



## **TOWN BOARD WORK SESSION MEETING**

September 28, 2015

Immediately following the Kern Board Meeting

Town Board Chambers

301 Walnut Street, Windsor, CO 80550

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

---

**GOAL of this Work Session is to have the Town Board receive information on topics of Town business from the Town Manager, Town Attorney and Town staff in order to exchange ideas and opinions regarding these topics.**

**Members of the public in attendance who have a question related to an agenda item are requested to allow the Town Board to discuss the topic and then be recognized by the Mayor prior to asking their question.**

### **AGENDA**

1. Construction Defects discussion
2. Municipal Code Sec. 16-10-20(1)i. regarding Home Occupations that Involve the Tutoring of more than Two Students – P. Hornbeck
3. Future meetings agenda



## MEMORANDUM

**Date:** September 28, 2015  
**To:** Mayor and Town Board  
**Via:** Work Session materials, September 28, 2015  
**From:** Ian D. McCargar, Town Attorney/Kimberly A. Emil, Asst. Town Attorney  
**Re:** Construction Defect Ordinance (Lakewood model)  
**Item #:** Work Session #1

### **Background / Discussion:**

The development of diverse housing opportunities for Town residents is a priority under the 2015 Strategic Plan. This includes encouraging multi-family developments, both owned and rented units, such as condominiums. The Town Board is aware of the limited availability of these types of housing options within the Town limits, and seeks to make the Town more attractive to developers and builders who may wish to create such projects.

Some of the reluctance of the building and development communities is the perceived risk of exposure to large damage awards under Colorado's construction defects legislation. Efforts to pass a statewide bill to limit builder/developer's exposure to these construction defect lawsuits, placing greater responsibility on the homeowner's association to fully inform homeowners of the potential drawbacks and costs of pursuing such litigation, failed earlier this year. This statewide effort is by most accounts not likely to surface again in the foreseeable future.

*Local legislative efforts ("Lakewood Model").*

Some communities, most notably the City of Lakewood, City of Lone Tree and Commerce City, have through home rule powers adopted local legislation which are intended to accomplish some or all of the objectives in the state-level effort. Specifically, these measures call for:

- Required notice to a builder by homeowners, with a builder "right to repair";
- Builder requirements for acknowledging and responding to homeowner notices;
- Limitations on HOA amendments to alternative dispute resolution ("ADR") clauses in covenants;
- Limitations on HOA's, requiring notification and homeowner majority approval before construction defects suits may be initiated by the HOA.

These measures are believed to reduce the risk to developers and builders, but their impact on diverse housing stock is untested.

*Legal concerns with the Lakewood Model.*

In mid-July, 2015, the Town Attorney joined city attorneys from a diverse cross-section of Colorado municipalities, including Brighton, Commerce City, Parker, Lakewood, Winter Park and Denver. This conference was convened by CML. The attorneys received a cautionary

opinion from the Denver City Attorney's Office, indicating that this type of ordinance would likely not survive a challenge over home rule powers, separation of powers and the recent *Vallagio* decision.

*Vallagio at Inverness Residential Condo. Ass'n, Inc. v. Metro. Homes, Inc.*, (Colorado Court of Appeals, May 7, 2015).

The Court of Appeals recently ruled that clear and unambiguous ADR requirements in HOA covenants cannot be defeated by HOA vote, even where the developer is no longer a member of the HOA (*i.e.*, the developer has disposed of all its lots). This case has not been officially published by the Court of Appeals, and may be referred to the State Supreme Court. If this decision stands, some feel that it may give developers added protection through ADR requirements, which in many cases lead to non-litigated outcomes.

This case also could cut against the broad-brush Lakewood prohibitions on HOA covenant amendment powers. If ADR requirements in covenants are "clear and unambiguous", the *Vallagio* case insulates them from HOA amendments in alignment with the Lakewood model. If not "clear and unambiguous", then the opposite may be true, which conflicts with the Lakewood ordinance on this point.

Given that this case has important potential impacts on the Lakewood model, it may be wise to await the outcome of any further appeals.

*Colorado Metropolitan Mayors Caucus Activity.*

The CMMC recently indicated that it may explore support for statewide legislation that calls for both construction defects reform and financial support to the affordable housing community. At this time, no formal action is pending on this concept.

**Financial Impact:** None.

**Relationship to Strategic Plan:** Community Spirit and Pride; diverse housing opportunities.

**Recommendation:**

- Hold off on consideration of a Windsor ordinance adopting the Lakewood model.
- Await outcome of *Vallagio* appeals.
- Assess home rule and separation of powers, in light of Denver City Attorney's cautions.
- Keep tabs on Colorado Metro Mayors Caucus efforts, stay in touch with CML.



## MEMORANDUM

**Date:** September 28, 2015  
**To:** Mayor and Town Board  
**Via:** Kelly Arnold, Town Manager  
Scott Ballstadt, AICP, Director of Planning  
**From:** Paul Hornbeck, Associate Planner  
**Subject:** Review and discussion regarding Section 16-10-20(1)i. regarding tutoring or instruction of no more than two students at any one time  
**Item #s:** Work Session # 2

### **Background:**

The purpose of this work session is to discuss the possibility of amending Municipal Code Section 16-10-20(1)(i) pertaining to the number of students allowed with home occupations. The full code section on home occupations is included in the attachments, but subsection (i) being considered for amendment reads as follows:

*In the event a home occupation involves tutoring or instruction, no more than two (2) students may be present at the dwelling unit at any one (1) time.*

An amendment to increase the number of students to eight at any one time is being considered at the request of a resident, Ms. Robin Flores, who operates a home-based music lesson business with more than two students at any one time. Her case was brought to the Town's attention due to a neighbor's complaint about parking associated with the home occupation. Ms. Flores' business is part of a national curriculum that targets teaching groups of four to eight students at a time. She was granted a variance from this code section in March, 2015, by the Board of Adjustment with an expiration of December 31, 2015. The Board felt this was an equitable solution to allow her existing business to continue to operate while a code amendment was considered.

Planning Commission held two work sessions in September, 2015 to discuss the issue. At the first work session, staff summarized the findings of a cursory review of zoning regulations on the topic from municipalities in the region. It is standard for home occupations to be required to be incidental and secondary to the use as a dwelling and they are prohibited from creating traffic or parking nuisances. Most municipalities either have specific limits on the number of customers or students allowed at any one time or limit the number of customer vehicles allowed at any one time. A summary of the findings can be found in the attachments.

After discussion at the first work session there was limited consensus amongst the Planning Commission. Some members expressed concerns on the possible negative impacts on residential neighborhoods, including traffic and parking. Other members felt an increase in number of students was appropriate. At a follow-up work session, staff presented the following possible alternatives to address number of students associated with home occupations:

**1. Make no changes**

Under this option, the code would remain as-is. Only two students would be allowed at any one time with home occupations.

**2. Increase the number of students allowed**

The Planning Commission did not seem to have concerns with the number of students per se, but seemed more concerned about the parking and traffic impacts generated by a higher number of students. This approach does not address parking, traffic, or number of vehicles.

**3. Eliminate or increase the maximum number of students while limiting number of vehicles**

Since parking and traffic impacts were the main concern, restricting the number of vehicles to a set number at any one time could be an effective way to minimize those impacts. Many communities in the region use this approach, typically with limits of one or two vehicles at any one time.

**4. Require all parking needs to be accommodated on-site without altering residential character.**

There is currently no requirement that vehicles must be accommodated on-site, but adding such a requirement may serve as a means to limit parking impacts and traffic impacts. If this approach is used, a provision should be included to prohibit the altering of residential character to prevent property owners from adding parking areas that are not in keeping with the residential character of the neighborhood. This approach would give flexibility to larger lots that have longer driveways or other areas to accommodate more vehicles, while a typical SF-1 zoned property would likely accommodate two to four cars on the driveway. Since this approach does not directly address number of vehicles, larger lots which accommodate more parking could still potentially have negative traffic impacts.

**5. Allow up to two (2) vehicles associated with a home occupation to be parked on-street; require all remaining parking needs to be accommodated on-site without altering residential character; set a maximum number of eight (8) students at any one time.**

A combination of portions of alternatives two, three and four above could provide more flexibility to operators of a home occupation while still minimizing parking and traffic impacts to the neighborhood.

The following draft language based on this alternative was presented to the Planning Commission for their consideration:

- i. In the event a home occupation involves tutoring or instruction, no more than two (2) vehicles associated with the home occupation shall be parked on public or private streets or rights-of-way. All parking needs in excess of two (2) vehicles generated by the home occupation shall be accommodated on-site without altering the residential character of the premises. In no event shall more than eight (8) students be present at any one time. In the event that five (5) or more students will be present at any one time, the applicant shall submit to the Town a copy of the State Child Care License or Formal Exemption Letter.

The Planning Commission discussion on the topic is summarized below:

- One member was in favor of striking the section regarding students altogether due to enforcement challenges.
- One member was in favor of requiring all parking to be provided on site.
- One member expressed concerns about the Town monitoring on-street parking associated with home occupations.
- Concerns that regulations pertaining to numbers of students could be interpreted to include other group meetings such as Boy Scout meetings, etc. were voiced, although it is not the intent of the home occupation regulations to apply to such group meetings.
- There were concerns about negative impacts to residential neighborhoods, including traffic and parking. There was discussion about the impacts of three particular types of traffic and parking: the number of business vehicles, number of customer vehicles parking on-site or off-site, and number of vehicle trips per day or week.
- The impact to similar business operating out of commercial properties was discussed, along with the feeling that commercial zoning would be a more appropriate location for instruction of so many students.
- The majority of the members were in favor of no changes and ultimately the consensus of the Planning Commission was to make no changes to the current code language.
- The proponents of the code changes were advised that they have the option to apply to the Board of Adjustment for an extension of their existing variance approval to continue instruction through the current school year.

**Recommendation**

Consider the alternatives and the discussion of Planning Commission and provide direction to staff on the issue.

**Enclosures:** Summary of Regional Municipalities' Regulations  
Municipal Code Section 16-10-20

## **Summary of Regional Municipalities' Regulations**

### **Number of Students Associated with Home Occupations:**

- Arvada does not specify number of students but limits customer vehicles to two at a time and requires parking to be provided off-street;
- Broomfield does not specify number of customers but only allows two customer vehicles at any one time, parked at the dwelling or on the street;
- Denver allows up to four students at any one time;
- Evans allows only one customer vehicle at a time to be on site;
- Fort Collins does not specify number of customers but does require the use to be clearly incidental and secondary to the use of the dwelling for dwelling purposes without changing the character thereof;
- Greeley allows only one customer or client vehicle associated with the home occupation at the home at a time;
- Longmont does not specify number of customers at any one time but requires all parking needs to be accommodated on-site without altering the residential character of the premises
- Loveland allows up to four customers at any one time with a major home occupation and only one customer at any one time for minor home occupations;
- Milliken allows up to ten customers per day but does not specify a maximum at any one time; and
- Thornton allows only one customer at a time.

Sec. 16-10-20. - Home occupations.

Intent. The intent of this Section is to provide for limited business uses within dwellings when such uses will clearly not alter the character or appearance of the residential neighborhood. Telecommuting, as defined in this Chapter, is exempt from home occupation registrations.

- (1) Home occupations shall be permitted as an accessory use of any dwelling unit in any Single-Family Residential Zoning District, whether or not authorized as a named accessory use by this Code, if the following conditions are met and continuously exist:
  - a. Home occupations shall be incidental and secondary to the residential purpose of the dwelling unit, and occupational activity shall be harmonious with the residential use.
  - b. The exterior appearance of the dwelling and lot shall not be altered, nor shall any home occupation within the dwelling be conducted in a manner which would cause the premises to differ from its residential character.
  - c. Home occupations shall not alter the exterior appearance by the use of colors, materials, construction or lighting, or by the emission of sounds, noises, dust, odors, fumes, smoke or vibrations detectable outside the dwelling.
  - d. There shall be no advertising display or signage or other indications of a home occupation on the premises.
  - e. All persons carrying on the home occupation must be regular inhabitants of the dwelling unit, with not more than one (1) additional noninhabitant employee or co-worker per home occupation.
  - f. The total square footage devoted to home occupations shall not exceed either twenty-five percent (25%) of the total floor area of the dwelling unit or five hundred (500) square feet, whichever is less, and in no event shall more than fifty percent (50%) of the total square footage of any building on the property be used for storage of materials, inventory or equipment related to the home occupation.
  - g. There shall be no sale, display or distribution of merchandise which requires customers to visit the property to transact business. On-site retail or wholesale transactions cannot be the primary activity of the home occupation. All such sales must remain incidental and secondary to the home occupation.
  - h. Home occupations may be conducted within the dwelling which shall be the principal building and use on the lot, as long as the home occupation is in compliance with the square footage requirement identified in Subparagraph f. above.
  - i. In the event a home occupation involves tutoring or instruction, no more than two (2) students may be present at the dwelling unit at any one (1) time.
  - j. In the event a home occupation involves child care, the number of children cared for at the dwelling unit at any one (1) time shall be limited to the lawful number permitted by the rules and regulations for the day care homes then in effect and issued by the Department of Social Services of the State. The home occupation of child care shall be exempt from the square footage conditions as set forth in paragraph f. above.
  - k. Vehicular traffic flow associated with the home occupation shall not adversely affect traffic flow and parking in the surrounding residential area.
  - l. There shall be no exterior storage of material and/or equipment used as part of the home occupation on the property.
  - m. The use of utilities shall be limited to that normally associated with the use of the property for residential purposes. Electrical or mechanical equipment that creates audible interference in radio receivers or visual or audible interference in television receivers or causes fluctuations in line voltage outside the dwelling unit shall be prohibited.

- n. Home occupations shall not be transferable to alternate locations or persons.
  - o. Activities conducted and buildings, equipment and material used or stored in coordination with the home occupation shall comply with all building and fire codes, as adopted by the Town.
- (2) Prior to the establishment of any home occupation, an application for such home occupation shall be registered with the Planning Department. Such application shall include the name and address of the persons conducting the home occupation and a description of said occupation. Upon completion of an application and verification by the Town that said home occupation meets the provisions identified in this Section, staff shall issue to the property a copy of the approved home occupation registration. There shall be no fee for the registration of the home occupation set forth herein.
  - (3) If the Town determines that the use does not meet all of the requirements of a home occupation, then the home occupation application shall be refused, and the use shall either be brought into full compliance with the provisions of this Chapter for home occupation registrations, or the use shall be abandoned and all operations ceased.
  - (4) Revocation. In the event any activities associated with a home occupation registration no longer meet the provisions of this Chapter for home occupation registrations, this noncompliance may result in revocation of the Town's approval of the home occupation, denial of building permits and/or certificates of occupancy, injunctive relief prohibiting use of the property and other remedies available to the Town under this Code and other applicable laws of the State.
  - (5) All home occupations lawfully in existence at the time of the adoption of this Section shall be allowed to continue at their present levels of activity and in their present form, and, if hereafter changed, those home occupations must conform to the requirements of this Section.

(Ord. 2008-1321 §B)



## FUTURE TOWN BOARD MEETINGS

Work Sessions & Regular Meetings will be held in the Board Chambers unless otherwise noted.

---

October 5, 2015 6:00 p.m.	Town Board Work Session - Cancelled Town Board attending District 2 meeting in Severance, CO Attending: Vazquez, Melendez, Baker, Morgan, Adams, Arnold
October 12, 2015 5:30 p.m./1 <sup>st</sup> floor conference room	Board/Manager/Attorney Monthly Meeting
October 12, 2015 7:00 p.m.	Town Board Meeting
October 19, 2015 6:00 p.m.	Town Board Work Session Request from Martin Lind Raindance Fixed Review Time Frames Request from Tom Muth for amendment to Commercial Activity Corridor IGA
October 26, 2015 6:00 p.m.	Town Board Work Session NFRMPO presentation – Terri Blackmore Windsor-Weld County Coordinated Planning Agreement draft common development standards
October 26, 2015 7:00 p.m.	Town Board Meeting
November 2, 2015 6:00 p.m.	Town Board Work Session Public Works Facility Update Road Impact Fee review of “look-back” provisions
November 9, 2015 5:30 p.m./1 <sup>st</sup> floor conference room	Board/Manager/Attorney Monthly Meeting
November 9, 2015 7:00 p.m.	Town Board Meeting Kern Board Meeting
November 16, 2015 6:00 p.m.	Town Board Work Session
November 23, 2015 6:00 p.m.	Town Board Work Session
November 23, 2015 7:00 p.m.	Town Board Meeting
November 30, 2015	Fifth Monday
December 7, 2015 6:00 p.m.	Town Board Work Session

December 14, 2015 Board/Manager/Attorney Monthly Meeting  
5:30 p.m./1<sup>st</sup> floor conference room

December 14, 2015 Town Board Meeting  
7:00 p.m.

December 21, 2015 Town Board Work Session  
6:00 p.m.

**Additional Events**

October 9, 2015; 5 pm Conserving Nature's Resources VIP reception - tentative: Vazquez,  
Morgan

October 10, 2015; 7:30 am Budget work session

October 22, 2015; 6 pm Larimer County dinner – attending: Vazquez, Melendez, Baker, Morgan,  
Adams, Arnold

October 29, 2015; 6 pm Weld County Town /County dinner – attending: Melendez, Morgan,  
Adams, Arnold

**Future Work Session Topics**

None.