

**Boulder City Council  
STUDY SESSION**

**Televised**

**Tuesday  
February 10, 2015**

**6-8 PM**

**Potential Regulation of Vacation Rental by Owners**

**8-9 PM**

**Chautauqua Lease**

**Council Chambers  
Municipal Building  
1777 Broadway**

Submit Comments to City Council  
Email: [council@bouldercolorado.gov](mailto:council@bouldercolorado.gov)

or

Attention: Alisa Lewis, City Clerk  
PO Box 791, Boulder, CO 80306  
Fax: 303-441-4478



CITY OF BOULDER  
STUDY SESSION

**TO:** Members of City Council

**FROM:** Tom Carr, City Attorney  
Bob Eichen, Chief Financial Officer

**DATE:** February 10, 2015

**SUBJECT:** Potential Regulation of Vacation Rental by Owners

**PURPOSE:**

This study session will provide an opportunity for council to consider options for regulation of vacation rentals by owner. Vacation rentals by owners have grown dramatically over the last five years. Boulder's current code was drafted long before such rentals became popular. There is nothing in the code that addresses such rentals directly. It appears that this segment of Boulder's economy will continue to grow. This study session is intended to elicit policy guidance from council regarding the approach the city should take in addressing this growth.

**INTRODUCTION:**

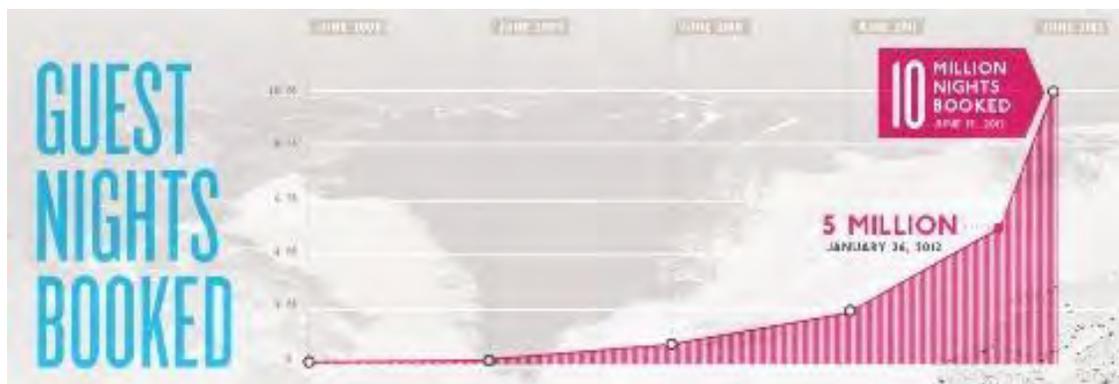
Boulder residents have long rented their homes to visiting vacationers. Previously, such rentals were sporadic and incidental. The so-called "sharing economy" growing out of almost universal internet usage has caused a significant increase in this type of rental activity in Boulder. This growth has coincided with and been spurred by the evolution of companies created to facilitate such rentals. In 2008, city staff examined all listings for vacation rentals in Boulder on the website [www.vrbo.com](http://www.vrbo.com). Staff found 31 properties listed, with only 21 actually located in the city of Boulder. In December 2014, staff accessed the website [www.airbnb.com](http://www.airbnb.com) and found over 1800 listings referring to the city of Boulder. Of these, staff confirmed 514 in the city. It appears that it is time to consider how the city should regulate these rentals.

## BACKGROUND:

### The Vacation Rental Industry

Vacation rentals have increased dramatically over the last 20 years. In 1987, David and Lynn Clouse moved to Aurora, Colorado from California.<sup>1</sup> They sold a rental property and bought a condominium in Breckenridge. Looking to earn enough income to pay the mortgage, they decided to rent the condo when they were not using it. Property management companies generally earned 45% of the rental income. The Clouses decided to rent the condo themselves. They placed a 15 word advertisement in the back pages of Ski Magazine at the cost of \$700 for five months. By 1995, they decided to take advantage of the then nascent internet. Mr. Clouse designed a database that he could transform into a webpage to market his condo. He also offered to post some of his friends' rentals for free. The initial website was text only. He ultimately learned to post pictures, which led to charging for the service and ultimately the founding of vrbo.com. In November 2006, Homeaway, Inc. purchased vrbo.com. Homeaway is listed on the NASDAQ under the symbol AWAY. On December 30, 2014 it closed at \$28.99 with a market capitalization of \$2.7 billion.

VRBO's major competitor is airbnb.com. In 2007, Joe Gebbia and Brian Chesky, were 27 years old and sharing a small apartment in San Francisco.<sup>2</sup> They were struggling to make ends meet. Mr. Gebbia and Mr. Chesky were designers who had attended the Rhode Island School of Design. There was a design conference coming to San Francisco and Mr. Gebbia and Mr. Chesky saw an opportunity. They decided to market the opportunity for participants to sleep at their apartment on air mattresses. They offered to make breakfast. They called their effort an "air mattress bed and breakfast." They rented three air mattresses for \$80 each. In 2008, San Francisco hosted the Democratic National Convention. Based on their earlier experiment, Mr. Gebbia and Mr. Chesky expanded their effort and managed to launch a website two weeks before the convention. They got 800 listings. Airbnb is privately held. The company's value has been estimated as high as \$10 billion. The company's website<sup>3</sup> provides the following growth chart:



<sup>1</sup> The information here comes from a corporate history posed on <http://www.tugbbs.com/forums/showthread.php?t=35409> and an interview with Mr. Clouse at [http://www.interviewbooks.com/vrbo\\_com.htm](http://www.interviewbooks.com/vrbo_com.htm).

<sup>2</sup> This information is drawn from an article in the Telegraph, which can be accessed at <http://www.telegraph.co.uk/technology/news/9525267/Airbnb-The-story-behind-the-1.3bn-room-letting-website.html>.

<sup>3</sup> <http://blog.airbnb.com/5-things-you-didnt-know-about-airbnbs-growth/>

The two companies have different corporate philosophies. VRBO is geared toward the rental of vacation homes. Airbnb, which started as a sharing website, is more focused on rental of owner occupied properties. VRBO only rents entire homes or apartments, while Airbnb will also rent a private room or a shared room. This distinction may be becoming less significant. In Boulder, 65% of Airbnb listings are for entire properties, while less than 1% are for shared rooms.

**Vacation Rentals in Boulder**

On June 15, 2014, the San Francisco Chronicle published a study entitled [Window into Airbnb’s Hidden Impact on S.F.](#) The Chronicle used Connotate, Inc., a data harvesting firm, to mine data from Airbnb’s website. Using this data the Chronicle was able to provide a profile of Airbnb users in San Francisco. City staff endeavored to create a similar profile by accessing the Airbnb website manually.<sup>4</sup>

The 514 rental properties identified in Boulder include 335 properties in which the entire home or apartment is offered. There are 174 rentals for private rooms and 5 rentals for shared rooms. The average price per night is \$148, although this is skewed by some higher priced properties. The median price is \$100. Absent an ability to access Airbnb’s database, there is no way to determine accurately how often the properties are rented. Airbnb allows users to post reviews for individual properties. These reviews can provide some surrogate for actual use data. The following chart breaks down the 514 properties by number of reviews:

Number of Reviews	Number of Properties	Percentage
Greater than 50	28	6%
11 to 50	109	21%
10 or less	377	73%

This data suggests that most Airbnb hosts in Boulder are occasional renters. It also suggests that there are some properties rented with more regularity. Of the 28 properties with more than 50 reviews, 5 had more than 100 and one had 240 reviews. It also is important to note that not every visitor will post a review and most visits likely last more than one day. Thus, to the extent that the data provides a measure for usage, it understates the actual number or rental days. The following chart breaks down the citywide data by neighborhood:

---

<sup>4</sup> Staff also reviewed the VRBO website. It appeared that there were more listings on the Airbnb website than on the VRBO website. Also, it appears that many hosts list on both websites. For this purpose, staff decided to focus on Airbnb.

Neighborhood	Totals		> 50		11 to 50		10 or less		Price	
	#	%	#	%	#	%	#	%	Mean	Median
30 <sup>th</sup> Street Corridor	51	10%	2	4%	8	16%	41	80%	\$102.34	\$85
East Boulder	27	5%	2	7%	5	19%	20	74%	\$116.96	\$89
Goss Grove	13	3%	2	15%	5	39%	6	46%	\$106.99	\$98
Gunbarrel	6	1%	0	0%	0	0%	6	100%	\$88	\$99
Mapleton/Downtown	53	10%	2	4%	8	15%	43	81%	\$169.70	\$96
Martin Acres	24	5%	0	0%	3	13%	20	87%	\$131	\$119
North Boulder	146	28%	6	4%	31	21%	109	75%	\$155.57	\$100
South Boulder	26	5%	1	4%	5	19%	20	77%	\$161.08	\$89
Uni Hill/Chautauqua	71	14%	6	9%	15	21%	50	70%	\$159.70	\$108
Whittier	98	19%	7	7%	29%	30%	62	63%	\$161.72	\$105

None of this data is definitive. It does suggest that some neighborhoods are more impacted than others. Staff's review of the Airbnb website also found many hosts who joined the site in 2014. This suggests the possibility of significant additional growth in the future.

### **Boulder's Current Regulations**

As explained above, Boulder's current code was not drafted in contemplation of large scale rental of private residences for less than thirty days. Nevertheless, there are several code sections that would seem to apply and could potentially be enforced without additional legislative action. Enforcement of these sections would effectively prohibit most residential vacation rentals.

#### **A. Zoning**

The city's land use code includes the following definitions:

"Bed and breakfast" means a building of a residential character other than a hotel or motel compatible with the neighborhood offering:

- (1) Temporary lodging for less than one month;
- (2) Twelve or fewer rooms for guests;
- (3) At least one meal daily for guests; and
- (4) A manager residing on the premises, but not providing the accessory uses normally associated with a hotel.

"Hostel" means a facility for residence of under one month that provides simple dormitory or sleeping rooms and common rooms for cooking, meeting, recreational, and educational use; that is chartered or approved by the International Hostel Federation or its national or regional affiliates, or similar organizations; and that is supervised by resident house-parents or managers who direct the guests' participation in the domestic duties and activities of the hostel.

"Hotel/motel" means an establishment that offers temporary lodging in rooms, for less than one month, and may include a restaurant, meeting rooms, and accessory uses and services, including, without limitation, newsstands, gift shops, and similar incidental uses conducted entirely within the principal building but excludes a bed and breakfast, as defined in this section.

§ 9-16-1, B.R.C. 1981, "General Definitions" Most vacation rentals would qualify either as a "Hotel/motel" or a "Bed and breakfast." When the rental is for an entire unit, it would seem unlikely that there is a "manager residing on premises" or "at least one meal daily for guests." Since 65% of the listings in Boulder for Airbnb and all listings for vrbo.com are for an entire unit, it would appear that most vacation rentals would be categorized as a "Hotel/motel" and not as a "Bed and breakfast." This is significant, because the city prohibits hotels and motels in all residential zones, but allows bed and breakfasts. The relevant section of the use table<sup>5</sup> is as follows:

Districts	RH-1, RH-2, RH-4, RH-5	RH-3, RH-7	MU-3	MU-1	MU-2	MU-4	BT-1, BT-2	BMS	BC-1, BC-2	BCS	BR-1, BR-2	DT-4	DT-5	DT-1, DT-2, DT-3	IG	IM
Use Modules	R6	R7	M1	M2	M3	M4	B1	B2	B3	B4	B5	D1	D2	D3	I2	I3
Hostels	U	U	U	A	U	G	U	G	A	*	A	G	G	U	U	U
Bed and breakfasts	U	A	U	A	A	*	*	*	*	*	*	*	*	*	*	*
Motels/hotels	*	*	*	*	*	A	U	A	A	*	A	A	A	U	*	*

Hotels and motels are not permitted in any residential zoning district. Bed and Breakfasts are allowed in some residential zoning districts. Most existing residential vacation rentals listed are in residential zoning districts and therefore would not be a permitted use under the current zoning code. To prove a violation, however, staff would need to identify the exact address and determine the zoning district.

**B. Taxation**

The city imposes an accommodation tax on rentals of thirty days or less:

There is and shall be paid and collected an excise tax of seven and one-half percent on the price paid for the leasing or rental of any hotel room, motel room, or other "public accommodation" located in the city for lodging purposes.

§ 3-3-2, B.R.C. 1981 "Imposition and Rate of Tax." The code defines "Public Accommodation" as follows:

<sup>5</sup> To allow better readability, staff has deleted the zone districts in which none of the listed uses are permitted. It should be clear that the above table shows only the zone districts where these uses are permitted under any circumstances. The complete use table can be found at Section 9-6-1, Table 6-1: Use Table.

"Lodging services" or "public accommodation" means the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses or has the right to use or possess *any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp or trailer court and park or similar establishment*, for a continuous period of less than thirty days under any concession, permit, right of access, license to use or other agreement, or otherwise.

§ 3-1-1, B.R.C. 1981 "Definitions." (emphasis added). The definition would appear at first glance to be very broad and inclusive of vacation rentals. The italicized language, however, does not specifically include rentals of residential properties. The phrase "or similar establishment" could be construed in such a manner. To be clear, if council wishes to tax vacation rentals, staff recommends that the code should be modified to include such rentals specifically.

There is another taxing alternative Council may want to consider. That is to have a separate kind of tax for this new and rapidly growing business industry segment. Based on staff discussions with communities that currently tax these types of rentals, gaining compliance in collecting and remitting the tax it is challenging and very different than collecting accommodations taxes. The staff effort is more labor intensive and the administration and collection efforts required are very different. This means, it is going to cost significantly more than it takes to administer, gain compliance and collect the current accommodations tax. If Council wishes to consider taxing these types of rentals, staff recommends that alternative taxes also be considered rather than adding it to the accommodations tax.

### **C. Rental Licensing**

The city requires any property offered for rental to have a rental license:

(a) No operator shall allow any person to occupy any rental property as a tenant or lessee or otherwise for a valuable consideration unless each room or group of rooms constituting the rental property has been issued a valid rental license by the city manager.

§ 10-3-2, B.R.C. 1981 "Rental License Required Before Occupancy and License Exemptions." There are three exemptions from the rental licensing requirements.

1. An owner-occupied unit may have up to two "roomers."
2. An owner may rent his or her "principal residence" for up to twelve months, if the owner occupies the property before and after the rental and at the time of the rental resides outside of Boulder County.
3. "Commercial hotel and motel occupancies" that rent primarily for less than thirty days. Bed and Breakfasts are not exempt.

Again, it should be clear that this language was not drafted in contemplation of regulating residential vacation rentals. Nevertheless, there is some symmetry here. If a residential vacation rental is not a hotel or motel, it should have a rental license. If it is a hotel or motel, it would not be a permitted use in any residential district.

#### **D. Fire Safety**

The city of Boulder has adopted, with revision, the 2012 Edition of the International Fire Code.<sup>6</sup> § 10-8-2, B.R.C. 1981 “Adoption of International Fire Code With Modifications” The fire code has specific provisions relating to hotels, motels and boarding houses. These provisions could be read to apply to residential vacation rentals. The following are some of the fire code requirements for motels and hotels:

1. Post diagrams showing at least two evacuation routes immediately adjacent to the room exit. 2012 IFC § 408.8.1
2. Have either a manual fire alarm system, sprinklers or be less than two stories with all rooms separated by one hour fire walls. 2012 IFC § 1103.7.5.1
3. Have an automatic smoke detection system. 2012 IFC § 1103.7.5.1.1

#### **E. Affordable Housing**

The city’s standard affordable housing covenant prohibits leasing the entire home. Thus, anyone leasing an affordable housing unit would be violating the covenant. There is no similar restriction for leasing a room. Enforcement in that circumstance would require reliance upon the zoning limitations discussed above.

#### **E. Conclusion**

The current city code was not drafted to address regulation of residential vacation rentals. If enforced as written, the current code would prohibit most such rentals. Staff seeks direction about whether such enforcement conforms to council’s intent with respect to residential vacation rentals.

#### **Pros and Cons of Residential Vacation Rentals**

In this section staff has assembled some brief advantages and disadvantages of residential vacation rentals. These are not meant to be exhaustive or to presume to substitute staff’s thinking for council’s policy judgment. These are merely issues that have arisen through the course of this project of which staff believes council should be aware.

---

<sup>6</sup> The 2012 Edition of the International Fire Code can be found at <https://archive.org/stream/gov.law.icc.ifc.2012/icc.ifc.2012#page/n3/mode/2up>.

## **A. Cons**

### **1. Impact on Residential Neighborhoods.**

One major concern raised around the country is the impact of residential vacation rentals on the character of the neighborhoods in which they exist. Frequent turnover, additional traffic and cars can undermine the quality of life in a residential neighborhood. Although the council receives occasional complaints about such activity today, continued growth in this practice could permanently alter the very character of Boulder's residential neighborhoods.

### **2. Unfair competition to the Hotel/Motel Industry.**

The Hotel and Motel Industry is subject to significant regulation both at the city and the state level. Hotel owners pay accommodation tax on every room rental. Residential vacation rentals do not pay taxes and do not comply with health and safety regulations. This creates an unfair playing field motels and hotels who are complying with the law.

### **3. Public Safety**

The growing number and diversity of residential vacation rentals makes it very difficult to assure compliance with minimum standards of health and safety. Many commentators have noted that a host is inviting a stranger into his or her home. There have been reports of abuse and damage by guests booked through Airbnb.<sup>7</sup> A man in Barcelona was convicted of raping two women who rented his apartment through Airbnb.<sup>8</sup>

### **4. Impact on Availability of Housing**

Housing that shifts to permanent short term rental is taken out of the pool of units available for residential use. In some communities, it is common for investors to purchase a home for the purpose of short term rental. Boulder's popularity suggests that this could be a trend here. Each house dedicated to short term rental is one less house available for residential use. Such a trend could negatively affect the city's already challenging housing market.

## **B. Pros**

### **1. Generating Income for Residents**

Renting a residential property appears to be a way for Boulder residents to earn a little extra income. Living in Boulder can be very expensive. Boulder has struggled to find means to

---

<sup>7</sup> For example, *PHOTOS: An Airbnb Guest Held A Huge Party In This New York Penthouse And Trashed It*, Business Insider, March 18, 2014. This article can be accessed at <http://www.businessinsider.com/how-an-airbnb-guest-trashed-a-penthouse-2014-3?op=1>. *10 incredible Airbnb horror stories*, Fox News, May 8, 2014. This article can be accessed at <http://www.foxnews.com/travel/2014/05/08/10-incredible-airbnb-horror-stories/>.

<sup>8</sup> Spain: Man jailed for raping holidaymakers who rented his flat through AirBnB, International Business Times, December 20, 2014. This article can be accessed at <http://www.ibtimes.co.uk/spain-man-jailed-raping-holidaymakers-who-rented-his-flat-through-airbnb-1480434>.

provide affordable housing to its residents. Allowing residents to rent their homes or rooms in their homes can provide some extra income to assist with residential affordability.

## **2. Economic Activity**

Airbnb has done studies of its economic impact on the following eight cities: San Francisco, New York, Paris, Amsterdam, London & Edinburgh, Sydney and Barcelona.<sup>9</sup> The following is a summary of the San Francisco results:

- The average San Francisco hotel guest visits for 3.5 days and spends \$840. The average San Francisco Airbnb guest visits for 5.5 days and spends \$1,045.
- 56 percent of Airbnb hosts in San Francisco said they use their Airbnb income to help pay their mortgage or rent.
- 72 percent of Airbnb properties in San Francisco are located outside the central hotel district.
- 42 percent of hosts in San Francisco use their Airbnb income to pay for regular living expenses.

There has been no study of economic impacts on Boulder or any similarly situated community.

## **3. Supports Marijuana Tourism**

Boulder law prohibits smoking in most hotel and motel rooms. § 6-4-3(a)(2), B.R.C. 1981 “Smoking Prohibited Within Buildings and Enclosed Areas” (No more than 25% of the rooms in a hotel or motel can be smoking rooms). Marijuana consumption is permitted in any fenced area of a private residence. § 6-16-2, B.R.C. 1981 “Definitions” (“Place open to the general public” shall not include any fenced area of a private residence regardless of whether it can be seen from a place open to the public.”); § 6-16-13, B.C.R. “Prohibited Acts” (“It shall be unlawful for any person to: Cultivate, distribute, produce, smoke, use, or ingest marijuana openly or publicly in a place open to the general public”). Thus, it is possible that residential vacation rentals provide a place for marijuana tourists to consume their purchases legally.

## **Responses from Other Communities**

The sudden growth of residential vacation rentals has triggered a response by many local governments. Ironically, San Francisco, where Airbnb was founded, prohibited short term residential rentals until the county supervisors approved an ordinance, effective February 1, 2015, conditionally legalizing and taxing such rentals. Homeaway, Inc. has sued San Francisco challenging the ordinance as an unfair burden on interstate commerce.

The following is a summary of the provisions of some municipal ordinances addressing residential vacation rentals.

---

<sup>9</sup> The studies can be found at <http://blog.airbnb.com/airbnb-economic-impact/>

## **A. Towns and Cities in Colorado**

### **1. Aspen**

In 2011, the Aspen City Council adopted an ordinance allowing for residential vacation rentals in Lodging Zone Districts, Commercial Zone Districts, Mixed Use Zone Districts, and Residential Zone Districts. The ordinance also limits rentals to no more than 30 days. It requires that the host obtain a vacation rental permit and a city tax. If there is a homeowner's association, the host must notify the HOA of the application for a vacation rental permit. The ordinance prohibits a host from renting individual rooms and requires that the host have a local representative to respond to renter issues.

### **2. Vail**

Vail has not adopted any specific regulations for vacation rentals. Vail does not require a business license for persons who rent no more than two units. Vail does require that owners pay sales and lodging taxes.

### **3. Breckenridge**

Hosts must obtain an Accommodations Unit license and pay an annual fee. Hosts must also collect sales and lodging tax.

### **4. Frisco**

Frisco requires hosts to obtain a town business license and pay sales and lodging taxes.

### **5. Colorado Springs**

Short-term rentals are allowed in any zone where single family or multi-family residential uses are allowed. Hosts must collect sales and lodging tax. No signage identifying the property as a short-term rental is permitted.

## **B. Other Cities**

### **1. San Francisco, California**

San Francisco's ordinance requires that only permanent residents may rent and they can only rent their primary residence. The host must reside in the primary residence for 275 days in each year, effectively limiting entire unit rentals to 90 days. The host must put his or her name on a registry. Advertising for rental without being listed on the registry is a violation. The host is required to have at least \$500,000 in liability insurance or participate in a hosting platform that provides such insurance. The host must post a sign on the inside of the front door listing the location of all fire extinguishers in the unit and building, gas shut off valves, fire exits and pull fire alarms.

## **2. Austin, Texas**

Austin adopted comprehensive regulations of residential rentals in 2012. Austin requires that a host obtain a “short-term” rental license. To apply for a license the owner must submit: 1) a \$285 fee; 2) proof of property insurance; 3) a valid certificate of occupancy or a certified inspection and 4) proof of payment of hotel occupancy tax. Unless the unit is owner occupied, Austin will only issue licenses for up to 3% of the units in a census tract.

## **3. Portland, Oregon**

Portland, Oregon adopted its short term rental ordinance during the summer of 2014. Portland requires that a host obtain a short term rental permit. To obtain a permit, the unit must first pass an inspection to verify that the unit was a legal bedroom under the law existing when it was constructed, has a smoke detector interlinked with a smoke detector outside of the bedroom and has a carbon monoxide detector. The host must also provide a notice to all recognized neighborhood organizations. The host must live in the unit at least 270 days. The host may obtain a permit to rent up to two bedrooms. For a permit to rent three to five bedrooms, the host must go through a conditional use review.

## **4. Palm Desert, California**

Palm Desert has perhaps one of the most detailed regulations. The Palm Desert ordinance includes the following provisions:

- a. A three day, two night minimum stay
- b. A maximum number of occupants based on the number of rooms
- c. No change to the outside appearance of the structure
- d. All parking associated with the rental must be on-site
- e. Twenty-four hour access to the host or a representative
- f. A Duty to limit noise or disorderly conduct and respond within 60 minutes of any complaint to halt the behavior
- g. A permit fee and tax.

## **Policy Questions for Council**

Staff requests direction from council on the following questions.

### **1. Does council need more information?**

Staff has attempted to provide council with sufficient information for council to begin the conversation. To date, all work has been done in house. There are consultants who can provide a much more comprehensive look at vacation rental activity in Boulder. If council believes that a more comprehensive look would be helpful, staff could prepare a budget for retaining a consultant and a work plan for a more comprehensive examination of the issue. Staff does not believe that such additional work is necessary. Additional information is not likely to change the basic facts, which are that the number of vacation rentals is growing and could present a

problem in Boulder. Nevertheless, council is always the ultimate judge of what information would be helpful.

**2. Does council prefer to ban or to regulate residential vacation rentals?**

**3. If council would prefer to ban residential vacation rentals, would council like staff to propose an ordinance clarifying the ban and facilitating enforcement?**

**4. If council would prefer to regulate and tax, which issues should staff explore for regulation?**

The following are some provisions found in other ordinances around the country. If council is interested in regulating, which of these or others is council interested in considering:

- a. Location
- b. Number of rental days
- c. Fire safety
- d. Inspections
- e. Parking
- f. Rental only of principal residence
- g. Rental only by full time residents
- h. Insurance
- i. Neighborhood notification
- j. Noise or disorderly conduct
- k. Licensing
- l. Taxation

It should be noted that most of these regulations should be fairly simple to draft depending on council direction. Limitation by location is the most complex. To craft such an ordinance would require a significant planning effort. Staff would appreciate council direction regarding the nature and extent of public process council believes would be appropriate for such regulations. For most of the alternatives listed above, the legislative process may be sufficient for adequate public input. This issue would appear to be similar to the regulation of food trucks. A more involved process will require staff time and adjustment to work plans.



CITY OF BOULDER  
STUDY SESSION

**TO:** Members of City Council

**FROM:** Tom Carr, City Attorney

**DATE:** February 10, 2015

**SUBJECT:** Chautauqua Lease

**PURPOSE:**

This study session will provide an opportunity for council to consider options for the Chautauqua lease.

**INTRODUCTION:**

Since 1898, the city has leased 26 acres of land and city-owned buildings to the Colorado Chautauqua Association (“CCA”), which was originally known as the Texas-Colorado Chautauqua Association. A map of the leased area is attachment A. The original lease has been renewed or amended seven times over that time period. At times the changes have been substantial, although in 1960 the lease was renewed with a notation on the 1940 lease “Renewal w/o change 1960/1.” Although drafted as a lease, the document also governs the relationship between the city and an organization that manages some of its most important assets. It really should be thought of as both a lease and a public/private partnership agreement.

**BACKGROUND:**

For over 120 years the city and the Colorado Chautauqua Association have maintained a beneficial relationship in the establishment operation and maintenance of a Chautauqua assembly for the benefit of the Boulder Community and visitors. A brief historical perspective of the Colorado Chautauqua Association that was drafted for the 1998 lease renewal is attachment B. CCA is interested in renewing the lease with the city.

The city owns all 26 acres in Chautauqua. Private individuals own 40 of the 100 cottages. The majority of these cottages have been in the same family or ownership group for many years. The only parties to the lease are the city and CCA. Historically, CCA has entered into subleases with the owners of cottages for terms equal to the term of its master lease with the City. CCA owns 60 cottages and rents them to the public. The City owns one cottage that is rented out by CCA. Additionally, the city owns the Auditorium, Dining Hall and the Academic Hall.

The lease was the product of an effort by Boulder to attract Texas educators to Boulder. In 1897 the Texas State Board of Education was promoting the idea of starting a summer Chautauqua in the Rocky Mountains. Boulder was in competition with Denver and Colorado Springs as potential sites. Boulder was chosen as the preferred site subject to several conditions prescribed by the educators. In February of 1898 the proposal was presented to Boulder citizens. To secure the assembly Boulder was required to establish a park of at least eighty acres and construct permanent buildings for the use of the Chautauqua. The city also was required to provide access to the grounds by rail. The assembly directors in turn promised to offer a complete program of education and entertainment during the summer at no expense to the city.

### **Lease Terms**

The lease is attachment C. The lease does seem to reflect its history. The following is an outline of the current terms:

1. Term. The current lease has a term of twenty years commencing January 14, 1998. Thus, the lease ends on January 13, 2018.
2. Rent. The lease requires CCA to pay annually \$2,000 in lieu of property taxes and \$2,500 in rent.
3. Responsibilities. CCA is required to maintain and improve all buildings and improvements on the property except for private cottages and the dining hall restrooms. CCA has the “privilege” of remodeling and “making such substitutions, additions, modifications and improvements thereto as the Association may deem proper.” The city is required to provide city service and landscaping around the parking lot. There was also agreement that the city would pay for replacement of the wooden roofs on the Dining Hall and Auditorium, unless CCA could secure grant funding. The replacement was completed through grant funding.
4. By-Laws and Articles of Incorporation. The city council appoints 2/15 of the CCA Board of Directors.
5. Use of Facilities. CCA is required to give the facilities “the widest practicable use in terms of scope and time.” CCA is required to at least have a summer entertainment program with at least 15 performances between June 15 and August 31.

6. Traffic Control and Parking. CCA is entitled to regulate parking when the available parking is “filled or is close to being filled.” CCA also is entitled to impose a charge for parking. The city and CCA agreed to work together to develop a neighborhood parking permit system to “reasonably assure to each cottage a reasonably convenient on street or off street parking space.”

7. Non-Discrimination. CCA is required to follow all laws regarding non-discrimination.

8. Insurance. CCA is required to maintain liability insurance in an amount equal to the limitation on judgments in favor of two or more plaintiffs as established in the Colorado Governmental Immunity Act. The current limit is \$990,000. C.R.S. § 24-10-114. CCA is required to name the city as an additional insured.

9. Covenant Not to Incur Liens. CCA cannot incur liens in excess of \$1 million on the property.

10. Association to Assume Duties of City Indemnification. CCA agreed to indemnify the city for any claims arising out of ownership of the buildings, except the public restrooms.

11. Permitting. The city and CCA agreed to develop a process for sharing information about events in the park.

12. Inspection of Books. CCA is required to maintain its books at Chautauqua. The books are subject to inspection by the city at any time.

13. Annual Report and Audit. CCA is required to provide an annual report including the following:

- a. Number and type of performances;
- b. Number of attendees in the Auditorium, Community House and other venues;
- c. Estimated number of city residents served;
- d. Estimated number of Boulder youth served;
- e. Number of free admissions provided to community organizations and individuals;
- f. Number of free events;
- g. Description of outreach to diverse communities and communities of color;
- h. Number of low or no cost rentals to non-profits or governments; and
- i. Number and type of partnerships with other arts and cultural organizations.

CCA also is required to provide the city with an annual financial audit.

14. Limitations on Subleases. CCA is required to provide subleases to the cottage owners. The subleases cannot be assigned without CCA’s approval, which cannot be withheld unreasonably. At the end of any sublease, the cottage owner has the

right to remove his or her cottage. If it is not removed within six months, it becomes CCA's property. A cottage owner may sell a cottage within the fourth degree of consanguinity. The lease includes a consanguinity table. To simplify, this means that an owner could sell to a parent, child, grandchild, great-grandchild, great-great grandchild, aunt, uncle, cousin, niece, nephew, great niece, great nephew, grandparent, great grandparent or great-great grandparent. CCA has a first right of refusal before a cottage owner can sell outside this degree of relationship. CCA is required to pay fair market value as established through an appraisal process.

15. Termination or Nonrenewal of Lease. If the lease is terminated or not renewed, CCA is required to remove all buildings and other improvements. If they are not removed within six months they become property of the city.

16. Miscellaneous. This section includes standard clauses governing choice of law, severability if a provision is invalidated, termination upon breach and the written lease being the only agreement.

### **Stewardship Framework and Guiding Principles**

On February 1, 2011, CCA presented its "Chautauqua 2020 Plan" to the city council. CCA's vision highlighted many of the deficiencies of the existing lease and raised questions about the nature of the relationship between the city and CCA. Community members responded to CCA's vision with significant concern. In particular, CCA identified the need for a new building to meet the need for a maintenance facility and additional meeting space. It became clear that the lease does not provide an adequate framework for community consideration of that type of vision. Following the City Council study sessions on February 8, 2011 and April 8, 2011, and in response to specific interest in two elements of CCA's vision – parking management and the addition of a new building within the leasehold area – city staff and CCA in June 2011 jointly proposed a Chautauqua Collaborative Stewardship Framework.

The framework's purpose was to provide a stewardship process for balancing visitor enjoyment and resource protection at Chautauqua while supporting the missions of Chautauqua's multiple interests (the Colorado Chautauqua Association, the City of Boulder Open Space and Mountain Parks and the City of Boulder Parks and Recreation) and respecting the character of adjacent neighborhoods. The process was not intended to supersede any of the city's regulatory processes. Rather than focus solely on CCA's building vision, the framework sought to lay the foundation for continued success of the Colorado Chautauqua and adjacent Chautauqua Open Space through better coordination of use and stewardship efforts between the city and CCA.

Staff retained consultants to study Chautauqua and develop a Collaborative Stewardship Framework. Input from council, the public and city boards over the six months of developing the framework raised a number of fundamental questions and concerns about roles and responsibilities of the city and the CCA, and the related lease provisions. Staff presented the draft framework to council on May 15, 2012. After

reviewing the framework, council passed a motion forming a temporary working committee to draft, with CCA, principles to guide subsequent negotiations regarding the CCA lease for the full council's consideration and endorsement.

The motion passed by City Council on May 15, 2012 was as follows:

Motion to accept the recommendation to continue discussions initiated through the Chautauqua Collaborative Stewardship Framework process to:

1. Focus specifically on the place management and financing roles and responsibilities of the Colorado Chautauqua Association (CCA) and the City of Boulder; and
2. Form a temporary working committee composed of two City Council members and staff from Community Planning and Sustainability, the City Attorney's Office, and Public Works to meet two to three times over the next few months to draft principles for the full Council's consideration and endorsement to guide subsequent negotiations to the CCA lease. These principles would be developed in close consultation with the CCA.

The temporary committee, consisting of two council members, six city staff members, and four CCA representatives met four times from July to October and drafted guiding principles. At the initial meeting in July 2012, the group also discussed the strengths, weaknesses, opportunities and constraints of the relationship between the city and the CCA.

Staff presented the draft guiding principles as information items to the Transportation Advisory Board, the Parks and Recreation Advisory Board, the Open Space Board of Trustees and the Landmarks Board in November 2012. On December 4, 2012, council unanimously approved the Guiding Principles. The Guiding Principles are attachment D. CCA also approved the Guiding Principles. The Guiding Principles represent a shared statement about the nature of the Colorado Chautauqua and the manner in which its primary stewards (The City of Boulder and CCA) intend to collaborate in the planning and management of its future. The Guiding Principles include guidance and principles that may assist in developing a new lease.

The Guiding Principles include a threshold for process related to changes at Chautauqua. The principles were implemented immediately to collaborate on parking, road and circulation improvements and for construction of a new free-standing building for new ADA compliant restrooms .

The project to build ADA compliant bathrooms served two purposes: 1) to provide accessible restrooms; and 2) to serve as a pilot to evaluate opportunities for collaborative decision making between the city and CCA on a major project. A working group of city and CCA staff collaborated to identify a recommended location and design for ADA accessible restrooms to serve the Auditorium, and potentially other visitors to

Chautauqua. This working group consisted of city staff from the Parks and Recreation, Open Space and Mountain Parks, Facilities and Asset Management, and Community Planning and Sustainability Departments with CCA representatives. This group conducted a needs assessment, site analysis, and significant community outreach to arrive at the now-approved restrooms.

The working group used the guiding principles as the foundation for the analysis and decision making process. For example, the group analyzed location and design options based on Chautauqua's role as:

- A public place by assessing the needs of multiple types of park users through a collaborative, open process (Principle 1: A Public Place, Principle 4: A Balanced Approach);
- Collaboratively managed by establishing roles and responsibilities based on the type of project (Principle 5: Collaborative Place Management);
- A historic landmark by collaborating with the city's Landmarks Board and historic preservation staff (Principles 2: A Historic Landmark, and Principle 3: A Historic Mission);
- A community asset with a unique sense of place by gathering input from a wide range of stakeholders with different roles and perspectives (Principle 6 – Cautious Approach to Change); and
- A shared resource by developing a cost and maintenance sharing approach between the city and CCA (Principle 7-Shared Financial Responsibility).

Staff developed six options. Staff presented the options and sought feedback from the CCA Board of Directors, the Landmarks Board, the Open Space Board of Trustees and the Parks and Recreation Advisory Board. Staff also conducted a community open house at which approximately 30 people were in attendance and posted an online survey that received 498 responses.

On February 18, 2014, the city manager provided counsel with an Information Packet memorandum describing the process. On May 17, 2014, the Landmarks Board unanimously approved an application to construct a new 355 square foot building for the ADA accessible restrooms. Construction is scheduled to begin shortly, with the restrooms expected to be available for the 2015 summer season.

The restroom project highlights both the utility of the Guiding Principles and the shortcomings of the lease. Ideally, such a process would be documented in the agreement between the parties. One goal of the lease renewal process should be to memorialize and confirm the process for change management at Chautauqua.

## **Issues for Council Consideration**

### **a. Parking**

Access management and parking are important issues in the lease renewal. The current lease provisions do not represent current practice. In 1998, the parties contemplated the creation of a neighborhood parking program for Chautauqua. No such program has ever been implemented. In 2011 and 2012, staff worked to develop options for better parking management at Chautauqua. Staff conducted three public meetings and made presentations to TAB (twice), PRAB and OSBT. On April 17, 2012, under Matters from the City Manager, council considered five alternative proposals for parking management developed through this process. On May 1, 2012, staff presented to council a proposed ordinance implementing the staff recommended option. Based on input from council members, staff decided to withdraw the proposed ordinance.

Parking is one of the key issues that should be addressed during the course of lease negotiations. The good news is that much of the background work already has been done. The bad news is that there has been no community consensus on resolving the parking issues at Chautauqua.

Parking issues at Chautauqua should be informed by the currently ongoing Access Management and Parking Strategy. Finding a solution that meets all of the diverse needs at Chautauqua will be challenging.

### **b. Governance**

One of the most important issues for the long term relationship between the city and CCA is governance. Presently, the city council appoints two members to the fifteen-member Board of Directors. Council may want to consider other options, including possibly requiring that one of the appointees be a member of council. Staff provided alternative governance options in an information packet item on May 7, 2013. A copy of this memorandum is attachment E. The governance discussion can be found at pages 7 through 12.

### **c. Change Management**

It has become clear over the last few years that change management at Chautauqua is very important to our community. Any agreement should provide for a transparent and clear process that has community confidence. It would be helpful if any agreement should build on the Stewardship and Guiding Principle efforts over the last two years.

### **d. Term**

Charter Section 111 limits city leases to a term of 20 years. In November 2012, the voters amended the charter to allow for 30 year lease terms with two-thirds approval

by council if the lessee makes substantial capital investments in the facility. This is an issue that could be addressed as part of the lease negotiations. Of course, the ultimate decision resides with council.

**e. Underlying Philosophy**

One issue to be considered is whether the CCA should be charged with maximizing the use of the facility. This concept may not be consistent with current community expectations for Chautauqua.

**f. Form of Agreement**

Many of the issues that arise with relation to Chautauqua are beyond the normal scope of a lease. One issue to be considered is whether in addition to a lease, which is necessary for the property rights, council may want to consider having a public-private partnership agreement with CCA.

**g. Limitations on Transfer/CCA Right of First Refusal**

Council also may want to consider whether the limitation on transfers continues to support any viable policies. CCA owns 60 of the 100 cottages. Part of the lease conversation could include whether there is an optimal ratio for ownership by CCA and whether the right of first refusal continues to be necessary.

**h. Maintenance**

The lease is somewhat vague regarding maintenance responsibilities. It would be helpful to clarify responsibility for streets, drainage and other maintenance. A summary of current maintenance responsibilities is attachment F.

**Process**

Staff would appreciate council guidance on a process for developing recommendations for lease provisions. One option would be to follow the process used to develop the guiding principles. That is, create a committee comprised of council members, city staff, and CCA representatives. This committee could be the starting point for discussions on any issues. It might also be helpful to have additional community participation to provide more diverse perspectives. Staff also would expect to seek input from PRAB, TAB, OSBT and Landmarks Board as well as state and federal historical preservation authorities. Staff recommends the following process:

- a. March through May – Lease Committee meets and develops outline for lease issues.
- b. June through July – Input from Boards and Commissions

- c. August through September – Public meetings
- d. October – Council consideration of lease

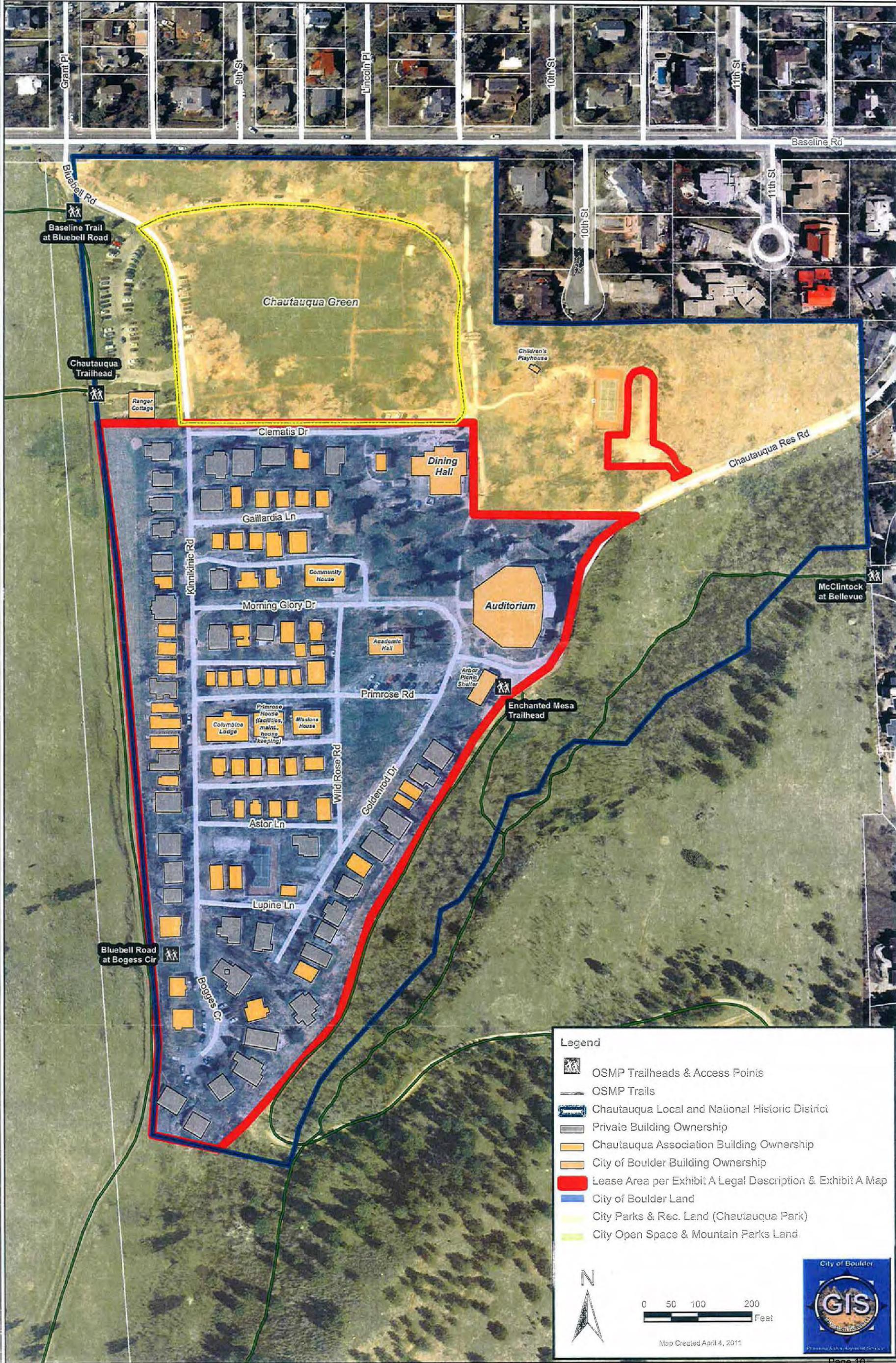
**Questions for Council**

1. Are the issues identified correctly?
2. Are there others that council would like to consider?
3. Does council want to consider a different or additional form of agreement?
4. Is the process identified appropriate?
5. If so, should the committee be expanded?

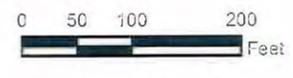
**Attachments**

- Attachment A – Leasehold Area Map
- Attachment B – History from 1998 lease renewal memorandum
- Attachment C – Current Lease
- Attachment D – Guiding Principles
- Attachment E – May 7, 2013 Information Packet Memorandum
- Attachment F – Maintenance Responsibilities

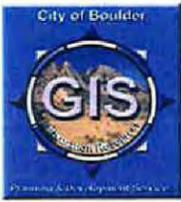
# Chautauqua Map



- Legend**
- OSMP Trailheads & Access Points
  - OSMP Trails
  - Chautauqua Local and National Historic District
  - Private Building Ownership
  - Chautauqua Association Building Ownership
  - City of Boulder Building Ownership
  - Lease Area per Exhibit A Legal Description & Exhibit A Map
  - City of Boulder Land
  - City Parks & Rec. Land (Chautauqua Park)
  - City Open Space & Mountain Parks Land



Map Created April 4, 2011



DEC 2 / 1937

## THE HISTORY OF THE COLORADO CHAUTAUQUA ASSOCIATION

### A. The Chautauqua Movement

The roots of the Chautauqua movement can be traced to the Lyceum groups that began in New England as early as 1830. Lyceums were named after ancient Greek self-education groups and were formed to sponsor oratory, concerts, lectures, and other educational programs. Although interrupted by the Civil War, the Lyceums reappeared after its end in the form of winter evening programs held in school rooms, town halls, or private homes. Talent bureaus were formed to arrange routes and bookings for speakers and soon the movement began to spread westward.

The first Chautauqua was founded on the banks of Lake Chautauqua in 1874 as the New York Chautauqua Assembly. The purpose of the assembly was to provide a place where Sunday School teachers could go for continuing education. The education was not, however, limited to religious matters, and from the beginning, the Chautauqua offered lectures on history, science, language, geography, and art in addition to Bible study.

In three years the Chautauqua program grew and courses in science, literature, and music education were added. Many of the participants were so enthusiastic that they wanted to take the Chautauqua idea to their home communities. To meet this demand, a home reading course, called the Chautauqua Literary and Scientific Circle, was established. These circles were the first mail order book clubs in America and soon became the equivalent of a correspondence school, offering diplomas to students completing a four year course. Over the years an estimated one million persons were enrolled.

The Chautauqua idea also grew by imitation. Within three years there were assemblies formed in Michigan and Ohio. While the New York Chautauqua approved and encouraged its imitators, there was no formal connection between them. By 1886, there were 38 permanent Chautauquas, and by 1900 the total had grown to more than 150. In addition to the permanent assemblies, large numbers of Chautauqua circuits sprang up in the early part of the century. Prior to the depression and mass distribution of the radio, there were more than 12,000 temporary Chautauquas set up annually in rural America. As Theodore Roosevelt said, Chautauquas were "the most American thing in America."

DEC 2 / 1927

## B. The Colorado Chautauqua--The Beginning

The initiative for the establishment of the Chautauqua assembly in Boulder came from a group of Texas educators. In 1897 the Texas State Board of Education was promoting the idea of starting a summer Chautauqua in the Rocky Mountains. Initially, Boulder was in competition with Denver and Colorado Springs as a potential site. Boulder was chosen as the preferred site, subject to several conditions prescribed by the educators. In February of 1898 the proposal was presented to Boulder citizens. In order to secure the assembly, Boulder must establish a park of at least eighty acres and construct permanent buildings for the use of the Chautauqua. They must also allow access to the grounds by rail. The assembly's directors in turn promised to offer a complete program of education and entertainment during the summer at no expense to the city.

A bond election was held on April 5, 1898 to ask the citizens' approval for the necessary funds. The margin of victory was 35 to 1, an overwhelming endorsement by the residents of Boulder. A committee was chosen to select the site; however, the final choice was left to an official of the Gulf and Southern Railroad who had been selected as the first Chautauqua Manager. He chose the seventy-five acre Bachelder Ranch which was situated near the base of Green Mountain.

The opening of the new Chautauqua was scheduled for July 4, 1898, and as the site was just chosen, only eleven weeks remained. An auditorium to seat 6000, a dining hall to feed 300, a transit system, a water system, and other buildings must be designed, contracted, and built in less than three months. Construction on the Auditorium began, and all the necessary facilities were completed by July 4th, except for the transit system. Visitors were housed in tents made by the Colorado Tent and Awning Company especially for Chautauqua.

The opening ceremonies on Independence Day featured the Governors of Colorado and Texas as well as a Texas Congressman, the President of the University of Colorado, the Mayor of Boulder, and the Chautauqua President. After the opening addresses, a pause was taken for lunch and at 2:15, Henry Watterson, "the greatest living orator of Kentucky" gave an oration. The morning crowd of 2,000 swelled to more than 4,000 by the afternoon.

During the first summer, a variety of programs was presented. These included oratory, evangelism, magic, and a choral performance of Handel's Messiah. Lecture and discussion topics included wildlife preservation, a criticism of "fools and grumblers", and the "secret of building character." The first moving picture at Chautauqua was shown on July 21, 1898. This was a demonstration of Edison's Projecting Kinetoscope. The program was devoted to "displaying in life motion the realistic moving pictures of the Hispano-American War."

DEC 2 / 1937

In 1898 the Assembly program included thirty-three major evening programs. The program on August 10, featured "the most famous divine of the last half of the nineteenth century," T. Dewitt Talmadge, and attracted a crowd of 8,000 persons. The Kansas City Symphony Orchestra of fifteen musicians was contracted for the season. More than 51 classes were offered with the tuition being \$5.00 for one course or three for \$10.00.

A Boulder Chautauqua tradition that began in the first year was the mountain excursions. Often these excursions were taken by train. On July 27, 1898 the Boulder Herald reported, "Two trainloads, including the Chautauqua Orchestra, made the trip to Ward. The young people danced The German at the stop at Mt. Alto, and Professor Palmer gave a talk in the pavilion on mines and minerals." Since the Chautauqua grounds are located at the edge of the mountains, many Chautauquans simply gathered in groups and took "mountain tramps" into the foothills.

Although the first season was an unqualified success as far as the program was concerned, it was not without problems. Boulder residents complained about the 50 cent daily admission charge. At the beginning of the summer, the quality of food in the Dining Hall was poor, and despite the published reports to the contrary, most Chautauquans were not that enamoured with spending six weeks in a tent. Most importantly for the future, the first summer ended with a deficit of about \$18,000.

### C. The Chautauqua Established

Boulder officials and representatives of the Assembly began meeting at the end of the first summer to discuss ways to solve the problems confronting Chautauqua. The most important items were transportation, permanent housing, and finances. The housing problem was perhaps the easiest to solve. Some of the summer visitors from the first year decided to build cottages for their families, and residents of Boulder were encouraged to build cottages that could be rented in the summer. They were promised that they would be able to recover their investment in only eight years. Within two years about 40 houses were constructed for summer use as well as a permanent bathhouse and restrooms.

The transportation question created a controversy that was to consume Boulder for the next year over building an electric railway system. At the end of April, only three months before the scheduled opening, the Colorado and Southern Railroad stepped in to insure that the railway would be built.

The financial problem too was handled by the C and S Railroad which promised to provide the necessary underwriting to insure the 1899 season. Certainly an air of optimism surrounded the opening of the second season. A number of improvements had been made to the grounds which included an administration building, a short order tent, and panels on the sides of the

DEC 2 / 1937

Auditorium that could be raised and lowered.

The highlight of the second summer was the appearance of William Jennings Bryan on July 12. His visit to Boulder was hailed by all. As one newspaper stated, "never before has Boulder been honored by so distinguished a personage." An estimated 7,000 people braved the cold and rain to catch a glimpse of Bryan and to hear his famous speech. He spoke for two and one-quarter hours and then moved from the stage to the rear of the Auditorium shaking hands.

The second season ended successfully in all areas. The revenue for the summer was enough to cover the expenses, and those who attended were again enthusiastic about the programs. It appeared that the success of the Colorado Chautauqua was assured.

As is often the case, the optimism of the second season was simply a precursor of the rocky road ahead. In early 1900 the Colorado and Southern Railroad decided to pull out of active management of the Assembly. At the end of the third season Chautauqua was in debt. The railroad agreed to forgive the debt if a fund of \$5,000 could be raised to guard against future financial problems. In addition, the railroad agreed to contribute \$1,000 to the fund. By November 16 the committee met to announce that the drive had been successfully concluded with pledges totalling \$5,830. On June 19, 1901 the transfer of the control of Chautauqua from the railroad and Texas educators to Boulderites was completed with the formation of the Colorado Chautauqua Association.

#### D. Into the Twentieth Century

During the several seasons that followed, a number of changes and improvements were made to the Chautauqua grounds. A veranda, offering a spectacular view of Boulder and the mountains, was added to the Dining Hall. The Academic Hall was built to house the summer school programs and one of Boulder's first fountains was constructed next to the new building. A major push was initiated to get teacher's groups from Texas, Kansas, and Nebraska to build cottages for their members to use. In all, about 15 teachers' groups built cottages at Chautauqua.

The programs presented during the summer assemblies continued to stress moral improvement and patriotism. At times the theme was the economy, religion, and even technology. The ever popular orators shared the stage with instrumentalists, singers, magicians, and preachers. Dramatic readings were quite popular in the early years, and the use of moving pictures that had begun in the first year with the Edison demonstration was expanded.

The Auditorium stage was rebuilt in 1905 to provide a larger performing area, and dressing rooms. In 1917, 600 new opera chairs were installed to replace the uncomfortable wooden

DEC 2 / 1987

benches.

The Colorado Chautauqua continue to offer classes to summer residents for about 30 years. Until 1906, Chautauqua was the only summer college level academic program in Colorado. When the University began to offer a summer program, it was welcomed by the officials of Chautauqua, since it would relieve the need for the more academically oriented classes at Chautauqua. By paring down the course offering, the Association was able to decrease its overhead and strengthen itself financially.

A great number of planned physical activities continued at Chautauqua for many years. Children's groups were formed to occupy, in a healthy manner, the youngsters time. "Not only are children safeguarded in every possible way from physical risks and questionable influences, but their pleasure is provided for with equal care...there will be hare and hound, volley ball, beefsteak fries, mountain tramps, burro rides, tennis, croquet and story hours where they are introduced to the best of classical legend as well as the imaginary creations of Kipling, Stevenson, Field and Dickens," stated the Chautauqua Bulletin. In 1913, the City of Boulder built a playground in the park.

Between 1910 and 1920 the last of the major Chautauqua buildings were constructed. The Mission Lodge was built. It was the first such lodging facility in the park and the Chautauqua Community House was constructed in 1917. The Community House was a joint project of the Chautauquans, the City of Boulder and Boulder citizens. The building was designed to house social, literary and musical activities for Chautauqua and the community. The Columbine Lodge, built in 1919, was the first and only building at Chautauqua to be designed in a standard hotel format.

#### E. The Decline of Chautauquas

Chautauqua continued to grow during the 1920's, but there was less direct support from the Boulder business community, as more of the cottages came under the ownership of the Association and out-of-state summer vacationers. The summer of 1926 was the high point for cottagers with the population at one time reaching 600. The Chautauqua directors encouraged the purchase and building of cottages by summer visitors.

Between 1924 and 1929 the national Chautauqua movement declined to the point of virtual extinction. All of the more than 10,000 circuit Chautauquas closed operation. By the end of the decade, only a handful of the permanent, independent Chautauquas survived and none without serious problems. Although several of the Chautauquas struggled on through the depression, within a few years, only three would remain. The factors that led to this swift demise of this great American institution have

DEC 2 / 1937

been the subject of many debates, however, it is generally agreed that the most significant were, the depression, the popularity of the radio, access to talking pictures, the greater ownership and use of the automobile, and the effect that the movies and radio had upon the availability of talent for the Chautauqua programs.

Although attendance was high and programming continued through the 1928 season, the Colorado Chautauqua experienced numerous problems during the 1920's. Although various managers were hired, operating debts increased. The accounting and management areas were reorganized in 1927 and the operation was significantly curtailed. However, before the Association could regain its financial health the stock market crash occurred. The crash took away the one thing that the Association had been able to count on during the 20's, good attendance.

In 1933, Chautauqua experienced its most dismal season. Attendance was down by two-thirds from 1929 with the peak daily population being only 176. At the end of the season, the Association had accumulated debts of over \$47,000. The buildings had been neglected for a decade and since there was no money for repairs, some were simply torn down. The beautiful towers on the front of the Dining Hall were removed along with the bandstand, and all but one of the Auditorium's eighteen flagpoles. The office was moved from the house west of the Dining Hall, to the Academic Hall since the Association had cut its summer school and the few remaining programs were moved to the Community House. For a time it appeared that 1933 would be the last for the Colorado Chautauqua.

#### F. Back from the Brink

By the spring of 1934 the economies of the West and Southwest had begun to improve. Mr. Bogges, who had guided the Association successfully in its early years had retired from his job with the Boulder School system and agreed to take on the full time task of managing Chautauqua. The Association was given more time to take care of its debts and thus a modest 1934 season was planned. This was the beginning of a quiet period for Chautauqua when the main emphasis was on renting the cottages to summer vacationers. No great risks would be taken in providing live programs for cottagers, and the primary evening entertainment became the movie. Chautauqua had installed permanent projection equipment prior to 1920, and had upgraded the system to include sound in 1932. The 1934 season that almost didn't happen ended as a financial success with a surplus of \$1977.

During the late 1930's the number of summer visitors began to increase and the Association was able to chip away slowly at the accumulated deficit. In addition, efforts were made to increase the level of repair and maintenance for the Chautauqua buildings. In 1940 the City and Chautauqua set about the task of negotiating a new lease. It was quickly decided that the Association should continue the management of Chautauqua and a

DEC 2 / 1957

new 20 year lease with 20 year option was offered by the City. Shortly after the signing of the new lease, the Association was faced with the task of trying to survive another catastrophic period in American history with the beginning of U.S. involvement in World War II.

The war made it more difficult for people to get to Chautauqua because of the rationing of many items including gasoline and automobile tires. During 1942 most people felt it their patriotic duty to forego vacations and to do whatever they could for the war effort. By the second summer, it had been decided that all Americans needed an occasional furlough from the war and people were encouraged to come to Chautauqua by bus or train to recuperate.

### G. Thirty Years of Tranquility

At the end of the Second World War, the Colorado Chautauqua Association had finally managed to pay off the debt that had been incurred in the 1920's. Chautauqua was being discovered by a new generation of vacationers who were not as interested in the cultural and morally based programming as in recreation and social events. In 1953, only two live performances were scheduled in the Auditorium. The tennis court, cocktail parties, and mountain picnics became the main attractions. However, Chautauqua continued to offer some programs of thought-provoking content in the smaller Community House.

The primary source of income for the Association was the rental cottages. The programs were primarily geared to serve the needs of the summer visitors. The rents that the Association was able to charge for the modest accommodations were not enough to generate a significant surplus. The Association continued to do only the improvements that were absolutely necessary in order to meet the minimal standards of safety. In 1946 the University of Colorado asked the Association to allow winter occupancy of the cottages by married students since the Boulder area could not accommodate the needs of the returning G.I.'s. The University loaned the Association the money to make the necessary improvements to about 40 cottages so that they could be occupied in the winter. While this opportunity to rent the cottages in the winter gave the Association greater income, it also created added wear and tear on the already fragile cottages and the resultant increase in maintenance and staff costs. During the first thirty years it is questionable whether the winter rentals helped or hurt Chautauqua's financial position.

By 1975, it was clear that Chautauqua faced serious problems. The aging Chautauqua Board had guided Chautauqua steadily since the depression, but they were not able to meet the substantial challenge of rebuilding a seriously decaying facility. It was suggested by officials of the City that there was little hope of saving the buildings and that the wise course of action was to tear down the buildings before they fell down, possibly injuring

DEC 2 / 1987

people. There was also the matter of the lease negotiations that would need to start in the near future since the existing lease expired in 1981.

#### H. A New Beginning

The Fall of 1976 began a yearlong chain of events that would provide the Colorado Chautauqua with its sorely needed new beginning. As early as 1974, members of Boulder historical groups had been working on historic designations designed to protect the buildings from being quickly razed before citizens of Boulder had an opportunity to consider various alternatives. The manager of the Chautauqua Park for 24 years retired at the end of the 1976 season and the Board was faced with the responsibility of replacing him. An effort was being made by President of the Association and the Director of Boulder's Parks and Recreation to get a new lease put together. A lease proposing that people owning cottages pay for improvements to the City owned buildings was rejected by of the cottage owners.

In response to the rejection of this proposal the Chautauqua Board in desperation considered transferring Association property to the City of Boulder. At this point, word began to spread that Chautauqua was on the brink of being torn down to make way for a brand new convention center. The outcry from residents was immediate and vocal. The paper was swamped with letters from outraged citizens who were unanimously against the destruction of the park. On March 21, 1977, the Parks Advisory Board met to consider a recommendation that the property be transferred to the City.

It was recommended by individuals crowding the meeting room that the current Chautauqua Board resign and make way for a new group that might want to save the park rather than give it away. This idea gained momentum as well as support of the newspapers. In April, most of the Chautauqua Board resigned and within three weeks there were 36 applications from citizens wishing to take their place. By October of 1977, a complete new Board was in place and a new set of by-laws were ratified.

At the same time, Chautauqua was actively pursuing the historical designations that could offer protection from those who wished to see the park dismantled. The Auditorium was placed on the National Register of Historic Places. The attempt to make all of Chautauqua Park a National Historic District would require another three years for completion. However, by early 1978, all of the elements necessary for Chautauqua to move ahead were in place, save one - a new lease with the City of Boulder would not be worked out until about a month after the old one had expired in 1981. The new Board did not wait for a new lease to begin their work because they were aware that even three years would be too long. Chautauqua still faced the prospect of having a great deal of restoration to do and no available finances to do it with. The Board, nevertheless, took on the challenge of begin-

DEC 2 / 1987

ning the first phase of the restoration project with little idea of where the money might come from. It was determined that the Community House and Auditorium needed to be given immediate attention. A drive was begun to raise money from summer Chautauquans to do the necessary repair to the Community House. The building was in need of structural shoring up as well as new plumbing, electrical, porch floor, and painting. In a few months, the Association had received pledges of more than \$30,000 to do the needed work.

The Auditorium was, if anything, in worse shape than the Community House. And furthermore, it was at least five times as large. The Board looked into a variety of potential sources of restoration funding. It was determined that the Association would make an initial effort to get funds from two sources; first, they would apply to the Colorado State Historical Society for a grant, and second, an application would be submitted for a share of Boulder's Community Development Funds. During the summer of 1978, the Board received word that it had been granted funding from both in the amount of \$75,000 each. The following year the Association again applied for Community Development Funds, and received a grant for \$40,000 to continue the restoration. A third grant in the amount of \$55,000 was received the following summer and a separate planning grant from the National Endowment for the Arts for programming in the amount of \$7,000 was also received.

With the Community House and Auditorium saved from imminent collapse, the Board was now ready to embark on Phase Two of the restoration effort. When the new Board had been put in place, the new by-laws provided for a membership Association. These persons contributed tax deductible gifts. An initial membership of about 500 was established, and provided a financial boost to Chautauqua of about \$12,000. While this was not a great deal of money, in the first three years of the program it did provide the margin of difference between a surplus and loss for the Association. In 1980, there were some major management changes made by the Board. A new Executive Director was hired who possessed greater experience in management and fund raising than his recent predecessors. The Dining Hall, which had never been more than a break-even proposition for the Association, was leased to a private operator with excellent restaurant skills. The Auditorium programming began to include live performances and the summer residency of Colorado Music Festival Orchestra. Presentations began to feature performers of national caliber.

During the second phase of the restoration the Association concentrated on the Dining Hall and the most critical of the Chautauqua owned cottages. It was decided to restore and upgrade a group of cottages that had never been winterized, since the Association could realize a greater return from being able to rent them in the winter. The money for restoration of the Dining Hall would be sought from the Community Development funds and from Association operating funds. The Board authorized more than

\$30,000 from the 1982 budget to begin the most urgent work. For 1983 a grant of more than \$68,000 was received for the planning and first phase of the Dining Hall restoration. In 1984, a second grant of \$59,900 was received. During this effort, the classic towers were rebuilt, the rickety stairs replaced, the foundation pillars were stabilized, and the Dining Hall infrastructure was reinforced. During the period of Dining Hall restoration, the Association had expanded its annual income from memberships to more than \$22,000 with a total of more than 850 members. These increased contributions, plus the additional income realized from the expanded winter rental program, provided more than \$200,000 to the Association during the four years from 1981-84. This money was used for the restoration and winterization of twelve more cottages during that period.

As of July 1984, the first two phases of the restoration were complete. The Auditorium and Dining Hall exteriors are beautifully restored, the buildings structurally sound, and the Community House is returned to its place as one of the most unique and beautiful buildings in Colorado. The Association is ready to begin Phase Three of the restoration project. During phase three of the campaign, the Association will be attempting to find the funding necessary for projects totalling 1.3 million dollars. The major component of this phase of the restoration will be a private capital fund drive with a goal of \$750,000.

Presently, summer programming includes a fine balance of orchestra concerts, dance, speakers, folk presentations, drama productions and, of course, movies. The history committee continues to make progress as volunteers collect historic articles, do research, and make plans for the history room. And, every day, the park offers its quiet and beauty as a refuge from a busy world.

LEASE

THIS LEASE, made and entered into this 12th day of August, 2000 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 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

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, 2001; 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;

NOW, THEREFORE, the parties hereby agree as follows:

1. TERM. The City hereby leases the real property described in Exhibit A attached hereto to the Association for a period of twenty years beginning January 14, 1998. 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 1 of every calendar year during the term hereof a sum of money calculated as follows:

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. 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 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. 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, to the area described in Exhibit A, and shall assume the maintenance of the 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

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.

4. **BY-LAWS AND ARTICLES OF INCORPORATION.** Throughout the term of this Lease, two-fifteenths (2/15) of the Association's Board of Directors shall be appointed by vote of the City Council.

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. 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 AND PARKING. The Association shall have the following rights and powers with respect to entry into and parking within 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 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 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.

The Association and the City agree that the absence of a dependable and coherent residential parking scheme 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.

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 on the leasehold described in Exhibit A or on any of the buildings or improvements located thereon not owned by the City, shall obtain proper bonds to insure against any such liens and shall post the land prominently to indicate 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 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. 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. The Association and the City shall develop a mutually agreeable process for sharing information concerning planned activities and events in the park adjacent to the real property 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.

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 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 C. 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.

(vi) 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.

Nothing in this Section 14 shall prohibit the Association and the owner from agreeing to provisions in their 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. 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.

16. MISCELLANEOUS.

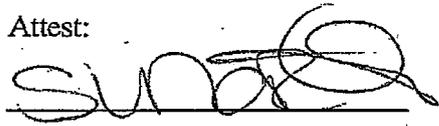
- A. The legislation of the State of Colorado and the City of Boulder shall be applied in the interpretation, execution, implementation and enforcement hereof.
- B. In the event that any provision hereof shall be held to be unenforceable by any court of competent jurisdiction, such holding shall not 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.
- 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.

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

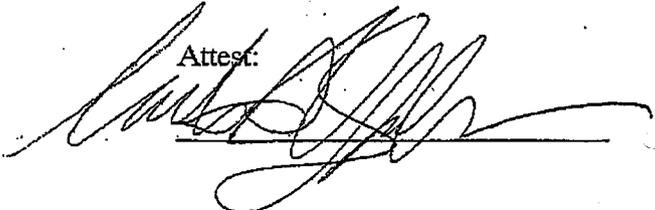
CITY OF BOULDER

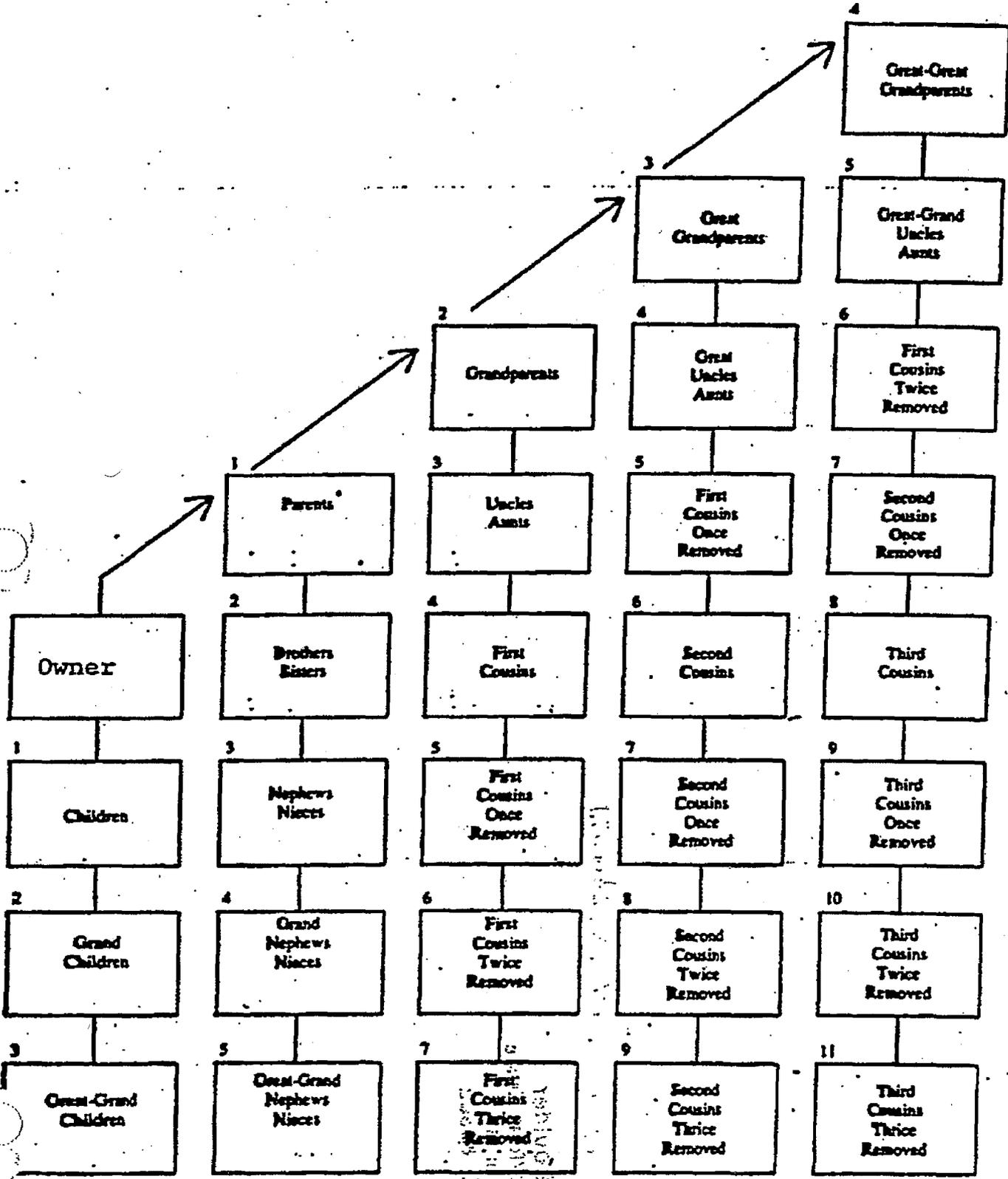
By:   
Its: City Manager

Attest:  


THE COLORADO CHAUTAUQUA ASSOCIATION

By:   
Its: PRESIDENT, BOARD OF DIRECTORS

Attest:  




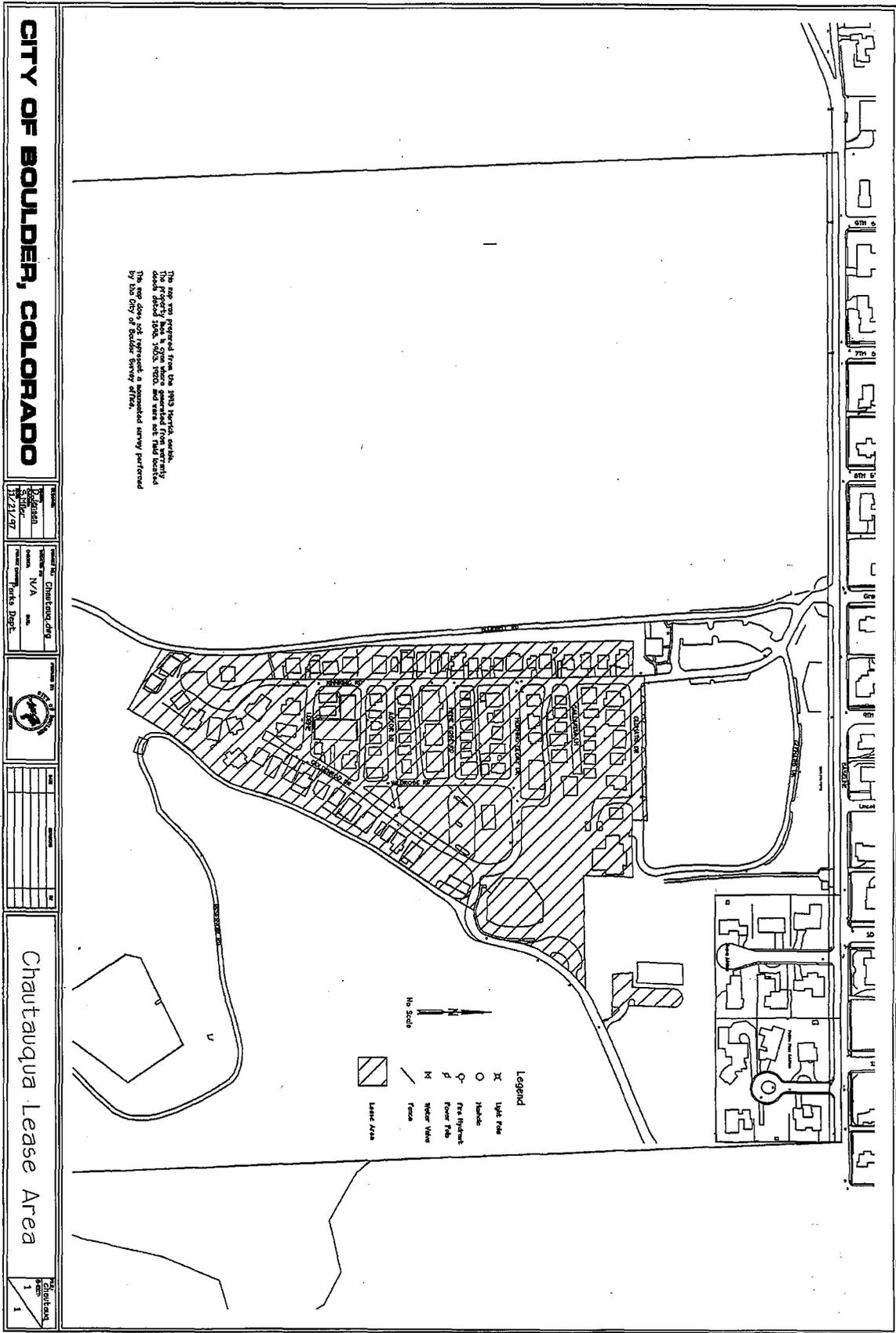
Figures show degree of Relationship / all Relationships include relationship to Owner by marriage or adoption

EXHIBIT B

EXHIBIT A

Commencing at a point along the East edge of Bluebell Road  
490'<sup>±</sup> South of the intersection of Bluebell Road and Baseline  
Road;  
Thence East, 690'<sup>±</sup> along a line described by the North edge of  
Clematis Road;  
Thence South, 170'<sup>±</sup> along a line parallel to and 10'<sup>±</sup> East of  
the East side of the Chautauqua Dining Hall;  
Thence East 300'<sup>±</sup>, along a line parallel to and 95'<sup>±</sup> North of  
the North side of the Chautauqua Auditorium;  
Thence South West, 1,400'<sup>±</sup> along a line described by the West  
edge of Chautauqua Reservoir Road;  
Thence West, 150'<sup>±</sup> to the East edge of Bluebell Road;  
Thence North, 1,400'<sup>±</sup> to the point of beginning.

Exhibit A



**GUIDING PRINCIPLES FOR PLACE MANAGEMENT AND FISCAL SUSTAINABILITY \***

**Purpose of the Guiding Principles**

These guiding principles represent a shared statement about the nature of the Colorado Chautauqua and the manner in which its primary stewards (the City of Boulder and the Colorado Chautauqua Association) intend to collaborate in the planning and management of its future.

**1 A Public Place**

Chautauqua is a shared community resource and a public place. It is essential that it remain a place that is accessible, safe and welcoming to the general public.

**2 A Historic Landmark**

The Colorado Chautauqua is a recognized national and local historic landmark. Preservation of its historic character is of the utmost importance when making decisions about its future.

**3 A Historic Mission**

Chautauqua supports cultural, educational, social and recreational experiences that are integral to its historic character and function. Preservation and perpetuation of its historic mission and supporting operations are paramount to sustaining the spirit of Chautauqua.

**4 A Balanced Approach**

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 principles 1, 2 and 3. Management decisions about surrounding uses should be made with sensitivity to potential impacts on Chautauqua. At the same time, Chautauqua should be managed and preserved in a manner consistent with the community's sustainability goals and with sensitivity to impacts on surrounding residential neighborhoods.

**5 Collaborative Place Management**

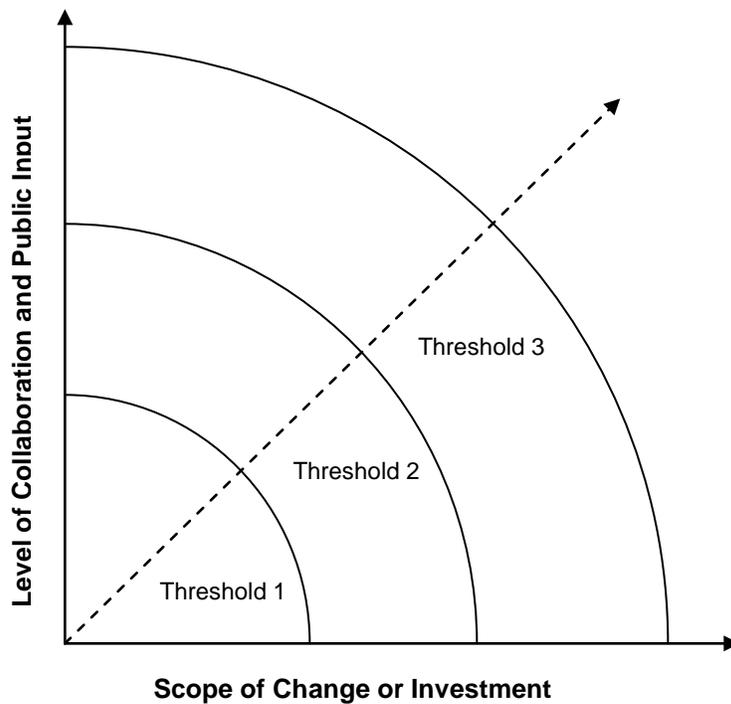
To achieve the balanced approach described in principle 4, the Chautauqua area (including the CCA leasehold and adjacent parks and open space) must be collaboratively managed. In particular, the following components of collaborative place management must be clearly defined and agreed to by the city and the CCA:

**5a Roles and Responsibilities.** The city and the CCA have the joint responsibility of preserving, perpetuating and improving the spirit and historic character of Chautauqua through collaborative stewardship and place management as well as the responsibility of managing specific public and private assets:

- ***The Colorado Chautauqua Association*** has the role of perpetuating the spirit and mission of the historic Chautauqua through production of cultural, educational, social and recreational experiences to benefit the Boulder community and visitors to the area. The CCA also has the responsibility, under its lease with the city, of managing and programming certain public assets and CCA's owned cottages, lodges and other facilities in a manner consistent with its historic mission and these guiding principles.

- The City of Boulder** has multiple roles, including: 1) **owner** of the underlying land throughout Chautauqua, three key historic buildings and an historic structure in the leasehold, serving in this role as landlord to the CCA; 2) **manager** of the public infrastructure throughout Chautauqua and of the public assets and lands outside the leasehold, including a public park and open space; and 3) **regulator** in terms of city laws. The city has the responsibility of representing the interests and priorities of the community at-large; maintaining safe and efficient access to and within the site; and coordinating policy and action in a manner consistent with these guiding principles.

**5b Thresholds for Collaborative Processes.** Effective collaboration among the multiple core entities responsible for the Chautauqua area’s management is critical. In general, the collaborative processes between CCA, the city and the public should proportionately increase as the scope of the proposed change increases as illustrated in the following graph:



The following is illustrative of “thresholds for collaboration” that will be refined, clarified and agreed to by the city and the CCA to guide future agreements and decision-making processes. It may or may not be the final recommendation to have three thresholds; that will be determined in the next steps.

- Threshold 1: Minor Modifications.** These encompass site or facility changes that do not involve significant changes to the site or public building exteriors; are led and financed primarily by a single party; and are consistent with these guiding principles. Coordination and collaboration between the CCA and the city is essential, but successful precedents exist that can be clearly defined and followed to ensure transparency, mutual understanding and continued success. *Examples of this type of change include recent enhancements to site way finding and interpretive signage and*

*current work to improve the bus pull-out and site circulation for improved pedestrian safety.*

- **Threshold 2: Significant Modifications Led by a Single Party.** These are changes to the site or facilities that significantly alter a city-owned building’s exterior, involve new construction or demolition, significantly alter historic site patterns or designs, and/or represent a significant change in use. This level of change may be proposed by a single party but will require a higher degree of coordination and collaboration early in the process to address the concerns or needs of other parties and ensure consistency with these guiding principles. The resulting process may or may not lead to shared financial responsibility, but should ensure transparency, opportunities for public input and clarity and timeliness of decision making for the concerned party(ies). *Examples of this type of change include the potential addition of ADA-accessible bathrooms for the Chautauqua Auditorium and the concept of a new free-standing building.*
- **Threshold 3: Significant Modifications Requiring Multi-Party Investment.** These are changes similar in scope or impact to those in Threshold 2, but which would clearly benefit from joint investment in their design and implementation. Due to the shared investment, these may require an even higher degree of collaboration early and throughout the process. *An example of this type of change is the potential undergrounding of utilities around and through the National Historic Landmark area.*

**5c Guiding Policy Documents.** To support a collaborative approach to management of the Chautauqua area, key policy documents should be jointly developed and adopted by the core parties. These include, but are not limited to, the Chautauqua Collaborative Stewardship Framework (which should be revised and finalized consistent with these guiding principles) and the Chautauqua Design Guidelines.

**5d Public Information and Input.** Because the management of Chautauqua is a shared responsibility across multiple entities, it can be difficult for the public to find complete and accurate information regarding planning and management-related issues for the area. A shared approach to providing public information and opportunities for public input shall be developed and implemented to support these principles’ goals for collaborative stewardship in the public interest.

## **6 A Cautious Approach to Change**

While it is recognized that changes within and around Chautauqua will occur over time, decisions over these matters must be thoughtfully and cautiously considered, and collaboratively managed in accordance with these guiding principles to ensure the preservation of Chautauqua’s historic character and unique sense of place.

## **7 Shared Financial Responsibility**

Because the Chautauqua area is a shared resource with community-wide as well as interest-specific benefit, investments in its care and upkeep should be shared in accordance with the benefit provided to each interest or user group as well as the community at-large. This does not remove the possibility of significant changes being funded by a single party; however, when there are clear benefits to multiple entities, joint funding should be considered.

## Definitions

*Enhancement:* to make greater, as in value, beauty, or effectiveness; augment; provide with improved, advanced, or sophisticated features. In the context of historic preservation, “enhancement” is usually used to refer to the repair, rehabilitation, restoration and, in some cases, the re-creation of historically documented features.

*Historic character:* those aspects of an historic property or historic district that accurately convey a sense of its past. The National Register defines seven aspects of integrity that are important components of historic character: location, design, setting, materials, workmanship, feeling, and association. National Historic Landmarks typically possess all of these aspects of historic character/integrity.

*Historic preservation:* an endeavor that seeks to preserve, conserve and protect buildings, objects, landscapes or other artifacts of historic, architectural or environmental significance.

*Leasehold:* the property managed by the Colorado Chautauqua Association under a lease agreement with the City of Boulder as shown in *Figure 1*. The city-owned property leased by the CCA includes all the land and three buildings including the Auditorium, Dining Hall, and Academic Hall.

*Manage:* to have oversight and responsibility for the on-going affairs and/or the upkeep of a site, property, organization or business.

*National Historic Landmark:* a nationally significant historic place designated by the Secretary of the Interior because it possesses exceptional value or quality in illustrating or interpreting the heritage of the United States.

*Place management:* the process of preserving or enhancing an area in a manner that maintains its integrity as a “place” with a unique character and function. This is practiced through programs to enhance a location or to maintain an already attained desired standard of operation. Place management can be undertaken by private, public or voluntary organizations or a mixture of each. Despite the wide variety of place management initiatives, the underlying common factor is usually to best meet the needs of multiple users and interests (e.g., residents, visitors, and owners) in a manner consistent with the nature of the place.



Figure 1: CCA Leasehold (outlined in red)

*Protect and preserve:* broadly speaking, protecting and preserving is the process of determining and implementing appropriate actions to minimize change to identified historic properties or districts that would adversely affect their historic character.

*Stewardship:* the ethical overseeing and protection of something considered worth caring for and preserving.

*\*The Guiding Principles for Collaborative Place Management and Fiscal Sustainability of the Colorado Chautauqua* (“the Chautauqua Guiding Principles”) adopted by the Boulder City Council and the Colorado Chautauqua Association Board of Directors in late 2012 following a thoughtful public process represent a shared statement about the nature of the Colorado Chautauqua and the manner in which its primary stewards (the City of Boulder and the Association) intend to collaborate in the planning and management of its future.



**INFORMATION PACKET  
MEMORANDUM**

To: Members of City Council

From: Jane S. Brautigam, City Manager  
Tom Carr, City Attorney  
Paul J. Fetherston, Deputy City Manager  
David Driskell, Executive Director of Community Planning & Sustainability  
Maureen Rait, Executive Director of Public Works  
Kirk Kincannon, Director of Parks and Recreation  
Mike Patton, Director of Open Space and Mountain Parks  
Susan Richstone, Deputy Director of Community Planning & Sustainability  
Bill Cowern, Traffic Operations Engineer  
Jeff Haley, Parks and Recreation Planning Manager  
Glen Magee, Design and Construction Manager, Facilities and Asset Management  
Joe Castro, Facilities and Fleet Manager  
Jeff Hirt, Planner II

Date: May 7, 2013

**Subject: Information Item: Update on Chautauqua**

---

**EXECUTIVE SUMMARY**

This memorandum provides council with background information and an update on staff work relating to Chautauqua. City Council approved the *Guiding Principles for Collaborative Place Management and Fiscal Sustainability of the Colorado Chautauqua (Attachment A)* at its December 4, 2012 meeting. The guiding principles represent a shared statement about the nature of the Colorado Chautauqua and the manner in which its primary stewards (the City of Boulder and the Colorado Chautauqua Association) intend to collaborate in the planning and management of its future.

At the December meeting staff proposed the following next steps for the first quarter of 2013:

1. Develop 2013 work plan for Chautauqua-related items
2. Initiate planning for new ADA bathrooms as a pilot
3. Examine governance, management and lease options

As part of implementing the guiding principles, City Council requested information on alternatives to the lease agreement that currently defines many of the relationships, governance processes and operating agreements between the city and the Colorado Chautauqua Association (CCA). The current lease expires on January 13, 2018. The Analysis section of this memo includes information on alternative legal relationships.

Over the last several months, CCA and city staff have made progress on a number of efforts. Each of these is described in more detail in the Analysis section. These steps constitute the early elements of the 2013 work plan. In the coming months, the integrated project team will continue to develop a more detailed work plan and schedule.

- Accessible Bathrooms - Formed a working group to develop and conduct a public planning process for new accessible bathrooms.
- Transportation, Parking, and Other Site Amenities - Evaluated parking and access management issues at Chautauqua and implemented pedestrian enhancements on Baseline Road. Worked collaboratively on the design and construction of a bus pull-out, one-way angled parking in the Open Space and Mountain Parks (OSMP) lot and the resurfacing of Kinnickinik and Clematis streets.
- Legal Alternatives - Governance, Management and Lease Options – continue to analyze the optimal relationship between the city and CCA to advance the guiding principles.
- Regional Air Quality Control Grant - Submitted for and tentatively received Regional Air Quality Control grant funds for an electric vehicle charging station at the Ranger Cottage.

## **FISCAL IMPACT**

While there is no immediate fiscal impact anticipated with this project, the guiding principles specify that the Chautauqua area is a shared resource with community-wide and interest-specific benefit, and future investments in its care and upkeep should be shared with the CCA in accordance with the benefit provided to each interest as well as the community at large. The anticipated investments for accessible bathrooms and transportation enhancements discussed in this memo may have fiscal impacts to the city at a later date. These will come before council for consideration when and as appropriate, but no decisions are required at this time nor are any specific investment commitments being made.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- **Economic:** Successful collaboration between the city and CCA to preserve Chautauqua as a historic landmark and cherished community resource will help support its continued role as a tourist destination and economic asset.

- **Environmental:** The guiding principles emphasize the need to take a balanced approach to management and preservation of Chautauqua in a manner consistent with the community's sustainability goals.
- **Social:** The guiding principles clarify community values related to the preservation and management of Chautauqua as a public place and resource, and confirm the importance of including the public and the surrounding residential neighborhoods in a collaborative decision-making process. The principles also note the importance of maintaining Chautauqua as an accessible and safe place for the general public.

## **BACKGROUND**

In May 2012, City Council formed a temporary working committee to draft, in close consultation with the CCA, a set of guiding principles for collaboration between the city and CCA on future planning and place management. This council direction was in response to a draft *Chautauqua Collaborative Stewardship Framework* developed with the CCA in early 2012. The temporary committee, which consisted of two council members and six city staff members, met four times with CCA representatives from July to October 2012 to draft the guiding principles. City Council approved the guiding principles (**Attachment A**) at its December 4, 2012 meeting.

## **ANALYSIS**

### **1. Accessible Bathrooms**

A working group of city and CCA staff is coordinating the effort to identify a recommended location and design for American with Disabilities Act (ADA) accessible bathrooms to serve the Auditorium, and potentially other visitors to Chautauqua. A needs statement, initial site analysis, and proposed approach and timeline have been developed and are described below.

The working group has been analyzing options for the location of the restroom facility to best serve the needs of Auditorium users and other visitors. The options under consideration include 1) an exterior freestanding structure and 2) repurposing of space within the Auditorium itself. The analysis will inform the number of fixture units that can physically be constructed and identify opportunities to serve a variety of users, including Auditorium patrons and other users of the greater Chautauqua area. Cost-benefit analysis will further inform the location and size decisions. Due to site constraints, the options are limited.

Work is also continuing to identify operation and management responsibilities and times of operation. This will have an influence on the physical location of the facility and initial and ongoing operational costs.

The draft project schedule is outlined below:

<b>ADA Bathroom Draft Project Schedule</b>	
Feasibility Analysis (including board check-in)	March – June 2013
Community Input (Auditorium season)	July 2013
Staff Recommendation to Boards and Council	September – October 2013
Preliminary Design	October – December 2013
Landmark Alteration Certificate Application	November 2013 – January 2014
Completion	May 2014

Need for Chautauqua Auditorium Accessible Bathrooms

The Chautauqua Auditorium, which has no restrooms, had a 2012 ticketed attendance of 42,045, plus approximately 6,375 non-ticketed attendees (those that listen on the lawn outside the Auditorium). Since the overall mission of the Colorado Chautauqua Association includes a focus on accessibility, this is a key issue.

**Attachment B**, Chautauqua Auditorium Accessible Bathrooms Needs Assessment, provides more detailed information.

Feasibility Analysis

A Feasibility Analysis is being prepared as a joint effort between two city departments - Parks and Recreation and Facilities and Asset Management - that will identify the pros and cons of the various locations, facility size opportunities and overall costs. The chart below shows the current decision-making matrix that will inform this process. While the chart evaluates both Auditorium users and those using publicly accessible areas outside of the Auditorium, the intent is to focus on the needs of Auditorium users. The analysis, however, will also look for areas that benefit both types of users.

## Chautauqua Auditorium Public Restrooms Feasibility Analysis

Evaluation Criteria	Option 1	Option 2	Option 3, etc.
<b>ADA Accessibility</b>			
<i>Addresses Americans with Disabilities Act (ADA)</i>			
Meets Standards			
Design Flexibility			
Exceeds Standards			
Accommodates Multiple Facilities			
<b>Maintenance</b>			
<i>Addresses maintenance issues over time</i>			
Regular O&M			
5 Year R&R			
Lifecycle Upgrades			
<b>Site Context</b>			
<i>Addresses consistency with the aesthetic and historic elements of the Auditorium area</i>			
Aesthetics			
Historic Preservation			
Appropriate Materials			
<b>Operational Feasibility</b>			
<i>Addresses safety and convenience for all users</i>			
Egress Conflicts			
Activity Area Conflicts			
Adequate Lighting and Safety			
Access and Visibility to All Auditorium Users			
<b>Users and Time of Operation</b>			
<i>Addresses a variety of user needs at different times of the year in the Auditorium area</i>			
Auditorium Event Patrons Only			
Picnic Shelter and Trailhead Users:			
Spring – Fall (Daylight Hours)			
Year Round (Daylight Hours)			
<b>Financial</b>			
<i>Addresses initial costs of construction and lifecycle costs</i>			
Design Complexity			
Construction Cost			
Lifecycle			
Permitting - Approvals			
<b>Legend</b>	<b>Negative Impact</b>	<b>No Significant Impact</b>	<b>Positive Impact</b>

Analysis efforts are slated for completion by June 1, 2013. The planning process for potential new ADA-compliant bathrooms is intended to act as a pilot approach for implementing the guiding principles and clarifying the thresholds in the guiding principles and the related processes for public input and decision-making. The guiding principles lay out a tiered approach where decision-making collaboration increases proportionately with the magnitude of the decision. The exploration of any new decision-making approaches will be coordinated with discussions regarding the current lease and options for its revision and renewal or an alternative form of agreement.

## **2. Transportation, Parking, and Other Site Amenities**

### 2012 Chautauqua Access and Parking Management Study

In the summer of 2012, the City of Boulder and the CCA undertook an access and parking management study of the Chautauqua area. The study used a variety of data sources to examine both parking utilization and duration. The study, which included all of the Chautauqua area and the surrounding neighborhood, also examined data from a series of hang-tags issued to different Chautauqua area user groups. In addition, directional traffic counts were taken at both entrances to the Chautauqua area. The city also installed several temporary improvements on Baseline Road intended to slow motor vehicle traffic and better facilitate pedestrian access to and from the Chautauqua area. The impact of these improvements was studied over the summer of 2012.

The results from this study can be found under the agenda for the [April 1, 2013 Transportation Advisory Board meeting](#).

The study found a variety of patterns, but none that resulted in a staff recommendation to implement any significant parking changes. Please refer to the study at the above link for more details.

### Bus Pullout

To improve the safety and functionality of the pedestrian and vehicular traffic flow entering Chautauqua, the city will be adding a lane designated for loading and unloading of visitors adjacent to the Ranger Cottage parking lot and Chautauqua Green. The project will provide a benefit to the community by creating a safe area for children and other groups to be dropped off at the park. This improvement is based upon input from the Landmarks Design Review Committee and will compliment the character of the site by balancing the aesthetic and historic quality while addressing safety and operational efficiency. Additionally, the Ranger Cottage parking lot will be improved through the addition of parking spaces and overlay of the existing asphalt.

The bus pull-out project has been a true partnership between the city and the CCA with funds and construction project management divided among CCA, and the city's OSMP and Parks and Recreation Departments. The Landmarks Design Review Committee approved the proposed bus pull-out improvements. Currently, construction documents are complete and a public information meeting with the neighbors will be facilitated this summer. In order to minimize impacts to visitors, the construction will begin in September and be complete by the end of the year.

### Other Amenities

The coordinating team (Parks and Recreation, Open Space and Mountain Parks, Facilities and Assets Management, and CCA) continues to meet regularly and to coordinate on programming and projects such as the above mentioned bus pullout . CCA projects that will require LAC processes in 2013 include window replacements as

part of cottage upgrades, alley resurfacing, expansion of dumpsters for composting, and possible revisiting of circulation patterns on Kinnickinick.

#### *Regional Air Quality Funding*

The city has also been tentatively awarded Regional Air Quality Council funding for three electric vehicle charging stations to be located at the 15<sup>th</sup> Street Parking Garage, Chautauqua Ranger Cottage, and Boulder Reservoir. Installation is anticipated for Summer 2013.

#### *Traffic Control Plan*

In addition, staff worked with the CCA to amend the traffic control plan for their “Special Event Permit” with the City of Boulder. The changes address concerns that on special event evenings, access to the Ranger Lot and Chautauqua green parking areas were restricted by CCA staff. The plan has been changed so that CCA staff will no longer control motor vehicle access onto the site directly from Baseline Road but rather will move this control point south to where Kinnickinick enters the leasehold area. This allows motor vehicles to circulate the Ranger lot and the Chautauqua green without restriction. This change was made for the summer of 2012 and it is intended to remain a part of the traffic control for future special events.

#### *Chautauqua Dining Hall Improvements*

The Chautauqua Dining Hall received significant structural and interior upgrades this year. The CCA replaced the wood shingle roof (and the wood shingle roofs on Cottage 100 and the two stone sheds behind – so now all roofs in Chautauqua are code-compliant), which also required structural support for the heavier roofing material. The roof stabilization and replacement project was funded 55% by a grant from History Colorado’s State Historical Fund. Deteriorated exterior trim, siding and gutters were also replaced with the roof project. The CCA joined the new operator of the Dining Hall, Three Leaf Concepts (also the operator of the Dushanbe Teahouse), in funding significant interior improvements to the Dining Hall. Highlights of the improvements include: energy efficiency upgrades (installation of high performance insulation, state-of-the-art heating and cooling, tankless hot water heaters, energy efficient lighting, water conserving plumbing features and diagnostic energy-saving tools); restored 1940s oak floors; the addition of two stone fireplaces; and updated bathrooms.

### **3. Legal Alternatives - Governance, Management and Lease Options**

CCA is a not for profit corporation governed by a fifteen member board of directors. Two of the directors are appointed by the City Council. Three are elected by the directors. One member is appointed by the private cottage owners. The remaining nine directors are elected by the Chautauqua membership. Anyone can be a Chautauqua member and have a say in Chautauqua’s governance.

The city’s current lease with Chautauqua expires on January 13, 2018, giving the community an opportunity to look at different ways of structuring the relationship

between the city and CCA. Although the current lease was executed on August 12, 2002, and runs from January 18, 1998, most of the terms were carried over from earlier leases going back many years. Many consider the current lease to be somewhat antiquated. It was drafted at a time when there were far fewer user demands and perhaps different community interests with respect to Chautauqua. Some of these issues were brought to light in the guiding principles discussions of the past year. The purpose of the following analysis is to help the City Council and the community consider various aspects of the legal relationship between the city and CCA and the various potential legal structures available.

A key question is whether a lease is the appropriate legal instrument to memorialize the city's relationship with CCA. A lease gives the lessee a possessory interest in the subject property. Generally a lease gives the lessee the right to exclude others and use the property in the same manner as the owner. Such use may be inconsistent with how many in the community see the city's relationship with CCA. The city is interested in having a third-party manage and maintain Chautauqua, but not have the right to make changes without engaging in an appropriate and transparent process.<sup>1</sup>

The obvious benefit of having an independent entity manage Chautauqua is that it saves the city the expense of maintaining and managing the facility and contributes its own financial resources to these efforts. CCA maintains city structures and provides programming for the community. If not for CCA, the city's taxpayers would bear the expense of these operations.

CCA's, whose principal source of revenue is rental income, owns and rents 60 of the 99 cottages along with the Missions House Lodge and Columbine Lodge. In addition to the rental income, CCA has access to other revenue sources that would not be available to the city. As a not for profit corporation, it can and does receive charitable donations. In addition, CCA receives grant funds from the Scientific and Cultural Facilities District, ("SCFD"). Charitable donations and grants together accounted for 13% of CCA's revenue in 2011.<sup>2</sup>

CCA's revenue comes principally from renting cottages for lodging. According to the 2011 annual report, CCA's revenue was derived as follows:

Lodging	66%
SCFD	10%

---

<sup>1</sup>It is important not to lose sight of the valuable contributions that the current arrangement has made to Chautauqua and the community. Chautauqua is in some ways a victim of its own success. The facility is so successful and popular that various different user groups seek influence over management. The current structure has its risks and benefits. The biggest risk is that the lease gives the city very little legal basis to control what happens at Chautauqua. As a practical matter, however, the city has established practices that provide significant municipal input into decision-making at Chautauqua.

<sup>2</sup> CCA has qualified for SCFD's Tier II, which entitles CCA to share in approximately 21% of the funds available to SCFD.

Subleases	7%
Public Events	7%
Private Events	5%
Donations	3%
Memberships	2%

The Current Lease between the City and CCA

It is important to understand the limitations in the lease. For example, the city and CCA are the only parties to the lease, although it governs the rights of the cottage owners, including limiting to whom they can sell their cottages. Individual cottage owners sublease the land under their cottages from CCA. The leased premises cover a triangle of land south of Clematis Drive, which is immediately north of the dining hall. The lease does not include the park land north of Clematis Drive or the open space that surrounds Chautauqua.

The lease, which gives CCA broad authority over the property, requires CCA to maintain all of the buildings and has the “privilege” of “remodeling the buildings and improvements and making such substitutions, additions, modifications and improvements thereto as [CCA] may deem proper.” In return, CCA is required to pay \$2,000 in taxes and \$2,500 in rent. CCA has year round use of the property and is required to give the leased property “the widest possible use in terms of scope and time.” Although given broad authority under the lease, as a practical matter, CCA works closely with city staff and the community on any proposed projects at Chautauqua. In addition, CCA is constrained from exercising its full authority by the city’s Historic Preservation Code. As a historic district, any changes to the exterior of any of the buildings require a Landmarks Alteration Certificate.<sup>3</sup>

Options for Legal Structure

**Option 1: Lease**

One option is to negotiate another lease with CCA. Any new lease would look significantly different from the current lease. The following are some issues that should be considered.

- **Geographic Scope**

Perhaps the most important element of a lease is what is being leased. The current lease is very broad in scope, encompassing a triangle of land south of Clematis Drive. Under the lease, CCA accepts responsibility for maintaining the entire area. Under this arrangement, CCA’s revenue is used to maintain city property. Council may want to consider a different scope or other limitations. Any limitations of the scope of the lease would need to be considered in light of the funding needs.

---

<sup>3</sup> One obvious change would be to draft language that places the relationship in the context of existing legal limitations.

The roads present a unique challenge. The roads have not been maintained to the level of a city street, although Public Works does some snow removal and minor street repairs. It is not clear whether improving the streets to the level required for normal residential streets would be appropriate or necessary. Nevertheless, it is important to consider how this issue and other maintenance issues should be addressed in the future.

- **Parties**

It is important to consider the city's relationship to the cottage owners. The cottagers own their buildings but the city owns the land on which they are constructed. The city leases the land to CCA, which in turn subleases the land to the cottagers. The lease includes detailed provisions regulating CCA's subleases including a right of first refusal on cottage sales. The benefit of this arrangement is having a third party handle the administrative details of the individual subleases, including collection of rent and limiting assignment of leases. The downside is that the cottagers have no direct relationship to the city. One issue to address is whether the city's relationship to the cottagers might be enhanced by a change in the nature of the relationship. The city also leases the land where the Dining Hall is to CCA, and they in turn sublease that space.

- **CCA's Duties**

The language quoted above requires CCA to maximize the use of the facility twelve months a year.<sup>4</sup> Any new lease should be clear about the nature and extent of the expectations that the city has for CCA. Some members of the community have been outspoken in expressing their views that CCA should limit the use of facilities. Council has an opportunity to give direction about the appropriate balance of various stakeholders' visions for Chautauqua. The current lease encourages CCA to maximize revenue and to invest that revenue in Chautauqua. To the extent that a new lease restricts CCA's activities, Council should consider whether there needs to be a concurrent reduction in CCA's responsibilities or additional revenue streams to replace any loss of revenue from restrictions imposed.

- **Rent paid to the City**

The existing rent paid by CCA to the city is a nominal amount. Nominal rent makes sense in the context of the true purpose of the existing lease. That is, the current lease is structured to facilitate CCA's management of Chautauqua. The real benefit that the city receives is the management, maintenance and operation services that CCA provides. Nevertheless, the rent amount should be considered.

---

<sup>4</sup> The language quoted is: "CCA has year round use of the property and is required to give the leased property "the widest possible use in terms of scope and time."

- **Governance**

The current lease gives the city the right to appoint 2/15<sup>th</sup> of CCA's board. There has been some discussion about increasing the city's control over CCA by increasing the number of board members appointed by the city. As council considers this issue, it is important to be mindful of the benefits accrued from CCA's status as a not-for-profit corporation.<sup>5</sup> As long as CCA remains an independent entity this should not be a problem, even with increased city representation on its board. Increased city control would not affect CCA's federal non-profit tax status. CCA would, however, lose that status if it were converted to a city department.<sup>6</sup> Tax exempt status turns on the purpose of the organization. A municipality does not qualify for federal non-profit status, because a municipality has purposes beyond those allowed for non-profits. If the ability to receive donations is important, it will be necessary to make sure that CCA's focus remains on appropriate charitable purposes.

- **Parking**

The principal change to the 1998 lease was an additional section on traffic and parking control. The lease gives CCA the authority to restrict traffic and parking "when the available parking space therein has been filled or is close to be filled." The lease also contemplates the creation of a residential parking district in the surrounding community, which has not been done. The different needs of the various Chautauqua users and the lack of mass transit access cause a significant parking problem. Open space and parks users can fill all of the parking spots. CCA has an interest in having parking available for lodging guests, Auditorium audiences and dining hall patrons. Balancing these competing needs will perhaps be one of the most difficult issues in this process.

- **Term**

Charter section 111 was amended by the voters at the last election to allow for lease terms up to 30 years "if the tenant makes significant improvements to the property that the council finds provide a public benefit." A 30 year lease requires approval by a 2/3 vote of council.

## **Option 2: Management Agreement**

As an alternative to a lease, the city could enter into a management agreement with CCA. The principle benefit that the city receives from CCA is management of the city facilities. This would be a good approach if the city is looking to take over maintenance and operations. This approach would eliminate CCA's property interest in Chautauqua. It has the benefit of more accurately reflecting the true relationship between the city and CCA. It might be challenging to cover all of the relationship in a management agreement. The biggest challenge is the relationship with the private cottage owners. They need some property interest in the land underlying their cottages.

---

<sup>5</sup> In 2011, three percent of CCA's revenue came from donations.

<sup>6</sup> Rev. Rul. 60-384, 1960-2 C.B. 172

The current sublease arrangement provides such an interest, which CCA manages. Switching to a management agreement with CCA would require the city to enter into some other arrangement with the private cottage owners and any other sub lessees, including Dining Hall operators.

### **Option 3: Condominium**

A condominium is a legal form of property ownership that allows for common ownership. It changes the concept of ownership from owning a footprint on the ground and whatever is built on that footprint to ownership of airspace. While most people think of condominiums as a form of apartment ownership, it is a legal tool often used for complex projects. For example, both the St. Julian development and the Boulder Junction project involve complex condominium units. In the former, the hotel and the garage are separate units. In Boulder Junction there are five different owners. Some of the common elements are owned by all five owners, and others are to be shared by a smaller subgroup of the owners.

The advantage of the condominium form is the breath of conditions and rights that can be controlled through the condominium declaration. For Chautauqua, this would be a useful form, if Council is interested in providing to the cottage owners some perpetual and vested rights that are greater than those enjoyed by a lessee and less than fee simple to the land. That is, rather than having renewable 20 year right to lease the land underlying the cottages, they would own condominium units representing the footprint that the cottage sits on. The cottage owner would have something they owned in a recognized ownership structure rather than owning a building subject to a land lease. Sale of the units could be restricted in a manner similar to the restrictions on subleases in the current lease.<sup>7</sup>

A condominium allows for greater flexibility in structuring the relationship. It also would allow for cottage owners to have more security than that provided by a 20 year sublease. It also allows for portions of the area to be held in common ownership and subject to the terms of the condominium declarations. Such a change would recognize that it is highly unlikely that the city would ever try to drive the cottagers out.

Sale of the condominium units also could be a mechanism to generate funds for improvements to the infrastructure, such as the roads and other common features. Annual fee payments could also generate revenue for ongoing maintenance or to support issuance of revenue bonds for major projects.

---

<sup>7</sup> Cottages owners can transfer the sublease “within the fourth degree of consanguinity.” Degrees of consanguinity are measured by the distance to a common ancestor. Thus, children are in the first degree of consanguinity, because they are only one step to common ancestors, their parents. Great, great grandchildren are in the fourth degree of consanguinity. This provision allows for CCA to have a first right of refusal before transfer to someone outside the fourth degree of consanguinity.

## **NEXT STEPS**

### **Accessible Bathrooms**

- Working group to prepare feasibility analysis, including boards and council check-in (March - June 2013)

### **Transportation, Parking, and Other Site Amenities**

- Continue evaluation of temporary improvements on Baseline Road (ongoing)
- Host public information meetings on bus pullout construction (Summer 2013)

### **Legal Alternatives - Governance, Management and Lease Options**

- Discuss legal options and decision-making options with council (4<sup>th</sup> quarter 2013 during study session)

**Continued Coordinating Team Meetings** (Parks and Recreation, Open Space and Mountain Parks, Facilities and Assets Management, and CCA) to address ongoing program and site management.

Chautauqua Maintenance  
Summary of City Practices

Roadway maintenance work provided at Chautauqua by the Parks and Recreation Department is as follows:

- Snow plowing of the entire perimeter road and parking areas around the Chautauqua Green, including; Kinnikinic Road south from Baseline to Clematis Drive, east on Clematis Drive and around the circle south and west on Sumac Drive, back to Kinnikinic, and
- All road and parking lot maintenance and repair, overlays of failed surfacing, and drainage improvements.
- Currently, Clematis Drive is part of the CCA lease area while the other roads described above are located outside of the lease area.

Landscape maintenance provided in the Chautauqua lease area by the Parks and Recreation Department is as follows:

- All shrub and flower bed planting and maintenance in front of the Chautauqua Dining Hall, including the two shrub and perennial landscape beds along Clematis Drive and the three raised annual flower beds located on the Dining Hall plaza area (CCA has provided funds to purchase the annual flowers in the past).
- Provide turf maintenance for the lease area directly north of the Auditorium.
- Tree pruning off of the overflow parking lot to prevent branches from damaging the fence or impeding play at the city tennis court.
- Irrigation water for the area around the Auditorium and maintenance for the shared irrigation backflow system. Parks staff works with CCA staff to coordinate the watering schedules to ensure effective watering.
- Sidewalk plowing of the north/south walk running from Morning Glory Drive along the west side of the Auditorium, the east side of the Dining Hall, to Clematis Drive.
- Trash and litter removal from the south portion of the overflow parking lot located on the east side of the city tennis courts.
- Cleaning and maintenance of the restrooms located below the Dining Hall, including extra cleanings to accommodate seasonal special events.

Roadway maintenance work provided at Chautauqua by the Public Works Department is as follows:

- Snow plowing of the perimeter roads in and out of the Park - Kinnikinic Road south from Baseline to the terminus at Bogges Court and Lupine Lane east to Goldenrod Drive, returning to Baseline along on the Chautauqua Res Road and 12th Street, and
- Minor asphalt repairs - pothole patching and minor, thin (1" - 2") overlays of failed surfaces along the roads that are plowed.

Utility maintenance work provided at Chautauqua by the Public Works Department is as follows:

- Water mains are located in several roadways and are connected to public buildings and the private residences through service lines. Fire hydrants provide fire protection. Water meters are remotely read.
- Preventive maintenance of water main line valves and fire hydrants occurs on a 1-3 year interval and fire hydrants are flushed when serviced or as necessary. Corrective maintenance occurs generally on an as needed basis and includes the repair of water main, service lines, valves, fire hydrants and meter pits.
- The waste water sewer mains are located in several roadways and merge into one line that runs north under the park to a collector main on Baseline. Several sections of pipe have been rehabilitated with CIPP (Cured in Place Pipe) over the years. Maintenance is generally performed every 5 years and includes a minimum of CCTV (Closed Circuit TV) inspection with annual maintenance work program based on inspection needs.
- Swales collect storm water on the south end of the lease area. There are several catch basins and culverts collecting storm water in the lower loop road around the park that then drain out into a collector storm water main on Baseline Road. Maintenance of the piped storm water system is provided as necessary and includes a minimum of CCTV (Closed Circuit TV) inspection every 5 years with annual maintenance work program based on inspection needs.

Visitor and facility maintenance work provided by Open Space and Mountain Parks

- Maintenance, plowing and resurfacing of Bluebell road
- All trails and trailheads leading into and out of the Chautauqua
- McClintock trailhead
- Ranger Cottage building which includes public restrooms and building maintenance
- Snow plowing and resurfacing for the western parking area in front of the Ranger Cottage
- All landscaping west of Kinnikinic road and north of the ranger cottage including the native plant garden in front of the Ranger Cottage.
- All information and way finding signs at Ranger Cottage and at trailheads
- Placement and servicing of all waste receptacles at all access locations
- First responder for all accidents, injuries and wild land fires that occur in this area
- Traffic and crowd control for visitors to this area on busy weekends and large holiday events such as the 4<sup>th</sup> of July.