

September 26, 2016

Deb Gardner, Chair
Elise Jones, Vice Chair
Cindy Domenico
Boulder County Commissioners

Re: Request for Recusal on Twin Lakes Voting

Dear Boulder County Commissioners,

We are writing this letter to request that you recuse yourself from voting on September 27th, 2016, regarding the Boulder Valley Comprehensive Plan (BVCP) and Twin Lakes land-use change requests.

The Boulder County Personnel & Policy Manual obliges Cindy Domenico, Elise Jones, and Deb Gardner to recuse themselves because they currently sit on both the Board of County Commissioners (BOCC) and the Boulder County Housing Authority (BCHA).

Section I, Number I.6(B)8 of the Policy Manual sets forth the eligibility of individuals to serve as members of Boards and Commissions. That section unequivocally states: “Persons may only serve on one (1) Board or Commission at a time.” Indeed, this policy exists “to avoid possible conflict of interest situations which could occur as a result of county employees or Elected Officials (as defined above) serving as voting members on Boards and Commissions.”

Here, the County is violating its own policies. Cindy Domenico, Elise Jones, and Deb Gardner all serve on both the BOCC and BCHA in violation of Section I, Number I.6(B)8 of the Boulder County Personnel Manual.

Although under some circumstances Colorado statutes may permit members to hold dual offices, incompatible fiduciary duties make it imperative for members such as yourselves to avoid situations where conflicts of interest may arise and for you to recuse yourself from voting where you are or may appear to be biased or impartial. Moreover, your dual membership on boards—with one board seeking a legislative amendment and the other board functioning as one of four bodies of review meant to protect the public interest—undermines public trust in the legislative process, specifically regarding the BVCP and Twin Lakes land use.

In other words, under the circumstances, your membership on both boards fails the “sniff test” regarding members’ bias or impartiality: it smells fishy for you to vote on the Twin Lakes land-use change requests while serving on both the BOCC and the BCHA. You are voting on land-use change requests for land you in effect control and for another property BCHA hopes to develop and manage.

The proposed mixed density and medium density amendments would directly affect the use and monetary value of BCHA's property. This is a clear conflict of interest—and the very situation Section I, Number I.6(B)8, of the Policy Manual aims to avoid. The BOCC cannot impartially vote on legislative amendments that they themselves put forward while acting as the Board of the BCHA.

Furthermore, we have raised concerns about this conflict of interest in the past. You have claimed you can remain objective while serving competing interests in these two roles. All evidence, however, suggests the contrary and further demonstrates your inability to remain objective or even acknowledge the existence of a conflict of interest. Many of your actions have revealed an arbitrary and capricious nature in decisionmaking and disregard for your own procedures pertaining to land-use change requests. The following non-exhaustive list of examples is illustrative of this conduct and includes:

- The BOCC violating Boulder County's Policy II.9 Conflict of Interest,¹ when it failed to disclose a conflict of interest whereby elected officials (the commissioners) were exercising a substantial discretionary function with county contracts and purchases (i.e., sale of 6655 Twin Lakes Road, \$50,000 architect contract) while at the same time controlling BCHA's participation in the transaction.
- The BOCC transferring the Twin Lakes parcels from Boulder County to BCHA in a business meeting without public comment on October 1, 2015. Open records show that prior to the transfer, the County deliberately disregarded Twin Lakes Action Group's (TLAG) request for an open-space acquisition review for the land.
- The County deliberately restricting constituent access to decision makers. At the September 21, 2016, planning commission deliberation, we discovered that several planning commission members never received the studies, analyses, and letters that our constituent group, TLAG, sent to them. This was because the county refused to send TLAG's emails to the Planning Commission as the legislative process demands. Instead, the county buried the information more than 300 pages into an online public-comment pdf file. The county further obstructed TLAG's ability to inform the Planning Commission of this critical information by subsequently refusing to even inform the Planning Commission that new information had been added to that pdf file.
- The Boulder County Attorney's Office advising planning commission members against meeting individually with TLAG members about the Twin Lakes

¹ "An employee or Elected Official exercising any substantial discretionary function in connection with a county contract, purchase, payment, or any other financial or monetary transaction who is a director, president, general manager or similar executive officer or who owns or controls, directly or indirectly, a substantial interest in any business or entity participating in the transaction, shall give seventy-two (72) hours written advance notice of the conflict to the BOCC. Failure to disclose a conflict of interest may be grounds for immediate termination, and the employee may be charged according to C.R.S. Section 18-8-308 and Section 18-8-308 as amended."

legislation. At the same time, BCHA and staff had unfettered, direct access to these decision makers.

- The BOCC declining to conduct an ethics investigation into citizens' concerns about BCHA lobbying activities and official misconduct. Instead, without ever meeting with the aggrieved constituents, the BOCC ignored these concerns, and, remarkably, then sent a county-wide email *condoning* BCHA's actions. Thus, the Board of the BCHA is effectively policing itself while choosing to ignore constituents' complaints as well as violations of Boulder County policies.
- The BOCC preemptively approving a \$50,000 contract for an architect for the Twin Lakes *before* even voting on the competing land-use change requests. Although you claimed the contract was just a preliminary feasibility study, the terms of the contract are clearly much broader and presumptuous in scope.
- The BOCC moving forward Request #36 for Open Space for further study at the screening hearing but refusing or failing to conduct any additional study of the request.

With these actions and others, you have demonstrated an entrenched bias, a clear breach of fiduciary duty to the citizens of Boulder County and violation of public trust. We demand that you remedy this by, at a minimum, recusing yourself from the Twin Lakes land-use change request voting tomorrow, September 27th, 2016.

Robert Wechsler, director of research for City Ethics, has said, "One person may not serve two masters. The duties of loyalty and fidelity to the public interest—the soul of public service—cannot survive in an atmosphere in which the holder of multiple offices must disregard the interests of one constituency in order to serve the interests of another."

As it pertains to the Twin Lakes land, Wechsler's quote has proven to be true and the democratic process has been abandoned. It is our sincere hope that we can resolve this issue now, without resorting to litigation, and begin to restore public trust in the Boulder legislative process by your voluntary recusal from the land-use change request voting.

Sincerely,



Dave Rechberger, Chairman, Twin Lakes Action Group