold, Colorado Secretary of State
Brittany Pettersen, U.S. Representative
John Hickenlooper, U.S. Senator
Michael Bennet, U.S. Senator
Kathy Hodgson, Lakewood City Manager
Travis Parker, Lakewood Planning Director
Jay Robb, Lakewood City Clerk
Greg Buchanan, Lakewood Records Manager
Ross Williams, Lakewood Parks Planner

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Further reply
Mark Smith to
City

Dear Lakewood City Clerk's Office/Public Records Staff:

In an email yesterday, you indicated that my three (3) public records request items would take 149 hrs. to process at a cost of \$5,003. I am a Senior Citizen on a fixed income. Frankly, that time and fee is absurd.

Regarding item 1 - the The Lot Lot Adjustment and associated graphics and files for the 777 S. Kairoi project cannot be that extensive, nor need any internal screening at all.

Regarding item 3 - the public comment records, your reply that 'public comments' are attached to meeting minutes is not clear at all. Are they attached as written minutes, which your email seems to imply? Or are they attached and kept in storage on tape or digitally, as permanent audio records? In either of the latter cases, they are existent and would need no internal screening. I certainly am not asking city staff to type up minutes - I assumed you do that as part of records.

Regarding item 2 - Correspondence from Dept. Heads to the City Council, I cannot believe there is any notable volume of correspondence. Why would there be when some Council members have repeatedly noted that they have no role in the Belmar Park West Project, and staff has routinely confirmed that? Even if there happens to be a small volume of correspondence (again, why would there be?), none of it, except possibly Attorney-Council correspondence, would have any grounds as 'privileged'. Further, as I inquired, it's not clear to me that any Attorney-Council would have 'privilege' given the notations I indicated in my original request of Monday, 12/18.

Given the above, please indicate to me, in detail and with specificity, how is it possible that 149 hours of staff time (that's just short of four working weeks), is needed to meet my public records request? I await your prompt reply, and I continue to seek the records at a reasonable cost, not an absurd one.

Allow me to remind all parties - in a 10/25/23 phone call, Matt Post, former Lakewood Senior Planner and Belmar Park West Project Manager, shared with me that the city Planning Department's 'etrakit' project information system (on the Planning Department's website) is convoluted, disorganized, and not user-friendly. Pursuant to Mr. Post's recommendation, I have sought public records almost always thru your public records process, only to be responded to in the fashion of your reply yesterday

Happy Holidays,

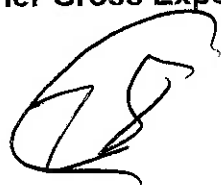
Mark Smith, Ward 3 Resident/Property Owner/Taxpayer/Concerned Citizen

On Thursday, December 21, 2023 at 04:23:30 PM MST, mark98027@aol.com <mark98027@aol.com> wrote:

12/21/23

RE: Public Records Request & Other Gross Experiences at Lakewood City Hall

Mayor Strom & City Council,



RE: Belmar Park West Project - Follow-Up on my 12/18/23 Public Records Request AND Follow-Up on Meeting with Roger, Cheryl & I

From: Wendi Strom (wenstr@lakewood.org)

To: mark98027@aol.com; RLow@lakewood.org; RebSte@lakewood.org

Date: Sunday, January 7, 2024 at 05:00 PM MST

Mark,

I've been wanting to reach out to get you more information about the cost of CORA requests, thank you for again including me here.

Each document gathered and distributed in response to a CORA request requires a legal review of one of our city attorneys. That review, because it requires the use of city staff's time, is the main reason why there is an expense that comes with requests that exceed more than one hour. (There is no cost for the first hour).

This legal review is done for two primary reasons.

- 1. To identify and redact any personal, private information, and
- 2. To identify and redact any attorney-client information.

The hourly billing rate charged is one that is capped by the state and deemed to be reasonable by the courts. In comparison to working with attorneys for non-city matters (ex: estate planning), you would usually see it billed somewhere north of \$100, and often even over \$200 per hour.

I hope this helps clarify some background on the cost.

Our city clerk's office staff will also work with requesters like yourself to fine tune & narrow the scope of requests to help bring those costs down were able as well.

Warm regards,

Wendi Strom
Mayor, Lakewood Colorado
303-987-7040
Lakewood.org

480 S. Allison Parkway
Lakewood, CO 80226

1/7/24 E-mail from
Mayor Wendi Strom to
Mark Smith indicating
how fortunate I am
to not have a
\$15K to \$30K

From: mark98027@aol.com <mark98027@aol.com>

Sent: Friday, January 5, 2024 7:12 PM

To: Roger Low <RLow@lakewood.org>; Rebekah Stewart <RebSte@lakewood.org>; Wendi Strom <WenStr@lakewood.org>

Subject: Re: Belmar Park West Project - Follow-Up on my 12/18/23 Public Records Request AND Follow-Up on Meeting with Roger, Cheryl & I

EXTERNAL - USE CAUTION

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my charge for
12/18/23
Records request.

~~EXHIBIT 1~~

March 12, 2024, Lakewood statement

Lakewood's planning director has decided to refer this proposed private development to the city's Planning Commission because there is an indication that an appeal will be filed as part of the city's review, and such an appeal would be sent to the Planning Commission. By making the decision now to refer this case to the Planning Commission, it will ensure the most efficient and expeditious method for handling this proposed development. The referral will occur when the proposed development submits plans for final review and approval as part of the administrative review process, which is expected to take several more months.

contradicts statement
publ
for
month

Because this proposed development will be presented to the Planning Commission, the planning director and other city staff cannot provide any comments about this development. The Planning Commission process is a "quasi-judicial" process, which means information and comments about the case must occur only during the Planning Commission's public hearing. The quasi-judicial process is similar to a court proceeding, and all communications about the case must occur only during the public hearing proceedings.



Please visit Lakewood.org/777SYarrow for additional information about this project.

Source: city of lakewood, CO



Departments



Planning



Projects of Community Interests



Proposed Develop. at 777 Yarrow
Updated 3/12 City Staff

30



Pay scale
*205,920

204-2506

**CITY OF LAKEWOOD
JOB DESCRIPTION**

Director of Planning/B0113 Job Title/Job Type	
Executive/B01/8810 Occ. Group/Level/ WCC	City Manager Title of Immediate Supervisor
Planning/Planning Department/Division	October 31, 2016 Revised Date Driver's license req added

↓
*228,800
↓
*251,860

City of Lakewood's Statement of Excellence

The City of Lakewood is dedicated to upholding City values to include: Performance Excellence, Leadership, Respect and Collaboration. Best fit candidates will demonstrate innovation, customer service, dedication, passion and engagement. All people, citizens and employees, will be treated with respect, relevance, and importance.

205,920

228,800

JOB SUMMARY

Under the general direction of the City Manager, the Planning Director provides the highest-level professional leadership, management, and strategic direction to the Planning Department, which consists of the Comprehensive Planning and Research Division and the Planning-Development Assistance Division.

The Comprehensive Planning and Research Division develops and helps implement the city's comprehensive plan including neighborhood plans, special area plans and corridor plans; provides liaison to and support for neighborhoods; administers federal Community Development Block Grant and HOME Investment Partnership programs; and provides, analyzes and makes recommendations regarding demographic data and trends.

The Planning-Development Assistance Division implements the city's comprehensive plan, zoning ordinance and subdivision ordinance; manages land development processes through collaboration with the community, applicants' teams, other City staff and appropriate outside agencies; and serves as the staff liaison to the Planning Commission and the Board of Adjustment. Both divisions are integral components of the interdepartmental Development Assistance Team, which is the singular, integrated voice for the city regarding land development.

The Director identifies potential developers and encourages investment in the community, particularly in transition areas; interacts extensively with the public and City Council; ensures highly credible processes and interactions that engender confidence in the department and the entire city organization; and serves as the project manager for assigned special projects.

251,860

MAJOR TASKS, DUTIES AND RESPONSIBILITIES (This job description does not intend to list every function of the position)

ESSENTIAL FUNCTIONS

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The following statements are illustrative of the essential functions of the job and do not include other nonessential or peripheral duties that may be required. The City of Lakewood retains the right to modify or change the duties or essential and additional functions of the job at any time.

Exhibit, articulate, and reinforce the core values of the city and those of the department including professionalism, respect, thoughtful analysis, high quality written and oral work products, enjoyable work environment, trust, open communication and high credibility. Develop department staff to represent the City organization to City Council, Planning Commission, Board of Appeals, business groups, neighborhood organizations, City staff and others. Encourage employees to be self-directed, non-bureaucratic, and thoughtful risk-takers focused on the city's goals and the intent of varied and numerous regulations. Consistently develop and reinforce collaborative teamwork among department staff, among the Development Assistance Team, and with the community and with developers' teams. Encourage front-line staff, their supervisors and division managers to collaborate across division and departmental structures to optimize organizational effectiveness. Develop and encourage staff to resolve inquiries, which may be complex or controversial in nature, from citizens and the development community. Provide long-range strategic input to the development process, staff goals, and to the city management team to encourage practical progress toward community visions and goals. Actively participate as a member of and support the city's management team. Work closely with the Deputy City Manager and Director of Public Works on key development projects and unique development opportunities. Provide leadership oversight of the preparation and adoption of a new zoning ordinance, with input from the Director of Public Works and with day-to-day management by the managers of the department's two divisions. This project is underway with anticipated completion in April 2012.

Advise the City Manager of topics and issues that may rise to the attention of the City Council, City Manager's office or Planning Commission and suggest courses of action. Anticipate, prevent and solve problems. Think long-term, seeking durable policies and decisions. Ensure that required processes are flawlessly executed.

Market development opportunities to good quality developers focusing particularly on areas that are challenging or present greater opportunity to increase sustainable community value including the Colfax corridor and appropriate areas near light rail stations.

Participate in appropriate meetings of the City Council, Planning Commission, Board of Appeals and community organizations. Supervise managers of the Comprehensive Planning and Research division and the Planning-Development Assistance division.

Represent the City with various local, regional and national business and service interests, organizations and associations.

Supervise preparation of the department budget and manage fiscal and personnel resources within the department.

Perform other duties as assigned.

ORGANIZATIONAL RELATIONSHIPS

Supervision Received

General direction from the City Manager.

Supervision Given

Supervise and direct division managers.

ESSENTIAL QUALIFICATIONS (Knowledge, Skills and Abilities)

Education

Bachelor's degree in City or Regional Planning or related field with a Master's degree preferred.

Experience

A minimum of five years increasingly responsible experience as a lead professional land planner/architect with at least two years providing successful supervision/management.

Proven multi-disciplinary collaboration. Public sector and private sector professional level experience is preferred.

Experience successfully contributing to sustainable redevelopment is desirable.

Licensure/Certification/Registration

Valid driver's license and good driving record required.

AICP certification preferred.

Other Knowledge, Skills and Abilities

High degree of ethics ~~and integrity.~~

~~Calm demeanor and positive interaction skills including capability~~ to interact with irate people in a diplomatic and tactful manner.

Innovative and creative in the development of practical plans and programs addressing planning, redevelopment and growth issues.

Ability to work effectively with the city's Management Team including discerning political influences that affect the city or department.

Ability to work independently with high energy and job commitment, ~~handling~~ a high workload with poise, effectiveness and good humor.

~~Understand and communicate larger community and organization issues and define staff roles; proportionately delegate responsibility and authority and provide resources and support the staff.~~

~~Superior oral and written communication skills in dealing with City Council, City Manager, business and other community members, media, peers, subordinates and others.~~

Strong knowledge of planning principles and related legal principles.

A record of continuing education and professional development.

A background check is required.

PHYSICAL AND MENTAL REQUIREMENTS

PHYSICAL REQUIREMENTS

Body Positions

Must be able to move about within City facilities, transport self to other off-site locations and sit using a computer and telephone for extended periods of time.

Lifting and Carrying

Must be able to lift paperwork and files weighing up to 20 pounds.

Hearing

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Comments for Senate Judiciary Committee on HB24 1107 Charles Kopp to: LCS
Committees 04/09/2024 04:19 PM

To Judiciary Committee:

Please note a resounding NO on HB24 1107 tomorrow. I'm very disappointed that the House recently passed this very bad bill and I and many other Colorado citizens are counting on your chamber to kill it.

1107 shows a blatant favoritism toward developers in important land use issues that the public should have no disadvantage with when legal actions are necessary. Let's keep the playing field level!---and STAND UP to the big development lobby instead of caving in to their interests. And if many Colorado legislators believe that the interests of profit-driven developers are aligned with the true interests of our state, they are, indeed, very misguided.

The multitude of us who care about preserving the character and quality of life in our communities, and Colorado's great natural environment will be watching the way you all vote on this and related bills. Sure, we need more affordable and available housing like just about everywhere else in the nation today, but this unfair bill and others under consideration are for the most part not the solutions. We need a much more targeted approach to solve housing needs, and not one that's a big gift to developer interests, which are NOT the same as the public's.

Sincerely,

Charles Kopp
Fort Collins
charleskopp01@gmail.com

Please vote NO on HB24-1107 and don't advance the bill out of Committee.

HB24-1107 is a corporate housing, Chamber of Commerce, developer and local government promoted bill to discourage local residents from bringing actions for judicial review on land use decisions.

Local residents are the very parties in these actions that don't have attorneys on retainer and the \$\$\$\$ to not only pay their own expenses for the judicial review but pay the attorney fees and expenses of developers and local governments.

The City of Fort Collins, where I live, has 3 lobbyists working on this bill. And of course, the Colorado Bankers Association, Colorado Contractors Association, National Association Industrial Office Properties, Rocky Mountain Home Association, to name a few, are lobbying in support of the bill.

Losing a decision does not make the claim against a local government frivolous as a Fort Collins legislator claimed. And why doesn't the land use applicant have to pay attorney fees if they lose the judicial review?

This is so unfair and autocratic on local and state governments' part. Governments and developers don't have more rights than local residents. Is HB-1107 Colorado's version of Citizens United?

Northern Water is monitoring this bill. Northern Water wants to build a huge reservoir near where the Poudre River exits the Poudre Canyon to take water out of the Poudre for cities on the eastern plains. If this bill passes, the implications for local residents and environmental protection advocates are dire. And how will this bill affect actions brought against entities such as the government and Northern Water which have eminent domain powers?

When did elected Democrats start working so hard for corporate housing, financiers and developers? These are the very entities that have contributed to Colorado's soaring housing prices.

And why is affordable housing mentioned in the FAQs of the bill? Many if not most Colorado governments aren't requiring or building inclusionary affordable housing in developments, including Fort Collins. Of the thousands of housing units developed and in the process of development in Fort Collins where I live, almost all are market rate housing units.

It's all carrots, which developers aren't interested in, and no sticks or required inclusionary housing. Developers don't care about affordable housing; they want to develop market rate housing. So many years have been wasted by Fort Collins not requiring affordable inclusionary housing in all new developments.

The Fort Collins city council has also voted against measures to ensure safe rental housing and raising the minimum wage – both related to affordable housing issues. The city council has agreed to all the Chamber's demands when it comes to housing and affordability, including no requirements for inclusionary housing in new developments.

But of course, because the government can, it looks to reduce the rights of its residents rather than truly address the affordable housing issue. It's so much easier to burden local residents rather than the government, corporate housing interests and the Chamber.

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