December 11, 2023

Mayor Wendi Strom & City Council Members

City of Lakewood

Civic Center North

480 South Allison Parkway

Lakewood, CO 80226-3127

.

**RE: Belmar Park West Major Site Plan/Multifamily Development Proposal at**

 **777 S Yarrow St. [SP 22-0010]. This Document transmitted and to be**

 **recorded as Part of Lakewood Planning Department’s Record of Decision.**

Dear Mayor Strom & City Council Members:

Thank you for your past and continuing attention to the critical matter of the proposed Belmar Park West (BPW) Multi-Family project. As all are aware, for weeks the project has resulted in citizen outcry – a passion for Belmar Park and community image. Does Lakewood want to make the wrong decision(s) on this site - to allow a project of this magnitude to encroach on its crown-jewel park? Does Council want to blindly accept staff decisions, details of which you may not be aware of, that contradict Lakewood's public interest?

Consider the modest yet poignant words that concerned citizen Venetia Ruehle shared in a 10/19/23 email to Mayor Strom:

*. . . Belmar Park is an oasis in the city for wildlife and people. We walk the park daily and see a multitude of people enjoying the park. There is a connection between Belmar Park and the surrounding area. The proposed 412-unit building. . . would be a tragic mistake, making a mockery of community. . . planning principles. . . Community planning was central to the development of the Belmar area. The impact of the apartment building on the environment, the park, and community of Belmar . . is unacceptable. Long term value is derived from high quality planning and urban design. . . .* **(Exhibit 1)**

Myself and others are not anti-development, and deem it well to place an appropriately sized, suitably scaled project on the site. I severely doubt that you or most have contemplated the gross monstrosity of project size, or the hypocrisy of its name. Kimley-Horn (KH), Kairoi’s Civil Engineering Firm, in 2/12/21 correspondence noted:

*Kairoi aims to develop a high quality community that will continue to enhance*

*the Belmar and Belmar Park neighborhood while working to connect and integrate*

*with the adjacent lake and park system.* Another KH correspondence notes the project: *will be seamlessly integrated to Belmar Park and surrounding land uses.*

***(see Exhibit 1.a.)***

Really? Here’s my suggested reply to Kimley Horn & Kairoi Residential:

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December 11, 2023

Dear Kimley-Horn & Kairoi Residential:

Your Major Site Plan submittals to date extraordinarily fail to enhance Belmar Park and surrounding neighborhoods. The Belmar Park West project ‘integrates’ with Belmar Park in the worse possible way, with adverse impacts to a multitude of resources and experiences provided there. You have routinely dismissed staff requests in the public interest and supported by city codes, for example, a significant project buffer along frontage with Belmar Park, and upper-story building ‘step-backs’. The majority of our City Council has expressed concerns about the excess size and impacts of your project, yet they feel they can do nothing about it. We adamantly disagree that Council can do nothing about your project. We understand that 777 S. Yarrow St buildings are old and not ripe for office use, and that site redevelopment has fine potential to be a community asset. We are pleased and welcome the opportunity to work with you to consider and support an appropriately sized and scaled project, with quality site planning and design elements that recognize and appreciate the precious jewel that Belmar Park and its surroundings are to our community. Thank you for your attention to this matter.

Sincerely,

The Vast Majority of Lakewood Resident Concerned Residents

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 As constituted, Belmar Park West is better named Belmar Park Destroyer. It is slated for approval and construction at present configuration, and all will be appalled, asking how did we allow this to happen? There will be no turning back, and Belmar Park Destroyer will be a permanent blemish on all of Belmar Park and its precious being. Is that what the Council, *our elected representatives*, want? Is that what the community wants? The latter I assure you not. If we don’t act now, we’re going to get it, and we are going to regret it. Yet solutions and ‘win-win’ outcomes for all are straightforward and apparent. Let’s work constructively together, to make those happen.

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1. **Introduction:**

I am a member of ‘Save Belmar Park’ (SBP), a self-appointed Committee of Lakewood citizens gravely concerned about the impacts to Belmar Park from Kairoi Residential’s [i.e. Kairoi] proposed Belmar Park West (BPW) multi-family project. Our committee represents the concerns of hundreds, and if we had time to organize, thousands of Belmar Park appreciators and users, from Lakewood and beyond. This letter represents the views and concerns of Committee members and concerned Lakewood citizens. As noted on page 1, our members, and I’m sure Lakewood residents at-large, are not anti-development. It’s about *quality* of development. A properly sized/scaled and designed multi-family project at 777 S Yarrow can be a complement to the site - a community asset.

Citizens are reaching out with profound concern to ensure final BPW plans are in Lakewood’s best public interest - as presently constituted, they are not. It is disturbing that a project of this magnitude has not undergone extensive public review – as you likely know, none is mandated unless Travis Parker, Planning Director, enabled pursuant to Lakewood Zoning Code (LZC) 17.2.7.3(B) turns review and approval over to the Planning Commission, with accompanying staff expertise and assistance. Mr. Parker has been urged to do so **(Exhibit 2)**.Planning Staff, Community Resources staff, as well as Mayor Strom and multiple City Council members have noted the BPW project is oversized relative to its site and surroundings. For example, in a 10/25/23 meeting with two SBP members, former Senior Planner/Project Manager Matt Post noted the project was “huge” when he first saw drawings in 2021, further, that he deemed a project half its size (~200 units) would still be large for the site. Ross Williams, forty-plus year Parks Planner at Community Resources, in an ~11/27/23 phone conversation, noted “that he anticipated trouble with the project, and that it will have significant impacts”. In personal conversations and in written correspondence, Mayor Strom and Councilmembers (i.e. referred to collectively as ‘Council’ herein) Stewart, Olver, Janssen and Springsteen (the latter two former) have expressed matching concerns about project size. We collectively need to understand the Goliath size of the project, and the impacts it will have. The footprint alone of BPW buildings is 128,900 square feet - that’s over thirteen (13) times the ~9,750 sf footprint of 1st Bank building at 550 S Wadsworth Blvd. Likewise, gross building area BPW is 670,000 square feet, again over thirteen (13) times that of the 1st Bank building. Just picture ~ten 1st Bank buildings, fronted by 20’ wide access road, ringing the perimeter of the site, towering over Belmar Park, some 20’ plus higher than the 1st Bank building, and with zero buffer (1st Bank is estimated ~52’ to cornice; Site Plan Sheet 1 indicates 75’ building height at BPW). As previously noted, a tragic mockery of community planning. Yet, an obvious and ready solution – a significant ‘westerly’ project buffer (i.e. *minimum* 175-feet) from Belmar Park - sits in our collective laps. A 175-foot buffer from the edge of easterly walkway [measured from a point at ~center of existing parking lot, would yield 1.91 acres of critical open space dedication in relation to the 3.46 acres *demanded* by Lakewood’s Parkland Dedication Code (figure: 476-feet westerly lot line x 175-foot buffer = 83,300 square feet/1.91 acre). At least .22 acres of that 1.9 acres al*ready lies* within Belmar Park as a city easement, thus: 1.9 acres – .22 acres = 1.69 acres. 1.69 acres is just under half of the 3.46 acres *demanded* by Code. Kairoi seeks to reduce or eliminate easements and lots lines so they can have their full cake. A significant buffer created through code land dedication would significantly mitigate project impacts. Yet it has been ignored. Why? Further discussion on city easements follows under II.3.

1. **Mayor & Majority Council Perspectives & Misunderstandings to Date:**

Given that administrative project review has been conducted behind closed doors, and given the precious resource that is Belmar Park, is Council surprised by citizen outcry? Despite this outcry, majority Council response *to date* has been: 1) “It’s private property”; 2) “It’s zoned for higher density/it meets zoning code requirements”; 3) “There’s nothing we can do”; 4) “It has Urban Renewal Designation/it’s exempt from the Strategic Growth Initiative Building Permit Limitations”; 5) “We can’t change applicable zoning ordinances/codes midstream”; 6) “The project has been in review for three years” 7) “We’re going to get sued”, 8) “Kairoi paused project submittals and seeks community input”. Concerned citizens demand you to understand the following integrally related and absolute truths which dispel all these Council declarations.

1. **“Its Private Property”** Yes, the site is private property. Private property rights have never been absolute in this country. That such rights are not absolute was first decided in the U.S. Supreme Court’s landmark decision, *Euclid v. Amber*, 272 U.S. 365 (1926), wherein the Court ruled that zoning is a valid exercise of the ‘police power’ - the power of government to protect and promote the public health, safety and welfare. Countless local, state, and federal court decisions have supported, and expanded on the *Euclid* decision. Lakewood’s City Charter, Section IX, Zoning and Planning, expresses its ‘police power’ for those exact purposes, manifested in zoning and other codes (e.g. your exemplary Existing Tree Preservation, Parkland Dedication, and Building Step-Back codes). The following text clearly indicates Lakewood’s codes are *not* being used as intended, nor in the public interest. Concerned citizens ask this nonsense to stop; to *use your own codes* to promote public health, safety and welfare while also recognizing Kairoi’s property rights, to create mutually acceptable, mutually beneficial results. At present it’s a ‘Kairoi wins – City [and citizens] lose arrangement.
2. **“It’s Zoned for Higher Density/It Meets Zoning Requirements”** Yes, the property is zoned for possible higher density. The M-C-U district has no minimum dwelling-units per acre, nor maximum dwelling units per acre density allowances (see LZC 17.5.2 - Mixed Use Dimensional Standards). The M-C-U zone has a Minimum 2-story height requirement and a Maximum 120-foot height allowance (see, respectively LZC 17.5.3 and 17.5.2.). Those are *minimum* and *maximum* allowances that must be considered, and reviewed, within the context and rules of all applicable city planning and other code documents (e.g. Lakewood 2025-Moving Forward Together; Imagine Tomorrow-Parks Plan, Parkland Dedication, Tree Protection, Building Step-Back, etc.). More hypocrisy that staff has cherry-picked goals and policies supporting the project, and flatly ignored others that would scale it down. This document demonstrates that staff has failed to apply, and in cases ignored, those plans and documents in Lakewood’s overall public interest.
3. **“There’s Nothing Council Can Do”** The expression/thought: “there’s nothing that Council can do” is patently false. As a taxpaying citizen, and as a 20-year City Planning professional, I am demoralized to hear such statement. It is expressly understood that the City Council is not a decision authority on the BPW Major Site Plan. However, it is entirely within your scope of authority to: a) inquire what is going on with staff review and note your concerns about said review; and b) to direct staff, thru the City Manager, to incorporate your input, as *the elected officials* representing the city of Lakewood **(see Exhibit 3).** These responsibilities are not only authorized – they are compelled. Lakewood Municipal Code (LMC 2.03.020 *charges* Council with public trust duties **(see Exhibit 4).** Your intervention and public trust dutiesare critically important given continued staff failures to make review and approval decisions with due consideration of public interest. As former Councilor Springsteen urged on 10/23/23, “*Who’s in charge here*”? Citizen outcry to Mayor and Council has been precisely because there has been no other recourse. There are actions you can take – the Resolution submitted in October by Ms. Springsteen was an excellent option. Contrary to belief, the Resolution was not seeking to change laws – rather, it sought to apply Lakewood codes with public interest, not strictly private interest, in mind.

Further on the subject of Council’s “there’s nothing we can do” role in the BPW Project: Kairoi seeks modification of lot lines and/or vacation or reduction of easements on their 4.44-acre property. A Lot Line Adjustment (LLA) application is included with the Major Site Plan application. I am not clear on its status, and herein request information from Planning staff [calls to Planning staff are routinely unanswered and counter service has been, with minor exception, to put it politely, poor]. It is not clear whether Article 5, or Lakewood Subdivision Regulations Article 7 [Vacation and Dedication] is the proper procedure to vacate easements). Regardless, at least two, possibly three easements incorporated in the Irongate Executive Office Plat [recorded ~1972] are held by the City of Lakewood, and *it is possible that City Council authorization is required to vacate or reduce them (source: 12/11/23 phone Conversation with Ross Williams, Parks Planner, DCS.)* Changing of lot lines and/or vacating easements will increase Kairoi fee-simple ownership and lot size to 5.25 acres (a .89 acre increase in size) from the existing 4.44 site, and presumably allow full development per existing Site Plans. Concern about city lot lines easements and infrastructure therein, for example, the Belmar Park walkway within the 777 S Yarrow property, has been communicated in staff correspondence **(see** **Exhibit 5; also Exhibits 8 & 20)** – I am informed the ‘boathouse’ area easement: Jefferson County Recording 8602161, is 9,442 square feet - .22 acres).As I learn more, it is apparent that the subject of easements and lot line adjustments needs more attention – I will do more research. Importantly, Council *appears* to have a direct role in enabling the BPW as currently proposed.

1. **“It has Urban Renewal Designation/it’s Exempt from Strategic Growth Initiative Building Permit Limitations”** Public understanding is that the property, and nearby sites, are part of the ‘West Alameda Corridor Reinvestment Area’ and associated Strategic Growth Initiative *designations* and exemptions. So what? Do those designations and exemptions in any way preclude the need for quality site planning in the public interest? If anything, WACRA and SGI designations and exemptions ought to highlight the need for excellence in site planning.
2. **“We Can’t Change Applicable Zoning Ordinances/Codes Midstream**”
There has been zero effort to change zoning or other applicable ordinances ‘midstream’, or retroactively. This is yet another fabricated, and misleading doubt and fear tactic. It is wrong, yet telling, that former Councilmember Springsteen’s Resolution was dismissed amid obfuscation led by ex-Mayor Paul at the 10/23/23 Council meeting. Ms. Springsteen, Councilor Olver, Councilor Janssen, and others had become acutely aware of staff malfeasance in project review. Yet, at that meeting, Deputy City Attorney Dorotik claimed that staff would be in a “quandary” if they were asked to consider Council input requested by Ms. Springsteen’s duly submitted Resolution (see Exhibit 5.a.) A Resolution is simple, but at this point critically, the formal expression of opinion, will and intent from Council for staff to consider correcting adverse decisions made to date **(see Exhibit 5.a.)** Any suggestion or inference that a Resolution of Council has been conflated with an Ordinance to change rules is pure deceit. Council must reconsider, with minor updates, the Resolution that Councilor Springsteen prepared, and Councilor Olver supported.
3. **“The project has been under Review for Three Years/the MSP Decision must be made soon”** Kairoi submitted its initial MSP preplanning application on ~2/12/21. It did not submit its formal development application until 4/27/22. Projects of this magnitude take time; it would not be uncommon for this type of project to take ~5 years for review and decision – a multitude of factors apply. In a previously referenced phone call, it was noted to me that “the project seems to take one step forward, and five steps back”. Perhaps this is because the Kairoi team has been difficult to work with - consider the following select internal city staff *written comments* on project review garnered from Colorado Open Records Act requests [bracketed text added for clarification]. I am pleased to provide every record – they are excluded as Exhibits to respect confidentiality.

We have communicated this to them several times . . . . . .that underground.

stormwater detention . . .is not desirable. Do we just need to say no to underground detention?

. . .How much bending [to project applicants] do we need to do?

. . .These guys [Kairoi team] are exceedingly difficult and are not taking are direction well at this point. .

Just went through their landscape plans for the parking areas and I am honestly in shock. I cannot believe that this is what they [Kairoi team] presented to us after all the comments that we provided to them in advance.

. . .staff did suggest that the height of the structure adjacent to the park be reduced to limit the visual impact from the park. . The applicant [dismissed that suggestion] and chose to move forward with the current proposal. .

Council may also wish to consider what one commentator shared during public comment on 11/27/23 – that Kairoi has an F + BBB rating; go to [www.bbb.org](http://www.bbb.org) (rated 1.2 out of 5). Said reviews are apparently based on tenant experiences, yet it’s not unreasonable to assume that tenant experiences correlate to city review experiences. None of the staff comments under (6) are alarming in government – developer interactions. But they speak loudly about applicant responsibility relative to timeframe for review. Given that there has been zero public review, and outcry to our elected officials is the only recourse, are citizens to blame for any time delays?

1. **“We’re Going to get Sued**” I am not a lawyer – the following is not legal advice, rather, based on 20 years’ experience in local government planning, including Director-level positions. There is always potential for legal action (appeals and/or lawsuits) associated with land development projects. Consider however:
	1. Developers complete due diligence and are responsible to know the code-regulatory and associated planning & policy framework, including uncertainties, they are entering into in land use entitlement processes.
	2. Some preliminary, but not final, staff direction on select MSP matters has been made and communicated to Kairoi. That no final MSP and related decisions have been made were communicated by Matt Post in aforementioned 10/25/23 and 10/31/23 conversations. As a Major Site Plan, the project has no formal approval until the Director makes his final written determination on the MSP and related approvals.In its 10/18/23 letter to Mayor and Council, Kairoi notes.

 *. . we should have worked to have community discussion because of the importance of the neighboring park”. . .and we want to work with residents to listen to their concerns and explore opportunities for potential changes to the project”* (**Exhibit 6).**

Myself and others commend Kairoi for their desire to listen and address community concerns **(Exhibit 7).** In noted 10/25 and 10/31/23 conversations, Matt Post expressed that he admonished Kairoi: “*you better be willing to step up and make project changes relative to citizen concerns.*” Given that Kairoi has admitted its shortcomings in not addressing public/community input, how is it that they will be in a position to appeal, or sue, for project changes sought?

* 1. If the MSP application was denied, Kairoi would first be obligated to exhaust administrative appeals pursuant to Lakewood codes. *If* that scenario were to transpire, city officials and legal staff could mediate with Kairoi to resolve potential differences.
	2. Generally, neither developers nor local governments want to enter into legal controversies. If the city of Lakewood, or any other jurisdiction, is operating within the discretion of its duly adopted planning-policy and related zoning and other code documents, its police power – the ability to protect and promote the public health, safety and welfare – will be upheld. At currently constituted, the excessive size and scale of the BPW project is apparent to Council and citizens. Public interest/public welfare considerations will be in favor.
	3. Any potential legal delay costs developers time and money. Developers do not like time and associated money delays. If such delays were to occur, they present further opportunities for resolution of differences.
	4. Regarding legal threats - ask yourself, do we want to act out of unwarranted fear, or out of conviction for the public good?
1. **“Kairoi paused Project Submittals and Seeks Community Input”** As noted under 7.b. above, I commend Kairoi for its expressed interest to work with the community. The council has lauded that effort as well. However, in its ‘community’ meeting held on 12/6/23, Kairoi secured no representation of concerned citizens beyond three (3) Belmar Commons [BC] Townhome HOA members. It is understood that city staff was charged with securing citizen involvement, and it is understood that a limited number of citizens might best achieve common agreements. The truth, however, is that city staff ‘plugged’ the meetings to have limited input, and doubtless limited controversy, from the outset. Myself and Regina Hopkins, Chair of SBP, both sought to be involved in the community meeting(s); we were both dismissed. Celia Greenman, another SBP member, was emailed by Matt Post that she would attend the roundtable, yet was later dismissed.

The involvement and concerns of Belmar Commons residents is appreciated. However, their involvement, and their concerns, *do not* reflect the full interests and perspectives of concerned community residents at large. Correspondence from Belmar Commons to city staff clearly indicates BC concerns are focused on traffic and noise impacts from the BPW project. Yet even those concerns have been dismissed. I spoke with Susan Brugman, BC-HOA Chair, the afternoon following the 12/6 ‘community’ meeting. Ms. Brugman indicated that the meeting between Kairoi, city staff, and BC residents was productive, but also noted that concerns were focused on those of BC residents. Ms. Brugman shared she brought up overall citizen concerns about a significant westerly buffer from Belmar Park, and that Kairoi’s response was, to paraphrase, “we looked into that but can’t accomplish it, due to West Metro Fire access demands and otherwise.”

Concerned citizens care about traffic and noise impacts to Belmar Commons, and to Belmar Park. However, there are a litany of additional concerns related to Belmar Park – adverse impacts to passive recreational and related aesthetic experiences, in addition to impacts on mature trees, waterfowl, upland birdlife, and small species wildlife. Putting it accurately, despite espoused assurances ‘community’ outreach by Kairoi, arranged by complicit city staff, has been effectively none.

It should be crystal clear that all Council expressed excuses, ranging from “It’s Private Property”; right through to ‘We’re going to get sued”, are dispelled. Hundreds, and if they even knew of the BPW project, I’m sure thousands of Lakewood and beyond residents are hopeful that newly elected Mayor Strom, as well as tenured and newly elected Councilmembers will work with concerned citizens to utilize existing planning and code documents to make quality planning and urban design happen.

1. **Lakewood Staff Review of the Belmar Park West MSP in Relation to City Planning & Code Documents:**

Troubling procedural and substantive failures in BPW project review have been identified. The glaring procedural failure is that a project of its magnitude, immediately adjacent to a crown jewel park, has been enabled for administrative review, vs. public hearings and citizen involvement associated with Planning Commission review. That citizens have been forced to plead to Council and staff, sometimes in scattershot fashion and often fruitless manner, speaks loudly to the *procedural and substantive* failures. Mr. Sibley’s letter of 10/18/23 is *applicant testimony* of these failures.

As proposed, the BPW Site Plan fails any reasonable standard of quality site and urban design that Lakewood planning documents and land use codes require. Major substantive staff review and decision failures exist, outlined in detail following. Each of these failures must be reviewed and appropriately modified to approve a MSP that recognizes public interest in tandem with Kairoi’s interest.

Detailed information is provided and evaluated, as staff has made fixed, and adverse, decisions on key matters. In some cases, for example, consideration of project compliance with Lakewood’s 2015 Comprehensive Plan (& amendments thereof) staff has cherry-picked supportive goals and ignored, for example, the need to protect natural resources like Belmar Park. No staff report of any kind has been produced, and, for example, Ross Williams shared in a phone call on 11/27/23 that he’s “out of the decision loop”. Why is a 40-year employee, *the* City’s Park planning professional, out of the decision loop, given the immediate adjacency of Belmar Park? Details follow.

Myself and other citizens do not have the time, nor in some cases resources or expertise, to delve into the litany of all BPW project review matters, for example, traffic impacts (which have been raised by Belmar Commons residents, yet in their own words dismissed); noise impacts, architecture, landscaping, lighting, stormwater management, fire access, snow-storage, etc. All latter subjects’ merit detailed attention.

It is critical to note that (1 through 7) are often integrally related. For example, Fair Market Value payment needs discussed under (2) are directly related to the choice of land dedication and/or fee-in-lieu payments discussed under (1).

As a reminder from the Table of Contents on page 2, project issues discussed below include:

1. Parkland Dedication Code: Land Dedication and/or Fee-in-Lieu?
2. Parkland Dedication Code: Fee-in-Lieu Fair Market Value – The Facts
3. Adjoining Property at 777 S Wadsworth - Strategic Planning Opportunities
4. Comprehensive Plan Compliance or Noncompliance?
5. Tree Protection Code
6. Building Step Back & Related
7. Other
8. **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 voluntary 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?*

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 acres 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 of 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 "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. Newlands’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 voluntary 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.RA. 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 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.

1. **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 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 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 buildingon 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-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.

1. **Adjoining Property at 777 S Wadsworth Blvd: Strategic Planning Needs & Opportunities:**

Issue: *I have learned, through reputable sources, that Kairoi Residential has a right-of-first refusal agreement with the adjoining property at 777 S Wadsworth Blvd, owned by Irongate Offices LLC (as a reminder, its 4.44-acre parcel was purchased in June 2021 from Irongate Offices LLC). Knowledge of the right-of-first refusal contract has recently been confirmed in email correspondence from Travis Parker, Lakewood Planning Director to Councilor Olver. That Kairoi seeks control and possible ownership of the adjoining ~4-acre parcel is understood. There are critical reasons, supported by city planning and code documents, to consider site planning for both properties in tandem.*

As previously noted, Kairoi Residential, as purchaser BELMAR OWNER LLC), bought 777 S Yarrow St. in June 2021 from then-owner IRONGATE OFFICES LLC. Todd Tedford, Proprietor of Tedford Commercial Real Estate, owns IRONGATE OFFICES LLC, and the remaining ~4 acre adjoining parcel at 777 S. Wadsworth which houses Office Buildings 1-3. Awareness of the right-of-first refusal, or further agreement, and its implications, must be considered by the City. The Irongate Office buildings were built in the early 1970’s, making them old, diminished in quality, and primed for redevelopment, especially given prime location, area housing demand, remote-work trends, etc. Kairoi prudently has seized that opportunity. ‘Belmar Park East’ may be in the pipeline.

Pursuant to Purpose and Intent statements of Lakewood’s Zoning Code (LZC 17.1.2), immediate communication with Kairoi representatives is needed regarding its intentions for 777 S Wadsworth Blvd. City staff or officials might suggest it is none of their business, or public business, to make inquiry to Kairoi about the same. Kairoi executives may echo that sentiment. But effective and coordinated land use planning in the public interest mandates discussion and action especially but not limited to citizen outcry over Kairoi’s Belmar Park West proposal. Lakewood’s Zoning Code was and is enacted for the following purposes (see LZC 17.1.2**): (see Exhibit 17)**

1. To promote the public health, safety and welfare of the citizens of the City of Lakewood;
2. To implement the visions, goals and recommendations of the City of Lakewood Comprehensive Plan *(discussion regarding consistency with Lakewood's Planning documents follows under number [5]);*
3. To protect and enhance the natural environment including the conservation of natural features, land, and energy;
4. To promote the orderly development and redevelopment of land within the City of Lakewood;
5. To ensure the effective integration of development and redevelopment with surrounding land uses;
6. To respect the unique characters and attributes of individual neighborhoods;
7. To enhance the appearance of the City of Lakewood through quality site and building design.

Each of the above ‘Purposes’ and ‘Intents’ provides express and sound rationale for city officials to engage Kairoi in discussions about plans for the adjoining 777 S Wadsworth Blvd. parcel. Council and are reminded that all of the noted ‘Purpose and Intent’ statements of the Lakewood Zoning Code are mandatory, as LZC 17.1.3 dictates that: “ . . . *All land use decisions shall be consistent* with the goals and policies of the Comprehensive Plan *and with the Purposes and Intent of this Zoning Ordinance*” (*emphasis added*). There needn’t be an immediate application/land development proposal at 777 S Wadsworth to engage Kairoi in discussions. My understanding is that Kairoi is exclusively in the multifamily development and property management business. It is reasonable to assume that if Kairoi exercises its right of first refusal, additional multifamily development will be planned for the adjoining site. Best to execute, at minimum, conceptual joint site planning, including address of critical issues like traffic flow and management. The alternative is to develop westerly 777 S Yarrow site, at a cost expected near or above $100 million (gross estimate), only to realize failed opportunities for joint/integrated site planning regarding traffic circulation and other joint matters. It is understood that S Yarrow St. divides the two parcels – that is not cause to dismiss applicable issues. The need for joint site planning is especially highlighted due to citizen outcry about the Belmar Park West project. Increased density placed closer to Wadsworth makes sense. All options also need to provide suitable mitigation of impacts to the Belmar Commons Townhomes. The City, Kairoi, and perhaps Mr. Tedford should enter into discussions about the best end-result opportunities for all parties on the two parcels combined. Lakewood *may* benefit from a highly-resourced applicant in this regard – it depends on Kairoi’s interest in our community. We demand parties to have vision, and to act on the same.

1. **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.RS. 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 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 reins 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):

1. 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).*
2. 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).*
3. 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?

1. **Tree Protection Code:**

Issue: *Lakewood’s Tree Preservation Code designates all trees with caliper (i.e. diameter) of 8” or more one-foot above grade as “protected” trees. Early in the Belmar West application process, staff decided it would enable removal of all ~69 “protected” 8” or more caliper trees on the 777 S Yarrow St. site. Citizen outcry in relation to Belmar West project commenced in large part to Kairoi’s plans to remove most all “protected” trees.*

LZC 17.6.5.8, Existing Tree Preservation, designates all trees with caliper (i.e. diameter) of 8” or more one-foot above grade as “protected” trees. Proposed developments containing protected trees “*shall* be protected to the extent reasonably feasible” (Subsection A). Further, the (Planning) “Director shall determine, through consultation with the City Forester, when it is not feasible to retain protected tree(s) . .” (Subsection B). I am told that Kairoi completed a tree survey for the site. I assume, but have not seen, an evaluation of the survey has been completed by Lakewood’s City Lakewood’s City Arborist.

Initial 6/11/21 comments from Planning staff to Kairoi indicated: “a site inventory will need to be prepared consisting of . . . [protected trees per LZC 17.6.5.8] . . *that will need to be preserved on* the site” (**see Exhibit 8).** It goes on to read: “trees that are determined *not* to meet the *preservation requirement may be removed*” **(***emphasis added*). The clear message of the 6/11/21 text is that designated “protected” trees are expected to remain protected. Fifteen months later, in 9/29/22 correspondence **(see Exhibit 20),** in relation to a tree survey conducted by Kairoi, staff correspondence reads: “Based on the provided tree survey, at total of 1,282 caliper inches worth of protected trees are to be removed.” The message devolved from “you must save protected trees per the code”, in June 2021 to [paraphrased]: “*your* survey says you’re taking down 1,282 caliper inches of protected trees in September 2022 – that’s just fine”. For the record, given a surveyed 1,282 caliper inches of protected trees, and given 69 protected trees, average protected tree caliper size is 18.6” [i.e. 1,282 caliper inches divided by 69 trees = 18.6” average protected tree caliper size). Concerned citizens want to see evidence, as required respectively by LZC 17.6.5.8(A) and (B) of: a) the Planning Director’s determination that it is not “reasonably feasible” for existing protected trees to remain; and b) findings of the Planning Director’s consultation with the City Forester, that “it is not feasible to retain protected trees”. Did Kairoi Residential ever submit a Site Plan(s), even conceptual, that demonstrated compliance with the existing tree preservation shall mandate in LZC 17.6.5.8. If Kairoi did not, how is it that the Planning Director and/or staff made any determination that it is not “reasonably feasible” to preserve “protected” trees, as is expressly assumed by the code itself.? Isn’t Lakewood a designated tree city? Doesn’t Lakewood officially have an aspiration to have 30-percent tree canopy cover or the like?

Staff neglect of duty in relation LZC 17.6.5.8 and associated planning document policies, is yet another startling example of ‘behind the scenes/not in the public interest’ actions. Does the City Council blindly want to accept removal of 69 trees averaging 18.6” caliper? Does the Council have any wonder why citizens have reached out to Council? Does the City Council blindly want to accept removal of 69 trees averaging 18.6” caliper? Concerned citizens want to see evidence, as required respectively by LZC 17.6.5.8(A) and (B) of: a) the Planning Director’s determination that it is not “reasonably feasible” for existing protected trees to remain; and b) findings of the Planning Director’s consultation with the City Forester, that “it is not feasible to retain protected trees”; evidence from the Planning Director and/or staff that “it is not reasonably feasible”

Did Kairoi Residential ever submit a Site Plan(s), even conceptual, that demonstrated compliance

with the “shall protect 8” or greater caliper trees? If they did not, how is it that the Planning Director and/or staff made any determination that it is not “reasonably feasible” to preserve “protected” trees, as is expressly assumed by the code itself? The hubris of staff messaging in relation to tree removal continues. In a 11/21/23 email, a generic city statement reads:

Except in very unique circumstances, it is not against any city ordinance to cut down mature trees. Any property owner can remove trees from their property at any time. The city code does require the replacement of trees that are taken as part of new development. **(Exhibit 21).** *(What? The city email basically says “cut down trees at will”*

And yet, there’s more. In a meeting with two SBP Committee members on 10/31/23, Matt Post boasted, that, if “protected’ trees are removed, he has convinced Kairoi to plant 3” replacement trees vs. the 2” required in LZC 17.6.5.9 (Tree Replacement). Does staff know that 3” trees will not have as effective survival rates of 2” trees? Does staff know that the handful or more of supposedly “protected” trees to remain on site *will not* survive site construction? On-site tree replacement is further fraught – the site is packed with buildings and impervious cover which will interfere with long term tree health.

I would personally like to see vigorous, healthy trees on site preserved. But other considerations, for example, the need for a significant natural buffer (e.g. as previously noted, a *minimum* of 175-feet from the easterly edge of adjoining Belmar Park walkway) is deemed paramount. Regardless, the stance and actions taken by staff in relation to Lakewood’s Existing Tree Preservation Ordinance is further proof of good codes not applied toward public interest. Does the Council have any wonder why citizens have reached out to Council?

1. **Building Step-Back & Related:**

Issue: *LZC 17.5.3.4 (Height Transition to Adjacent Residential Districts) requires, where a single family or duplex structure exists on residentially zoned property (any ‘R’ classification), that multifamily buildings located within 125 feet of the ‘R’ district boundary, meet ‘bulk plane/step-back’ and related requirements. Kairoi’s Site Plan shows its main building within 125’ of a an ‘R’ zone district (the entirety of Belmar Park is zoned R-1-12). Although they are historic single-family structures, at least three exist within the Heritage Area of Belmar Park. Thus, it appears LZC 17.5.3.4 applies, yet Planning staff has indicated it does not.*

As noted above, on plain reading it is apparent that LZC 17.5.3.4 (Height Transition to Adjacent Residential Districts – **Exhibit 22**) applies to the proposed Belmar West multi-family apartment building – *at minimum* along any border areas facing or adjoining the Heritage Areas of Belmar Park. That Heritage Area includes at least three (3) single family structures: a) the 1930s Farmhouse; b) the Steer-Peterson House; and c) the Caretaker’s Cottage. The Heritage Area Administrative Offices building also constitutes a single-family structure, even though used for office purposes. LZC, Article 14 (Definitions) does not define “Single Family Structure”. It defines Structure as “Anything built or constructed on or in the ground or attached on or in the ground; an edifice or building of any kind or any piece of work built or composed of parts joined together in some definite manner”. Section 17.4.1 (General Intepretations) also notes the phrase “used for” includes “arranged for,” “designed for,” “intended for,” “maintained for,” and “occupied” for. There is no question that the three indicated single family structures were “used for” single family structure purposes – even if historic, LZC 17.5.3.4 does not preclude their designation as “single family structures”.

Yet, given the above, the 6/11/21 Pre-Planning Application follow-up letter from Lakewood staff to Kairoi indicates:

The referenced provision *(i.e. bulk plane)* applies when a multifamily building is constructed adjacent to where a single-family or duplex structure exists. Due to no single-family or duplex use on the adjacent properties, this is not a requirement” (**see Exhibit 8).**

Anyone reading this document may seem like I’m ‘reaching’ to make a code provision apply to applicant Kairoi Residential. However, the facts, as documented at length herein, are that: a) city staff has routinely overlooked or outright ignored planning and code provisions [including zoning code and municipal code provisions] in its review of the Belmar West MSP to-date. The need to apply the ‘bulk-plane/building step-back’ and additional provisions in LZC 17.5.3.4 is especially important as staff has lobbied for them voluntarily, but has been dismissed (i.e. in previously referenced conversations with Mr. Post on 10/25/23 and 10/31/23 Matt indicated the need for building ‘step-back’ provisions had been dismissed by Kairoi.

On another building ‘step-back’ provision, Kairoi’s Site Plan, Sheet 1 of 50, reads: “WAIVER NOTE: This Major Site Plan Received Approval of a Minor Waiver to the Minimum Step-Back Requirements of the M-C-U Zone District from the Planning Director, Case # \_\_\_\_\_, as required by Article 2 of the Lakewood Zoning Ordinance.” It is believed the indicated Minor Waiver request is in relation to a ‘step-back’ requirement for the building façade facing S. Yarrow St. Clarification from staff is requested.

1. **Other:**

The time, resources, and expertise to address the litany of additional project review matters (traffic impacts and traffic circulation, building architecture, landscaping, lighting, stormwater management, pedestrian circulation, snow storage, etc.) is not available. I understand concerns have been raised, for example, about traffic impacts, and, for example, about snow storage. I find it difficult to believe that existing road improvements will successfully accommodate BPW generated traffic at acceptable levels-of-service. We all know the adverse conditions on Wadsworth Blvd. at select and growing time segments. I’d note also that the sightlines to make a right turn/southbound (on red-light) signals from Virgnia Avenue, and especially from Ohio Avenue, are not good – this sight-line issue is exaggerated by high auto speeds on Wadsworth Blvd.; I envision accidents. Susan Brugman the same to city staff, and their reply was, to paraphrase: ‘we’ll deal with improvements when accidents happen”. I’d also note that traffic queueing (i.e. cars backed up along roadways, waiting for lights to change) is likely going to be a notable issue, for example, along Virginia Ave. and Ohio Ave. moving on to s Blvd. I have shared with Susan Brugman,
Belmar Commons HOA Chair, that Kairoi should pay for an independent assessment of the Kimley-Horn’s traffic study – that study was completed in the midst of the Covid epidemic, and I’m not convinced its ‘no notable traffic impacts’ findings are reasonable. It is common for development applicants to pay for independent transportation planning firms, chosen by the reviewing agency, to provide objective review.

Other items are troubling. The Lakewood Planning Department, on its ‘Current Projects’ informational webpage for the BPW project, posts some misleading and false, or information, yet its message is being transmitted by Council itself, and is perhaps the main citizen source of information - more precisely, misinformation. As select examples, the website indicates: **(see Exhibit 23).**

1. **Under Property Rights Information:** The pages notes, in part: “Where use by right exists, there is not a process where adjacent neighbors have a say in how a property owner develops a property under ‘use by right’ . . . Because development is occurring under the existing property rights, the proposed development will occur solely through the administrative process managed by the Planning Department.” This section also compares the property rights of individual single-family homeowners to Kairoi’s rights to develop a massive apartment complex. **FACTS:** All the latter statements are grossly misleading to false, but it appears that even some Council members are taking their cues directly from it, not to mention what is broadcast to the 158,000 taxpaying residents of Lakewood. The Planning Director has the authority to enable Major Site Plan review and decision authority by the Planning Commission, including associated widespread public notice and public hearings (neither of which are limited to adjacent property owners’ input); the Director *chose not to pursue important and needed Planning Commission/public review options*. Just a tad ironic that on 10/18/23, the applicant decreed the failure of community outreach – only to then, with aid from the Planning Department, limit any real citizen involvement. To compare the rights of Kairo on the BPW project to the rights of individual homeowners is grossly misleading and wouldn’t stand up to any scrutiny. It suggests, for example, that I could have ~90 percent impervious surface on my single-family residential lot.
2. **Under “Who owns the property” question and related Overview:** Webpage notes in part: “No portion of Belmar Park will be used in the development of this property, except for tree, shrub, and natural grass plantings adjacent to the site”. The latter is misleading to false. **FACT:** Planning staff has notified Kairoi that sidewalk portions, the pumphouse, and landscape areas lie within a city easement across Kairoi’s property **(see Exhibits 5, 8 & 20).** My understanding is that the city is being asked to vacate or reduce easements and/or lot lines to enable proposed site construction. Even if the sidewalk is realigned, the webpage answer is not correct. Further, it is my understanding that stormwater discharge to Belmar Park will occur.
3. **Under the question: “What is the City of Lakewood Doing to minimize the impacts on Belmar Park?”**

The webpage notes: “Community Resources staff are exploring opportunities to enhance and protect wildlife habitat, which may include elements like additional signage, outdoor education opportunities, and additional plantings”. **FACT:** Does anyone believe that ‘additional signage and outdoor education opportunities’ will minimize impacts on Belmar Park from the BPW project? The webpage answer is appalling and provides no information about how staff has abjectly failed to incorporate a significant buffer, protect existing trees, etc. I’m sure the Cormorants, Egrets, Herons, Wood-Ducks and hundreds of other species will be assured by ‘additional signage and outdoor education.’

1. **Under the question: “What will the city require for parkland dedication**”? The webpage notes “The fee-in-lieu of parkland dedication law is being followed, and information indicating anything to the contrary is not correct” It goes on to note that fee-in-lieu is enabled in lieu of dedication. **FACT:** The first sentence is grossly misleading, and especially antagonistic when it states: “anything to the contrary is not correct”. There is no information provided on the webpage regarding specific ‘public interest’ and related primary criteria (including adjoining parkland and historic areas as top) in making decisions to seek land dedication) The statement is especially egregious read in conjunction with [c] above.

The Planning Department should be ashamed of the above webpage information and should correct it with the facts noted above.

1. **Conclusion**:

Thousands of Lakewood and area residents deem Belmar Park, with its precious character and resources, a special place – a crown jewel of Lakewood’s exemplary park and open space system. A perplexing element of staff decisions to date is how can impacts to, and concerns about, Belmar Park be so ignored, in a community that so prides itself on its open space resources? Why not administer the city’s own progressive ordinances in the public interest, instead of private interest? There hasn’t been a remote balancing of interests.

Given circumstances, citizen outcry should be no surprise to Council. You are the elected officials, the representatives of this community, with public trust obligations. Although some support public purchase of the Kairoi site, I believe that most citizens would be content with a suitably scaled and sized development complementing - not offending - its surroundings. Toward that end, Lakewood has excellent and progressive planning and code documents that can create positive outcomes and a community asset for Lakewood, and for Kairoi Residential.

Some suggested next steps are:

1. A Council work-study session(s), or Council Subcommittee-work study session(s), to review this document. I welcome Planning and Park staff

presence, *however*, I have legitimate concerns about staff possibly

being defensive – respectfully stated, experience indicates that some staff may not be open-minded. It is paramount that Council members be fully informed about what’s happened to date on matters detailed in this document.

1. An updated Resolution (from ex-Councilor Springsteen’s 10/11/23 Version) for Council deliberation and vote (that 10/11/23 Resolution is comprehensive; I note that some updates can be made. *As limited and DRAFT examples*, in Section 1, in relation to the Park and Open Space Dedication Ordinance (LMC 14.16), require an appropriate amount of on-site land dedication, to be specifically determined, complemented by Fair Market Value fee-in-lieu payments for remaining required acreage dedications (on-site dedication would be in the form of a significant buffer along the westerly boundary [as noted previously in the document, a

175-foot buffer would significantly mitigate project impacts].

In Section 2, allow removal of trees, as necessary, outside of protected land

dedication areas; Eliminate Section 3;

1. More broad-based outreach and dialogue from City staff and the Kairoi team to concerned citizens. I am not suggesting overloaded citizen meetings, rather, focused working sessions where better opportunities for project change can be made. As previously shared, the recent Kairoi-Staff-Belmar Commons meeting was not reflective of sincere community input.

Thank you for your time, attention and consideration, past and ongoing, to the critical matter of the BPW project is appreciated. *If* any information conveyed in this document is inaccurate, I welcome correction. I also welcome replies from staff and others – open communication is clearly needed, but parties must welcome it. It’s time to come together and create the constructive (not destructive) and beneficial (not adverse) results we all deserve.

Most Sincerely,

Mark S. Smith

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720.219.9832

cc: Kathy Hodgson, City Manager

 Travis Parker, Director of Planning

 Alison McKenney-Brown, City Attorney

 Kit Newland, Director of Community Resources

 Ross Williams, Facilities Planner

 Save Belmar Park Committee Members

 Interested Parties List (retained by Save Belmar Park Committee)

 Steve Farthing, Lakewood Concerned Citizen

- Exhibits -

1. 10/19/23 email from Venetia Ruehle, Lakewood Resident to Wendi Strom.

1.a. 2/12/21 Kimley-Horn Correspondence to City of Lakewood Planning Department

1. 11/10/23 email from Mark Smith to Matt Post, Senior Planner/Project Manager to

cc: Travis Parker & Others.

1. Extract from City of Lakewood Policies & Procedures Manual.
2. Lakewood Municipal Code (LMC) Section 2.03.020
3. 2/25/21 Planning Department Memo from Garret Downs to Matt Post

 re: City easements on 777 S Yarrow St. property.

 5.a. 10/11/23 Cover Sheet for Resolution prepared by ex-Councilor Springsteen and

 presented to City Council on 10/23/23.

1. 10/18/23 Letter from Tyler Sibley, Kairoi Residential to Mayor & Council
2. 11/9/23 Letter to Tyler Sibley, Kairoi Residential, from R. Hopkins & M. Smith,

cc: Council & multiple persons.

1. 4/2/21 Letter from Lakewood Planning to Kairoi following Pre-Planning.
2. 3/1/21 e-mail from Ross Williams to Matt Post re: Parkland Dedication.
3. 6/11/21 Comment Letter from Lakewood Planning to Kairoi Residential.
4. 5/9/22 e-mail from Ross Williams, Parks Planner to Matt Post Parkland Dedication.
5. 11/21/23 e-mail from Greg Buchanan, Lakewood Records Manager, to Mark Smith
6. 6/18/18 Lakewood Department of Community Services Park Land Ordinance and

Policy.

1. Proof of $6 million sale of 777 S. Yarrow on 6/18/21 from County Assessor’s

Office.

1. Jefferson County Assessor’s File record indicating $6 million value of Kairoi
	1. acre property.
2. 6/8/23 Letter from Thomas E. Downey, Jr. to Scot Kersgaard, Jefferson County

Assessor, seeking reduced property assessments at 777 S Yarrow St.

1. Lakewood Zoning Code (LZC) 17.1.2 (Purpose & Intent).
2. Colorado Revised Statues, C.R.S. Section 31-23-206(1) – Master Plans.
3. City of Lakewood Planning Department Webpage re: Comprehensive Plan Status.

19.a. 3/18/21 email from Catilin Hasenbaig-Long, Sustainability Staff, to Matt Post.

1. 9/29/22 Comment Letter from Lakewood Planning to Kairoi Residential.
2. 11/21/23 email – noting City of Lakewood tree cutting policy to citizen(s).
3. LZC 17.5.3.4 - Building Setback & Related Standards.
4. Lakewood Planning Department, Webpage Information on BPW Project.