

**BOULDER CITY COUNCIL MEETING
MUNICIPAL BUILDING, 1777 BROADWAY
SPECIAL MEETING
Thursday, August 6, 2015
6 PM
AGENDA**

1. CALL TO ORDER AND ROLL CALL

2. PUBLIC HEARINGS

A. Second reading, and consideration of a motion to adopt **Emergency Ordinance No. 8059** amending Chapter 11-1 “Water Utility,” B.R.C 1981, and **authorizing** the City Manager to execute **an agreement** relating to the provision of **out-of-city water services with the owner of 4400 Peach Court**

B. CONCEPT PLAN REVIEW AND COMMENT: Request for citizen, staff and City Council comment on a proposal for a mixed-use development (**Alexan Flatirons**) located at **McKenzie Junction, 3600 Highway 119 (Diagonal Highway)**, that includes 295 market-rate multi-family units, 83 affordable-rate multi-family units, associated community buildings and 54,000 square feet of commercial office space (with options for partial retail and coffee); reviewed under case no. LUR2015-00028

C. Request for Council direction regarding proposed draft lease with the Colorado Chautauqua Association

3. MATTERS FROM MEMBERS OF COUNCIL

A. National League of Cities committee assignments

4. ADJOURNMENT

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CITY OF BOULDER
CITY COUNCIL AGENDA ITEM
MEETING DATE: August 6, 2015

AGENDA TITLE:

Second reading, and consideration of a motion to adopt Emergency Ordinance No. 8059 amending Chapter 11-1 “Water Utility,” B.R.C 1981, and authorizing the City Manager to execute an agreement relating to the provision of out-of-city water services with the owner of 4400 Peach Court.

PRESENTERS:

Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning & Sustainability (CP&S)
Susan Richstone, Deputy Director, CP&S
Charles Ferro, Development Review Manager, CP&S
Hella Pannewig, Assistant City Attorney
Lesli Ellis, Comprehensive Planning Manager
Julia Chase, Paralegal, City Attorney’s Office
Edward Stafford, Development Review Manager, Public Works
Scott Kuhna, Development Review Supervisor
Jeff Hirt, Planner II

EXECUTIVE SUMMARY

This agenda item is a second reading of an ordinance (**Attachment A**) amending Chapter 11-1 “Water Utility” and City Manager authorization to execute an agreement to provide out of city water services to an approximately 6.5 acre single family property in Area III-Planning Reserve at 4400 Peach Court. Boulder County has approved an expansion of the existing house for a larger single family home. Please note that this is a request for consideration of an emergency ordinance per City Charter Sections 17 and 18.

The property owner requested water service through the Left Hand Water District (District) in 2013. Pursuant to the city’s Intergovernmental Agreement (IGA) with the District (**Attachment C**), the city received this referral as the property is in the Boulder Valley Planning Area. The city objected to granting of the tap request through the District because it was inconsistent with the Boulder Valley Comprehensive Plan (BVCP) (**Attachment D**). Specifically, because the property is in Area III-Planning Reserve, there is the potential for future city service area expansion that may create overlapping service between the city and the District.

As a result, the property owner has requested city water service. The ordinance is required primarily because the property is in Area III, and BRC Sec. 11-1-15 (Out of City Water Service) only addresses properties in Area II.

STAFF RECOMMENDATION

Staff is recommending that council consider an ordinance (**Attachment A**) that would enable the subject property to obtain city water service through an agreement executed by the City Manager for the following reasons:

1. BVCP Sec. 1.20 states that the city and county intend to maintain the option of future service area expansion in Area III–Planning Reserve;
2. BVCP Sec. 1.36 (b) supports extending limited utility service in Area III when it furthers BVCP goals;
3. To avoid the potential of overlapping service between the city and District water supply within the City of Boulder Service Area; and
4. The request is limited to one approved single family dwelling unit and accessory structures directly related to the single family use. The request will not result in additional development potential.

City Council approved this request as outlined in this memo on first reading on July 28, 2015.

This is a request for consideration of an emergency ordinance to address a time sensitive need for safe potable water to the property at 4400 Peach Court. Emergency ordinances have to be adopted by two-thirds of council members present.

Suggested Motion

Staff requests council consideration and action in the form of the following motion.

Suggested Motion Language:

Motion to adopt Emergency Ordinance No. 8059 amending Chapter 11-1 “Water Utility,” B.R.C 1981, and authorizing the City Manager to execute an agreement relating to the provision of out-of-city water services with the owner of 4400 Peach Court.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic:** None anticipated. Area III–Planning Reserve is an area where the city and county intend to maintain the option of future Service Area expansion. No city improvements are proposed at this time.
- **Environmental:** The water service will provide the property with safe potable water. The applicant will be able to cease, avoid or limit use of wells, ditch water or trucking in water for their potable water source.
- **Social:** The water service will help to ensure that basic health and safety needs of the residents and visitors to the property are met.

OTHER IMPACTS

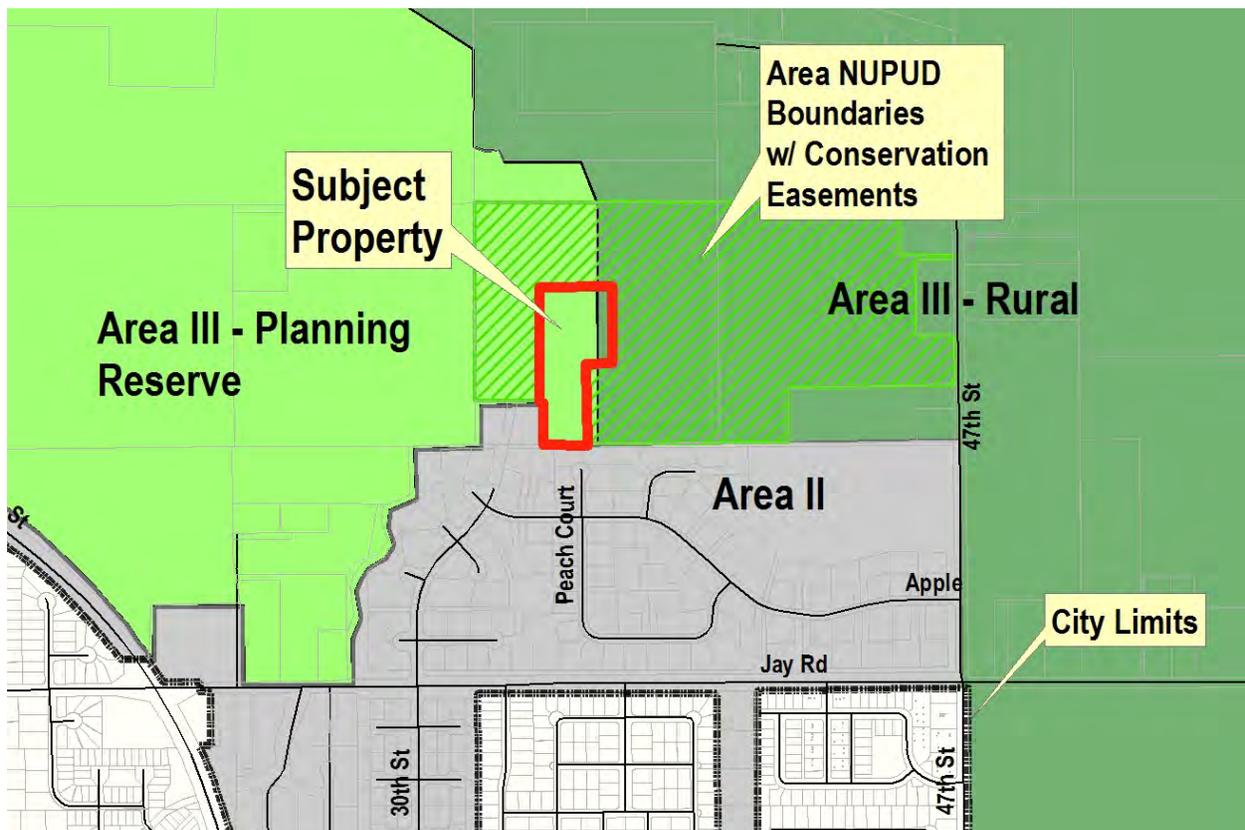
- **Fiscal:** None identified.
- **Staff time:** The proposed ordinance and agreement are within normal staff work plans.

BOARD AND COMMISSION FEEDBACK

Planning Board provided comments on this request at their July 16, 2015 meeting. The comments related to clarifications for the council memo and included:

- Show a map of public lands and conservation easements that surround this parcel (addressed in the Vicinity Map and Existing Conditions and Boulder County Approvals section below); and
- Address if this approval sets any kind of precedence for similar future requests (addressed in the Select Components of Ordinance and Agreement section below).

Vicinity Map



BACKGROUND

The Left Hand Water District is a special district that provides treated water to about 6,500 homes in Boulder and Weld Counties. The City of Boulder and the District entered into the 1995 Amended and Restated Agreement (IGA, see **Attachment C**) that provides a process for the city to comment on requests for new service or changes in service to existing District water customers in the Boulder Valley Comprehensive Plan (BVCP) area. The city's review of the requests focuses on whether the District has the capacity to serve the new customers and whether the request is consistent with the BVCP.

The city and the district have a long history of coordinating utility services within the BVCP area. Special districts like Left Hand are quasi-municipal corporations and political subdivisions under state law. While there are a number of special districts that provide various services within the Boulder Valley, the city and Boulder County have discouraged expansion of such districts, to discourage urban development outside of the urban municipalities. Since the early 1970s, the city and the District have worked to prevent conflicts and overlaps between the city and District water service and to ensure that any utility service within the Boulder Valley is done in a manner consistent with the BVCP.

Within the past few years, the District has replaced a 2-inch water line with an 8-inch water line to service an area generally located north of Independence Road, east of North 55th Street, south of Jay Road, and west of 63rd Street. The District has also replaced an undersized 2 ½ inch waterline with a 6-inch water line between the intersection of 47th Street and Apple Way, extending 2,685 feet north along 47th Street to the intersection with Pleasant Ridge Road.

Application History

The chronology below summarizes the city's involvement in this application since 2013:

- March 2013 – City received referral from Left Hand Water District for single family water service at 4400 Peach Court. The Left Hand Water District indicated that they can serve the property (staff confirmed this is still the case under current conditions).
- June 2013 – City informed District of objection to District's referral due to inconsistency with BVCP policies (**Attachment D**). The Left Hand Water District subsequently removed this request from their board hearing schedule.
- May 2014 – City received request for out of city utility permit from 4400 Peach Court property owner for water service.
- June 2014 – City provided comments on application that include the need to join the Northern Colorado Water Conservancy District and the requirement for a special ordinance and agreement due to the property's Area III-Planning Reserve status.
- July 2014 to present – City and applicant discussions and finalization of components of special ordinance and agreement.

Existing Conditions and Boulder County Approvals

The subject property contains a single family house and accessory buildings (see **Attachment B**). The property is also known as the Poor Homestead, a historic farming complex first settled in the 1880s. Boulder County Land Use reviewed and approved expansion of the existing house in 2013 (Case No. SPR-13-0013). This approval was for expansion of the existing house for a 2,693 sq. ft. residence. The approved house stays under the maximum permissible size of a residence on the property of 2,706 sq. ft. per Boulder County regulations. The property has several existing accessory buildings totaling 4,715 sq. ft.

The subject property is also part of the Poor Nonurban Planned Unit Development (NUPUD). The Vicinity Map above identifies the surrounding properties within this NUPUD, and an adjacent NUPUD to the east extending to 47th Street.

The NUPUD's in the Vicinity Map above are conservation easements, according to Boulder County Parks and Open Space (i.e., the NUPUD is the mechanism for establishing the conservation easement). These conservation easements carry their own stipulations, including a limitation on new development. Within

these NUPUD's, only accessory buildings that are for agricultural use are allowed. No new principal structures are allowed in these NUPUDs.

Select Components of Ordinance and Agreement

The proposed ordinance and agreement contain the following provisions that would allow city water service to the property, as BRC Sec. 11-1-15 currently does not allow city water to the property:

- City Manager authorization to execute an Out of City Utility Agreement and Revocable Permit for 4400 Peach Court.
- City Manager authorization to approve changes to the Agreement provided those changes meet the standards of BRC Sec. 11-1-15 "Out of City Water Service".
- Clarification in both the ordinance and agreement that city water service is limited to one dwelling unit and accessory structures only directly related to the single family use and a 1-inch water meter.
- A statement that the property owner must connect to city water service within six months of City Manager approval.
- That the owner is fully responsible for the costs of the connection and obtaining required approvals for easements and any affected ditch companies for city water service.

Any future requests for out of city water service to properties in Area III-Planning Reserve would have to follow a similar process to this application, unless BRC Sec. 11-1-15 is amended from only currently allowing out of city water to Area II properties to also allowing water service to Area III-Planning Reserve properties.

ANALYSIS

This section provides further analysis of the application relative to the out of city utility permit provisions in BRC Sec. 11-1-15 (b).

(1) The property is located within Area II of the Boulder Valley Comprehensive Plan, unless the facility to be served is a publicly owned facility that because of its nature is most appropriately located outside Area II and because of the general public interest should be served by water service

The property is in Area III – Planning Reserve and contains an existing single family residential structure and several accessory buildings. BRC Sec. 11-1-15 does not regulate water service to Area III properties. In order for the property to receive city water service, the city must approve the ordinance set forth in **Attachment A**. Staff supports extension of city water to the property because it is consistent with BVCP Policies 1.20 & 2.07(b) – “the city and county intend to maintain the option of limited future Service Area expansion” and 1.36 – “the city and county agree that it is appropriate for the city to extend limited utility service in Area III and Area II in circumstances that further Boulder Valley Comprehensive Plan goals”. In this case, the goal is to maintain the option of future Service Area expansion and avoid potentially overlapping service boundaries with the Left Hand Water District in that area. IGA Recital #2 also states that the city and District seek to “insure development consistent with good planning and the Boulder Valley Comprehensive Plan”.

(2) There is no main extension involved for such service beyond one hundred feet or in violation of the main extension limit, whichever is less

There is no main extension involved with this request.

(3) The city planning department has determined that the proposal does not constitute new urban development and is consistent with the comprehensive plan

The water service requested is for an approved single family residential home and accessory buildings subordinate to the single family use and will not result in any new urban development.

(4) The City has referred the application to the Boulder County Planning Department under the referral provisions of the comprehensive plan

The city referred the application to the Boulder County Land Use Department. The county indicated they had approved expansion of the single family home and has no conflicts with this out of city water service request.

(5) The service is to be extended to a structure, which contains a legal use, that existed on the effective date of this chapter or to a platted single-family lot existing on the effective date of this chapter

The service is to be extended to a Boulder County-recognized single family residential structure and outbuildings built in 1880 and 1960, respectively. The ordinance also allows future water service to accessory buildings directly related to the single family use within 1-inch water tap limitations.

(6) The property is located below the "Blue Line"

The property is located below the Blue Line.

(7) The property owner agrees in an agreement running with the land to annex to the City as soon as the property is eligible for annexation

The property owner has signed an Out of City Utility Agreement (**Attachment A**) that indicates this in Sec. 4.h.

(8) The property has an existing permitted out of city sewer connection or has applied for such permit in accordance with the requirements of section 11-2-10, "Out of City Sewer Service," B.R.C. 1981, and agreed to connect to sanitary sewer when eligible.

The property has a county-approved septic system and it not eligible to connect to city sewer service at this time.

NEXT STEPS

The City Manager will be asked to sign the Out of City Utility Agreement and Revocable Permit in **Attachment A**. The applicant will then be required to obtain all necessary approvals to connect to city water that may include an easement and right of way permit. The agreement stipulates that the applicant must connect to city water within 6 months of City Manager approval.

ATTACHMENTS:

- A. Ordinance and Agreement for Out of City Utility Service
- B. Site Plan
- C. 1995 City and Left Hand Water District IGA
- D. City Letter to Left Hand Water District (June 2013)

ORDINANCE NO. 8059

AN EMERGENCY MEASURE ORDINANCE AMENDING CHAPTER 11-1, "WATER UTILITY," B.R.C. 1981, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT RELATING TO THE PROVISION OF OUT-OF-CITY WATER SERVICES WITH THE OWNER OF 4400 PEACH COURT AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS AND RECITES THE FOLLOWING:

A. The property generally described as 4400 Peach Court (the "Property") and more particularly described as Lot 1, POOR NUPUD, County of Boulder, State of Colorado, is located in Area III-Planning Reserve Area of the Boulder Valley Comprehensive Plan.

B. It is in the interest of the public's health, safety, and welfare to extend limited water utility service to the Property.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. The city council authorizes the city manager to execute on behalf of the City of Boulder, Colorado, an Out-of-City Utility Agreement and Revocable Permit for the Property, generally in the form attached to this ordinance as Exhibit A. The city manager is authorized to sign an Out-of-City Utility Agreement and Revocable Permit after the property owner has completed the appropriate technical reviews and satisfied the conditions contained herein that are required pursuant to Chapter 11-1, "Water Utility," B.R.C. 1981, for outside of the City utility services except as those may be modified herein. The city manager is authorized to approve changes to the Out-of-City Utility Agreement and Revocable Permit provided those changes meet the standards of this ordinance and of Section 11-1-15, "Out-of-City Water Service," B.R.C. 1981, except as modified by this ordinance.

1 Section 2. The city council of the City of Boulder finds that: 1) making water available
2 to the Property is fair and equitable; 2) it is in the interest of the public's health, safety, and
3 welfare to extend limited water utility service to the Property; 3) providing water service to the
4 Property is consistent with the Boulder Valley Comprehensive Plan's policy 1.20 that states that
5 the City and County intend to maintain the option of future Service Area expansion in Area III-
6 Planning Reserve Area; and 4) making water available to the Property is consistent with Boulder
7 Valley Comprehensive Plan Policy 1.36 "Out-of-City Utility Service," which supports extending
8 utility service to Area III in circumstances that further Boulder Valley Comprehensive Plan
9 goals. Extension of the City water service to the Property would be limited to one existing
10 dwelling unit and accessory structures that are located on the same lot as the single family
11 dwelling unit, are subordinate to and customarily found with the single family dwelling unit, and
12 are operated and maintained for the benefit or convenience of the occupants of or visitors to the
13 single family dwelling unit. There is no additional development potential beyond one dwelling
14 unit.
15

16 Section 3. To the extent that this ordinance conflicts with any previously adopted
17 ordinance of the City, including Subsections 11-1-15(b)(1), 11-1-15(b)(5), and 11-1-15(b)(8),
18 B.R.C. 1981, such ordinances are suspended for the limited purpose of implementing this
19 ordinance. This ordinance shall be considered an amendment to Chapter 11-1, "Water Utility,"
20 B.R.C. 1981.

21 Section 4. The owner of the Property has applied for out-of-city water service to the
22 dwelling unit and its accessory structures on the Property and shall actively seek approval of
23 such application in a manner that is consistent with Subsection 9-2-6(e), B.R.C. 1981. If the
24 applicant fails to keep the application active, then it shall be considered withdrawn and this
25 ordinance shall be of no further force or effect. If the owner of the Property does not connect to
26 the out-of-city water service within six months after the Out-of-City Utility Agreement and

1 Revocable Permit is approved by the City Manager, then the permit shall expire and this
2 ordinance shall be of no further force or effect.

3 Section 5. This ordinance is necessary to protect the public health, safety, and welfare of
4 the residents of the City, and covers matters of local concern.

5 Section 6. The council deems it appropriate that this ordinance be published by title only
6 and orders that copies of this ordinance be made available in the office of the city clerk for public
7 inspection and acquisition.

8 Section 7. The council finds that public health, peace, and safety justify the adoption of
9 this ordinance as an emergency measure to address a time sensitive need for safe potable water to
10 the property at 4400 Peach Court.

11
12 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
13 TITLE ONLY THIS ___DAY OF _____, 2015.

14
15 _____
16 Mayor

17 Attest:

18 _____
19 City Clerk

20
21 READ ON SECOND READING, PASSED BY A TWO-THIRDS VOTE OF COUNCIL
22 MEMBERS PRESENT, ADOPTED AS AN EMERGENCY MEASURE, AND ORDERED
23 PUBLISHED BY TITLE ONLY THIS ___DAY OF _____, 2015.

24
25 _____
26 Mayor

Attest:

EXHIBIT A TO ORDINANCE

For Administrative Purposes Only
Address: 4400 Peach Court
Owner: Idle Acre Land Company LLC
Case No. LUR2014-00039

OUT-OF-CITY UTILITY AGREEMENT AND REVOCABLE PERMIT

This Agreement and Permit (“Agreement”), issued this ____ day of _____, 201_, by and between Idle Acre Land Company LLC, a Colorado limited liability company (“Owner”), the owner of certain property, generally located at 4400 Peach Court and more particularly described as Lot 1, POOR NUPUD, County of Boulder, State of Colorado (“Property”) and the City of Boulder, a Colorado municipal corporation (“City”).

RECITALS

- A. The Owner has applied to the City for water service for a proposed residential use on the Property.
- B. The Property is located in Area III-Planning Reserve Area of the Boulder Valley Comprehensive Plan.
- C. The Property is already located within the Northern Colorado Water Conservancy District.
- D. The Property has been included in the Municipal Subdistrict of the Northern Colorado Water Conservancy District by the Weld County District Court’s order dated October 6, 2014 in Case No. 1937CV9454-S1.
- E. The City Council of the City of Boulder (the “City Council”) concludes the following: 1) making water available to the Property is fair and equitable; 2) it is in the interest of the public’s health, safety, and welfare to extend limited water utility service to the Property; and 3) making water available to the Property is consistent with Boulder Valley Comprehensive Plan policies that support extending city utility service to Area III in circumstances that further Comprehensive Plan goals, including policy 1.20 that states that the city and county intend to maintain the option of future Service Area expansion in Area III-Planning Reserve.
- F. The City Council passed Ordinance No. _____ which authorizes the City of Boulder to provide municipal water utility service to the Property which is located outside the City limits of the City of Boulder for such uses under such terms and conditions as set forth by the said ordinance and the B.R.C. 1981.
- G. The City Council has determined that said service should be granted subject to the terms and conditions set forth herein.

Agreement

NOW, THEREFORE, in consideration of the recitals, promises, covenants herein set forth, and other good and valuable consideration herein receipted for the parties agree as follows:

- 1. That the City will make available to the Owner, City of Boulder water service conditioned upon the Owner meeting and keeping the terms and conditions hereinafter contained. Such service is to be made available for use on that portion of the Property, outside the City limits of the City of

Boulder, which is not now eligible for annexation to the City of Boulder under the laws of the State of Colorado.

2. The water service herein authorized is to be restricted exclusively to the Property and to a 1-inch water meter for a single family dwelling unit and accessory structures that are located on the same lot as said single family dwelling unit, are subordinate to and customarily found with the single family dwelling use, and are operated and maintained for the benefit or convenience of the occupants of or visitors to said single family dwelling unit. No enlargement, increase, or modification of said service shall be made without prior written approval of the City through the appropriate official. The Owner agrees that it shall be a violation of this Agreement if the Owner uses any City water service for any use that is not the single family use of the Property or that is not subordinate to and customarily found with the single family dwelling use and operated and maintained for the benefit or convenience of the occupants of or visitors to the single family use of this Property.
3. Both parties agree that the water service is provided under an Out-of-City Utility and Revocable Permit, that rates for the said service may be increased and if they are, the Owner will pay them, and that the service may be discontinued if the Owner fails to perform as required or if the needs of the City residents require.
4. Owner agrees to fulfill all of the following conditions:
 - a. To use the service only for the qualifying use as a single family dwelling unit. Water service shall be limited to a 1-inch water meter for a single family dwelling unit and accessory structures that are located on the same lot as said single family dwelling unit, are subordinate to and customarily found with the single family dwelling use, and are operated and maintained for the benefit or convenience of the occupants of or visitors to said single family dwelling unit;
 - b. At Owner's sole cost, to make the connection at such point or points and obtain any necessary easements or ditch company approvals as the City Manager prescribes;
 - c. Prior to connection to the City water service, the Owner shall pay all fees prescribed in Section 11-1-15, "Out-of-City Water Service," B.R.C. 1981;
 - d. To pay the outside City rates until such time as the Property is annexed;
 - e. At Owner's sole cost, to install and maintain the devices necessary to measure the use of the services for the purposes of assessing the charges therefor, if the City Manager finds it is necessary;
 - f. To apply to the City for a new Out-of-City Utility Agreement and Revocable Permit and any other necessary approvals before enlarging the service authorized herein or before altering, changing, enlarging or extending in any manner whatsoever the type of use for which water service is authorized herein;
 - g. To furnish a current title memorandum showing that title to the Property is vested in the Owner's name or to reimburse the City for obtaining such title memorandum and to pay any recording costs incurred;

- h. At any time after the Property becomes eligible for annexation to the City and upon request by the City, the Owner shall file with the City a valid annexation petition for the Property or, if requested, shall do all things necessary to further the annexation of said Property to the City, and shall agree to annex subject to the terms and conditions normally imposed upon annexations under the same or similar circumstances to include at least the following:
- (1) payment of the applicable development fees and taxes;
 - (2) participation in a public improvement assessment program; and
 - (3) dedicate to the City public improvement and right-of-way easements normally required of properties under same or similar circumstances.
5. Under no circumstances may existing wells be used for domestic water purposes for the single family use. No person shall make any cross connections to the City's municipal water supply system.
6. Owner agrees to comply with all laws and regulations applicable to the Property and its development.
7. This Agreement will become effective thirty days after the date of its issuance unless the city council schedules a hearing thereon.
8. The City is of the opinion that it has the legal authority to enter into the within contract and the powers and authority to perform all obligations herein imposed upon it. However, the City cannot anticipate what challenges, if any, might be made by any persons. Therefore, in the event this Agreement, or any step or steps taken by the City to perform any of its obligations hereunder, is challenged in a lawsuit or lawsuits, the City shall have no obligation to perform further, and the City shall have the option to rescind the within.
9. The covenants contained herein shall run with the land and be binding upon Owner, its successors and assigns, and all owners now or hereafter of the land hereby served by the City Water Utility.
10. Owner has read the above and understands its terms and conditions, and now by its representative's signature below does evidence its desire and intent to accept said service subject to the terms and conditions set forth herein.
11. If this Agreement creates an interest in land, that interest shall vest, if at all, within the lives of the undersigned, plus twenty years and three hundred sixty-four days. However, if Owner does not connect to water utility system within six months of the date of this permit, this permit shall expire and this Agreement will be null and void.

Executed on the day and year first above written.

IDLE ACRE LAND COMPANY LLC,
a Colorado limited liability company

By: _____
Finnius Ingalls, Managing Member

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 201_ by Finnius Ingalls as Managing Member of Idle Acre Land Company LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: _____

(seal)

Notary Public

CITY OF BOULDER, COLORADO

By: _____
 Planning Director

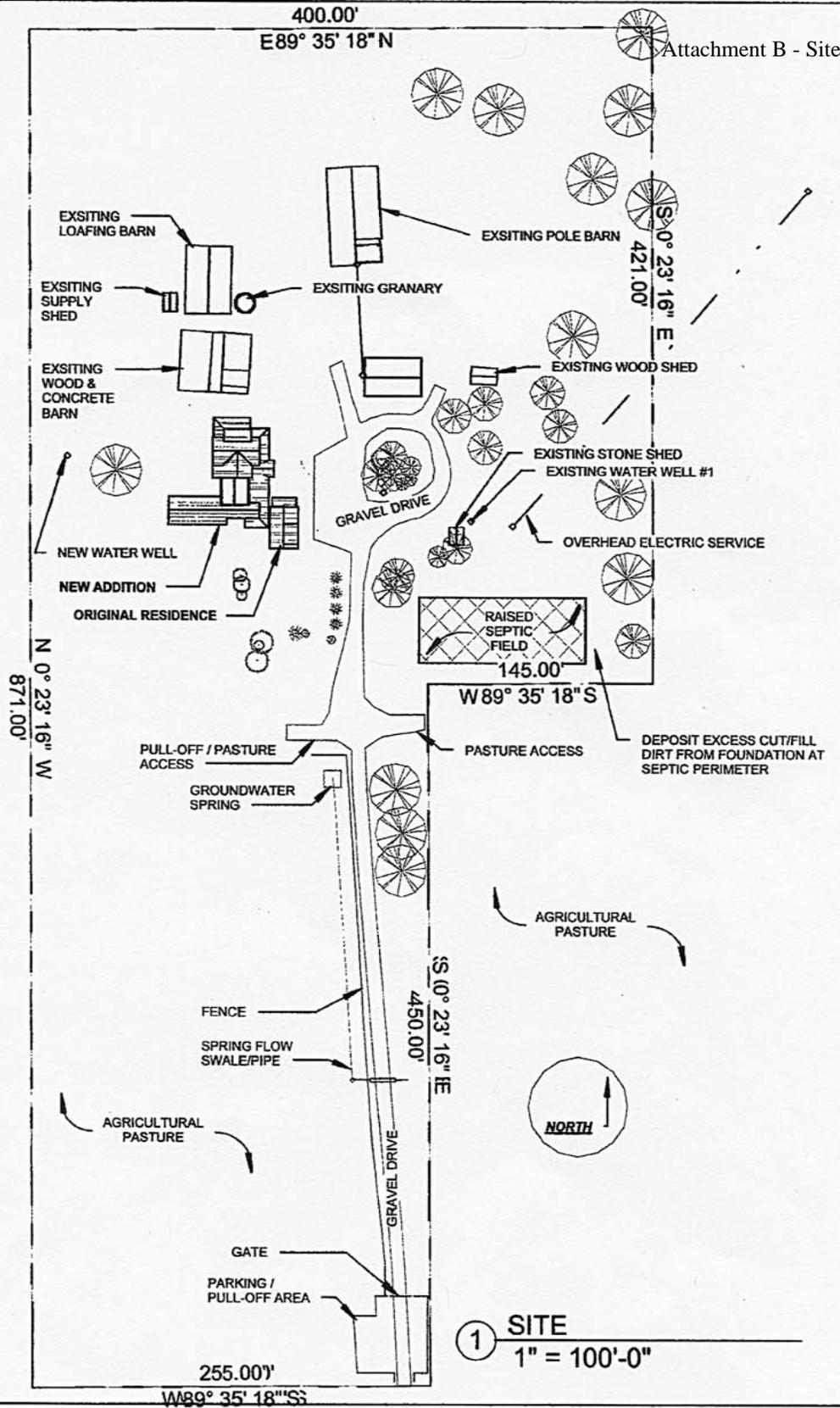
ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Date



<p>IDLE ACRE LAND CO</p>	<p>4400 Peach Ct, Boulder, CO</p>	<p>SITE PLAN</p>	
		<p>Project number 0001</p>	<p>AA1</p>
<p>Date 2/26/13</p>			
<p>Drawn by FFI</p>			
<p>Checked by Checker</p>	<p>Scale 1" = 100'-0"</p>		

#01513796 05/02/95 01:18 PM REAL ESTATE RECORDS
F2049 CHARLOTTE HOUSTON BOULDER CNTY CO RECORDER

AMENDED AND RESTATED AGREEMENT

46

THIS AGREEMENT, made this 11th day of April, 1995, by and between the City of Boulder, Colorado ("City"), and Left Hand Water District ("District"),

RECITALS:

WHEREAS, the Boulder Valley as defined in the Boulder Valley Comprehensive Plan jointly adopted by the City and the County, as amended to the date of this agreement ("Boulder Valley"), overlaps with areas now served by the District; and

WHEREAS, the City and the Left Hand Water Supply Company ("Company"), predecessor to the district, entered into an agreement, as of May 24, 1972, which sought (1) to eliminate overlapping service between the City's and the Company's water supply utilities and thereby eliminate potential conflicts generated by such overlapping, and (2) to insure development consistent with good planning and the Boulder Valley Comprehensive Plan; and

WHEREAS, the Company had filed a service plan with the County preliminary to the filing of a petition for the formation of a proposed special water district, pursuant to Section 32-1-201, et seq., C.R.S. 1973, as amended; and

WHEREAS, on March 24, 1980, the County conducted a public hearing, at which time the County recessed the hearing for a period of time in order to provide the Company with an opportunity to enter into negotiations with any municipalities which would be affected by the service plan; and

WHEREAS, the Boulder Valley Comprehensive Plan, as revised and updated, had been approved by the County Planning Commission and Board of County Commissioners and by the City Planning Board and the City Council; and

WHEREAS, the provision of water service as described in the proposed service plan submitted by the Company impacted upon the concerns addressed in the Boulder Valley Comprehensive Plan and the parties agreed that such provisions should be coordinated in accordance with that Plan; and

WHEREAS, the City and the Company entered into an agreement on July 18, 1984 to restate the general principles of the May 24, 1972 agreement and to amend it to recognize the effect of the proposed formation of the District; and

WHEREAS, that July 18, 1984 agreement was ratified by the City and the Company shortly after the formation of the District; and

WHEREAS, the City and the Company had previously entered into a water supply agreement on December 4, 1979, in order to provide for a cross connection between the parties water systems in order to provide peak use service to the Company's customers located within a small portion of the Boulder Valley along N. 51st Street; and

WHEREAS, in their 1984 agreement, the parties provided for the provisions of the 1979 agreement remaining in effect; and

WHEREAS, the City and the District now desire to change the provisions of their 1979 agreement; and

WHEREAS, the cross connection provided for in the 1979 agreement is no longer necessary as adequate pressure now exists in the looped mains in 51st Street and the parties deem it desirable to create a cross connection on 47th Street north of Jay Road in order to provide adequate pressure to existing District customers and developed properties within the District; and

WHEREAS, the City and the District as political subdivisions of the state, are encouraged and authorized to cooperate and contract with each other and other units of government pursuant to Part 2 of Article 1 of Title 29, C.R.S. 1973, for the purpose of making the most efficient and effective use of their respective powers including but not limited to the provision of any function, service, or facility lawfully authorized to each;

COVENANTS

NOW THEREFORE, in consideration of the recitals above and for other good and valuable consideration, the City and the District hereby agree as follows:

1. The District and the City shall exert their best efforts to eliminate all water supply utility service being provided by the Company within that portion of the Boulder Valley (as that term is defined in the Boulder Valley Comprehensive Plan as amended to the date of this Agreement) designated as Area I under the Boulder Valley Comprehensive Plan, as amended (with the exception of those subdivisions known as Valhalla and Gunbarrel Estates), as soon as practicable.
2. Water service may be provided by the District until an area is designated as Area I. Upon such designation, the City shall have the sole and absolute discretion to incorporate the area within the City's domestic water system.
3. The District shall not expand its water supply utility and in particular shall not grant any water supply tap, enlarge or extend any water main, or exercise the power of eminent domain within the Boulder Valley (as depicted on the attached "Exhibit A" incorporated herein by reference) , without first requesting, receiving, and giving due consideration to the City's comments, including a full hearing before the District's Board of Directors upon request by the City. any replacement, enlargement, or extension of the company's water supply utility within the Boulder Valley shall be designed and constructed to meet or exceed the then applicable requirements of the City. This paragraph specifically includes and is applicable to properties currently serviced by the District as well as those which may be included in the District. In the event the District decides to provide a water tap to an existing use or parcel, the District agrees to provide such tap solely by means of a service contract with the District, not by an expansion of the District. Also, the District will require such owners to covenant that additional requests for service for new taps or units will not be made during the term of the service contract.
 - a. The District and the City will follow the process described in Exhibit B hereto, when requesting and reviewing service expansions under Paragraph 3, above.
4. The parties shall exert their best efforts to insure that all areas served by the District shall be developed in a manner consistent with good planning and the Boulder County Comprehensive Plan, as amended, and the Boulder Valley Comprehensive Plan, as amended.
5. In the event of a transfer of water services from the District to the City, the

District shall approve a petition for exclusion of the property from the District's service area in accordance with the then applicable laws concerning such exclusions, and the District shall pay to the City the plant investment fee assessed by the City at that time on the customer, up to the value of one unit of Northern Colorado Water Conservancy District ("Big Thompson") water per dwelling unit (as defined as of the date of this Agreement) at that time. Upon conversion, exclusion from the District's service area, and payment of the plant investment fee to the city, the District shall retain all raw water equipment, and funds theretofore conveyed by the customer to the District or the Company.

6. Upon conversion, the District may retain whatever easements it may reasonably require, if any, for the continued operation of its remaining water supply system.

7. Upon conversion, each customer converting to service by the City: (a) shall also pay the additional fees required by the City, including, without limitation, applicable front foot assessments; (b) shall petition for inclusion in the Northern Colorado Water Conservancy District, and/or the Municipal Subdistrict, if required by the City; (c) shall sell any and all water and ditch rights used on or appurtenant to the customer's land to the City at the fair market value thereof, as provided in the Boulder Revised Code, as amended; and (d) shall provide and dedicate to the City a meter and meter pit conforming to then current City specifications.

8. The District and the City shall exercise their best efforts to develop and maintain a standard meter installation acceptable to both parties.

9. The District shall refer any proposals for inclusion or exclusion in its service plan for any lands within the Boulder Valley as shown on "Exhibit A" hereto to the County for review and approval pursuant to the service plan and this agreement incorporated therein. In conjunction with such review, the County shall refer any such proposal to the City for review. Proposals for inclusion of land shall not be granted by the District in the absence of permission from the County, provided that neither the City nor the County shall be able to obligate the District to provide water service outside of the areas expressly included in its service plan.

10. The District shall include the provisions of this agreement as a replacement for the July 18, 1984 and the April 7, 1990 agreements as a part of the district formation and amendment documents and shall file such documents of record in the office of the Clerk of the County of Boulder.

11. The City and the District specifically revoke the provisions of the water supply agreement dated December 4, 1979, except as such provisions are restated herein and replace said agreement with the following provisions:

- a. The parties shall disconnect the existing crosstie at 51st and Jay by closing valves and/or removing the meter and install a new crosstie at 47th and Apple Way.
- b. Upon notice to the City, Lefthand may provide new taps, up to the maximum line capacity of 26 taps¹, in the following order of priority:
 - i. Existing houses within district
 - ii. Existing vacant lots and parcels within the district (at the rate of one tap per existing parcel or per existing lot)
 - iii. Existing houses built prior to May 1972 not in the district
 - iv. Existing houses built between May 1972 and March 1978 not in the district
 - v. Existing houses built between March 1978 and June 1982 not in district
 - vi. Existing houses built between June 1982 and the date of district formation, not in the district
 - vii. Existing houses not in the district built after the date of district formation
 - viii. Existing vacant lots and parcels not in the district (at the rate of one tap per parcel or lot)

In the case of categories iii through vii (all existing houses not in the district), the date of tap request will take precedence over the date of house construction in determining the order of priority.

In the case of categories iii through viii, if insufficient taps exist to serve all requests in any individual category, priority would be given to those existing houses with a demonstrated health risk from a contaminated water supply.

- c. Over some period of time to be agreed upon by the parties, the City would take over the Left Hand/Pleasant Ridge line and provide service directly to customers on that line consistent with the terms of paragraphs 5, 6 and 7, above.

¹ The maximum number of taps is based upon the line capacity with the crosstie to provide 30 psi pressure at ground elevation (which is 10 psi lower than City service standards) at the end of the line on the western edge of the Pleasant Ridge subdivision. The agreement would reflect that if after two years of testing during peak usage periods it is demonstrated that there is additional line capacity for several additional taps, the number would be increased from 26. It is anticipated that maintaining a water pressure of thirty pounds per square inch will increase reliability and service for the existing twelve taps as well as the additional taps.

12. This agreement integrates all understandings between the City and the DISTRICT as of its date, and no prior, contemporaneous or subsequent agreement, amendment, or novation shall have any effect unless embodied in an express written agreement executed by the parties to be bound thereby.

13. This agreement shall be binding upon the successors and assigns of the parties hereto, and shall be subject to amendment only upon the written mutual agreement of all parties authorized by the governing body of each.

14. The parties agree that the objectives of this agreement can be obtained only if all parties substantially perform their obligations and that damages are an inadequate remedy for breach. The parties therefore agree that if there is a substantial failure of performance by any party, any other party may seek specific performance.

15. If a court of competent jurisdiction at any time holds that a portion of this agreement is invalid or unenforceable, the remainder shall not be affected thereby and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this agreement this 11th day of April, 1995.

ATTEST:

Alisa D. Lewis
Director of Finance and Record
Ex-Officio City Clerk

CITY OF BOULDER

Wesley Jay
Mayor

ATTEST:

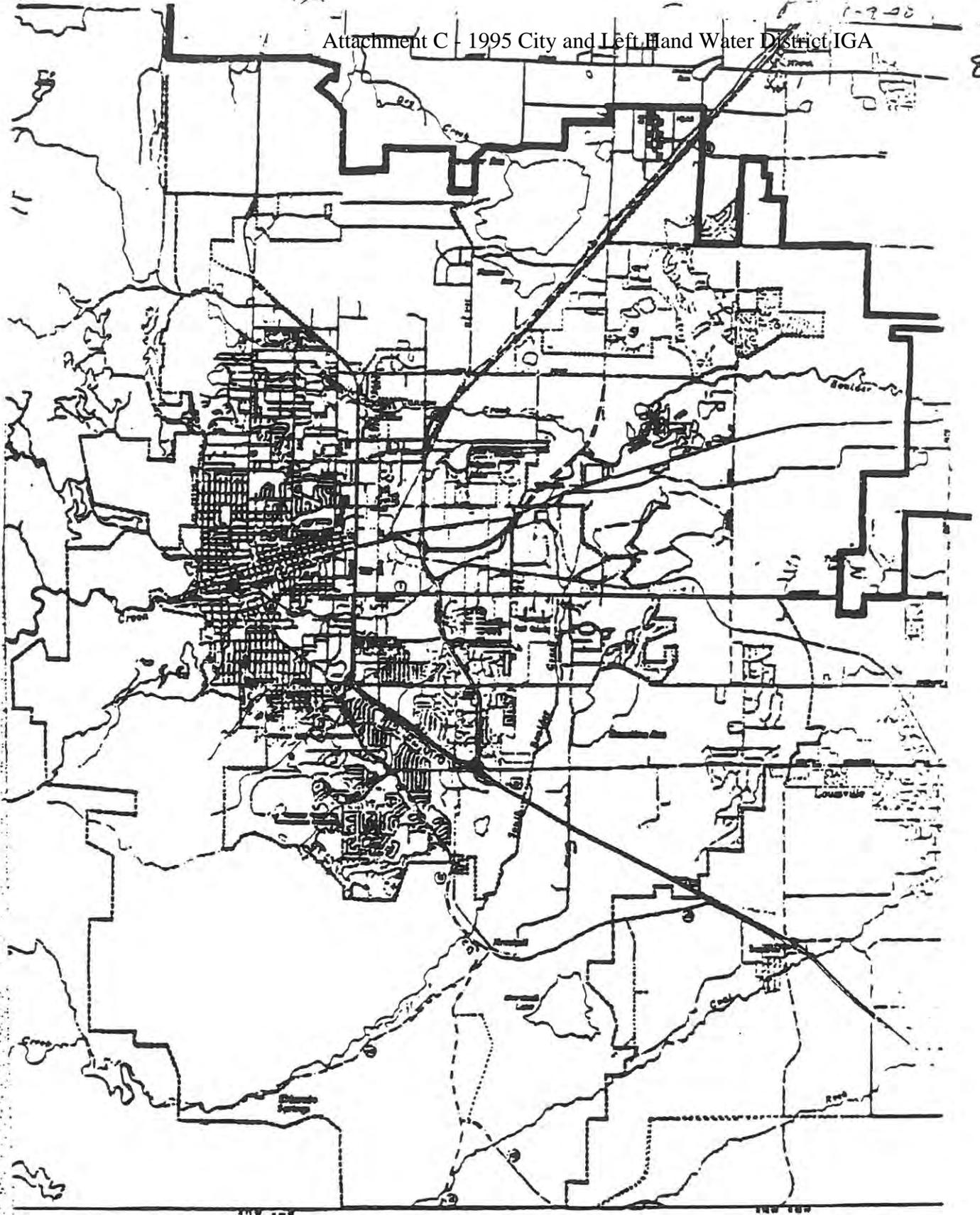
Earl Juhl
Secretary

LEFT HAND WATER DISTRICT

[Signature]
President

pwwaaee
a-lfthn3

1-2-00
3
8



- Boulder Valley Comprehensive Plan boundary
- Left Hand Water District boundary



EXHIBIT A

EXHIBIT B

REFERRAL PROCESS/LEFTHAND WATER DISTRICT

Under the Lefthand Agreement with the City of Boulder, the District agrees not to expand its water supply utility into the Boulder Valley without first requesting, receiving, and giving due consideration to the City's comments, including a full hearing before the District's board upon request by the City. The following referral process was agreed upon in the fall of 1991 by the Lefthand District representatives, the City staff, and the City Manager's Office.

1. The District General Manager should submit a letter request to the City Manager requesting the City's comments. The District's letter should specifically describe the property to be served either by inclusion of a map or a legal description of the area. The proposed service extension should also indicate the number of new taps to be provided, as well as whether or not the taps will be provided to existing or proposed development. The District's letter should be copied to the City's Planning Director and Public Works Director, who will then refer it to the appropriate persons in their departments for processing. A copy should also be provided to the City Attorney's Office.

2. The City Manager will provide a copy of the letter requesting service to City Council members in their non-agenda material to assure that they are aware of the request in the event they wish to raise any questions or voice any concerns about the proposal, which would trigger a request by the City for a formal hearing before the District board.

3. The Planning Director will appoint a project manager for these Lefthand requests, which project manager will take the request through the DRC review process. Planning Department will schedule these requests on a two-week rather than a three-week DRC review.

4. After all DRC comments are received, and prior to a response to the Lefthand District, the item will be scheduled for a Policy Resolution Group meeting to ensure that all possible policy issues have been addressed. Policy Resolution Group will determine if the matter should be referred to the City Manager prior to responding to the Lefthand District. In evaluating Left Hand's requests, the City will not oppose Left Hand providing a water tap to a residence which was in existence prior to June 11, 1982 which has requested water service as a result of the residence's existing well having been determined to be unpotable by the Boulder County Health Department.

5. The City Attorney's Office will prepare a response to the Lefthand District for the City Manager's signature, which response shall incorporate the DRC comments as may be modified by the Policy Resolution Group, any City Manager comments, and any Council member comments.

6. The City Manager signs and sends the response to Lefthand and copies all City Council members in non-agenda material.

PW WA AEE



CITY OF BOULDER
Planning and Development Services

1739 Broadway, Third Floor • P.O. Box 791, Boulder, Colorado 80306-0791
phone 303-441-1880 • fax 303-441-3241 • email plandevlop@ci.boulder.co.us
www.ci.boulder.co.us/pwplan/

June 10, 2013

Chris Smith, P.E.
General Manager
Left Hand Water District
P.O. Box 210
Niwot, CO 80544-0210

RE: Request for 60 day delay in hearing for service to property at 4400 Peach Court.

Mr. Smith:

The city has received a referral for a tap request within the Boulder Valley planning area, for the property at 4400 Peach Ct. The property contains a single family house and out-buildings. The property recently received approval by the County land use department to demolish the original pre-1900 farmhouse and construct a slightly larger single family home similar in character to the historic farmhouse.

The Left Hand Water District (District) is prepared to serve the single property. City staff determined that this request is not consistent with both the BVCP and the city's Agreement with the District.

The District has provided water service in proximity to the proposed property for many years, which is located at the western edge of the Left Hand distribution system. The proposed property to be served is located in the Area III – Planning Reserve of the BVCP, directly north of the Palo Park and Orange Orchard subdivisions, which are located in Area II of the BVCP and are served by city water.

Because this property is located in the Area III – Planning Reserve, there is the potential for future city service. The city requests a 60 day delay in the District hearing for service to the property at 4400 Peach Court for the city to explore the provision of city water service. City water service to the property would be through special ordinance and will require additional time.

Sincerely,

Scott Kuhna, P.E.
Public Works Development Review Supervisor
City of Boulder - Planning & Development Services

1739 Broadway, 3rd Floor
P.O. Box 791
Boulder, Colorado 80306
303-441-4071 (tel)
303-441-4241 (fax)
kuhnas@bouldercolorado.gov

CC: Maureen Rait, Executive Director of Public Works
David Driskell, Executive Director of Community Planning & Sustainability
Susan Richstone, Deputy Director of Community Planning & Sustainability
Lesli Ellis, Comprehensive Planning Manager
Chris Meschuk, Planner II, Comprehensive Planning
Scott Kuhna, Public Works Development Review Supervisor



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM
MEETING DATE: August 6, 2015**

AGENDA TITLE: CONCEPT PLAN REVIEW AND COMMENT: Request for citizen, staff and City Council comment on a proposal for a mixed-use development (Alexan Flatirons) located at McKenzie Junction, 3600 Highway 119 (Diagonal Highway), that includes 295 market-rate multi-family units, 83 affordable-rate multi-family units, associated community buildings and 54,000 square feet of commercial office space (with options for partial retail and coffee).
Reviewed under case no. LUR2015-00028.

PRESENTER/S

Jane S. Brautigam, City Manager
David Driskell, Executive Director of Community Planning & Sustainability
Susan Richstone, Deputy Director of Community Planning & Sustainability
Charles Ferro, Land Use Review Manager
Elaine McLaughlin, Senior Planner

On May 7, 2015, Planning Board reviewed the Concept Plan for the subject site; the staff memo is provided as Exhibit A and the minutes from that hearing are provided as Exhibit B. The key issues raised by the Planning Board were whether residential uses are consistent with the Boulder Valley Comprehensive Plan (BVCP), whether residential uses were an appropriate use for the site and whether the city should consider purchasing the site for open space purposes.

On June 2, 2015 City Council voted to call-up the Concept Plan for review and discussion. In calling up the Concept Plan, council members indicated interest in considering Planning Board's input on other types of land uses on the property and the potential for rezoning the property.

Per Section 9-2-13, B.R.C. 1981, the purpose of the concept plan review step is to determine a general development plan for the site, including, without limitation, land uses, arrangement of uses, general circulation patterns and characteristics, methods of encouraging use of alternative transportation modes, areas of the site to be preserved from development, general architectural characteristics, any special height and view corridor limitations, environmental preservation and enhancement concepts, and other factors as needed to carry out the objectives of this title, adopted plans, and other city requirements. This step is intended to give the applicant an opportunity to solicit comments from the reviewing authority early in the development process as to whether the concept plan addresses the requirements of the city as set forth in its adopted ordinances, plans, and policies. Comments on a concept plan are not binding, but are meant to inform any subsequent site review application.

Exhibits:

Exhibit A: Planning Board memo with Attachments
Exhibit B: Feb. 5, 2015 Planning Board Minutes

**CITY OF BOULDER
PLANNING BOARD AGENDA ITEM
MEETING DATE: May 7, 2015**

AGENDA TITLE: CONCEPT PLAN & REVIEW - Proposed mixed-use development (Alexan Flatirons) located at McKenzie Junction, 3600 Highway 119 (Diagonal Highway), that includes 295 market-rate multi-family units, 83 affordable-rate multi-family units, associated community buildings and 54,000 SF of commercial office space (with options for partial retail and coffee). Reviewed under case no. LUR2015-00028
Applicant: Bill Holicky
Property Owners:

REQUESTING DEPARTMENT:

Community Planning & Sustainability

David Driskell, Executive Director

Susan Richstone, Deputy Director

Charles Ferro, Land Use Review Manager

Elaine McLaughlin, Senior Planner

OBJECTIVE:

1. Hear applicant and staff presentations
2. Hold public hearing
3. Planning Board discussion of Concept Plan. No action is required by Planning Board.

SUMMARY:

CONCEPT PLAN & REVIEW - Proposed mixed-use development (Alexan Flatirons) located at McKenzie Junction, 3600 Highway 119, that includes 295 market-rate multi-family units, 83 affordable-rate multi-family units, associated community buildings and 54,000 SF of commercial office space (with options for partial retail and coffee).
Reviewed under case no. LUR2015-00028

Project Name: Alexan Flatirons

Location: 3600 Highway 119, north of Independence Road at Highway 119

Size of Tract: 20 acres

Zoning: Business Transition-1 (BT-1)

Comprehensive Plan: Transitional Business

Key Issues: Staff is recommending three key issues for discussion of the Concept Plan:

- Consistency with the BVCP Land Use Designations;
- Predominate use on site of residential consistent with BVCP Policies;
- Concept Plan responsiveness to City "Edge and Entryway" Design Considerations

I. INTRODUCTION AND BACKGROUND

The vacant 20-acre property was annexed and zoned Transitional Business in 1981. The previous review history for this property includes an issues identification review in 1995 and a non-binding concept plan review in 1998 for an office and hotel development; a site review in 2000 for five office buildings that was withdrawn; and a Concept Plan review in 2006 for a mixed use development. In addition, in 1998, the Open Space Board of Trustees was asked to consider purchase of the property given the context and surroundings with open space.

At that time the OSBT declined to purchase the property based on the very high market price as an annex and business-zoned property. Attachment A provides minutes from the two previous Planning Board Concept Plan review discussions. In previous discussions, this site has been referred to as a “gateway” given the high visibility of the site entering Boulder from the north on Highway 119.

II. PROJECT DESCRIPTION

The proposed Concept Plan consists of 295 market rate multi-family residential and 83 permanently affordable on-site senior attached units, along with two commercial buildings for office and retail totaling 54,000 square feet. Community amenities proposed include landscaping and open space along with two swimming pools. The applicant noted that the development is organized around an internal greenway to provide connections into an existing trail network, opportunities for a variety of open space and to create a transition from the lower density scale of the north end of the site to the larger buildings of the south side. A reduced version of the Concept Plan is provided in Figure 1, and a link to the Concept Plan submittal is provided in Attachment A. Tables 1 and 2 provide a preliminary tally of the number of bedrooms proposed for each type of apartment building. While the applicant has not identified specific demographics anticipated for the site, the number of bedrooms per building type can be summarized as follows:

Market Rate: 295 Units Total

- 2 Bedroom: 88
- 1 Bedroom: 177
- Studio: 30

Affordable Rate: 82 Units Total

- 2 Bedroom: 19
- 1 Bedroom: 63

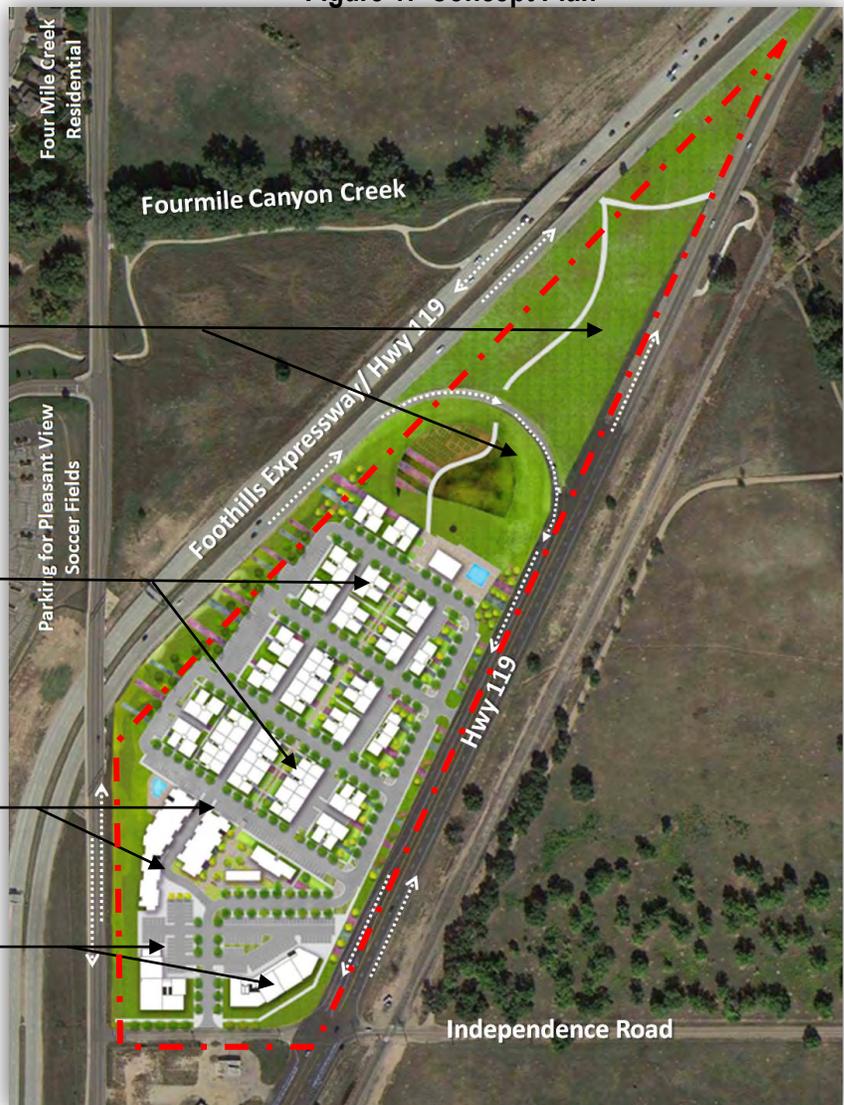
Open Space

256 Apartment Units

83 P.A. Senior Housing Units

Commercial/Office

Figure 1: Concept Plan



Figures 2a thru 2e: Conceptual Massing Sketches:

2a: Senior Attached Residential Units Massing



2b: Market Rate Apartment Building Massing



2c: Market Rate Apartment Buildings Massing



2d: Office/Retail Massing



2e: Office/Retail Massing



Table 1: Market Rate Apartment: Preliminary Bedroom Count per Building				
BUILDING A1 X 1	GROSS AREA	STUDIO	1 BEDROOM	2 BEDROOM
1ST FLOOR	2,407 SF		3	
2ND FLOOR	2,407 SF		3	
3RD FLOOR	2,407 SF		3	
TOTALS PER BUILDING	7,221 SF		9	
BUILDING A2 X 2	GROSS AREA	STUDIO	1 BEDROOM	2 BEDROOM
1ST FLOOR	3,341 SF	1	3	
2ND FLOOR	3,341 SF	1	3	
3RD FLOOR	3,341 SF	1	3	
TOTALS PER BUILDING	10,023 SF	3	9	
BUILDING B X 4	GROSS AREA	STUDIO	1 BEDROOM	2 BEDROOM
1ST FLOOR	4,264 SF	2	2	1
2ND FLOOR	8,712 SF	2	6	2
3RD FLOOR	8,712 SF	2	6	2
TOTALS PER BUILDING	21,688 SF	6	14	5
BUILDING C1 X 8	GROSS AREA	STUDIO	1 BEDROOM	2 BEDROOM
1ST FLOOR	1,964 SF		1	1
2ND FLOOR	3,927 SF		2	2
3RD FLOOR	3,927 SF		2	2
TOTALS PER BUILDING	9,818 SF		5	5
BUILDING C2 X 6	GROSS AREA	STUDIO	1 BEDROOM	2 BEDROOM
1ST FLOOR	1,627 SF		2	
2ND FLOOR	3,892 SF		2	2
3RD FLOOR	3,892 SF		2	2
TOTALS PER BUILDING	9,411 SF		6	4
BUILDING C3 X 2	GROSS AREA	STUDIO	1 BEDROOM	2 BEDROOM
1ST FLOOR	3,627 SF		3	1
2ND FLOOR	3,627 SF		3	1
3RD FLOOR	2,535 SF		3	
TOTALS PER BUILDING	9,789 SF		9	2

Table 2: Affordable Senior Residential Units: Preliminary Bedroom Count per Building			
FLOOR	GROSS AREA	1 BEDROOM	2 BEDROOM
1ST FLOOR	10,913 SF		9
2ND FLOOR	27,400 SF	29	8
3RD FLOOR	27,400 SF	29	8
GRAND TOTAL	65,713 SF	58	25

III. CONCEPT PLAN REVIEW AND COMMENT per Section 9-2-13

(g) Guidelines for Review and Comment: The following guidelines will be used to guide the planning board's discussion regarding the site. It is anticipated that issues other than those listed in this section will be identified as part of the concept plan review and comment process. The Planning Board may consider the following guidelines when providing comments on a concept plan:

- (1) Characteristics of the site and surrounding areas, including, without limitation, its location, surrounding neighborhoods, development and architecture, any known natural features of the site including, without limitation, mature trees, watercourses, hills, depressions, steep slopes and prominent views to and from the site;

Existing Site. As shown in the aerial of Figure 3 and the street views of Figures 4a and 4b, the approximately 20 acre site is located on the northeast side of the main part of the city, in a prominent location and entryway from southbound Highway 119, the Diagonal Highway. The site is flanked on both the east and west by the separated highway, as well as an access ramp on the north side of the site to the highway and Independence Road on the south side of the highway. An elevated and bermed portion of 47th Street also flanks a portion of the western side of the site.

The site is currently vacant with no previous site development except for previous oil drilling. There's a landmarked remnant oil well located on the northern portion of the site. Historic information about the oil well is provided in the comment section under "Landmarks Preservation."

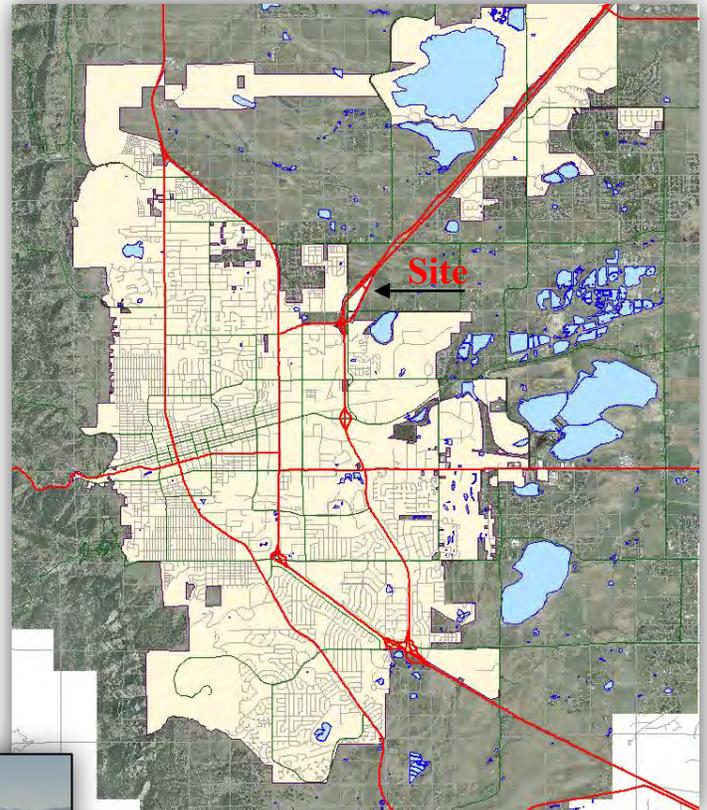


Figure 3: Site Location
Figure 4a: View of Site from Hwy 119
Figure 4b: View of Site from on-ramp portion of Hwy 119



Site looking toward south west

As shown in Figure 5, the topography of the site is essentially flat across the 20 acres. However, there is a low point on the northern end of the site, below the on-ramp to the highway. A topographic map is illustrated below with the direction of the slight slope on the site.

Fourmile Canyon Creek is located at the northern most point of the site. The northern triangular shaped portion of the site is entirely within the 100 year flood zone and a portion of the point includes high hazard flood zone along with “high functioning” wetland area.

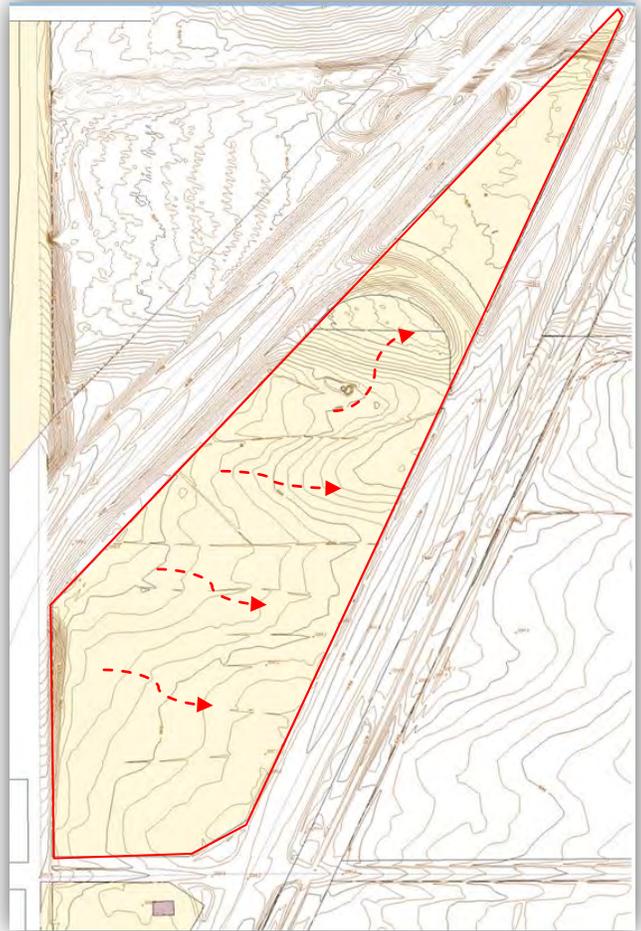


Figure 5: Topographic Map of the Site

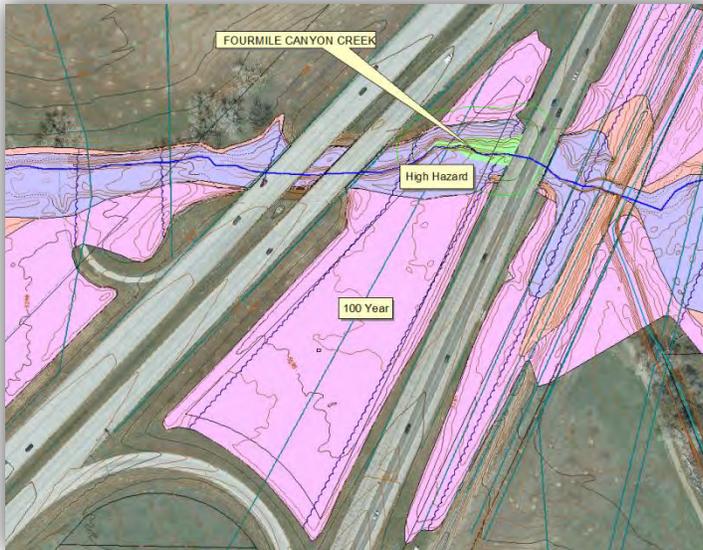


Figure 6: Flood Mapping of the Site

The site contains mostly “weedy” type plant species and there’s essentially no trees with the exception of the farthest point of the site on the north where mature trees such as willow and cottonwoods align the Fourmile Canyon Creek as shown in Figure 7.



Figure 7: Looking toward Fourmile Canyon Creek on North Portion of the Site

The site surroundings are varied and include rural agricultural land that historically has been an area of farming and cattle ranching. Cattle are still grazed on the property to the east.

Hayden Lake to the southeast is a man-made reservoir which is owned by Boulder & Left Hand Ditch Company where water is stored and then released later in the season into Boulder & Left Hand Ditch. A trailhead for the Cottonwood Trail east of Highway 119 is located on the north side of Hayden Lake. A recently approved Kum and Go Gas Station is located to the south as a redevelopment of the site to the south of Independence Road.

To the west directly across 47th Street is the city owned Pleasant View Soccer Fields. Further west is the low and medium density residential developments of Northfield Village and the Four Mile Creek neighborhoods. There are photos of the surroundings in Figure 9 on page 7.

Also located nearby is the Boulder Municipal Airport and the subject property is located within an Airport Influence Zone (AIZ) and would be required to comply with the Land Use Code section 9-3-10(e) that states,

(1) Zone Four:(A) A person annexing to the city and thereafter constructing a new principal structure in the city shall be required to sign an avigation easement as a condition of obtaining a building permit, and the easement shall be recorded. An applicant for a development permit pursuant to [chapter 9-2](#), "Review Processes," B.R.C. 1981, may be required to sign an avigation easement as a condition of obtaining a building permit, and the easement shall be recorded. (B) All new utility lines shall be placed underground.

A map of the Airport Influence Zone in relation to the site is provided along with images of the surrounding context on the following page.

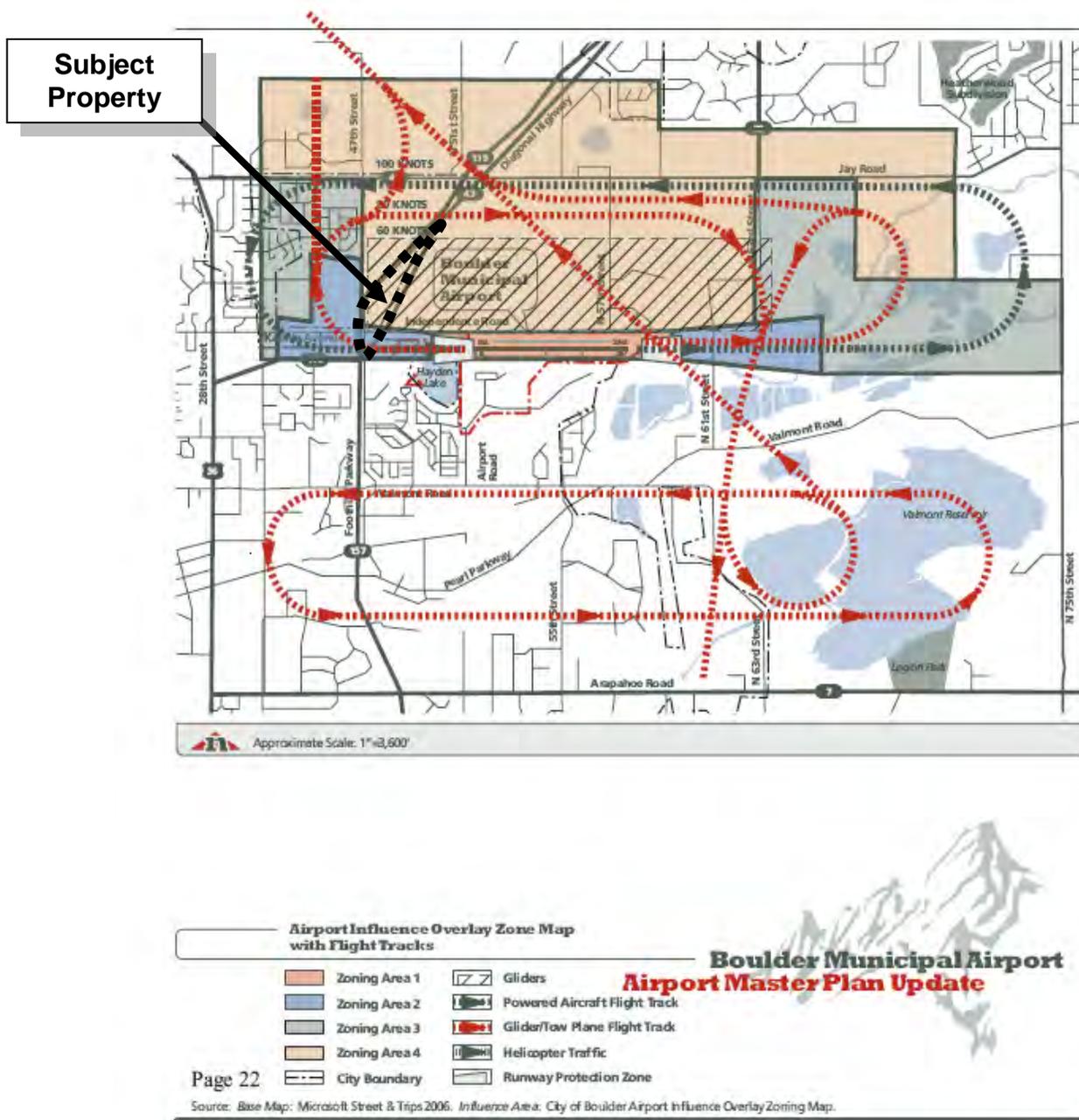


Figure 8: Site in Context of Airport Influence Overlay Zone Map

Figure 9: Photos of Site Surroundings



(2) Community policy considerations including, without limitation, the review process and likely conformity of the proposed development with the Boulder Valley Comprehensive Plan and other ordinances, goals, policies, and plans, including, without limitation, sub-community and sub-area plans;

Shown in Figure 9, the site is designated as Transitional Business under the Comprehensive Plan defined as:

“along certain major streets of the valley. These are areas usually zoned for less intensive business uses than in the General Business areas, and they often provide a transition to residential areas.”

While the comprehensive plan land use designation indicates an intent for “less intensive business” the BT-1 zoning on the site permits attached residential by-right, Figure 10 illustrates the zoning on the site. Other policies are related to the need for housing and in particular permanently affordable housing, as is provided in the plan. Refer to criteria #8.

Other comprehensive plan policies help to inform development on this site. In particular, the site is considered a community edge and entryway and would need to be consistent with policy 2.05 as follows:

2.05 Design of Community Edges and Entryways

Well-defined edges and entryways for the city are important because they support an understanding and appreciation of the city’s image, emphasize and preserve its natural setting, and create a clear sense of arrival and departure. Natural feature are most effective as edges, but public open land, major roadways or heavy tree planting can also function as community edges. As new areas are developed, the definition of a community edge will be a design priority. Major entryways into the Boulder Valley will be identified, protected and enhanced.

The applicant would need to provide greater information on how to establish a feature that would establish an “effective” edge as is recommended in the policy. Today, just the roadway establishes the site as an edge. In previous Concept Plan reviews recommendations were made to either establish iconic architecture on the site and/or tree plantings. Staff notes that the surface parking lots shown on the Concept Plan would not be acceptable as defining features within this city entryway. Refer to Key Issue 3 for additional discussion.

(3) Applicable criteria, review procedures, and submission requirements for a site review;

- Site Review Criteria of the Land Use Code section 9-2-14(f), B.R.C. found [here](#).
- Boulder Valley Comprehensive Plan policies
- Traffic Impact Study is required since the project’s trip generation is shown to exceed the residential threshold of 20 vehicles during the peak hour, as described in Section 2.02 of the City of Boulder Design and Construction Standards (DCS).
- Transportation Demand Management (TDM) plan consistent with section 2.03(l) of the DCS and section 9-2-14(h)(2)(D)(iv) and (v) of the Boulder Revised Code (BRC) which outlines strategies to mitigate traffic impacts created by the proposed development and implementable measures for promoting alternate modes of travel.
- A CDOT Access Permit will be required for the proposed ¾ access from the Diagonal Highway. The CDOT Access Permit must be applied for concurrently with Site Review submittal for preliminary CDOT approval and must have final approval prior to final engineering plan approval.

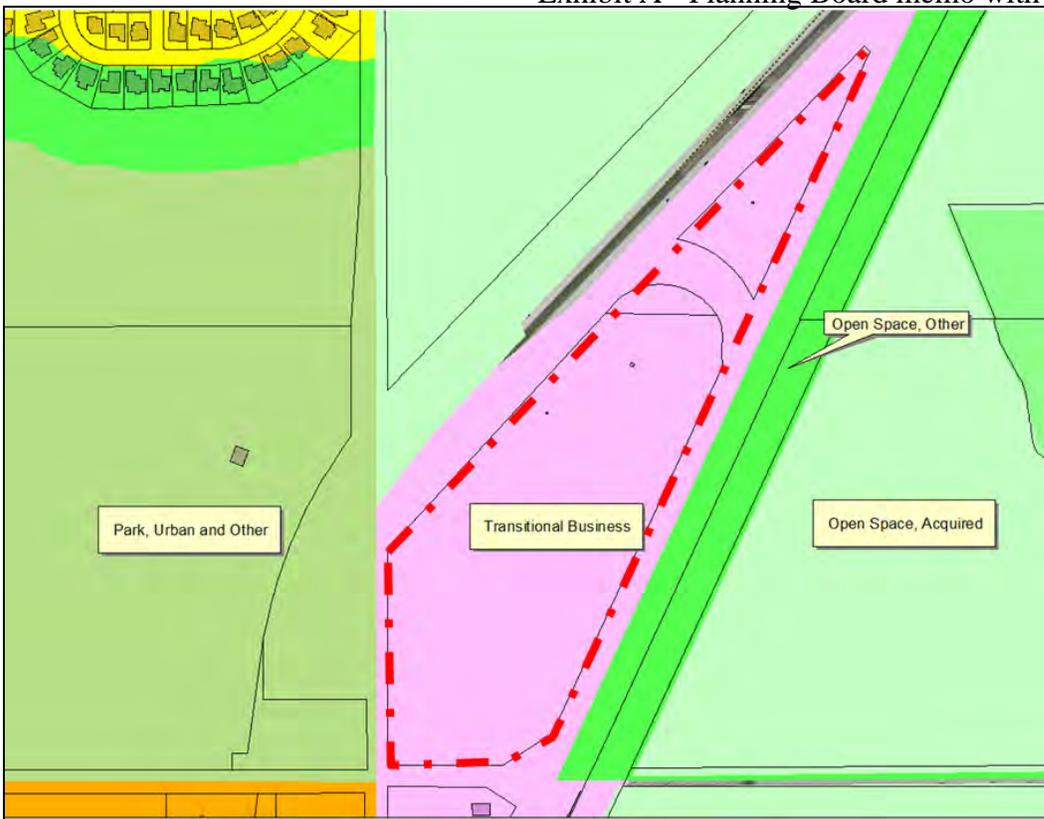


Figure 9: Comprehensive Plan Land Use Map

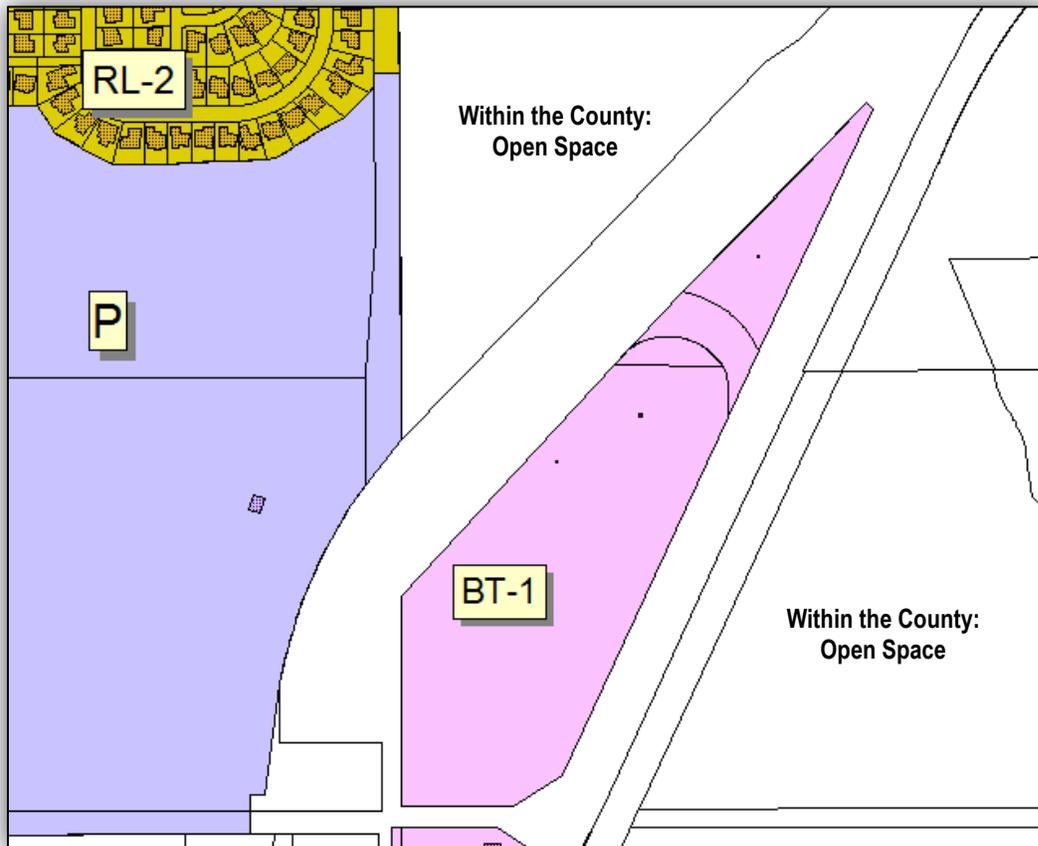


Figure 10: Zoning Map

(3) Applicable criteria, review procedures, and submission requirements for a site review (continued);

- Inclusionary Housing: each new residential unit developed on the property is subject to 9-13 B.R.C., 1981, "Inclusionary Housing." The general Inclusionary Housing (IH) requirement is that all residential developments must dedicate 20 percent of the total dwelling units as permanently affordable housing. For rental projects this requirement may be met through the provision of on-site affordable rental units or comparable existing or newly built off-site permanently affordable rental units or through the dedication of land appropriate for affordable housing or by payment of a cash-in-lieu contribution. The proposed 387 units result in an inclusionary requirement of 77.4 permanently affordable units. The applicant's proposal to provide 83 permanently affordable senior units on-site would meet or exceed that requirement.
- Inclusionary Housing: Per 9-13 B.R.C., 1981, and associated regulations, permanently affordable dwelling units must be proportionate in type (such as detached, attached or stacked units) and number of bedrooms to the market rate units. Attached permanently affordable units must have an average floor area no less than 80 percent of the market-rate units, however this is a minimum and larger units are encouraged. Permanently affordable dwelling units must meet the "Livability Standards for Permanently Affordable Housing." No unit shall be considered a permanently affordable unit until the location, construction methods, floor plan, fixtures, finish and the cabinetry of the dwelling unit have been approved by the city manager.
- Inclusionary Housing: Any required documents including the Determination of Inclusionary Housing Compliance form, Covenants to secure the permanent affordability of the units, and an Agreement must be signed and if necessary recorded prior to application for any residential building permit. On or off-site permanently affordable units must be marketed and constructed concurrently with the market-rate units.
- Inclusionary Housing: Rental developments that meet the requirement with a cash contribution are required to acknowledge and agree to comply with that portion of the IH Ordinance which requires that if an owner chooses to convert the rental units to for-sale units within five years they will be required to pay the difference between the rental and for-sale CIL amount that was due when the building permit was issued.
- Inclusionary Housing: Any applicable cash-in-lieu contribution must be made prior to receipt of a residential building permit. The cash-in-lieu due is based on the amounts in place when paid.

(4) Permits that may need to be obtained and processes that may need to be completed prior to, concurrent with, or subsequent to site review approval;

Assuming the applicant pursues a Site Review application after Concept Plan, other types of permits may be necessary as the project plans progress:

- Technical Document for final plans (i.e. landscape, irrigation, architecture, lighting, engineering)
- A CDOT access permit must be reviewed and approved through a separate Technical Document Review process.
- A Special Use Permit will be required for the public improvements to be constructed within the CDOT right-of-way. The CDOT Special Use Permit must be applied for concurrently with Site Review submittal for preliminary CDOT approval and must have final approval prior to final engineering plan approval.

- (5) Opportunities and constraints in relation to the transportation system, including, without limitation, access, linkage, signalization, signage, and circulation, existing transportation system capacity problems serving the requirements of the transportation master plan, possible trail links, and the possible need for a traffic or transportation study;

The site is situated with Highway 119, 47th Street and Independence Road along with highway access lanes surrounding property. Opportunities exist to connect the project to the Fourmile multi-use path network that extends east to the Cottonwood Trail shown to the right. The site is challenged by the lack of close proximity to transit stops. As shown below, there are existing bus routes along the Diagonal Highway including the BOLT and the "J." However, as indicated on the map, there is one bus stop located within one-quarter mile of the site for north bound BOLT route only.

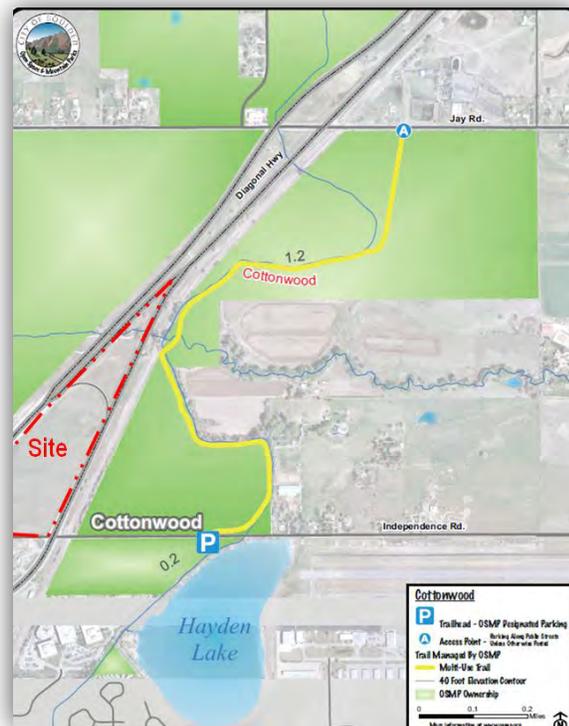


Figure 11: Fourmile Multi-Use Path

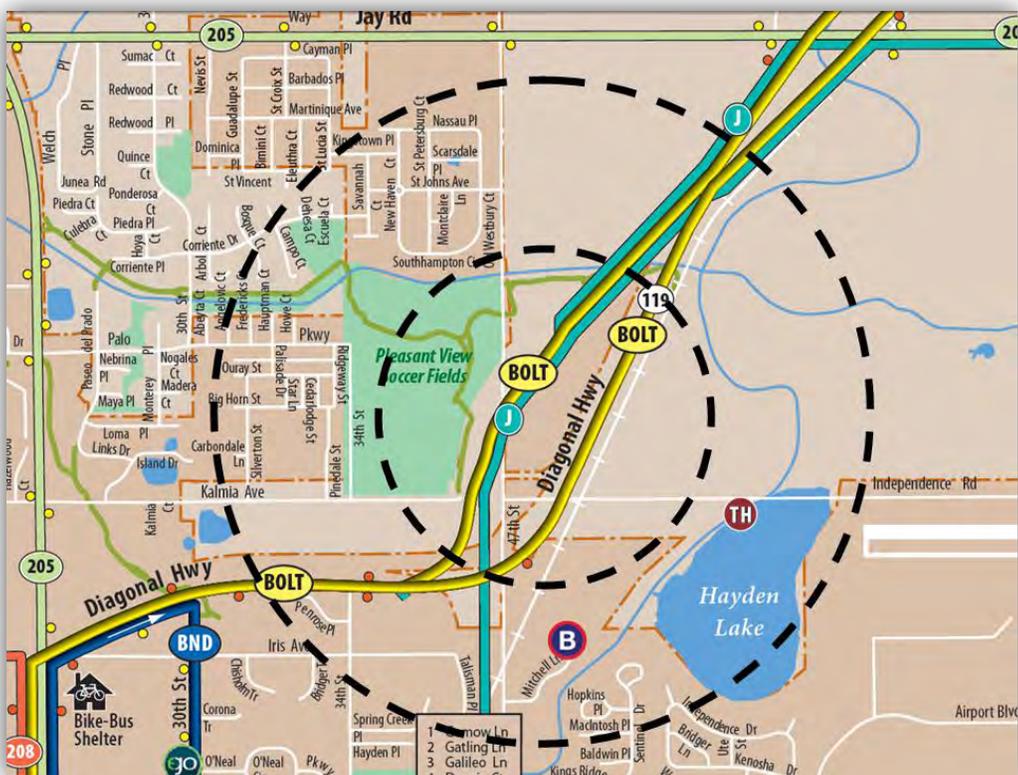


Figure 12: Walking Distances from Site to Bus Stop

In addition, given that the applicant is proposing a parking reduction, the challenge will be the preparation of a Transportation Demand Management plan without the benefit of transit on the site.

- (6) Environmental opportunities and constraints including, without limitation, the identification of wetlands, important view corridors, floodplains and other natural hazards, wildlife corridors, endangered and protected species and habitats, the need for further biological inventories of the site and at what point in the process the information will be necessary;**

Portions of the site are located in the Four Mile Creek floodplain. The northernmost “triangular area” north of the off-ramp is primarily located in the conveyance and high hazard flood zones and development in these areas will be restricted in accordance with city floodplain regulations. The applicant will be required to dedicate a public flood control easement for the conveyance zone. A small area of the site south of the highway off ramp is also in the 100-year floodplain, and partially located in the high hazard and conveyance zones. Refer to the graphic on page 10.

There are no known special status species on the property. There are a number of large, mature trees on the northern most point of the site where the point of the site interfaces with the Fourmile Canyon Creek. That portion of the site doesn’t appear to have any plans for redevelopment. However, at the time of Site Review an existing Tree Inventory will be warranted.

The property contains the individually landmarked #1-21 McKenzie Oil Well. Dating from 1901-1902, the Boulder Oil Field’s McKenzie Well was designated a Landmark by Boulder City Council in November of 2002 and listed in the National Register of Historic Places in 2004. The well has significance not only for its association with the Boulder Oil Field, but the impact that the discovery of crude had on the growth and development of the city during the first decade of the twentieth century. These events have been recognized as making a significant contribution to the broad patterns of Boulder history.

Any physical change to the pump jack or well itself, including relocation, would require review by the Landmarks Board. Relocation of the pump jack would disassociate that element of the landmark from the well itself and would likely be found to be inconsistent with the historic preservation ordinance and the General Design Guidelines. Shown below is the original oil derrick from 1902, and as the pump appears today.



Figure 13: Images of the McKenzie Oil Well (from 1902 on the left and today on the right)

(7) Appropriate ranges of land uses;

The existing Transitional Business zoning supports a mix of uses as the intent in the zoning is to provide a transition between business and residential uses. This site is unique and differs from most sites in the Transitional Business zone in that there's little in the way of a built context surrounding the site with the exception of the highway. Typically, transitional business exists where there is a change in zoning from commercial or business uses and residential. The intent is to buffer the residential. The closest residential to this site, is ¼ to ½ mile away, as is the nearest business or office buildings. Therefore, while the existing zoning is intended to create a transition, there's little in the way of land use to transition to or from.

The appropriateness of the site for residential uses was a key issue raised during previous Concept Plan review discussions. Concerns about the lack of bicycle and pedestrian connections, safety and noise impacts from the nearby airport, traffic noise from the surrounding highway and lack of nearby services were discussed as reasons why this site may not be very livable. This is particularly true for the proposed senior housing on the site. Therefore, the question of residential on the site is less an issue of compatibility or appropriateness of land uses, but rather one of addressing the challenges of the site's location to create a desirable neighborhood.

Shown to the right are the ¼ to ½ mile distances surrounding the center of the site. As is noted, there's little in the way of walkable proximity to services or employment.

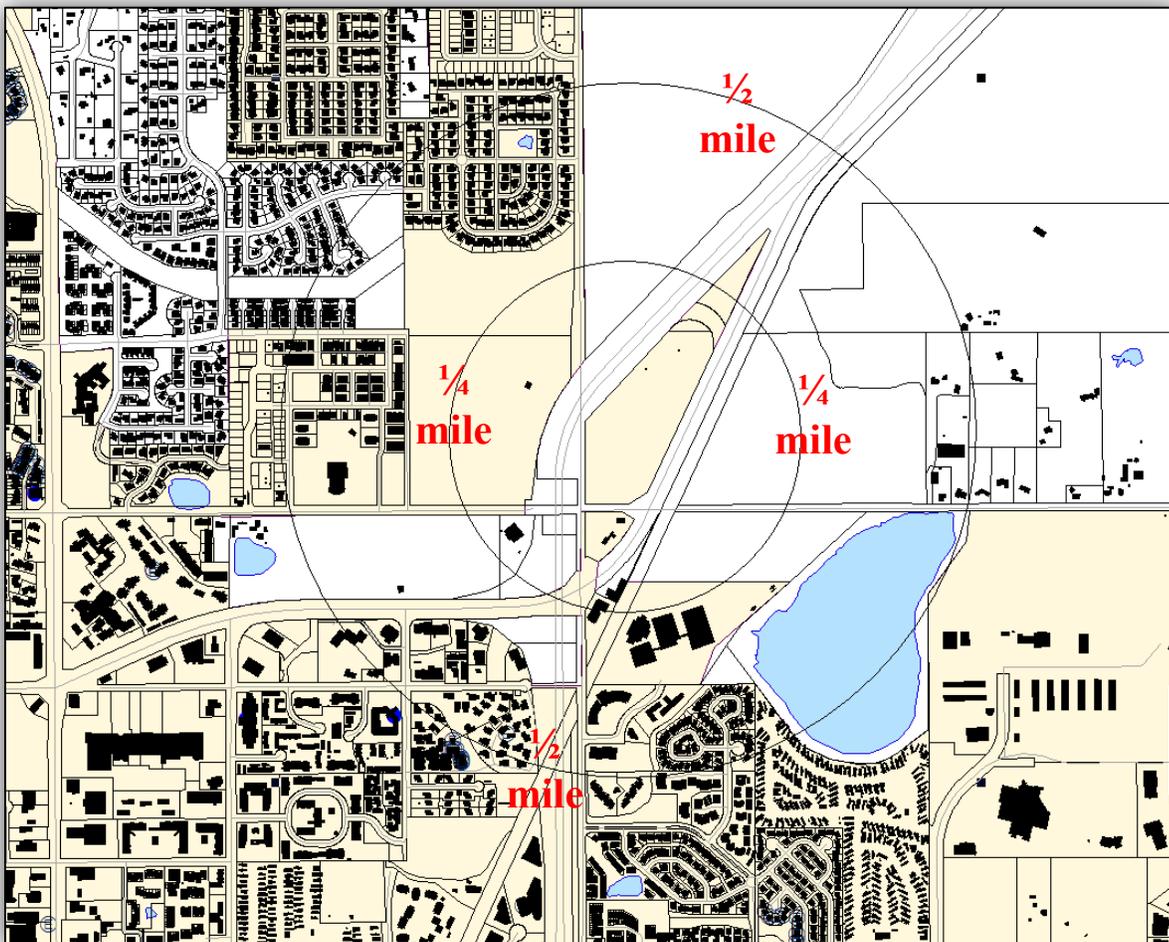


Figure 14: Walkable proximity to services or employment

8) The appropriateness of or necessity for housing

The proposed project's provision of housing, particularly affordable senior housing on site, along with a diversity of housing would help to meet several BVCP policies that address the need for housing. The challenge for this particular site, while meeting many of the policies for housing, is that the location doesn't meet the intent for mixed use and multi-family development proximate to transit, employment or services. The need for transit facilities in this location along with other services beyond the small retail and/or coffee shop proposed on site makes the site less appealing for residential and senior residential than other locations within the city. The following are the BVCP policies regarding the need for and provision of housing:

7.01 Local Solutions to Affordable Housing

The city and county will employ local regulations, policies, and programs to meet the housing needs of their low and moderate income households and workforce. Appropriate federal, state and local programs and resources will be use locally and in collaboration with other jurisdictions. The city recognizes that affordable housing provides a significant community benefit and will continually monitor and evaluate its policies, programs and regulations to further the city's affordable housing goals.

7.02 Permanently Affordable Housing

The city will increase the proportion of permanently affordable housing units to an overall goal of at least ten percent of the total existing housing stock through regulations, financial subsidies and other means. City resources will also be directed toward maintaining existing permanently affordable housing units and securing replacements for lost low and very low income units.

7.03 Populations with Special Needs

The city and county will encourage development of housing for populations with special needs including residences for people with disabilities, populations requiring group homes or other specialized facilities, and other vulnerable populations where appropriate. The location of such housing should be in proximity to shopping, medical services, schools entertainment and public transportation. Every effort will be made to avoid concentration of these homes in one area.

7.06 Mixture of Housing Types

The city and county, through their land use regulations and housing policies will encourage the private sector to provide and maintain a mixture of housing types with varied prices, sizes and densities, to meet the housing needs of the full range of the Boulder Valley population.

7.09 Housing for a Full Range of Households

The city and county will encourage preservation and development of housing attractive to current and future households, persons at all stages of life and to a variety of household configurations. This includes singles, couples, families with children and other dependents, extended families, non-traditional households and seniors.

7.10 Balancing Housing Supply with Employment Base

Expansion of the Boulder Valley housing supply should reflect to the extent possible current employer locations, projected industrial/commercial development sites, variety of salary ranges, and the demand such developments bring for housing employees. Key considerations include housing type, mix, and affordability. The city will explore policies and programs to increase housing for Boulder workers by fostering mixed-use and multi-family development proximate to transit, employment or services and by considering the conversion of commercial and industrial zoned or designated land to residential use.

7.13 Integration of Permanently Affordable Housing

Permanently affordable housing, whether publicly, privately or jointly financed will be designed as to be compatible, dispersed, and integrated with housing throughout the community.

KEY ISSUE 1: Is the proposed project consistent with the BVCP Transitional Business Land Use

The intent of Transitional Business is to provide less intensive business uses than General Business and provide a transition to residential areas. The BVCP land uses for the entire city are illustrated with the Transitional Business land use areas circled in Figure 15a below. As can be noted, the majority of these areas do serve as a transition from higher intensity business or industrial land use to residential. The exception is the subject site given that it is straddled on both the east and west sides with open space, as shown in Figure 15b. Because of this distinction, there are few precedents to compare to the site.

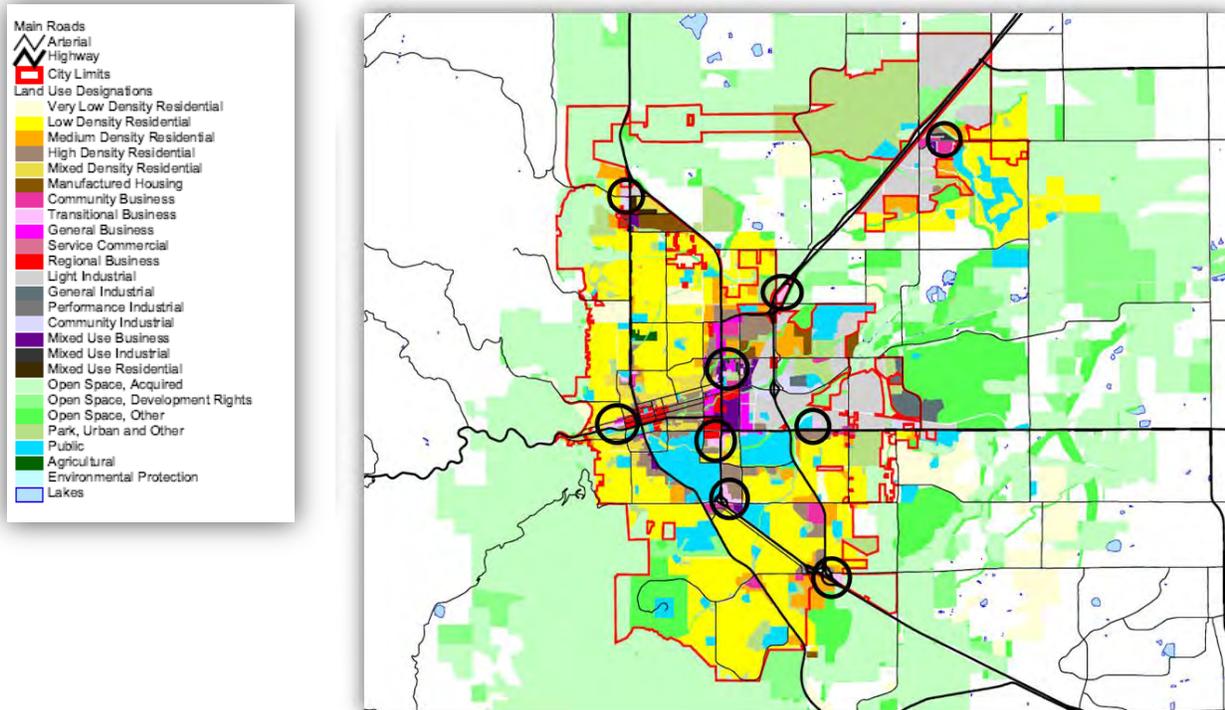
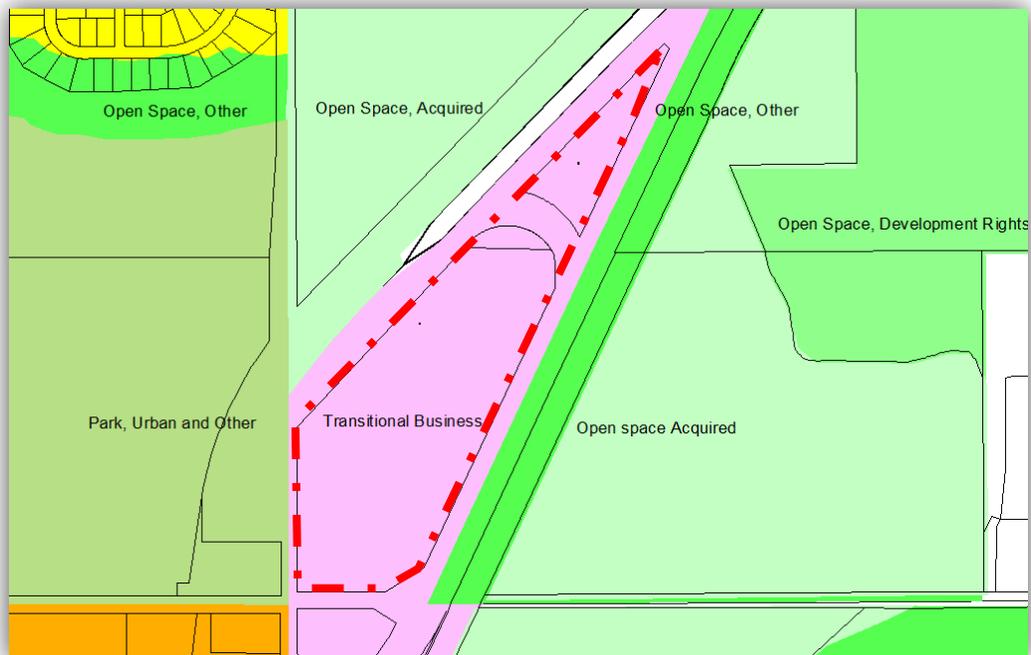


Figure 15a: Transitional Business Areas throughout the City (above); 15b: Land Use Context of Site (below)



The closest land use precedent in the city that is a “transitional business” area surrounded by open space and major roadways is another “entryway” site located at the southeast end of the city at the apex of Highway 36/Foothills Expressway and South Boulder Road as shown in Figure 16. In that case, office buildings were constructed and are considered consistent with the intent of the Transitional Business Land Use.

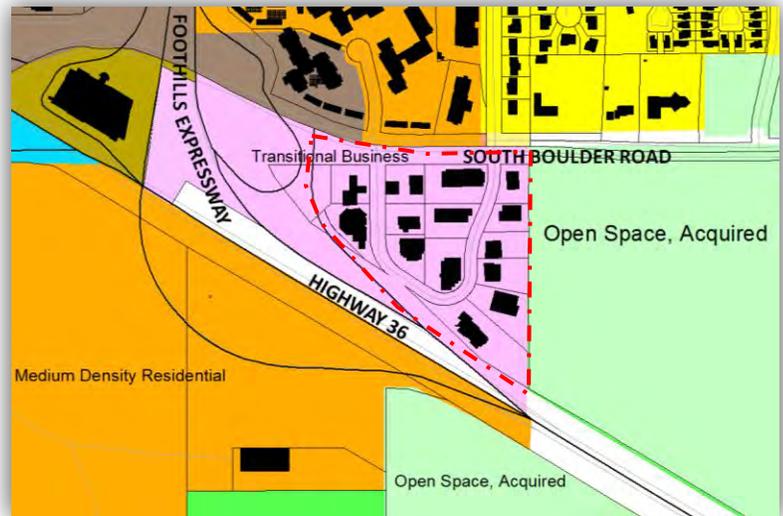


Figure 16: Comparable “Entryway” Transitional Business Site

Given the more intensive highway context of the subject site and the predominant use of the site for residential, rather than office, the Concept Plan is arguably contrary to the intent of the BVCP Transitional Business Land Use. However, it is important to note, that while the BVCP Transitional Business Land Use is intended to provide for “less intensive business uses” the Business Transition – 1 (BT-1) zoning does permit attached residential as a by-right use. Because the development on the site would require Site Review, analysis of the consistency of a site with the vision of the BVCP land use and policies is important to consider appropriateness of a use for the context.

KEY ISSUE 2: Is the predominant use of the site for residential consistent with relevant BVCP Policies?

While the Concept Plan does illustrate a mix of uses, the predominant use on the site is residential, with 295 attached residential units along with 83 permanently affordable senior units shown to occupy approximately three quarters of the development area. The question of appropriateness of the site for residential was discussed in previous Concept Plan reviews where residential was also the main use proposed on the site. At that time, the board acknowledged the need for residential in the city but questioned the site as a livable place for residential and comments noted that the site “in the middle of a cloverleaf” and that, “people would be living in a sea of traffic.” Another comment noted that there would be a need to, “demonstrate that the site is livable.” These issues remain with this Concept Plan.

Staff notes that with the surrounding highway traffic, noise and air quality would be among the impacts to any future residential. Accessibility for residents, particularly seniors, from this site to other services and transit outside of this site would be challenging as well. In previous reviews, there was a suggestion that an underpass for pedestrian connections would be important. While in the previous review, one board member suggested that perhaps the site would be more appropriate for seniors because of “fewer auto trips” and the ability for development to be “inward focused” as well as “residents may not be as affected by noise.” Staff notes that there are BVCP policies that apply universally to residential development.

For example, BVCP policy 2.14 “*Mix of Complementary Land Uses*” states,
“The city and county will strongly encourage, consistent with other land use policies, a variety of land uses in new developments... Wherever land uses are mixed, careful design will be required to ensure compatibility, accessibility and appropriate transitions between land uses that vary in intensity and scale.”

The adjacent Highway 119 has a significant intensity creating impacts. Given that there is little ability to mitigate these impacts on the site through an “appropriate transition” staff finds that this policy would not be met by the Concept Plan.

Similarly, BVCP policy 2.21, “Commitment to a Walkable and Accessible City” states,

“The city and county will promote the development of a walkable and accessible city by designing neighborhoods and business areas to provide easy and save access by foot to places such as neighborhood centers, community facilities, transit stops or centers, and shared public spaces and amenities. The city will consider additional neighborhood-serving commercial areas where appropriate and supported by the neighbors they would serve.”

While the applicant is illustrating 53,000 square feet of retail office, there is little in the way of neighborhood serving commercial. There is also little opportunity to provide easy and safe access given the surrounding highway on the majority of the site. In addition, the site would need to create a sense of a neighborhood for residents that mitigates external impacts and provides for daily on-site services, something difficult to achieve in the highway context.

KEY ISSUE 3: Does the Concept Plan respond to the Design of the Community Edge and Entryway context?

In past Concept Plan and Site Reviews for the site, reference has been made to the site being a “gateway” or at an “entryway” to the city as defined in BVCP Policy 2.05. This is evident in Figure 17, aerial photo; Figures 18 & 19, street views, the site is not only an “edge” or “entryway” into the main part of the city, but also is in the foreground of significant views from Highway 119 of the Flatirons.

2.05 Design of Community Edges and Entryways

Well-defined edges and entryways for the city are important because they support an understanding and appreciation of the city’s image, emphasize and preserve its natural setting, and create a clear sense of arrival and departure. Natural feature are most effective as edges, but public open land, major roadways or heavy tree planting can also function as community edges. As new areas are developed, the definition of a community edge will be a design priority. Major entryways into the Boulder Valley will be identified, protected and enhanced.



Figure 17: Birds Eye Aerial Showing Entryway Context of Site and in Relation to Flatiron Views



Figure 18: Distant view of the site when approaching from southbound Highway 119



Figure 19: Close in view of the site when approaching from southbound Highway 119

There are no images provided which depict the proposed massing on the site from this viewshed. However, because of the high visibility of this site from Highway 119, the development plans would need to make a strong statement for design excellence and simultaneously preserve the significant view corridor toward the Flatirons. Previous discussions about development on this the site have noted that this unique site context would warrant emphasis on iconic architecture yet in a style that would simultaneously be understated in relation to the views.

As currently configured, there are parking areas that are shown to abut the highway. While typically such an approach could provide a buffer for the buildings for the living/working areas of the site from a highway, in this case, parking lots would not be an appropriate design response to the “entryway” context.

CONCLUSION:

The Concept Plan is challenged by questions of consistency with the BVCP Land Use designation of Transitional Business, by accessibility and compatibility of the site in relation to the surrounding highway as well as the responsibility of building upon a city entryway site.

PUBLIC COMMENT AND PROCESS:

Required public notice was given in the form of written notification mailed to all property owners within one-half mile of the subject site and a sign posted on the property for at least 10 days. It is important to note that while the Land Use Code standards for mailing are to property owners within 600 feet, given the surrounding open space to the site, staff determined that a radius of ½ mile would better serve the process by notifying the nearest neighbors. Therefore, all notice requirements of section 9-4-3, B.R.C. 1981 have been met. At the time of the memo preparation, eleven comment letters were received and are provided in Attachment B.

STAFF FINDINGS AND RECOMMENDATION:

No action is required on behalf of the Planning Board. Public comment, staff, and Planning Board comments will be documented for the applicant's use. Concept Plan Review and comment is intended to give the applicant feedback on the proposed development plan and provide the applicant direction on submittal of the Site Review plans.

Approved By:

David Driskell, Executive Director
Community Planning & Sustainability

ATTACHMENTS:

- A: Planning Board Minutes from previous Concept Plan review 2001 and 2006**
- B: Community Comments**
- C: Concept Plan Submittal**

**MCKENZIE JUNCTION CONCEPT PLAN
DECEMBER 13, 2001 PLANNING BOARD MEETING
SUMMARY OF PLANNING BOARD COMMENTS**

"Gateway" Site

- Cowles:** A gateway property marks a transition between open space and the city.
- I like the mixed use concept but this proposed project turns inward, which is the opposite of what we want. A mixed use project should have well defined connections with the area outside its boundaries, so that there will be a flow of life and energy between the project and its surroundings.
- Gunter:** A gateway should symbolize Boulder and its values; an oil well does not symbolize Boulder values.
- Nielsen:** This gateway should be an edge with landscaping; less is more.
- Pommer:** The proposal gives some of what the community wants but it is a unique setting.
- Use the "triangle" north portion of the site as a landscaped edge.

Land Uses

- Board:** Concurs that a hotel (maximum three stories) should be considered as a potential use.
- Board:** Unanimously supports some type of land swap so alternative uses can be developed on the site.
- Cowles:** The development proposed is too dense; cut the number of offices and jobs to help our jobs/population balance (TB sites are under consideration for less density allowed). Less on this site is better. I'd rather see housing than commercial, since the city actually needs housing.
- Look at park uses.
- A hotel use may be appropriate since those visitors would be driving in cars anyway; also, there is no campground in Boulder – could this be a possible site?
- Gunter:** Underground parking may not be a great idea for this site, given environmental and water resource concerns.
- The applicant has done an excellent job with a site that's a disaster.
- The previous concept plan for a hotel was rejected due to the building height, not the land use; a limited service hotel could be a good use for this site (safer since much of the building would be unoccupied during daytime flights).
- How would the flex space units get sold together (residential and commercial unit)?
- Local "support" uses (e.g. coffee, bagel shops) would be key; surrounding properties may also provide these support uses.

Nielsen: Are there civic uses (soccer fields, transit hub, etc.) that would preserve the views and keep the oil well? Has the city explored if those options are possible?

The flex space concept is intriguing. How workable will it be for business with visiting clients?

Consider a special district to assist city purchase of the site.

O'Hashi: What is the reason for City Open Space not purchasing the site?

Pommer: Adequate parking is key; there is no place for parking to "spill out".

The site may have a carrying capacity that doesn't match its acreage; the applicant would have to demonstrate that the land use intensity is appropriate

Residential Uses

Cowles: The site is in the middle of a cloverleaf; who would want to live there? People would be living in a sea of traffic.

Could the site be more appropriate for a residential community for seniors? This use would have fewer auto trips, can focus inward, and residents may not be as affected by noise (an underpass for pedestrian connections would be important).

Gunter: Due to the surrounding roads, it could be a bad place to live; but the city is residence-starved. Can you make the site livable and sellable?

Pommer: Which schools will serve the site?

The inclusion of service uses will be important.

The applicant will need to demonstrate that the site is livable. We want more housing but are not convinced that housing is appropriate on every site; commercial uses make more sense on this site. We try to balance on all individual sites.

Perhaps find someone with a commercial site who would rather develop residential units

Transportation

Cowles: Almost all trips to and from the site would be by car because the 47th street flyover to the SW, the Diagonal to the NW and the offramp and Diagonal that wrap most of the rest of the property create a wall of severance which can be safely traversed only with a car well equipped with air bags.

Gunter: The transportation study should be conservative in its assumptions about the site; include trips to be generated by future development; use up-to-date traffic numbers; for TDM plans, assume a large number of trips (perhaps charge employees \$2.00 per day and distribute fees to people who use alternate modes).

Nielsen: Would want to see underpasses to the west and east (to the open space and soccer fields).

O'Hashi: Traffic impacts and a TDM program are key.

Architecture

Cowles: I like the elevations, but concerned that the buildings create an urban space that works.
The proposed commercial architecture is noble for a gateway and reflects our plains heritage.
The street orientations may need to shift to protect the best views

Gunter: Cover buildings with landscaping for a more natural look rather than making an architectural statement.
Enhance the landscaping to help with noise buffering (e.g. evergreen trees).
The commercial architectural style shown doesn't work – the rest of the architectural character is OK.
Consider going to DDAB Board for review – great free advice and their comments are not binding

O'Hashi: The architectural style reflecting the McKenzie history complements the design. Be careful not to create fake history – may not be appropriate

Nielsen: Doesn't like the "silo" feature design; understands that the design is very conceptual

Pommer: The architectural design is important – need a street façade for highway users to view, but the buildings must focus inward also. Likes the conceptual architectural design.
There should be some consistency between the different building types (e.g. use of flagstone or tile materials) so that they appear as one development.
For a previous concept plan review, the Planning Board indicated that 55 feet would not be an acceptable building height

Noise

Gunter: What disclosure will be given to tenants and owners re: noise?

Pommer: Compare this site with the noise generated and traffic counts from streets adjacent to other residential developments, e.g. The Boulders, Wellman Creek, Tantra, Moorehead residences backing onto US 36, and the condos at US 36 and Table Mesa Drive.

Oil Well

Board: Concur that the well should be considered for landmarking.

O'Hashi: If the oil well is in production, consider how it may affect the plan if it is kept active.

What will the reclamation plan be, given the city landmarks and COGCC processes?

Where is the oil well reservoir? The holders of the surface rights may have the right to drill additional wells on the property

Airport Influence Zone

Gunter: Has observed planes and gliders going over the site. The real issue is that there have been some crashes.

Has concern about the building height proposed. Buildings should be under 35 feet, for safety from flight paths.

Would like more information on glider and plane flight paths.

The applicant will be required to underground all utilities

**CITY OF BOULDER
PLANNING BOARD ACTION MINUTES
August 3, 2006**

BOARD MEMBERS PRESENT:

Elise Jones, Chair
Simon Mole, Vice Chair
John Spitzer
Phil Shull
Adrian Sopher
Claire Levy
Richard Sosa

STAFF PRESENT:

Robert O. Cole, Land Use Review Manager
Ruth McHeyser, Acting Planning Director
David Gehr, Assistant City Attorney
Brent Bean, Senior Planner
Steve Durian, Engineer
Jody Jacobson, Communications
Mary Wolff, MRW & Assoc.

ACTION ITEMS

A. Public hearing and consideration of Concept Plan LUR2006-00044, McKenzie Junction. Concept Plan proposal includes the development of up to 344 residential units and 35,000 square feet of non-residential use.

Applicant: Scott McFadden, Trammell Crow Residential Development
Owner: Birch Mountain Limited Liability Company

Elise Jones:

The site is a median, not good for residential. It is an entrance to the city though. What might go there - perhaps a church, one piece of incredible architecture or more soccer fields. Residential doesn't work on the perimeter. Service Industrial might work on the south end where it's less visible. Disagreed with Commissioner Spitzer that this site was appropriate for affordable housing because the site is so undesirable. Keep the connection to the bike path on 4-mile creek. Not adverse to some residential but it needs to address noise, open space, and have a lower density and a different configuration. The notion that it's a glorified highway median is what the developer has to overcome.

Simon Mole:

Is the proposal compliant with the park service area requirements? Concerned about the access; ingress and egress. Perhaps we can transfer Service Industrial zoning from somewhere else in the city. This site is just about uninhabitable due to noise etc. but some kind of building would be acceptable here. I do not believe you can get a neighborhood or community here. This is a place that is auto-oriented, maybe service industrial with some live-work. Height is not an issue at this location. If the developer can answer the question of who and how people will live residential may be supportable. Noise is a problem overall, building techniques can mitigate the indoor impacts but it's a problem for outdoor living.

John Spitzer:

Development that results in a fortress will create a sound wall, but as a gateway site is a wall of buildings appropriate. Site needs less density and more of a whimsical flavor. Affordable housing, this site has potential because it is so undesirable that the developer might be able to meet an affordable price point. Perhaps a live/work, service industrial environment.

Phil Shull:

I don't think the site will ever work as a gateway. There's no distinguishing characteristics to celebrate. It is an abrasive even hostile site for residential. The commercial tenants would also struggle, the location is wrong, and the site is too small. The Site has a limited chance of surviving as a mixed-use site. Some built form won't damage the view-shed irreparably. Biggest issue is the noise buffering, how to mitigate. Service industrial could be a viable use for this site. I do think limited residential could work on the interior, with a campus feel. View impacts are not an issue at this location. The site is auto oriented but doesn't need all the streets proposed. Density does not work here – half what is proposed. There would be a high turnover of rentability, no one would want to live here for any length of time.

Adrian Sopher:

The site is not a gate way, it projects out and is disconnected from the rest of the community. The site is designated Area I on the BVCP. Only at the center of the site is the sound reduced to a point where housing might work. I can see small scale estate residential buffered by trees in the center, if you wanted to do res. here. High density residential is not appropriate for this site. As a gateway, no building on the site will block the views of the mountains, this is not a concern. Do not put residential on the perimeter, office or service commercial would work to protect the interior for possible residential. The central area should have a fair amount of green/park space. Not sure the egress on the East works because of acceleration distances. The balance of uses is not supportable to make this a viable community. The noise issue must address. The site is not a comfortable place for residential with traffic on all sides at all times.

Claire Levy:

This really is a median. I can't see putting a community of people here. Though we need affordable housing, this location is disconnected and has access issues. This is a place for service industrial. The site is not appropriate for retail due to access and location. Three story structures would be acceptable at this location. But could work for small services and to get things fixed. I don't think development will mar the view to the flatirons. I wouldn't object to something messy on the site, we need places for messy things to happen in the community. Housing on this site would be a real challenge due mainly to the noise. Access is also a challenge, what's proposed is circuitous. Residential density will need to be lower. The site is an island, hemmed in with no connectivity, nowhere to walk.

Richard Sosa:

Site should be Open Space, because it has noise issues that probably can't be resolved. Health and safety for residents is difficult given that the site is surrounded by highways. The corridor is an important view-shed as an entryway. The proposal does not have discernible entryways. The noise issue will be difficult to overcome. Walls are not a good idea as a planning feature. The proposed site plan has cluttered roads and too many. I want to see more usable, functional green space/park area.

Attachment B: Community Comments

From: Sharon Penny [mailto:████████████████████@████████████████████.com]
Sent: Monday, April 20, 2015 4:51 PM
To: McLaughlin, Elaine
Subject: Alexan Flatirons project

I would like to make known my objection to the Alexan Flatirons project at 3600 SH 119, review #LUR2015-00028.

1. Traffic issues: The area is basically the median of the diagonal highway, and the intersection of many roads. Traffic congestion is already bad there, and adding this project would seriously impact people's ability to get to and from work in a timely fashion, as well as increase the number of accidents.
2. Size: The project is way too ambitious for the size of the property.
3. Lack of parking: The notification letter did not specify whether any parking would be provided. But I would point out that the soccer fields right across the street already have issues with inadequate parking, causing illegal parking in the adjoining neighborhoods. This problem would only exacerbate the problem.
4. No public transportation: To my knowledge there is no public transportation to the area, so all access would be by private vehicle.
5. Comment: If this project were suggested for the area north of BT-1, it might be a feasible use of the space, but the BT-1 area in question would serve the city better as a small green area or park to greet visitors coming into town from the NE.

Thank you for your consideration of my input.

Sharon Penny
4894 Hopkins Pl.
Boulder

-----Original Message-----

From: K.C. Gordon [mailto:████████████████████@████████████████████.com]
Sent: Tuesday, April 14, 2015 7:18 PM
To: McLaughlin, Elaine
Subject: Concept plan comment

Elaine,

I'm commenting on the concept plan LUR2015-00028.

After receiving in the mail from the City of Boulder Planning and Development Services a notice on this plan I have only one comment for consideration. I think you will need a traffic signal at the intersection of RH-4, Diagonal Hy and Independence Rd. It almost needs one now as the traffic entering that intersection from the east on Independence Rd. has been increasing. Travelers usually want to go into Boulder, south on RH-4, Diagonal Hy from Independence Rd., and with the speed of cross traffic, it can be a tricky maneuver. Adding this density to this area will certainly require some safety improvement, like a traffic signal. Speed limits in RH-4, Diagonal Hy are 55mph north and 45mph south.

Thank you,

Kenneth Gordon
3265 34th Street Apt.53
Boulder, CO 80301-1964
tel-303-444-6689
kc9989@comcast.net

April 17, 2015

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

Dear Sirs:

Subject: Neighbor Input Re: LUR2015-00028

As residents of the Four Mile Creek neighborhood in north Boulder, we received notice of a concept plan and review of the proposed "Alexan Flatirons" project. Because we will be out of town on May 7, we would like to comment via this letter.

We believe the project is unsuitable for the site for several reasons:

1. Site too small for the proposed density – Three-story buildings holding 378 residential units (and a small amount of commercial) would greatly impact surrounding neighborhoods.
2. Lack of parking – The project proposes 570 parking spaces plus one small "community" parking area, which seems inadequate. Having all parking on-street makes entrance and egress more difficult (compare with the Northfield Commons neighborhood, where this is also the case).
3. 2.62 acre "park" – Though a small "community" garden is proposed, there is no real park for the neighborhood, only a long, thin triangle of leftover land (called a "greenway"). We believe a new apartment complex development would attract small families with children. The lack of facilities will increase pressure on the overcrowded Palo Park East, which is now already serving four neighborhoods: Palo Park, Four Mile Creek, Northfield Commons, and Northfield Village. (We have heard that the vacant plot to the south of East Palo Park is also proposed for residential development.)
4. Site is between two highways – Of course, people desperate for housing might consider this an acceptable alternative, but it poses health and safety hazards (high-speed traffic and exhaust from the Longmont Diagonal). A new entrance would be required, or an upgrade to Independence Road, and it is unclear who would pay for this (city, county, or developer?).

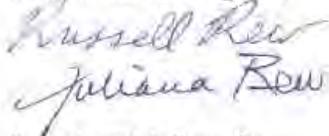
5. Encroachment on buffer between Boulder and cities to the east. The proposed residential project adds to further eastward urban sprawl from Boulder. Avoiding this has been a long-standing goal of the Boulder County Comprehensive Plan.

6. Lack of public transportation – RTD at 47th and Iris goes to Longmont, not Boulder. The nearest bus stop into Boulder is across a busy exit off the Longmont Diagonal. If a goal of adding higher density housing is desirable for Boulder, the city should be required to negotiate with RTD for improved public transportation facilities.

The site may be more suitable for a single hotel or doctor's office, etc., and is zoned for that use, although we would prefer to see it preserved as open space (similar to the fenced plot along 47th Street between Cottonwood Trail (Kalmia?) and Jay Streets). (Of course, this property would have to be purchased from the current owners to become open space.)

We recognize that Boulder is a desirable place to live, but we also recognize that with careful planning it has grown slowly—until recently. Compare it to Colorado Springs, which 20 years ago was about the same size as Boulder, and which now has a population of over 400,000, or Austin, Texas, which has grown from 100,000 to 800,000 in the same period.

Thanks and best regards,



Russell and Juliana Rew
4101 S Hampton Cir
Boulder, CO 80301

From: Josh Kahn [mailto:████████████████████@boulderco.gov]
Sent: Thursday, April 16, 2015 5:45 PM
To: McLaughlin, Elaine
Subject: LUR2015-00028

All those family units and surrounded by major roads. Is there any retail nearby that will not keep everyone out of their cars? I cannot see how this development makes any sense? Maybe retail but a neighborhood surrounded by the highway and other roads with no other infrastructure nearby?

Josh Kahn
3990 Montclair Lane
Boulder, CO 80301

From: suzywolf@gmail.com [mailto:████████████████████]
Sent: Thursday, April 23, 2015 11:17 AM
To: Dean E. Wolf
Cc: McLaughlin, Elaine; dean wolf
Subject: Neighbor Comments/Concerns regarding Alexan flatirons development.

Dear Elaine,

I would like to submit the following comments/concerns to be placed in the Staff memorandum to the Planning Board.

I agree with my husband, Dean Wolf's, comments (below) and would like to add a concern for the prairie dogs who currently reside in that field. Is it possible to relocate them and then dig a barrier so that they do not come back? What is the plan to avoid killing them while building any development on this property. Our nine year old daughter is very worried about them and we wanted that to be on the record.

Thank you!

~Suzy Wolf
4 Mile Creek Resident

From: Dean E. Wolf [mailto:████████████████████]
Sent: Thursday, April 23, 2015 2:01 PM
To: McLaughlin, Elaine
Cc: law@ipmls.com
Subject: RE: Neighbor Comments/Concerns regarding Alexan flatirons development.

1. The developer is seeking approval to build 368 high density multi-family units on the property. That number seems very high (and greedy). The families would be packed in like sardines with so many units. I'm curious to know how many persons total would inhabit this development. If one assumes 3 persons per unit, then we're talking 1,104 additional persons.
2. The proposed development would essentially be an isolated island of 368 high density multi-family units surrounded by freeways (Hwy 157), high-speed roadways, and train tracks. The noise and pollution factors alone would seem to make this development prohibitive of such a large residential development. The location of this development seems much more suited for low density residential with a larger proportion of the property allocated for business/commercial use.
3. Noise of Train - I am a resident of 4 mile Creek Development, and live near 47th street. Trains running on the train tracks near the proposed development site frequently blow their horns multiple times between 12am and 4am. From my house, the noise of these train horns sounds very loud, even with the windows of our home closed. these train horns would most definitely be very disruptive to the residence of the proposed development.
4. No sidewalks/pedestrian access. As far as I can tell, the proposed development plan does not include any plans for building sidewalks around the entire development. this presents a major safety issue, as it is very likely that the residents of the development will wish take the shortest path (e.g., via jaywalking across diagonal highway and other nearby streets) to access (via foot) the Pleasant View

Soccer fields and open space areas (e.g. cottonwood trail)

5. Possible toxic environmental/soil contamination due to presence of existing oil well on property. Has any study been conducted to determine the extent to which the soil and groundwater on the property has been contaminated by the oil well? If such contamination exists, it could be very harmful for children living in the development, as well as adults.

6. Increased probability of pedestrians attempting to illegally cross over the train tracks to access open space areas (e.g., cottonwood trail). There is already an issue with users of the multi-use path (on the north side of train tracks) illegally crossing over the train tracks to access open space areas (e.g., cottonwood trail). The addition of 1000 additional nearby residents would greatly exacerbate this problem.

7. Insufficient allocation of outdoor recreational space in development plan. where would the children of the development play outside? In the development's concrete parking lots? For the development of this size, one would expect that adequate outdoor recreation space be allocated for the recreation of the residents of the development, including, for example, a large grass field (for sports such as soccer, baseball, football), a playground area and play structure for younger children, picnic tables, shade structures, etc.

8. Wetlands issue. There currently exists a wetlands on the property. Has the developer conducted an adequate environmental impact report (EIR) to determine how the development might affect the wetlands and native species which inhabit the wetlands?

9. Traffic congestion issue.in addition to the obvious traffic congestion issues relating to 400-800 vehicles attempting to enter/exit the development property, there is also the issue of southbound on ramp to the Diagonal Highway at 47th St., which, currently, is accessible only via a left turn lane that can accommodate at most 20 vehicles before the line backs up into the intersection of Diagonal Highway/47th

10. School Over Enrollment Issues. Where would the children from this development attend school? Has the developer addressed this issue at all? Which elementary school would be the "local" school? Which middle school? The closest public elementary school Crest View Elementary, which is already over capacity (with over 600 students). I am a member (and former chairperson) of the Crest View Elementary School Accountability Committee (SAC), and I know that Crest View Elementary is already struggling with significant issues relating over enrollment of students at that school. There is ongoing concern that these over enrollment issues will further be exacerbated by the enrollment of additional new students from the new development communities just west of Pleasant View Fields. Similar over enrollment issues also currently exist at Centennial Middle School. it is not feasible or practical to assume that there is adequate space at either Crest View elementary or Centennial middle school to accommodate the children of the proposed Alexan flatirons development.

Dean E. Wolf
Intellectual Property Attorney
Corporate Counsel
Tel: 510.655.9111
Fax: 510.868.2711
Telecon: 712-832-8310 x 3887328
<http://www.linkedin.com/in/deanwolf>

From: McLaughlin, Elaine
Sent: Thursday, April 23, 2015 1:56 PM
To: 'Dean E. Wolf'
Cc: 'dean wolf'
Subject: RE: Neighbor Comments/Concerns regarding Alexan flatirons development.

Hi Dean-

We appreciate your thoughtful concerns. Could you please authorize attachment of these comments into the staff memo that goes to the Planning Board? Your email has a disclaimer statement that requires authorization. Then, per your request, I've provided some preliminary responses to your questions in *bold italic* below. Some of the points you bring up were similarly identified by staff in comments to the applicant and in the draft memo to Planning Board. Additional or expanded information will come from other disciplines (such as transportation or engineering) prior to Planning Board, but I did want to respond to your request to address the comments.

All the best-
Elaine

Elaine McLaughlin, Senior Planner
Department of Community Planning + Sustainability
City of Boulder
1739 Broadway, 3rd Floor
Boulder, CO 80306-0791

303-441-4130 (phone)
303-441-3241 (fax)

<http://www.boulderplandevlop.net>
<http://www.bouldercolorado.gov/>



From: Dean Wolf (iPhone) [mailto:dean@ipmls.com]
Sent: Thursday, April 23, 2015 11:13 AM
To: McLaughlin, Elaine
Subject: Re: Neighbor Comments/Concerns regarding Alexan flatirons development.

Thanks for confirming, Elaine. Unfortunately, I will be out of town on May 7, and will not be able to personally attend the planning board meeting.
Just curious... Are you able to address any of my comments/concerns with me either by phone or email?

Dean E. Wolf
Intellectual Property Attorney
law@ipmls.com • 510.290.8866
www.provisionalpatentlawyer.com

From: Dean E. Wolf [mailto:████████████████████]
Sent: Thursday, April 23, 2015 2:48 AM
To: McLaughlin, Elaine
Cc: 'dean wolf'; ████████████████████
Subject: Neighbor Comments/Concerns regarding Alexan flatirons development.
Importance: High

Dear Elaine:

I am a resident of 4 Mile Creek Development, and wish to submit the following comments/concerns to be placed in the Staff memorandum to the Planning Board regarding Alexan flatirons development.

Kindly confirm receipt of this email communication.

Thank you.

Regards,
--Dean Wolf
Resident of 4 Mile Creek Development

1. The developer is seeking approval to build 368 high density multi-family units on the property. That number seems very high (and greedy). The families would be packed in like sardines with so many units. I'm curious to know how many persons total would inhabit this development. If one assumes 3 persons per unit, then we're talking 1,104 additional persons. *At this stage of the review process, Concept Plan, the applicant hasn't prepared detailed plans illustrating the number of bedrooms so it's difficult to be definitive at this early stage. The plans include 83 senior residential units, so the number of residents per unit may be less than the three. Beyond that information, there is no definitive demographic data at this point.*

2. The proposed development would essentially be an isolated island of 368 high density multi-family units surrounded by freeways (Hwy 157), high-speed roadways, and train tracks. The noise and pollution factors alone would seem to make this development prohibitive of such a large residential development. The location of this development seems much more suited for low density residential with a larger proportion of the property allocated for business/commercial use. *Staff has noted this in comments to the applicant as well as the draft staff memo. The zoning on the site is Business Transition – BT-1 which is intended for lower intensity office/commercial, but for which attached residential is permitted by-right.*

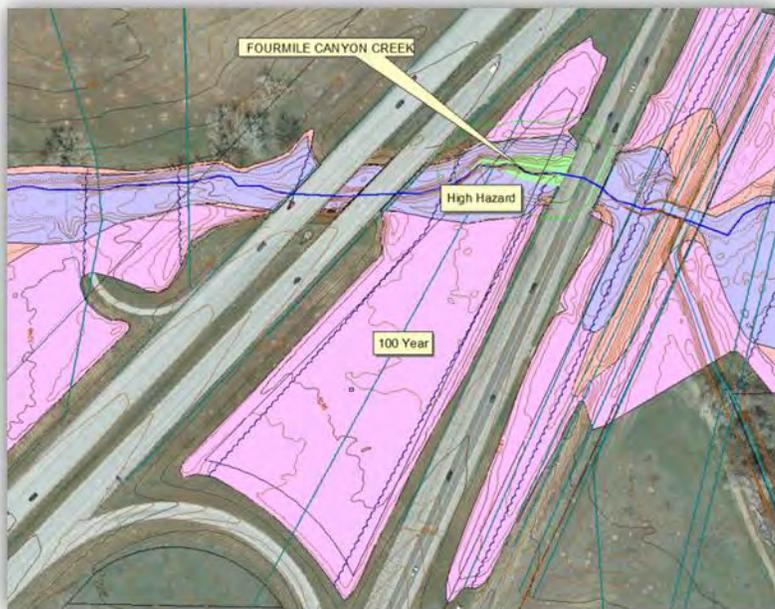
3. Noise of Train - I am a resident of 4 mile Creek Development, and live near 47th street. Trains running on the train tracks near the proposed development site frequently blow their horns multiple times between 12am and 4am. From my house, the noise of these train horns sounds very loud, even with the windows of our home closed. these train horns would most definitely be very disruptive to the residence of the proposed development. *The proximity of residential to trains are not currently regulated. There are discussions about creating "quiet zones" in limited places in the city which require implementing infrastructure at crossings in coordination with the BSNF Railroad.*

4. No sidewalks/pedestrian access. As far as I can tell, the proposed development plan does not include any plans for building sidewalks around the entire development. This presents a major safety issue, as it is very likely that the residents of the development will wish take the shortest path (e.g., via jaywalking across diagonal highway and other nearby streets) to access (via foot) the Pleasant View Soccer fields and open space areas (e.g. cottonwood trail) *Staff recognizes this concern and has indicated this in comments to the applicant and the staff memo.*

5. Possible toxic environmental/soil contamination due to presence of existing oil well on property. Has any study been conducted to determine the extent to which the soil and groundwater on the property has been contaminated by the oil well? If such contamination exists, it could be very harmful for children living in the development, as well as adults. *Drainage reports are required for development and if contamination is indicated in the report, regulation of any mitigation is through the State of Colorado.*

6. Increased probability of pedestrians attempting to illegally cross over the train tracks to access open space areas (e.g., cottonwood trail). There is already an issue with users of the multi-use path (on the north side of train tracks) illegally crossing over the train tracks to access open space areas (e.g., cottonwood trail). The addition of 1000 additional nearby residents would greatly exacerbate this problem. *Independence Road on the south end of the site does connect to the trailhead for Cottonwood Trail east of Highway 119. The information about illegal crossings is helpful to understand however, and I will share this with our transportation engineers.*

7. Insufficient allocation of outdoor recreational space in development plan. Where would the children of the development play outside? In the development's concrete parking lots? For the development of this size, one would expect that adequate outdoor recreation space be allocated for the recreation of the residents of the development, including, for example, a large grass field (for sports such as soccer, baseball, football), a playground area and play structure for younger children, picnic tables, shade structures, etc. *This would need to be further studied as project plans progress as what they are illustrating today is very general.*



Staff concurs that adequate open space would be important and the applicant will be required to meet and exceed city standards for open space for BT-1 zoning which requires 1,200 square feet of open space per dwelling unit that can be aggregated together. This is a good point particularly about the qualitative nature of open space provided, particularly given the highway surroundings.

8. Wetlands issue. There currently exists a wetlands on the property. Has the developer conducted an adequate environmental impact report (EIR) to determine how the development might affect the

wetlands and native species which inhabit the wetlands? *The wetland appears to be confined to the area aligning Fourmile Canyon Creek (shown in green on the attached map). They are not showing any development near the creek or north of the round access ramp.*

9. Traffic congestion issue.in addition to the obvious traffic congestion issues relating to 400-800 vehicles attempting to enter/exit the development property, there is also the issue of southbound on ramp to the Diagonal Highway at 47th St., which, currently, is accessible only via a left turn lane that can accommodate at most 20 vehicles before the line backs up into the intersection of Diagonal Highway/47th *At the time of Site Review, if the applicant chooses to proceed, a Traffic Impact Study will be required to be prepared.*

10. School Over Enrollment Issues. Where would the children from this development attend school? Has the developer addressed this issue at all? Which elementary school would be the "local" school? Which middle school? The closest public elementary school Crest View Elementary, which is already over capacity (with over 600 students). I am a member (and former chairperson) of the Crest View Elementary School Accountability Committee (SAC), and I know that Crest View Elementary is already struggling with significant issues relating over enrollment of students at that school. There is ongoing concern that these over enrollment issues will further be exacerbated by the enrollment of additional new students from the new development communities just west of Pleasant View Fields. Similar over enrollment issues also currently exist at Centennial Middle School. it is not feasible or practical to assume that there is adequate space at either Crest View elementary or Centennial middle school to accommodate the children of the proposed Alexan flatirons development. *There is not an identified school for students at this point as there's little information provided at this conceptual stage about the potential tenants. A portion of the development is intended for senior housing and that's the only demographic that the applicant has defined at this stage. If and when project plans progress, additional information would need to be provided about the number of bedrooms and the likely demographic that the units would be marketed to or if there's any units planned that would be appealing to families with young children in this location.*

--Dean Wolf

Dean E. Wolf
Intellectual Property Attorney
WolfIP Law Group | Gaming IP Specialists
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<http://gamingipattorney.com/>

PLEASE CONSIDER OUR ENVIRONMENT BEFORE PRINTING THIS E-MAIL

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From: Jean Aschenbrenner [mailto:]
Sent: Thursday, April 23, 2015 8:22 AM
To: McLaughlin, Elaine
Subject: Alexan Flatirons Concept Plan

I am writing to present my objection to the Alexan Flatiron Plan.

I live at 4816 Baldwin Place, east of 47th St., North of Kings Ridge.

I am currently retired but I spent 25 years working at IBM north of Boulder before that and have lived in this house for 26 years.

The area proposed for development is not large so, given the number of multi-family units, it will be densely populated. Traffic in and out of the development will be a major problem. It appears it will need to exit onto 47th Street. It will flow to the intersection of 47th St and the Diagonal where they join with Foothills Parkway. This intersection area seems to be designed creatively to deal with complicated traffic merging. Feeding lots more traffic into that intersection will cause major problems.

Further, given that Boulder is growing, one could expect more traffic at the Foothills/Diagonal junction. If the area is developed as proposed, it will preclude other necessary enlargements of the roads and intersections in the area.

Note that there is a railway line also in this area which limits road expansion. Already there are backups on 47th Street south of the Diagonal due to trains. Supposedly Light Rail will be using those lines in the future. The large amount of extra traffic will not be able to be supported.

There are ball parks just west of the proposed development. These are important for our youth and should not be moved or diminished. The large amount of extra traffic on 47th Street may require road widening and will also complicate access to the ball fields.

I sincerely hope that this Concept Plan is modified to become more reasonable.

Jean Aschenbrenner
303-786-9411
jeanasech@hotmail.com

Sent from Windows Mail

-----Original Message----- [REDACTED]
From: Sam Lloyd [mailto:samrlloyd@comcast.net]
Sent: Thursday, April 23, 2015 12:29 PM
To: McLaughlin, Elaine
Subject: Re: Alexan Flatirons Concept Plan

Greetings Ms. McLaughlin. One of my neighbors forwarded the message about the Alexan Flatirons Concept Plan & Review and I would to provide some thoughts for consideration.

The proposal would seem to be a high density apartment complex plus some commercial properties. The majority of the residents in our development (Four Mile Creek) use 47th Street as one of our primary entrances and route into the city of Boulder and we have some concern about the increased volume of traffic that would result from this development.

378 multi-family units sounds like a very large number of homes (houses, apartments, condominiums?) for that rather compact area of land!

We also have a very high rate of usage of 47th Street by bicyclists. Even though there are bicycle lanes on that street the proposed development could create a more hazardous route for the bicycle riders!

We appreciate your notification and information.

Best regards,

Sam Lloyd
4012 Mustique Court
Boulder, CO 80301
samrlloyd@comcast.net
303-998-0248 Work/Home/Cell

From: Micki [mailto:[REDACTED]]
Sent: Friday, April 24, 2015 10:47 AM
To: McLaughlin, Elaine
Subject: Alexan Flatirons

This is in response to the notification that the project known as Alexan Flatirons - 3600 SH 119.

I am not in agreement that this is a good place to build the number of homes and businesses as presented in the letter sent out. The land is far too small to handle the number of people that will be moving in there. The congestion alone is reason enough to find another location - such as property to the north on the west side of the Diagonal Highway.

The accessibility to the proposed homes is going to cause a huge increase of the use of 47th Street. This street was meant to be a frontage road and already experiences very high levels of traffic during rush hour times.

I am an affordable housing condominium owner in the NoBo Holiday Theater area. I am happy to see

that Boulder is continuing to add affordable housing. I have lived in Boulder for 40+ years now and have watched the housing developments cram as many homes as is possible into the properties purchased. I am saddened to see numerous overcrowded neighborhoods with next to nothing yards for children to play in,, smaller streets that are very difficult to navigate particularly when it snows, lack of adequate parking, and a very high turnaround of homes up for sale as families begin to grow.

The properties chosen for these developments are always in the least desirable parts of town so that a developer can buy at a the lowest possible price in a city that everyone wants to live in. I may be wrong but I don't see these kinds of neighborhoods developed anywhere west of Broadway. I see nothing wrong with trying to get the most for your money but as the influx of families continues to rise at a very fast rate, I think the quality of our town's neighborhoods should be taken into consideration. Too many rats in the box causes havoc.

Micki Sugar
1735 Yaupon Avenue
Boulder, CO 80304

From: Susan Enfield [mailto:susan.enfield@jshs.com]
Sent: Thursday, April 23, 2015 9:43 PM
To: McLaughlin, Elaine
Subject: Alexan Flatirons proposed development

Hi Elaine,

I am a neighbor of Dean Wolf & just read his letter & your replies. Although in general, I support higher density within Boulder to theoretically mitigate the number of people commuting to work here, I think Dean raises several good points.

In particular, the Diagonal has had some terrible accidents on it, given that people drive at speeds of 55-70 mph (speeding on their commute), but people also turn on & off it from a dead stop, often without a stop light. I regularly use Independence Rd as a "shortcut" to get to 47th when stuck at the long red light at the Diagonal. That turn is very poorly marked, especially for night driving. At the same time as I am trying to turn west onto Independence, people often turn south onto the Diagonal from the eastern extension of Independence, crossing traffic and potentially causing collisions if they don't properly assess all the different vehicle directions & speeds.

As a Crestview & Centennial parent, I can also attest to those schools becoming more over-enrolled. In contrast to the abundance of elementary & middle schools in South Boulder, it seems that North Boulder needs another school or two, not just bigger schools!

Thanks,
Susan

.....
Susan Enfield
cell: 720-289-2301
email: susan.enfield@jshs.com

From: david williard [mailto:williard@cityofboulder.com]
Sent: Friday, April 24, 2015 2:22 PM
To: McLaughlin, Elaine
Subject: Alexan Flatirons Development

Hi Elaine,

Thanks for the opportunity to submit comments regarding the Alexan Flatirons development.

I live on East Palo Park (which is within 1/3 of a mile of the new development) which has seen a huge rise in use over the last two years, for several reasons:

- 1.) The city recently redeveloped the playground (it is beautiful) which attracts lots more kids to the park.
- 2.) The city thus far has refused to enforce the leash law at the park, resulting in as many as 15 dogs running around the park off-leash. There is a lot of barking, as you can probably imagine.
- 3.) In addition to many people driving to the park so that their kids can use the playground, many people drive from other areas to the park to let their dogs run off leash. It is considered a dog park by many.
- 4.) As Palo Park is one of the last affordable areas in Boulder, many families are moving to the area, resulting in a higher proportion of homeowners with young children.

The result -- an extremely loud park that feels like a free-for-all and is incredibly crowded on the weekends. I now no longer enjoy going outside my home because of so many screaming kids at the playground. I hear them all day inside my home, too, especially on the weekends. I have tried to roll with this, but I'm frustrated with the city because developments are going in around us that include NO amenities for children.

I have mentioned these issues to city officials in several city council meetings involving the planned affordable housing development on east Palo Parkway. What I see in developments like Northfield Commons, the development at Jay and 47th near us, and the upcoming affordable housing development is a lack of attention on spreading noise out and having consideration for people who live along East Palo Park who didn't realize 10 years ago that the city was going to overload the area with dense housing and not put in any additional playgrounds or parklands. Now the city is considering an additional 400 units in a really weird spot, and I am concerned that there are no plans to develop a park for these people. the ONLY park in the area is east palo park, and I assume it will be overrun even further if the development is allowed to proceed. If so, I fear that I will have to move because the park will be used all the time, and my wife and I will have no peace and quiet.

Thanks for hearing me out.

Regards,
David Williard
303-641-7761

From: "Chuck Brock" <clb@boulderplanningboard.net>
To: "boulderplanningboard" <boulderplanningboard@bouldercolorado.gov>
Cc: "community-cycles-advocacy-committee@googlegroups.com" <community-cycles-advocacy-committee@googlegroups.com>
Subject: Comments on Alexan Flatirons from Community Cycles

Dear Planning Board:

The Advocacy Committee of Community Cycles would like to comment on the Concept Plan for the proposed Alexan Flatirons project. Our comments are focused on the transportation elements of the proposal.

We share Staff's concern that the proposed development is not effectively connected to the rest of the city. This multi-use, but primarily high-density residential, development is located in the middle of a triangle bounded by the Diagonal Highway (55 mph), the northbound onramp to this highway (45-55 mph), and 47th Street (40 mph). There are poor options for biking or walking to other parts of the city. The only direct access by bike from this location would be along 47th St., which has a speed limit of 40 mph and a 4-5 foot-wide unprotected bicycle lane. While experienced adult cyclists might take this route, it is extremely unlikely that children or less confident riders would take the option to bike from this location. The Fourmile Creek trail is a nice amenity, but does not connect directly to shopping, work, or entertainment destinations; using it would entail a significant detour.

The developer suggests that this is a "transit rich" environment. However, unlike Downtown and Boulder Junction, which are or will be served by a variety of different transit lines, as well as both on and off-street bike facilities, the only transit access to this site is the Bolt, which stops across the Diagonal onramp outbound from Boulder. The Boulder-bound stop is on the other side of Foothills in the middle of an unfinished median triangle. To access this stop, riders would have to pass through the underpass of Diagonal and Foothills. Below is a Google Streetview photo of this location. There is no sidewalk along the underpass. The speed limit here is 45 mph, and this is a 7-lane state highway at this location. Traffic turns rapidly from the Diagonal to north- and south-bound 47th, aided by shallow turning angles and very wide curb radii. We think this would be a very challenging—even dangerous—environment for a potential transit commuter, and would not be accessible at all for children below the age of 16.

In sum, this location is unfriendly to transportation by any mode other than motor vehicle. We expect that virtually everyone living in or accessing this location will use a car. It's hard to imagine that development here would help meet Boulder's climate and transportation goals as outlined, for example, in the TMP.

Thank you for your service to our community.

The Community Cycles Advocacy Committee

Looking westbound from 47th and Diagonal. The Boulder-bound bus stop is on the other side of this underpass to the right.

Boulder, CO 80301 - Google Maps

<https://www.google.com/maps/@40.038489,-105.244465,3a,75y,237.81h,9...>



Image captured Aug 2012 © 2015 Google

Link provided [here](#).

Attachment C: Concept Plan Submittal

CITY OF BOULDER
PLANNING BOARD ACTION MINUTES
May 7, 2015
1777 Broadway, Council Chambers

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

PLANNING BOARD MEMBERS PRESENT:

Aaron Brockett, Chair
Bryan Bowen
Crystal Gray
John Putnam
John Gerstle
Leonard May
Liz Payton

PLANNING BOARD MEMBERS ABSENT:

STAFF PRESENT:

Hella Pannewig, Assistant City Attorney
Susan Meissner, Administrative Assistant III
Charles Ferro, Development Review Manager for CP&S
Elaine McLaughlin, Senior Planner
David Thompson, Civil Engineer- Traffic

1. CALL TO ORDER

Chair, **A. Brockett**, declared a quorum at 6:03 p.m. and the following business was conducted.

2. APPROVAL OF MINUTES

On a motion by **C. Gray** and seconded by **J. Putnam** the Planning Board approved 7-0 the August 28, 2014 minutes.

3. PUBLIC PARTICIPATION

1. **Dean Dinair, 1507 Bluebell Avenue**, thanked Sloane Walbert for explaining the Bluebell project to him. He wanted to assure that the project is sensitive to the neighborhood character. He also felt that the limits for subdivision should be limited.

4. DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS/CONTINUATIONS

- A.** Call Up Item: USE REVIEW to establish a 1,605 square foot restaurant, "Troovi Eatery & Juice Bar" in currently unoccupied retail space at Solana Apartments 3060 Pearl Parkway under case no. LUR2015-00025. Expires May 8, 2015.

- B. Call-Up Item: Minor subdivision review, case no. LUR2015-00008, for the creation of a second residential lot with frontage on 15th Street. Lot 1A to be 7,605 square feet and Lot 2A to be 7,404 square feet. This approval is subject to potential call-up on or before May 11, 2015.
- C. Call-Up Item: NONCONFORMING USE REVIEW (LUR2015-00017): Request for an expansion to a nonconforming use to remodel the kitchen facilities at the Alpha Chi Omega house located at 1162 12th Street, including mechanical equipment and screening located on the building rooftop and associated ductwork within the rear yard setback. The project site is zoned Residential - High 5 (RH-5). The call-up period expires on May 15, 2015.

Board Questions:

- C. **Gray** asked a question about item 4B.
- D. **Thompson** answered board questions.

None of these items were called up.

5. PUBLIC HEARING ITEMS

- A. CONCEPT PLAN & REVIEW - Proposed mixed-use development (Alexan Flatirons) located at McKenzie Junction, 3600 Highway 119 (Diagonal Highway), that includes 295 market-rate multi-family units, 83 affordable-rate multi-family units, associated community buildings and 54,000 SF of commercial office space (with options for partial retail and coffee shop). Reviewed under case no. LUR2015-00028.

Applicant: Bill Holicky
Property Owner: Birch Mountain, LLC

Staff Presentation:

- C. **Ferro** introduced the item.
- E. **McLaughlin** presented the item to the board.

Board Questions:

- E. **McLaughlin** answered questions from the board.
- D. **Thompson** answered questions from the board.

Applicant Presentation:

Bill Holicky, the architect, presented the item to the board.

Board Questions:

Bill Holicky, the architect, answered questions from the board.

1. **Michael O’Keeffe, 4520 Nassan Place**, asked for clarification and spoke in opposition to the project. He did not feel that the location was conducive to residential for health and transportation reasons.
2. **David Williard, 3975 Dehesa Court**, expressed some concerns about this development. He supports affordable housing but noted that this is a loud area and is not a pleasant place to be. He did not think that people would use the proposed open space and would instead go to the park adjacent to his house. He thought it would put pressure on the existing community. He asked that the applicant put a playground into the complex in an area that would be utilized.

3. **Hunter Smith, 5105 Independence Rd**, is a neighbor and felt that this development would impact the rural character of the properties to the north and east. He was concerned about the impacts on traffic and noted that the intersection at Independence is a dangerous intersection; he recommended slowing traffic or adding a traffic light.
4. **John Harneg, 3880 N. 57th Street**, lives east of the development and expressed concerns regarding safety and traffic. The Intersection at Independence and the Diagonal is very dangerous. He thought the impact of the residential units and commercial space would be problematic. Traffic speeds are fast on Independence and 57th Street. The airport is close by and asked where this sits in relation to the flight path.
5. **Holly Hyatt Langdon, 3702 Star Lane**, expressed concerns about the impact of the views of open space and surrounding areas. She did not think that the community would be conducive to bike and bus connections for seniors. She felt that it was in a median and would not be a nice place to live.
6. **Jean Aschenbrenner, 4816 Baldwin Place**, noted that the train tracks will be loud for residents. She noted that the current traffic bottlenecks at that location and causes backups. She did not think that there would be sufficient space to expand the highway. Consider the cost of flood repairs to the open space area.
7. **Bob Murphy, 4075 N. 57th Street**, expressed concerns about the air traffic over that development. Other neighbors in the area already do not like the air traffic. He had traffic concerns as well; there are already traffic jams and this would add pressure to that area. He noted that there are many runners, cyclists and horses that use Independence Road; he wanted to assure the safety of all users.

Board Comments:

Summary:

- Board members did not find the proposed project to be entirely compliant with the BCVP.
- Residential use is allowed per the zoning but many board members did not feel that it was an appropriate use. Though not currently allowed, the board thought business industrial or other light commercial uses could be more appropriate given traffic, noise, siting and accessibility concerns.
- Some members recommended that Open Space consider purchasing the property or rezoning it during the BVCP update.
- **L. Payton** suggested that the site be considered for satellite parking. Others did not feel that would be an appropriate use given the existing traffic congestion. Some members did feel that this could be a good site for a rest area with an interpretive educational center.
- The edge conditions of the site are challenging. The board members felt that the proposed plan allowed for views of the Flatirons and liked that “soft” edge to the city.
- Some members suggested that the historic well be moved out into the open space on the site.

Detailed Comments:

Consistency with the BVCP and Land Use

J. Putnam was unsure about this project as it has many contradictory cross currents. Though the current vacant state seems to provide a good edge, it is private property and allowed to be developed. Unless the city changes its mind about acquiring this property, they must allow for it to be developed. Service industrial uses, especially with the Kum and Go adjacent to the property, could be an appropriate use.

L. May did not think that the proposal was entirely consistent w the BVCP policies; it would be better suited as an infill project within the city. He agreed that service industrial uses might make better sense on the site. Given that it has a current land use designation, he didn't think it was appropriate to say that nothing should be built there. He did not think that office space would be appropriate for the same reason as residential because it is a large traffic generator. He thought uses like service industrial with light traffic impacts were most appropriate.

J. Gerstle agreed that service industrial would be a better use for the site. He expressed concerns about senior housing given the transportation limitations for residents who may not drive. Though the residential use was granted by-right, he did not think that it met the BVCP intentions.

A. Brockett thought that this site would function best as open space and expressed concern about putting residential uses on this site. He did not think that this would be a good place to live given the fumes and noise from the two highways, trains and planes. He thought service industrial or office would be a better use for the site. He could possibly imagine a small amount of residential cloaked within other uses. Though there are bus stops, they are difficult to access and thought cyclists would not likely use the path regularly to run errands. Community Cycles did not advocate for this proposal.

B. Bowen felt warmer to the site than the others. He used to commute by bike through this site and understood why cycling could be a theme for the project and the way to tackle residential on this site.

C. Gray thought that the applicant did a good job with a tough site but did not think the predominant use should be residential. She worried that it would not be a liveable place for residents and felt the site was isolated on an island. She would prefer to see commercial uses and buffer the site as has been proposed.

L. Payton appreciated the staff memo and wanted to incorporate staff's concerns into her comments without reiterating them. She noted that when a development was last proposed on this site, the Planning Board said it was uninhabitable. The DRCOG report said that the traffic will increase considerably in the future and habitability will get worse. She did not think that the residents would open windows or go out to use the open space.

Edge Conditions

J. Putnam felt that the site is challenged, but he did not consider this to be a median. He did not think that a park and ride would be appropriate in this location as the traffic was already problematic. He thought that the McKensie well should be sited to stand out by itself in the field. This could serve as an historical reminder of fossil fuel use.

L. May thought a natural edge to the city would be most effective and suggested that the city should buy this site.

J. Gerstle thought that a park and ride or rest station would be a good use and was worth considering

in conjunction with service industrial.

A. Brockett agreed with the applicant that the view of the Flatirons should be the gateway, but thought the proposal was less of a gateway and more of an edge. Keep it subtle to let the views of the Flatirons be the edge. He cited the large art project at the entry point to Longmont. Something of that nature could be incorporated on this site.

B. Bowen agreed that softer edge to town was more appropriate than a large and powerful building. Small houses make good edges from rural highways. The gateway is the view to the flatirons.

C. Gray liked the landscape concept but felt that it would be more natural to continue the softer edge from Four Mile Creek. She did not think that iconic architecture was appropriate and noted that it is unlikely that the city would purchase the site for open space; the city's policy is not to buy Area 1 properties due to cost.

Residential Use

J. Putnam noted that there are other residential sites that have higher noise loads and asked that the applicant address acoustic considerations through design. This will be a rental property and therefore will likely have a higher tolerance for noise. He asked the applicant to return with noise levels in terms of LEQ and day/night levels integrating the train and aircraft considerations. His largest concern about residential uses on this site pertained to the islanding effect. Bike connections could help. Use alternate transit data to show that the site will not be isolated.

A. Brockett thought this site would always be predominantly accessed by cars. Consider incorporating retail that is predominantly accessed by car, i.e. washing machine vendors.

B. Bowen agreed that the site could be good for other uses with less traffic and trips. He thought the proposed neighborhoods functioned well without the open space within them as mountains and views work as open space.

C. Gray thought transition and office uses would be okay for the property but expressed concern about residential use. Some office uses generate less traffic than others. Keep bike connection concept. Don't underestimate Boulder bikers and where they'll ride.

L. Payton felt that the site should be used as a well designed rest stop as opposed to residential. Incorporate interpretive signage with the history of the oil rig, Diagonal Highway, etc. Consider AMPS goals as well; this could be a site for well-designed parking outside of the city to connect to bus service. She felt that the site is a median; the continuity of the median from Boulder to Longmont is important

Transportation and Access

J. Putnam requested that the applicant provide an intense traffic analysis with a TDM plan that includes a large amount of alternate modes and traffic generation potential. Look at planned improvements to sidewalks and access. Include vehicle charging infrastructure. He liked the proposed bike and locker infrastructure.

A. Brockett noted that the proposed underpass is critical and important.

B. Bowen noted that the traffic concerns were important and questioned what the surrounding roads will be like in the future. Look at means for mitigating and funneling traffic. Have good retail exposure and mental mapping for parking. Look at simplifying traffic circulation specifically driving through retail to get to residential areas and the absence of a left hand turn onto Jay Road. Work with the County to add infrastructure connections through adjacent open space.

C. Gray wanted to see a vibrant TDM plan and possible Eco Passes through she noted that bus access is difficult from this site.

L. Payton requested that the applicant provide an analysis of the expected traffic on all adjacent roads in the future, not just traffic to and from the development.

Other Comments

B. Holicky, the applicant, noted that service industrial and some of those uses discussed by the Planning Board are not currently allowed on this site.

L. May recommended that the BVCP update consider this parcel and make other uses allowable. He did not feel that the current land use and zoning are appropriate for this parcel because of its isolation and location between highways.

5. MATTERS FROM THE PLANNING BOARD, PLANNING DIRECTOR, AND CITY ATTORNEY

- The Planning Board will meet at 5 p.m. before the next meeting to discuss findings from the APA conference.
- **Brockett** mentioned that staff might consider a two night hearing for the SPARK project.
- BDAB would like feedback from the Planning Board where they would be the most useful.
- **B. Bowen** noted that it is difficult for the Planning Board to make changes to architecture during site review; it could be appropriate to send such items to BDAB and to clarify their focus areas.
- **L. May** thought it would be valuable for BDAB to focus on the architecture. There have been times that projects went to BDAB before they came to Planning Board and there were problems with discrepancies in feedback/opinions. He thought it would be better for projects to go to BDAB after Concept Review and before Site Review. That would allow the boards to work together better. He thought Design Review on Landmarks Board works well and suggested instating a similar process utilizing BDAB.
- **A. Brockett** requested that BDAB concentrate on architecture and refrain from commenting on use, scale and mass.

- **C. Gray** agreed and asked that BDAB also address public realm.
- **L. May** noted that he and **C. Gray** are on the Housing Process Committee. Council is interested in having a similar committee for the Comp Plan update. Reserve space to discuss this at the June agenda.

6. DEBRIEF MEETING/CALENDAR CHECK

7. ADJOURNMENT

The Planning Board adjourned the meeting at 8:22 p.m.

APPROVED BY

Board Chair

DATE



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: August 6, 2015

AGENDA TITLE: Request for Council direction regarding proposed a draft lease with the Colorado Chautauqua Association.

PRESENTERS

Jane S. Brautigam, City Manager

Tom Carr, City Attorney

David Driskell, Executive Director, Community Planning and Sustainability

Maureen Rait, Executive Director, Public Works

Molly Winter, Executive Director, Downtown & University Hill Management Division and Parking Services

Yvette Bowden, Director, Parks and Recreation

Tracy Winfree, Director, Open Space and Mountain Parks

Mike Sweeney, Director, Public Works for Transportation

EXECUTIVE SUMMARY

For 117 years, the City of Boulder has partnered with the Colorado Chautauqua Association and its predecessor the Texas Colorado Chautauqua Association to create and maintain the Colorado Chautauqua. Since 1898, there have been nine lease renewals, modifications or renegotiations. The current lease, which was adopted on January 14, 1998 and modified on August 12, 2002, expires on January 13, 2018. It can adversely affect a tenant's (cottage owner's or other CCA tenant's) ability to obtain financing or CCA's ability to enter into multi-year contracts (e.g., with Colorado Music Festival or the Dining Hall operator) if a lease of this nature is allowed to come too close to its expiration date. Accordingly, both the city and CCA have a desire to enter into a new lease this year, effective January 1, 2016.

At a February 10, 2015 study session, Council considered and discussed options of a new lease with CCA. On February 17, 2015, Council created a Chautauqua Lease

Committee, consisting of two council members, two CCA representatives and one cottage owner. Between April and July, the committee met six times in meetings facilitated by Heather Bergman and supported by city staff. The meetings were open to the public and several community members attended and offered comments at each session. Minutes of each meeting were taken and published online, as were iterations of the lease as it was being revised. The committee has approved draft revisions to the lease, which are shown in attachment A. The purpose of this agenda item is to receive council feedback regarding these proposed changes. If Council is generally supportive of proposed lease, staff will seek feedback at a joint meeting of the Landmarks Board, the Open Space Board of Trustees, the Park and Recreation Advisory Board and the Transportation Advisory Board. Taking into account that feedback, Council will be asked to consider approval of the lease in September or October.

Discussion

The following highlights the major changes in the lease. Overall the goal was to update the lease to reflect the current relationship between the city and CCA, recognizing the shared values and important role that Chautauqua plays in our community. In 2012, the city council developed a stewardship framework for Chautauqua, including the adoption of Guiding Principles for Place Management and Fiscal Sustainability on December 4, 2012. These Guiding Principles balance the need to preserve, protect and maintain Chautauqua's historic character with the needs of diverse stakeholders and user groups. The Guiding Principles are expressly incorporated as part of the lease and specifically reference three times. In large part the revisions to the lease were guided by Council's earlier stewardship conversation.

Significant Changes to the Lease

The following is a discussion of the significant changes to the lease. They are presented here in the order in which they appear in the lease to make it easier to follow. The order, therefore, is not reflective of the significance of the change.

A. Term (Paragraph 1, page 2)

Under section 111 of the Boulder Home Rule Charter, most city leases cannot be more than 20 years. A lease can be up to thirty years "upon approval by a two-thirds vote of all council members if the tenant makes significant improvements to the property that the council finds provide a public benefit." CCA would prefer a thirty year lease. The two council members of the committee did not feel comfortable recommending such a term, considering the language in the charter reserving to council the question whether there is or will be "significant improvements . . . that the council finds provide a public benefit." Accordingly, the recommended provision is for a term of twenty years, with a provision for a new 20-year term beginning January 1, 2026 – ten years into the lease – if neither council nor the CCA board objects. Depending on Council's reaction to this proposal, CCA might still advocate for a 30-year term.

B. Rent (Paragraph 2, page 2)

The current lease requires CCA to pay \$2,000 in lieu of ad valorem taxes and rent of \$2,500. The committee recommended that this provision be eliminated and replaced with a provision calling for rent of one dollar. The committee reasoned that considering the value of the property, the current rent is little more than symbolic. Moreover, the real value to the city lies not in the rent paid, but the maintenance, upkeep and capital investment that CCA makes at Chautauqua. This change would also bring the Chautauqua lease in line with the city leases for the Boulder Museum of Contemporary Art, the Dairy Center for the Arts and the Boulder History Museum. BMOCA and the Dairy Center each pay one dollar per year. The Boulder History Museum is treated as a contractor and does not pay rent.

C. Responsibilities (Paragraph 3, pages 2-3)

The “Responsibilities” paragraph provides important guidance about the use and maintenance of the leasehold area. Several provisions in the current lease go far beyond what would be considered acceptable today. There is also some ambiguity in the language regarding maintenance responsibilities. The committee attempted to clarify the roles and incorporate the Guiding Principles into the language allowing CCA to make changes at Chautauqua. The current lease reads as follow:

The Association shall have the privilege of remodeling the buildings and improvements and making such substitutions, additions, modifications and improvements thereto as the Association may deem proper

The breadth of this language is not unusual for a ground lease, but it does not reflect our current community values. Accordingly, the committee added the following qualification:

Any such substitutions, additions, modifications and improvements shall be governed by the Collaborative Place Management provisions of Guiding Principles for Place Management and Fiscal Sustainability as set forth in Exhibit B and be subject to all other city requirements.

The committee’s intent is that any change will require compliance with the Guiding Principles and any other city requirement, for example obtaining a landmarks alternation certificate when required under the code.

The current lease requires the city to maintain the “public streets.” This term is not defined. It may have been an attempt to exclude alleys. The new language is intended to clarify the city’s responsibilities and to conform to current practice.

Both CCA and the city anticipate the need to perform major renovation of the streets and underground utilities at Chautauqua. The need to perform this work will not limit normal maintenance of these facilities.

D. By-Laws and Articles of Incorporation (Paragraph 4, page 4)

Currently, the city is entitled to appoint two of fifteen board members. In the lease, this is written as two-fifteenths of the board. The committee revised this language to specify two members and to prohibit expansion of the board beyond its current size. In the event that CCA decides to reduce the size of its board, the city's representation will never be less than two members. In addition, this paragraph was amended to require that one city appointee shall be a city council member.

E. Use of Facilities (Paragraph 5, page 4)

The current lease requires that CCA give the facilities "the widest practicable use in terms of scope and time." The committee removed this language and replaced it with the following that is intended to reflect a more contemporary view of CCA's role:

[I]t is the intent of the parties that the leased facilities be managed such that needs and interests of many are balanced in a manner that protects the site and spirit of Chautauqua. The leasehold area should be used, managed and preserved in a manner consistent with the community's sustainability goals and with sensitivity to impacts on surrounding residential neighborhoods, while allowing the Association to remain financially viable without city subsidy.

This language includes several important concepts:

- CCA is no longer expected to maximize use.
- It incorporates preservation into CCA's responsibilities.
- It incorporates the city's sustainability goals.
- It requires sensitivity to the impacts on the surrounding residential neighborhoods.
- It recognizes that CCA needs to generate sufficient revenue to meet its responsibilities without city subsidy.

F. Traffic Control and Parking (Paragraph 6, page 5)

The committee changed the title of this paragraph to Access and Parking. The committee believes that the lease is not the appropriate means to address traffic control and parking at Chautauqua. The lease addresses only a portion of the greater Chautauqua area and only involves one stakeholder. The committee recognized that "Chautauqua needs a tailored access management to balance the access of the variety of users and modes while also maintaining natural, built and historic environments." Accordingly, the lease provides for a Chautauqua Access Management Plan (CAMP) to be developed by next year and then periodically updated, to address the needs and responsibilities of all users.

Staff recommends that the approach to developing CAMP be based on the principles detailed in the lease which implies a holistic, comprehensive and area-wide approach. Staff anticipates that given the different uses and unique character of the area a variety of tools and innovative approaches will be needed to meet the needs and challenges of the area. Staff will use existing access management strategies such as Neighborhood Parking Permit zones, paid and managed parking, integration with multi-modal strategies as the starting point for designing the tailored solutions needed to address the access needs within the Chautauqua lease area, the adjacent park and open space areas and the surrounding neighborhoods.

Staff will recommend implementation of Pilot Programs to test potential innovative solutions when appropriate. Substantial data were collected in 2011 and 2012 regarding the parking and use of the area as part of a prior access management effort. Because the OSMP visitation data used for this prior work dates back to 2005 and appears to capture visitation more broadly than at Chautauqua alone, OSMP is updating local visitation data through a special target study in the late summer of this year.

The development of the CAMP will have budget and resource impacts on all parties and will need to be integrated into the work plans of the city and the Chautauqua Association. Staff will work in collaboration with CCA and involve the other stakeholders and the surrounding neighborhoods.

Staff will develop a public process which involves soliciting input from stakeholders in the area, as well as reporting to and solicitation of feedback from key Boards and Commissions, before bringing a final recommendation to the City Council. The Council will receive periodic updates from staff as the project progresses.

G. Covenant Not to Incur Liens (Paragraph 9, Page 7)

The current lease limits liens to \$1 million. The committee changed this to CCA's "reasonable ability to pay based on Association revenue." The title of this paragraph was changed to "Liens."

H. Permitting (Paragraph 11, page 8)

This paragraph required that CCA and the city agree on a process for permitting activities in the park and required an annual meeting. In fact, staff meets with CCA regularly and much more frequently than annually. In addition, the paragraph did not address open space. Accordingly, the paragraph has been renamed "Coordination" and eliminates the annual review provision.

I. Limitation on Subleases (Paragraph 14, page 9)

This paragraph has been removed and replaced with a new paragraph 15, entitled "Subleases," which appears on page 9. The current lease devotes several pages to the limitations on the ability of private cottage owners to sell their cottages. CCA and the

cottage owners are in the process of renegotiating these provisions as well as others. The committee decided that it would be a better practice to simply incorporate the sublease into the lease by reference.

The new paragraph also requires that CCA assess the cottage owners for a portion of CCA's contribution to the major utility renovations discussed in paragraph 3. The final language of this paragraph is still being negotiated.

J. Privately Owned Cottages (New, Paragraph 14, page 13)

This paragraph recognizes the importance of the private cottages. It requires CCA to lease land to the cottage owners. It also limits CCA's ability to acquire additional cottages only if the acquisition meets strategic guidelines set established by the board of directors. CCA also agrees to maintain its current practice of increasing rents only to cover increased costs through inflation.

K. Miscellaneous (Paragraph 17, page 15)

In the current lease, the lease can be terminated immediately based on any breach. The committee recommended removing the word immediately and allowing an opportunity to fix the problem.

L. Amendment (New, Paragraph 18, page 16)

There was no provision in the existing contract for amendment of the lease. This paragraph provides a process for amendment.

ATTACHMENTS

Attachment A – Lease with Draft Revisions

LEASE

THIS LEASE, made and entered into this ____ day of _____, 2015, by and between- the City of Boulder, Colorado, a Colorado home rule city ("City"), and the Colorado Chautauqua Association, a Colorado non-profit corporation ("Association").

WITNESSETH:

WHEREAS, the City and the Association have maintained for ~~approximately one~~ hundred and seventeen years a mutually beneficial relationship in the establishment and maintenance of a Chautauqua assembly for the benefit of the Boulder community and its visitors; and

WHEREAS, the entire Chautauqua (a portion of which is described in Exhibit A attached hereto) was entered into the City, state and national registers of historic places as ~~an~~ historic district in 1978; and was designated a National Historic Landmark district by the U.S. Secretary of the Interior in 2006; and

WHEREAS, the preservation of the Chautauqua heritage for the benefit of future generations -and the operation -of the Chautauqua -for the benefit- of all are the primary objectives of both parties;

WHEREAS, the existing Lease agreement between the parties will expire on ~~March 6,~~ 2004 January 14, 2018; and

WHEREAS, the parties have determined that it is in the interests of both to renew the existing Lease on the terms and conditions set forth below; and

WHEREAS, on December 4, 2012, the Boulder City Council adopted Guiding Principles for Place Management and Fiscal Sustainability, which are attached as Exhibit B and which are incorporated as if set fully forth in this lease agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. TERM. The City hereby leases to the Association the real property described in Exhibit A attached hereto ~~to the Association~~ for a period of twenty years, beginning January 14, 1998~~1, 2016~~, and ending December 31, 2036. The parties agree that if, during the six-month period prior to January 1, 2026, neither party objects, the Lease will be extended automatically for a period of twenty years commencing on January 1, 2026, and concluding on December 31, 2046. Any such objection may be made by an affirmative vote of the majority of the City Council or by an affirmative vote of a majority of the Association's Board of Directors. In the event that a party so objects, the term of the Lease shall end on December 31, 2036. The City reserves the right to replace the description contained in Exhibit A by a more detailed survey of the land in question, at any time.

2. RENT. As rent, and as partial consideration for this Lease, the Association agrees to pay to the City on or before ~~October~~January 1 of every calendar year during the ~~term~~Term hereof ~~at the sum of money calculated as follows: one dollar.~~

~~A. In lieu of City ad valorem taxes on the real property described in Exhibit A, the Association shall pay \$2,000.00 per annum to the City.~~

~~B. As rental for the use of the real property described in Exhibit A, the Association shall pay \$2,500.00 per annum to the City.~~

3. RESPONSIBILITIES. Chautauqua encompasses multiple ownerships and missions; the needs and interests of many must be balanced in a manner that protects the site and spirit of Chautauqua, in keeping with Guiding Principles for Place Management and Fiscal Sustainability.

Management decisions about surrounding uses should be made with sensitivity to potential impacts on the Association's leasehold area. The Association accepts responsibility for the maintenance and improvement of all buildings and improvements located on the real property described in Exhibit A, except for private cottages and the public restrooms immediately below the Dining Hall. With respect to ~~such~~ the Dining Hall and public restrooms, the City shall assume all costs of regular and reasonable cleaning and maintenance, supplies and water, annual painting, and major maintenance, including, without limitation, replacement of obsolete or unserviceable fixtures. The Association shall maintain, preserve and keep all buildings and improvements for which it is responsible in good repair, working order and condition and shall make or cause to be made all necessary repairs and improvements to that end. The Association shall have the privilege of remodeling the buildings and improvements and making such substitutions, additions, modifications and improvements thereto as the Association may deem proper. Any such substitutions, additions, modifications and improvements shall be governed by the Collaborative Place Management provisions of Guiding Principles for Place Management and Fiscal Sustainability as set forth in Exhibit B and be subject to all other city requirements. The Association agrees to implement all feasible procedural safeguards in the operation of the Auditorium; ~~the Dining Hall and the Academic Hall~~ so as to minimize the likelihood of serious fire. Subject to the availability of appropriations therefor, the City shall:

- A. Provide all ongoing City services, such as police, fire, animal control, and the ~~like~~ similar services, to the area described in Exhibit A; and ~~shall assume the maintenance of e public streets and public utilities of such area and the park areas adjacent thereto;~~
- B. ~~Plant screening landscape around the parking lot parcel separately described in~~
Exhibit A; and

B. The City shall provide for the maintenance of the streets, but not the alleyways. The parties recognize that the streets in the leasehold area are part of the historic nature of Chautauqua. The city shall not be responsible for maintaining such streets to the level of normal city standards for city streets. The city shall make such minor and incidental repairs as may be necessary to keep the streets serviceable. The city shall provide snowplowing for such streets as resources are available consistent with other city priorities.

C. ~~If the Association is unable to secure grant funding for replacement after all reasonable efforts, pay for the cost of replacing the wooden roofs on the Dining Hall and the Auditorium (stage roof only) before or by 2014.~~ The parties agree that in the foreseeable future, major renovation of the streets, and drainage system will be necessary, and that on-going maintenance of the water mains and sanitary sewers will continue and prioritized with other city utility maintenance work. The parties intend that the renovation of infrastructure will be coordinated with moving the overhead utilities underground.

4. BY-LAWS AND ARTICLES OF INCORPORATION. Throughout the ~~term~~ Term of this Lease, ~~two-fifteenths (2/15)~~ two-fifteenths (2/15) of the Association's ~~Board of Directors~~ shall be appointed by vote of the City Council, one of whom shall be a member of City Council. Without the written permission of the City, the Association shall have no more than 15 members of its Board of Directors, inclusive of those appointed by the City

5. USE OF FACILITIES. The Association shall have year-round use of all of the real property described in Exhibit A, and it is the intent of the parties that the leased facilities be ~~given the widest practicable use in terms of scope and time.~~ managed such that needs and interests of many are balanced in a manner that protects the site and spirit of Chautauqua. The leasehold area should be used, managed and preserved in a manner consistent with the community's

sustainability goals and with sensitivity to impacts on surrounding residential neighborhoods,
while allowing the Association to remain financially viable without city subsidy. At a minimum,
the Association shall schedule a summer entertainment program in the Auditorium annually
beginning no later than June 15 and extending to at least August 31. Such programming shall
include at least 15 live performances.

6. ~~TRAFFIC CONTROL~~ ACCESS AND PARKING. ~~The Association shall have the~~
~~following rights~~ MANAGEMENT. As a national, regional and powers with respect to entry
into local landmark and parking within attraction, Chautauqua needs a tailored access
management strategy to balance the access of the areas described in Exhibit A:

A. ~~—~~ The Association shall be entitled, at its discretion, to deny or regulate motor
vehicle entry into such areas when variety of users and modes while also
maintaining the available parking space therein has been filled or is close to
being filled. For purposes of exercising this right, the Association may deny or
regulate entry at the entrance to the park on Baseline Road and/or on 12th Street.
In exercising this right, the Association will use its best efforts to direct motor
vehicles which are denied entry to available parking space on the north side of
Baseline Road natural, built, and 12th Street, and will otherwise use its best
efforts to minimize the impact of motor vehicle parking and traffic in the
residential neighborhoods adjacent to the park.

B. ~~—~~ The Association shall be entitled, at its discretion, to impose a charge for parking
within such areas.

historic environments. The Association and the City agree that the absence of a
dependable and coherent residential parking scheme program in the areas described in Exhibit A
has adversely affected the Association's operations, the maintenance of a Chautauqua assembly
and its attendant mission, and the experiences of those who reside or stay in such areas in order to
enjoy and experience the Chautauqua. ~~The Association and the City further agree that a solution~~

~~to the foregoing problems requires the adoption and implementation of a residential permit parking system or similar plan, which reasonably assures to each cottage a reasonably convenient on or off street parking space. To that end, the City shall direct its staff to work with the Association to design such a system or plan, and shall use its best efforts to adopt the same as an Ordinance of the City, enforceable in the same manner as other City Ordinances of a similar nature. But such commitment shall not impair the legislative authority of the City Council.~~Chautauqua. The parties recognize that during peak periods, parking demand for all uses within and around Chautauqua far exceeds supply. The movement of vehicles looking for parking presents safety issues and degrades the visitor experience. During the first year of this Lease, the parties commit to develop a Chautauqua Access Management Plan, which shall be thereafter periodically reviewed and revised by the parties to address current circumstances and conditions. That plan shall be governed by the following principles:

- Chautauqua is a unique shared resource requiring unique solutions.
- Chautauqua is a National Historic Landmark.
- A mix of uses must be accommodated.
- Pedestrians must be given priority on the narrow streets without sidewalks.
- Traffic circulation should be minimized in the interests of pedestrian safety and user experience.
- Parking demand is seasonal and solutions need not address time periods during which access is readily available.
- During peak periods, the parking needs of users in the historic core should be prioritized, but not exclusive.
- A seasonal transportation demand management (TDM) plan for employees should be implemented.
- The interests of the surrounding neighbors should be addressed.
- Any plan should be flexible to address changing circumstances.
- Access management should be consistent with the Guiding Principles for Place Management and Fiscal Sustainability.
- Consistent with the City's climate commitment and sustainability and resiliency goals, any plan should support public transit, alternative modes of transportation, and a reduction in vehicle miles traveled.

7. NON-DISCRIMINATION. The Association shall abide by all relevant City, state and federal legislation concerning non-discrimination in the offering of housing and public accommodations and in admissions to public events.

8. INSURANCE. The Association shall cause public liability insurance to be carried and maintained, at all times during the term hereof, with respect to all activities to be undertaken by the Association on or in connection with the real property described in Exhibit A. Such public liability insurance shall be in amounts not less than the then applicable coverage amounts for any injury to one person in any single occurrence and coverage amounts for any injury to two or more persons in any single occurrence set forth in Section 24-10-114, C.R.S. 1973, as amended, but not less than \$150,000.00 for any injury to one person in any single occurrence. Insurance purchased by the Association pursuant to this section shall name the City as an additional named insured, and a certificate evidencing the insurance coverage required by this section shall be provided at least annually to the City. Each insurance policy provided pursuant to this section shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the City, without first giving actual written notice thereof to the City at least ten days in advance of such cancellation or modification.

9. COVENANT NOT TO INCUR LIENS. The Association shall not incur liens greater than a total of \$1 million dollars its reasonable ability to repay based on the leasehold described in Exhibit A or on any of the buildings or improvements located thereon not owned by the City, Association revenue. The Association shall obtain proper bonds to insure against any such liens and shall ~~post the land prominently to indicate~~ include provision in any relevant document stating that the City shall not be responsible for any indebtedness or liens incurred.

10. ASSOCIATION TO ASSUME DUTIES OF CITY: INDEMNIFICATION. The Association shall assume any and all duties ~~with which~~ might otherwise be imputed to the City by virtue of its continued ownership of the public buildings located on the real property described in

Exhibit A, except for the public restrooms- located on the lower level/north side of the Dining Hall building. The Association agrees to indemnify and save harmless the City against any and all claims, debts, demands, or obligations which may be asserted against the City arising by reason of, or in connection with, the City's ownership of the aforementioned public buildings and any alleged act or omission of the Association on or in connection with the real property described in Exhibit A.

11. PERMITTING COORDINATION. The Association and the City shall develop a mutually agreeable process for sharing information concerning planned activities and events in the City park and open space adjacent to the real property Association's leasehold described in Exhibit A, and concerning the receipt, review and grant of permits for activities in ~~the park.~~ ~~The process by which information will be shared, needed agreements reached and applications for permits reviewed and approved shall be included in an annual review of issues and procedures conducted between the Parks and Recreation Department and the Association, and may be renegotiated at any time upon request of either party.~~ those City adjacent areas.

12. INSPECTION OF BOOKS. The Association shall maintain its principal office on the Chautauqua grounds and shall keep and maintain the books of the Association at such office. The books and records of the Association shall be subject to inspection and examination by the City at all times.

13. ANNUAL REPORT AND AUDIT. The Association shall provide an annual report to the City on or before ~~March 1st of~~ June 15th of each year detailing the following performance indicators: number and type of performances; number of attendees in Auditorium, Community House and other programming venues; estimated number of City residents served; estimated number of Boulder youth served; number of tickets and free admissions provided to community organizations and individuals; number of free (no cost) events sponsored by the Association; description of outreach efforts to diverse populations/communities of color in Boulder; number of

low or no-cost rentals to non-profit or governmental groups in the community; and number and type of partnerships with other arts and cultural organizations. The foregoing report shall accompany an annual financial audit also submitted to the City. ~~Subsequent to the receipt of the annual report and the annual audit, the City Manager or his/her designee shall convene a meeting to discuss any and all issues that may exist between the City and the Association. This meeting may be combined with the annual review described in Section 11 above.~~

14. ~~LIMITATIONS ON SUBLEASES. The Association shall provide in all subleases to owners of private cottages that:~~

- ~~A. No sublease shall be assigned or further let without prior written approval of the Association, which approval shall not be unreasonably withheld.~~
- ~~B. Upon termination or nonrenewal of such sublease, the owner of the improvements on the property shall have the choice to remove such improvements from the property. Any improvements not removed within six months shall automatically become the property of the Association.~~
- ~~C. As a condition of continued tenancy, each cottage owner shall, prior to transferring an ownership interest in the cottage to or for the benefit of any person not related to the owner within the fourth degree of consanguinity including marriage or adoption, as set forth in the chart attached as Exhibit B), offer, in writing, to sell all ownership interests in the cottage to the Association (the "Offer"). The Association shall have twenty one (21) days from the date it receives the Offer to notify the owner in writing of its determination to proceed with the offer (the "Continuation Notice"). If the Association fails to provide the Continuation Notice within twenty one (21) days following its receipt of the Offer, the owner may freely transfer his or her interest in the cottage during the rest of the year, ending on the anniversary of the Association's receipt of the Offer. At the conclusion of that year, the provisions this paragraph shall again be~~

~~triggered by any proposed transfer beyond the fourth degree of consanguinity (as defined above). If the Association provides the Continuation Notice within twenty one (21) days following its receipt of the Offer, the owner and the Association shall proceed as follows:~~

~~(i) For the thirty (30) days immediately following the Association's provision of the Continuation Notice, the Association and the owner shall negotiate concerning the price to be paid by the Association for the purchase of all ownership interests in the cottage (the "Negotiated Purchase Price"). If, within or at the conclusion of that thirty (30) day period, the Association and the owner agree in writing on a Negotiated Purchase Price, then the owner shall transfer all ownership interests in the cottage to the Association for payment of the Negotiated Purchase Price at a closing occurring at date and time mutually agreeable to the parties, but no later than forty five (45) days after the date on which agreement was reached on the Purchase Price. Payment of the Negotiated Purchase Price at the closing shall be apportioned and allocated as follows: first, to the payment of any and all ad valorem or other taxes then due and owing on the cottage, or which will be due and owing for the calendar year, tax year or other relevant period up to the date of closing; second, to the full payment and satisfaction of any and all liens, encumbrances, assessments or other obligations secured by the cottage or any interest in the cottage; third, to the owner or his/her designee.~~

~~(ii) If the Association and the owner are not able to agree in writing on a Negotiated Purchase Price within the thirty (30) day period set forth above, then within seven (7) days after the termination of the thirty (30) days, the owner and the Association shall jointly request a list of six (6) appraisers from the Appraisal Institute or such other association or group of professional appraisers as may be~~

~~specified in the sublease to which the Association and the owner are parties. The listed appraisers shall have no prior or current professional or financial relationship with the Association or the owner, shall not have a family relationship of any type with the owner, and shall have the following minimum qualifications: a) an MAI or SRA certification; b) a minimum of seven (7) years experience in the appraisal of real estate; c) a minimum of five (5) years experience in the appraisal of real estate in the Denver-Boulder metropolitan area.~~

~~(iii) Within seven (7) days after receipt of the list of appraisers, the owner and the Association shall meet to select two appraisers from the list. The Association and the owner shall each take turns striking one appraiser from the list until only two appraisers remain (collectively, the "Impartial Appraisers").~~

~~(iv) The Association/ and the owner shall jointly inform each Impartial Appraiser of his/her selection, and shall jointly request that each Impartial Appraiser promptly appraise the value of the cottage without regard to the value of the land on which it is situated and which the owner is entitled to use and occupy by virtue of his or her sublease with the Association, without regard to any offer which may have been made for the purchase of the cottage, without regard to any contract of sale which may then be outstanding with respect to the cottage, and without communicating with the other Impartial Appraiser concerning his or her appraisal of the cottage. Each Impartial Appraiser shall issue a written report of his or her appraisal to the Association and the owner (an "Appraisal Report"). Except as set forth below, the Association and the owner shall be equally responsible for the payment of all fees and costs charged by the Impartial Appraisers in preparing the Appraisal Reports.~~

~~(v) The average of the values of the cottage set forth in the Appraisal Reports shall constitute the price which the Association must pay in order to purchase all ownership interests in the cottage (the "Appraised Purchase Price"). The Association shall have twenty one (21) days from its receipt of the second Appraisal Report in which to notify the owner of its intent to purchase all ownership interests in the cottage at the Appraised Purchase Price (the "Purchase Notice"). If the Association fails to provide the Purchase Notice within twenty one (21) days following its receipt of the second Appraisal Report, the owner may freely transfer his or her interest in the cottage during the rest of the year, ending on the anniversary of the Association's receipt of the second Appraisal Report. At the conclusion of that year, the provisions this paragraph C shall again be triggered by any proposed transfer beyond the fourth degree of consanguinity (as defined above).~~

~~(vi) If the Association provides the Purchase Notice within twenty one (21) days following its receipt of the second Appraisal Report, the Association shall be entitled to purchase and receive all ownership interests in the cottage on the terms set forth below unless, within thirty (30) days following his or her receipt of the Purchase Notice, the owner notifies the Association in writing of his/her decision to terminate the Purchase Notice (the "Termination Notice"). The Termination Notice shall be accompanied by payment from the owner to the Association in an amount equal to the Association's share of the fees and costs incurred and charged by the Impartial Appraisers in preparing the appraisal reports, and shall be void and ineffective unless accompanied by such payment. If the owner provides the Termination Notice and required payment to the Association on or within thirty (30) days following his or her receipt of the Purchase Notice, the Association's entitlement to purchase and receive all~~

~~ownership interests in the cottage shall terminate; provided, however, that the provisions of this paragraph C shall again be triggered by any proposed transfer beyond the fourth degree of consanguinity (as defined above), regardless of such transfer occurs or is proposed to occur.~~

~~(vii) If the Association provides the Purchase Notice within twenty one (21) days following its receipt of the second Appraisal Report, and if the owner does not provide the Termination Notice and required payment to the Association on or within thirty (30) days following his or her receipt of the Purchase Notice, the owner shall transfer all ownership interests in the cottage to the Association for payment of the Appraised Purchase Price at a closing occurring at a date and time mutually agreeable to the parties, but not later than forty five (45) days after the owner's receipt of the Purchase Notice. Payment of the Appraised Purchase Price at the closing shall be apportioned and allocated as follows: first, to the payment of any and all ad valorem or other taxes then due and owing on the cottage, or which will be due and owing for the calendar year, tax year or other relevant period up to the date of closing; second, to the full payment and satisfaction of any and all liens, encumbrances, assessments or other obligations secured by the cottage or any interest in the cottage; third, to the owner or his/her designee. In order to assure an objective purchase decision on the part of the Association, the Association shall maintain a reasonable reserve for the purchase of cottages, and no person with a current or prospective financial interest in the matter may vote on the Association's decision to set the amount of such reserve or to purchase or not to purchase a cottage.~~

14. PRIVATELY OWNED COTTAGES. There are currently 39 privately-owned cottages at Chautauqua. Private ownership of some of the cottages provides a contemporary sense of neighborhood and a link to Chautauqua's history. While some cottages have year-round

residents, others follow a historic pattern of use by families during the summer months.
Recognizing the importance of private ownership, it is the intent of the parties that the number of privately-owned cottages shall not change significantly. The Association shall sublease the land on which the private cottages are situated to the owners of each private cottage. The Association has acquired a privately-owned cottage only once during the prior twenty year lease term. The parties recognize, however, that the Association may choose to acquire cottages in furtherance of its mission to preserve, perpetuate and improve the site and spirit of the historic Chautauqua. The Association agrees that it will only exercise the right of acquisition pursuant to strategic guidelines set forth by its board of directors and as necessary to further its mission. The Association further agrees to maintain the current practice of increasing rents only to account for increased costs through inflation.

15. SUBLEASES. The Association shall, as soon as practicable after the date of this lease, negotiate subleases with the private cottage owners (each a "Sublease"). Each Sublease shall be substantially in form and content as set forth in Exhibit C attached hereto and shall have the same term as the term of this lease including any extension of the term as provided in paragraph 2. As a condition of continued tenancy, the Association shall impose assessments upon the cottage owners sufficient to recover ___% of the Association's share of the costs associated with the capital improvements described in paragraph 3(C).

Nothing in this Section ~~14~~15 shall prohibit the Association and the owner from agreeing to provisions in the sublease which are supplemental or additional to the terms set forth above, provided that such supplemental or additional provisions are consistent with, and do not impair or limit, the terms set forth above.

~~15~~16. TERMINATION OR NONRENEWAL OF LEASE. Upon the termination or nonrenewal of this Lease, all buildings and improvements on the real property described in

Exhibit A shall be removed within six months, and if not removed shall automatically become the property of the City of Boulder.

4617. MISCELLANEOUS.

- A. The legislation of the State of Colorado and the City of Boulder shall be applied in the interpretation, execution, implementation and enforcement hereof.
- B. In the event that any provision hereof shall be held to be unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- C. This Lease shall be terminable ~~immediately~~ by either party upon any breach of the terms hereof; No delay, omission or forbearance in exercising such right or power shall impair any such right or power or shall be construed as a waiver thereof, unless such waiver is expressly given in writing and signed by both parties. Prior to termination, the party asserting breach shall provide notice immediately to the other party. The party that is alleged to have breached the Lease shall have fourteen days to cure. If the breach is not cured within fourteen days after notice, the Lease may be terminated.
- D. The captions contained herein are inserted for ease of reference only and shall not be construed to constitute or modify any part hereof.
- E. This Lease contains and constitutes the entire agreement ~~between~~ the City and the Association with respect to the subjects addressed herein, and all prior or contemporaneous agreements or leases between the City and the Association, whether written or oral, are merged in and superseded by this Lease.

18. AMENDMENT. No amendment or modification of this Lease, shall be valid or binding unless reduced to writing, approved and executed by the parties in the same manner as the execution of this Lease.

DRAFT

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

CITY OF BOULDER, COLORADO

Jane S. Brautigam, City Manager
1777 Broadway
Boulder, CO 80302
Telephone (303) 441-3090
Fax (303) 441-4478

Attest:

City Clerk

THE COLORADO CHAUTUAQUA ASSOCIATION

By: _____
Susan G. Connelly, Executive Director
900 Baseline Road
Boulder, CO 80302
Telephone: (303) 442-3282
Fax: (303) 449-0790

Attest:

Secretary, Board of Directors