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Boulder County Planning Commission - *transmitted via email*

Re: Request for Reconsideration of Twin Lakes Vote, BVCP Update

Dear Planning Commission Members:

Thank you for considering TLAG's Request for Consideration by putting it on the agenda for the October 19, 2016 Planning Commission members. Justice, fairness, due process, and consistency with the BVCP will be served by moving for reconsideration. Reconsideration will advance – not compromise – the integrity of the Planning Commission's decision in this rare instance.

First, TLAG concedes that reconsideration could be inconvenient for staff, but we believe that concern is outweighed by assuring the public and the Gunbarrel community that the Planning Commission is committed to getting this decision right. Staff drafted a comprehensive recommendation and devoted untold staff hours to present what appeared many as a persuasive legal brief rather than an objective discussion of the respective pros and cons of the two competing change requests under the decision criteria for the BVCP.

The facts and procedure here are unique. Nonetheless, the staff recommendation was narrowly approved by a 4-3 vote, and some observers left believing that the Motion to Approve would not had passed had Planning Commission Chair Natalie Feinberg-Lopez not had to leave the meeting to catch a flight despite participating in most of the discussion before departing. All 8 members present on September 21 would have been in a position to vote had the Twin Lakes item been scheduled ahead of Jay Road on the agenda.

TLAG is confident in the Planning Commission's ability to manage its docket and agenda. The suggestion that reconsideration could lead to an arbitrary decision that "undermines the integrity and finality of all future Planning Commission decisions" seems to over-state the concern. The circumstances present here are exceedingly rare. In all instances, the decisions as to whether to put a request for reconsideration on the agenda, or to entertain a motion to reconsider – are entirely within the discretion of the Commission.

General parliamentary rules appear to provide that Motions for Reconsideration can be made at the same meeting when the initial vote was held, or the next meeting, and that the Motion should be made by a member who voted in the majority on the original vote. It would appear reasonable for one of the members not present for the original vote to be allowed to move for reconsideration in this context, because the votes of those two members could change the outcome. Planning Commission votes bylaws do not preclude reconsideration.

At least three examples of material new information exist, which were neither known or considered by the Commission prior to the initial vote.

First, when the Commission originally voted, at least some members were likely unaware that the title of the Staff Recommendation to approve “MR and Environmental Protection” would actually approve a request that is repugnant to the BVCP definition of Environmental Protection:

The Environmental Preservation designation includes private lands in Areas I and II with environmental values that the city and county would like to preserve through a variety of preservation methods including but not limited to intergovernmental agreements, dedications, development restrictions, rezonings, acquisitions, and density transfers.

Staff was either unaware that Area III lands do not qualify for an Environmental Protection designation, or failed to connect the dots between the staff recommendation and the fact that the Twin Lakes parcels are intended to be annexed and re-designated Area III if the MR requests go forward. The fact that the staff recommendation violates the BVCP constitutes grounds for reconsideration. As to slippery slope arguments, playing fast and loose with the definition of Environmental Preservation is about as slippery as it gets – as any person involved in enforcement of conservation easements and lands trusts can attest.

Second, the 115-page staff memo did not advise the Commission that the staff recommendation would violate the BVCP policy regarding future annexations of Area II lands in Gunbarrel, despite citing it: “If resident interest in annexation does occur in the future, the city and county will negotiate new terms of annexation with the residents.” The record lacks any evidence that residents are interested in annexation, and the annexation contemplated by the staff would be to dictate annexation rather than “negotiat[ing] new terms of annexation with the residents.” The fact that the present vote violates the annexation policy in the BVCP is grounds for reconsideration.

Third, the staff memo did not advise the Commission the housing crisis might be a good reason to conduct comprehensive planning for the Planning Reserve that includes the 80-acre Yarmouth Parcel which was the subject of Area II to III change requests to allow affordable housing development earlier in the BVCP Update. Nor did staff advise the Commission that:

- If Planning concluded that the Yarmouth parcels are appropriate to consider land use changes on, they could house up to 1,440 units – and 960 units at the units/acre density currently under consideration for the Twin Lakes parcel.
- The Boulder County Housing Authority was founded in 1975 and now owns and operates 611 units per the website.
- Yarmouth alone could house double the AH units that BCHA has built or acquired in 41 years of existence (an average of 16 per year), and four times the number of units proposed for Twin Lakes at the same density.
- The rationale for voting down the Yarmouth requests in the 2016 BVCP Update is equally applicable to the Twin Lakes parcels: lack of comprehensive or Sub-Community planning to inform the context and specifics of the change requests. It is illogical to state that comprehensive planning is a pre-condition of advancing change requests for the Reserve, but not highly similar change requests for unincorporated Gunbarrel – when no plan has been completed for either area.

This new information going to the potential to better achieve AH goals in the BVCP and otherwise, and the importance of planning all communities before approving changes that could

allow piecemeal development changing the character of currently unplanned communities – are grounds for reconsideration.

Fourth, to the extent members of the Planning Commission may be concerned that the recusal issue is relevant, it is uncontested that recusal applies to votes on BVCP change requests. At a minimum, disclosure of the *appearance of conflict* was required when the County Commissioners voted to approve a BVCP change request that they initially approved submitting in their role as BCHA Commissioners:

- For the agenda item preceding Twin Lakes at the September 21 hearing, Planning Commission member Leah Martinsson recused herself from the Jay Road request.
- In the context of recusing herself from Eco-Cycle matters, Commissioner Jones stated in a Boulder Daily Camera column: “While both my sister and I are able to separate business from our familial relationship, we nonetheless realize that our association might *raise concerns in the public eye*. That is why, in addition to my stepping aside from anything related to Eco-Cycle, I have gone above and beyond by also recusing myself from actions on the broader topic of zero waste.” (emphasis added)
- For the Twin Lakes case, the conflict would seem to be more apparent. Three members of the Boulder Daily Camera Editorial Advisory Board agree¹:
 - “The county commissioners are also board members of the Boulder County Housing Authority and they refuse to recuse themselves from what should be the next level of approval in the change-of-use proposal for two 10-acre parcels in the Twin Lakes neighborhood to allow for up to 280 units of affordable housing.” (Fern O’Brien)
 - “It also seems strange that the commissioners approved a proposal presented by the commissioners.” (Rett Ertl)
 - The county commissioners also serve on the Boulder Housing Authority board. Checks and balances anyone?” (Don Wrege)

The community obviously has concerns here, where 1) the Commissioners constitute the entire three-person BCHA board, 2) they have a fiduciary relationship to BCHA, and 3) it can’t be argued that any one Commissioner’s vote did not matter because the motion passed by a 3-0 vote. All three have actual conflicts, *and* an undeniable appearance of conflict – which none of the three disclosed at any hearing.

In sum, under the unique and rare procedural and factual circumstances presented by the Twin Lakes change requests, entertaining a Motion for Reconsideration is appropriate.

Respectfully,



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¹ http://www.dailycamera.com/editorials/ci_30421170/from-editorial-advisory-board-twin-lakes