

**In re: Boulder Valley 2015 Comprehensive Plan Update
Requests for Changes**

**Twin Lakes Action Group
Position Paper on Mixed-Density Residential Land Use Change Requests in Gunbarrel
6655 Twin Lakes Road, 6600 Twin Lakes Road, & 0 Kalua Road**

I. INTRODUCTION & SUMMARY

This Position Paper is submitted by the Twin Lakes Action Group (TLAG), a growing and vibrant organization of over 150 citizens within the Gunbarrel community united behind a positive vision for enhancing the quality of life across Gunbarrel, protecting and restoring the environment, giving residents a voice in the absence of elected officials representing the community, and preserving the rural residential look and feel of the Twin Lakes community.

TLAG submitted change requests to designate the Twin Lakes parcels as open space consistent with the Boulder Valley Comprehensive Plan (BVCP) and Boulder County Open Space acquisition criteria, which provides that the first priority for acquisition is lands adjacent to existing open space and threatened by development. As the rationale for TLAG’s “Greater Twin Lakes Open Space” requests are set forth therein, this paper responds to the change requests submitted by Boulder County Housing Authority (BCHA) for 6655 Twin Lakes Road, and Boulder Valley School District (BVSD) for 6600 Twin Lakes Road and 0 Kalua Road¹.

While the County single-mindedly pursues development of these lands, it has ignored alternative uses and its own open space acquisition policies. The County has failed to study or provide any meaningful analysis of either: 1) the suitability incorporating the three publicly owned parcels into the adjacent Twin Lakes Open Space, which is the heart and soul of the Twin Lakes community; 2) the potential impacts and suitability of the Mixed-Density Residential (MXR) change requests for this specific location; or 3) whether better, more appropriate locations for the proposed developments are available. Because the County and BVSD have not done their homework, the MXR requests are premature and must be denied at this time.

Of all the change requests submitted for the 2015 Update, the most interest and controversy appears to center around these three Gunbarrel parcels. In contrast to other parcels where generally one and sometimes two change requests were received, at least eleven change requests were submitted for 6655 Twin Lakes Road, six for 6600 Twin Lakes Road, and five for 0 Kalua Road.²

The Boulder Valley Comprehensive Plan is designed to “protect the natural environment of the Boulder Valley while fostering a livable, vibrant and sustainable community.”

¹ The legal description of the two parcels of land owned by BVSD as stated in the BVSD’s land use request is Tract 4008 described under parcel numbers 146311300009 and 146314200001. Approximately .4 miles east of 63rd Street off Twin Lakes Road (south side) in Gunbarrel. No address number has been assigned to this property. One of the parcels has been identified as either 6600 Twin Lakes Road, 6500 Twin Lakes, or even 6650 Twin Lakes Road. For this Position Paper, the addresses will be 6600 Twin Lakes Road and 0 Kalua Road to avoid confusion.

² Sometimes, clicking on the interactive map posted from BVCP indicates twenty change requests for 6655, ten or eleven for 6600, and five or six for 0 Kalua Road. Regardless of the actual numbers, there is obviously great public and community interest in these properties’ status under the BVCP.

Current zoning for the parcels is low-density residential, open space, and public. For all three parcels, the current owners are applying for Mixed-Density Residential (MXR) designations. If granted, the owners' requests could ultimately result in the development of as many as 360 public and/or affordable housing units. The change requests submitted by TLAG, residents, and neighbors seek public uses for these public lands consistent with the existing character of the community and adjacent uses: including Greater Twin Lakes Open Space, Environmental Conservation Area, Natural Ecosystems designation, and Area III Rural Preservation Area.

The Open Space and environmental preservation requests are: 1) consistent with the goals and objectives of the BVCP and surrounding uses; 2) consistent with existing community character and the interest of the community; and 3) designed to protect the environment, enhance the community, improve the quality of life for all County residents, and build upon existing Open Space holdings to significantly expand the environmental, recreational, and related benefits provided by the existing Twin Lakes Open Space.

For these reasons, TLAG's change requests should be approved, and the MXR requests denied. The requests should be denied because the County, the City, or other responsible governmental authorities have failed to date to: 1) follow its own policies by not analyzing the Open Space acquisition potential of these properties, 2) adequately involve the community in the decision-making process, 3) adequately disclose the full range of potential impacts of granting the MXR requests, 4) adequately investigate whether the location or other characteristics of the three properties make them suitable for the proposed high-density uses currently being sought, and whether more suitable alternative locations exist; or 5) require affordable or public housing components in recently approved housing development in Gunbarrel.

Inadequacies in the decision process, errors in the applications, and conflicts with the BVCP require denying the MXR requests. The highest and best use of these publicly owned properties is as Open Space, based on their location in unincorporated Gunbarrel, alignment with the BVCP and the support of up to twelve local neighborhoods. With the County's purchase of 6655, the 2015 Update presents a unique opportunity to create a Greater Twin Lakes Open Space in the heart of the community.

As set forth below:

- The MXR requests are premature in addition to being inadvisable, inconsistent with the BVCP, and doomed to failure because they would risk permitting unsuitable uses for public housing projects in a location that neither supports that use, nor is able to serve the needs of future residents of such projects.
- The MXR requests are generally inconsistent with the goals, objectives, and provisions of the BVCP. Having passed on the readily available opportunity to incorporate uses of the type and at the density level now proposed for these three undeveloped properties in recently developed apartment and condominium projects in industrial areas of Gunbarrel, the current attempt to force square pegs into the round hole of low-density rural residential neighborhoods bordering on Open Space, riparian areas, wildlife habitat, and regional trails is doomed to failure.
- By contrast, the BVCP offers ample support for the change requests submitted by TLAG and local residents. These uses would further the goals and objectives of the plan, and immeasurably enhance the community while furthering environmental protection on three important parcels. Notably,

Boulder County Open Space has declined to so much as conduct a formal review or recommendation regarding the potential of these properties for open space and environmental protection, let alone commission a formal review allowing all County residents and interested civic groups to participate and contribute their knowledge and expertise.

- TLAG is not unmindful of the community need for affordable housing, and stands ready to identify more suitable and appropriate locations for the types of development which BHCA seeks to pursue on these three undeveloped parcels which are currently zoned low-density residential, open space, and public.

In sum, granting TLAG's requests and denying the MXR requests will best protect the natural environment of this locale while fostering a livable, vibrant and sustainable community.

II. CONTEXT

The Boulder County Zoning Resolution, February 4, 1944, provides:

A zoning ordinance imposes such reasonable limitations upon the right of a property owner to use his property as he pleases, as may be determined by considerations of public health, safety, and welfare. But he may not use his property as he pleases without regard for his neighbors, or the effect of his actions upon the welfare and prosperity of the whole community of which he is a part. Nor is a zoning ordinance merely a temporary matter. It is an integral part of public planning, which takes the long view. The use of land is a granted right, but the land itself remains long after individuals who have exercised such rights have passed away. Rural zoning contemplates not only benefits in the present, but also seeks to conserve our resources for future generations.

This paragraph from the County's original zoning resolution is still quoted in Article 4 of the current Boulder County Land Use Code. The direction and commitments contained therein have been found durable enough to stand unchanged for over seventy years. The requests for annexation and change of zoning must be considered in the context of the County's time-honored adherence to land use and zoning policies that take account of the surrounding community and weigh those interests against the desires of a property owner to do as he pleases without regard to others. The durable benefits of long-term conservation have been central to decision-making since day one, as has a forward-looking approach that benefits future generations.

III. BACKGROUND & CONCISE STATEMENT OF FACTS

The land at 6655 Twin Lakes Road is an open field of roughly 10 acres within unincorporated Gunbarrel. The north property line abuts the County Twin Lakes Open Space. To the south, across Twin Lakes Road, is a second open area of roughly another 10 acres in size, listed as 6600 Twin Lakes Road and 0 Kahlua Road. The latter two properties are owned by the BVSD. The Red Fox Hills subdivision lies east of these open spaces, and the Twin Lakes subdivision to the west, and open space purchased by the Gunbarrel Public Improvement District (GPID) to the southeast

When the area was first platted and subdivisions started being developed, it was generally communicated and understood that the BVSD property was reserved for an elementary school to serve the local children, while the Archdiocese intended to build a parish on the 6655 Twin Lakes Road

property. Neither organization, for reasons of their own, went forward with these plans, and it is undisputed that all three properties remain undeveloped, and largely bordered by open space.

A paved multi-use trail runs through the Twin Lakes subdivision, ending at the southwest corner of the BVSD owned open land. For at least the last 25 years, there has been a social trail from the end of the current path, running north, across 6655 Twin Lakes, connecting to the Twin Lakes Open Space. These paths, generated and kept active by the local community, establish the current use of the properties as open space.

Importantly, a proposed trail connection on the Trails Map of the BVCP (at 100) runs through both these properties. According to the BVCP (at Page 87):

The Boulder Valley Comprehensive Plan Trails Map is a comprehensive guide for existing and proposed trails and trail connections for the entire Boulder Valley. It shows proposed trails that have been planned through departmental master planning or area planning processes as well as trail connections that are important links in the Boulder Valley and regional trails systems.

These properties, along with the Twin Lakes Open Space, are the heart of the Twin Lakes community. On a calm day, one may find a family launching model rockets. On a windy day children fly kites. On any day one sees hundreds of locals and visitors staying at the Twin Lakes Inn enjoying the open space. Bicyclists use this land as a link between trails and Twin Lakes Road and more adventurous bicyclists enjoy the pump track at the south end of the 6600 Twin Lakes Road property.

On May 28 2013, Boulder County quietly purchased the property at 6655 Twin Lakes Road from the Archdiocese of Denver for \$470,000 from the County general fund. For the next two years, there was no public discussion or notification of any future plans for use of the open space.

The first public indication of the County's plans for the property was a December 13, 2014 article in the Boulder Daily Camera, entitled, "Boulder: Is affordable housing working?" While discussing Boulder Housing Partners' history of providing affordable housing, the article mentioned, "Another 62 rental units are planned at Twin Lakes in Gunbarrel." The plans revealed by this story pre-dated any outreach to the community.

After some investigation uncovered the County's 2013 purchase of the property, a few citizens living in the neighborhood attended the BCHA's meeting on March 31, 2015 to ask about plans for the land. They were told there were no current plans for the land, that it was in the County's land bank and that, "This potential project does not even have a work plan, which indicates it is a low priority for the next several years."

Less than one month after the BCHA meeting, by April 21 2015, the County had posted a PDF on the website <http://www.ourbouldercounty.org>, echoing this assertion. The BCHA information page on 6655 Twin Lakes Road stated: "At this time, Boulder County and Boulder County Housing Authority anticipate planning for the development to occur in a 3-5 year time frame."

By June 4, 2015 the BCHA information page had changed to the following:

With the goal of delivering new affordable housing opportunities by 2020, BCHA plans to request approval from the BCHA Board of Directors on June 30, 2015 to submit a land use

designation change request as part of the Boulder Valley Comprehensive Plan 2015 Major Update. If approved by the Board, BCHA will submit that request to the City of Boulder in August 2015. Over coming months BCHA will develop a preliminary project schedule which will include the anticipated timing for an annexation request to the City of Boulder.

In addition to the opportunities for public participation and comment that accompany the City of Boulder's Comprehensive Plan update, annexation and permitting processes, BCHA will host focus groups, community meetings and an interactive web platform to offer multiple venues for the community to stay informed and involved in the planning and development process for this project.

Within these 6 weeks the project had gone from 3-5 years for the planning phase to project completion in that time, despite personal assurances from BCHA personnel that no immediate action was contemplated. It is not credible that BCHA had no intention of accelerating the project's time schedule in March when they had a fully developed plan and time schedule only 6 weeks later.

As we now know, developing this property under the requested MXR density is a high priority for BCHA in the 2015 BVCP Update. The County currently appears committed to putting its full staff and budgetary resources behind the requested change, without considering alternative uses or considering the community's interest in a more sustainable, conservation-oriented vision for the property.

The first public outreach by the County was a "Community Meeting on Affordable Housing in Gunbarrel," held by the BCHA on August 13, 2015. This meeting addressed no general questions about the absolute lack of upfront community involvement or public comment opportunities up to that date, or the avowed need or long term plan to create either affordable or high-density, low-income public housing in Gunbarrel. Instead, the meeting was specifically held to present the BCHA's pre-determined plans to develop 6655 Twin Lakes Road as an affordable or public housing site. At this meeting, the BCHA personnel specifically stated that they had no information on the open space across the street owned by BVSD, and that the BVSD would make its own plans for that land.

Despite calling it a community meeting, BCHA clearly had no intention of actually listening to the community. The notes for this avowed "public outreach" meeting were posted on <http://www.ourbouldercounty.org> by Jim Williams, Communications Specialist, on July 27 2015 at 8:02 a.m. -- more than two weeks *before* the meeting was held. Advance posting of the minutes might reasonably be construed as a strong indicator of a preordained outcome. Otherwise stated, public officials attended to talk, rather than listen, to interested residents.

BCHA's lack of transparency is reinforced by the BVSD land use requests. The first public indication of the BVSD's intent to develop the land was their submission of the change requests on October 2, 2015 -- the same date as the BCHA's request. The two requests are virtually word-for-word copies of one another. Both requests declare the intent of each organization to partner with the other in planning the parcels. See Exhibit 4.

Willa Williford, a member of the BCHA staff, stood in front of the community on August 13th and declared they had no idea of BVSD's plans, despite the fact she had already acknowledged in an e-mail dated June 4th that BCHA and BVSD personnel had met on the 3rd of June to walk the land. Six weeks after the community meeting, the two organizations had a fully developed plan to jointly develop the two parcels. This strains BCHA's credibility to the breaking point.

IV. ISSUES & ARGUMENT

Multiple issues with the properties and the process to date clearly preclude granting the land use designation requests from low density residential to mixed-density residential. These issues include failures in the public process, lack of due diligence on the part of the BCHA, incomplete and incorrect assertions in the applications for land use designation change by both the BCHA and the BVSD, and conflicts with the known desires of the Gunbarrel subcommunity (as stated in the BVCP). Finally, and definitively, the development plans, as stated in the BVSD and BCHA land use change requests, conflict with multiple core values, policies and commitments of the BVCP.

1. Failures to adhere to public process preclude approval of the MXR change requests.

Multiple failures in the public process need to be corrected before the MXR requests can be considered because, if approved, that new designation would result in permanent development of these properties, which are currently owned by governmental entities. These failures include lack of public input on the best use of land purchased with County general funds, lack of due diligence before making a decision to proceed with high-density housing development, and attempts to implement plan changes in conflict with the stated purposes and intent of the BVCP.

First, the County and BCHA failed to satisfy even minimal community involvement or public participation standards in making a land use decision for 6655 Twin Lakes Road. Core to the successful implementation of regional planning efforts is the BVCP commitment to community involvement and open decision-making as stated at §1.05 (emphasis added):

The city and county recognize that environmental, economic and social sustainability are built upon full involvement of the community. The city and county therefore support the right of all community members to play a role in governmental decisions, through continual efforts to maintain and improve public communications **and the open conduct of business.** [...] Emphasis will be placed on notification and engagement of the public in decisions involving large development proposals or major land use decisions that may have significant impacts on or benefits to the community.

The Boulder County Comprehensive Plan (BCCP) also recognizes the need for community input:

§H.1 The County shall encourage public participation in the making of decisions by public and quasi-public bodies which significantly affect citizens.

The County and BCHA have yet to allow any meaningful community involvement in discussions regarding the best use of this property. Nor has there been any public discussion of or input into the criteria and process used to select this property for MXR development. Even private landowners and developers are held to higher standards of community involvement than those provided by the County.

The changes requests are thus premature. Processes to date have been inadequate and incomplete, and have not resulted in any meaningful exchange of information needed to inform decision making. Under the BVCP, before consigning this land to permanent MXR development, the community must be meaningfully involved in weighing alternative visions, concepts, criteria, designations, zoning, and uses. This has not occurred.

In light of the recognized need for public input on, “the making of decisions by public and quasi-public bodies which significantly affect citizens,” transfer of this land from Boulder County to the BCHA was also premature. That transfer, without the chance for public input, goes against both the BVCP and the BCCP. With regard to the two BVSD properties, the sum total of community involvement regarding the MXR requests to date is: zero. BVSD is also a public, governmental entity. Something more is inarguably required. At this time, the change requests are premature.

Second, the change requests suffer from a total lack of public involvement in BCHA's selection process for affordable housing locations. While it is understood that the BCHA might not wish to conduct a full public discussion of such plans before purchasing a parcel of land, those circumstances do not apply here. The County initially purchased the land in May 2013, and more than two years passed before the County approved transfer to BCHA or submission of the change requests. There was more than sufficient time to meaningfully involve citizens and communities consistent with the BVCP. Instead BCHA announced its decision to seek MXR development with no prior notice, no opportunity for citizen input, and no attempt to involve the community. Assurances in the BCHA Frequently Asked Questions handout such as, “This is a public process, with noticed opportunities for comment by the public” ring hollow when held against the fact that all such process post-dated decisions to seek change requests and MXR development without any community involvement or public debate whatsoever. Land use and zoning designations represent the most basic decision regarding these publicly owned lands which are of great interest to the community.

Third, the process lacked due diligence on the part of BCHA before deciding on this property as a building site.

The Geology section of the BCCP defines the uses proposed by BCHA and BVSD as intensive land uses:

- **Land Uses**

Intensive uses shall mean those land uses which include: any structures used for supporting or sheltering any human use of occupancy; and/or, facilities or improvements which tend to attract congregations of people.

Further in this section, GE §1.05 of the BCCP states (emphasis added):

GE §1.05 - The County shall require the evaluation of all geologic hazards and constraints where such hazards or constraints may exist in unincorporated areas of the county as related to new intensive uses. Such evaluations shall be conducted by a professional practitioner having expertise in the subject matter. Such evaluations should incorporate analytical methods representing current, generally accepted, professional principles and practice.

Despite known concerns regarding high water tables and flooding in the area neither BCHA nor BVSD has conducted any such evaluation on these proposed development sites. See Exhibit 1, Hydrologic Analysis (June 24, 2015 Gordon McCurry, Ph.D. Mercury Hydrology, LLC). It is undisputed that no such evaluations have been provided to the public for review and comment by outside experts, or local residents who have significant knowledge and expertise on these issues. This failure alone is sufficient to preclude approval of the MXR change use requests.

By contrast, the TLAG and citizen requests seek non-development designations which are protective of the environment, additive to the existing open space, and not qualifying as intensive uses or triggering

any need for such evaluations. In fact, any prairie restoration and other ecologically informed management activities resulting from approval of these requests would be expected to significantly *reduce* flooding and related geologic hazards to existing development.

The existing record establishes that no traffic impact study has been conducted. Rather, according to an October 14, 2015 email from Senior County Planner Pete Fogg to County Transportation:

“can your folks do a trip generation, road capacity and trip dispersal analysis (what roads would likely be used in leaving and returning to the site) based on an assumption that 120 affordable dwelling units will be built on the BCHA/BVSD properties? This would help us evaluate the proposal’s cross-jurisdictional impacts per criterion (1) above. If annexation is to occur the city, which does not have the necessary contiguity at this time, would either have to annex south down N 63rd to Twin Lakes Rd, then east on that road to the properties[.]”

See Exhibit 2.

Thus, contrary to the assertions in the MXR requests, actual analysis of cross-jurisdictional impacts appears to have been lacking in advance of submission of the change requests. Rather, only after the change requests were submitted and citizens started raising questions did responsible government officials begin scrambling to conduct the studies and evaluations required by planning dicta before any high intensity change requests be approved. It is undisputed that no traffic study has been conducted to date. The time and the place to evaluate such a study is not before the four boards in the context of change requests, but in public meetings with community involvement.

If these premature change requests were submitted by a private developer motivated by profit, they would not get the time of day from the responsible boards. Government requests to develop these lands should be held to equal or higher standards or scrutiny. As submitted, they are dead on arrival.

One obvious and glaring flaw in the study belatedly suggested by the Senior County Planner, the number of units could be double the 120 specified in the email if the MXR requests are approved on all three properties. The requested densities allow up to 18 units per acre, so 20 acres could see proposals to develop up to 360 units. This would be triple the level of impacts which the County has yet to analyze.

BCHA may currently find it convenient to disavow plans for that level of development. However, BCHA’s public credibility is somewhat strained at this point. In any case, it is incumbent on planning authorities and elected boards alike to be advised of the higher of potential traffic and other impacts in the event the proposed change requests are approved. Should BCHA or other entities wish to assure that the higher level of impacts will not occur, they are free to submit modified change requests at a future date.

Informed decision-making regarding traffic is of paramount concern to the public and responsible governmental bodies alike. Here, all three properties proposed for MXR can only be accessed via Twin Lakes Road, so the need for a comprehensive traffic study is obvious. Clearly, the traffic study should precede any land use changes authorizing intensive land uses.

The infrastructure in Gunbarrel is aging, and it is unclear if the current water and sewage systems have the capacity to handle the increased demand associated with several hundred more dwelling units and associated “community” facilities apparently contemplated by BHCA, but not yet divulged to the

public. In particular, there have been two water main breaks along Twin Lakes Road in 2015 alone, one by the Twin Lakes Inn and a second in Red Fox Hills, at the intersection of Twin Lakes Road and Quail Creek Lane. There have been an additional three breaks on Quail Creek Lane in the past two years. The MXR change requests should not be considered until it is known if they will require expensive upgrades to the infrastructure to support them, what the cost would be, and how various scenarios could impact existing services, residents, and businesses.

2. Many of the assertions in the MXR requests are unsubstantiated or incorrect.

The MXR change requests filed by BHCA and BVSD assert that the proposed change is consistent with the policies and overall intent of the BVCP. However, their requests are not supported by the paragraphs cited. Instead, their requests tend to conflict with rather than further core objectives and principles in the BVCP.

The threshold question is whether adequate due diligence, public involvement, or objective analysis has occurred to date to allow for reviewing Boards, Councils, and Commissions to reach informed decisions about the MXR change requests. The answer must be reached in the context of assurances from the County and BCHA regarding their commitment to a comprehensive and open process:

BCHA is committed to a thorough, responsible, and transparent process as we continue to move forward with our assessment of the property. As additional studies are conducted and opportunities for public input are available, we will communicate through the above interest lists and other channels to help ensure that all interested in this assessment are informed.

<http://www.bouldercounty.org/family/housing/pages/housingdevelopment.aspx>

Because the undisputed factual record established that these governmental commitments have not been met to date, the MXR requests are premature at this time and must be denied because the proponent has failed to do their homework, or meet their commitments to the public.

a. The MXR requests wrongly assert that the proposed changes would not result in significant cross jurisdictional impacts that may affect residents, properties or facilities outside the city.

The assertion that cross jurisdiction impacts would be insignificant is incorrect. As part of their land use designation change request they would also be seeking annexation of the properties from the county to the city. As a result of the future annexation, the properties would be almost entirely surrounded by the rural residential community of unincorporated Gunbarrel, creating an enclave of city land slated for medium-high density development (up to 18 units per acre) within the county and causing significant cross jurisdictional issues.

First, the enclave would be a small island, requiring city police and fire protection of an island within an area serviced by the County Sheriff and the Boulder Rural Fire Prevention District, causing endless jurisdictional issues and confusion. City fire police and emergency medical personnel will answer calls from county property, while county emergency services will be summoned to the city properties.

As a case in point, on the evening of August 19, 2015, a 911 call was placed from Cafe Blue to the police, regarding a fight which had spilled out from Bogey's, a neighboring bar. The caller was told, "You are not in Boulder, you are in Gunbarrel." In fact, both Bogey's and Cafe Blue are in the

commercial section of Gunbarrel and within the limits of the City of Boulder. Clearly there is already confusion over jurisdiction in the area.

Second, neighbors of the proposed development are understandably concerned about public health and safety. All parties must acknowledge the paramount importance of public health and safety under BVCP, BCCP, and basic precepts of good government. Here, there is no indication that the City of Boulder Police Department, County Sheriff, or other relevant governmental authorities have been consulted with regard to these issues in the context of the proposed change requests that would authorize development significantly shifting the demographics of the community.

Third, changing the zoning of just these two properties while leaving the surrounding zoning in place resembles impermissible spot zoning. In a venerable 1961 Colorado Supreme Court decision involving Boulder County, it was held that the test for determining whether unlawful spot zoning occurred is “whether the change in question was made with the purpose of furthering a comprehensive zoning plan or designed merely to relieve a particular property from the restrictions of the zoning regulations.” Clark v City of Boulder, Colo. S. Ct. 362 P.2d 160 (1961 En Banc).

The Supreme Court found that the comprehensive zoning scheme for the neighborhood at issue “has been developed for single family houses and other uses permitted in residential districts[,]” and that the disputed zoning change “had all the earmarks of a special act enabling the intervenors to build a filling station on property previously zoned as residential.” 362 P.2d. Here, TLAG stands in the shoes of the Plaintiff attacking the City Ordinance approving the spot zoning request in Clark v. Boulder, and the County stands in the shoes of the gas station proponent seeking special treatment for a preferred use which is adjudged incompatible with existing land use designations, zoning, and the community character.

County government is not exempt with complying with state law, and furthering the County’s own comprehensive zoning schemes. Here, every indication is that the MXR requests are inconsistent with existing land use and zoning, inconsistent with the character of the community, and intended to convey special treatment to BCHA (a county entity governed by the Commissioners sitting as BCHA Board). The inability of any of the three parcels to satisfy the 1/6 contiguity requirements for annexation underline why all signs point to the county’s schemes being an attempt to spot zone three parcels for its own convenience. If BCHA or other parties wish to pursue large-scale affordable or public housing projects in Gunbarrel, the place to do so is within areas currently part of the City of Boulder, or directly adjacent to such parcels so as to satisfy the contiguity requirement as intended by the state legislature.

Spot zoning is defined as:

The granting to a particular parcel of land a classification concerning its use that differs from the classification of other land in the immediate area.

Spot zoning is invalid because it amounts to an arbitrary, capricious, and unreasonable treatment of a limited area within a particular district and is, therefore, a deviation from the Comprehensive Plan.

<http://legal-dictionary.thefreedictionary.com/Spot+zoning+%28land+use%29>

Spot zoning of these properties will leave the City open to legal challenges and make both projects quite uncertain.

Future annexation of the properties from the North would leave the properties with no city access to the property, forcing them to exclusively use a county road to access the properties. This could leave the city and county at odds over use and maintenance of Twin Lakes Road by a large number of city residents. Future annexation via Twin Lakes Road cuts off several roads within the community, Starboard Drive, Starboard Court, Barnacle Court, Barnacle Street, Beachcomber Court, Driftwood Place, Kahlua Road, Mast Road, Galley Court and Sandpiper Circle.

The net effect of annexation of these properties via Twin Lakes Road will be dividing the existing neighborhoods into stubs of county roads, significantly degrading the character and cohesiveness of the Gunbarrel sub-community and confusing jurisdictional, service, and infrastructure issues.

b. The MXR requests wrongly assert that the proposed change would not materially affect the land use and growth projections that were the basis of the BCVP.

The BVCP recognizes that (at 14-15), “The Gunbarrel subcommunity is unique,” acknowledges that “interest in voluntary annexation has been limited” and pledges that, “if resident interest in annexation does occur in the future, the city and county will negotiate new terms of annexation with the residents.” This proposed annexation and the associated re-zoning will materially affect the existing land uses in the vicinity, and have the potential to significantly affect the overall character of Gunbarrel on a wide range of important matters ranging from traffic to environmental quality.

Annexation of these parcels is impractical without annexation of the surrounding neighborhoods. As noted below, annexation is opposed by residents. None of these parcels currently satisfy the 1/6 contiguity requirement for annexation under state law, and neither the County nor the City has publicly stated how they intend to seek to meet that requirement. The desire of all adjacent neighborhoods to remain unincorporated precludes annexation by using any of those properties.

Annexation could only be pursued over the objections of affected residents, and by seeking to use sleight-of-hand tactics such as 1) somehow proposing to achieve contiguity by leap-frogging the County-owned Twin Lakes Open Space; 2) transferring the Open Space to the City to achieve contiguity (which would trigger the right of citizens to petition for a county-wide vote; or 3) attempting to pursue a “series” or “flagpole” annexation in the face of significant community opposition.

The first option for annexation under consideration by the County is somehow attempting to annex by leapfrogging the County’s Twin Lakes Open Space to the north. Senior County Planner Pete Fogg acknowledges that “the county’s open space policies have not supported annexation of open space to obtain contiguity to other properties[.]” See Exhibit 2 (Pete Fogg email dated Oct. 15, 2015 re: BVCP 2015 Update Information Request).

At the same time, County Open Space has yet to consider the applicability of, let alone adhere to, County Open Space acquisition policies. This may be because there is some sentiment that Open Space areas in a rural residential setting are less deserving of the benefit of generally applicable policies than other Open Space properties. But County Open Space policies and the tax measures funding our

County Open Space lack any support for any such ad-hoc position. Accordingly, continuing to ignore clearly applicable acquisition criteria would be arbitrary and capricious.

The proposal for a Greater Twin Lakes Open Space cannot be disregarded by County officials simply because the location of the existing Open Space might be disfavored by certain County officials, and others may be willing to turn a blind eye. The environmental and open space change requests exhaustively document consistency with the BVCP, and how environmental protection and recreation would improve the community and the County.

No authority in either the County or City Open Space charters, missions, or policies offers support for using taxpayer-funded Open Space to annex parcels to facilitate high intensity development adjacent to existing Open Space. In fact, such annexation would be anathema to such charters, missions, and policies. Does either the County or the City really want to endorse a precedent of using Open Space to promote development of lands proposed by citizens for acquisition into the Open Space system, and environmental protection and restoration consistent with the BVCP and the open space programs?

Second, the County could attempt to transfer Twin Lakes Open Space to the City, so that the Open Space could be annexed, as a precursor to annexing the lands targeted for development. This would trigger the right of citizens to petition for a county-wide vote. Like with the County, there appears to be nothing in City Open Space policies that contemplate using open space lands to facilitate intensive development uses.

The third option for annexation would be a “series” or “flagpole” annexation using a long stretch of Twin Lakes Road as the flag. This dubious method has not been employed in Boulder County to the best of our knowledge, and certainly not under any facts approaching the current circumstances. If allowed here, what would stop the County from using the same means to annex property in Gunbarrel to the north, towards Lyons to the northwest, in Eldorado Springs to the south, or adjacent to Lafayette and Louisville to the east?

In conclusion, there are serious issues regarding all of the potential annexation approaches. If legal, the future consequences of establishing either precedent would appear to be inimical to the BVCP, commitments to community involvement, or respect for the wishes of unincorporated Gunbarrel residents to have a say in the future of their community. Because MXR development cannot proceed without annexation into the City, the vote on the MXR requests is tantamount to a vote on annexation by the methods proffered by the County to date.

- c. The MXR requests wrongly assert that the proposed change would not materially affect the adequacy or availability of urban facilities and services to the immediate area or to the overall service area of the City of Boulder.**

The area is rural. This island of city property would require the city to provide public water, public sewer, storm water and flood management. It is unclear whether the current infrastructure is capable of providing these services without significant upgrades. There is no data on the adequacy of the current infrastructure to handle several hundred more residents. Conceivably, MXR could result in a population increase of more than 1,000, primarily drawn from demographics with recognized high needs for governmental programs, services, facilities, and infrastructure.

Without knowing the ability of present infrastructure to meet the needs of the proposed development and the cost of any improvements, the MXR requests are premature under the BVCP.

The city and other governmental authorities must also assure the provision and availability of adequate urban transportation. Urban transportation is not currently available. The nearest bus station is half a mile away, and the buses are infrequent. Walkscore (walkscore.com) scores Gunbarrel as only 18 on a scale of 100 for walk-ability, categorizing it as “car-dependent” and with “minimal transit.” The lack of attention to urban transportation further establishes that the requests are premature.

Finally, the BVCP requires meeting standards for minimum levels of necessary infrastructure and amenities such as parks, playgrounds, and schools, *before* residential development can be considered.

The BVCP states (at VI. Urban Service Criteria and Standards):

These standards are intended to be minimum requirements or thresholds for facilities and services that must be delivered to existing urban development, or new development and redevelopment to be considered adequate. These adequacy standards allow the county to determine if an urban level of services is met prior to approving new urban development in the unincorporated area, and they provide the City a basis for linking the phasing of growth to the planned provision of a full range of urban services in Area II, annexation and capital improvement decisions.

Among these criteria are:

- (a) Provide neighborhood parks of a minimum of five acres in size within one-half mile of the population to be served.
- (b) Provide community parks of a minimum of 50 acres in size within three and one-half miles of the population to be served.
- (c) Provide playground facilities for toddlers, preschoolers and school-age children up through age 12 within one quarter to one-half mile of residents.

With the possible exception of the Boulder Reservoir, no such facilities exist in the Gunbarrel area within the prescribed minimum distances. Without adequate services as defined above, annexation cannot be considered.

d. The MXR requests wrongly assert that the proposed changes would not materially affect the City’s Capital Improvements Program.

The MXR requests appear likely to require investment in various infrastructure, services, and other improvements such as parks, playgrounds, schools or child care facilities, and potentially costly upgrades to the sewer, water and storm drainage systems. None of these needs are addressed by the current Capital Improvements Program in the context of several hundred new residents in currently undeveloped areas in unincorporated Gunbarrel. The requests and other communications fail to indicate that responsible authorities have considered or quantified gaps, needs, or costs; or formulated a plan that assures budget, staffing, and other resources will be adequate to meet needed upgrades. Again, the MDX requests are premature at this time.

e. The MDX requests wrongly assert that approval would not affect the Area II/Area III boundaries.

The future annexation requests that would follow approval of MDX are by definition a change to the Area II boundary. Annexation would be a significant encroachment of the city into the unique

Gunbarrel sub-community. The perspective of the community, which was excluded from all planning until the MDX and housing proposals were presented as a fait accompli, is that annexation would be a significant negative impact, contrary to the vision and goals of the sub-community, and the many applicable sections of the BVCP relied on by the TLAG and citizen change requests.

The change requests are inconsistent on their face with §7.13 Integration of Permanently Affordable Housing, in the BVCP, which states:

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

Building several hundred affordable housing units on three adjoining *currently undeveloped* parcels in a rural residential community, sharing a boundary with Twin Lakes Open Space. The MDX requests would cluster all of the affordable and public housing in Gunbarrel at this single location, one which the community considers to be incompatible with the existing rural residential character, which is reflected by the existing allowed uses including open space and public.

BCHA currently manages 12 three-bedroom rental units at Catamaran Court (6660 Kalua Road), abutting the south side of the BVSD property. Thus, adding three more affordable housing developments here would be the opposite of dispersing affordable housing “throughout the community.” Instead, it will create a single large area of affordable housing rather a dispersed design that is integrated it throughout the community. Clustering up to 360 units (representing the lion’s share of total affordable units in all of Gunbarrel) at the proposed locations is inconsistent with affordable housing standards in the BVSD.

For comparison purposes, BCHA currently owns and manages a sum total of 611 units across the entire County. BCHA Twin Lakes Road FAQ at 10. These units are spread across 7 sites, for an average of under 90 units per site. Thus, the potential number of new units on Twin Lakes Road (240 based on the County’s current estimate of 120 units/10 acres and three parcels adding up to 20 acres, and 360 at the high end) could result in clustering roughly 40-60% of the current number of units county-wide in a single location. Per BHCA, MDX would require additional development of community centers and related common buildings to make up for the lack of any such infrastructure in the area currently.

Finally, an underlying premise of these MDX change requests appears to be that the lack of affordable housing in Gunbarrel is so critical that it should trump all other considerations in the BVCP. The MDX requests assert that there is a “severe shortage” of affordable housing in the Gunbarrel area. Although BCHA claims to work closely with the Boulder Housing Partners (BHP), they have indicated that they were ignorant of the facts surrounding the lack of any affordable units in the extensive recent housing developments in the Gunbarrel Center planning area around the King Soopers.

Gunbarrel Center, the 251-unit mixed-use development at 6685 Gunpark Drive was allowed to build 69 affordable units at 2685 28th Street, miles away in the City of Boulder proper. Apex 5510, a 232-unit apartment project at 5460 Spine Road was allowed to contribute 10% of their per-unit cost to fill a financing gap in an affordable housing project at 2810 and 2850 29th Street. Doing the math conservatively, had the approving authorities required that the ratio for Gunpark Drive was applied as an affordable housing component *within Gunbarrel* for both projects, at least 120 affordable units would now be available in Gunbarrel.

Both the 28th and 29th Street projects are near the city core. Both are located near public transportation, city parks and playgrounds, and other necessary infrastructure and services. Both of these projects meet BVCP standards for location of affordable housing.

The City of Boulder seems to have correctly determined that there is no severe shortage of affordable housing in Gunbarrel and that building affordable housing within the current city limits, in accordance with the BVCP is a better choice and higher priority. This throws the entire premise underlying of the MRX requests into question. The general lack of affordable housing in the City of Boulder proper is readily evident and well documented. But what about Gunbarrel, which the BVCP acknowledges to be a separate, unique community? Does any data support BHCA's contention that existing housing stock in Gunbarrel, including the recent private developments, are falling short in the context of unmet needs for the Gunbarrel work force? What hard data regarding demographic, employment and housing has been presented in support of the MDX requests? For instance, the MDX change requests assert that Gunbarrel is a "regional jobs center" without providing any statistical support or references.

Ready alternatives exist to provide affordable housing in close proximity to Gunbarrel. First Yarmouth Holdings LLC submitted a BVCP change request that would allow affordable housing development on 80.41 acres of private lands it owns in the City Planning Reserve at the northeast intersection of Jay Road and 28th. This privately owned vacant parcel is four times the combined size of the 20 acres targeted by BCHA for intensive development on Twin Lakes Road. The Yarmouth properties represent just 16% of the 500-acre planning reserve. Dedicating just 40 acres of the Yarmouth parcel could provide double or more affordable housing units as are proposed for Twin Lakes Road, and those 40 acres represent less than 10% of the Reserve. The Yarmouth parcel is located on major arteries, and residents would have ready access to Gunbarrel: approximately five minutes by car and ten by bike.

Second, on August 6, 2015, the City Council nixed a proposal for a mixed use development at Foothills and Diagonal that would have provided at least 83 affordable units in even closer proximity to Gunbarrel. This proposal encompassed "a 29-building plot, including almost 300 apartments, 82 affordable-rate units and 54,000 square feet of office space, all connected by a bike-friendly scheme that's state-of-the-art, even by Boulder's standards." This site is almost 50% larger than the three Twin Lakes Road parcels combined; so it could comfortably provide as many or more affordable units if entirely devoted to that use. As to the concerns about the Foothills and Diagonal site, many of Boulder's neighborhoods east of Broadway are bordered by busy streets on one or more sides. This is also true in Longmont, Louisville, and Lafayette. Berms, setbacks, placing the business district component nearest to roads, and one or more traffic lights for ingress and egress to the development would cushion houses from the roads and calm traffic.

The takeaway is obvious. There appear to be multiple more suitable, readily available sites that could address any need for affordable housing for the Gunbarrel work force. When the MDX change requests are denied as premature, responsible agencies should thoroughly study these potential alternatives.

- f. **The MDX requests conflict with the BVCP by failing to recognize the uniqueness of Gunbarrel, failing to address fatal problems with annexation efforts, not meeting criteria for a compact development plan, and transforming the low-density rural residential character of the community.**

First and most basic, the MDX requests are inconsistent with the unique position that Gunbarrel holds in the BVCP. The BVCP recognizes Gunbarrel as a unique subcommunity at §1.24 (h) s:

The Gunbarrel subcommunity is unique because the majority of residents live in the unincorporated area and because of the shared jurisdiction for planning and service provision among the county, the city, the Gunbarrel Public Improvement District and other special districts. Although interest in voluntary annexation has been limited, the city and county continue to support the eventual annexation of Gunbarrel. If resident interest in annexation does occur in the future, the city and county will negotiate new terms of annexation with the residents.

The BVCP clearly indicates that annexation of Gunbarrel will be accomplished, if at all, as a whole, with the entire subcommunity involved in voluntary annexation negotiations with the city. The current proposals are piecemeal annexations of small parts of the subcommunity, without the input or participation of any of the residents of Gunbarrel or the Public Improvement District. The MXR requests represent an end run designed to evade existing standards, guidelines and understandings providing that future annexations will be contingent on the informed consent of affected communities. Here, the governmental proposals seeking annexation and mixed use development are being pursued regardless of the lack of community support, in obvious contravention of the BVCP.

There is no resident interest in this annexation, nor have terms been discussed – let alone negotiated – with the County. How do piecemeal, leapfrog land annexations further commitments to involve the subcommunity in decisions that will determine its future?

There is no reason that the parcels need to be annexed into the City of Boulder, other than the desire to develop far more housing units at far higher densities than the county allows. This is insufficient reason to contravene the letter and spirit of the BVCP in regards to future annexations in Gunbarrel. Again, the fact that these parcels are owned by governmental entities raise the bar for approaching community development in good faith, and assuring compliance with applicable BVCP and BCCP provisions.

In the BVCP, §2.03 Compact Development Plan states, “the city prefers redevelopment and infill as compared to development in an expanded Service Area in order to prevent urban sprawl and create a compact community.” The three subject properties are currently undeveloped, and are outside the current Service Area. Unlike the affordable housing locations referenced above which satisfied the in lieu component of recent Gunbarrel housing developments, the proposed affordable housing cluster in Gunbarrel would necessitate transforming a rural residential community into a densely developed area requiring a wide range of urban infrastructure and services of dubious compatibility with the existing community character. The City Planning Board should review these controversial requests in light of BVCP direction and goals.

The BVCP Land Use Designation Map shows all of unincorporated Gunbarrel to be low density residential or open space. As such, the requested mixed density designation is inappropriate, and in conflict with adjacent subdivisions and the existing neighborhood. The higher density buildings already in the area were allowed because the properties in question were not slated for residential use. The overall density of the area has already reached the designated density in the BCCP. Development of the three parcels as proposed will exceed the plan density, resulting in significant physical, infrastructure, and environmental hazard impacts.

V. POSITIVE COMMUNITY VISION

The land use requests submitted by TLAG and others better meet the requirements of the BVCP and the needs of the local and the larger community. The rationale for TLAG's change requests to create a Greater Twin Lakes Open Space is set forth in the requests themselves, and further discussed in TLAG's September 30, 2015 letter to the Boulder County Commission. See Exhibit 3.

According to County Commissioner Elise Jones, no final decisions had been made by the County as of October 1, 2015, when the County Commission voted to approve transfer of 6655 Twin Lakes Road to BCHA. "It keeps all of our options on the table," Jones said. See Exhibit 5. However, Commissioner Jones' inference that the vote on transferring 6655 to BCHA was not a final, pre-ordained action appears to be undercut by Commissioner Gardner's statements in the same article:

Gardner, however, said the property was a vacant lot when the county purchased it, and not something the county would normally buy to preserve as open space.

"We bought that property for the explicit purpose" of putting affordable housing there, Gardner said, but she added that Boulder County hasn't yet made final decisions about the form that housing development might take.

See Exhibit 5.

First, the public record offers no indication that open space or any use other than medium-high density affordable or public housing was even considered for these parcels. Second, Commissioner Gardner's comments raise questions regarding why the County is ignoring its own Open Space acquisition policies regarding a property that: 1) is adjacent to existing Open Space and threatened by development; 2) provides "Wildlife habitat" for a long list of species identified in the TLAG change request narrative; and 3) includes and would enhance "Riparian and scenic corridors," and 4) constitutes "Land that could provide trail connections."

This land satisfies four of the five County Open Space acquisition criteria. Commissioner Gardner's personal opinion may be that Gunbarrel and the larger community might not sufficiently benefit from doubling the size of the existing Twin Lakes Open Space the crown gem of the Open Space system in Gunbarrel to even justify serious consideration of that proposal. But a personal opinion does not relieve County government from conducting a comprehensive study of the open space potential of these parcels based on objective criteria, and informed recommendations reflecting community involvement and ecological expertise of residents and independent scientists and recreational planners.

Although the County Commission listened to concerns presented by TLAG on September 21, 2015, and received the TLAG letter prior to approving the transfer of 6655 to BCHA, there is nothing in the record to establish that the County ever actually considered alternative uses for the property at any time in the process. It is currently undisputed that no studies or formal recommendations have been prepared regarding change requests proposing a Greater Twin Lakes Open Space, Environmental Conservation Area, Natural Ecosystems, or Area III Rural Preservation Area designations.

These properties, considered together, provide a unique opportunity to create a Greater Twin Lakes Open Space area, providing a connected wildlife corridor from the existing Twin Lakes Open Space to

the open space to the south, including connectivity with Boulder Creek. The current social trails can be upgraded to connect the current dead end trail back into the Twin Lakes trail. By day they will provide passive recreation for the community, and at night it will remain a foraging area for the Great Horned Owls who nest in Twin Lakes Open Space, as well as other wildlife species.

This vision supports the BVCP on many levels, including:

- §1.02, Principles of Environmental Sustainability by “maintaining and enhancing the biodiversity and productivity of the local ecological system.”
- §1.03, Principles of Economic Sustainability by “Providing for and investing in a quality of life, unique amenities and infrastructure that attracts, sustains and retains businesses and entrepreneurs.”
- §1.05, Community Engagement by having been put forward by and enjoying the overwhelming support of the community.
- §2.04, Open Space Preservation by providing a linkage between currently separate parcels of open space, “preserving critical ecosystems” and providing “land for passive recreational use.”
- §2.10, Preservation and Support for Residential Neighborhoods “to protect and enhance neighborhood character and livability.” From the very first, the Twin Lakes and the associated open land to the south have been integral to the local community. This was first recognized when the county purchased the current Twin Lakes Open Space in response to heavy community use of what was then private land. Along with Twin Lakes Open Space, the properties at 6655 Twin Lakes Road, 6600 Twin Lakes Road and 0 Kahlua Road have become the heart of the Gunbarrel community. With these three properties all held by public entities, it is time to formalize what has been recognized within the community for decades, and to formally create the Greater Twin Lakes Open Space.
- §2.19, Urban Open Lands by providing “an urban open lands system to serve the following functions: active and passive recreation, environmental protection, flood management, multimodal transportation, enhancement of community character and aesthetics.”
- §2.23, Trails Corridors/Linkages by providing connections between existing trails that cannot be made through other properties allowing “development of paths and trails where appropriate for recreation and transportation.”
- §3.40, Ecosystem Connections and Buffers. Connecting two current isolated areas of open space allows the city and county to “work together to preserve, enhance, restore and maintain undeveloped lands critical for providing ecosystem connections and buffers for joining significant ecosystems.”

CONCLUSION

The MXR requests submitted by BCHA and BVSD should be denied at this time. These requests have been put forward ahead of the public process which should precede disposition of public lands, are uninformed by public input on the best use of the properties, lack critical data needed to make a

decision on the ability of the properties and the surrounding infrastructure to sustain the proposed intensive development uses, and are poorly thought out in conflict with the BVCP. The TLAG change requests should be approved because they are consistent with the BVCP, preserve irreplaceable open space, provide wildlife habitat, protect riparian and scenic areas, foster trail connections, and enhance the heart of the community.

LIST OF EXHIBITS TO TLAG'S POSITION PAPER

- Exhibit 1 Hydrologic Analysis (June 24, 2015 Gordon McCurry, Ph.D. Mercury Hydrology, LLC; commissioned by Twin Lakes Action Group)

- Exhibit 2 Email from Senior Boulder County Planner Pete Fogg to County Planning and Transportation officials (October 14, 2015)

- Exhibit 3 TLAG Letter to Boulder County Commissioners (cc to County Attorneys and County Open Space Director Ron Stewart) re: Community concerns, Greater Twin Lakes Open Space proposal including public-private partnership concept, and request for meaningful community involvement (September 30, 2015)

- Exhibit 4 TLAG Letter to Boulder Valley School District (October 13, 2015)

- Exhibit 5 Neighbors urge Boulder County to convert Gunbarrel affordable-housing site to open space, Longmont Times-Call (October 1, 2015)