

July 10, 2007

Re: Docket DC-05-002H (Expanded TDR Program)



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Dear Boulder County Commissioners and Planning Staff:

We are gravely concerned about the direction that the county is taking with the Sustainability program and urge you to reconsider the proposals that are presented in this docket. These proposals advocate for additional regulations based on information that has not yet been provided. It is premature to craft regulations without first providing the "BuildSmart" program details. It is also premature to propose drastic house size restrictions for "Special Characters Areas" that haven't been properly researched to determine if these areas even deserve such a designation - per the Land Use Department, this research is projected to take 4-5 years. **It is simply bad policy to implement regulations based on absent information.**

Despite public concerns, neither you nor the Planning Commission have addressed the economic impact of these proposals. What will it cost the taxpayers to create a TDR bank and administer these new proposals? Is this cost even justifiable when considering how few new homes are built in the rural county each year? These proposals would severely restrict landowners' property rights. Like the abysmal merger policy, is it fair to inflict ultra-restrictive regulations on a portion of rural property owners in order to implement a poorly crafted policy? Affected landowners need to be notified of these proposals by the county immediately, as they stand to lose much with these proposals. In addition, more advanced notice of these public hearings and details of proposals should occur.

We recommend that you address the "BuildSmart" program prior to considering the proposals contained in this docket. Short of your doing that, below are more specific comments and concerns regarding this docket.

"BuildSmart" program – The public details on "BuildSmart", particularly its levels (Silver, Gold, etc.), are non-existent at present. Increased energy efficiency used to mitigate the impact of a larger structure makes sense, but until actual data and the "BuildSmart" program information are provided, proposals incorporating "BuildSmart" should be tabled.

We continue to advocate for a simple, voluntary green building/renovating program countywide for both new and existing structures. If the county's goal is to increase conservation of resources and promote green building practices, then all existing and proposed structures in Boulder County, including within the municipalities, should qualify for green building incentives. ***We strongly encourage a change of focus to providing incentives and support for upgrading the existing housing stock to be more energy efficient throughout the county, and less obsession with new, rural houses.***

Expanded Transferable Development Rights (TDRs) program –

- The county's current TDR program has been in operation for a number of years, but details and accountability for this program are sorely lacking. This lack of transparency is unacceptable. The county needs to address the problems created by its existing TDR program (including the county's role in increased house sizes created as a result of its TDR program) before implementing a new TDR program.

- Despite repeated requests by the public, these proposals contain no consideration of lot size - a 65-acre parcel is considered on a par with a sub-acre lot. This is ridiculous.

- The thresholds and caps proposed for Special Character Areas (SCAs) are outrageous, draconian, and unjustifiable. The staff has indicated that it will take four to five years to adequately study all SCAs individually. Again, this is another proposed regulation that is based on non-existent information. It should be removed from consideration. If individuals in neighborhoods have a problem with house sizes, then they can look at implementing the existing Neighborhood Conservation Overlay District (NCOD) regulations. In reality, the proposed SCAs would just impose these unpopular NCODs by fiat.

- Requiring builders of "large" houses to effectively purchase Open Space elsewhere lacks the "essential nexus" required (see Ed Byrne's letter, June 5, 2007). Adopting such a provision exposes the county to severe legal liability.

- The size limit proposed for a landowner to sell Development Credits (1300 sq. ft.) is absurdly small, and would do little to “provid(e) a diversity of housing stock in unincorporated Boulder County.” Very few would be eligible to sell DCs; little diversity would be provided.
- Since few would be selling DCs as such, the DCs required to build large houses would most likely originate from TDRs (1 TDR = 4 or 10 DCs, depending upon particular option). The county's Parks and Open Space Dept. anticipates selling TDRs generated by buying Open Space parcels under this program (POSAC meeting, June 28). Thus, in effect, much of the burden of Open Space purchases would be shifted from county residents as a whole to the small minority of rural landowners. This is contrary to the “fairness” objective of the Land Use Code revision process, as well as the “equity” required of legitimate “Sustainability” (see the Brundtland Commission report¹).
- This is not an exhaustive list of our objections to the current proposals.

Instead, we recommend:

- Take lot sizes into consideration. Use “presumptions” on a sliding scale based upon lot size to exempt house size from the “Neighborhood Character” criterion in Site Plan Review (SPR), as suggested by the Planning Commission.
- Seriously consider rezoning most of the SCA candidates where small lots prevail. Most of these are currently improperly zoned with “Agricultural” or “Forestry” zoning, and the required setbacks, etc. are inappropriately excessive. Nothing in the current proposals addresses this.
- Eliminate the requirement of DC purchases to build or enlarge a house, and raise the threshold for sale of DCs to something more sensible. Make DCs convertible into TDRs, and provide at least enough TDR receiving sites to match the supply of TDRs (or purchase the TDRs using Open Space funds).
- If the county is going to continue generating TDRs from its Open Space and Conservation Easement purchases, it should do so in a well-publicized manner. Many taxpayers are offended to find that their Open Space Tax dollars do not extinguish development in many cases.
- Make any county involvement, such as the proposed “bank” fully transparent and responsive to citizen inspection.

House-Size Limitations – We do not favor absolute limits on house sizes. If more regulation is needed in this area, then perhaps additional review for very large houses such as a Limited Impact Special Review, as proposed by the Planning Commission, would make sense, provided the threshold for such a review is sensible (10,000+ sq. ft.).

“Sustainability” – The Comprehensive Plan Element drafted by staff and rubber-stamped by the Planning Commission is more of a rationalization for continuation of “business-as-usual” in Boulder County than adoption of the principals generally considered essential to “Sustainability”. These include equity and economic considerations. (Again, see the Brundtland Commission report¹) The current proposals show little consideration for the citizens adversely affected, and are thus incompatible with “Sustainability”.

Land Use Code Revision Process – According to the timetable originally projected, this process should be nearly finished. Instead it has hardly started and is floundering off onto tangents. Initially “Neighborhood Character” in SPR was one of the universal major concerns, and the diversion into “Sustainability” was somehow supposed to address staff’s problem defining this term (which now seems to have become equivalent to house size). This diversion has not been useful in resolving the Neighborhood Character issue – the staff memorandum for this docket contains several problematic alternatives for defining a “Neighborhood” reflecting staff’s continued quandary. In addition, this docket has inserted fresh controversies and divisions where there were too many already.

We sincerely hope that you will address these concerns.

- Members of the Land Use Coalition

¹United Nations. 1987. "[Report of the World Commission on Environment and Development.](http://ringofpeace.org/environment/brundtland.html)" General Assembly Resolution 42/187, 11 December 1987. Report available at <http://ringofpeace.org/environment/brundtland.html>.