



Land Use Department

Courthouse Annex

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**BOULDER COUNTY
BOARD OF COUNTY COMMISSIONERS**

July 10, 2007

5:00 P.M.

**Hearing Room, Third Floor,
Boulder County Courthouse**

PUBLIC HEARING

STAFF PLANNER: Michelle Krezek

Docket DC-05-002H: Expanded Transfer Development Rights (TDR) Program, including Structure Size Considerations

SUMMARY:

The Sustainability Element of the Boulder County Comprehensive Plan as adopted by the Planning Commission included goals and policies addressing the impact of large-scale development on the rural character of the unincorporated areas of the County. In addition, the Element also included policies in relation to sustaining a diversity of housing stock, preserving vacant parcels, encouraging smaller scale development and ensuring new development was built in a more sustainable manner.

To implement these policies, staff has developed a conceptual draft of an expanded TDR program, which includes thresholds for structure size. A public meeting was held on June 5th to hear from the public on this concept draft. After hearing from the public, the Board directed staff to use the comments from the public to develop several alternative programs for consideration by the Planning Commission. The Planning Commission took public testimony on these options at its June 20th meeting, and has made a recommendation to the Board of County Commissioners as to their preferred framework for these regulations.

None of these options are in final form, and it is understood that many details still need to be defined. But the material provided should give both the public and the Commissions enough information to consider the capacity of each option to meet the adopted goals of the Sustainability Element.

BACKGROUND ON THE IMPLEMENTATION OF THE SUSTAINABILITY ELEMENT:

Staff has been working on two different but related programs designed to implement the goals and policies outlined in the Sustainability Element of the Comprehensive Plan – the BuildSmart green building code, and an expanded Transfer of Development Rights program including structure size considerations. These goals and policies include preserving the rural character of Boulder County, especially those areas with particular historic or contextual character; promotion of more sustainable development through incentives, education and regulation; allowing for the impacts of larger scale homes to be offset through the preservation of vacant land and smaller scale development elsewhere in the County; and providing flexibility for property owners to build and keep smaller scale homes thus providing a diversity of housing stock in unincorporated Boulder County. The Board of County Commissioners held study sessions on May 23rd on both BuildSmart, with the Board of Review, and the Expanded TDR program, with the Planning Commission. For that study session, conceptual drafts were developed and distributed for each program.

The Commissioners held a public hearing on June 5, 2007 to take public testimony on the conceptual draft of the TDR program. In general, the comments on the concept draft centered on the fact that the program as drafted would disproportionately disadvantage the middle class; the size thresholds were too low as the average family needs more than 2,600 square feet of living space; mountains and plains should not be treated differently, as development is much more visible in the plains and people living in the mountains often work from home so they need home office space; if sustainability is the goal, the focus should be on green building; and there should be more flexibility in dealing with impacts – the purchase of development rights is not the only appropriate way to deal with large houses.

Staff took these comments and prepared three options for Planning Commission to consider at their June 20th public hearing. After taking public testimony, the Planning Commission reviewed and considered the different options. Their consensus was that Option 2, with some modifications, was the one they felt was the most appropriate to meet the goals and policies identified in the Sustainability Element.

DISSCUSSION:

Based on the public comment on the original concept draft, Staff developed three options or frameworks for this program. In addition, the Planning Commission made a recommendation at their June 20th meeting as to the framework they recommend using to draft regulations. Included with this memo is a chart comparing the three options and the Planning Commission recommendation. These options are still in the conceptual stage and as such do not include every detail, but are intended to give you the framework under which each version of the program would work.

Option 1

Option 1 is a modified version of the concept draft that was presented at the May 23rd study session, based on comments heard from the public. This option allows for the transfer of development potential from both vacant and developed parcels, through a county-run bank. The bank facilitates the transfer of Rights and values those Rights, using market data for vacant land sales. Development Rights can be divided into Development Credits, four Credits equals one Right, and Credits are used to transfer square footage between parcels.

The County is divided into distinct geographic areas (mountains, plains, and Special Character Areas (SCAs)) with size thresholds specific to each of these categories. Total square footage includes habitable space, including basements, but not covered porches. Each home is allowed 500 square feet of garage space; additional garage square footage will be counted toward the total square footage of the home.

The purchase of Development Rights or Credits is required to build a home of a size greater than the threshold size. For homes smaller than the threshold size, there is the possibility to sell some of the unused development potential and preserve that smaller scale home. In addition, for development below the threshold size, outside a SCA, Site Plan Review will not review the size of the structure. For homes above the threshold size, SPR would continue to consider size as it relates to neighborhood character, however, SPR criteria would include presumptions as to the definition of neighborhood and appropriate size for that neighborhood. All development will have to meet BuildSmart requirements.

Option 2

Option 2 incorporates more flexibility in offsetting impacts. This option includes a definition of various development size levels and includes alternatives for the mitigation of impacts associated with each level. In addition, this option specifically integrates the BuildSmart green building program to ensure that all development is more sustainable and to allow for mitigation of larger scale development.

The size levels included in this option are based on several considerations:

1. The U.S Green Building Council, in their LEED for Homes program, defines a 2,600 square foot five bedroom home as a “neutral” sized home (measured using all conditioned space, whether finished or not).
2. The Boulder County Building Code requires sprinklers for new homes greater than 3,600 square feet, so we see a natural break in housing size just below 3,600 square feet.
3. Public testimony indicated that an average family of four living in a house with a home office needed approximately 5,000 square feet of space.

As in Option 1, total square footage includes habitable space, including basements, but not covered porches. Each home is allowed 500 square feet of garage space; additional garage square footage will be counted toward square footage. The ability for property owners with small-scale homes to sell Development Credits and deed restrict their property is also included in Option 2. A county-run bank would facilitate the transfer of Rights and Credits, and would set the values associated with Development Rights.

However, under this Option, there is no distinction between development in the mountains and the plains. The defined development levels apply to all areas of Boulder County, except Special Character Areas. SCAs are included in this option, and will have specific thresholds and caps until more specific requirements for those communities can be developed. The development levels are as follows:

Below 2,599 square feet

- ✓ BuildSmart – meeting the mandatory BuildSmart requirements (Bronze level) – this is the level of BuildSmart that all new construction, including substantial additions and remodels, will have to meet
- ✓ SPR – Limited SPR Review –no consideration of size included in the SPR review

- ✓ May deed restrict and sell Development Credits if development is less than 1,300 square feet

- 2,600 to 3,599 square feet - BuildSmart – meet Bronze BuildSmart plus one of the following:
 - BuildSmart Silver Level
 - Deed Restrict to maximum square footage – but can not sell Development Credits
 - Buy one Development Credit
- ✓ SPR – SPR Required – Size as it relates to neighborhood compatibility will be a consideration in the SPR approval process

- 3,600 to 4,599 square feet - BuildSmart – meet BuildSmart Silver plus one of the following:
 - BuildSmart Gold Level
 - Buy two Development Credits
- ✓ SPR – SPR Required – Size as it relates to neighborhood compatibility will be a consideration in the SPR approval process

- 4,600 and above
 - ✓ BuildSmart – meet BuildSmart Gold (up to 6,000 square feet; 6001 square feet and above requires net-zero energy use plus BuildSmart Gold)
 - ✓ Development Credits – required purchase of one Development Credit for every 1,000 square feet over 4,600 square feet
 - ✓ SPR – SPR Required – Compatibility with neighborhood will be a consideration in the SPR approval process

As in Option 1, SPR criteria would include presumptions as to what neighborhood is being considered and appropriate size for that neighborhood.

Besides meeting the same sustainability goals and policies as are met by Option 1, this option integrates the requirements of BuildSmart into the expanded TDR program and responds to the comments of property owners. Much of the public testimony focused on the idea that it would be more appropriate to meet sustainability goals through increased green building standards than through the purchase of development credits, and this option gives property owners the flexibility to make that choice. In addition, the option also allows for the impacts of larger scale homes to be offset through the preservation of land elsewhere in the County, and provides flexibility for property owners to keep smaller scale homes thus providing a diversity of housing stock, through the sale and purchase of Development Rights and Credits.

Option 3

Option 3 expands on our current regulations and programs to better meet the Sustainability goals and policies outlined in the Comprehensive Plan. We heard public comment that we already have Site Plan Review to deal with neighborhood character, so why the need to develop new regulations. This option does away with the requirement to buy development rights or credits for all but the largest homes; plus it would expand the SPR criteria to better deal with applications for larger-scale homes which impact established neighborhoods. It also expands the current TDR program to allow for the sale of development rights from vacant mountain land in a private transaction, without a county-run bank to facilitate or value that transaction. Specific details as to the properties eligible for sale of Development

Rights will have to be developed based on the resource values included in the Boulder County Comprehensive Plan.

Under this option, size considerations for all areas of the County will be dealt with through the SPR process; updated SPR criteria will be necessary to give better guidance as to what constitutes a neighborhood and what size development is compatible with that neighborhood. The use of presumptions as to what defines a neighborhood and what constitutes development that does not adversely impact that neighborhood will be included in the SPR standards and criteria. There will be no Special Character Areas; Site Plan Review will be used to deal with the preservation of neighborhood character in those areas.

Option 3 requires that all homes will have to comply with the BuildSmart program, with larger homes having to be built at a higher BuildSmart level. Additionally, in order to mitigate the impacts of the largest homes, these developments will be required to go through a Limited Impact Special Review (LISR) approval process, which entails a public hearing before the Board of County Commissioners, will have to purchase a Development Right, and depending on size, may be required to build to a “net-zero energy” standard.

As in Options 1 and 2, total square footage will include habitable space, such as basements and accessory structures used for residential purposes, but will not include covered porches. Each home is allowed 500 square feet of garage space; additional garage square footage will be counted toward square footage. Unlike Options 1 and 2, there is no ability for property owners with small-scale homes to sell Development Credits and deed restrict their property, thus preserving a diversity of housing stock in the unincorporated Boulder County.

Planning Commission Recommendation

The Planning Commission felt most comfortable with the framework given in Option 2, but wanted to make some modifications to that Option.

- Scaling of credits – Development Credits divided into a 1/10 increment, instead of the proposed ¼. This will allow owners who want to expand a small amount to buy just the square footage they need. It will also reduce the cost for small additions of square footage. We also discussed making the Development Credits more expensive as more were needed to increase square footage, but the Planning Commission was not comfortable with increasing prices for Credits or Rights.
- Basement square footage – Exclude basements in determining the square footage for threshold purposes, but include the basement square footage for determining compliance with BuildSmart.
- Ability to repurchase development credits once they have been sold to the bank – on this issue the Planning Commission did not reach consensus and asked staff to look at some more options; they did feel that allowing some amount of square footage repurchase would allow property owners to respond to changes in circumstance such as having another child, moving an elderly family member in or needing a home office, but struggled with the community certainty associated with the limitation placed on future development.
- Thresholds – given the addition of basement square footage, the Planning Commission elected not to change the various threshold numbers included in Option 2. (They did not, however, endorse these thresholds as the “correct” number, but thought we should continue to look at what numbers would be appropriate.) The thresholds outlined in the proposal would exclude some amount of basement

square footage as well as the 500 square feet of garage space and covered porches from the total square footage.

- Special Character Areas – The Planning Commission liked the idea of SCAs and felt they are very important to meeting the goals of the program. They were, however, concerned that the very limited thresholds and caps, will unfairly treat some SCAs who could be under the strict thresholds for a long period of time until a neighborhood plan is completed. Instead of the thresholds and caps, the Planning Commission would like to see additional SPR criteria added to specifically deal with these areas.
- Limited Impact Special Review for the very large homes – Borrowing from Option 3, the Planning Commission liked the idea of requiring LISR for homes over 8000 square feet total (including basements and garages). This heightened review would allow for specific mitigation of impacts to be done for these larger homes.
- Valuation – the Planning Commission feels very strongly that the valuation of Development Rights needs to be market based. They did not have specific recommendations as to how to do this, and asked staff to bring back options with the regulations.
- Site Plan Review – the Planning Commission is very supportive of “beefing” up the SPR criteria to give applicants more certainty as to what size development is compatible with their lot and neighborhood.

REQUEST:

At your July 10th meeting, staff is asking that the Commission review, consider and take public testimony on the four options presented in this packet. The goal for the Board is to determine which option they feel most comfortable with and identify any proposed changes to that framework. If the Board agrees with the Planning Commission as to the appropriate framework, staff will begin filing in the details and drafting regulations to implement the direction given by the Planning Commission and Commissioners. Once drafted, any regulations will have to go through a public hearing process before both the Planning Commission and the Board of County Commissioners.

Comparison of Options and Variables
Transfer of Development Rights and Structure Size Thresholds

| | Option One | Option Two | Option Three | Planning Commission Recommendation | Variables |
|---|--|--|--|--|---|
| Development Rights | Includes | Includes | Includes | Includes | |
| Development Credits | Includes | Includes | Does not include | Includes | |
| Relationship between Development Rights and Development Credits | Development Credits are fractions of Development Rights – 1 DR = 4 DCs | Development Credits are fractions of Development Rights – 1 DR = 4 DCs | N/A | Development Credits are fractions of Development Rights – 1 DR = 10 DCs | Relationship between DRs and DCs 1 DR = 4 DCs 1 DR = 10 DCs – smaller increments may be useful for allowing building just over the thresholds Breakdown DRs into tenths up to one half, and then use quarters – 1/10, 2/10, 3/10, 4/10, ½, ¾ - this will allow some smaller increments |
| Division of County into Geographic Areas | Mountains Plains Special Character Areas | Special Character Areas The rest of the County – thresholds are the same for mountains and plains | Thresholds for special review are different between mountains and plains; no Special Character Areas | Special Character Areas – which would have specific SPR criteria to define compatibility with the SCA The rest of the County – thresholds are the same for mountains and plains | Retain the distinction between mountains and plains in all options Include Special Character Areas in 3 |
| Sale of Development Rights | Yes | Yes | Yes | Yes | |

Comparison of Options and Variables
Transfer of Development Rights and Structure Size Thresholds

| | Option One | Option Two | Option Three | Planning Commission Recommendation | Variables |
|--|--|--|--|--|--|
| Sale of Development Credits | Yes, with deed restriction Mts: 1,300 sf = 2 DCs; 650 sf = 3 DCs Plns: 2,000sf = 2 DCs; 1,000 sf = 3 DCs | Yes, with deed restriction 1,300 sf = 2 DCs | No | Yes, with deed restriction 1,300 sf = ½ DR – using either tenths or quarters, a 1,300 sf maximum would be able to sell ½ DR | The deed-restricted sizes are based on the concept draft numbers of 2,600 sf in the mountains and 4,000 sf in the plains. These deed-restricted numbers may be varied to reflect different thresholds. |
| Repurchase of sold Development Credits | No, once a deed restriction is placed on the property, it can not be lifted through the repurchase of DCs. | No, once a deed restriction is placed on the property, it can not be lifted through the repurchase of DCs. | No, there is no option of sale or repurchase of DCs under this option. | Planning Commission did not reach consensus on this issue – asked staff to bring back options for consideration with the regulations | Allow the repurchase of DCs only up to the threshold at any time with an approved Site Plan Review Allow the repurchase of DCs for only a specified period of time with an approved Site Plan Review |
| Measurement of square footage | Based on Assessor’s methodology – conditioned habitable space, including basements, but not including covered porches. 500 square feet of garage space exempted from square footage. | Based on Assessor’s methodology – conditioned habitable space, including basements, but not including covered porches. 500 square feet of garage space exempted from square footage. | Based on Assessor’s methodology – conditioned habitable space, including basements, but not including covered porches. 500 square feet of garage space exempted from square footage. | Based on Assessor’s methodology – conditioned habitable space, but not including covered porches or basements. 500 square feet of garage space exempted from square footage. | 500 square foot garage exemption based on size of two-car garage; could exempt a larger garage space Exempt a portion or entire basement space <ul style="list-style-type: none"> • Give a basement credit of a specific square footage for each threshold • Give a basement credit of a certain percentage of the above- grade square footage (1/3 or ½) Include basements and garages in the total but increase the total square footage allowed under each threshold. |

Comparison of Options and Variables Transfer of Development Rights and Structure Size Thresholds

| | Option One | Option Two | Option Three | Planning Commission Recommendation | Variables |
|--|---|---|--|--|--|
| Thresholds | <p>Mts = 2,600 sf</p> <p>Mts/SCAs = 1,000 sf with 1,650 sf cap</p> <p>Plns = 4,000 sf</p> <p>Plns/SCAs = 1,500 sf with a 2,500 sf cap</p> | <p>Thresholds for increased mitigation – 2,599 and below 2,600 - 3,599 3,600 – 4,599 4,600 and above</p> <p>Mts/SCAs = 1,000 sf with 1,650 sf cap</p> <p>Plns/SCAs = 1,500 sf with a 2,500 sf cap</p> | <p>None, size dealt with on a case-by-case basis through Site Plan Review</p> | <p>Thresholds for increased mitigation – 2,599 and below 2,600 - 3,599 3,600 – 4,599 4,600 and above</p> <p>SCAs will be defined; however, there are no thresholds or caps for SCAs. Instead development in SCAs will be reviewed through the SPR process with additional standards and criteria for review of development within a SCA.</p> | <p>These thresholds were included as a place to start discussions. These particular numbers were set based on the median house size currently in the county.</p> <p>Other options for setting thresholds include: Median house size for the past X number of years</p> <p>Size needed by an average four person family</p> <p>Above grade square footage with an allowance for basement square footage</p> |
| Purchase of Development Rights for building above threshold levels | <p>Development above the threshold will require purchase of DRs or DCs</p> <p>Mts: DR = 2,600 sf / DC = 650 sf</p> <p>Plns: DR = 4,000 sf / DC = 1,000 sf</p> | <p>Option to purchase DCs for development between 2,600 and 4,599</p> <p>Purchase of DCs required for development over 4,600 – one DC required for each 1,000 sf over 4,600</p> | <p>DR required for development over 5,000 sf in mountains or 8,000 sf in plains</p> | <p>Option to purchase DCs for development between 2,600 and 4,599</p> <p>Purchase of DCs required for development over 4,600 – one DC required for each 1,000 sf over 4,600</p> <p>Allow DCs to be divided into 1/10 increments</p> | <p>Scaling – either make the initial DCs smaller increments of square footage to allow for small less expensive increases in square footage or make the initial DCs less expensive to allow for small increases to the threshold to be made at a lower cost.</p> <p>Changes to the threshold numbers would require changes to the amount of square footage associated with DCs</p> |
| Development Rights Bank | <p>County managed bank/clearing house will facilitate the transfer of DRs and DCs as well as set the value of DRs</p> | <p>County managed bank/clearing house will facilitate the transfer of DRs and DCs as well as set the value of DRs</p> | <p>No County managed bank – transfers of DRS will be handled by the private market</p> | <p>County managed bank/clearing house will facilitate the transfer of DRs and DCs as well as set the value of DRs</p> | <p>Third-party managed bank that facilitates transfers and sets values</p> |

**Comparison of Options and Variables
Transfer of Development Rights and Structure Size Thresholds**

| | Option One | Option Two | Option Three | Planning Commission Recommendation | Variables |
|----------------------------|--|---|---|---|---|
| Valuation of DRs | County bank will use market value of vacant land sales to establish a value for DRs – concept proposal is to use an average price for vacant land over a three year period | County bank will use market value of vacant land sales to establish a value for DRs – concept proposal is to use an average price for vacant land over a three year period | Value established by the private market | County bank will use market value of vacant land sales to establish a value for DRs – Planning Commission felt very strongly that the market should set the value, and asked staff to bring back options for their consideration as to how to achieve this. | <p>Different formulas can be developed –</p> <p>Using a longer or shorter time frame</p> <p>Looking at the DR as only a percentage of the value of a vacant parcel</p> <p>Use an independent appraisal to determine value</p> <p>Update of valuations – annually, semi-annually, timing of updated based on supply and demand</p> |
| Relationship to BuildSmart | Development would have to meet BuildSmart requirements depending on the size of the structure | Development would have to meet BuildSmart requirements depending on the size of the structure; however, property owner could opt to build to a higher level of BuildSmart in lieu of purchasing DCs up to a specific size | Development would have to meet BuildSmart requirements depending on the size of the structure | <p>Development would have to meet BuildSmart requirements depending on the size of the structure; however, property owner could opt to build to a higher level of BuildSmart in lieu of purchasing DCs up to a specific size</p> <p>Basement square footage would count in determining the appropriate BuildSmart requirements – energy budget or emission standard</p> | Set an energy budget and or carbon emission standard through BuildSmart that all houses have to meet, regardless of size. |

Comparison of Options and Variables Transfer of Development Rights and Structure Size Thresholds

| | Option One | Option Two | Option Three | Planning Commission Recommendation | Variables |
|--|---|---|---|--|---|
| Relationship to SPR | <p>Development below threshold – SPR without any consideration of size</p> <p>Development above the threshold – SPR with presumptions as to the applicable neighborhood and character</p> | <p>Development below threshold – SPR without any consideration of size</p> <p>Development above the threshold – SPR with presumptions as to the applicable neighborhood and character</p> | <p>SPR required for all development with the presumptions as to the applicable neighborhood and character</p> | <p>Development below threshold – SPR without any consideration of size</p> <p>Development above the threshold – SPR with presumptions as to the applicable neighborhood and character</p> <p>Planning Commission would like to see the SPR criteria enhanced to give applicants and neighbors more certainty about what scale of development is compatible</p> | <p>No site plan review for development below thresholds in subdivisions</p> <p>Presumptions of neighborhood equal to 1500 feet and size at 125% of median could be expanded or reduced</p> <p>Determine appropriate size based on a model looking at the sizes of a specific number of the nearest structures - e.g. determine the median size of the nearest five structures, the median size of the next nearest 15 structures, and the median size of the next 20 structures. Then find the mean of those three medians to determine the compatible size for the area.</p> <p>SPR thresholds for requiring SPR or ability to apply for a waiver should be consistent with thresholds in this program</p> |
| Relationship to Limited Impact Special Use | <p>None, other than current requirements for grading</p> | <p>None, other than current requirements for grading</p> | <p>LISR required for development over 5,000 sf in mountains or 8,000 sf in plains</p> | <p>LISR required for development over 8,000 total square feet – no exclusion of basement or garage square footage</p> | <p>The thresholds for LISR can be changed</p> |