Land Use
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BOARD OF COUNTY COMMISSIONERS
MEETING SUMMARY

September 27, 2016 – 3:30 PM
Commissioners Hearing Room, Third Floor
Boulder County Courthouse

CONTINUATION FROM AUGUST 30 JOINT PLANNING COMMISSION-BOARD OF COUNTY COMMISSIONERS PUBLIC HEARING, NO TESTIMONY

Docket BVCP-15-0001: Boulder Valley Comprehensive Land Use Change Requests

STAFF PLANNERS:

Dale Case - Land Use Director, Boulder County; Nicole Wobus - Long Range Planning and Policy Manager, Boulder County Land Use; Pete Fogg - Senior Planner, Boulder County Land Use; Steven Giang - Planner I, Boulder County Land Use; David Driskell - Executive Director, City of Boulder Planning, Housing + Sustainability (PH+S); Susan Richstone - Deputy Director for Planning (City of Boulder PH+S); Lesli Ellis - Comprehensive Planning Manager (City of Boulder PH+S); Jay Sugnet - Senior Planner (City of Boulder PH+S); Jean Gatza - Senior Planner (City of Boulder PH+S); Caitlin Zacharias – Planner I (City of Boulder PH+S)

BACKGROUND

This document summarizes discussion and outcomes from a September 27 Board of County Commissioners (BOCC) public hearing at which deliberation and decisions took place related to land use change requests as part of the Boulder Valley Comprehensive Plan (BVCP) Major Update. The meeting was a continuation of the joint Board of County Commissioners and Planning Commission public hearing on August 30, 2016 at which staff presented recommendations, requestors made presentations, and members of the public provided public comment on these matters. The August 30 hearing agenda included staff and requestor presentations for requests for land use changes at: 3261 3rd Street (Request #25), 2801 Jay Road (Request #29), and 6655 and 6500 Twin Lakes Rd., 0 Kalua Road (Requests #35 and #36). No decisions were made at that hearing. As scheduled, Planning Commission decided on the land use change requests at the September 21 hearing, and decision making advanced to the BOCC on September 27.

Decisions by the City of Boulder's decision making bodies will follow. A joint Planning Board – City Council hearing on these matters will take place on October 13 and November 10 (a shift from the original schedule). Planning Board is scheduled to make decisions following public testimony at the October and November hearings. City Council will decide on December 6.

Please refer to the staff memo submitted in advance of August 30 hearing for the full staff recommendation. All public comments received related to the public requests for land use designation

changes are available here:
http://www.bouldercounty.org/property/build/pages/lubvcp150001.aspx#PublicComment

In advance of decision-making by BOCC on September 27, staff provided a summary of discussion and outcomes from the September 21 Planning Commission meeting, as well as clarification on a number of topics raised at the hearing related to the Twin Lakes requests.

SEPTEMBER 27, 2016 BOARD OF COUNTY COMMISSIONERS MEETING SUMMARY

Overview and Key Outcomes

All three members of the Board of County Commissioners, Elise Jones (Chair), Cindy Domenico (Vice Chair) and Deb Gardner, were in attendance. Staff from the Boulder County Land Use Department provided a summary of the BVCP process leading up to the Planning Commission decision, as well as next steps. Staff noted that Request #29 (2801 Jay Road) withdrew from the BVCP land use designation change process because the requestors will pursue the change along with an annexation request they submitted to the city on September 17.

BOCC addressed Requests #35 and #36 first, voting to adopt the staff recommendation that had previously been approved by the Planning Commission on September 21, along with similar motion language, provided in Table 1.

BOCC's vote on 3261 3rd Street (Request #25) followed. BOCC approved the staff recommendation, consistent with the outcome of the September 21 Planning Commission decision.

With two approvals from the county's decision-making bodies, the motion language in Table 1 will advance to the city's decision making bodies for their consideration. Note that references to attachments in Table 1 refer to attachments to the August 30 staff report. Full descriptions of staff recommendations related to the land use designation changes are included in the staff report for the August 30 joint hearing for the Boulder County decision making bodies (Planning Commission – Board of County Commissioners), and will also be included in the staff report for the upcoming City of Boulder joint Planning Board – City Council Hearing.[1]

[1] The staff report for the Planning Commission – Board of County Commissioners hearing is available at: http://www.bouldercounty.org/property/build/pages/lubvcp150001.aspx.

Table 1. Summary of Decision Outcomes

Item	Motion Language	Vote Summary
3261 3rd Street (Request #25)	Motion to approve the Land Use Map change and the Area I, II, III Map change to the Boulder Valley Comprehensive Plan, as shown and described in Attachment A, as to 3261 3rd St. (Request #25): Change to Low Density Residential and Open Space - Other & Change to Area II for a portion of the site.	Yes: 3 No: 0
6655 Twin Lakes Road, 6500 Twin Lakes Road and 0 Kalua Road (Requests #35 and #36)	Motion to approve the following Land Use Map change to the Boulder Valley Comprehensive Plan, as shown in Attachment C, to 6655 and 6500 Twin Lakes Road and 0 Kalua Road to change to Medium Density Residential and Environmental Preservation. With a recommendation to any decision-making bodies overseeing future development on the property that the Guiding Principles that were developed in the Twin Lakes Stakeholder Group process are honored, and that future development of the property ensures that wildlife values and appropriate corridors are established.	Yes: 3 No: 0

ATTACHMENTS

- Attachment: Letter withdrawing Request #29 from the BVCP Major Update land use designation change process

Guiding Principles from Twin Lakes Stakeholder Group Process

The Twin Lakes Stakeholder Group agreed to the following guiding principles during the facilitated process, to apply if development occurs:

- Continue an advisory group to influence development, design elements, etc.
- Be thoughtful and clear about communication and ensure transparency going forward.
- Mitigate impacts on existing infrastructure and neighborhoods.
- Delineate wildlife habitat and corridor, open space, trails, and create a set-aside for no development.
- Ensure a diversity of housing types.
- Create a design that is consistent with the current surrounding neighborhoods.
- Ensure adequate parking to minimize negative impacts on the surrounding neighborhoods.
- Supply appropriate numbers and types of community amenities to the public.
- Supply appropriate numbers and types of affordable housing units.

Summary of Discussion and Deliberation for 3261 3rd Street

The BOCC had no questions of staff related to this request. The Commissioners cited their familiarity with the case, and that the property owner's pursuit of the land use designation change is consistent with the direction BOCC provided in their decision on the property's Subdivision Exemption application to the county.

All three Commissioners supported the staff recommendation because it would not result in additional housing units on the site. Commissioner Jones acknowledged discussion at the Planning Commission

hearing about the importance of a comprehensive review of potential changes in Area II / III mapping for this and about a dozen other properties if a November ballot measure to shift the Blue Line is approved.

Planning Commission voted 3-0 to APPROVE the staff recommendation.

Summary of Discussion and Deliberation for Twin Lakes Road Parcels

The Commissioners acknowledged that members of the Twin Lakes Action Group requested the Commissioners recuse themselves from the decision on the Twin Lakes parcels. The Commissioners decided not to recuse themselves, and the Assistant County Attorney provided an explanation of the legal basis for that decision. Legal analysis on the topic is included in a memo prepared by the County Attorneys' Office dated September 26, 2016. That memo is part of the public record and is available at this link: http://www.bouldercounty.org/property/build/pages/lubvcp150001.aspx .

The Commissioners asked questions related to:

- The significance of Area II within the Boulder Valley Comprehensive Plan
- Procedural clarification regarding the advancement of the requests to the remaining decision making bodies
- The history and any potential restrictions on the types of uses that can occur on the Boulder Valley School District parcels
- The significance of potential annexation of open space
- The ability to limit the sale of potential affordable housing to teachers
- The cash in lieu component of the city's inclusionary housing program
- Potential impacts of development on nearby owls
- Wildlife compatibility

Regarding the significance of the Area II designation of the Boulder County Housing Authority and BVSD parcels, county staff highlighted that Area II is the area within the BVCP planning area that is intended for annexation and potential future development in accordance with the appropriate comprehensive plan land use designation. It is the area that has been pre-determined through planning and agreements involving the city and the county to be appropriate for annexation in the interest of achieving a compact development pattern for the Boulder Valley as a whole. City staff described Area II in the context of Area I and Area III, commenting that Area I is the area within the city of Boulder and is more urban in character. Area III is the area intended to stay rural, and Area II is the area intended to be annexed into the city.

The Assistant County Attorney addressed procedural questions related whether the BOCC should specifically vote on each of the requests separately. She explained that the BOCC was just required to take an action related to the parcels involved. She noted that an approval of the staff recommendation would result in denial of both requests #35 and #36. She also clarified that recommendations associated with a decision-making body's approval do not need to perfectly match one another, as they are not binding.

The Assistant County Attorney also addressed questions related to the significance of the history of the BVSD parcel, and the legality and significance of annexation of land designated as open space, which are also summarized in the memo from the County Attorney's Office dated September 26, 2016, referenced previously. The legal analysis finds that nothing related to the history of the BVSD parcels or the potential annexation of open space would preclude approval of the staff recommended changes in the land use designations of the BCHA and BVSD parcels.

Regarding the question of whether potential future affordable housing developed to serve BVSD employees could be limited just to those employees, staff highlighted BVSD's previous comments that other jurisdictions have successfully implemented such programs. Those jurisdictions include Telluride Colorado and Jackson Hole Wyoming, and Roaring Fork Colorado is pursuing the model as well.

The Assistant County Attorney also responded to the question related to why cash-in-lieu is offered as an option for developers. The response was consistent with legal analysis in the September 26 memo prepared by the County Attorney's Office. City staff also noted that cash-in-lieu would not be an option for any development of land that is annexed into the city. All permanently affordable housing built on land that is annexed must include on-site affordable housing.

Staff from Boulder County's Parks and Open Space (POS) Department responded to the Commissioners' question about potential impacts on owls nesting in the area of the BCHA and BVSD parcels. POS staff explained that the nesting owls are located northeast of the BCHA parcel, between the Twin Lakes trail and the neighborhood located to the south. The county POS Department has monitored the owls for about eight years, and POS has a program to educate the public about the owls. The owls have successfully fledged in close proximity to the heavily traveled trail and nearby residential development for many years.

POS staff noted that great horned owls are urban-adapted, and that there is a healthy population in the county. POS knows of 80 nests located in the county. Great horned owls are not on the county's list of Species of Special Concern. They are migratory birds and any potential development would need to proceed in compliance with provisions of the Migratory Bird Treaty Act. That would involve taking steps to minimize the impacts of potential construction (e.g., planning related to the timing of construction, etc.).

In response to questions about wildlife present on the BCHA and BVSD parcels themselves, POS staff noted that the species present on the parcels are urban adapted. Furthermore, the vegetation on the parcels is non-native, so it does not support a large diversity of animals and plants. Animals do make use of the trails on the property, but there is also land serving as a wildlife corridor to the north, and other areas serving as wildlife corridors in close proximity to the parcels.

Commissioner Gardner expressed gratitude for the hard work on the part of all parties involved in the robust public process up to this point. She noted that the parcels do not meet the criteria for open space acquisition, and that they have been located in Area II for over 30 years. She commented that affordable housing is a county-wide and a national issue, and it warrants a regional approach to identifying solutions in Boulder County. She also cited the limited availability of land for developing affordable housing in Boulder County. She noted that the only way to address the supply and demand imbalance for affordable housing is to introduce new permanently affordable housing and supportive housing where possible. She heard the concerns of the neighbors, especially around density, compatibility and the need for wildlife corridors. She values the guiding principles that came out of the Twin Lakes Stakeholder Group process, and appreciated BCHA and BVSD's commitment to adhere to those principles, as noted in a letter following the September 21 Planning Commission meeting. She values and supports the recommendations attached to the Planning Commission's vote to approve the staff recommendation.

Commissioner Domenico also thanked the public and staff for the work that has gone into the process surrounding the Twin Lakes requests, and thanked the Planning Commission for the extensive exploration of numerous issues at their decision hearing. She emphasized the importance of maintaining a 30,000 foot view in decision making related to the comprehensive plan land use designation changes. She also commented on the importance of advancing opportunities to address

the regional affordable housing crisis, noting the difficulty of teachers and young families to find affordable places to live in the county. She cited the parcels' location in Area II since the beginning of the Boulder Valley Comprehensive Plan, meaning the parcels have been planned for annexation for many years. She also commented on the large tracts of open space that surround and contribute to the quality of life in the area. She recognized BCHA and BVSD's commitment to wildlife values and corridors in any development that proceeds, honoring the outcomes of the Twin Lakes Stakeholder Group process. She agrees with the staff recommendation and the decision by the Planning Commission.

Commissioner Jones highlighted the challenge of the decision and that the debate around the issue reflects a split in the community. She commented on the importance of balancing the values and core principles of the BVCP. She recognized the community's relationship to the land, and why many would prefer not to see the Twin Lakes parcels developed. She recognized her eight years of experience on the Boulder Planning Board during which time she saw many proposals to develop vacant parcels that were frequently accompanied by requests to preserve the land as open space, and that is an understandable reaction. She commented on the critical need to address housing affordability in the community, recognizing that 40,000 Boulder County residents spend more than half of their income on housing. She highlighted the Boulder County's land use philosophy to keep the outskirts rural and focus development in the cities, and that Area II of the BVCP is designated as an area where development is planned to occur. Boulder County is protecting land as open space on the outskirts of the urban areas. Affordable housing needs to be located somewhere in the community, though potential new affordable housing developments are consistently met with resistance from neighbors.

Commissioner Jones remarked that BCHA has a great track record for building successful projects that are sensitive to issues of environmental protection. She expressed excitement about the opportunities associated with partnering with the school district (e.g., bike share and car share programs), and noted the importance of creating affordable places for teachers to live.

Commissioner Jones expressed appreciation for the extensive discussion and deliberation by the Planning Commission and concurred with their recommendation for a wildlife corridor. She appreciated BCHA and BVSD's letter of commitment to include a trail corridor in any development that occurs on the parcels, and to keep density no higher than 12 units per acre to help achieve compatibility with the neighborhood.

Commissioner Domenico moved to approve the staff recommendation, and Commissioner Gardner seconded the motion. All three commissioners voted in favor of the staff recommendation, along with the recommendation put forward by the Planning Commission.

ATTACHMENT

Letter withdrawing Request #29 from the BVCP Major Update land use designation change process.

Ed Byrne, P.C.
A Professional Legal Services Corporation
250 Arapahoe Avenue, Suite 300
Boulder, CO 80302 - 5838

September 23, 2016

Boulder County Land Use Department
P.O. Box 471
Boulder, CO 80306

Planning and Development Services
P.O. Box 791
Boulder, CO 80306

Re: Withdrawal of BVCP Land Use Designation Map Change Request #29

Dear People,

The owners of 2801 Jay Road have asked me to notify the City of Boulder and Boulder County that we have decided to withdraw BVCP Land Use Designation Map Change Request #29 from the BVCP major update process.

2801 Jay Road has been designated as "Area II" in the Boulder Valley Comprehensive Plan (BVCP) since the 1970s, so it has been and is eligible for annexation at any time. Two years ago, the owner of 2801 Jay Road submitted a City application for concept review. While the process was ongoing, staff suggested we submit a BVCP Major Update land use map change request (even though participation in the Major Update is not required for an Area II annexation), so we submitted BVCP map change request #29.

On January 28, 2016, Planning Board voted against further consideration of our request. Planning Board later voted to reconsider their decision not to study our request, even though we did not appear at the hearing or ask that they do so. We had instead decided to prepare and submit to the City an application for annexation, rezoning and site review, a process which we completed on Monday, September 17, 2016. Having submitted a detailed, comprehensive annexation application, there is no need for a parallel, non-specific analysis of 2801 Jay Road by the County Commission, Planning Board and City Council.

Thank you for your consideration in this matter. The input we received during the BVCP process has made our annexation and site review proposal for 2801 Jay Road a much better project, and we appreciate it.

Sincerely,

Ed Byrne

Edward R. Byrne

cc: Dale Case
Kathy Parker
David Driskell
David Gehr
Hella Pannewig

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