



"To enhance the quality of life in Boulder County, and protect people's opportunity to own, use, and enjoy their property by promoting environmentally sound, fair and consistent land use decisions."
- Land Use Coalition Mission Statement

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The Land Use Lantern

Newsletter of the Land Use Coalition

February 2005

President's Column

"Bad laws are the worst sort of tyranny."
- Edmund Burke



Betty Gibbs
LUC President

In Boulder County, the Land Use Code is a rat's nest of conflicting regulations seemingly designed to trip up the unwary landowner who is trying to build or add on to a house or other structure. Not only are many aspects of the code arbitrary, but the Land Use Department and Commissioners have a history and culture of doing everything in their power to throw up blocks to anyone trying to do anything on their land. We have heard and documented a couple hundred stories of people who have been through review processes and the expensive gyrations and accommodations they have to make to get a building permit.

The LUC takes well-deserved credit for bringing land use issues to the attention of the Commissioners and the public. Because of LUC attention and activities in the Legislature, we have seen significant positive changes in treatment of property owners. With the new Commissioners, we expect to see more positive changes.

In October, we had a planning meeting and talked about ideas for the coming year. These are the main areas we are working on:

- **Fund Raising** - The LUC depends on the donations and generosity of our members. Special events, public lunches/dinners on land use topics (like the upcoming dinner with Rep. Stengel on Feb. 17) and bumper stickers are a few of our fund raising activities.
- **Land Use Code Revisions** - Members of the LUC will be participating with the new Commissioners, County staff, and other groups to improve the Land Use Code. In addition we will continue to monitor the unmerge process, Open Space activities, and revisiting the Zucker Report Findings.
- **State Legislature Activities** - We will continue to work with State legislators on land use issues. We're also working on statewide property rights organization.

To meet these goals and continue providing support for positive land use changes we need your support! The LUC depends on the donations and generosity of our members. You can help by renewing your membership and contributing any extra that you possibly can. Membership dues play an essential part in helping to cover our operating costs. Please make a difference - renew now! Come to our monthly meetings and meet our dedicated group of passionate and committed volunteers. You will see that your donations are well worth it. Hope to see you at one of our upcoming events!

Betty Gibbs

Phone: 303-444-6032, E-mail: contactus@landusecoalition.org

NEW COUNTY COMMISSIONERS WANT YOUR INPUT



On January 11, two new Commissioners were sworn in to begin their terms on the Boulder County Board of Commissioners (BOCC). Will Toor replaced Paul Danish and Ben Pearlman replaced Ron Stewart. Boulder County land owners who have long suffered during their reigns, are relieved that Stewart and Danish are out due to term limits. The third Commissioner, Tom Mayer has served two years.

Commissioner Toor and Commissioner Pearlman have acknowledged the well-known problems with the County's Land Use Code and have pledged to overhaul and simplify it. They have welcomed suggestions from the public and have been open to talking to members of the Land Use Coalition about this and other land use issues. Their new approach is vastly different from their predecessors and we are heartened at the idea of working with them (instead of against them) to make Boulder County a better place for all of us.

We have a great opportunity here and need your input to help draft the LUC's recommendations to the BOCC. Included on the enclosed membership renewal form, is a place for you to share your thoughts, comments, and suggestions for fixing the County's land use code. Don't delay...send in your comments today. If you have questions or would like to serve on the Land Use Code Committee, please contact Dick Schillawski at rschillawski@earthlink.net or 303-664-0156.

Don't Miss the LUC Dinner with Rep. Joseph Stengel on Feb. 17

The LUC is honored to have State Representative Joseph Stengel as our guest speaker. Rep. Stengel sponsored the merger legislation in the House and was instrumental in getting this important piece of legislation passed. Come hear his thoughts on the 2005 legislative session and land use issues in Colorado.

- When:** Thursday Feb. 17 at 5:00 PM
- Where:** Red Lion Restaurant - 38470 Boulder Canyon
- Cost:** Your individual meal/drink/tip & LUC donation
- RSVP:** By Feb. 14 to Barbara Taylor - 303-444-9508 or boulderheights@comcast.net

NONCONFORMING USES & STRUCTURES IN UNINCORPORATED BOULDER COUNTY

You may own a house that has been "grand-fathered in" because it was built before the existence of zoning in Boulder County, or at least before many of the zoning laws currently on the books were adopted. Your home or other building on the property may be designated a "nonconforming structure" because it has now become out of compliance with the subsequent Land Use Code regulations per *Boulder County Land Use Code [BCLUC] Article 4-1002*. Or you may be using the property in a way that the zoning rules prohibit, rendering it a nonconforming use, per *BCLUC Art. 4-1003*.

It's important to know this because your property may lose value over time or even become virtually unmarketable because no lender will finance a home that is not in compliance with the building codes, or you may be prevented from upgrading or even maintaining the property. You may live in an "overlay" district, for example, a flood plain or "neighborhood conservation" district.* Many structures, especially older homes, have become nonconforming over the years because of the avalanche of new regulations adopted by the County in recent years.

A "nonconforming structure" is any existing structure not in compliance with the zoning district in which it is located. A "nonconforming use" is any existing use not in compliance with the use regulations of the Land Use Code for the zoning district in which it is located. *BCLUC Article 4-1000*

The Zoning Code clearly mandates the County's policy that nonconforming structures and uses should be brought into compliance "as speedily as justice will permit" and that their regulations will be "strictly construed against the continuation or expansion of nonconformity."

No one wants to see people living in truly unsafe conditions, and the intent of such prohibitions may be benign. However, it is in the application of such provisions that the Commissioners with their uncontrolled discretion, have abused the rights of homeowners. You may be safe - at least for a while - if your house is well-built, up-to-date, you don't need to expand the square footage, and it doesn't burn down or get carried away by flood.

You may not alter, repair or enlarge the structure in any way that would increase the degree of nonconformity with respect to Code's setbacks or height restrictions. This would include any modification that results in an increase in floor area or height. The only exception would be for public health and safety reasons enforced by another governmental entity with jurisdiction, for example, a fire district.

If your house has been damaged or destroyed

You are allowed to rebuild if your nonconforming house has been damaged or destroyed by fire or flood or some other cause that is out of your control. You may be permitted to rebuild in the original location, keep the same floor area and height without going through Site Plan Review (SPR), but only if you start building within 6 months and complete your project within a year. For practical reasons, this condition may be impossible to meet, and you become subject to the whims and arbitrary decisions of the Boulder County Land Use Department, and ultimately the

Board of County Commissioners. They have broad discretion to turn down projects and impair your access to your property.

The County is not the only governmental entity for homeowners building a house to contend with. Other governmental and quasi-governmental districts may have gained concurrent jurisdiction along with the County, and if you are rebuilding or improving your existing home, their regulations must also be complied with: historic districts, water and sewer districts, fire districts and/or natural landmark designations may have been established since your house was originally built, and these regulations now apply to you. You may find that there are more obstacles to rebuilding your house than you had anticipated. The staff at the Land Use Department has a responsibility to assist homeowners in restoring their homes, but the practical reality is that they often use restrictions in the Code in ways that will restrict construction.

Districts may also have authority to impact your homebuilding, sometimes in ways that are fatal to the success of your project. In situations like this, going through SPR or Limited Impact Special Use Review (LISR) will inevitably throw you into the briar patch of the Byzantine and tortuous land use process in the Boulder County Land Use Code. **You may need to hire a lawyer, planning consultant or other professional to help you work through it.**

Non-conforming Structures: Burned Out Victims of the Overland Fire

Land use bureaucracy and elected officials often say one thing, and do another: Publicly the County professed to want to help the burned out homeowners of the Overland fire by expediting the approval process, waiving the requirement of SPR and otherwise helping them to avoid the worst part of obtaining a permit to build. An appropriate stand to take in times of distress. The reality is quite different, however.

Homeowners may be subject to regulations of overlying districts such as fire or water districts. Each Fire District has its own set of regulations, and they have the right and the responsibility to impose their conditions on homeowners in their district. They also have a built-in method for influencing the building decision process, and can make you spend money you don't have to force you to meet those conditions of review. For example, for the Overland fire victims who lost their houses, the Left Hand Fire District has imposed a burdensome and expensive requirement of indoor sprinkler systems, even in very small houses. Until now, that was an option left up to the owner, as long as the total square footage of the house did not exceed a certain amount.

A Non-conforming Use: The El Vado story - Tara & Jim Parks -or- No good deed goes unpunished

Tara Parks only wanted to improve the motel - turned apartment units - which she and her husband Jim had purchased in 1992. Built in the 30's, the El Vado's (located near Sugarloaf Road in Boulder Canyon) nine units were home to a variety of people at an affordable level by Boulder standards - between \$450 & \$750 per unit. The complex was in serious need of updating: old wiring,

plumbing, lack of adequate insulation, too low ceilings and leaded paint all needed to be removed and replaced. The improvements would not have added any additional square footage, and would bring the drafty units in compliance with code.

El Vado was considered a nonconforming use as a multi-family dwelling in the mountains, and to make these improvements, the Parks had to undergo a hearing under the LSIR requirement, both arduous & expensive. The Commissioners would need to find that the work would benefit the community in a significant way before they could approve the plan. The Parks were so confident that the Commissioners would approve their plan that they spent \$12,000 in preparation and exhibits for the hearing. The Commissioners justified their perfunctory denial and accused the Parks of an evil intent to gouge the tenants, and finding that a "handful of rental units" did not constitute "a significant socioeconomic need within the county". Their project would only be approved if the Parks agreed to permanently restrict the deed keeping the rents permanently affordable -- with Boulder County deciding what constituted "affordable".

As a result, the improvements were not authorized, and the structures will not be upgraded and improved, a significant loss for the County, the Parks' and their tenants.

Likewise, conflicts will occur when Neighborhood Conservation Overlay Districts* dictate what square footage, lighting and house colors will be permitted for homes in your community. As it is, a bare majority of your neighbors can impose their architectural and design standards on you, even though you have lived in your house for years in the form it is in right now. Your house will have become a non-conforming structure, subject to the same limitations on financing and renovation.

Conclusion: Use Due Diligence Before You Buy

You are at the mercy of arbitrary decisions made by the Board of County Commissioners and the Land Use Department. Maybe the most worrisome aspect about living in a nonconforming structure is that the condition of your home will be dependent on the discretion of bureaucrats and elected officials with little or no training in architecture or design. Not only does the BOCC have enormous discretion to impose restrictions on your home, the cost of appealing an adverse decision is prohibitive, with very little chance for reversal. Most people do not have the stomach for lengthy and costly litigation, and so are stuck with the final decision made by the Commissioners. Finally, and importantly, keep in mind that a lender will be reluctant to finance a home that is a non-conforming structure because of the limitations in improvements and the difficulty in upgrading, improving and remodeling the home.

By Ann Mygatt

** A Neighborhood Conservation Overlay District (NCOD) is an area of homes that has adopted specific building requirements (with only a bare majority vote) similar to covenants, that are imposed on the houses located in their area. You would be subject to these rules even if they are imposed after you have purchased your home. A new provision to the Code, no cases have yet turned up challenging this designation.*

MERGER UPDATE

On August 24, the Boulder County Commissioners unanimously approved text amendments to create an administrative "unmerge" process. At the hearing, the Land Use Coalition recommended to the Commissioners that they throw out the proposed text amendments and either rescind the 1993 "merger" policy altogether or adopt a simpler procedure. Close to a hundred people attended the hearing and all who testified were against the proposed amendments. The Commissioners acted against the recommendations of the affected landowners, their own Planning Commission, land use attorneys, local newspapers, and all fair-minded citizens. We've included a few of the articles that were published in local newspapers concerning Boulder County's merger policy on our website: www.landusecoalition.org.

The LUC plans to continue to fight Boulder County's automatic merger policy and to get the County to rescind the policy altogether or institute a simpler, non-subjective procedure that will restore property rights to all merger victims. Both Commissioner Toor and Commissioner Pearlman have stated that they intend to fix the merger issue. Rest assured, the merger issue will be included on our list of suggested changes to the Land Use Code.

If you are a possible merger victim, you need to know that the County's proposed "unmerge" procedure (called the "Administrative Parcel Division Process") is confusing and has risks. You can choose to wait until the new Commissioners have fixed the merger issue or you can choose to file now to have your properties "unmerged" under the County's new procedure. The LUC cannot give legal advice on this issue. You need to determine your best individual course of action. You may want to seek legal advice. Please know that whatever your decision, the LUC stands ready to help. We will continue to provide updates on our merger actions. Should you submit an application under the County's new "unmerge" procedure, we have a list of suggestions available on our website or we can mail it to you.

Since the County instituted the "Administrative Parcel Division Process" in September, only 12 applications have been submitted. This speaks volumes about the lack of support for this ill-formed process, as we have sent correspondence to hundreds of landowners whom we suspect are merger victims and eager to have their property rights restored. As of January, only about 50% of the parcel unmerge applications have been approved.

- Five applications have been approved. The first one approved was the Beggs' application. Another application was approved even though neighbors objected. One application to separate 5 parcels was approved as 2 parcels. The 5 parcels are all on separate deeds, but because they were combined for tax purposes, they cannot be separated using this application. Another application to separate 3 parcels was approved as 2 parcels. The third parcel was deemed to be too steep for building and had no legal access.

- Five applications have been denied. Four applications were denied because the parcels are on one deed. One application was denied because of shared improvements. In this case, the house is on one parcel and a garage and barn are on the other parcel across the road.

- Two applications are pending.

Please contact Pam McElwain at pamelamcelwain@yahoo.com or 970-278-0214 if you have a merger question.



PO Box 20265
Boulder, CO 80308

LUC CALENDAR

- LUC February Meeting (date changed)Feb. 9
- LUC Dinner with Rep. StengelFeb. 17
- LUC March MeetingMarch 2

Meetings are usually held at 5:30 at the Rockies Brewing Co. at 2880 Wilderness Place in Boulder. Please call 303-666-7903 or visit www.landusecoalition.org to confirm meeting date & location.

LAND USE COALITION OFFICERS

- President: Betty Gibbs
- Vice President: Pam McElwain
- Secretary: Jo Wiedemann
- Treasurer: Jeanne White

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Karl Anuta, Dirk Arnold, AJ Chamberlin, Jim Hester,
Ann Mygatt, Kevin Probst, Dick Schillawski,
Barbara Taylor, Jo Wiedemann, Jeanne White

COMMITTEES

- Boulder County Land Use Monitoring Committee -
Dick Schillawski (303-664-0156)
- Legislative Committee - Kevin Probst (303-258-9256)
- Luncheon Committee - Jo Wiedemann (303-447-2569)
- Merger Committee - Pam McElwain (970-278-0214)
- Newsletter Committee - Ann Mygatt (303-449-8007)
- RS2477 Roads Committee - AJ Chamberlin (303-441-5682)

LUC MEMBERSHIP RENEWAL FORM ENCLOSED

In order to continue receiving LUC newsletters and updates, please complete and return the enclosed membership renewal form, along with your membership dues. We want our members to know that all of our staff is strictly volunteer with no paid positions whatsoever. Many of us work tirelessly on all issues that concern property rights in Boulder County. Please help us continue our efforts to educate the public about land use issues that affect us all by making a contribution to the LUC. Your prompt payment of renewal fees/donations is greatly appreciated!

Volunteers Wanted to Serve on County Boards, Commissions

The Boulder County Commissioners are seeking volunteers to fill 85 vacancies on 15 commissions covering areas ranging from aging and housing to open space and domestic abuse. Each year the commissioners appoint citizens to serve on these boards for terms ranging from one to five years, depending on the specific committee. The committees typically meet once a month or "as needed" at various locations.

Citizens interested in applying to serve may download an application from the Boulder County Web site at: [www.co.boulder.co.us/bocc/Advisory Boards/index.htm](http://www.co.boulder.co.us/bocc/Advisory%20Boards/index.htm) or call Cecilia Lacey at 303-441-4504. Applications are due in the commissioners' office by 4 p.m. Friday, Feb. 18.



The Land Use Coalition enters 2005 with pride in the accomplishments of the last seven years and hope for the future in working with our new County Commissioners and other elected officials and government agencies. We appreciate the wonderful support all of our members and donors have given us over these past years. Your donations have allowed us, through our merger regulation battle alone, to restore millions of dollars of property value to small landowners across Boulder County. Without your generous support none of our victories would have been possible.

Unfortunately, the LUC also enters 2005 with significantly reduced funds. In the past we have tried to keep a healthy balance in our bank account to allow us to respond rapidly to emerging issues. However, over the past year our expenses on such issues as the merger regulation battle, the election, and sponsoring luncheons and conferences on important topics have put us in the position of not having the funds we feel are needed to continue to fight for your property rights. Be assured that your donations are used exclusively for organization expenses such as mailings, advertising, legal fees, printing, travel expenses, sponsoring meetings, and the like, and not for people's time in our "all volunteer" organization.

We ask that you consider a donation to the Land Use Coalition to help us rebuild our reserves and allow us to continue working for you. Though we do not insist on annual dues, we suggest an annual donation of \$25.00 or more to help the LUC function. Larger donations are always gratefully accepted. We count on you to sustain the efforts of our organization as we work for fair treatment of small landowners across Boulder County and Colorado overall. As a special thanks for your donation, we will send you one of the bumper stickers below. Please mark your bumper sticker preference on the form below.

Thanks again for your support and generosity. Please join us at our monthly meetings to give us your counsel and to lend a hand!



LUC MEMBERSHIP DUES & DONATIONS

Enclosed is my \$25 LUC 2005 membership fee I am making an extra donation of \$ _____

Please send me the following bumper sticker: Respect PR Take Politics out of PR

Name _____

Address _____

City/State/Zip _____

Phone _____ E-mail _____

We do not share our donors list, mailing list or e-mail list with anyone. If you give us your e-mail address, you will receive the newsletter and current actions and announcements online.

Many Thanks for your generous donation!

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