

MIKE CHIROPOLOS
ATTORNEY & COUNSELOR, CHIROPOLOS LAW
1221 PEARL SUITE 11
BOULDER CO 80302 303-956-0595 -- mikechiropolos@gmail.com

TO: To Whom It May Concern
FROM: Mike Chiropolos, Counsel to Twin Lakes Action Group
DATE: January 12, 2017
SUBJ: **Boulder County Planning Commission Sept 21, 2016 Vote on Twin Lakes Parcels
BVCP Update**

Question Presented:

Was the Boulder County Planning Commission's 4-3 vote on the Twin Lakes parcels on September 21, 2016 a denial of the change requests for lack of a five member majority of the full nine member Commission as required by State law, the County Land Use Code, and the Planning Commission Bylaws?

Short Answer: YES, it appears that the 4-3 vote was a denial of all change requests.

Analysis:

First, the Colorado statutes governing County Comprehensive Plans require that the plan, or any amendment to the plan, be adopted by a vote of not less than a majority of the entire membership of the commission.

30-28-108. Adoption of plan by resolution.

A county or regional planning commission may adopt the county or regional master plan as a whole by a single resolution or, as the work of making the whole master plan progresses, may adopt parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter which may be included in the plan. The commission may amend, extend, or add to the plan or carry any part of it into greater detail from time to time. The adoption of the plan or any part, amendment, extension, or addition shall be by resolution carried by the affirmative votes of not less than a majority of the entire membership of the commission. The resolution shall refer expressly to the maps and descriptive matter intended by the commission to form the whole or part of the plan. The action taken shall be recorded on the map and descriptive matter by the identifying signature of the secretary of the commission.

CRS 30-28-108 (emphasis added).

Second, the Boulder County Land Use code provides that the Boulder Valley Comprehensive Plan (BVCP) is considered part of the Boulder County Comprehensive Plan (BCCP):

18-117 Boulder County Comprehensive Plan

That document, including all amendments, adopted by the Planning Commission, which provides policy direction to the County and the public about how existing and proposed land uses ought to be evaluated, how the various governmental and land management

entities in the County should coordinate their activities, and how environmental resources should be preserved. The Boulder Valley Comprehensive Plan and any similar subarea plans are considered part of the Boulder County Comprehensive Plan.

See <http://www.bouldercounty.org/doc/landuse/landusecode.pdf> at Section 18-117, page 18-3 (emphasis added).

Third, the Boulder County Planning Commission bylaws recognize that the enabling authority for the Commission is the state code section including 30-28-118 requiring that any changes to a county comprehensive plan be approved by a majority of the entire Planning Commission. They provide that the Planning Commission shall consist of nine members.

I. ENABLING AUTHORITY

Enabling authority for the Planning Commission of Boulder County is found in Part 1 of Article 28 of Title 30 of the Colorado Revised Statutes, as amended. Additional authority for the actions of the Planning Commission, as generally set forth in these Bylaws, is found in other provisions of the Colorado Revised Statutes which expressly or impliedly authorize or require the Planning Commission to act (including but not limited to the Planned Unit Development Act of 1972 (Article 67 of Title 24); the Special District Act (Article 1 of Title 32); the Preservation of Commercial Mineral Deposits Act (Part 3 of Article 1 of Title 34); and § 22-32-124 concerning proposed school district site acquisition and development, and in the duly enacted provisions of the Boulder County Land Use Code as it currently exists and may be amended from time to time.

II. MEMBERSHIP, APPOINTMENTS, AND TERMS

A. The Planning Commission shall consist of nine members, who shall be appointed by and in the discretion of the Board of County Commissioners.

BCCP Bylaws at I and II(A).

Fourth, the Planning Commission Bylaws explicitly provide, consistent with state law, that a “majority of the entire membership” is needed to adopt or amend all or part of the County’s Comprehensive Plan:

E. Five members shall constitute a quorum of the Planning Commission for official action. All official actions of the Planning Commission shall be taken by vote, with a majority of those members present and voting needed to approve a vote except as otherwise expressly provided in these Bylaws. Moreover, to approve any action adopting or amending all or part of the County’s Comprehensive Plan under C.R.S. §§30-28-106 through-109, not less than a majority of the entire membership of the Planning Commission (five members) shall be required to vote in favor of such action.

Bylaws at IV(E) (emphasis added)

In conclusion, it appears that the Motion to Approve the MR recommendation at the September 21, 2016 Planning Commission meeting failed by a 4-3 vote. TLAG’s subsequent Motion for Reconsideration was thus based on the mistaken assumption that the Planning Commission had approved the change request as stated in the motion.