

# Resolution

Rejecting the major site plan for Belmar Park West at 777 South Yarrow Street in Lakewood, CO 80226 -

LOT 3, IRONGATE EXECUTIVE PLAZA SUBDIVISION LOT LINE ADJUSTMENT NO. 1, PARCEL LOCATED IN THE WEST QUARTER OF SECTION 14, TOWNSHIP 4 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO

Lakewood Project Number: SP22-0010

Whereas Article 7.1 of the [City Charter](#) empowers City Council to act by resolution;

Whereas [Article 17.1.7.1](#) of the Zoning Ordinance states:

- "No oversight or error on the part of the Director or any employee of the City shall legalize, authorize, or excuse the violation of any of the provisions in this Zoning Ordinance."

Whereas the Lakewood Zoning Ordinance 17.1.2 prominently displays on the first page of the zoning ordinance after the Table of Contents that the purpose and intent "**To protect and enhance the natural environment** including the conservation of natural features, land and energy" is one of the first three intended purposes that developers, planners, city councilors and citizens see;

Whereas the Lakewood Zoning Ordinance 17.1.3 states that:

"**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."

Whereas Article 17.1.3 in effect makes the Comprehensive Plan binding, not merely advisory as per [CO Rev Stat § 30-28-106 \(2020\)](#);

Whereas Chapter 7 page 4 of the Comprehensive Plan states GOAL-S-CL1:

" The City shall be a leader in sustainability."

# Resolution

Whereas Chapter 7 Pages 3 and 4 of the Comprehensive Plan state that:

"Sustainable development means improving the quality of life of humans, while living within the carrying capacity of supporting ecosystems."

"Sustainable design is the careful nesting of human purposes with the larger patterns and flows of the natural world"

"The Sustainability Plan is used to guide the community to reach economic prosperity, social equity, and environmental health. It provides measurable strategies for Lakewood to become more resource and energy efficient, to meet ecological and economic challenges, and to protect vital resources including air, water, climate, **and the natural environment.**"

Whereas the **Sustainability Plan** Chapter 6 Natural Systems states the following Goals and Targets:

- "Mitigate the negative effects of the built environment and human behavior on Lakewood's natural systems to **ensure biodiversity** and enhance ecosystem services."
- "Increase the acreage of functional and healthy natural ecosystems"
- "Achieve tree canopy coverage of 30 percent by 2025."

Whereas the Belmar Park West Major Site Plan for 777 S Yarrow Street, Lakewood, CO 80226 includes removal of 69 trees;

- The tree canopy of these 69 trees is a habitat for various life forms including birds and insects which are part of the natural environment of Lakewood which Article 17.1.2 of the Zoning Ordinance requires to be protected and enhanced;
- The proposed 433 3-inch mitigation trees only approximates 16% of the removed tree canopy which represents a significant loss of the natural

# Resolution

environment in violation of Article 17.1.2 of Lakewood's Zoning Ordinance purpose and intent that the natural environment be protected and enhanced;

Whereas the Belmar Park West Major Site Plan for 777 S Yarrow Street, Lakewood, CO 80226 includes a supplemental proposal to pave a portion of open space for a parking lot and thereby reduces the acreage of functional and healthy natural ecosystems;

- Reducing the acreage of functional and healthy natural ecosystems is inconsistent with the above-mentioned Sustainability Plan goal to increase the acreage of functional and healthy natural ecosystems;

Whereas another stated purpose of Article 17.1.2 of the Zoning Ordinance is: "To promote the public health, safety and welfare of the citizens of the City of Lakewood";

- The major site plan for 777 S Yarrow St has little or no area for snow storage which could create a hazardous condition in violation of the purpose and intent of the zoning ordinance to promote the public health, safety and welfare of the citizens of the City of Lakewood by delaying emergency response after a winter storm if snow and ice cannot be properly cleared due to lack of snow storage;

Whereas S Yarrow Street is so narrow it cannot legally accommodate a painted center stripe;

Whereas the Kimley-Horn traffic study estimates over two thousand two hundred additional car trips per day not counting Amazon, UPS or other deliveries on that narrow residential street;

Whereas thousands of additional car trips and deliveries per day on a street so narrow a center stripe is not possible does not **seamlessly integrate** with the neighborhood as required by GOAL L-N2 of Lakewood's Comprehensive Plan;

Whereas the Comprehensive Plan GOAL L-N2 on p.4-10 requires and is not achieved:

# Resolution

- "Through the site plan review process and design guidelines, ensure that new multifamily, mixed-use, and commercial developments adjacent to single-family neighborhoods are compatible by incorporating appropriate design, scale, height transition, and connectivity to **seamlessly integrate with the neighborhood.**"
- "Develop new residential design guidelines that reflect sensitive design principles and, through the site plan review process, work to **mitigate the impact of infill development** on existing single-family properties."

Whereas there are no mitigations as required by GOAL L-N2 of Lakewood's Comprehensive Plan to mitigate the impact of infill development causing thousands of additional vehicle trips per day in the existing residential area;

Whereas over the last 50 years 3 billion birds have been lost in the US and Canada;

Whereas two thirds of North American bird species are at risk of extinction;

<https://www.pbs.org/newshour/show/2-out-of-3-north-american-bird-species-face-extinction-how-we-can-save-them>

Whereas the ongoing decline of bird populations increases the urgency of bird conservation measures;

Whereas the Lakewood Zoning Ordinance requires the natural environment to be protected and enhanced;

Whereas over 230 bird species have been documented at Belmar Park including several species protected by the Migratory Bird Treaty Act (MBTA) such as double-crested cormorants and which therefore are intended to be protected and enhanced as a stated purpose of Article 17.1.2 of the Lakewood Zoning Ordinance;

# Resolution

Whereas the US Fish and Wildlife Service (USFWS) "will enforce the MBTA and investigate incidents where the prohibition on the incidental take of birds has been violated;

<https://www.fws.gov/guidance/sites/guidance/files/documents/do225.pdf>

From <<https://www.fws.gov/node/418591>>

Whereas occurrences of incidental take in Belmar Park due to future disturbance from adjacent construction activity including nest abandonment and habitat avoidance may be observable to knowledgeable park visitors;

Whereas knowledgeable park visitors will likely report incidents of incidental take to USFWS;

Whereas USFWS remedial enforcement actions could include closure of Belmar Park and/or suspension of adjacent demolition/construction activities at 777 S Yarrow St;

Whereas Belmar Park is in the path of the Central Flyway which is a critical element of the natural environment used by migratory birds and which therefore is intended to be protected and enhanced as a purpose of Article 17.1.2 of the Lakewood Zoning Ordinance;

Whereas the 777 S Yarrow St property is only about 48 feet from the ponds at Belmar Park;

Whereas Belmar Park habitat disturbance due to demolition and construction activity at 777 S Yarrow St would be ongoing and extensive for months or years in violation of Article 17.1.2 of the Lakewood Zoning Ordinance which requires the natural environment to be protected and enhanced;

Whereas human-induced disturbance can have a significant negative effect on birds' breeding success by causing nest abandonment and increased predation;

From <<https://www.sciencedirect.com/science/article/abs/pii/S0301479708800023>>

Whereas the proposed multifamily building at 777 S Yarrow St is large and exceeds 800,000 square feet and is at least 5-stories with 412 residences and

# Resolution

would be permanently attended by significantly increased human activity and resulting ongoing habitat disturbance at adjacent Belmar Park unprotected bird and wildlife habitat in violation of Article 17.1.2 of the Lakewood Zoning Ordinance which requires the natural environment to be protected and enhanced;

Whereas effects from industrial developments include direct loss of habitat, disturbance through the presence of humans during the construction process and the presence of artificial light used to illuminate construction sites.

From <<https://www.sciencedirect.com/science/article/pii/S0301479708800023>>

Whereas the US Fish and Wildlife Service advises: “The best way to avoid habitat impacts is to avoid placing development and energy projects in or near important bird habitat.” <https://www.fws.gov/story/threats-birds-habitat-impacts> ;

Whereas the site plan does not provide any affordable housing;

Whereas Lakewood's combined 10-year housing pipeline **surplus** exceeds 3,000 total units as per the Gruen and Gruen Housing Analysis Appendix C page 122;

Whereas the site plan for Belmar Park West at 777 S Yarrow Street is not consistent with the goals and policies of the Comprehensive Plan and with the Purposes and Intents of Lakewood's Zoning Ordinance and therefore violates Article 17.1.3 of the Zoning Ordinance;

**Now, Therefore, Be It Resolved by the City Council of the City of Lakewood, Colorado that:**

**Section 1:** The site plan submitted by KAIROI Properties, LLC for Belmar Park West, located at 777 S Yarrow Street, Lakewood, CO 80226, is hereby rejected by the City Council.

**Section 2:** The City Council directs the City Manager to take the necessary steps to effect the rejection of said site plan including providing written notice of this rejection to Applicant within 7 days of the adoption of this resolution.

# Resolution

**Section 3:** This resolution shall take effect immediately upon adoption.

**INTRODUCED, READ AND ADOPTED,** by a vote of \_\_\_ for and \_\_\_ against, at a hybrid regular meeting of the Lakewood City Council held on [Insert Day] day of [Insert Month], [Insert Year], at 7 o'clock p.m.

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Mayor

ATTEST:

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Jay Robb, City Clerk

APPROVED AS TO FORM:

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Alison McKenney Brown, City Attorney