



*"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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P.O. BOX 20265 - Boulder, CO 80308  
303-666-7903 - [www.landusecoalition.org](http://www.landusecoalition.org)  
[contactus@landusecoalition.org](mailto:contactus@landusecoalition.org)

# The Land Use Lantern

Newsletter of the Land Use Coalition

June 2005

## *President's Column*

Greetings LUC Members and Landowners:

This is my first "President's Column" since my return as president of the LUC, so I thought I would take a few moments to say thank you for the opportunity to serve as your president, and to lay out what I hope will be the direction of the LUC over the next couple of years. I'd also like to extend a heartfelt thanks to Betty Gibbs on behalf of all LUC members for providing outstanding leadership for our organization for the last several years. Betty has dedicated many hours to the LUC and has been an integral part of our organization since its beginning. Thanks for all of your efforts and accomplishments Betty!!

The LUC is an all-volunteer organization. Because of that, we can accomplish only what the motivated folks in the group are willing to work on. Our success over the years has been possible because we have had a group of 10-20 dedicated workers (the numbers wax and wane with the seasons) supported by the generous financial donations of the larger group of supporters. Through this symbiotic arrangement we have been able to make huge strides in bringing land use sanity back to Boulder County. All LUC members, those who work on projects and those who help with funds, can take great pride in our victories on the "Steep Slopes" issue, the "Takings" legislation, the "Merger" issue, the "Term Limits" question, the "Common Ground" effort, numerous other smaller topics, and now the "Land Use Code Revision" process. The impact of these successes will be felt in Boulder County for generations.

However, our work is not done! The recently initiated Land Use Code Revision process being conducted by the Boulder County Land Use Department at the direction of the Commissioners, could be the most important Land Use action of the last 20 years. We need to be an active and influential participant in this process. If we can ensure that fairness, reason, common sense, and realism are instilled in the revised Land Use Code, we will have achieved our greatest success to date. Fortunately, we have a great leader in our work on this code revision in Dick Schillawski. Dick and the Code Committee team are doing an outstanding job, and becoming recognized by the Land Use Dept. as important contributors to the Code Revision process. This effort will be a major focus of the LUC over the next 2 years.

Now, more than ever, it's important that all of our members – old and new – speak up and share their thoughts and experiences on changes that need to be made to the county's land use codes. We have provided the county's feedback form (as well as link to the form online) for your comments. Do not delay – complete this form today! Share your experiences and help make Boulder County a better place for your family and for future generations.

In addition to the land use code revision effort, I would hope the LUC would continue to pursue the goal of making the Open Space program one that not only buys open space land, but also manages it properly for the good of the environment, the good of the public, the good of those who are neighbors to open space lands, and the good of the user community.

One other area the LUC should consider pursuing is the abuse of eminent domain and government takings. The LUC is one of the few voices in Boulder County speaking out for small landowners against government excesses. We can work with the State Legislature, other Colorado property rights groups, and even national groups to ensure governments do not steal private property from one owner to reward other parties and to enrich their own tax coffers.

In addition to these "BIG ISSUES" the LUC will continue to aid individual landowners with their battles, to track the Merger process and help folks navigate through the "unmerge" process, and generally serve as a watchdog on land use injustices in the County.

You can see we have an aggressive agenda! To that end, we need your hands-on help or your financial support to make sure this record of success continues. Please consider either coming to our meetings and becoming active, or sending a donation to the LUC so we can have the needed resources for mailings, advertisements, flyers, trips to the Legislature, sponsoring public dinners and luncheons, printing bumper stickers, and all the other things the LUC does. We cannot progress without your support!!

*Kevin Probst*

Phone: 303-258-9256, E-mail: [kprobst@mho.net](mailto:kprobst@mho.net)

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## UPDATE ON COUNTY CODE REVISION PROCESS

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On May 24, The Boulder County Board of Commissioners (BOCC) held the first public meeting for input on land use code revisions. The County's website stated: "At this meeting, the commissioners will invite members of the public to present their views regarding how the code has worked in the past, what changes to the code are desirable, and how the code revision effort should proceed to maximize public participation, and achieve the best result given the goals of the process."

The LUC was allotted time at the beginning of the public meeting to give a presentation on land use code revision suggestions. Dick Schillawski, LUC code revision committee chairperson, gave the LUC presentation. A variety of interested parties spoke about their concerns with the land use code including green building advocates, architects, attorneys, real estate agents, agricultural landowners, former County employees, residents and landowners. The majority of speakers criticized the land use code and encouraged changes.

Prior to the May 24 public meeting, Dick Schillawski, Kevin Probst, and other LUC members met individually with the new commissioners and presented the LUC's list of code revision suggestions. Dick and the code revision committee have spent many hours going through the land use code and compiling this comprehensive list of suggestions. We've provided a list of the suggestions below. Many thanks to Dick and the code revision committee for their efforts, and thanks to the LUC members who've submitted their comments to the committee.

This code revision process is perhaps the most important land use action to come out of the County in many years. Under the direction of the commissioners, the Land Use Department has hired a Special Projects Manager, Michelle Krezek, for a contract 2-year position to oversee the land use code revision process. We've invited Michelle to our July monthly meeting and encourage you to attend to share your thoughts with her on the code revision process. The Land Use Dept. has put together a special website tracking the County's land use code revision efforts and encouraging public

input at: <http://www.co.boulder.co.us/lu/code/input.htm>

**Your help is needed!** The Land Use Dept. has asked for feedback on suggested changes to the land use code and they have asked members of the public to submit their suggestions on the enclosed feedback form. Please complete this form and mail it to: Attn: Michelle Krezek, Boulder County Land Use Dept, PO Box 471, Boulder, CO 80306. Or you can fill out the same form online at the link listed above. In addition to the feedback form, Land Use Dept. Director, Graham Billingsley, has asked for public feedback in the form of phone calls, letters, and personal visits with him or staff. Either Graham or Michelle can be reached by phone at 303-441-3930 or via e-mail – [gbillingsley@co.boulder.co.us](mailto:gbillingsley@co.boulder.co.us) or [mkrezek@co.boulder.co.us](mailto:mkrezek@co.boulder.co.us).

In addition to sharing your personal experiences with the County and the land use code, we encourage you to pick a couple of land use code revision topics from the list we've included below. **PLEASE DO NOT DELAY – YOUR INPUT IN THIS PROCESS IS ESSENTIAL TO A POSITIVE OUTCOME!**

The next BOCC public meeting has been scheduled for Wednesday, June 22, 7:00pm - 9:00pm in the County Commissioners hearing room, located on the 3rd floor of the Boulder County Courthouse. NOTE: this is not a public hearing, so there will not be any public testimony, but the public is invited to attend. The BOCC and Planning Commission will be reviewing the list of issues they have received from the public and staff, and will be offering their own issues for consideration.

We will continue to send out e-mail announcements as notices or meetings are announced by the BOCC and Land Use Dept. If you have suggestions for the LUC code revision committee or if you would like to participate on the committee, please contact Dick Schillawski at [rschillawski@earthlink.net](mailto:rschillawski@earthlink.net) or 303-664-0156. To be added to our e-mail announcements list, please send an e-mail request to [contactus@landusecoalition.org](mailto:contactus@landusecoalition.org).

### LUC's Land Use Code Revision Topics

The Land Use Coalition is a grassroots, 100% volunteer, non-profit, non-partisan organization dedicated to informing, supporting and protecting citizens and their property rights in Boulder County, while also supporting open space, wildlife, and reasonable land use regulations. We welcome the opportunity to provide public input on the revision of the land use code. We applaud the new Board of County Commissioners' call to make improvements to the land use code. We feel the land use code should be objective vs. subjective, easier to understand, and ensure the equitable and consistent treatment of all applicants. We have spent many hours reviewing the current land use code and have compiled the following list of items that need to be addressed. As the code revision process will likely change and evolve, so too will this list. *(Last updated: 06/06/05)*

#### **"MERGERS"**

- **Rescission of "mountain mergers"** - Campaign promise of new commissioners
- **Elimination of single-deed "merger" policy** - Policy based upon inferred intent to merge properties which is contrary to historic evidence of general practice and testimony in specific cases
- **Use of criteria in SB67** - Regardless of when "merger" supposedly took place
- **Elimination of recently implemented "unmerge" process** - It further complicates the situation and it would be better to implement the items noted above

## SITE PLAN REVIEW

- **Make the Site Plan Review process one that builds harmony in neighborhoods** - As opposed to the current process that encourages conflicts and pits neighbors against neighbors, thus destroying neighborhood harmony
- **Eliminate "obsession" with house size** - As expressed in square feet; change the practice to just confirming conformance with the zoning district's setbacks and height limit; in the absence of a coherent and defensible reason for regulating house size, current practices based upon poorly defined "neighborhoods" look like spot zoning
- **Eliminate Criterion 14 (scrape-offs)** - SPR criteria should be the same regardless of whether or not there is an existing house or other development on the property
- **Require staff to identify Criterion 15 (Comp. Plan & IGA issues) at the pre-application conference** and not to drag them in as afterthought(s) later, applicants are not, and should not be expected to be experts on these documents, that's the Department's function
- **Eliminate "long driveways" from language** - Rely on other SPR criteria to mitigate any negative aspects, in many/most cases getting the new development away from road(s) is the most beneficial possible outcome of SPR
- **Eliminate "legal access" from SPR application requirements** - It isn't among the SPR criteria and is thus inappropriate to require it for application
- **Improve revegetation provisions** to better accommodate time delays for regrowth and do-it-yourself efforts, and facilitate use of letters of credit
- **Ensure lighting constraints aren't exceeding what's necessary for safety** - The Land Use Dept. is currently exceeding the down-lighting requirement and the Director's authority
- **Eliminate the "double-count" policy for grading calculations** - Use "excess" grading as a trigger for an SPR hearing before the BOCC, not to trigger limited impact special review
- **Minimize "circular-process" concerns** (landowner is supposed to prepare an application addressing concerns not raised until review of the application) - make it a more "sequential" process
- **Limit "visual impact" issues to objective criteria** - e.g. establish objective criteria for "ridge-line" construction limitations, have a pre-approved color palette, specifications on acceptable window reflectivity and/or shading techniques, etc. In general, establish objective criteria and eliminate subjective elements of SPR

## LAND USE DEPT. ISSUES

- **Present telephone system is inadequate** - Currently outside callers often get busy signals
- **Return telephone calls promptly** - Some staff don't, if they return calls at all
- **Minimize mailing and paperwork delays** - Sometimes hold-up is as much as a week
- **Emphasize problem solving, rather than creation** - Reward staff efforts at this and make the purpose of the LUD to help landowners succeed in their project rather than to abandon their project
- **Examine zoning enforcement** (which recently appears to be going overboard)
  - Empowers unreasonable neighbors & disputes (mediation?)
  - Exacerbates problems posed by inappropriate Code regulations
  - Complaint-based system may need rethinking
- **Perform Zucker Report progress review** - (not a "re-do") for conformance with spirit of recommendations

## OTHER ISSUES

- Agricultural sector regulations
- Historic Preservation and Scrape-offs
- Non-conforming uses (and "grandfathering")
- Neighborhood Conservation Overlay Districts (NCODs)
- Proof of legal access
- Special Use Review regulations
- Neighbor notification criteria for applications
- Mountain road systems - maintenance and preservation
- BOCC calendar and docket packets available online
- "Affordable housing" vs. "housing that's affordable"
- Boundary line adjustment process
- Land Use Dept. fee structure
- Flood Plain regulations
- Fire regulations
- IGAs (Intergovernmental Agreements)
- Accessory dwellings



PO Box 20265  
Boulder, CO 80308

**LUC CALENDAR**

- LUC July Meeting . . . . . July 6
- LUC August Meeting . . . . . August 3
- LUC September Meeting . . . . . September 7

Monthly meetings are held the first Wednesday of each month at 5:30 at the Boulder Beer brewpub (formerly Rockies) at 2880 Wilderness Place in Boulder (west of Foothills Hwy & Valmont)

**LAND USE COALITION OFFICERS**

- President: Kevin Probst
- Vice President: Pam McElwain
- Secretary: Betty Gibbs
- Treasurer: Jeanne White

**BOARD OF DIRECTORS**

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 Code Revision 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)

**MERGER UPDATE**

The merger issue is high on the LUC's list of suggested revisions to the County's Land Use Code. **It's imperative that LUC members and all merger victims contact the Land Use Dept. and recommend that mergers be rescinded.** We've included specific recommendations pertaining to mergers and the land use code on page 2 of this newsletter. You can use the feedback form enclosed or one of the other contact options listed.

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. In general, most land use attorneys have recommended their clients to wait and see if the merger policy is going to be rescinded or radically revised with the current land use code revision process. 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.

*Please contact Pam McElwain at [pam.mcelwain@comcast.net](mailto:pam.mcelwain@comcast.net) or 970-278-0214 if you have a merger question.*



5. Sign Code - Code Reference: Article 13

6. Nonconforming Uses - Code Reference: Article 4-1000

7. Update and clarification of development standards in Article 7 including road standards and erosion and sedimentation controls - Code Reference: Article 7

8. Review Processes

9. Other areas of the code.

Additional Questions / Comments