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# Speech

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## **Limiting Building Height: The Story of a Citizens Initiative to Preserve Mountain Vistas and a City's Future**

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**Prologue by Charles Wilkinson†**

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## PROLOGUE

This piece, a story that has long needed to be told in full, traces the evolution of the historic 1971 decision by the citizens of the City of Boulder, Colorado to place a height limit of fifty-five feet on all future buildings. Ruth Wright is the perfect person to recount this fascinating episode. She was deeply involved in accomplishing this City Charter amendment and also happens to be a careful and objective scholar as well as a writer who knows how to present an engaging story. Further, this important article, set in its particular time and place, sheds light on the critical early years of the modern environmental era in America and reminds us of how it is that so often the greatest results are due to the efforts of informed, committed citizens.

These events in Boulder took place during the origins of the modern environmental movement. One of the first manifestations was the passage of the Wilderness Act in 1964. Then accomplishments turned into a deluge beginning in 1970. The National Environmental Policy Act went into effect on January 1 of that year and the first Earth Day was celebrated on April 22. The Clean Air Act, Clean Water Act, Endangered Species Act and other revolutionary statutes were passed soon afterward and most of the federal laws comprising the foundation of the field of environmental and natural resources law were enacted within the decade. Wright's account captures the new kind of creative thinking, citizen vitality, and community excitement that characterized this era.

The 1971 height limitation was the capstone on a series of innovations in these early days that established Boulder's well-deserved reputation as one of the most environmentally sensitive municipalities in the country. Boulder's stirring beauty is largely due to the verticality of the backdrop to town, rising sharply up from the plains at the exact base of the Rockies. The most dramatic formations are the sheer, arresting Flatirons, but the eye is also drawn to the long ridges and foothills heading off to the north and south. The people of Boulder treasured the matchless terrain and, just as the town was beginning to be "discovered," took decisive action to protect its unique natural qualities.

In 1959, citizens approved a ballot initiative that prevented development in the foothills above town. This innovation was the so-called "Blue Line," which prohibited the delivery of city water for any new buildings above the elevation line of 5,750 feet. The

landscape that people looked up at from town would remain natural. A few years later, a luxury hotel complex was proposed for construction on the aptly-named Enchanted Mesa, just south of town. When a legal action proved to be inadequate, citizens turned again to the ballot box. The voters solidly approved a substantial bond issue to bring a condemnation proceeding, compensate the owner, and keep the mesa forever in open space. Then came an ambitious and enormously successful program to provide for preserving open space. In 1967, the voters overwhelmingly approved a one-percent sales tax, with sixty percent to go for transportation and forty percent for open space. This greenbelt system, created by the first voter-approved tax for open space in the country, has been expanded over the years and remains a revered staple in the community.

The 1971 height limitation was adopted in response to perhaps the biggest threat of all to Boulder's relationship with its landscape. As Wright explains in detail, the number and height of proposed buildings was overwhelming, almost incomprehensible. Potentially fifty buildings up to 140 feet high could have been built, obliterating vistas of the Flatirons and the Rocky Mountain foothills at locations all over town. It is worthwhile to examine the importance of a vista. It is so easy to say that such a thing is nothing more than an amenity. But vistas lift us up and stretch us out. They connect us with beauty. They give us inspiration and cause us to reflect. Vistas are a main source for invoking what landscape architect and philosopher Frederick Law Olmsted called the "contemplative faculty." Olmsted's son, Frederick Law Olmsted Jr., in his 1910 report for Boulder, urged creating parks to preserve the views of the mountains. Is it not true that one of the finest gifts of these parks is the reactions we have when we stand in them, pause for a moment, and look up toward the west?

The episode chronicled by Ruth Wright proves once again how committed citizens can change the world. No single individual or small group could have accomplished this height limitation. After all, the business community, the major developers, and a majority of the City Council supported the seemingly inevitable drive toward a radically different, impersonal, tall-building Boulder. But beyond any doubt Wright herself did make a difference. She was a law student at the time, and hardly looking for extra work, but was troubled by the threatened development. So she proceeded to write an authoritative seminar paper that painstakingly analyzed the constitutional law cases, federal and state, and concluded that a fifty-five foot height limit for buildings would be constitutional. This was early in the

development of the constitutional dimensions of environmental law and, while a number of cases had addressed the issue, there was still uncertainty over whether such a limitation might be a taking of private property rights. Wright's paper was accurate and convincing, though, and, combined with her effective presentations in speeches and debates, eliminated the constitutional issue both legally and politically. While she had good company, the fifty-five foot limit might well have not passed without Ruth Wright.

Wright has since gone on to a full life of public service. She served in the Colorado House of Representatives from 1980 through 1994, with six years as House Minority Leader. Since then, as an active supporter of nonprofit and governmental organizations, she has been a board member on the State Health Board, Colorado Water Quality Control Commission, Audubon Colorado, Colorado Water Trust, and the Boulder Open Space Board of Trustees. Wright has long been one of Colorado's most respected public figures, always available for fair and knowledgeable advice on public issues. From her selfless work in protecting Boulder's quality of life during the historic height limit controversy through her long career afterward, no one better stands for the proposition that a single person, especially one who can bring people together, can make a major difference.

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## I. BACKGROUND

Boulder, Colorado, in 1968, was a city of about 70,000 souls,<sup>1</sup> nestled up against the foothills of the Rocky Mountains, and home to the University of Colorado.<sup>2</sup> The mountain waters of Boulder Creek flowed through downtown. Several federal laboratories were also headquartered here, attracting high-tech industries resulting in a highly-educated, engaged citizenry. Boulder (also referred to as the “City”) was blessed with a beautiful setting, and its thoughtful citizens cared deeply about their environment. But there was trouble in river city. The high annual growth rate of seven percent meant that the population would double in ten years.<sup>3</sup> Recognizing the importance of controlling their destiny by controlling development, in November 1967, sixty-one percent of citizens voted to tax themselves to buy open space—the first community in the nation to do so.<sup>4</sup> The goal was to buy the lands on the precious mountain backdrop along the western edge of the city, the valleys, the ridges, and the buffering agricultural lands that made Boulder one of the most desirable places to live in America.<sup>5</sup>

Just months after the successful open space sales tax vote, a new threat was brewing: high-rise buildings, especially in the downtown area. While some tall buildings in Boulder had been permitted under previous zoning ordinances, now a clamor for more high-rise buildings was erupting. News stories in Boulder’s local paper, the Boulder Daily Camera, showed there was strong interest by banks and other commercial entities—supported by architects—to create numerous buildings at least 100 feet high.

The City was just beginning to purchase lands on the mountain backdrop, the number one goal of the open space vote, yet suddenly high-rise buildings were proposed that would cut off the views Boulder residents cherished. This was a real threat, especially to the historic downtown, just eight blocks east of the mountain backdrop.<sup>6</sup> This is the story of citizens versus a huge array of well-respected, influential,

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1. Bill Hoffman, *Building Height, Growth Limit Issues Debated*, BOULDER DAILY CAMERA, Oct. 21, 1971.

2. Aerial View of the City of Boulder, 1970 (Attachment A). NOTE: the attachments for this Speech can be found in the online version of Ruth Wright’s speech available on the Colorado Natural Resources, Energy & Environmental Law Review website here: <http://www.colorado.edu/law/sites/default/files/CNREELR-V27-I2-Ruth.pdf>.

3. MICHAEL LINDEBURG, CIVIL ENGINEERING REFERENCE MANUAL app. 87.B (13th ed. 2016).

4. *OSMP Nature & History*, CITY OF BOULDER COLO., <https://bouldercolorado.gov/osmp/nature>.

5. Aerial View of the City of Boulder, *supra* note 2.

6. Street Map of the City of Boulder (1968) (Attachment B).

powerful people and entities that had a legitimate, but very different, vision for Boulder's future. The City Administration and the City Council (also referred to as the "Council") were also conflicted. If anyone had asked what would be the result of these conflicting visions, no one could possibly have guessed the final outcome.

Why is a civic battle that raged forty years ago still relevant today? Because in cities large and small, citizens are still concerned about high-rise buildings for several reasons. First, of course, in large cities, high-rise buildings are a necessary fact of life. In general, a strong argument for high-rise buildings is the potential for increasing population density.<sup>7</sup> Density can reduce sprawl and make mass transit more feasible. Going up rather than out creates efficient offices, hospitals, and educational buildings, and it facilitates mobility for senior citizens. High-rises can be spectacularly beautiful symbols of a modern society. There is also the prestige factor; these buildings tower over their neighbors, and some even are named, such as Trump Tower and the Pan American Building in New York; Security Life Building and First National Bank Building in Denver, and the former Colorado Insurance Group Building in Boulder.

On the other hand, high-rise buildings can also have negative impacts: supplanting historic buildings or even districts, losing pedestrian friendly activities, taking over parkland or open space, obstructing views, or overwhelming lower architectural masterpieces. Just one high-rise can dramatically change a neighborhood, creating more traffic and the loss of community and family values. It is also worth mentioning that fires in a high-rise can be disastrous and much more difficult to fight.

In this speech, I will discuss the drama of a real-life story with a real cast of characters—people who cared, agonizing decisions being made by administrators and elected city council members, financial successes or failures at stake, heated debates, a robust media, a cliff-hanger election—and an epilogue forty-plus years later.

## II. THE STORY UNFOLDS: ADOPTION OF AN INTERIM ORDINANCE TO CONTROL HIGH-RISE STRUCTURES

In April of 1968, PLAN-Boulder, the local environmental group that I chaired, sent a letter to the city, warning of the lack of control over

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7. However, in Boulder density is controlled by Floor Area Ratio (FAR) and units per acre. See *infra* note 207.

potential high-rise structures.<sup>8</sup> Bill Lamont, Planning Director, responded that he recognized the urgency, since five high-rise inquiries had already been received.<sup>9</sup> Amendments to the zoning code to limit buildings to fifty feet, and to only allow taller buildings up to 100 feet under special review, were already being formulated.<sup>10</sup>

By January 1969, Lamont had developed a lengthy, detailed and well-reasoned memorandum to the City Council.<sup>11</sup> He stated, “For purposes of a common beginning, we are defining high-rise buildings as any building over 50 feet in height.”<sup>12</sup> He also stated that height limitations in Boulder had been established since the beginning of zoning in the 1920s and presented the advantages and disadvantages of such buildings.<sup>13</sup> His recommended course of action for the City Council included these words of caution:

High-rise buildings create a tremendous impact upon the community . . . . Boulder would continue in its position as a desirable City in an excellent natural setting without the intrusion of high-rise buildings. Few developments can alter the character and appearance of a community more than high-rise buildings. . . . high-rise buildings can be an asset to Boulder, but one which is not absolutely necessary to relieve a lack of visual excitement. Our mountain backdrop does this far more successfully than any group of the most well designed buildings could ever hope to do.<sup>14</sup>

The City Council decided to move ahead with an interim ordinance. It had already asked Boulder architects to form a committee on height to make recommendations for a final ordinance.<sup>15</sup>

During a heated public hearing on an interim ordinance, Lamont responded that the proposed height limitations “were actually a stop-gap measure against a log-jam of proposed structures pushing the 100-foot limit in a panic move on the part of developers . . . .”<sup>16</sup> The Planning Board concluded that interim height controls were necessary until the architects completed their study and recommended that buildings up to a

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8. Letter from Ruth Wright, to Bill Lamont (Apr. 12, 1968) (Attachment C).

9. Letter from Bill Lamont, Planning Director, to author (Apr. 19, 1968) (Attachment D).

10. *Id.*

11. Memorandum from Planning Director to City Council (Jan. 6, 1969) (Attachment E).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Interim Control of Local Building Heights Urged*, BOULDER DAILY CAMERA, Feb. 8, 1969.

16. *Planning Board Asking Interim Height Limits*, BOULDER DAILY CAMERA, Mar. 7, 1969, at 12.

height of fifty feet be permitted without review. Projects above that height would require special review by the Board of Zoning Adjustment, with an advisory report from the Planning Board.<sup>17</sup> A memorandum from the City Attorney's Office stated that the City Council should also consider an alternate proposal that would limit all buildings to the height of fifty feet, with no exceptions.<sup>18</sup>

At the April 1, 1969 council meeting, I urged the Council to adopt an interim ordinance to "hold the line" because the Zoning Board had shown a propensity towards approving high-rise buildings.<sup>19</sup> Only five of the nine council members were present.<sup>20</sup> Joyce, Bowers, Geesaman and Trent voiced their positions that the City Council, not the Zoning Board, should have the final decision on all buildings proposed for high-rise development.<sup>21</sup> Joyce felt the Council was more politically responsive.<sup>22</sup> Buechner said he would only vote for an ordinance limiting height to fifty feet with no exceptions.<sup>23</sup> The hearing was continued to April 15.<sup>24</sup>

The April 15 meeting was more contentious. Two and a half hours of public debate resulted in postponing action to May 6 on a five to two vote.<sup>25</sup> Pros and cons elicited some pithy comments such as one by citizen Mary Skumanich replying to John Cohagen's urging that high-rises be permitted now, "while Mr. Cohagen may weep for half a year, we may weep forever."<sup>26</sup> When attorney Guy Hollenbeck complained about the complexities of the ordinance proposals, such as light and shade calculations, Planning Board member Larry Brown retorted that such calculations have been made since the time of the Babylonians. "I don't think we are any less equipped today than we were 3,000 years ago . . . ." <sup>27</sup> The debates had begun.

Finally, on May 6, 1969, the City Council adopted Interim Ordinance No. 3418, effective for six months.<sup>28</sup> It limited building height to fifty feet, but allowed up to 100 feet in the Planned Development

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17. Memorandum from City Planning Department to City Council (Mar. 14, 1969) (Attachment F).

18. Memorandum from City Attorney's Office to the City Council (Mar. 31, 1969) (Attachment G).

19. *Council Delays Interim Limit on Building Heights*, BOULDER DAILY CAMERA, Apr. 2, 1969, at 1.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* Council members Knecht, Haertling, Klemme and Newkirk were absent.

24. *Id.*

25. *City Council Again Delays Building Height Limitation*, BOULDER DAILY CAMERA, Apr. 16, 1969, at 1.

26. *Id.*

27. *Id.*

28. Interim Ordinance No. 3418, May 6, 1969 (Attachment H).

Zoning Districts with special review, requiring approval by the Planning Board and the City Council—thereby taking the final decision unto itself.<sup>29</sup> A city questionnaire had also been sent to test citizens' attitudes on certain issues.<sup>30</sup> In response to the question "Should highrise buildings be discouraged in certain areas of Boulder?" 85.2 percent of Boulder citizens agreed.<sup>31</sup> There is no doubt that after these difficult months, the City Council fully realized the potential impact of high-rise buildings on the future of Boulder. The Interim Ordinance was extended twice and was in effect for almost one and a half years.

### III. HARD CHOICES

If the City Council's adoption of an Interim Ordinance was difficult, the Council's real-life decisions were agonizing—the actual locations of individual proposals, pressure by developers, their architects and attorneys, the effect on neighboring properties, the reaction by the public, media coverage, editorials, letters to the editor, and debates. The following sections will discuss three controversial proposed high-rise developments: the Horizon West proposal, the James Hunter proposal, and the John Cohagen proposal.

#### A. *The Horizon West Proposal*

The Horizon West apartment building was the first high-rise proposal to be processed under the new ordinance.<sup>32</sup> The proposal in the 1800 block of Twenty-Fourth Street was heard by the Planning Board for a rezoning to the Planned Development Zoning District on June 5, 1969.<sup>33</sup> The Planning Board, having heard from staff that the proposal met the requirements of the Interim Ordinance and was in keeping with the initial thoughts of the Architects Committee for this area, gave its unanimous approval.<sup>34</sup> Then, on July 1, 1969, Council also gave its unanimous approval (Knecht absent).<sup>35</sup> No one had shown up at either of the public hearings. A few weeks later on July 31, 1969, a Denver Post story announced that a \$2.3 million high-rise luxury apartment would be constructed at 1850 Twenty-Fourth Street (now Folsom Street), with an

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29. *Id.*

30. *High Rise Controls Supported*, THE DENVER POST, June 3, 1969, at 25.

31. *Id.*

32. BOULDER CITY PLANNING BOARD, BOARD MINUTES (1969).

33. *Id.*

34. *Id.*

35. BOULDER CITY COUNCIL, MINUTES OF THE MEETING (July 1, 1969); BOULDER, CO, ORDINANCE NO. 3500 (July 15, 1969).

artist's rendition of a huge building eleven stories high.<sup>36</sup> It was not until the following summer, however, when layer upon layer of stories reached skyward, did the visual reality hit home.<sup>37</sup> Citizens made comments such as appalling, offensive, gross and eyesore.<sup>38</sup> Why no one took up the cudgel early on is not easily explained, except that this location was many blocks east of downtown and the mountain backdrop, and the other two proposals (Hunter and Cohagen) were more controversial and heavily reported in the media.

### *B. The Hunter Proposal*

The Hunter proposal at Sixth Street & Canyon had a colorful history. Respected Boulder architect James Hunter was proposing to revitalize the "Ruins"—the unfinished Park Allan Hotel foundations.<sup>39</sup> Financier Allen J. Lefferdink had built the first downtown high-rise at Fourteenth Street & Walnut in 1954, a nine-story building, with his office in the penthouse.<sup>40</sup> It was known as the Colorado Insurance Group Building, or Joslins, since it housed the Joslins Department Store. It had been designed by Hunter.<sup>41</sup> On the north side of the building, Lefferdink touted his company with a red neon sign, three-stories high that read:

**Colorado  
Insurance  
Group**

The Park Allen Hotel was to be his second signature high-rise building, at a highly visible location—the mouth of Boulder Canyon where the creek leaves the foothills and flows into Boulder. Begun in 1958, all construction ceased when his federal tax problems and eventual bankruptcy put him in jail and out of business in the early 1960s.<sup>42</sup> The huge red neon sign on the building went dark.

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36. *\$2.3 Million is Price Tag*, THE DENVER POST, July 31, 1969 (Attachment I). The developer was James Kean, the designer William Heinzman, and the attorney Guy Hollenbeck.

37. TOWN & COUNTRY REVIEW (Boulder County), Aug. 19, 1970 (Attachment J).

38. *High Rise Building Draws Unfavorable Comment*, TOWN & COUNTRY REVIEW (Boulder County), Aug. 26, 1970.

39. On The Corner: The Lower Chautauqua Neighborhood Newsletter (Attachment K); *"The Ruins": The Concrete Foundations of the Proposed Lefferdink Hotel*, BOULDER DAILY CAMERA, Apr. 4, 1971 (Attachment L).

40. *Id.*

41. *Id.*

42. Silvia Pettem, *Silvia Pettem on Boulder History: Allen Lefferdrink Left Empty Pockets*, BOULDER DAILY CAMERA (Apr. 10, 2009), [http://www.dailycamera.com/ci\\_13117857?source=most\\_emailed](http://www.dailycamera.com/ci_13117857?source=most_emailed) (Attachment M).

When Hunter took over years later, the concrete foundations had been sitting there as an eyesore for more than a decade.<sup>43</sup> On February 24, 1969, he submitted his plans to the Zoning Board for a variance to go beyond the 100-foot limit for an apartment building.<sup>44</sup> This was before the adoption of the Interim Ordinance, so a building up to 100 feet was “by right,” only requiring approval from the Zoning Board to go higher than 100 feet.<sup>45</sup> Most importantly, the Zoning Board’s approval would be final.<sup>46</sup> The Board did approve Hunter’s high-rise development, over the objection of many residents that were upset with any disruption to the mountain view.<sup>47</sup> Then, on March 4, the City Council encouraged the development by supporting several preliminary actions needed for the building. Mayor Robert Knecht approvingly stated, “It’s the first concrete show of faith in the redevelopment of the core area.”<sup>48</sup>

This quote highlights a very important dynamic that played into the high-rise issue. With the competition from the Crossroads Shopping Center on the eastern side of Boulder, retailers were moving there, leaving the downtown with empty buildings and deteriorating shops.<sup>49</sup> In response, at a 1965 lunch for Boulder civic leaders, Knecht and Joe Stepanek, a University of Colorado official, outlined their ideas for revitalizing the downtown.<sup>50</sup> An organized group emerged from these discussions, eventually becoming Boulder Tomorrow in 1966—a strong movement to revitalize a faltering downtown.<sup>51</sup> It drew support from an ever-increasing coterie of banks, business interests and citizens. Officers were Knecht, President; Stepanek, Vice President; myself (representing PLAN-Boulder), Secretary; and Clyde Reedy, Treasurer.<sup>52</sup> It became dogma that high-rise buildings were necessary to bring downtown Boulder back to life. City Manager, Ted Tedesco, who joined the City

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43. “*The Ruins*”: *The Concrete Foundations of the Proposed Lefferdink Hotel*, *supra* note 39.

44. *What Makes A High Building Too High?*, BOULDER DAILY CAMERA, Feb. 27, 1969.

45. *Id.*

46. *Id.*

47. *Id.* Board members voting for approval were George Boland, Cal Briggs and Sandy Belcher. Absent were Duane Sarbaugh and Verle Root.

48. *Council Encourages 6th, Canyon High Rise Apartment Development*, BOULDER DAILY CAMERA, Mar. 5, 1969.

49. Mary Butler, *Pearl Street parents – A decade before mall, visionaries sought to revive ‘core area,’* DAILY CAMERA (Boulder), July 19, 2002; *Officers Are Elected By Boulder Tomorrow*, BOULDER DAILY CAMERA, Oct. 7, 1966; *Photo of Contract Signing*, BOULDER DAILY CAMERA, Mar. 25, 1967 (Attachment N).

50. *Id.*

51. *Id.*

52. *Id.*

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Administration in June 1967, became a key proponent of the Boulder Tomorrow campaign.<sup>53</sup>

Even though the Zoning Board had granted a variance and Council had supported the Hunter proposal in early 1969, Hunter's application for a building permit was turned down in June 1970 by Charles Carter, City Zoning Administrator, on the basis that the variance had expired.<sup>54</sup> Hunter argued with some justification that the variance was still in effect: he had received the variance by the Zoning Board for his development under the old ordinance, he had been waiting for those preliminary actions that the Council had promised, he had alerted the City of this non-action, and he had made investments in reliance on the variance.<sup>55</sup> In November 1970, he filed a lawsuit asking the court to declare his variance still valid and force Carter to reconsider his permit on its merits.<sup>56</sup>

### C. *The Cohagen Proposal*

What really caught everyone's attention, however, was John Cohagen's announcement that he intended to build a 200-foot building in the Arapahoe Shopping Center on Canyon Boulevard!<sup>57</sup> Carl Worthington would be the architect.<sup>58</sup> Worthington would become an articulate spokesman for the high-rise proponents; he also was on the City Planning Board and a member of the Architects Committee.<sup>59</sup> On March 20, 1969, the Boulder Camera printed an artist's rendition of a less-ambitious, but still surprising, seventeen-story skyscraper office and apartment building.<sup>60</sup> Earlier, Cohagen had asked for a variance from the Zoning Board to permit a 220-foot building.<sup>61</sup> That hearing had resulted

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53. *Id.* The project eventually faltered when a \$7 million bond issue was defeated; however, a far less extravagant version became a successful reality. Editorial, *Core Area — Heart of the Community*, BOULDER DAILY CAMERA, June 13, 1973, at 4 (Attachment O).

54. *Suit Filed Against City To Build Canyon Project*, BOULDER DAILY CAMERA, Nov. 16, 1970.

55. *Id.*

56. *Id.*

57. *17-Story Building Planned for 2600 Canyon Blvd.* THE DENVER POST, Mar. 20, 1969.

58. *Office-Apartment Plan Expanded*, BOULDER DAILY CAMERA, May 4, 1971.

59. COMMITTEE OF BOULDER ARCHITECTS, BOULDER HIGHRISE STUDY, FINAL REPORT (Nov. 13, 1969) (Attachment P); *Planning Board Approves High-Rise at 9th-Canyon*, BOULDER DAILY CAMERA, Sept. 19, 1969.

60. *17 Stories-too Many? Cohegan Defends "Skyscrapers,"* Mar. 20, 1969 (Attachment Q).

61. *A City Council Meeting Regarding the Interim Ordinance*, BOULDER DAILY CAMERA, Feb. 27, 1969.

in the Board's dismissal of the project, based on Assistant City Attorney Larry Rider's opinion that the Zoning Board did not have the authority to rule on so excessive a variance; however, the Board referred the matter to City Council and recommended approval.<sup>62</sup> Lamont felt the project could have some effect on the Boulder Tomorrow plan by reducing the availability of tenants for office structures downtown.<sup>63</sup> Cohagen, never one to avoid controversy, responded that he planned on bringing in outside tenants by attracting them with advertisements in the Wall Street Journal and other large metro news sources—obviously promoting growth!<sup>64</sup>

Then, in August 1969, after the adoption of the Interim Ordinance, Cohagen tried again to obtain approval on the basis of a variance, attempting to bypass that ordinance.<sup>65</sup> This time, the Zoning Board refused to even schedule the application on the directive of City Attorney Walt Wagenhals.<sup>66</sup> So, in early September 1969, Cohagen filed a \$100,000 damage suit on the basis that the Zoning Board had no legal authority to refuse to hear applications.<sup>67</sup> The City hired Boulder Attorney Gerald Caplan to defend the City, since, in an unusual move, Wagenhals was named as a co-defendant.<sup>68</sup>

#### IV. A PIVOTAL DECISION IN THE HIGH-RISE DEBATE: THE MILBURN PROPOSAL

The Milburn Proposal was just three blocks east of the Hunter proposal.<sup>69</sup> It was for a 100-foot office building in downtown Boulder on the northeast corner of Ninth Street & Canyon Boulevard.<sup>70</sup> Its architect was William Milburn.<sup>71</sup> In September 1969, the Planning staff had recommended approval, and the Planning Board unanimously approved the development<sup>72</sup> in spite of objections from citizens, including PLAN-Boulder. In a letter to the editor, I wrote:

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62. *Id.*

63. *17-Story Building Planned for 2600 Canyon Blvd.*, BOULDER DAILY CAMERA, Mar. 20, 1969, at 5.

64. *Id.*

65. *City Sued Over Issue of High Rise*, BOULDER DAILY CAMERA, Sept. 3, 1969.

66. *Id.*

67. *Id.*

68. *City Hires Attorney in Lawsuit*, BOULDER DAILY CAMERA, Oct. 8, 1969.

69. *Planning Board Approves High-Rise at 9th-Canyon*, *supra* note 59.

70. *Id.*

71. The Milburn Proposal: Architect's Rendition of 100-Foot Building at 9th & Canyon Blvd. (Attachment R).

72. *Planning Board Approves High-Rise at 9th-Canyon*, *supra* note 59.

We are dismayed at the city planning staff's recommendation for approval of a 100-foot highrise building on the northeast corner of 9th and Canyon Boulevard. This is, of course, in addition to the 122-foot building which will definitely be built at 6th and Canyon. Are we to lose our view of Boulder Creek Canyon altogether? And is this another step towards the disappearance of our mountain backdrop? . . .

. . . .

Whenever the citizens of Boulder have had the opportunity to voice their position for preserving their natural heritage . . . they have overwhelmingly voted to do so – witness the Blue Line Charter provision, the Enchanted Mesa bond issue, and the greenbelts sales tax. Do we need to go this route again on height limitation?<sup>73</sup>

At the City Council level on October 8, the development won preliminary approval five to three.<sup>74</sup> At the City Council meeting on November 18 for final approval, however, the proposal was hotly-contested, and it lost on an astonishing tie vote.<sup>75</sup> Klemme, switching his vote, said he would have preferred postponement for more time to digest the issue, but since he had to vote, he could not take the risk of destroying the view of the mountains from the city.<sup>76</sup> “I’m not satisfied we have thought through what we are doing . . . . This will be an irrevocable decision, at least in our lifetime.”<sup>77</sup> Joyce, however, said that the building would have been a “real shot in the arm for the core area and Boulder Tomorrow.”<sup>78</sup> Knecht added, “The press for high-rises will continue and it is naive for us to think we will have a vital core of municipal activity separate from a vital private core.”<sup>79</sup> These quotations encapsulate the two opposing visions. It was obvious that council members understood that they were making momentous and irreversible decisions about the future of Boulder. Some were not convinced that Boulder needed buildings higher than fifty feet; others, like Mayor

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73. Ruth Wright, Letter to the Editor, *Highrise Threatens Us Again*, BOULDER DAILY CAMERA, Aug. 6, 1969.

74. *Minutes of Meeting*, City Council of the City of Boulder, Oct. 7, 1969. Haertling, Joyce, Klemme, Knecht, and Newkirk were in support, and Bowers, Buechner, and Geesaman opposed, with Trent absent.

75. *Council Defeats 9th-Canyon High-Rise*, BOULDER DAILY CAMERA, Nov. 19, 1969, at 1. Four council members in support (Haertling, Joyce, Newkirk, and Knecht) and four opposed (Bowers, Buechner, Geesaman, and Klemme) with Trent absent.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

Knecht, were convinced that without high-rise buildings, their hopes for revitalizing downtown Boulder could not be realized.<sup>80</sup>

## V. CHANGING OF THE GUARD

The City of Boulder has a City Manager/City Council form of government.<sup>81</sup> The City Council has nine members with staggered terms.<sup>82</sup> Elections are held every two years.<sup>83</sup> There are four hold-over members, and five members are elected; the four highest vote-getters get four-year terms, the fifth gets a two-year term.<sup>84</sup> The City Council elects one of its members as mayor.<sup>85</sup>

On November 4, 1969, a city election was held for five City Council members.<sup>86</sup> The two incumbent City Council members running for re-election, Haertling and Geesaman, received four-year terms.<sup>87</sup> The four hold-over City Council members were Bowers, Buechner, Klemme and Knecht.<sup>88</sup> Three new members were elected: Dwayne Nuzum, Richard McLean, and Thomas Waugh, who received the two-year term.<sup>89</sup> This was the new team that would probably be making the momentous decision on a final high-rise ordinance.<sup>90</sup> The new Council took office on January 1, 1970, when Knecht was again chosen as mayor.

Also in January 1970, I returned to the University of Colorado to finish my law degree. I had not sought re-election as an officer of Boulder Tomorrow<sup>91</sup> due to my growing concern regarding Boulder Tomorrow's support of high-rise buildings. I also resigned as Chair of PLAN-Boulder. Joyce Davies became the Chair and was at the helm for the rest of the controversy.<sup>92</sup>

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80. *Id.*

81. The Charter of the City of Boulder, Colorado, 1984, Art. V., Administrative Service, The City Manager, §§ 63, 64.

82. The Charter of the City of Boulder, Colorado, 1984, Art. II., The Legislative Body: Its Powers and Duties, § 5.

83. *Id.*

84. *Id.*

85. *Id.* § 14.

86. Email from Marti Anderson to Author (May 22, 2014).

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Phase II Contract Specifies 'Continuous Exchange of Ideas' Between Planners and Boulder Tomorrow on Ten Key Problems and Details*, BOULDER TOMORROW, May 1968.

92. Interview with Joyce Davis (Nov. 2015).

## VI. CONSTRUCTING A FINAL HIGH-RISE ORDINANCE

During this period, the Committee of Boulder Architects<sup>93</sup> had been hard at work developing a draft of a final ordinance, issuing its report in November 1969.<sup>94</sup> A preliminary report had stated that high-rises in Boulder were highly desirable, and that explicit regulations regarding their location, bulk, land-coverage, shape, orientation, and effect on the immediate neighborhoods should be spelled out, leaving as little interpretation as possible to the body regulating high-rises.<sup>95</sup> Chairman Alan Zeigel said, “So we decided if we were smart enough to set up the criteria now, we would avoid future problems.”<sup>96</sup> The recommended maximum heights in the Final Report were:

Core area (essentially the downtown area) and the Crossroads area – 300 feet

Sub-community Cores – 200 feet

Open Areas (Greenbelts and around lakes) – 100 feet

Planned Development Zones – as appropriate, but not to exceed 200 feet

Other areas – 35 feet<sup>97</sup>

The report also stated that, “[h]igh rise buildings should be spaced apart from one another by a specific formula with the core spacing being the closest allowed.”<sup>98</sup> Legally, this was a major problem because the first high-rise to be approved could negatively affect other proposed high-rise projects. If such projects were denied because of the spacing requirement, the proponents could plead “denial of equal protection.” Later, the City Council also saw this as a problem requiring further research because “the proposal was seen by some as tending toward a ‘first-come, first served’ policy.”<sup>99</sup>

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93. Members of the Committee were H. Alan Zeigel, Chairman, Gale Abels, Stan Nord Connolly, Ken C. Dell, Stanley Mason Goldberg, Steven I. Gunn, William W. Milburn Jr., Wallace D. Palmer, David E. Rowland, James E. St. John, Rigomar A. Thurmer, Richard F. Veasey, Richard B Whitaker, and Carl A. Worthington. COMMITTEE OF BOULDER ARCHITECTS, *supra* note 59.

94. *Id.*

95. *Preliminary Report Issued on Control of High Rises*, BOULDER DAILY CAMERA, Sept. 2, 1969, at 1.

96. *Id.*

97. COMMITTEE OF BOULDER ARCHITECTS, *supra* note 59.

98. *Id.*

99. Ron Tollefson, *City Continues Height Debate*, BOULDER DAILY CAMERA, Apr. 14, 1971, at 1.

The public was stunned by the recommendations that buildings could be 200 feet and 300 feet high! Planning Director Lamont's reaction to the Architects Committee report was a surprising rebuke. Lamont even questioned the Architects Committee's basic assumption that high-rise buildings should be allowed at all, stating that low-rise buildings can be just as economical and would be much more fitting for Boulder's setting at the foot of the mountains; however, he felt that it was necessary once and for all to clarify the question.<sup>100</sup> He also thought that the final answers should be left to a vote of the citizens!<sup>101</sup> "They have the prerogative and ability to decide."<sup>102</sup> The "no action" by the City Council on the report spoke for itself. A small Sub-Sub Committee made up of two representatives each from the City Council, the Planning Board, and the Architects Committee would continue the work to find consensus.<sup>103</sup>

By April 13, 1970, the Sub-Sub Committee had reached consensus<sup>104</sup> on a somewhat less controversial proposal:

150 feet in the Core Area, (Downtown)

100 feet surrounding the Core Area

75 feet in the area south of Arapahoe, east of Seventeenth Street and west of Twenty-Fourth Street

55 feet in all other MR-3 and business zoned areas<sup>105</sup>

The committee stated that the sub-community centers, such as the area east of Twenty-Fourth Street and north of Boulder Creek, needed further evaluation.<sup>106</sup> Cohagen urgently requested that his property be addressed to permit 150-foot buildings.<sup>107</sup> He and his architect, Carl Worthington, had revised their proposal from one 220-foot building to two buildings in the 100-foot-plus range.<sup>108</sup> Subsequent evaluations did result in the Planning Director's recommendation that the area where 150-foot buildings would be permitted be increased from Twenty-Fourth Street all the way east to Thirty-Third Street and between Arapahoe and

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100. *Boulder Planning Director Mostly Opposes High-Rises*, BOULDER DAILY CAMERA, Nov. 17, 1969.

101. *Id.*

102. *Id.*

103. Memorandum from the Sub Sub-Committee on Height to the City Council (Apr. 13, 1970) (Attachment S).

104. *Id.*

105. *Id.*

106. *Id.*

107. Memorandum from the Planning Board to the City Council (Apr. 27, 1970).

108. *Id.*

Pearl Street, which included two shopping centers.<sup>109</sup> The memorandum stated that “if any place in the City was to permit higher buildings, based on physical conditions, this general area would be very well suited.”<sup>110</sup> It must be noted here that moving the boundary further to the east actually negatively impacted the revitalization of the downtown area, one of the most important reasons for allowing high-rise buildings. Why would anyone build downtown when it was much easier to develop out east: the land was cheaper, it was mostly undeveloped so that no valuable buildings needed to be razed, there was plenty of space for parking, it was at the crossroads of major thoroughfares, and the area was closer to the geographical center of Boulder. To reinforce his development proposal, Cohagen had also contacted attorney Richard Babcock to evaluate the height ordinance and to meet with staff to further explore some of the requirements in the code.<sup>111</sup>

When the City Council held a public hearing on the proposed final ordinance on July 7, 1970, there were negative responses from all sides.<sup>112</sup> Setback requirements, the effect on scenic views, and inadequacy of utilities were cited.<sup>113</sup> People even objected to the process whereby the Planning Board would have final approval unless called up by, or sent to, the City Council.<sup>114</sup> As one spokesman for a developer stated, “I don’t think details of this have been discussed enough – I even agree with PLAN-Boulder for a change.”<sup>115</sup> Cohagen went so far as to say that a Chicago attorney (undoubtedly the aforementioned Mr. Babcock) had told him the ordinance might be illegal.<sup>116</sup> It would take another year of meetings, public hearings, and revisions to come up with recommendations for a final ordinance. During that period, City Manager Tedesco showed some frustration with the City Council stating, “Everytime you have a meeting on this, the whole thing grows like yeast.”<sup>117</sup>

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109. Memorandum from the Planning Director to the Planning Board (June 23, 1970) (Attachment T).

110. *Id.*

111. Memorandum from the Planning Board to the City Council (July 2, 1970). Babcock was a nationally-recognized legal expert and author of *THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES* (1966).

112. *Boulder Skyline Controls Sent Back for Redrafting*, BOULDER DAILY CAMERA, July 8, 1970, at 1.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. Ron Tollefson, *High Rise Debate Returns to Council*, BOULDER DAILY CAMERA, Mar. 24, 1971.

During this period, Boulder's Fire Chief Jake Ringleman brought up the issue of fighting fires in new high-rise and large commercial buildings and recommended changes in the City Building Code to require sprinkler systems.<sup>118</sup> He warned that, without such requirements, the department's budget may have to triple to finance additional men and equipment.<sup>119</sup> He argued forcefully that the do-nothing alternative would risk citizens' and firemen's lives.<sup>120</sup> Area realtors and developers coalesced against such changes.<sup>121</sup> Hunter and Cohagen both expressed opposition.<sup>122</sup> Hunter charged that the proposed changes were part of the City's policy of having the developer pay for city services in lieu of increasing taxes, that this policy had stymied new growth and was an intrusion on his rights by a "paternalistic system."<sup>123</sup> Cohagen added that the code changes would impose extra costs on new construction and sprinklers would invite vandalism.<sup>124</sup> They both recommended that the measure be turned over to a citizens committee, "one of hard-boiled business men with dollar signs in their eyes."<sup>125</sup>

A few weeks later a Boulder Daily Camera story revealed that a group of about forty real-estate developers, lawyers, and businessmen had met, with Councilman Geesaman attending as a private citizen but providing City representation.<sup>126</sup> John Cohagen explained that after his two-year effort to obtain approval for a high-rise building, he had decided to seek an independent appraisal of the proposed code, and that the Urban Land Institute had recommended Richard Babcock.<sup>127</sup> Geesaman said, "This is probably one of the most far-reaching and controversial pieces of legislation I will handle," and added that the proposed code needed review by civic groups such as this one.<sup>128</sup> The meeting ended with Cohagen asking the group for proposals for hiring Babcock.<sup>129</sup> After naming itself FORWARD Boulder, Cohagen stressed that the group did not intend to be a political organization, but rather an

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118. *Fire Chief Says Decision Needed on City Protection*, BOULDER DAILY CAMERA, July 22, 1970.

119. *Council May Tighten Rules for High-Rise Fire Systems*, BOULDER DAILY CAMERA, Aug. 5, 1970.

120. *Id.*

121. *Council Delays Action on Fire Code Proposal*, BOULDER DAILY CAMERA, Sept. 2, 1970.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Business Group to Continue Efforts to Hire Zoning Expert*, July 22, 1970.

127. *Id.*

128. *Id.*

129. *Id.*

independent study group.<sup>130</sup> Bill Lamont welcomed the new group's comments and said that the Home Builders Association and the League of Women Voters had already submitted their comments and that the Planning Staff had already consulted with Professor Daniel Mandelker of Washington University's School of Law.<sup>131</sup> If Babcock were to be retained, Lamont said that it would mean that the code would be reviewed by two of the top five legal experts in the field.<sup>132</sup>

FORWARD Boulder announced its Executive Committee. It read like a Who's Who of Boulder Business Leaders, with John Cohagen as its spokesman.<sup>133</sup> It was a formidable group made up of movers and shakers, and one that could have a profound impact on City Council decisions.

## VII. JAMES JOHNSON AND THE TOWN & COUNTRY REVIEW

At this point, another key actor needs to be introduced: James G. Johnson, editor and publisher of the free *Town & Country Review*. Begun in 1963, the weekly paper had become *the* voice for the environment and a strong challenger to the *Boulder Daily Camera* for the hearts and minds of the citizens of Boulder County. By this time, circulation was 32,000 with about forty pages in each edition. It had a

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130. *FORWARD Boulder Set to Hire Zoning Expert*, BOULDER DAILY CAMERA, Aug. 6, 1970.

131. *Id.*

132. *Id.*

133. *FORWARD Boulder Lists Executive Group Names*, BOULDER DAILY CAMERA, Sept. 2, 1970. It included:

Neal King	A partner in Hollenbeck, King and French, attorneys
Ken Penfold	Ken Penfold Realty, Inc.
Dr. Richard Geesaman	City Councilman
Dick Wilson	Manager of Hogsett Lumber Co.
William Suitts	Real estate developer
Ed Erwin	Manager of Capitol Federal Savings in Boulder
Harold Short	President of the Flatiron Companies and the Chamber of Commerce
James Hunter	Architect
Gene Cline	Lu-Gen Homes, Inc.
Ed Singer	Vice president of the United Bank of Boulder
Bill Hellwig	Executive vice president of Mountain Savings and Loan
Dr. D. W. Pettyjohn	Professor of economics at the University of Denver who lived in Boulder.

vibrant editorial page with up-to-the-minute editorials by Johnson and many letters to the editor. Candidates and issue-committees that ignored the Town & Country Review did so at their peril. Its business advertisers were many and diverse; they knew the paper was being read. So what was Town & Country Review's involvement with the high-rise issue? In August 1970, the paper published a small cut-out ballot entitled "How Do You Feel About High Rise In Boulder?" with these options: "None, Up to 5, Up to 10, Up to 20, and No Limit."<sup>134</sup> While not a statistically valid survey, the results showed overwhelming antipathy towards high-rise buildings: out of 589 responses, 560 were "None."<sup>135</sup> Later, these ballots would become very useful because the responses included names and addresses. In that same issue, Johnson wrote one of his many editorials on the subject, this one bluntly entitled "Stop High-Rise."

Boulder at this point should not sacrifice one square inch of land surface, blue sky or mountain backdrop to encourage growth in any direction—upward, outward or even downward . . . .

. . . .

The pressures for high-rise and other undesirable growth will continue unabated. . . . In short, those interested in preserving Boulder will have to work with the same diligency as those who stand to benefit from exploitation of it.<sup>136</sup>

Note that Johnson prominently mentions growth. This was an integral part of citizens' concerns about the future. The growth issue would eventually be brought to a head when Zero Population Growth ("ZPG") filed its petition for its proposal to be placed on the November 1971 ballot.<sup>137</sup> More on that later.

## VIII. UPPING THE ANTE—1971

### A. *The Hunter Proposal Update*

Instead of continuing his futile attempt to get approval for his high-rise at Sixth Street & Canyon through the Zoning Board, Hunter came roaring back under the Interim Ordinance with three buildings: a

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134. *How Do You Feel About High Rise in Boulder?*, TOWN & COUNTRY REVIEW (Boulder County), Aug. 26, 1970; *High-Rise Poll Results*, TOWN & COUNTRY REVIEW (Boulder County), Sept. 2, 1970 (Attachment U).

135. *Id.*

136. James G. Johnson, *Stop High-Rise*, TOWN & COUNTRY REVIEW (Boulder County), Sept. 2, 1970.

137. *Election Questions in Brief*, BOULDER REPORT, Oct. 1971 (Attachment V).

110-foot high-rise hotel-convention center, a 110-foot apartment building adjacent to the hotel, and another 122-foot apartment building across Sixth Street.<sup>138</sup> And he brought in a “big gun”—Eric Hilton, “a third generation member of the family whose surname has come to be synonymous with quality hotel living.”<sup>139</sup> On February 4, 1971, after a lengthy hearing, the Planning Board voted four to two to recommend approval of the hotel (but limited it to 100 feet including the mechanical penthouse) and the adjacent apartment building (limiting it to fifty feet), but made no recommendation as to the third building.<sup>140</sup> In an interview with *Town & Country Review*, Hilton said they were ready to accept the project and added proudly that the hotel would create 100 new jobs for Boulder.<sup>141</sup> The *Boulder Daily Camera* report of the February 16 City Council meeting stated, “Seen by many as a prelude to a council policy on the future of high-rise in Boulder, the session packed nearly 300 advocates and enemies of tall buildings into the council chamber[s]. And they remained as the hearing stretched from 8 p.m. to well after midnight.”<sup>142</sup> Hunter was distressed with the City Council debate, saying “I’m asking for a pair of shoes — and you’re saying I can have one. . . . You’re killing the whole thing.”<sup>143</sup> To which Mayor Knecht responded, “We’re trying to be fair, Mr. Hunter. It’s your project — but it’s our city.”<sup>144</sup> After more than four hours and statements from nearly forty citizens, the City Council did approve the hotel at 100 feet, adding fourteen feet for a mechanical penthouse, and a fifty foot high apartment building adjacent to the hotel.<sup>145</sup> It rejected the third building, but indicated a potential compromise after restudy.<sup>146</sup>

### B. *The Cohagen Proposal Update*

Not to be outdone, Cohagen revised *his* project to create a spectacular “superblock” on the Arapahoe Shopping Center site with plazas, landscaping, and pedestrian walks among several buildings,

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138. *Boulder Hilton?*, BOULDER DAILY CAMERA, Feb. 5, 1971 (Attachment W).

139. *Id.*

140. Bill Hoffman, *Planning Board Limits Ruins’ Hotel Height*, BOULDER DAILY CAMERA, Feb. 5, 1971, at 1.

141. *City Council to Consider Hotel*, TOWN & COUNTRY REVIEW (Boulder County), Feb. 10, 1971.

142. Ron Tollefson, *City Balks at High-Rise Luxury Apartment Plans*, BOULDER DAILY CAMERA, Feb. 17, 1971, at 1.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

including one about 150 feet and one 300 feet high.<sup>147</sup> According to his architect, Worthington, high-rise construction is a key to prevent urban sprawl and with proper design, height would not greatly interfere with views.<sup>148</sup>

## IX. A MODEST PROPOSAL

Watching from the halls of academia, I realized that the City Council was heading towards permitting high-rise buildings. Fortuitously, a course in “Law and the City Environment” in the 1971 spring semester allowed me to write an extensive paper on height control for Professor Steve Williams. The purpose of the paper was to examine the legal, social, and urban planning aspects and consequences of establishing a maximum building height limitation of fifty-five feet in the City of Boulder, by amendment to the City Charter. The paper recognized that height is only one of many variables that make up the visual and practical impact of buildings in a community. Others include bulk, scale, color, texture, shape, landscaping and location. Many different kinds of controls are available, such as floor area ratio, density, parking requirements, maximum horizontal dimensions, maximum square footage, and setback requirements. The proposal would establish only one variable: height. The citizens would still be depending upon the good judgment of the City Council to establish the many other variables that make up a well-planned, well-designed community. Also, a simple height limitation in the City Charter could be changed or revoked by future electors.

Extensive research resulted in a lengthy paper in May 1971, entitled “A Proposed City Charter Amendment for the City of Boulder, Colorado, Limiting Building Height to 55 Feet.”<sup>149</sup> Why fifty-five feet? The City Council, the Planning Board, the Planning Staff, and the Architects Committee all generally agreed that “high-rise” buildings are those above the fifty-five foot level. It made sense. Buildings above that height have a much greater impact on the cityscape, and view protection to the west is an important factor in Boulder.

The paper gave a history of height control in Boulder, included arguments for and against high-rise buildings, presented thorough legal research on height control throughout the United States, and proposed

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147. *Set for Height Discussion*, BOULDER DAILY CAMERA, June 2, 1971 (Attachment X).

148. *Id.*

149. Minor changes have been made to the original text for clarity. A digital version of this entire paper is available at <http://hdl.handle.net/10974/21484>.

the wording for a City Charter amendment. The section, "ARGUMENTS FOR AND AGAINST HIGHRISE," included density, open space, land values and economics, the prestige factor, fire and panic, wind, view preservation, focal point, variety, in-structure parking, and harmony. In terms that specifically addressed the Boulder situation, it discussed revitalization of the core area, which was the original impetus for permitting high-rise buildings.

#### *A. The Proposed Amendment*

The wording for the proposed amendment was as follows:

All buildings and other structures throughout the City of Boulder shall be limited to a height not exceeding fifty-five (55) feet. This height limit shall not apply to spires, belfries, cupolas or domes not used for human occupancy, nor to silos, parapet walls, cornices without windows, antennas, chimneys, ventilators, skylights, or other necessary mechanical appurtenances usually carried above the roof level so long as they do not take up more than 25% of the roof area. "Height" shall be the vertical distance from the lowest point within twenty-five (25) feet of the tallest side of the structure to the uppermost point of the roof.

The purposes of this height limitation are to promote the health, safety and general welfare of the community; to secure safety from fire, panic, wind turbulence, and other dangers; to provide adequate light and air to abutting properties and the neighborhood; to prevent the overcrowding of land; to avoid undue concentration of population; to prevent encroachment of privacy; to lessen traffic congestion in the streets; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to insure personal safety by encouraging intensive use at the sidewalk level; to encourage the most appropriate use of land; to conserve and enhance property values; to preserve the integrity and character of established neighborhoods; to preserve scenic views of the mountain backdrop, which are a unique asset to the community and provide a distinctive character and setting for the city, and which provide an attraction to tourists, visitors, and students of the University of Colorado; and to protect a public investment of over \$3,000,000 in the mountain backdrop.

Note that the amendment is in two sections. The first states the legal restrictions which are to be implemented for future buildings in the city and provides for reasonable exceptions such as church spires, necessary mechanical equipment, chimneys, etc. The second section provides the purposes of the amendment. These are crucial to establish the rationale supporting the constitutionality of such

restrictions, protecting them from charges of violation of due process and the taking of private property without just compensation. Having researched all of the state supreme court decisions, I was able to include the key words from those decisions that approved height restrictions in the “purposes” section of the proposed amendment, and added some provisions which were specific to Boulder.

### *B. Is the Height Restriction Constitutional?*

For a law school paper recommending that a governmental entity adopt a major restriction that tells private property owners what they can or cannot do with their property, one issue stands out above all others: constitutionality. If it fails that test, all else is for naught. Because constitutionality is *the* fundamental issue, that portion of my 1971 paper is reproduced here. Also included from the 1971 paper is the section entitled “The 55-foot Height Limitation” because it also addresses constitutionality.

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When a city restricts heights of buildings it usually does so as part of a general zoning ordinance.<sup>150</sup> Since a height limitation would in effect be a city-wide zone restricting buildings to that height, the constitutional attacks thereon would be the same as on zoning regulations generally.

The usual attacks on a zoning restriction are that it violates due process and is a taking of private property without just compensation.<sup>151</sup> A possible third attack—that of denial of equal protection—can be made on the type of zoning ordinance which establishes various districts with different restrictions in each.<sup>152</sup> The various City of Boulder proposals establishing certain high-rise zones would be open to this attack. A property owner on the east side of Sixteenth Street, for example, immediately outside of the high-rise zone, whose property is restricted to, say, thirty-five feet, might allege a denial of equal protection where property directly across the street could be built to 140 feet. As early as 1909, however, in *Welch v. Swasey*,<sup>153</sup> the U.S. Supreme Court upheld the division of the city into zones of different heights, and in *Euclid v. Ambler Co.*<sup>154</sup> it upheld comprehensive zoning in general, with its many different types of restrictions. An unusual feature of the latest Planning Department proposal—that of requiring specific spacing between

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150. *Atkinson v. Piper*, 195 N.W. 544, 547 (Wis. 1923).

151. Maxine Kurtz, *Recent Developments in Zoning Law in Colorado*, 39 *DICTA* 211, 218 (1962).

152. *Welch v. Swasey*, 214 U.S. 91 (1909).

153. *Id.*

154. *Euclid v. Ambler Co.*, 272 U.S. 365, 390 (1926).

buildings depending on their height—may also be open to this attack. There is the possibility that the first high-rise which goes up on a block has an effect on what can be built on adjacent property, or at least where the second building must be located on the lot in order to satisfy the spacing requirement. If this did occur, the regulation might be benefiting one property owner (the one who built first) over the adjacent property owner—again a potential denial of equal protection. The equal protection issue is being mentioned here only because it indicates that a height limitation of fifty-five feet throughout the City would probably be less open to constitutional attack than present and proposed regulations.

### 1. *U.S. Supreme Court Cases*

There are several cases which are pertinent to the constitutionality of height control. *Welch v. Swasey* is a landmark case in height control.<sup>155</sup> The plaintiff had been denied a building permit because his building was designed to be over 120 feet high in a 100-foot zone.<sup>156</sup> In addition to the equal protection argument mentioned above, he argued that: (1) he was being denied the extra height for aesthetic purposes alone (to preserve architectural symmetry and regular skylines), which was not a proper public purpose for which the police power could legitimately be used; (2) that even if it were a proper public purpose, the restriction bore no reasonable and substantial relationship to it; and (3) that since it deprived him of profitable use, it was a taking.<sup>157</sup>

Regarding the public purpose, the Court pointed out that the state supreme court, in upholding the ordinance, had not relied purely on aesthetic grounds (fire hazard was mentioned as one of the others) and “[t]hat in addition to these sufficient facts, considerations of an aesthetic nature also entered into the reasons for their passage, would not invalidate them.”<sup>158</sup>

In regard to the due process argument, the Court agreed that if the statutes have no real, substantial relation to a public object and are arbitrary and unreasonable beyond the necessities of the case, the courts will declare them invalid.<sup>159</sup> However, the Court did find such a reasonable relation here, and upheld the restriction.<sup>160</sup>

Regarding the taking argument, the Court decided this limitation was not so unreasonable that it deprived the owner of its profitable use

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155. *Welch*, 214 U.S. 91.

156. *Id.*

157. *Id.*

158. *Id.* at 108.

159. *Id.* at 105.

160. *Id.* at 106.

without justification.<sup>161</sup> In addition, the Court stressed the fact that in passing upon questions of this character:

[I]n relation to limitations as to height of buildings in a large city, the matter of locality assumes an important aspect. The particular circumstances prevailing at the place or in the State where the law is to become operative; whether the statute is really adapted, regard being had to all the different and material facts, to bring about the results desired from its passage; whether it is well calculated to promote the general and public welfare . . . .<sup>162</sup>

The next major case came in 1926, when a realty company attempted to invalidate a comprehensive zoning ordinance which divided the city into various districts, regulating uses, lot area, size and height of buildings, etc.<sup>163</sup> While the decision wrestled mainly with the constitutionality of the districting aspect (which it upheld), regarding height limitations the Court said:

There is no serious difference of opinion in respect of the validity of laws and regulations fixing the height of buildings within reasonable limits, the character of materials and methods of construction, and the adjoining area which must be left open, in order to minimize the danger of fire or collapse, the evils of over-crowding, and the like . . . .<sup>164</sup>

The Court stated further that before a zoning ordinance could be declared unconstitutional, it would have to be established, “that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.”<sup>165</sup>

The Court itself used this test in striking down an ordinance as applied to specific premises in *Nectow v. Cambridge* (1928).<sup>166</sup> It found that an ordinance restricting the property to residential uses did not bear a substantial relation to the public health, safety and welfare where immediately adjoining lands were zoned and used for industrial purposes.<sup>167</sup>

From these cases, it appears that height restrictions will be upheld if they are reasonable and bear a substantial relation to public health,

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161. *Id.*

162. *Id.* at 105.

163. *Euclid*, 272 U.S. at 381. Building height classifications were limited to 2.5 stories or 35 feet; four stories or 50 feet; up to 80 feet; to all of these, certain exceptions were made, such as church spires, water tanks, etc.

164. *Id.* at 388 (citing *Welch*, 214 U.S. 91).

165. *Id.* at 395.

166. 277 U.S. 183 (1928).

167. *Id.* at 188.

safety and welfare, and that the inclusion of aesthetic considerations will not invalidate them.

Since *Nectow*, the U.S. Supreme Court has not spoken again on zoning. However, *Berman v. Parker* (1954)<sup>168</sup> expanded the “public welfare” concept to include aesthetics in the famous passage:

The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. . . . If those who govern the District of Columbia decide that the Nation’s Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.<sup>169</sup>

While this is a strong argument for aesthetics in zoning, the governmental power being tested here was that of eminent domain rather than the police power. “State courts, therefore, can still rule as they see fit on aesthetic zoning -- employing or disregarding *Berman* as they wish.”<sup>170</sup>

## 2. State Cases

Every state which has had the opportunity to rule thereon has upheld the governmental power to limit heights to promote public health, safety and welfare, and has upheld the application of this power in the vast majority of cases.<sup>171</sup> In 1956, the Illinois Supreme Court upheld a blanket height limitation of three stories or forty-five feet throughout the City of Highland Park.<sup>172</sup> The same court, in a decision reminiscent of *Nectow*, found an ordinance which restricted property in Chicago to forty-five feet unreasonable where adjacent properties were already built-up with multi-storied structures, stating that the character of the neighborhood afforded no basis for the height restriction.<sup>173</sup> In another case, a zoning ordinance requiring that the completed appearance of every new structure in the subdivision be substantially equal to that of

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168. 348 U.S. 26 (1954).

169. *Id.* at 33 (internal citations omitted).

170. L. Masotti and B. Selfon, *Aesthetic Zoning and the Police Power*, 46 J. URB. L. 723, 784 (1969). This article is highly recommended as a survey of the development of aesthetic zoning.

171. V. Woerner, Annotation, *Validity of building height regulations*, 8 A.L.R.2d 963 (1949).

172. *Chicago City Bank & Trust Co. v. City of Highland Park*, 137 N.E.2d 835, 840 (Ill. 1956).

173. *La Salle Nat’l Bank of Chicago v. City of Chicago*, 125 N.E.2d 609, 614 (Ill.1955).

adjacent buildings in appearance, square foot area and height was void. When regulations are imposed in order to promote health, welfare, safety and morals it is necessary that exactions be fixed in the ordinance with such certainty that they not be left to the whim or caprice of the administrative agency and the ordinance must have some relation to a lawful purpose.<sup>174</sup>

While most of the courts adopted the reasonable relations standard, the Florida Supreme Court has held that to invalidate a zoning ordinance, evidence must show that the effect would be to completely deprive the owner of beneficial use of his property.<sup>175</sup>

In a recent Eighth Circuit case, *City of St. Paul v. Chicago, St. P., M. & O. Ry. Co.* (1969), the matter of restricting building heights for aesthetic reasons alone came up for review.<sup>176</sup> The core area of St. Paul, Minnesota, is on a bluff forty to ninety feet above a strip of riverfront.<sup>177</sup> In the 1930s, a bond issue was passed to improve the downtown, build a courthouse, and locate a park on the edge of the bluff overlooking the river.<sup>178</sup> In the 1960s, a renewal plan for the downtown was implemented with great success through public and private efforts.<sup>179</sup> Up to that time the riverfront strip had been used for railroad tracks.<sup>180</sup> No longer needing the area for tracks, the railroad decided to sell the property.<sup>181</sup> A consultant proposed buildings which would rise from ten to twenty-two stories above the park and the bluff.<sup>182</sup> The city passed an ordinance which prohibited the erection of buildings which would rise above the level of the park and bluff.<sup>183</sup> The district court found that the fair value of the property prior to the passage of the ordinance was \$320,000 and afterwards \$150,000.<sup>184</sup> The plaintiffs conceded that the city's purpose was a public one, but to accomplish this purpose, it must use its power of eminent domain, compensating the railroad for the devaluation of its property.<sup>185</sup> In upholding the ordinance as a valid use of police power, the two to one decision cited the *Euclid* test for constitutionality and said that fairly debatable questions as to the reasonableness, wisdom and

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174. *City of W. Palm Beach v. State ex rel. Duffey*, 30 So. 2d 491, 492 (Fla. 1947) (en banc).

175. *Bay Harbor Islands v. Burk*, 114 So. 2d 225, 228 (Fla. Dist. Ct. App. 1959).

176. 413 F.2d 762 (8th Cir. 1969).

177. *Id.* at 763.

178. *Id.* at 764.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 765 n.5.

183. *Id.* at 765.

184. *Id.*

185. *Id.* at 766.

propriety of an ordinance are not for the determination of the courts but of the legislative body (citing Minnesota cases); that the mere fact that an ordinance seriously depreciates value of property is not enough to establish its invalidity.<sup>186</sup> nor can it be invalidated on the grounds that aesthetic considerations will be furthered.<sup>187</sup>

### 3. Colorado Cases

There is only one case which could be said to deal in any way with height restrictions: *Weicker Transfer & S. Co. v. Council of City of Denver*.<sup>188</sup> It arose before Denver had adopted a zoning ordinance.<sup>189</sup> The City Council had refused to permit the building of a warehouse giving several reasons relating to noise, danger and excessive height. The court held their decision invalid, stating on the height matter:

If the council has the power to enforce conformity in size and height of buildings and preserve uniformity of sky line it certainly must do so by ordinance. These things can be specifically prescribed. They call for no exercise of discretion in individual cases and any attempt in that direction must result in the establishment of the mere will or whim of the council as the sole guide.<sup>190</sup>

Since the Colorado zoning enabling legislation had been passed in 1923 and the case was decided in 1924, the court seemed to be chastising Denver for not enacting zoning ordinances pursuant thereto instead of making such decisions in an ad hoc manner.<sup>191</sup>

On zoning in general, the Colorado Supreme Court's early decisions reflect a wariness of the use of police power to restrict private property.<sup>192</sup> However, in *Colby v. Board of Adjustment* (1927),<sup>193</sup> the

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186. *Id.* at 767 (citing *Goldblatt v. Town of Hempstead*, 172 N.E.2d 562 (N.Y. 1961)).

187. *Id.* (citing *Berman*, 348 U.S. 26 (1954)). As regards aesthetic zoning, it was the desire of the author not to duplicate the excellent work done by Mr. Robert E. Temmer for Professor Carmichael's Land Use Planning Seminar in May of 1969. His paper was entitled *View Protection Ordinances* and he covered the subject of aesthetics in zoning in far greater detail than time permits here. However, the Eighth Circuit case cited above was not available to Mr. Temmer at that time.

188. *Weicker Transfer & Storage Co. v. Council of City and Cty. of Denver*, 226 P. 857 (Colo. 1924).

189. *Id.*

190. *Id.* at 858.

191. *Id.*

192. *See, e.g., Curran Bill Posting & Distributing Co. v. City of Denver*, 107 P. 261 (Colo. 1910); *see also Willison v. Cooke*, 130 P. 828 (Colo. 1913).

193. *Colby v. Bd. of Adjustment*, 255 P. 443, 445 (Colo. 1927) (en banc) (The specific issue in the case was the prohibition of a brickyard in a residential district).

court embraced *Euclid* in upholding Denver's comprehensive zoning ordinance.

Since that time, the Colorado Supreme Court has passed on many zoning disputes. It has recognized that limitations on the use of property are an essential and fundamental purpose of all zoning.<sup>194</sup> A zoning ordinance must be reasonable<sup>195</sup> and must bear a substantial relation to the public health, safety or general welfare.<sup>196</sup> However, the legislation is entitled to a presumption of constitutionality,<sup>197</sup> and the court will not sit as a super zoning commission to substitute its judgment for that of the legislators.<sup>198</sup> The burden is on the person alleging invalidity to prove it beyond a reasonable doubt;<sup>199</sup> although, one recent case established the burden of proof as "clear and convincing evidence."<sup>200</sup> This case, however, also stated that it had to be shown that the land as zoned was not susceptible to any reasonable or lawful use.<sup>201</sup> A zoning ordinance is not unconstitutional because it prohibits a landowner from using or developing his land in the most profitable manner.<sup>202</sup>

It is apparent from the above that the plaintiff attacking a zoning restriction has to overcome considerable obstacles.<sup>203</sup> It has been done,

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194. *Baum v. City & Cty. of Denver*, 363 P.2d 688 (Colo. 1961) (en banc).

195. *Jones v. Bd. of Adjustment*, 204 P.2d 560, 563–64 (Colo. 1949) (en banc); *see also Di Salle v. Giggall*, 261 P.2d 499, 501 (Colo. 1953) (en banc).

196. *Jones v. Bd. of Adjustment*, 204 P.2d 560 (1949), *Di Salle v. Giggall*, 261 P.2d 499 (1953), *Englewood v. Apostolic Church*, 362 P.2d 172 (1961), *Westwood Meat Market, Inc. v. McLucas*, 361 P.2d 776 (1961).

197. *Baum*, 363 P.2d 688.

198. *Id.*, *Orth v. Bd. of Cty. Comm'rs*, 408 P.2d 974 (Colo. 1966).

199. *Id.*, *City and Cty. of Denver v. American Oil Co.*, 374 P.2d 357 (Colo. 1962).

200. *Roeder v. Miller*, 412 P.2d 219 (Colo. 1966).

201. *American Oil Company*, stated the strongest test in requiring that the plaintiff would have to prove beyond a reasonable doubt that his property could not be devoted to any reasonable lawful use under the zoning ordinance. 374 P.2d 357.

202. *Colby v. Bd. of Adjustment*, 255 P. 443, 445 (Colo. 1927) (en banc); *City of Colorado Springs v. Miller*, 36 P.2d 161 (Colo. 1934); *Hoskinson v. City of Arvada*, 319 P.2d 1090 (Colo. 1958), *Baum*, 363 P.2d 688.

203. Justice Hall dissenting in *Vickers v. Township Committee of Gloucester Township*, 181 A.2d 129, 143 (N.J. 1962), complained that "our courts have in recent years made it virtually impossible for municipal ordinances to be attacked. Judicial scrutiny has become too superficial and one-sided." (The majority had upheld an ordinance excluding all trailers from the township.). Since then, there have been several cases where judges have demanded more than minimum rationality. In *National Land and Investment Co. v. Kohn*, 215 A.2d 597 (Pa. 1965), the court struck down four-acre minimum zoning; and in *Appeal of Kit-Mar Builders, Inc.*, 268 A.2d 765 (Pa. 1970), the same court invalidated two- and three-acre minimums. In another Pennsylvania case, a township ordinance which permitted apartments only by variance was held unconstitutional. *Appeal of Girsh*, 263 A.2d 395 (Pa. 1970). A federal court in *Dailey v. City of Lawton*, 425 F.2d 1037 (10th Cir. 1970), found a building permit denial had been racially motivated and was arbitrary and unreasonable. And another federal court struck an ordinance which had attempted to keep low-income housing (for African Americans)

however, notably in the *Denver Buick* case where the requirement for off-street parking facilities was held to be confiscatory.<sup>204</sup>

There apparently has been no Colorado case testing the validity of a zoning-type restriction imposed directly by the citizens. However, the following language gives considerable support to the concept of democracy in action:

Our laws have wisely committed to the people of a community themselves the determination of their municipal destiny . . . . With the wisdom or lack of wisdom of the determination we are not concerned. The people of the community, through their appropriate legislative body, and not the courts, govern its growth and its life. Let us state the proposition as clearly as may be: It is not our function to approve the ordinance before us as to wisdom or desirability. For alleged abuses involving such factors the remedy is the ballot box, not the courts.<sup>205</sup>

Where Colorado stands on aesthetic zoning is apparently unclear and whether aesthetics can be the sole purpose or only ancillary remains open.<sup>206</sup>

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out of a white residential area. *Kennedy Park Homes Ass'n. v. City of Lackawann*, 318 F. Supp. 669 (W.D.N.Y. 1970). It will be noted that these are all in the area of exclusionary and segregation-type zoning. Since highrise buildings are more expensive to construct, they usually demand higher rents. The present low-income housing in Boulder is being built no higher than five stories. Since the lower buildings are cheaper to build, and since height limitation does not decrease density, the height limitation is in no way exclusionary or segregation-type zoning.

204. *City and Cty. of Denver v. Denver Buick, Inc.*, 347 P.2d 919 (Colo. 1960).

205. *Baum*, 363 P.2d 688.

206. See *Temmer*, *supra* note 187. Where Colorado fits in to this scheme is not entirely clear. The early case of *Willison v. Cooke*, 130 P. 828 (Colo. 1913) is generally cited for the proposition that Colorado follows the general rule that aesthetic considerations alone are not sufficient to justify the exercise of the police power for a zoning ordinance. The case was not specifically dealing with a zoning ordinance, but with an ordinance placing certain restrictions on the erection of store buildings. The ordinance required a certain setback for a building, and required the owner to obtain signatures from a majority of the property owners in the block in which the building was to be built, approving its erection, if it was to be built in an existing residential section. The court held that these restrictions were invalid. *Id.* at 832 (“A store building in a residence section of the city is not desirable, from an aesthetic point of view; but restrictions for this purpose alone cannot be upheld, as it is only those having for their object the safety and welfare of the public which justifies restricting a use of property by the owner.”). *Willison* was decided before Denver enacted its first zoning ordinance in 1925, but the principle of the case was reaffirmed in 1932 by the Colorado Supreme Court in the case of *Hedgcock v. People (Setback Case)*, 13 P.2d 264 (1932). One other early Colorado case, *Curran Co. v. Denver*, 107 P. 261 (Colo. 1910) contains language indicating that aesthetic considerations alone will not be allowed to control land use. In commenting upon this language, the Colorado Supreme Court later said, “[w]e recognize the fact that this language was composed prior to the adoption of zoning laws, and the

### C. *The Fifty-Five Foot Height Limitation*

As has been mentioned above, there are many different restrictions which can be placed on property by zoning. The two major factors, however, are those which establish how the property can be used (e.g. residential, commercial, industrial) and those which control to what extent the property can be developed, typically stated in terms of floor area ratio (FAR) or dwelling units per acre. The height restriction affects neither of these.<sup>207</sup> What it is really saying to the property owner is, "You may put your property to the use for which it has been zoned, and you may build the same number of square feet or dwelling units in, but you must place them more horizontally than vertically." Since it is more expensive to build a high-rise than a lower building, the lower building cost is less. The limitation is really depriving the property owner of nothing more than the prestige factor of building vertically. And all property owners throughout the city are being treated equally.

The line of demarcation between high-rise and low-rise is a relative matter. Criteria to be used to establish that line should reflect local

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courts have generally expanded the conception of 'general welfare' with relation to such laws; nevertheless it points up the dangers to be guarded against in imposing unnecessary and unreasonable restrictions on freedom of action." If there were only these cases to consider, there would not be much doubt that Colorado's position is against zoning for exclusively aesthetic purposes, at least if they were unnecessary and unreasonable restrictions. However, there is also the early case of *Weicker Transfer and Storage Co. v. Denver*, 226 P. 857 (Colo. 1924), which also was decided before Denver enacted its first zoning ordinance. In *Weicker*, an application for a building permit for a multi-story warehouse had been turned down. One of the objections that the city had to the building was that it would not conform in size and height to surrounding buildings, and because it would be 'a nuisance to the sky line.' In commenting upon this particular objection, the court said: "[i]f the council has power to enforce conformity in size and height of buildings and preserve uniformity of sky line it certainly must do so by ordinance. These things can be specifically prescribed. They call for no exercise of discretion in individual cases and any attempt in that direction must result in the establishment of the mere will or whim of the council as the sole guide." The court went on to hold that the refusal of the building permit was an abuse of discretion, because the city failed to establish that any of their objections were valid, but in so doing, the court left the question unsettled as to whether the city could enact valid regulations to control the visual sky line, and thus left the question of aesthetic zoning for these purposes unsettled. No later Colorado case has dealt with this problem, and so it remains an open question.

207. The following information was not in the original height paper and is added here to explain why there is no financial advantage to building high-rise buildings vs. buildings fifty-five feet high or lower. The FAR controls density and can be used to prevent overloading city infrastructure such as water and sewer lines and streets. In 1971, in the area being proposed for high-rise buildings, the FAR was 3:1. This meant that a three-story building could cover the entire lot. Going higher did not increase the number of square feet or units that could be built. For example, on 100 by 100 foot lot with a 3:1 FAR, a building with 30,000 square feet of floor area could be built. If the building had more floors it was still limited to 30,000 square feet.

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## Limiting Building Height

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situations, not those of Chicago, New York or Denver. Boulder is located at the foot of the Front Range of the Rocky Mountains. Because of its topography, its spectacular mountain backdrop, and the fact that the height of its mature trees is about fifty to sixty feet, buildings above five stories begin to have much more of an impact on the cityscape than lower structures. It was, therefore, generally agreed by the City Council, the Planning Board, the Planning Staff, the Architects Committee on Highrise in Boulder, and the citizens, that high-rise buildings are those above the fifty to fifty-five foot level.

The fifty-five foot measure is a rational one. It is, in fact, more rational than a 100 or 140-foot limit. From a design point of view, five stories is the cutoff height for use of the hydraulic elevator. This type of elevator is raised by a telescoping shaft from the ground upwards. Once a building is designed beyond five stories, the more expensive electric elevator must be used, which is pulled upward by cables and machinery at the top of the building. Since there is almost no limit to the distance an elevator can be raised by this technique, there is no further convenient cutoff based on the elevator criterion. A bonus to using the hydraulic elevator is that it does not require the large mechanical penthouse on top of the building as does the electric elevator. The amendment includes logical exceptions such as church spires. The limit is set at fifty-five rather than fifty feet to provide some leeway so that there is no difficulty in building five stories pursuant to the limitation.

Its purposes are not purely aesthetic but include those that have been traditionally upheld, such as providing light and air, conserving and enhancing property values, and ensuring safety from fire and panic. But even if it were held to be purely for view protection, surely the fact that the view has been preserved by an enormous public investment in the mountain backdrop would convince the court that a substantial economic factor is involved.

Finally, if this amendment is unconstitutional, then every height ordinance setting height limitations Boulder has had, presently has, or would have in the future, must of necessity also fall as unconstitutional. They are no less arbitrary and unreasonable, nor bear no more substantial relation to the public health, safety, morals, or general welfare than this amendment. However, the U.S. Supreme Court has specifically upheld such height restrictions, and this amendment is in the same category.

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## X. TAKING THE INITIATIVE AND THE FINAL HIGH-RISE ORDINANCE

After summarizing the history of height control in Boulder, my 1971 paper stated “Thus the matter stands. What further changes or refinements will be made is as yet unknown. What is apparent, however, is that the present City Council will not place a blanket 55 foot height limit throughout the city.” The time for citizen action had come. It was already May 14, and time was of the essence with the November 1971 election looming. In order to control high-rise buildings in Boulder, citizens would have to petition the city government to put the proposed charter amendment on the November 2, 1971 ballot, thereby adding this specific language to the City Charter.<sup>208</sup> A City Charter is the constitution of a home rule city. It can only be adopted or changed by a majority vote of the citizens.<sup>209</sup> Citizens would have to obtain the required number of valid signatures on legal petitions and get City Council certification.<sup>210</sup> The initiative process is controlled by state statutes: the petitions need to state the exact wording of the proposed amendment, include sheets for valid signatures of registered voters (in our case at least 1,005), and a request that the item be placed on the ballot at the next election.<sup>211</sup> One of the requirements is a committee of five citizens to sponsor the petitions, whose names are to be listed on the petitions.<sup>212</sup> Here, the five citizens were Albert A. Bartlett, Joyce A. Davies, Ted J. Fiflis, Campbell Robertson, and Ruth M. Wright.<sup>213</sup> Then the gathering of signatures began. The names that had been gleaned from the Town & Country Review cut-out ballots were now hugely useful—a ready-made campaign team to carry petitions, with PLAN-Boulder leading the effort, the Sierra Club, other organizations, and citizens rallying to the cause.

By late July 1971, about 1,500 signatures were turned in.<sup>214</sup> At the August 3, 1971 Council meeting, City Clerk Carl Chapel and City Attorney Wagenhals declared that PLAN-Boulder had met the City’s legal standards for a place on the November ballot, and Council

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208. The Charter of the City of Boulder, Colorado, 1984, Art. I, Art. III, Art. IV, Art. X, § 137.

209. *Id.*

210. *Id.*

211. Art. XX Colo. Const., CRS 70-1-1 to 70-1-19.

212. *Id.*

213. Petition to Amend the Charter of the City of Boulder to Limit Height to Fifty-Five Feet (Attachment Y).

214. Letter from author to Carl Chapel, City Clerk, City of Boulder (July 25, 1971).

certified.<sup>215</sup> And none too soon! At that same meeting, the City Council adopted Ordinance No. 3732 to replace the Interim Ordinance that had been in effect for more than two years.<sup>216</sup> Councilman Klemme had resigned in July, and Harvey Platts was appointed in his place.<sup>217</sup> Mayor Knecht had left for a federal position in Washington D.C. Six council members voted for the ordinance.<sup>218</sup> Buechner, now the acting mayor, held true to his original position and voted no.<sup>219</sup>

Ordinance No. 3732 went into effect on September 2, 1971, just two months before the election.<sup>220</sup> Prepared by City Planning Staff, it was long, complex and intricate. Under the Ordinance, as many as fifty buildings up to 140 feet high could possibly be permitted in the downtown, Arapahoe and Crossroads Shopping areas and east to Thirty-Third Street.<sup>221</sup> The November election would have an enormous impact and could irreversibly decide what the City of Boulder would look like in the future.

The ZPG petition for a charter amendment for growth control also had received enough signatures to be on the November ballot. It said simply:

The City Administration and Council shall adopt regulations and policies to stabilize the ultimate population of the City of Boulder near one hundred thousand.<sup>222</sup>

Concerned, that if the issue failed, it could be interpreted as Boulder citizens supporting growth, some environmentalists urged Council to place an alternative growth policy on the ballot, giving citizens another opportunity to vote *for* growth control. The result was the following ballot issue:

BE IT RESOLVED that the City Government is directed immediately to undertake a definitive analysis of the optimum population and growth rate for the Boulder Valley. Pending the completion of this analysis and approval of programs developed to implement its results, the City Government, working with the County

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215. *Council Oks Height Limit, Petition Drive*, BOULDER DAILY CAMERA, Aug. 4, 1971.

216. *Id.*

217. Email from Marti Anderson to author (May 22, 2014).

218. Minutes of Meeting of The City Council of the City of Boulder, Aug. 3, 1971. Mayor Knecht and Councilman Waugh were absent. The council members who voted for the ordinance were Bowers, Geesaman, Haertling, McLean, Nuzum, and Platts.

219. *Id.*

220. Final Height Control Ordinance: Ordinance No. 3732, Published July 22, 1971 in BOULDER DAILY CAMERA, adopted Aug. 3, 1971 (Attachment Z).

221. *Id.*

222. *Election Questions in Brief*, *supra* note 137.

Government, shall take all steps necessary to hold the rate of growth in the Boulder Valley to a level substantially below that experienced in the 1960's and shall insure that the growth that does take place shall provide living qualities in keeping with the policies found in the Boulder Valley Comprehensive Plan.<sup>223</sup>

Apparently a City Council compromise, it was considered a “wimpy” alternative to the ZPG proposal since the growth rate in the 1960s was an astonishing seven percent per year—but at least citizens had an alternative to vote for. And so the battle between very different visions for the future of Boulder was joined.

## XI. THE CONTROVERSY INTENSIFIES: DEBATES AND CAMPAIGNS

The two months of campaigning before the November 2 election were intense. An earlier meeting in late June had set the stage. Worthington and I were the speakers.<sup>224</sup> We were congenial opponents and respected each other's points of view. We both wanted the best for Boulder—we just differed on what that was. We also had competing slide shows.<sup>225</sup> Worthington showed beautiful high-rise buildings with landscaped plazas. I showed the famous cities of Europe where only the cathedral spires pierce the skyline. Then I clicked on my final slide showing an elegant five-story building in the Denver Tech Center—designed by Worthington. It showed that he could design well, even when restrained to fifty-five feet. Reacting with a smile, Worthington said, “She disarmed me with that last one.”<sup>226</sup>

A panel discussion sponsored by the Democratic Women of Boulder County featured James Hunter, Beverlee Johnson (Chair of ZPG), Councilman Homer Ball and me (representing PLAN-Boulder). Right from the start, Hunter blasted PLAN-Boulder, saying that the height limitation was “based on emotion” and “patently shallow and hackneyed,” referring to PLAN-Boulder as a group of “[w]ell intentioned persons whose competence is still to be proven.”<sup>227</sup> Responding to a charge that PLAN-Boulder assumed “a cloak of omniscience,” I responded, “We're not trying to push anything down anybody's throat.

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223. *Id.*

224. *Debate High-Rise Value*, BOULDER DAILY CAMERA, June 24, 1971.

225. *Id.*

226. *Id.*

227. *Growth, Building Height Subjects of Debate*, BOULDER DAILY CAMERA, Oct. 2, 1971.

It's completely up to the voters. This is the democratic system."<sup>228</sup> Beverlee Johnson pointed to the ZPG study, "Is Population Growth Good for Boulder Citizens?" which indicated that the best economies of scale are realized where the population ranges between 50,000 and 100,000 and that the limitation could be implemented through techniques outlined some months ago by the City Administration.<sup>229</sup> Ball retorted that no one had looked at the costs of forcibly imposing a limit and that the key to controlling growth lies with land use, rather than setting a population ceiling.<sup>230</sup>

On October 19, the League of Women Voters sponsored a meeting with the Height Amendment and the two growth issues (by ZPG and City Council) receiving the most attention.<sup>231</sup> Worthington insisted that high-rise buildings would allow a better view of Boulder's mountain backdrop than lower, broader buildings.<sup>232</sup> I countered that architects do not design cities—they only design one building at a time and in accordance with the desires of the landowner.<sup>233</sup> On the growth issue, attorney Chuck Howe argued that the ZPG amendment was just a planning directive that would give government the muscle to resist developers.<sup>234</sup> But Councilman Richard McLean responded that if it was merely an expression of opinion, he would be all for it because "growth isn't really profitable." He considered the vote a mandate, worried about the cost of implementation and that it would spur growth in the county. Responding to the contention that the City Council's resolution was weak, he said that in any community other than Boulder, it would be "revolutionary."<sup>235</sup>

By far the biggest and much-heralded debate took place on October 20, sponsored by FORWARD Boulder.<sup>236</sup> Richard Babcock was again brought in from Illinois, together with Walter Lewis, a professor of architecture at the University of Illinois and a nationally-recognized speaker on improved city planning.<sup>237</sup> Law Professor Steve Williams, who approved my law school report, and I spoke on behalf of the Height Amendment.<sup>238</sup> For ZPG there were Beverlee Johnson and University of

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228. *Id.*

229. *Id.*

230. *Id.*

231. Phil Gruis, *League of Women Voters Meeting, ZPG Amendment Termed 'A Shot in the Dark,'* BOULDER DAILY CAMERA, Oct. 20, 1971.

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. Hoffman, *supra* note 1.

237. *Id.*

238. *Id.*

Colorado's Economics Professor Charles B. Howe.<sup>239</sup> Lewis and Babcock would respond to both "teams."<sup>240</sup> County Commissioner Jack Murphy was tapped as the neutral moderator.<sup>241</sup>

I pointed out that most of the recently adopted building code would remain in effect and that the Height Amendment would affect only those areas where the newly-adopted ordinance now permitted potentially fifty buildings up to 140 feet high, blocking views of the mountain backdrop, losing the intimacy of historic downtown Boulder, and creating hard-to-fight fire hazards on the upper floors.<sup>242</sup> Lewis argued that a flat fifty-five foot limit does not allow variety and imagination, nor does it accomplish the goal of planning that "enriches our life and gives it meaning."<sup>243</sup> He added that Boulder's setting lends itself to high-rise buildings because the scale of the mountains is so immense.<sup>244</sup> Babcock said that the real issue here is preserving the mountain view, and that the other stated goals are only legalistic "nonsense" and "archaic" concerns such as fire danger and the preservation of light and air.<sup>245</sup> Thus, while reading the amendment, he was "overcome by a wave of nostalgia."<sup>246</sup> (Note: as an attorney, surely Babcock appreciated the importance of judicial precedence in sustaining a legal challenge.)<sup>247</sup> Williams countered that in the early days, courts maintained that beauty did not count, only money. But new precedents involve bans on billboards and support historic preservation through zoning, like in Santa Fe, New Mexico. "It's conceivable that the court will hold this [amendment] unconstitutional, but I feel the court will not take that narrow, retrograde view."<sup>248</sup> After Johnson gave her well-reasoned statement, Lewis reiterated that, like the Height Amendment, the specificity [of 100,000] would prevent flexibility in planning.<sup>249</sup> Babcock, with ungracious disdain, said, "I get depressed that a person as bright as Mrs. Johnson is entranced by a simplistic solution."<sup>250</sup> Howe responded that instead of citizens subsidizing business growth, it should pay its own way.<sup>251</sup>

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239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

Thankfully, during the entire time, the media was fully engaged and reported these debates in great detail. Lengthy news stories quoted both sides extensively, and numerous compelling “letters to the editor” appeared almost daily. Two such letters, representing the best of opposing viewpoints were by Professor Steve Williams and Architect Carl Worthington.<sup>252</sup> And the two major newspapers were on opposite sides, with competing editorials. With the Boulder Daily Camera vehemently opposed to height control, it was crucial to have another editorial voice in support. The Town & Country Review filled that mission in spades. The Colorado Daily, a student newspaper at that time, also weighed in. Such media coverage resulted in a very well-informed citizenry and cannot be underestimated; without the coverage, it would have been almost impossible to overcome the fortune spent by the opposition. The most scathing editorial appeared on October 12. After extolling the virtues of the City Council ordinance, it went on to say:

Contrast all of that with the Wright proposal, the brainchild of one person, an amateur, backed by an organization of about 300 members of which about 30 are considered “most active” by PLAN-Boulder leadership. Consider the fact that the main designers and backers of the city’s building-height code are by the nature of their positions responsible to the public for the future impact of their decisions. On the other hand, the author (or authors) of the PLAN-Boulder height limit proposal need not answer to anybody for the consequences of their ill-conceived scheme but may quietly fade away from any accountability. . . . We consider the height-limit proposal now on the ballot by petition to be misguided, inimical to its avowed environmental purpose and detrimental to the best interests of our community’s future.<sup>253</sup>

In response, Campbell Robertson wrote:

This issue of height limit is a highly-subjective one; it isn’t at all a matter of right-or-wrong, rather just a question of what a voter majority wants Boulder to look like. . . . I also question seriously the recent recurrent use of the word “expertise,” . . . . This word constitutes a back-handed way by which very small groups imply that “they know what’s best,” . . . Finally, I feel it regrettable that those opposing the passage of the amendment descend to personally attacking Mrs. Wright by name. Attacks on persons can often be an indication that the case is too weak to stand on its own merits; I

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252. Stephen Williams, Letter to the Editor, *Building Height Limit Defended*, BOULDER DAILY CAMERA, 1971; Carl Worthington, Letter to the Editor, Great 55-Foot Misunderstanding, BOULDER DAILY CAMERA, Oct. 30, 1971 (Attachment AA).

253. *City’s Height Code Reasonable, Workable*, BOULDER DAILY CAMERA, Oct. 12, 1971.

would expect that many will feel this very same way and vote accordingly.<sup>254</sup>

Jim Johnson's editorial, however, was critical of the City Council:

Disillusioned, disappointed and distrustful describes our reaction to Boulder's City Council during the past years. . . . We are not opposed to high rise buildings per se. . . . We are only opposed to allowing 9 men on the City Council telling us where they should go.<sup>255</sup>

In supporting the Height Amendment, Johnson faulted the City Council for approving three high-rise buildings at Sixth Street & Canyon, against the recommendation of its Architects Committee that no high-rise be built that close to the mountains.<sup>256</sup>

It is almost inconceivable that a rational body could first appoint a study committee, then ignore its recommendations, then enact legislation in agreement with the same study they had previously ignored. Do we really want to leave future decisions on high rise buildings up to the City Council?<sup>257</sup>

The campaign really heated up when a group calling itself "A Bolder Coalition" (also referred to as the "Coalition") was organized to oppose both the Height and the ZPG issues.<sup>258</sup> It was chaired by distinguished Dr. Leo C. Reithmayer, Director of the Institute of Public Administration at the University of Colorado.<sup>259</sup> He had been Mayor in the late 1950s when the citizens had to put a charter amendment on the ballot by petition so that they could stop the city from pumping water up the mountain backdrop for development there.<sup>260</sup> Members of the Coalition included many well-known, respected citizens.<sup>261</sup> The

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254. Campbell Robertson, *Height Question*, TOWN & COUNTRY REVIEW (Boulder County), Oct. 20, 1971.

255. *High Rise Question*, TOWN & COUNTRY REVIEW (Boulder County), Oct. 27, 1971.

256. *Id.*

257. *Id.*

258. *Bolder Coalition Formed to Inform Community of Issues*, TOWN & COUNTRY REVIEW (Boulder County), Oct. 20, 1971.

259. *Id.*

260. Interview with Robert McKelvey (July 2015).

261. Members were: Don Beeson (Beeson-Baehr), Alten A. Bringle (Memorial Hospital), Frank Buchanan, Gerald A. Caplan (Attorney), Frank Chrisbens (Community Hospital), Bly Curtis (Formerly of the Council and the Health Department), Jim Flood (IBM), James Friggens (Readers Digest), Clyde Gelwick, Margaret S. Hansson (Gerico), Dr. Howard H. Heuston, Leo Hill (First National Bank), Ray Joyce (Lashley Persons), Neil King (Attorney), Dolores Kiser (NCAR), Carl McGuire, Ray Moses (Attorney), Rev. A.B. Patterson, Fred Pruett (Pruett Press), Francis Reinert, John Sayre (Attorney), Harold Short (Flatirons Company), Gary Svoboda (CU student), Richard Thornton (YMCA), Eugene Wilson (University of Colorado).

Coalition believed that now is the time for bold and progressive action, not a bury-your-head-in-the-sand attitude.<sup>262</sup>

Professional and creative full-page ads started appearing in the newspapers. The Coalition attacked both issues together, which was detrimental to the Height Amendment. The ZPG issue appeared easier to defeat as being potentially unconstitutional, or at least impractical to enforce, so that combining them made the Height Amendment more vulnerable—even though *its* constitutionality had been thoroughly researched. It is estimated that the coalition vastly outspent the proponents, with daily full-page ads and a blockbuster eight-page Election Special in the Boulder Daily Camera the day before the election.<sup>263</sup> Height Amendment supporters' expenditures were mainly for posters, bumper stickers, and handouts.<sup>264</sup> The “boots on the ground” campaign was people intensive, but cost-effective. In addition, there was a hotly contested City Council race with twenty-three candidates, and voters knew how they stood on height control.<sup>265</sup>

Also weighing in during these final days were two important entities: the Associated Students of the University of Colorado (“ASUC”) City Committee (CU student government), and the Colorado Daily. It should be pointed out that on July 1, 1971, the Twenty-Sixth Amendment to the United States Constitution was ratified, lowering the voting age to eighteen. The 1971 election throughout the country was the first test of the so-called “Youth Vote.” ASUC said:

It is the City Commission's general feeling that . . . (the height) amendment . . . is of merit in helping to preserve the scenic beauty of Boulder's natural environment and in restraining higher density in this area. Support the candidates that support all of these issues, and most importantly, VOTE Nov. 2.<sup>266</sup>

The ASUC was thereby stressing that the eyes of the nation were watching.

Popular cartoonist Pudim added his pithy pictorial comments essentially in support of the Height Amendment.<sup>267</sup> Former Mayor

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262. *Tomorrow is more than just another election day, November 2 Tuesday an election special*, Advertising Supplement to BOULDER DAILY CAMERA, Nov. 1, 1971.

263. *Id.* The advertising supplement was sponsored by A Boulder Coalition/ Leo C. Reithmayer, Chairman.

264. Poster: SAVE OUR SCENE (SOS): HEIGHT CONTROL, VOTE YES ON #5 (Attachment BB).

265. Printed Ballot for Nov. 2, 1971 Election [hereinafter Printed Ballot] (Attachment CC).

266. *On Election Issues*, TOWN & COUNTRY REVIEW (Boulder County), Nov. 2, 1971.

267. Pudim, *Higrise In The Canyon? He Did It*, COLORADO DAILY, Oct. 1971; Pudim, *Move On You're Loitering*, COLORADO DAILY, Oct. 1971 (Attachment DD).

Robert Knecht, who pushed for high-rise buildings in the hope of revitalizing the downtown, sent a thoughtful and gracious letter from Washington, D.C. which said:

55' Height Limit – I feel that the city's present ordinance restricting high rise to two very small areas (a portion of downtown and the Crossroads area) is adequate. However, many people want to see high buildings ruled out entirely in favor of preservation of our mountain views, a point of view I can well understand.<sup>268</sup>

## XII. THE ELECTION: NOVEMBER 2, 1971

A last-minute shock for height control and ZPG proponents—just a day or so before the election—was obtaining a copy of the printed election ballot that showed what voters would be seeing when they pulled the levers in the voting booth on Election Day.<sup>269</sup> In October, the City had prepared and distributed a pamphlet entitled “Election Questions in Brief” which described the six issues that would be voted on and gave them all titles and numbers.<sup>270</sup> The height control issue was titled: “HEIGHT LIMIT, BY PETITION, QUESTION 5.”<sup>271</sup> The ZPG issue was titled: “POPULATION LIMIT, BY PETITION, QUESTION 6.”<sup>272</sup> The pamphlet also specifically stated: “Questions 4, 5 and 6 deal with community policies and *are presented as they will appear on the ballot.*” (emphasis added)<sup>273</sup> But on the printed ballot, no numbers were shown, and in contrast to the four City proposals which *were* identified by titles in bold letters, there were no identifying titles on the height control or ZPG issues!<sup>274</sup> In the voting booth on November 2, with neither a title nor a number, it was exceedingly difficult to find these two issues. You had to read the small print four lines down to finally find the phrase “height not exceeding fifty-five (55) feet.” No one in City Hall had informed the proponents of this major change, nor alerted them in any way whatsoever. Many votes were probably lost on this problem alone. Whether this was intentional or inadvertent, of course, will never be known.

Election night was exciting, with voters following the election returns, either at the County Clerk's office where precinct returns were

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268. *The Old Firehouse Syndrome*, BOULDER DAILY CAMERA, Nov. 1971.

269. Printed Ballot, *supra* note 265.

270. *Election Questions in Brief*, *supra* note 137.

271. *Id.*

272. *Id.*

273. *Id.*

274. Printed Ballot, *supra* note 265.

posted as they came in, or listening to Roger Cracraft at KBOL, the local radio station. The ZPG issue went down rather early, (final result 12,156 to 8,605) with the City Council's growth option winning overwhelmingly (16,364 to 6,171).<sup>275</sup> It showed that Boulder citizens *did* support slower growth.

The Height Amendment was teetering on the edge throughout most of the evening. Finally, when the reports came in from the last precincts, some with the highest student votes, it zoomed ahead. The final vote was 11,577 to 10,273, a fairly healthy fifty-three percent to forty-seven percent—and the battle was over.<sup>276</sup>

The vote also showed that, out of twenty-three candidates running for City Council, John Buechner, Pen Tate, Ken Wright, Tim Fuller, and Karen Paget had won.<sup>277</sup> Buechner was running for his second term, the others were new. Buechner had actually touted his support of height control in his campaign ads.<sup>278</sup> None of the other incumbents—Ball, Bowers, Platts or Waugh were re-elected.<sup>279</sup> They had all voted in favor of the ordinance permitting buildings up to 140 feet.<sup>280</sup> The headline in the Boulder Daily Camera the next day read, “Youth Vote Key in Building Height Amendment OK.”<sup>281</sup> My quote was, “Young people are very environmentally concerned -- and this was an environmental issue.”<sup>282</sup>

## XIV. EPILOGUE

### A. *The Hunter Proposal*

In 1972 James Hunter bought the property at Sixth Street and Canyon from an Oklahoma insurance company for \$510,000, and sold it

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275. Phil Gruis, *Youth Vote Key in Building Height Amendment OK*, BOULDER DAILY CAMERA, Nov. 3, 1971 [hereinafter *Youth Vote Key*] (Attachment EE).

276. *Id.*

277. *Precinct-by-Precinct Voting For Council, Issues*, BOULDER DAILY CAMERA, Nov. 3, 1971 (election results) (Attachment FF). Notably, the “Youth Vote” also helped to elect the first black person, Tate (a lawyer); the first avowed environmentalist, Wright (a consulting water engineer); the first “hippie,” Fuller (the proprietor of a book store); and the first woman, Paget, a professor at CU (comment by author).

278. See John Buechner’s Campaign Advertisement (Attachment GG).

279. *Precinct-by-Precinct Voting For Council*, *supra* note 277.

280. Minutes of Meeting (City Council), Aug. 3, 1971.

281. *Youth Vote Key*, *supra* note 275.

282. *Id.*

four days later to Boulder County for \$770,000.<sup>283</sup> An investigation ensued, but eventually Hunter was cleared of any wrongdoing.<sup>284</sup> He insisted that the large profit he made was due to improvements he made on the land.<sup>285</sup> He had certainly put in an enormous effort over several years, both architecturally and politically, to get something built. Within a few years, Boulder County, together with the City of Boulder, built the two-story Justice Center. The views up Boulder Canyon are magnificent.

### *B. The Cohagen Proposal*

John Cohagen, together with his talented architect Carl Worthington, had envisioned a nine-square superblock with a 300-foot high-rise and two 100-foot-plus buildings with landscaped plazas in between.<sup>286</sup> This plan, of course, came crashing down on November 2, 1971. A bit sadly, as a “last hurrah,” in January 1972 a full-page ad appeared in the Boulder Daily Camera, showing what might have been, including a large photo of the possible design for Cohagen’s superblock.<sup>287</sup> Over the years, however, the Arapahoe Shopping Center has thrived with a new upscale five-story hotel and successful shops. Cohagen’s threat—that if the fifty-five foot height control election was successful, he would take the issue to court the next day—never materialized.

### *C. Downtown Boulder Today*

Many new commercial and residential buildings have been built, and although some are the maximum five stories high, they are not the dull, unimaginative structures that Professor Lewis had warned about. Downtown Boulder is thriving with one of the most successful pedestrian malls in Colorado, the Pearl Street Mall. Many people, too numerous to name here, have contributed to its success. In spite of the 1970 bond election loss for a new civic center, Boulder Tomorrow, led by architect H. Alan Zeigel and others, continued to provide the leadership for revitalization. Several parking structures were built to provide easier auto

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283. On The Corner: The Lower Chautauqua Neighborhood Newsletter, *supra* note 39; Sheriff’s Report on Probe of ’72 Land Deal Released, BOULDER DAILY CAMERA, Apr. 28, 1977.

284. On The Corner: The Lower Chautauqua Neighborhood Newsletter, *supra* note 39.

285. *Id.*

286. *Set for Height Discussion, supra* note 147.

287. *Id.*

access.<sup>288</sup> In 1974, City Council closed Pearl Street to auto traffic from Eleventh Street to Fifteenth Street (over the objections of some recalcitrant shop owners who wanted parking right outside their front doors—calling it the “Boulder Maul”).<sup>289</sup> Over the years the Mall has been landscaped with trees, flower beds and fountains, and paved with bricks. The historic buildings have been preserved and create an intimate and totally pedestrian-friendly setting. University of Colorado students bring their parents and grandparents to enjoy the ambiance. Many visitors come from out of town. Shops stay open in the evening, and the many restaurants, outdoor cafes and bistros are buzzing. Children’s play areas have rocks to climb on and squirting water to dodge. Festivals and art markets thrive, and buskers entertain. No need now to worry that Downtown Boulder will die on the vine. Mayor Knecht and City Manager Tedesco would be pleased. Chicago Professor Lewis would have to admit that the mall “enriches our life and gives it meaning” without high-rise buildings. Attorney Babcock should note that the constitutionality of the Height Amendment has never been challenged.

#### D. Colorado Case Law Update

In a section entitled “Is the Height Restriction Constitutional,” which is included in this speech, the original 1971 University of Colorado Law School report stated:

It is apparent from the above that the plaintiff attacking a zoning restriction has to overcome considerable obstacles. It has been done, however, notably in the 1959 *Denver Buick* case where the requirement for off street parking facilities were held to be confiscatory.

In 1975, the Colorado Supreme Court in *Stroud v. City of Aspen*,<sup>290</sup> expressly overruled *Denver Buick* (1959),<sup>291</sup> citing not only the older U.S Supreme Court case of *Village of Euclid v. Ambler Realty Co.* (1926),<sup>292</sup> but also the more recent case of *Village of Belle Terre v. Boraas* (1974).<sup>293</sup> Both cases recognized that zoning is constitutionally permissible so long as it is not arbitrary and is reasonably related to the public health, safety, morals and welfare. The Colorado Supreme Court then stated that Colorado has adopted a similar view. Thus, the only

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288. Butler, *supra* note 49.

289. *Id.*

290. 532 P.2d 720.

291. 347 P.2d 919.

292. 272 U.S. 365.

293. 416 U.S. 1.

Colorado case which weakened the authority to adopt zoning restrictions is no longer valid.

*E. Prestigious Appointment*

It should also be noted that Professor Steve Williams, who accepted and supported the idea that researching height control was a valid issue for a law school class, received a presidential appointment to the United States Court of Appeals for the District of Columbia in 1986 (for which prestigious appointment the height control proponents take no credit).

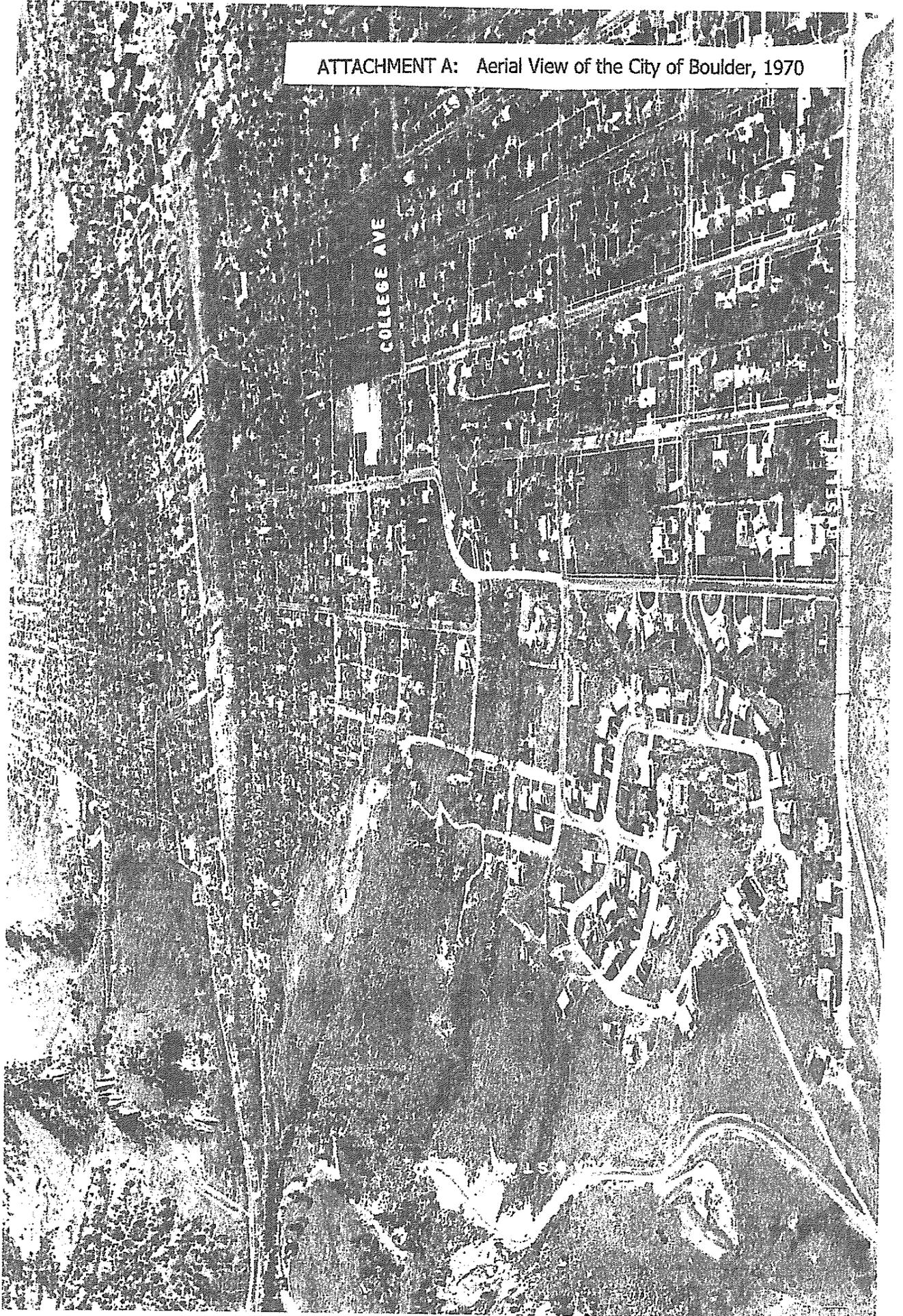
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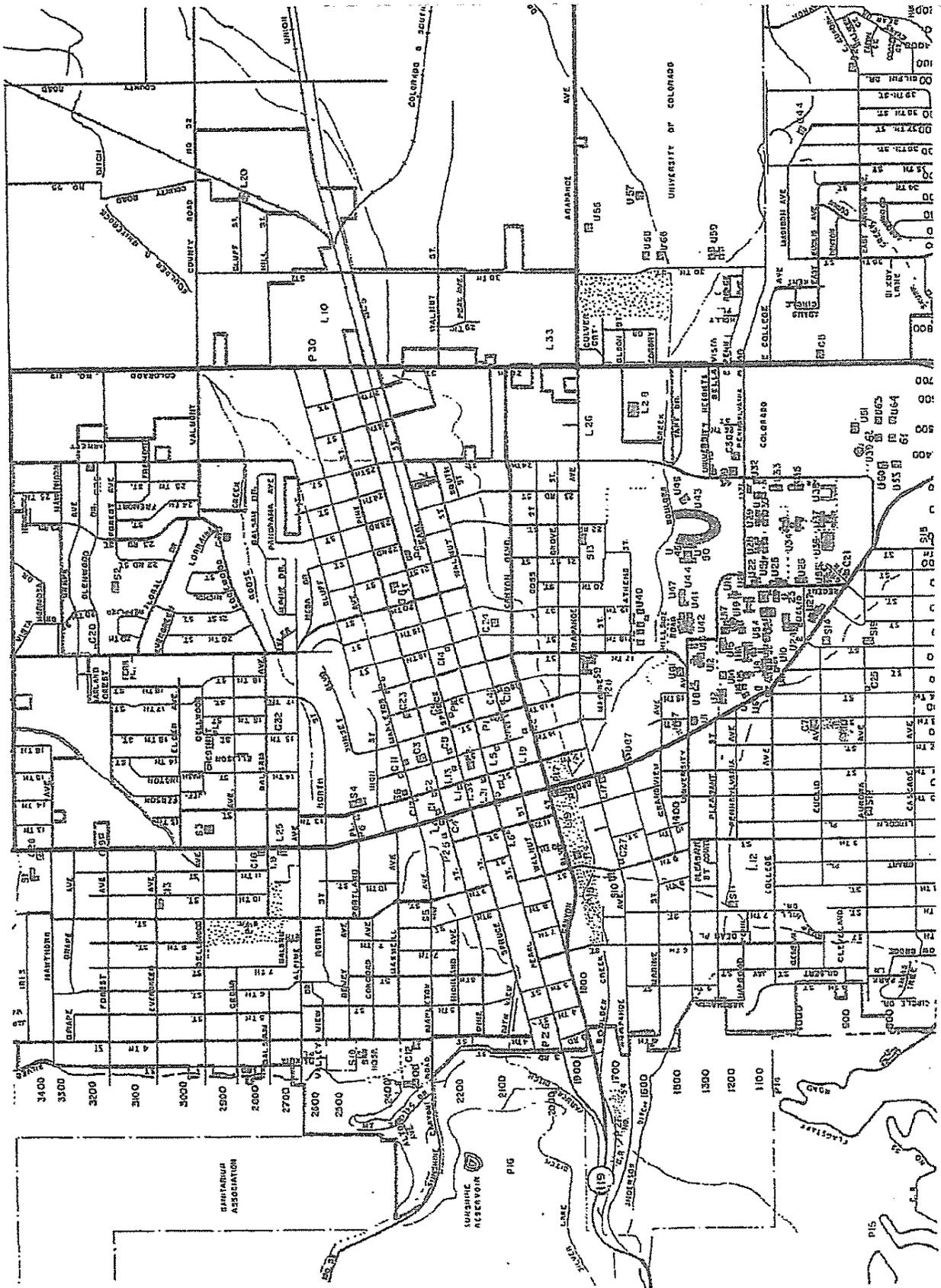
# **ATTACHMENT A**

ATTACHMENT A: Aerial View of the City of Boulder, 1970



# **ATTACHMENT B**

ATTACHMENT B: Street Map of the City of Boulder, 1968



**ATTACHMENT C**

ATTACHMENT C: PLAN-Boulder Letter to City Regarding Lack of Control Over  
High-Rise Buildings, April 12, 1968

**PLAN ~ Boulder CITY/COUNTY**

Box 1444XB, Boulder, Colorado  
1065

April 12, 1968

Mr. Ted Tedesco  
Members of the City Council  
Mr. Bill Lamont  
Members of the Planning Board  
City of Boulder  
Boulder, Colorado 80302

Re: High-rise Buildings in Boulder

Gentlemen:

Prior to the adoption of the last zoning map by the City Council in about 1957, it is my understanding that buildings no higher than fifty feet were permitted except with special permission by the City Council. In the few instances that they were requested, the City had the opportunity to decide whether or not to permit the structure. The building housing Joslins, I believe, was granted such a permit.

The new zoning map and its accompanying regulations allowed buildings up to 100 feet given certain conditions, i.e. square footage of lot, etc. My interpretation of these regulations is that if all of these conditions are satisfied, the developer has the right to build the structure 100 feet high. The height is no longer a privilege which can be granted by the City if the building is desirable, but a right which the City cannot deny.

As you know, our core area lies in a valley with bluffs north and south. The buildings on these bluffs at present command superb views across the valley, to the mountains and down the valley. Many 100-foot buildings, or even several strategically placed, would cut off these views. In addition, as one walks or drives in the core area, vistas open up to our magnificent mountain backdrop, as it does in many other areas of the city. Our mountains, in other words, are very much with us today.

I am not sure what the thinking was at the time the change was made. I can only imagine that it was an attempt to streamline procedure and save precious City Council time. In an ordinary community these would be worthwhile goals. But ours is an unusual city with unique geography. It would seem that more control rather than less control is desirable. If we returned to the 50-foot limitation and again required special approval of higher buildings, an application could be denied if it was felt that the site was inappropriate, or approval could be used as a lever to obtain certain requirements, such as good design.

As it stands now, the decision as to where high-rise buildings should go has been taken out of the hands of the City and put into the hands of the developer. With core area revitalization in the foreseeable future, I have decided that the time to voice my concern is now, before any rights might be established by purchases of land under the present ordinance.

I hope that the City will seriously consider going back to the special approval requirement for high-rise buildings.

Sincerely,

Ruth Wright, Chairman

# **ATTACHMENT D**

# CITY OF BOULDER, COLORADO

19 April 1968



Ruth Wright  
Chairman Plan Boulder  
Box 1444  
Boulder, Colorado

Dear Ruth:

Thank you for your recent letter expressing the concern of Plan Boulder with high-rise buildings in the City. The Planning Board, individual citizens, City Council members, and the Planning Staff share this concern with your organization. As a planning staff we are probably even more concerned because of the expressed interest by a number of developers to develop high-rise structures in the City. We have in recent months had as many as 5 inquiries as to the possibilities of high-rise structures in various locations. Because of this concern, we have recommended to the Planning Board that an amendment be made to the Zoning Code. This amendment is included with a number of other amendments to the code and should be coming to the public hearing stage during the month of May.

As you might already know, the City is embarking on the total revision of the existing Zoning Code and Map. Mr. Trafton Bean and Professor Daniel Mandelker have been employed as a consulting team to guide the City in the revision of the code and map. Because of this we were somewhat concerned with recommending immediate changes in our present code in a patch-work fashion. However, recognizing the realities of how long it takes to have a comprehensive zoning code adopted, we have made the decision to go forward with selected amendments at this time. The Planning Board has been reviewing proposed amendments since January, 1968.

Specifically, the section which deals with high-rise structures is 37-202(m). We are proposing in the MR-3, MR-4, Business, and I-1 districts that building heights above 50 feet, but less than 100 feet, shall be permitted only as special review uses by the Planning Board and Board of Adjustment subject to the following conditions:

Ruth Wright  
19 April 1968  
Page 2

1. A three-dimensional presentation showing the affect on the immediate neighboring property, the community within 1/4 mile, and the City as a whole;

2. The finding by the Planning Board that the building height will not adversely obstruct the view of the abutting residents; and

3. That the building is in accordance and harmony with the surrounding neighborhoods and will promote beneficial and economical use of land in the physical and economic development of the City.

This is the proposal at this time to place the structures over 50 feet back in the special review section of the ordinance. In the new zoning code we probably will continue to consider high-rise structures as a special review item. We feel that high-rise structures can serve quite desirably in the community as counter points to the horizontal-type of development. We do wish, however, and recognize that the views in the City of Boulder are an inherent and desirable benefit to all residents. This right must be protected and not infringed upon by others. Given proper siting and proper location within the City, high-rise structures can be an attractive addition. Given the wrong location or the wrong orientation, a high-rise structure can destroy many resident's scenic view.

Thank you again for your interest and I hope we can count on your support as we reach the public hearing stage with this amendment.

Yours truly,



Bill Lamont  
Planning Director

BL:mjc

# **ATTACHMENT E**

MEMORANDUM  
6 January 1969

TO: City Council  
FROM: Planning Director  
SUBJECT: Height Limitations and Zoning and High-Rise Buildings  
in Boulder.

During the past weeks the question of height limitations in the City of Boulder Zoning Code and, for that matter, the question of high-rise buildings in the City as a whole, has been placed before the Council. The Council has requested that the Planning Staff prepare a memorandum regarding the entire question as it relates to planning and future development in the City. For purposes of a common beginning, we are defining high-rise buildings as any building over 50 feet in height. In another locality we might consider more properly 100 feet or higher as a guideline (see appendix for examples).

1. HIGH-RISE - GENERAL DISCUSSION

The control of building height limitations in zoning codes has been clearly established since the beginning of zoning in the 1920's. The propriety of restrictions with respect to height of buildings, area controls, yards, and density of population in zoning has been satisfied with regard to the courts. In the State Enabling Legislation of the State of Colorado, and the declaration of purpose in the Boulder Zoning Code, it is clearly stated that such regulations are the intent or purpose of the ordinance to lessen congestion in the streets, provide adequate light and air, prevent undue concentration of population, and over-crowding of land, etc. These restrictions, particularly with regard to maximum height of buildings have generally been held valid wherever they have been tested as long as it has been reasonable, and under the circumstances, similarly applied. I do not think it is a question of whether the City has the right to control the height of buildings, but rather what is a reasonable method of control as it applies in the City of Boulder. Numerous methods have been developed in various communities in an attempt to assure reasonable height and bulk regulations. These controls are directed toward the assurance of daylight and air in the building itself, as well as on abutting properties, and in some areas, scenic view preservation. Many communities have actually proposed height bonus' where a developer will cover less of the lot area and thus provide additional open space while not infringing upon the neighboring properties or the neighborhood as a whole. Denver's zoning code, for example, is developed in this manner.

Even the most ardent proponents of high-rise buildings in the past have come to fear the indiscriminate use of high-rise structures in a community. It is almost a case of being too successful. Originally, many communities were against high-rise buildings, but they were considered by architects and planners as an excellent means of adding a third dimension to a community. They may be used positively as a method of providing identification to an area or a part of the community. It can act as a counterpoint to a horizontal scene, it can permit the maximum use of the land with the minimum amount of coverage, and, as said, it can provide visual identification - a focal point within an area.

On the negative side, if the high-rise structure is permitted without a reduction of land coverage, it can unduly increase the concentration of people and cars with the subsequent circulation problems placed on the City to solve. Visually, it can invade the privacy of other people and can screen scenic views. It can detract or compete with a view such as our mountain backdrop. In flat country, or flat area, where the high-rise interjects some visual relief to an otherwise dull horizontal scene, it is highly desirable if properly concentrated. But with our mountain backdrop it is highly questionable that an overabundance of high-rise structures indiscriminately placed throughout the community would be an asset, rather they would be a liability to the community. A case similar would be signs on our strip commercial areas which started out in a moderate way only to become a disruptive force as too many signs without regard to one another or the community, were placed in immediate juxtaposition to one another.

Undue concentration of people, traffic, and speculation in a particular area could create problems in a community exactly where the community was seeking to reduce its problems - usually in its core area. While this is a concern in Boulder - the undue concentration of people or vehicles in one area - I do not think this is the major concern; although, with our 3:1 floor area ratio in all business areas, we could reach an over-concentrated position if all the business zoned property in the core area, the "Hill", the 28th & Arapahoe area, or even our neighborhood shopping centers, would build to the maximum. Our main concern, aside from light and air, is the visual impact on the community and the loss of our natural setting.

## 2. CURRENT HEIGHT REGULATIONS

Under the current zoning ordinance, it is possible to construct a building over 50-feet in height in the MR-3 district if you have more than 20,000 square feet of lot area, there is no height limitation in the General Business District and in the Limited Industrial District. There is also some question in the PD District where it is listed as a 60-foot height limit

on the chart but in the content of the code, it states that any use or accessory use permitted and as regulated in the MR-4, Business, or Industrial Districts. This would raise some question as to what the height limit would be in the PD District.

To amend the code is clearly a legislative responsibility resting only with the City Council and not with any of the advisory boards such as the Planning Board or Zoning Board of Adjustment. These Boards may only recommend to Council that such consideration be made if they feel it is desirable, but they clearly lack, as stated in the memorandum from the Assistant City Attorney, Larry Rider, the power to amend or grant variances for buildings over the specified height limits in the Zoning Code unless it is the minimum variance necessary to meet unusual circumstances justifying special consideration peculiar to a specific property.

### 3. RECENT PROPOSALS

This is not a new problem and was anticipated as much as a year ago. During the Fall of 1967, the Staff and Planning Board began taking action to entirely revise the Zoning Code of the City. It was also felt that a number of amendments to the existing code would be needed immediately. A totally revised code, thoroughly reviewed by the citizens as well as the Planning Board and City Council, could take from 18 months to 2 years to be adopted. On this basis, the Planning Board was presented in January of 1968 with a number of suggested word changes to the code. Included in these amendments was a revision to Section 37-202(m). By this proposal it was suggested that a building height above 50 feet be permitted only as a special review use by the Planning Board and Zoning Board of Adjustment, subject to certain conditions and findings as a result of the applicant supplying needed information and visual displays to show that the community would not be adversely affected. (This was somewhat similar to the method used by Boulder in the Zoning Code prior to 1962).

This was not meant to indicate that the Planning Staff was contrary to high-rise buildings in the City of Boulder; however, we did feel that the indiscriminate use of high-rise buildings as permitted in our MR-3, MR-4, Business, and Industrial Districts, regardless of the geographical location of the zoning district in the City, was or could be contrary to the community's interest as a whole. For example, it would be possible to line Broadway on the "Hill" with high-rise structures completely obliterating the view of the flatirons from the University of Colorado campus, a view for which Boulder is famous.

During the Summer of 1968 when the proposed zoning amendments were being studied by the Planning Board and public hearings held, a number of the amendments were deleted for lack of ability to properly define them, or to carry them out in the time limits available. One of these amendments was the proposed control over the height of buildings as permitted throughout the community. The task, if done properly, would require considerable time and preparation.

In April, 1968, a similar concern with high-rise buildings was expressed by PLAN Boulder. The letter of April 12, 1968, stated a very real concern with the possibility that buildings up to 100 feet would be permitted throughout the community, regardless of the location, as long as it was in an MR-3, MR-4, Business, or Industrial District. This letter was forwarded to Council in April.

Other random comments from citizens concerned with high-rise buildings have been continuously received by our office. This question of high-rise structures in Boulder was expressed in the comments that were sent to the two consultants, Professor Daniel Mandelker and Trafton Bean, in preparation for their work on the redrafting of the zoning code for the City. A copy of the Planning Staff's comments sent to the consultants was also furnished to Council in April, 1968. The letter included, among other charges, the following:

"How high we should permit buildings in the community, recognizing Boulder's character and location adjacent to the mountains should be explored. The 'view' of many of the citizens of the community is critically important. While we are not against high-rise structures, it is vitally important that they be placed in such a position so as not to detract from the community nor infringe upon the neighborhood or citizens view of the mountains. We would wish to add the third dimension as an area of concern as it relates to scenic views."

#### 4. PROPOSED APPROACH

It would appear that the key to high-rise buildings in Boulder must be that they have to be located in the right place in the community and they must be built to the right height and mass. They can be too high or bulky, even when properly located. Their bulk must be such so as not to impede or be placed in such a position as to obliterate the scenic view of the surrounding neighborhood, i.e., a Denver-Hilton building placed parallel to the mountains across from the University "Hill" area would be very

undesirable. The site must be properly planned to guarantee that the height that is permitted results in an opening of the ground area to something besides asphalt. The circulation and parking must be adequate to handle the generation that would occur from the high-rise building in an efficient manner.

High-rise structures used in a conscientious sympathetic manner to the topography and the surrounding community, can be an asset to the City of Boulder. Used chaotically, without regard to the surrounding neighborhood and to the topography and backdrop of the foothills, the high-rise structure can be nothing but a disruptive force. It can negate the efforts that have been expended through the years to preserve Boulder's distinctive setting at the foot of the mountains.

High-rise structures, as viewed by many of our larger concerns, particularly insurance companies or major corporations, are considered as a form of advertisement with architectural attractiveness, meant to capture attention. Improperly placed, they become a competing force with the foothills. This then is the key question for Boulder. If we are to continue to develop Boulder in a planned method, attempting to harmonize the man-made developments that are occurring in our community with that of the natural setting, guiding the growth rather than being subservient, it behooves us to carefully consider the siting and the proper height of all high-rise buildings in the community. It is our desire, as expressed in the goals which the Council is presently considering, that we develop a harmonious community in its natural setting. I do not think that we wish to obscure this setting and I'm sure one building is not going to do it, but three, four, five, or ten buildings, some of which might be placed in the wrong place with the wrong bulk, could nullify all that our greenbelt program has attempted to preserve. Height alone is not the total answer for the City. It must be all inclusive - height, bulk, topography, site plan, and surrounding neighborhoods - these must be the considerations.

For Boulder the answer to the question should be that the high-rise building must not be a dominating feature in the City, but that they should be a complimentary feature, fitting into the community and the natural surrounding, not attempting to compete with the mountains for which they are totally inadequate to do. They should provide, at correct places in the community, a counterpoint to the general height of the surrounding lower buildings. It is possible to do this. It is possible that they may be a focal point without competing, but only if we exercise extreme caution in where they are located, how, and how high they are permitted to go.

We anticipate that the discriminate use of high-rise structures would be possible in such areas as Boulder Tomorrow, or in the vicinity of 28th and Arapahoe. These locations should be carefully reviewed. We see the use of high-rise structures with proper site planning as being advantageous to the City. But, consideration must always be given as to where and how they are to be located, and with proper respect for the abutting neighbors.

An excellent discussion of high-rise building and urban design is provided in a book by the same title, available in the Municipal Reference Library, by Hans Aregger and Otto Glaus. In this book there is an excellent discussion of the role of high-rise buildings, the good points and the bad. They also include a general discussion of the techniques they would use to evaluate a proposed high-rise structure. These are summarized as follows:

1. The geographical position;
2. The effect on the landscape;
3. The effect on the townscape;
4. The effect on adjacent sites;
5. The effect on the vicinity;
6. Architectural exploitation of the site;
7. Immediate surroundings, traffic;
8. Fire considerations;
9. Proportions and facades;
10. The use; and
11. Principles - "High-rise buildings should only be permitted: when they are set in a mixed building development; when their isolated appearance is justified by the demands of the urban plan; when they do not disturb the town or landscape or their immediate surroundings; can show good utilization and meet specific local requirements (police, fire, traffic)."

The authors ended by stating that it may appear unusual scrutiny for a specific use, but that high-rise buildings make significant demands on the scene and must be prepared to meet high demands.

High-rise buildings create a tremendous impact upon the community and to consider them as one would consider a single-family house, or even a 3 or 4-story apartment building, is not doing either of them justice. The community can continue to exist without high-rise buildings. Boulder would continue in its position as a desirable City in an excellent natural setting without the intrusion of high-rise buildings. Few developments can alter

the character and appearance of a community more than high-rise buildings. It is the basic feeling of the Planning Staff that properly used, with proper site planning, and properly located with regard to the community and immediate neighborhood, high-rise buildings can be an asset to Boulder, but one which is not absolutely necessary to relieve a lack of visual excitement. Our mountain backdrop does this far more successfully than any group of the most well designed buildings could ever hope to do.

## 5. SUMMARY

We would recommend two steps as a beginning:

1. The path that was being proposed and considered in the Summer of 1968 - that a 50-foot height limit be imposed as a height by right in the MR, B, and I Districts, and anything over 50-feet be considered only under special review in which the applicant would show directly what the capabilities of the site are, the site plan, the type of design, and the effect on the community as a whole in three dimension. A clear community benefit should be required as opposed to a community liability for the benefit of the applicant.

2. Before we can intelligently apply whatever guidelines are necessary to evaluate proposals over 50 feet, we should analyze the City from a topographical, land use, circulation, and design standpoint. The areas where buildings over the norm would have a minimal adverse effect should be outlined on a map and then analyzed from a height standpoint, i. e., would a 160-foot building adjacent to Boulder Creek in the vicinity of Broadway not infringe on the view of Flagstaff, the Flatirons, or the Divide, whereas a 200-foot building would? Boulder must be analyzed from a design standpoint specifically for high-rise structures.

The impact of high-rise structures is great on the design of a community, on the circulation, on the view of the citizens, and on adequate light and air for abutting properties and buildings. The height and bulk permitted must reflect local situations, not those of Chicago, New York, or Denver.

Therefore, we recommend that the interim control of special review be considered, with an immediate request to the local architectural group to accept a charge from the City of determining where, how high and under what criteria should high-rise buildings be considered in Boulder, bearing in mind:

1. Boulder's setting;

2. That the view of the backdrop is critical to the residents;

3. That scenic corridors from public areas on routes of approach to and through the City should be preserved; and

4. That high-rise buildings should be complimentary to the urban design of Boulder presenting concentrations in proper locations at proper heights opposed to chaotic scattering.

## APPENDIX

Buildings proposed or existing in Boulder in the 50 or 100-foot height range:

Name	Address	Height	YEAR
<u>Existing</u>			
1. San Marco Apartments	20th & Broadway	78'	✓
2. Presbyterian Manor	10th & Arapahoe	117'	* ✓
3. Golden West Manor	1055 Adams Circle	111'	* ✓
4. Colorado Building	1915 14th	100'	* ✓
5. Frasier Manor	350 Ponca Place	50'	
6. First National Bank	1800 Broadway	44'	
7. Ball Brothers	East Arapahoe	75'	* ✓
8. Williams Village (15 stories)	30th & Baseline	154'	* ✓
9. Columbine	25th & Taft	100'	* ✓
10. Harvest House	1345 28th	50'	
11. Mansard House	30th & Glenwood	50'	
<u>Proposed</u>			
1.	1900 20th (Residential 2 towers)	98'	
2.	500 Mohawk Drive	65'	
3. Spanish Towers	29th & Bixby	50'	
4. Golden West Manor addition	1055 Adams Circle	112'	

At least three other buildings have been proposed to begin in 1969, all in the 100'+ range. Plans for these structures have not been submitted as yet to the Building Inspection Department.

\* - Including penthouse which is normally about 20 feet above the roofline and not counted under our zoning code height limitation.

(Some of the exact heights were unavailable and were estimated by the Building Inspection Department.)

# **ATTACHMENT F**

MEMORANDUM

March 14, 1969

TO: City Council  
FROM: Planning Department  
SUBJECT: Interim Height Control.

The Planning Board at the March 6 meeting considered the interim height control proposal as an amendment to the Zoning Code. At that meeting, the Board also discussed alternative methods of approaching the problem. The conclusion of the Planning Board was that the interim height control was necessary until the architects have completed their study. The Board suggested that the interim control be adopted by the City and be specified for an interim period only. The approach to height controls would be similar to that which is presently being used for planned unit developments. Using the section of the Zoning Code that concerns planned unit development as a guide, the Board suggested that any building over 50 feet in height be subject to special review.

It was pointed out that height controls have a number of public safety and welfare aspects beyond protection of the view of the surrounding area. A high-rise building built on a small or restrictive parcel of property can have the effect of shutting off adequate light and air to the surrounding area. The traffic problems created by such facilities include a need for off-street parking, adequate roadway and traffic control for persons wishing to visit or leave the high-rise, and so forth. High-rise structures also require some special

consideration as to difficulties with utility service. And, other considerations that must be weighed when such buildings are proposed that involve the public interest are fire protection, congestion, and traffic safety.

The Charter and ordinances provide that exceptions and variations to the Zoning Code be approved by the Board of Zoning Adjustment and on special instances, an advisory report by the Planning Board. The proposed interim height control would amend the ordinance section concerning heights in Article 3, "Supplemental Regulations" of the Zoning Code and the allowable heights as contained in the Code, 37-202(e). The proposed provision would provide that the allowable height for new buildings would be 50 feet and that any building over that would have to be submitted for special review to the Board of Zoning Adjustment with an advisory report from the Planning Board. The application would have to include (1) a map of the area surrounding the building; (2) the development of the building and the surrounding area showing buffers, and set-back spaces; (3) the height and bulk of the proposed building; (4) the amount of off-street parking provided; (5) the location and orientation of all major exterior lighting devices; (6) an indication of the traffic movement and plans for the project area and the established street system serving the project area; (7) sketches of the structure relative to compatibility with the immediate neighborhood; and, (8) a general landscaping and screening plan. The Planning Board and the Board of Zoning Adjustment would have to consider whether the proposed structure interferes with the light and air of the surrounding

properties, are there adequate facilities for off-street parking, is there an undue strain placed on the public utilities or transportation system, and is the structure compatible with the surrounding area? Both Boards would keep in mind that in order to grant the exception, the project would have to be in harmony with the general purpose and intent of the Zoning Code and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.

An ordinance incorporating the above ideas as suggested by the Planning Board will be sent to Council on the April 1 meeting at which time a public hearing on this proposal will be held.

LCR:pp

# **ATTACHMENT G**

MEMORANDUM

March 31, 1969

TO: City Council  
FROM: City Attorney's Office  
SUBJECT: 50-Foot Height Limitation.

The Administration has submitted with this memo for the Councilmen's consideration proposals for limiting the height of buildings within the City during the time that the architects' study of high-rise buildings is being carried out. These proposals recognize that high-rise buildings and structures create public health, safety and welfare considerations that must be taken into account when such structures are built within the City. The memorandum submitted to the Council at their meeting on March 18, 1969, from the Planning Department indicated some of these considerations as they relate to traffic, fire protection, adequate parking facilities, and so forth. The adoption of a height limitation would be in recognition that the study is going on and that there are these other existing problems.

The Planning Board recommended to Council a proposal establishing 50-foot height limits and allowing for special exceptions up to 100 feet. The memorandum submitted to the Council on the 18th of March spells out with more detail the thinking of the Planning Board. The City Administration reviewed this proposal and felt that an alternate proposal which during the interim period would limit all new buildings to the height of 50 feet and not allowing exceptions over that limit should be considered by the Council.

3/31/69

Both proposals submitted to the Council are intended to be interim measures and the effective date specifies the time that they will be in force and effect. The reasoning behind this provision is to clarify that this is an interim measure and to indicate to interested parties the time period that the City contemplates the study to take.

LCR:pp

# **ATTACHMENT H**

ORDINANCE NO. 3481

AN ORDINANCE AMENDING SECTION 37-202(e) OF THE ZONING CODE OF THE CITY OF BOULDER, PROVIDING THAT IN THE MR-3, MR-4, BUSINESS, AND L-1 ZONING DISTRICTS, THE ALLOWABLE HEIGHT LIMIT SHALL BE FIFTY FEET, AND IN THE PD ZONING DISTRICT, THE ALLOWABLE HEIGHT SHALL BE ONE HUNDRED FEET; SETTING FORTH OTHER AMENDMENTS RELATING TO YARD DEPTHS, FLOOR AREA RATIO AND SITE SIZE IN THE PD ZONING DISTRICT; SETTING FORTH OTHER DETAILS IN RELATION THERETO; PROVIDING THAT THIS ORDINANCE WILL BE IN EFFECT UNTIL NOVEMBER 6, 1969; AND, DECLARING AN EMERGENCY THEREFOR.

WHEREAS, the City Council has previously asked the architects of the City to make a study of height limitations and high-rise buildings in the City;

WHEREAS, the architects' study is now in the process of being completed; and,

WHEREAS, heights of buildings in Boulder is a matter of substantial citizen interest and concern; and,

WHEREAS, the City Council is of the opinion that during the continuation of the study, and also because of the citizen interest and concern, the allowable height of buildings should be maintained at 50 feet and only in PD, Planned Development Districts, should the allowable height be 100 feet;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, THAT:

Section 1. Section 37-202(e) "Schedule: Area and Bulk Regulations" of Chapter 37 being entitled "Zoning" of the Revised Code of the City of Boulder, 1965, as amended, is hereby amended by the repeal of the present provisions as indicated as they now read and their re-enactment to read as follows:

(a) In column (m), line 8 (MR-3), line 9 (MR-4), line 13 (B), and line 14 (L-1) shall be 50 feet.

(b) In line 12, PD, Planned Development District, column (c) shall be one 1/2 acre, column (f) — 25 feet, column (g) — 25 feet, column (h) — 10 feet or 4 inches per foot of building height, whichever is greater, column (j) — 20 feet, column (l) — 2.5:1, and column (m) — 100 feet.

Section 2. If any part or parts hereof is for any reason held to be invalid, then the entire ordinance and all amendments herein made shall be held null and void and the laws presently in effect, and amended hereby, shall continue to control.

Section 3. This ordinance shall be in effect until November 6, 1969.

Section 4. The City Council finds that this ordinance is necessary to protect the public health and welfare. The existing height limits and the effects of high-rise buildings on the surrounding neighborhood and the City of Boulder are being studied by a committee of architects in order to make a recommendation to the City Council for the proper course to follow. The City Council is of the opinion that during the interim period the 50 foot height limit in all districts but the Planned Development District should be maintained so as not to jeopardize the effectiveness of the study. High-rise buildings are of a substantial public interest, creating problems of adequate light and air to surrounding neighborhoods, possibly over-burdening public utilities and traffic facilities, creating fire protection problems, creating problems of aesthetics and in general imposing on the community public health, safety and welfare problems that are now involved in the architects' study. Further, on this very important matter substantial time has expired since the problem was first considered and an ordinance, only temporary in nature, must be enacted and go into effect immediately. Based upon all of said facts the City Council is of the opinion an emergency exists and the within shall be immediately effective upon its adoption as an emergency measure and be published as such in accordance with the provisions of the Charter of the City of Boulder.

INTRODUCED, READ, PASSED AND ADOPTED AS AN EMERGENCY MEASURE this 6th day of May, A.D. 1969.

R. W. KNECHT  
Mayor

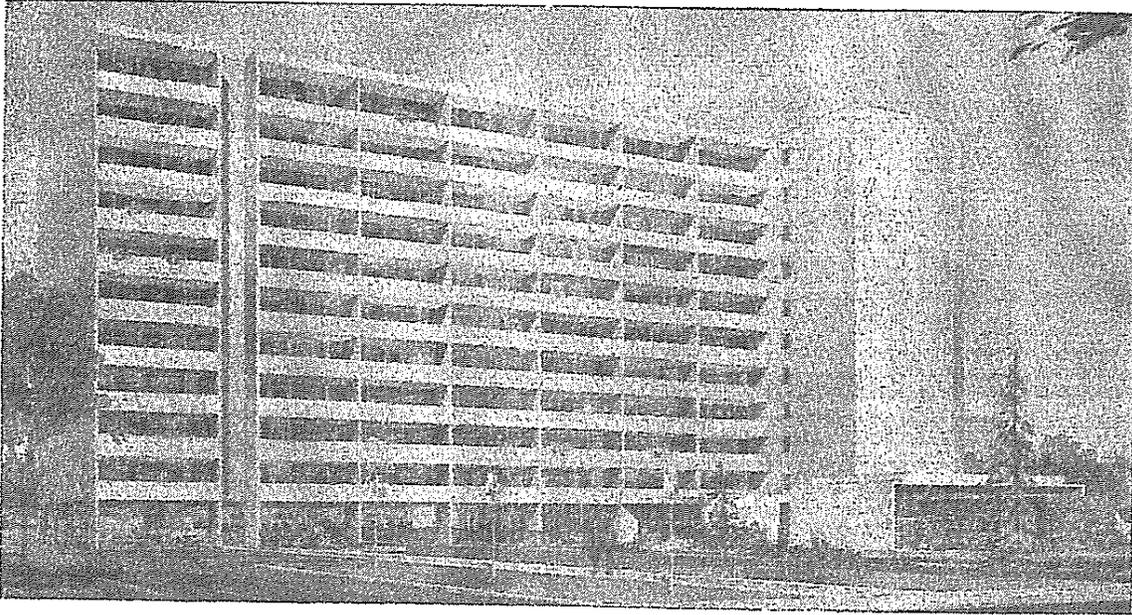
Attest:  
STEPHEN P. DICKSON  
Acting Director of Finance  
and Record  
Ex-officio City Clerk  
Pub. May 7, 1969, in the  
Boulder Daily Camera.

# **ATTACHMENT I**

: Horizon West: Artist's Rendition of Proposed High-Rise  
Building on 24<sup>th</sup> Street

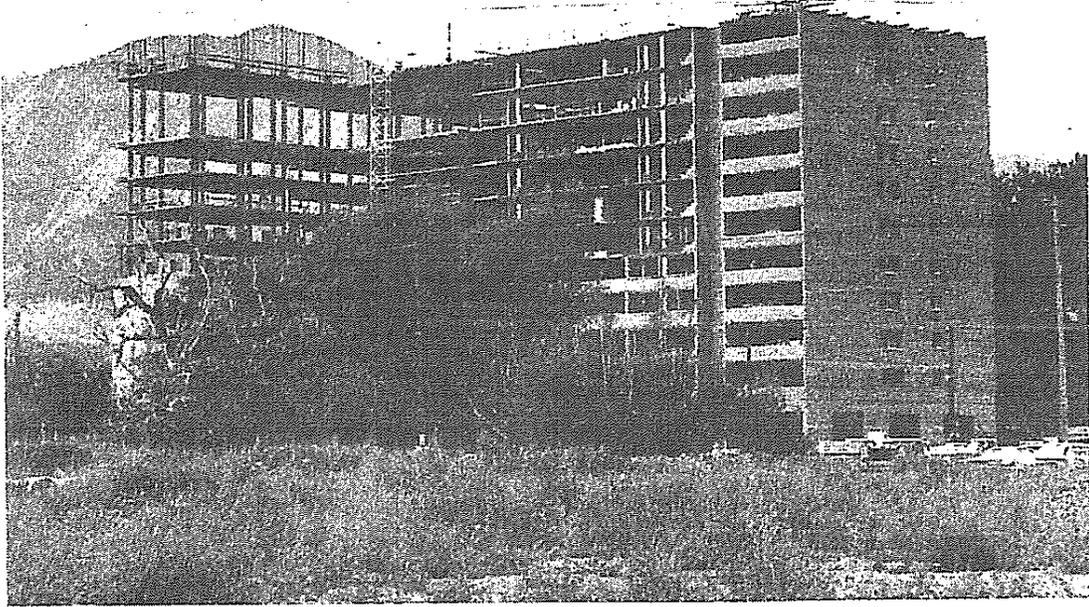
VOLUME 73, NUMBER 49

DENVER, COLORADO, THURSDAY, JULY 31, 1969



**\$2.3 MILLION IS PRICE TAG** on 11-story Horizon West Apartments to be built in Boulder on 24th St. between Canyon Blvd. and Pearl. An unusual combination of concrete construction methods—both lift slab and slip form—will be used in the precast and post-tensioned building. Floor and roof slabs will be poured on ground; several exterior walls and all core walls will utilize slip form method with pouring from roof slab as it is raised with hydraulic jacks. The architects, William Heinzman Associates of Boulder, will finish working drawings in about two weeks, and the general contractor, Broadway Construction Co., will start building immediately thereafter. Engineers are Johnson-Volland-Archuleta & Associates, structural; Beckett Engineering Co., mechanical; Garland D. Cox & Associates, electrical. Structure, to contain 140,000 square feet, will take about a year to complete. Apartments will rent for \$145 to \$375.

# **ATTACHMENT J**



Boulder's newest high rise, an eleven story 100 ft. building at 24th and Walnut, may be only one of many unless action is taken.

# TOWN & COUNTRY REVIEW

*Serving all of Boulder County including Boulder, Broomfield, Louisville, Lafayette, Longmont, Jamestown, Lyons, Canfield, Gold Hill, Magnolia, Nederland, Eldora, Eldorado Springs, Niwot, Allenspark, Hygiene, Superior, Pinecliff, Marshall, Salina and Ward.* **Circulation 32,000**

**One Section 40 Pages**

**Boulder, Colorado**

**August 19, 1970**

**Vol. VII, No. 34**

# **ATTACHMENT K**

# On The Corner

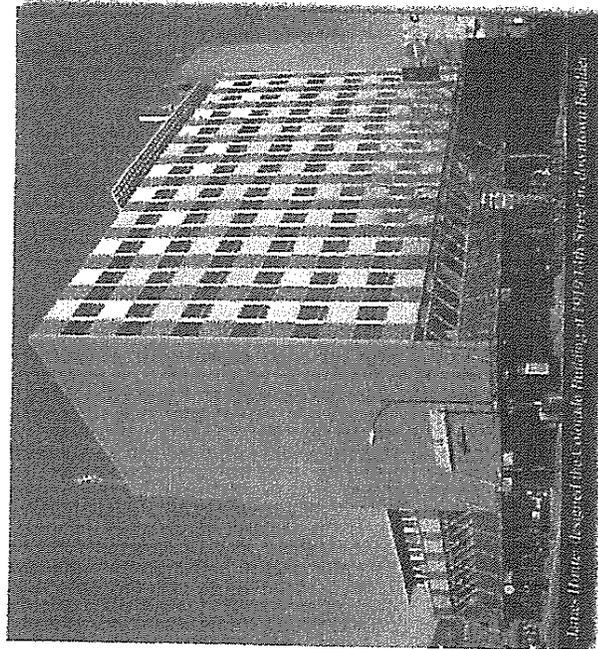
Smile!

## the Lower Chautauqua Neighborhood Newsletter

...Hunter, from opposite page

In downtown Boulder, Hunter designed the nine-story Colorado Building at 1919 14th street, in the International Style, for fellow Nebraskan Allen Lefferdink. Completed in 1956, this was Boulder's first skyscraper. Much of the public was outraged over this rectangular modernist structure. The Colorado Building has been called a monstrosity, unsightly and aesthetically disagreeable. Others find its postmodern style worthy of preservation.

Hunter was often describe as "affable," but he was not tolerant of the influx of young hippies into Boulder in the late 1960s and early 1970s. In a guest editorial for the Daily Camera published June 13, 1971, Hunter implored the city to get tough on the Hill 'problem' and hippies in Boulder. "We cannot afford the luxury of permitting Boulder to be a 'play pen' for maladjusted and defiant young people or a laboratory for bleeding heart social reformers," he wrote. In 1972, Hunter bought land at 6th and Canyon (now the Boulder County Justice Center) for \$310,000 from an Oklahoma insurance company. He sold it four days later to the county for \$770,000. The land was the site of Allen Lefferdink's failed Park Allen Hotel project. Lefferdink later was convicted on various fraud charges and served time in prison. An investigation ensued, but eventually Hunter was cleared of any wrongdoing. He insisted the large profit was due to improvements he made on the land before the sale was completed. Hunter retired from his architecture practice the following year. He died at his home in 1983 at the age of 75. Hunter's buildings and his civic involvement remain a part of Boulder's fascinating and often controversial history.

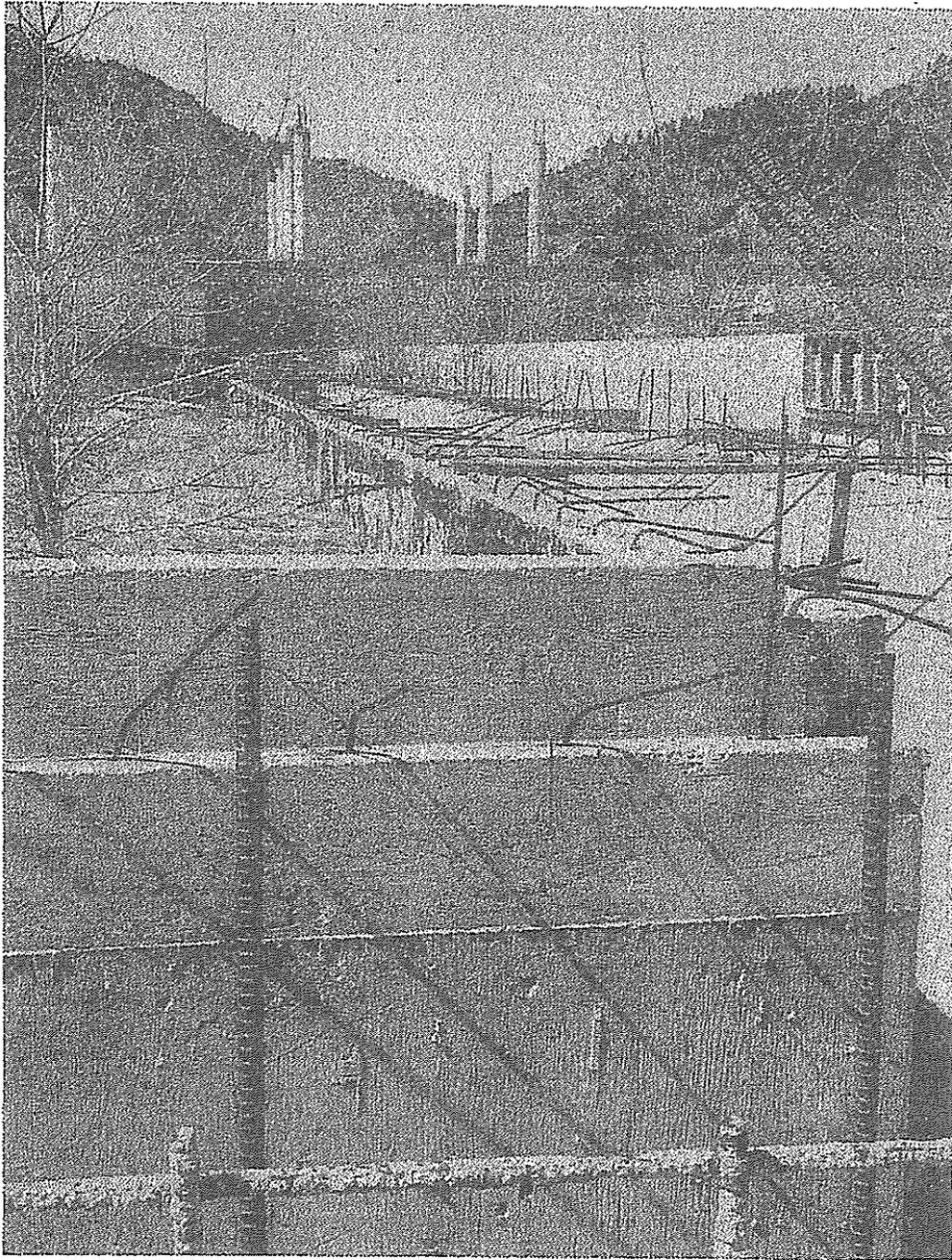


James Hunter designed the Colorado Building at 1919 14th Street in downtown Boulder.

Carol Taylor resides near the base of Flagstaff Mt. in Boulder. She is High Plains Library District Librarian at East Community Library in Erie, CO in Boulder County. She can be reached at [ctaylor@highplainslib.org](mailto:ctaylor@highplainslib.org)

# **ATTACHMENT L**

--- "The Ruins": The Concrete Foundations of the Proposed  
Lefferdink Hotel



**AND 'THE RUINS'**— Perhaps symbolic of the city's half-achieved high-rise policy, the aborted Park-Allen ruins stand at 6th and Canyon Boulevard, six blocks west of City Hall. Pillars, concrete footings and reinforcing rods — the ruins bear mute testimony to a policy yet undecided.

Daily Camera Photos By MYRON HARDING

April 4, 1971

# **ATTACHMENT M**

TAG : Sylvia Pettem Article Regarding Allen Lefferdink

## **Silvia Pettem on Boulder history: Allen Lefferdink left empty pockets**

*Silvia Pettem Boulder Daily Camera*

Posted:

DailyCamera.com

Throughout the 1950s, insurance tycoon and financier Allen J. Lefferdink built up a bogus multi-million-dollar empire based on worthless securities. Then his schemes -- like those of Bernard Madoff and other con men -- collapsed.

Financial wheeler-dealers are nothing new, but Lefferdink's initial companies were based in Boulder -- where many of his clients were left with empty pockets.

In 1949, when 31-year-old Lefferdink founded the Colorado Credit Life Insurance Company, the press called him a "youthful financial wizard." Before long, he controlled at least 40 corporations and employed 3,800 agents who quickly spread his concepts of post-war consumer credit throughout the country.

What Lefferdink offered was one-stop shopping for insurance, savings, loans and investments. If, for instance, one of his companies financed a car, then another company would handle the car insurance, but not before a few dollars were tacked on for credit life insurance and savings.

The companies were underwritten by stocks - purchased on the installment plan. Intercompany stock transactions were frequent, as Lefferdink shifted bank balances from his more lucrative companies to others in need of funds.

According to the Camera, Lefferdink only sold to Colorado residents so that he would not have to register the sales with the U.S. Securities Exchange Commission. Innocent investors often discovered that when they wanted to pull out their money, it simply wasn't there.

The beginning of the end for Lefferdink came in September 1960, when a civil suit in Denver District Court alleged 27 manipulations in stock, notes, and advances between defendant corporations. Lefferdink tried to reorganize as the Allied Lending Corporation, but his new enterprise never got off the ground.

Also contributing to his downfall were more than \$100,000 worth of mechanics liens filed against the construction of a hotel, partially built and since torn down on the site of today's Boulder County Justice Center.

When a Texas firm acquired Colorado Credit Life, the transaction included the nine-story Colorado Insurance Group Building at 1919 14th St. Lefferdink had constructed it four years earlier - complete with penthouse offices and rooftop heliport - but he could not keep up with the payments.

The building also came with a restraining order against Lefferdink, who had been accused of threatening to destroy company records after intermingling Colorado Credit Life assets with those of his other corporations.

In 1961, a federal grand jury indicted Lefferdink for fraud and conspiracy in bilking 20,000 investors out of more than \$15 million. He was acquitted, but on his way out of town, he told a reporter, "I came to Boulder broke, and I suppose some people would find it amusing if I had to go out the same way."

Lefferdink then went to New York, where he set up a string of international businesses and established a pyramid of banks, mutual funds and insurance companies. Finally, he moved offshore, onto his yacht "Sea Wolf," but sailed into Miami where, in 1976, new fraud and conspiracy charges did bring a conviction.

Eventually, like Madoff, Lefferdink was sent to jail. He died in 2003, leaving a legacy as a super swindler.

*Silvia Pettem and Carol Taylor now alternate as authors of the history column. To reach Pettem, write her at the Camera, P.O. Box 591, Boulder 80306, or e-mail [pettem@earthlink.net](mailto:pettem@earthlink.net)*

# **ATTACHMENT N**

## **Pearl Street parents - A decade before mall, visionaries sought to revive 'core area'**

**Daily Camera (Boulder, CO) - Friday, July 19, 2002**

**Author: Mary Butler, Camera Staff Writer**

In the beginning, they called themselves the Committee for Exploration of the Core Area Potential.

They were a collection of activists who feared one day the city's lifeblood would flow only to its extremities and not to its heart.

The group had vision.

"Bold, imaginative plans are justified by both the natural setting and probability that Boulder in 25 years will be the center of a metropolitan area with a population of 250,000. (In 1960, the metro population was a little less than 75,000.) With proper care, Boulder should become a living model of planned growth," an August 1966 progress report said.

They were persuasive.

"Alone, the individual property owner can do little. United with others, he can make a major contribution toward the revitalization of his city and his own economic future," one of their brochures proclaimed.

They had leadership.

Boulder's mayor, Robert Knecht, an atmosphere physicist at the National Bureau of Standards, dedicated himself to transforming the city's core.

He was smart, handsome, charming -- a winsome person who "could bring you to a luncheon and convince you something needed to be done," said Ted Tedesco, Boulder's city manager in the late 1960s.

Tedesco backed him up.

"We were a perfect complement to each other," Tedesco said. "Bob was more the front guy, the visual guy, who could speak as beautifully as anybody about the concept.

"I lobbied, cajoled and browbeat."

Members of CECAP largely credit their chairman Knecht, who died last summer, and Tedesco for being the mortar that brought together the bricks now paving Pearl Street.

"They were visionary," said Joe Stepanek, who also praises his friend, Francis "Franny" Reich, executive of Boulder's Chamber of Commerce, as one of the key leaders of the

day.

The four met for lunch in 1965.

Their goal was to turn talk of revitalizing downtown Boulder into action.

With the help and influence of dozens of others, they eventually did.

### Crossroads` impact

"I was hit by the economic wasteland that was Pearl Street. A third of the stores were either out of business or closing down," said Stepanek, a government consultant, who had returned to Boulder after spending six years in India.

The three-year-old Crossroads Mall had lured Pearl Street anchor J.C. Penney, among other merchants, away from downtown. The future trend appeared clear, as cities from Kalamazoo, Mich., to Fresno, Calif., experienced the same downtown depression.

But those cities fought the dawn of suburban malls with a different approach. They promoted urbanism and an outdoor experience.

They closed their Main Streets to cars, hoping people doing business downtown would frequent sidewalk cafes and shop there for convenience, as is common on the crowded plazas of Rome and Paris.

Boulder`s Knecht and his supporters, who visited such pedestrian mall projects to see the results for themselves, wanted to do the same.

"The glue was the leadership that Bob Knecht provided," said Peter Dietze, Boulder`s city attorney at the time. "Like everything else, once an idea gains momentum, a critical mass is formed, and it takes on a life of its own."

More than a decade would pass before a brick was laid on Pearl Street.

Knecht , Tedesco and their alphabet soup group, which in the fall of 1966 became Boulder Tomorrow, led the way.

"It was not all wine and roses," said Ruth Wright, a former state lawmaker who was secretary for CECAP/Boulder Tomorrow and also headed environmental group PLAN Boulder.

There was opposition. Dissenting Pearl Street merchants, who said no parking would result in no business, circulated petitions against the mall. One business unsuccessfully sued the city and each councilmember, including Wright`s husband, Ken.

Even after ground had been broken, project adversaries wore T-shirts bearing the

words "It's the Downtown Boulder Maul."

Nothing, however, stopped leaders of the Pearl Street charge. Instead, their vision was blurred.

A decade passes

The Pearl Street Mall of 1977 and what Knecht's group proposed a decade earlier were two different things.

Boulder Tomorrow hired Victor Gruen and Associates, a Los Angeles consulting firm specializing in downtown revitalization, to come up with a blueprint for downtown's future.

Gruen's urban planners envisioned creating a "super block." A nine-block pedestrian area stretching from Spruce Street to Arapahoe Avenue and 11th to 14th streets. A Boulder Creek-fed lake was to be built at the intersection of Broadway and Pearl.

"It would have included the performing arts center, City Hall, the library," Tedesco recalled. "All of that would have tied in beautifully."

But many people found the super-block plan too extravagant.

Another design firm, Sasaki Associates Inc. of Watertown, Mass., was hired. The firm was partnered with local designers Communication Arts and Everett Zeigel Associates, the predecessor to today's Oz Architecture.

Their plan, which went through several incarnations, was the one that became a reality.

Boulder's City Council in August of 1974, three years before the mall opened, passed a resolution to build a pedestrian mall on seven blocks from 11th to 15th, between Spruce and Walnut and on part of an alley between 13th Street and Broadway.

That was scaled down to four blocks, all on Pearl Street, by the time construction on the \$1.85 million project began.

Tedesco, who went on to become American Airlines' vice president of corporate affairs before retiring in Santa Barbara, Calif., still visits his daughter in Boulder. Although he likes the mall, he thinks it would have been truly great under the original plan.

"If I had stayed and Bob Knecht had stayed, maybe we would have made a difference," he said. Both left Boulder in the '70s. Knecht moved east to work as a national marine policy researcher and later taught at the University of Delaware before his death last summer. Tedesco became San Jose, Calif.'s city manager.

Local leadership shuffled. Political conflicts abroad in Vietnam and Cambodia brought

unrest to Boulder, as University of Colorado students demonstrated for peace. Times changed.

Through it all, said Nolan Rosall, Boulder's planning director who oversaw construction of Pearl Street Mall, support for the project did not waver.

"We had to work with the property owners and not impose a plan on them," said Rosall, who now is a member of Downtown Boulder Inc. "The plan was grown and refined by the property owners and tenants. People had to believe it was in their best interest to do this."

Pearl Street continues to be a "living process," he said. And the same broad base of leadership, ranging from merchants and bankers to political leaders and environmentalists, continue working to keep Boulder's lifeblood flowing throughout the city – especially to its heart.

Revitalization of downtown continues on Pearl Street between 9th and 11th and 15th and 17th streets, and between Walnut Street and Canyon Boulevard.

"All that is new in the last 20 years and the effort is continuing," Rosall said.

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## Officers Are Elected <sup>10-7-66</sup> By Boulder Tomorrow

The persons who had served as officers of CECAP, the Committee for the Exploration of the Core Area Potential, have been elected as the temporary officers of Boulder Tomorrow.

The officers were elected this morning as Boulder Tomorrow continues organizational steps. Named president of the new non-profit corporation was Mayor Robert W. Knecht. Other officers are Joseph Stepanek, vice president; Mrs. Kenneth Wright, secretary, and Clyde Reedy, treasurer. Knecht was chairman and Stepanek vice chairman of CECAP, an informal organization. Mrs. Wright and Reedy held similar posts to those which they were elected today with the former organization.

Boulder Tomorrow is being incorporated and organized to promote work toward a master plan for the central portion of Boulder and future possible projects under the master plan.

In addition to the officers, 13 persons were named today to serve as the temporary board of the corporation. A formal

election will be held after the first of the year when enrollment of members of Boulder Tomorrow is completed.

During the group's meeting this morning, several other steps necessary to complete temporary organization of Boulder Tomorrow also were completed. Reports also were received from the finance committee, concerning organization of a drive for funds to sponsor the preliminary master plan; from the group working on brochures and other printed materials, and from the screening committee that is making contact with various planning firms on proposals to make the preliminary master plan.



Boulder Tomorrow: *Boulder Daily Camera* Photo  
Signing contract with design firm Victor Gruen,  
March 25, 1967

Caption: Boulder Mayor Bob Knecht, who spearheaded research that led to the Pearl Street Mall's creation, signed a contract with Los Angeles design firm Victor Gruen and Associates on March 25, 1967. Sitting on either side of Knecht were Boulder County Commissioner Guy Atkins and Boulder acting mayor Howard Klerme. Many members and supporters of Boulder Tomorrow looked on. They are, from left to right: Les Weber, Paul Heffron, Joe Stepanek, Orville Beam, Clyde Reedy, Bob Quinlan, Ruth Wright, Neil King, Emmett Haywood, Peter Dietze, Jim Bowers, Christopher Brauchli, Charles Haertling and Jerry Smart. Camera File Photo

# **ATTACHMENT O**

# Editorials

## Core Area — Heart Of The Community

A couple of weeks ago Acting City Manager Bill Lamont and a group of businessmen told the City Council the time has come to tackle the complete revitalization of downtown Boulder.

Downtown redevelopment has been underway for several years, but not on a comprehensive scale. The parking lot system fostered by downtown property owners and the city has shown excellent progress. Some three dozen major renovations of downtown buildings have been completed, and another eight are scheduled for refurbishment. A number of attractive new buildings have been erected.

In 1969 Victor Gruen Associates, internationally noted urban planning firm, drew up a bold conceptional plan for the core area, including civic center expansion, a street circulation plan and pedestrian malls.

In 1970 voters turned down a \$7 million bond issue for the civic center, and that turned original enthusiasm to caution in downtown development — for many citizens and officials. Nevertheless, a substantial number of core area business people have plugged along to restore downtown to an attractive gathering place for people.

The planning board recently disapproved the traffic circulation plan in its present form. The plan would have required destruction of many business and residential properties and would have extended more than half a mile out of the central business district. Obviously, if the mall concept is to be implemented, there must be a sensible traffic circulation scheme. We're confident that if one is drawn up that is oriented to downtown

traffic movement and not to rapid routing of automobiles past the mall area, such a plan would be accepted. The traffic circulation system should be consistent with the purpose of the mall area — to provide a leisurely atmosphere for the attraction, comfort and convenience of people.

Improvement of city bus routes and schedules will be a plus factor for the core area. They go into effect next Sunday, providing greater convenience and broader mobility for patrons.

County facilities downtown are being expanded with the new courts-police complex, in which the city government is participating. The main public library downtown is expanding. The municipal building needs expansion or a new structure. Eventually a concert hall-cultural center in central Boulder will probably move up on the priority list.

An attractive, healthy core area is vital to any community. A well integrated central district is the heart of the city, the focal point of government, financial institutions, entertainment, a variety of retail businesses, professional services and various types of commercial and social services. Without such a strong focal point, a community becomes fragmented into neighborhoods, with little cohesiveness. Neighborhood centers and a vigorous downtown section play differing but important roles in a well balanced community.

Both the city government and the downtown businessmen have natural and strong incentives at this point to work together for core area development. Since their goals are to serve the people better, the community will benefit by meaningful support.

# **ATTACHMENT P**

~~BOULDER HIGHRISE STUDY~~

~~FINAL REPORT - NOVEMBER 13, 1969~~

It is important to note that this Report is a refinement of the generalities contained in the Preliminary Report dated August 25, 1969. For fullest understanding of this Report, the Preliminary Report should be consulted.

**CONCLUSIONS:**

1. Highrise building should be allowed in some areas of Boulder.
2. Such buildings should be controlled by a highrise Code, which would take the form of a "Use by Review" Ordinance. This Ordinance should require generalized, written criteria for guidelines, and an appeal mechanism.

**RECOMMENDATIONS:**

1. All buildings over 35 feet high should come under the Highrise Ordinance.
2. Highrise buildings should be allowed only in those areas shown on the accompanying map.
3. A sliding scale "bonus system" should be set up, such that a developer is rewarded with increased height and floor area in return for specific amenities designed into the project, such as:
  - a) Reduced land coverage
  - (1) Parking should be considered land coverage.

7. The Ordinance should be subject to periodic review.

**DIRECTION:**

1. The City Planning Department should develop the "bonus system" formula and establish building separations.
2. The City legal staff should prepare the Ordinance.
3. The City should provide a visual display for public presentation.
4. The Architect's Committee should be consulted for a final review of the completed Ordinance.

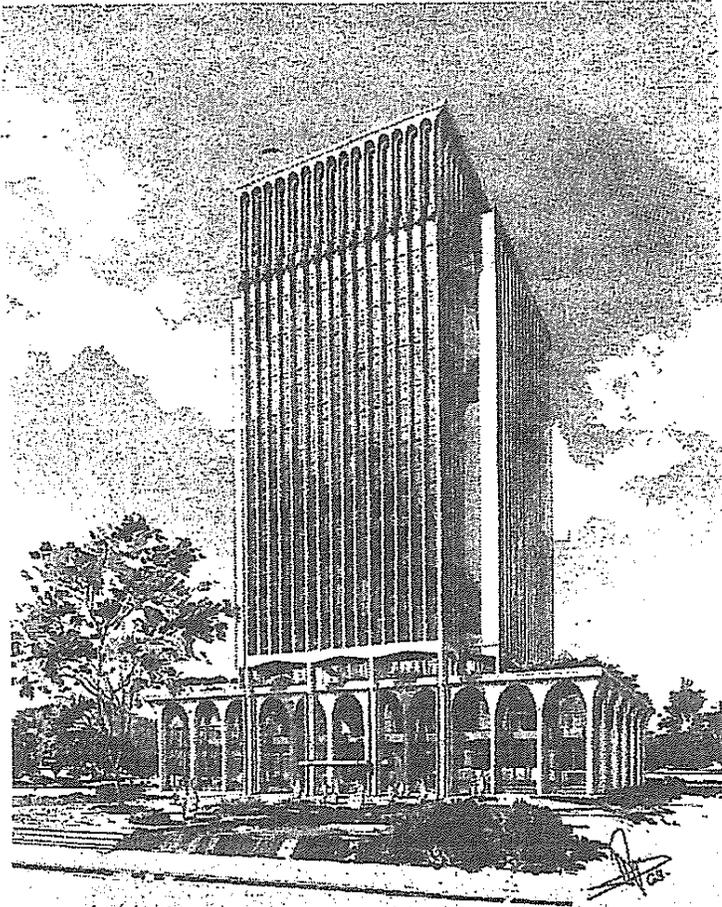
**COMMITTEE MEMBERS:**

L. Gale Abels  
Stanford Connolly  
Ken C. Dail  
Stanley Mason Goldberg  
Steven L. Gunn  
William W. Milburn, Jr.  
Wallace F. Palmer  
David H. Rowland  
James E. St. John  
Eugene A. Thurner  
Richard F. Veasey  
Richard B. Whitaker  
Carl A. Worthington  
H. Alan Zeigel

- (2) Maximum land coverage in areas other than the Core Area should be 50%.
  - b) Landscaping of open space.
  - c) Buildings should be encouraged to be of the tower configuration, but if a major axis is desirable to the developer, it should be generally oriented in the direction of the dominant view.
  - d) The building should be harmonious with the neighborhood with view protection being the prime consideration.  
(See Preliminary Report for discussions of color, texture, scale and bulk.)
4. Present Floor Area Ratios are too generous to be used as the starting point for the "bonus system". They should be substantially reduced; however, density should be greatest for the Core Area.
  5. The maximum total heights should be:
    - a) Core Area - 300 feet
    - b) Sub-community Centers - 200 feet
    - c) Open Areas (Greenbelts and around lakes) - 100 feet
    - d) Floating Planned Development zones - as appropriate, but not to exceed 200 feet.
    - e) Other Areas - 35 feet
  6. Highrise buildings should be spaced apart from one another by a specific formula with the core spacing being the closest allowed.

# **ATTACHMENT Q**

Artist's Rendition of Cohegan's Proposed 17-Story Building  
on Canyon Blvd. March 20, 1969



Artist's rendering of the 17 story skyscraper planned for the area between 24th and 28th on Canyon Blvd.

### 17 Stories-Too Many?

## Cohegan Defends "Skyscrapers"

Belief in Boulder and in the city's future are the reasons behind the planning for a 17-story "skyscraper" planned by Western Industries. "We could invest in many other cities," says John Cohegan, partner in the company. "But we believe in Boulder."

Cohegan said Western Industries and 24th Street Investors already have more than a million and a half invested in real estate here. He pointed out that Harlow Platts, president of the board of Western Industries, has lived in Boulder since 1911. Platts is the oldest living Boulder Chamber of Commerce president and has been active over the years in bringing Neodata (formerly Esquire) and the National Bureau of Standards to Boulder.

"Obviously we have faith in our city. However, we feel it is our investment and a city advisory board (the Planning Board) should not be able to dictate to us how many trees and shrubs we have to plant.

Cohegan, whose company developed the entire North Arapahoe Center, including the Village Theatre and the new Boettcher Building, said he is quite aware of aesthetics and landscaping is a part of all his plans.

He said many feasibility plans were studied for development of the area between Arapahoe and Canyon and studies proved the best way

## Cohegan Defends (cont.)

to move was to a high rise. The proposed building would be the tallest in the city. Presently, the Williams Village student complex goes to 14 stories, but Cohegan said even 20 stories on his land would not appear higher than Williams Village.

His plans call for a lower section of commercial shops, middle floors with offices and the upper four stories for luxury apartments.

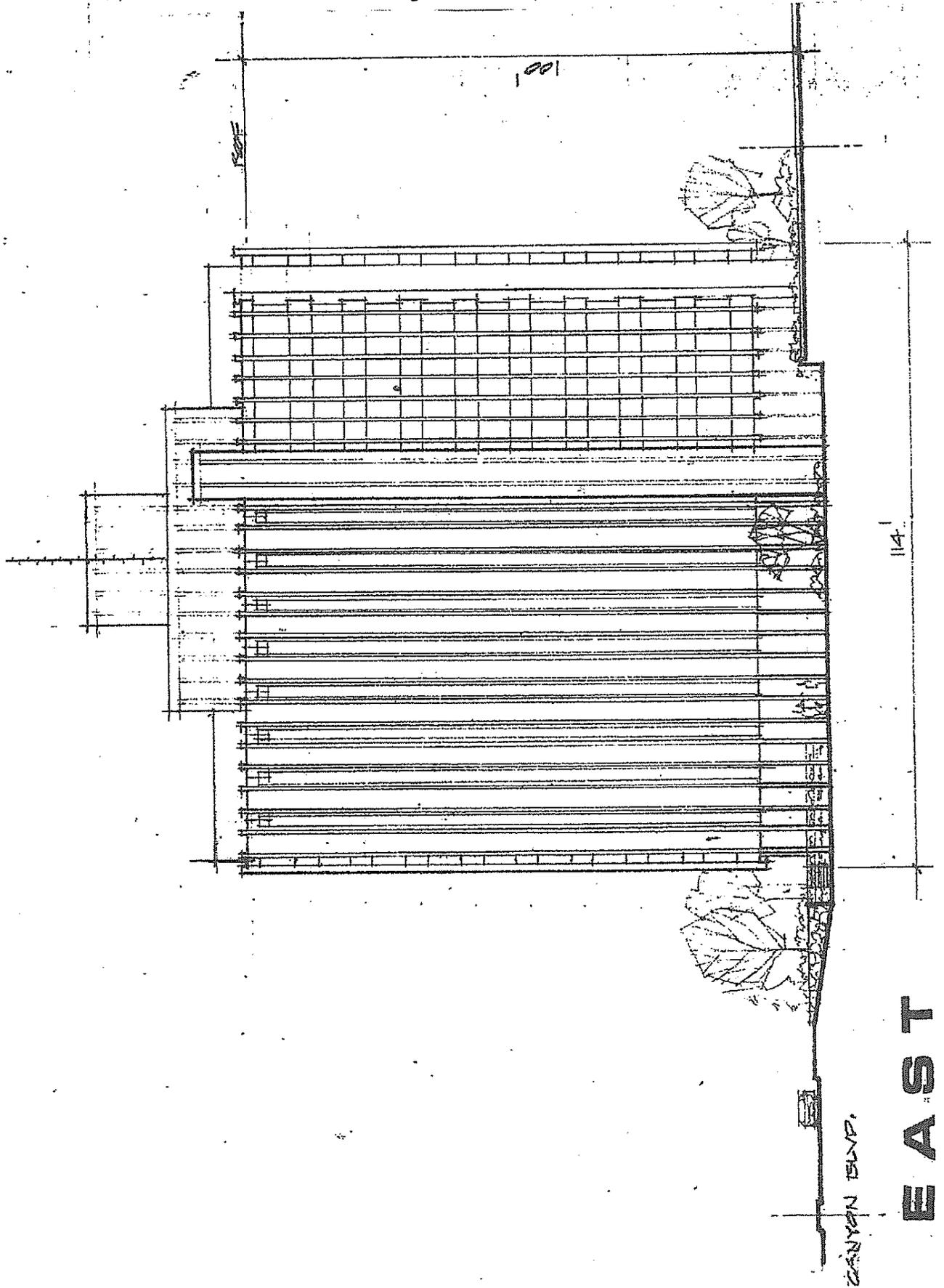
Cohegan also revealed that 24th Street Investors, which also includes some Denver men, has purchased other property along 24th Street, including two trailer parks. Future development will also include these properties. He said plans are to develop as much property in this area as the group can purchase.

Cohegan and Platts feel that the large stake the city has in Boulder Tomorrow is the reason that their group is having difficulty in receiving a go-ahead on their plans. Numerous offices are planned for downtown Boulder and Cohegan was told his plan for offices could ruin Boulder Tomorrow.

Cohegan feels that the offices he will fill (many from Denver businesses) will generate even more business for the rest of Boulder.

# **ATTACHMENT R**

The Milburn Proposal: Architect's Rendition of 100-Foot Building at 9<sup>th</sup> & Canyon Blvd.



CANYON BLVD.

EAST

# **ATTACHMENT S**

MEMORANDUM

13 April 1970

TO: City Council  
Planning Board  
Architect Committee on Height

FROM: Sub Sub-Committee on Height

1. High-rise buildings in the urban area, or core area of the City, should be considered in order to increase the density of development to the extent of creating more human scale inter-relationships centering on the pedestrian. In the fringe areas, which we are not ready to cope with at this date, the purpose would be to avoid sprawl and increase the amount of open space with the same land use intensity as permitted with lower buildings which by necessity cover more of the site.

2. High-rise buildings in the City of Boulder, based on need, might be provided for elderly and students as some of the prime potential occupants - pedestrian oriented. It was recognized some demand may occur for office high-rise, primarily for prestige value, but the need factor should be the most important consideration in permitting such structures.

3. The architect's report clearly demonstrated that view obstruction is not necessarily a result of height. Point buildings, properly located within the community, would certainly have less of an influence than slab buildings 35 to 50-feet in height. Color and texture, as brought out in the architect's report, were considered to be dominant visual factors as well.

4. A decision to encourage the Boulder Tomorrow area as a core area with vitality has been made by the City. Mass transportation, cultural facilities, human scale, pedestrians, excitement, all of these factors have been put forward as justifiable reasons for creating this increased density in the core of our City. The study, commitment and decisions have been completed, therefore, any height consideration should reflect this.

5. In considering where high-rise structures (over 55 feet) should be permitted, certain factors should be considered. These are:

- a. Proximity to pedestrian generator(s).
- b. Proximity to adequate transportation arteries.
- c. Proximity to shopping.
- d. Plumbing adequacy.
- e. Parks or open space.
- f. Relationship to views.
- g. Potential adverse results on the surrounding community as a result of these high-density developments in given areas.
- h. Height as a design function.

6. Absolute height controls were felt to be necessary from a citizens concern standpoint, as well as from a human scale standpoint. The floor area ratio approach will not work unless there is also an absolute limitation. If enough ground can be put together, unreasonable heights could be created in given areas under a pure FAR approach and thus negate the whole concept.

7. A policy or an ordinance may be adopted which spells out specific areas in which height, above the level by right, would be considered as part of Planned Developments. The present ordinance must be changed at any rate as it expires in May.

8. The following recommendations on height should be considered:

- a. All single-family areas would have a maximum height limit of 30 feet for the principal building.
- b. All other areas would have a height limit of 35 feet; to go above this it would be necessary to follow the Planned Development approach.
- c. Absolute height limits even under PD would be as follows (see attached):
  1. The core area, following the parking district boundaries - 150 feet.
  2. In the area surrounding the core on the north and east - 100 feet.
  3. The area south of Arapahoe, east of 17th and west of 24th - 75 feet.
  4. All other MR-3 and Business zoned areas - 55 feet.

Public hearings for these heights would be held by the Planning Board with permission by Council to call-up any application for their public hearing. This is taking the height out of Planned Development as a zone, and placing it in as a processing procedure as proposed under the new Zoning Code. This then eliminates the rezoning aspects for height purposes only.

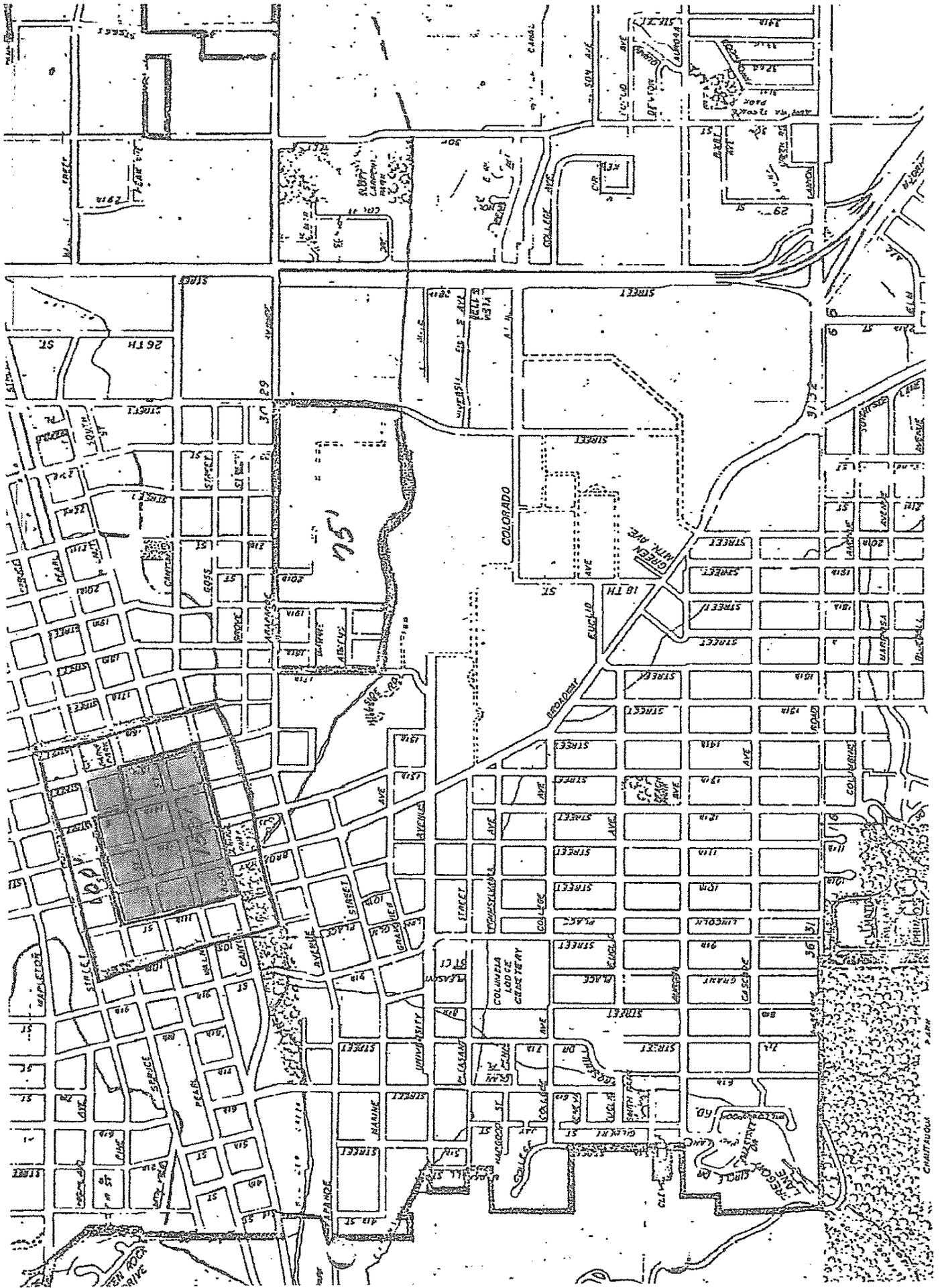
9. Controls.

- a. Usable open space (one side at least open to the street).  
In the core area 40% of the lot, excluding parking. All other areas 50% of the lot, excluding parking.
- b. Off-street parking. In any area covered by a mandatory parking district - not required. In office and commercial uses - one space for every 400 sq. ft. of building area, exclusive of basement areas. Two spaces for every unit in residential structures. These are the same requirements that are included in the proposed Zoning Code for redeveloping high-density areas.

- c. Setbacks would not be required in the core, except as required on the site plan. In other areas, 25-foot front and rear setbacks would be required unless otherwise approved by a PD site plan.
- d. Where less than 25% of the roof area is used for appurtenances and the added height is less than 15 feet, they are excluded from the height limit. Where more than 25% of the roof area is used for appurtenances, the height limit becomes absolute.

The rest of the controls would then come about by virtue of the Planned Development review, such as views, point vs. slab buildings, color and texture, etc.

10. Sub-community centers as shown in the Comprehensive Plan; the Hill area; the area in the vicinity of Community Hospital; and the area east of 24th, north of Boulder Creek; and the area east of 30th Street, south of Boulder Creek must be further evaluated for the land use relationships, design relationship and height effects in these areas. The sub-committee definitely felt that there was potential for height in these areas, but without the comprehensive planning that has occurred in the Boulder Tomorrow area, they were not prepared to comment on how high and under what conditions at this time.



# **ATTACHMENT T**

Planning Director's Memo Recommending Additional Property Where High-Rise Buildings Would be Permitted, Including Map, June 23, 1970

MEMORANDUM

23 June 1970

TO: Planning Board  
FROM: Planning Director  
SUBJECT: Height Ordinance

On June 4th, the Sub-Sub-Committee met and considered the area east of 24th Street for height control. The City Council had requested in May that the Committee bring forth a total recommendation with regard to height control before they take action. At that time, they extended the interim control until July in order to give the Committee and the Planning Board an opportunity to comment on the area east of 24th, as well as the standards that had gone to them at the end of April.

In reviewing the original recommendation, the Committee reconfirmed the regulations as submitted. They emphasized that a continuing effort must occur in the coming year to further detail the guidelines we will utilize in evaluating the individual proposals under the Planned Development procedure. This would include view corridors, setbacks, ground coverage, bonus concept, etc.

The Staff, in evaluating the area east of 24th Street, reached the conclusion that if any place in the City was to permit higher buildings, based on physical conditions, this general area would be very well suited. A study of this area indicated that the utilities, circulation, land assemblages, view protection of the neighborhood and zoning were such that higher buildings could be desirable to achieve design purposes in given developments. The main concern was that of the image of the City as a whole, and the purposes for which the height should be permitted. Certain uses such as hotels, major office tenants, high-density residential, etc., require the advantages of vertical development and circulation. Also, high-rise solutions encourages a reduction in the amount of ground coverage, encourages better site planning and permits the super-block approach to design. However, it was definitely felt that a chinese-wall effect along 24th, 28th and 30th would be undesirable. Also, the area was not pedestrian oriented or linked with abutting neighborhoods, but pedestrian circulation within the super blocks definitely should be stressed.

The Planning Board in considering this area as part of the regional core of the Boulder Valley, expected development in this area, as well as in the downtown core. In addition to the desire to avoid the chinese-corridor effect along 24th, 28th and 30th, it was felt that the view from 47th Street looking toward the mountains should strongly be considered and preserved.

The area proposed to permit buildings over 55-feet in height is from Arapahoe to Pearl, from 24th to 33rd. South of Arapahoe and east of 24th, the 55-foot height limit should continue to be the controlling factor.

It was recommended that a maximum height of 150 feet should be permitted in this area. All other regulations as contained in the proposed ordinance would remain the same, namely, those affecting the parking and usable open space, setbacks and necessity of going Planned Development.

It was felt that in reviewing the Planned Unit Developments, strong consideration should be given to the view corridors along Pearl, Canyon and Arapahoe. The buildings should be set back far enough from these streets to preserve these view corridors.

Hopefully, by taking this approach, there will be much less land coverage, preservation of the super blocks and a strong design element within the regional center of the Boulder Valley with the downtown core on the west and this area on the east. The primary purpose is not to increase the density in this area, but primarily to reduce the lot coverage and to encourage better site and building design.

# **ATTACHMENT U**

Town & Country REVIEW August 26, 1970

## How Do You Feel About High Rise In Boulder?

( ) We( ) feel Boulder should allow the following number of additional high rise structures to be erected:

- None
- Up to 5
- Up to 10
- Up to 20
- No Limit

Name \_\_\_\_\_

Address \_\_\_\_\_

Mail to TOWN & COUNTRY REVIEW, P.O. Box 703, Boulder (or 2690 28th St., Boulder).

Town & Country REVIEW September 2, 1970

## High-Rise Poll Results

Response to the opinion poll published in last week's Town & Country was overwhelmingly against having any high-rise structures in Boulder. Sixteen persons felt that there should be no limit on high rises while 560 believed that none should be allowed. Additional comments from read-

ers begin on page 4.

### Number of High-Rises That Should Be Allowed:

None .....	560
Up to 5 .....	10
Up to 10 .....	3
Up to 20 .....	0
No Limit .....	16

# **ATTACHMENT V**

# BOULDER REPORT

OCTOBER, 1971

The November 2 Municipal Election promises to be one of the most significant in Boulder's history.

A record number of candidates are running for five council seats. The four candidates receiving the highest number of votes will each earn a four year seat on city council. The fifth-place candidate will receive a two-year council term.

In addition, the voters will be asked to respond to six important ballot questions. The first three respond to recreation, library, and Greenbelt needs. Questions 4, 5 and 6 deal with community policies and are presented as they will appear on the ballot.

The questions are presented here in the order in which they will appear on the November 2 ballot.

## QUESTION

# 1

## RECREATION

**COMMUNITY ACTIVITY CENTERS:** One community recreation center is proposed for South Boulder, adjacent to Viele Lake in Table Mesa. A second center is proposed at 9th Street and Balsam Avenue in North Boulder.

Both community recreation centers would house facilities for youth and adult programs: crafts, games, meetings, music — nearly all programs currently offered by the City's Recreation Department. The centers would be open days and evenings. The North Boulder Community Center would also provide facilities for programs of the Senior Citizens Center.

**TENNIS COURTS:** Through a cooperative program with the Boulder Valley School District, the proposal would provide a net increase of 16 lighted and 6 unlighted tennis courts throughout the city.

**BALL FIELDS:** Also through a cooperative program with the Boulder Valley School District, the proposal would provide a net increase of 2 lighted and 4 unlighted ball fields in Boulder.

Cost for each community center (including swimming pool) are \$700,000 or a total of \$1,400,000. Costs for tennis courts construction and remodeling run \$104,000. Costs for ball field improvements run \$96,000. TOTAL: \$1,600,000.

City Council proposes to issue bonds to cover these recreation facilities. The recreation facilities bonds of \$1,600,000 and the proposed library facilities bonds of \$600,000—total \$2,200,000 — would be repaid by 2c per package tax increase on cigarettes.

City of Boulder Election Questions in Brief, October 1971.

# ELECTION QUESTIONS IN BRIEF

A MONTHLY REPORT TO THE  
BOULDER COMMUNITY  
FROM THE CITY OF BOULDER

QUESTION

# 2

## LIBRARY

This proposal is to construct a connecting library addition across Boulder Creek from the Boulder Public Library at 9th Street and Canyon Boulevard and to modify the existing building.

The most pressing library needs are additional study, research, and reading areas for library users, expansion of reference collections and services, and more space for adult books and periodicals. These needs can be met by utilization of the present children's room to provide the necessary space.

The children's library would then be moved to the proposed addition. The addition would also provide new space for exhibits and library-developed programs, meeting space for small groups using resources of the library, additional space for children's collections and services, and space for the development, collection, and use of non-print materials such as microforms, videotapes, and 8 and 16 millimeter films.

The cost estimates are \$500,000, including new construction, site development, remodeling, landscaping, parking, fees, technical equipment, furniture and the purchasing of books and materials.

The City Council proposes to issue bonds to cover the cost of this library expansion. The library bonds of \$600,000 and the proposed recreation facilities bond of \$1,600,000 — total \$2,200,000 — would be repaid by a 2c per package tax increase on cigarettes.

QUESTION

# 3

## GREENBELT

This proposal seeks limited authorization for the City Council to accelerate the purchase of Greenbelt lands through the issuance of bonds. Council would be limited to 50% of projected Greenbelt fund revenues for the repayment of bonds.

The city currently uses several techniques — purchase options, federal assistance, condemnation — to acquire Greenbelt lands. Limiting bonding authorization furnishes another technique when capital is quickly needed to purchase land at current prices.

The proposal involves no tax increase. The proposal merely requests authority to use part of Greenbelt revenues more flexibly.

QUESTION

# 4

## COUNCIL RESOLUTION ON GROWTH

"Be it resolved that the City Government is directed immediately to undertake a definitive analysis of the optimum population and growth rate for the Boulder Valley. Pending the completion of this analysis and approval of programs developed to implement its results, the City Government, working with the County Government, shall take all steps necessary to hold the rate of growth in the Boulder Valley to a level substantially below that experienced in the 1950's and shall insure that the growth that does take place shall provide living qualities in keeping with the policies found in the Boulder Valley Comprehensive Plan."

QUESTION

# 5

## HEIGHT LIMIT BY PETITION

"All buildings and other structures throughout the City of Boulder shall be limited to a height not exceeding fifty-five (55) feet. This height limit shall not apply to spires, belltowers, cupolas or domes not used for human occupancy, nor to silos, parapet walls, cornices without windows, antennas, chimneys, ventilators, skylights, or other necessary mechanical appurtenances usually carried above the roof level so long as they do not take up more than 25% of the roof area. "Height" shall be the vertical distance from the lowest point within twenty-five (25) feet of the tallest side of the structure to the uppermost point of the roof."

QUESTION

# 6

## POPULATION LIMIT BY PETITION

"The City Administration and Council shall adopt regulations and policies to stabilize the ultimate population of the City of Boulder near one hundred thousand."

# **ATTACHMENT W**



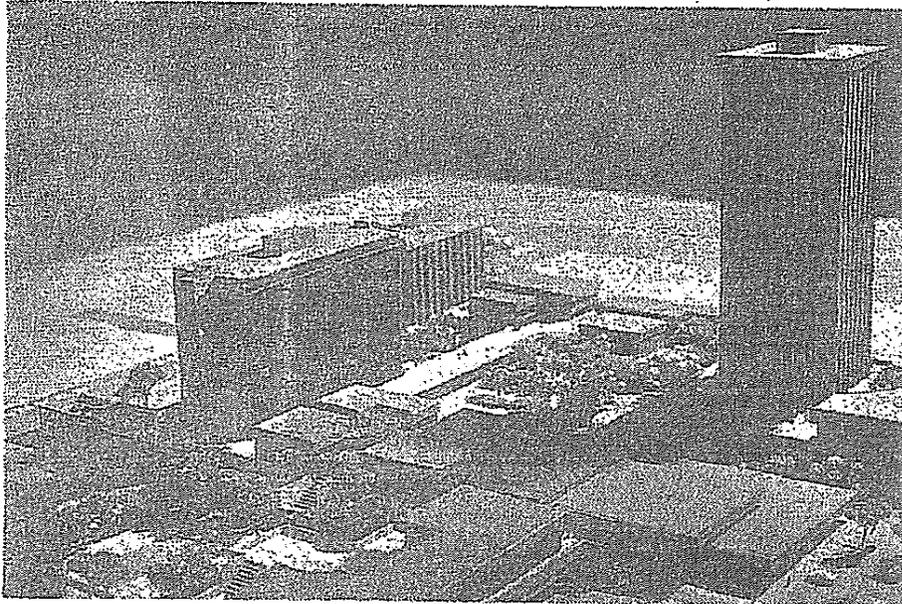
**BOULDER HILTON?** — Eric M. Hilton, right, a third generation member of the family whose surname has come to be synonymous with quality hotel living, discusses with Boulder architect James M. Hunter plans for a development in the area of the present Park Allen Hotel ruins at 6th and Canyon. Hilton's company is one of five national chains expressing interest in operating the proposed 225-unit hotel and convention center. Two apartment buildings are also propos-

ed. A variance from the City Council is needed to allow construction of the 10-story hotel before final commitments can be made. The City Planning Board at its meeting Thursday recommended that the council limit the hotel to 100 feet in height, including the mechanical penthouse, limit the adjacent apartment building to 50 feet and made no recommendation on the other proposed apartment building on the east side of 6th Street.

(Daily Camera Photo by Charles Wendt)

# **ATTACHMENT X**

Photo of Possible Design for Cohagen's Superblock  
*Boulder Daily Camera*, June 2, 1971



**SET FOR HEIGHT DISCUSSION —**  
This is the model of the Western Industries Inc. "superblock" project which will be informally discussed during the review of the city's proposed new building height ordinance at the City Planning Board meeting Thursday. Carl Worthington, speaking for Carl A. Worthington & Associates of Boulder, will point out that high-rise construction is a key to preventing urban sprawl and permits more open

space to be designed into the project. Thus, he will argue, height can provide benefits and with proper design will not greatly interfere with views. Here, the working model shows one possible design for the Western Industries project, indicating plazas, landscaping, pedestrian walks and several tall buildings, with the one to the left about 150 feet tall and the one to the right 300 feet high.

# **ATTACHMENT Y**

Petition to Amend the Charter  
of the City of Boulder to Limit  
Height to 55 Feet

**WARNING**  
**IT IS A FELONY:**

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his name more than once for the same measure or to sign such petition when not a qualified elector.

**DO NOT SIGN THIS PETITION UNLESS  
YOU ARE A QUALIFIED ELECTOR**

**TO BE A QUALIFIED ELECTOR, YOU MUST BE:**

- (a) At least twenty-one years of age.
- (b) A citizen of the United States.
- (c) A resident of the state of Colorado and have resided in the state at least twelve months.
- (d) A resident of the precinct in which you live for at least thirty-two days.

Do not sign this petition unless you have read or had read to you the proposed initiative or referred measure in its entirety and understand its meaning.

**TO: The Honorable Robert W. Knecht, Mayor, and the City Council of the City of Boulder, in the County of Boulder, State of Colorado:**

We, the undersigned legal voters and qualified registered electors of the above named City do hereby respectfully order and demand in accordance with Article XX, Section 5 of the Colorado Constitution, Colorado Revised Statutes 10-1-1 - 10-1-19, 1963, as amended, and Article IV and Article X, Section 137 of the Charter of the City of Boulder, that there shall be submitted to a vote of the qualified electors of the City of Boulder at the November 1974 election the proposal hereinafter set forth. Said proposal is to be submitted to a vote of the qualified electors of the City of Boulder, in the County of Boulder, State of Colorado, for their adoption or rejection at the polls at said municipal election to be held in the said City of Boulder.

Each of the signers hereto for himself or herself as the case may be says: I sign this petition in my own proper person only. I am a legal voter and qualified registered elector of the City of Boulder in the County of Boulder, State of Colorado. I have read or had read to me in its entirety the question hereinafter set forth and I understand its meaning. My resident address and the date of my signing this petition are correctly written after my name and I do hereby designate and appoint the following named persons, to-wit:

Name	Address
1. Albert A. Bartlett	2935 18th Street
2. Joyce A. Davies	4600 Osage Drive
3. Ted J. Ffills	1636 Columbine Avenue
4. Campbell Robertson	550 Spruce Street
5. Ruth M. Wright	1449 High Street

to represent me in all matters affecting this petition.

The question which we propose for submission is as follows:

"Shall the Charter of the City of Boulder be amended by enactment of a new provision thereto which shall read as follows:

All buildings and other structures throughout the City of Boulder shall be limited to a height not exceeding fifty-five (55) feet. This height limit shall not apply to spires, bellries, cupolas or domes not used for human occupancy, nor to silos, parapet walls, cornices without windows, antennas, chimneys, ventilators, skylights, or other necessary mechanical appurtenances usually carried above the roof level so long as they do not take up more than 25% of the roof area. "Height" shall be the vertical distance from the lowest point within twenty five (25) feet of the tallest side of the structure to the uppermost point of the roof.

The purposes of this height limitation are to promote the health, safety and general welfare of the community; to secure safety from fire, panic, wind turbulence, and other dangers; to provide adequate light and air to abutting properties and the neighborhood; to prevent the overcrowding of land; to avoid undue concentration of population; to prevent encroachment of privacy; to lessen traffic congestion in the streets; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to insure personal safety by encouraging intensive use at the sidewalk level; to encourage the most appropriate use of land; to conserve and enhance property values; to preserve the integrity and character of established neighborhoods; to preserve scenic views of the mountain backdrop, which are a unique asset to the community and provide a distinctive character and setting for the city, and which provide an attraction to tourists, visitors, and students of the University of Colorado; and to protect a public investment of over \$3,600,000 in the mountain backdrop."

The ballot title and submission clause which has been prepared by the above-named committee of five persons and is submitted to you by all of the petitioners is as follows:

A measure to amend the Charter of the City of Boulder by enactment of a new provision thereto which shall read as follows:

All buildings and other structures throughout the City of Boulder shall be limited to a height not exceeding fifty-five (55) feet. This height limit shall not apply to spires, bellries, cupolas or domes not used for human occupancy, nor to silos, parapet walls, cornices without windows, antennas, chimneys, ventilators, skylights, or other necessary mechanical appurtenances usually carried above the roof level so long as they do not take up more than 25% of the roof area. "Height" shall be the vertical distance from the lowest point within twenty-five (25) feet of the tallest side of the structure to the uppermost point of the roof.

FOR THE MEASURE .....

AGAINST THE MEASURE .....

Signature of Elector	Residence Address (Street and Number)	City, Town or Postoffice	Date of Signing Petition
1			
2			
3			
4			

# WARNING

IT IS A FELONY:

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his name more than once for the same measure or to sign such petition when not a qualified elector.

DO NOT SIGN THIS PETITION UNLESS  
YOU ARE A QUALIFIED ELECTOR

TO BE A QUALIFIED ELECTOR, YOU MUST BE:

- (a) At least twenty-one years of age.
- (b) A citizen of the United States.
- (c) A resident of the state of Colorado and have resided in the state at least twelve months.
- (d) A resident of the precinct in which you live for at least thirty-two days.

Do not sign this petition unless you have read or had read to you the proposed initiative or referred measure in its entirety and understand its meaning.

Signature of Elector	Residence Address (Street and Number)	City, Town or Postoffice	Date of Signing Petition
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STATE OF COLORADO }  
County of Boulder } ss.

The undersigned affiant, being first duly sworn, deposes and says: That he (she) is a qualified elector, that he (she) circulated this petition, that each signature thereon was affixed in his (her) presence, that each signature thereon is the signature of the person whose name it purports to be, that to the best of the knowledge and belief of the affiant each of the persons signing this petition was at the time of signing a qualified elector, that he (she) has neither received nor entered into any contract whereby in the future he (she) will receive any money or thing of value in consideration of or as an inducement to the circulation of such petition by him (her), and that he (she) has not or will not in the future pay, and that he (she) believes that no other person has so paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix his signature to this petition.

Signature ..... Address .....

Subscribed and sworn to before me this ..... day of ..... A.D. 19.....

My commission expires .....

.....  
(Notary Public)

(SEAL)

# **ATTACHMENT Z**

**ORDINANCE NO. 3732**

AN ORDINANCE REPEALING ORDINANCES NO. 3611 AND 3610 AND PROVIDING COMPREHENSIVE BULK AND HEIGHT REGULATIONS; RESTRICTING THE ERECTION AND CONSTRUCTION OF BUILDINGS OVER 35 FEET IN HEIGHT THROUGHOUT THE CITY; PROVIDING THAT THE 35-FOOT HEIGHT LIMIT MAY BE EXCEEDED IN SPECIFIED AREAS IF AN APPLICATION IS MADE TO THE CITY AND APPROVED IN ACCORDANCE WITH THE PROCEDURES FOR SPECIAL REVIEW PROVIDED FOR HEREIN; PROVIDING SPECIFIC MINIMUM REGULATIONS REGARDING USABLE OPEN SPACE, PARKING, SETBACKS, FLOOR AREA RATIOS AND BUILDING HEIGHT; AND SETTING FORTH DETAILS IN RELATION TO THE FOREGOING.

WHEREAS the City Council, being of the opinion that high-rise buildings are of substantial public concern, requested the architects within the community to conduct a study of the need and desirability of allowing high-rise buildings within the City, including the effect of such buildings on existing public facilities such as traffic, utilities, and other public services; the creation of problems concerning adequate light and air to surrounding neighborhoods; aesthetic questions and the obstruction of views; and

WHEREAS, following the submission of the architect's report to the City Council, the City Council, City Planning Board, and a subcommittee appointed by the City Council have studied the recommendations of the architects and have made further recommendations concerning high-rise buildings within the City of Boulder; and

WHEREAS, the studies requested by the City Council have indicated that:

(1) Unrestricted erection or placement of high-rise buildings could create:

(a) Undue burdens on public facilities, including parking, pedestrian and vehicular traffic facilities, fire and police protection, sewer and water utilities, etc.;

(b) Unduly interfere with the light and air available to surrounding properties;

(c) Block views which have long been considered an important part of the community; and

(d) Change the character of the community;

(e) Location, setback, land coverage, height and effect of high-rise buildings on the community at large and particularly surrounding neighborhoods should be explicitly regulated;

(f) In order to protect the public health, safety and welfare, a maximum building height should be set and any building proposed to exceed that height should be reviewed by the Planning Board to ensure that pedestrian and vehicular transportation facilities are adequate; that police and fire protection are available and adequate; that the building occupants will have available shopping facilities, parks and necessary public and private services; that the proposed building will not interfere with light and air of surrounding properties and will provide appropriate open space; and other similar considerations.

WHEREAS, the City Council, after receiving the reports requested by it and opinions and reports of other interested persons in the community, finds that:

(a) In order to protect the public health, safety and welfare, that a maximum building height shall be set by this ordinance and exceptions thereto provided by special review;

(b) The exceptions to the general height restrictions shall be limited to special areas that have been studied by the City Planning Department or by commission of the City Council;

(c) The provision for the general height restriction contained herein exceptions thereto in specified areas are in conformity with the proposed future development of public facilities and the City's comprehensive and long-range planning.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, THAT:

Section 1. Ordinances numbered 3611 and 3610 are hereby repealed.

Section 2. Chapter 37 "Zoning" of the Revised Code of the City of Boulder, 1965, as amended, is hereby amended by the addition of an Article X "Height Restrictions", to read as follows:

**ARTICLE X  
HEIGHT RESTRICTIONS**

**Section 37-1001. Declaration of Policy and Purpose.**

The City Council hereby declares that the unregulated placement and erection of buildings more than 35 feet in height may be detrimental to the proper development and orderly growth of the City of Boulder and contrary to the public health, safety and welfare. Therefore, the City Council finds that the general height restriction, the review of proposed buildings to exceed the general height restriction, and the regulatory provisions of this Article will protect, preserve and promote the orderly growth and development of the City of Boulder and the public health, safety and welfare by:

(1) Review of buildings that are proposed to exceed the general height restriction to ensure the safety and adequacy of the public facilities including streets, police and fire protection and water and sewer utilities serving the increased demands created by the proposed building;

(2) Providing that the structures provided for in subsections 37-1002 (a) and (b) will be in close proximity to facilities and services appropriate to the nature of the structure's occupancy and use;

(3) Providing by setbacks, floor area ratio, and open space requirements that adequate light and air will be ensured to surrounding properties and that the proposed building will not interfere with views, light and air of the community at large;

(4) Encouraging the utilization of land area for pedestrian oriented occupants and users (i.e., elderly persons) without overcrowding the land;

(5) Promoting the development of land and property in conformity with the City's comprehensive and long-range planning;

(6) Protecting and maintaining the integrity and character of surrounding neighborhoods;

(7) Protecting the aesthetic setting of the City of Boulder;

(8) Conserving and enhancing property values;

(9) Providing for property development that is compatible with the community.

**Section 37-1002. General Height Restriction.**

(a) Within all zoning districts of the City, the height of a principal building on a lot shall not exceed 35 feet.

(b) As an exception to the building height restriction specified in (a) above, application for a special review may be made to the City of Boulder to exceed that height in the following areas:

(1) Within that area bounded by 11th Street on the west, 16th Street on the east, Pine Street on the north, Boulder Creek and Boulder White Rock Ditch on the south; and in that area bounded by Pearl Street on the north, Poison on the west, Arapahoe Avenue on the south, and 33rd Street on the east, the maximum allowable height shall be as follows:

(i) 21 feet for the first floor of the building;

(ii) 100 feet for all habitable portions of said building above the first floor; and

(iii) 16 feet for ventilators and mechanical appurtenances provided said appurtenances shall not cover more than 25% of the total roof area, and 16 feet for spires, bellies, chimneys, domes, skylights, antennas and flagpoles.

(2) In all other areas within the City zoned for uses other than Single Family Residential, the maximum allowable height of the building shall be 35 feet and, in addition thereto, 16 feet for ventilators, and mechanical appurtenances provided said appurtenances shall not cover more than 25% of the total roof area, and 16 feet for spires.

(c) The maximum heights for buildings or portions of buildings as specified in subsections (b)(1) and (2) shall be absolute heights, and no variances or exceptions shall be granted from said maximum heights, except as may be specifically provided.

(d) The height limitations of this

Article for all buildings exceeding the general height restriction may be varied by the Planning Board upon review as provided in Section 37-1005 for spires, bellies, chimneys, domes, skylights, antennas or flagpoles.

**Section 37-1003. Building Height Defined.**

(a) "Building Height," for purposes of this ordinance, shall be the greater of the vertical distances on any side of a structure measured from the finished grade as defined herein to the uppermost portion of the building being measured.

(b) "Finished Grade" shall be the lowest point within 25 feet of the tallest side of the structure.

**Section 37-1004. Usable Open Space, Parking, Setback, Bulk and Floor Area Ratio Requirements.**

When an application is made for a building to exceed the general height restrictions as provided for herein, said proposed building shall comply with the following requirements:

(a) Usable Open Space. (1) "Usable Open Space," for the purpose of this section, shall be that land which is to be used for landscaping, pedestrian ways, plazas or screening and is directly oriented to the major pedestrian entrance or entrances to the building, and further, is open to view by the public and accrues to the benefit of the public as well as the occupants and users of the building. "Usable Open Space" as defined herein shall not include public or private streets, rights-of-way, roofs or balconies, open parking areas, parking garages, driveways, accessory buildings or similar uses.

(2) No application for a proposed building to be used for residential or mixed residential purposes shall be approved if the usable open space provided in said proposal does not comply with the open space requirements required in the applicable land use regulations of the City.

All other proposals shall provide for the following usable open space:

Building Height	Minimum Usable Open Space (percentage of the lot as defined in Section 37-108(f))
Up to 25'	None
Up to 35'	10%
Up to 55'	15%
Up to 75'	20%
Up to 100'	25%
Up to 125'	30%
Up to 140'	35%

**(b) Minimum Off-Street Parking Spaces.**

The minimum off-street parking spaces shall be provided as required by the applicable land use regulations of the City to be determined by building use and the zoning district in which said building is or will be located. The Planning Department may waive or alter the parking requirements of said buildings located in a public parking district and said district will fulfill all or part of the needs of the proposed building.

**(c) Setbacks and Building Setbacks**

Total Building Height	Street(4)			
	Front Yard	Rear Yard	Side Yard	Side Yard
Up to 35'	(3)	Service area or 10'	(3)	(3)
Up to 55'	10'	(1)	(2)	10'
Up to 75'	15'	(2)	(2)	15'
Up to 100'	20'	(2)	(2)	20'
Up to 125'	25'	(2)	(2)	25'
Up to 140'	35'	(2)	(2)	35'

(1) 15' if adjacent to alley, or 25'.

(2) One-half the total height of the building, or if adjacent lots are under the same ownership, or if no rear or side yard exists, then adjacent buildings over 35' will be separated by a distance equal to an average of their combined height.

(3) Any building built within the general height restriction of 35' for which no application for review is required shall comply with the setbacks required in the applicable land use regulations of the City.

(4) The Front Yard and Street Side Yard setbacks provided herein shall be in addition to any Front Yard and Street Side Yard setbacks required by the applicable land use regulations.

**(d) Bulk Standards.**

Total Building Height	Maximum Horizontal Dimension
Up to 35'	None
35' to 55'	By special review
55' to 75'	100'
75' to 100'	100'
100' to 140'	140'

**(c) Floor Area Ratio.**

(1) All business and commercial uses in the areas provided in Section 37-1002 (b)(1) - (3);

(2) In all other business or commercial districts - 2:1; and

(3) In all other zoning districts and for all residential uses or mixed residential uses as may be provided for in the applicable land use regulations.

**Section 37-1005. Variances.**

The Planning Board may vary the application of any of the requirements of this ordinance except the maximum building heights and the floor area ratio; provided, however, that such action by the Board shall not vary the terms hereof more than ten percent (10%) of any minimum or maximum requirement established by this ordinance.

**Section 37-1006. General Procedure.**

An application for an exception to the general height restrictions may be granted in the above-specified districts upon approval of the Planning Board under the procedures as hereinafter set forth. The application shall be reviewed on the basis of the policies and purposes set forth in Section 37-1001 of this ordinance along with other considerations set forth hereinafter.

(a) An application requesting approval of a building above the height restrictions shall be submitted in writing on a form provided by the City and shall be accompanied by a site plan drawn to a scale of not less than 1" = 100'. Information given on the form and the site plan will be in sufficient detail to enable the Planning Department and Planning Board to fully evaluate the application.

(1) The applicant shall furnish the names, addresses and telephone numbers of all owners of the property within 300 feet of the subject property.

(2) The owner(s) of each separately owned property within 300 feet of the subject property shall be given notice by regular mail that an application has been filed for a building to exceed the general height restrictions; that he may review the application during regular working hours and submit his recommendations to the Planning Department; the date of any public hearing thereon; and that any interested person may appear and be heard at said public hearing. Such notice shall be mailed at least fifteen (15) days prior to the public hearing.

(3) A notice reciting Height Exception Applied For, including the time and date of any public hearing with a brief summary of the application including the proposed height of the building, location and use, shall be given by publishing one notice thereof in a newspaper of general circulation in the City of Boulder, such publication to be made at least ten (10) days prior to the public hearing.

(4) A notice reciting Height Exception Applied For, and directing further inquiry to the City Planning Department shall be posted at least ten (10) days prior to the hearing on the property that is the subject of the height exception application.

(b) The Planning Board shall review all applications for a proposed building exceeding the general height restrictions and upon approval of said application may prescribe any reasonable conditions or requirements that it deems necessary for the public interest and to promote compatibility of the proposed building with the immediate neighborhood and to protect adjacent property from any adverse effects.

**Section 37-1007. Standards.**

The review of any application for a building to exceed the minimum height restrictions shall include the following considerations:

(a) Its geographical position and possible visual effects on existing structures or established districts;

(b) Potential problems on neighboring sites caused by shadows, loss of air circulation, or closing of the view;

(c) The influence on the general vicinity, including contrast with existing buildings and structures, streets, and traffic circulation conditions, and adjacent open space;

(d) Appropriateness of the uses within the building;

(e) Landscaping and physical separators that may be proposed to buffer the site from adjacent uses;

(f) The relationship of the building to open space, location of parking, pedestrian movement, circulation and buildings on adjacent properties;

(g) The proximity and adequacy of all public facilities, including vehicular and pedestrian traffic carriers, parking, water and sewer utilities, fire protection, and other safety protection measures.

**Section 37-1008.**

For any application to exceed the general height restrictions, the requirements of this Article shall apply.

All sections, or parts of sections of the Revised Code of the City of Boulder, 1985, as amended, or ordinances, or parts of ordinances in conflict or inconsistent herewith, are not hereby repealed unless otherwise specified, provided, however, for all applications to exceed the general height restrictions in accordance with this Article, the requirements of this Article shall control; provided, any existing approval of a building that does not or will not comply with the provisions of this Article shall not be affected nor abrogated by the adoption of this ordinance.

**Section 3, Section 37-324, "Height"** of the Revised Code of the City of Boulder, 1985, as amended, is hereby repealed and re-enacted to read as follows:

**Section 37-324. Heights Used in Determining Setbacks.**

For the purpose of determining side yard setback requirements in districts where such setbacks are based upon building height, the average height of each face of a building (the distance from average finished grade level to the highest point of the highest ceiling line) shall determine the setback.

**Section 4.** If any part or parts hereof is for any reason held to be invalid, such shall not affect the remaining portions of this ordinance.

**Section 5.** The City Council finds that this ordinance is necessary to protect the public health and welfare. The unregulated placement and creation of high-rise buildings are of substantial public interest, creating problems of adequate light and air to surrounding neighborhoods, possible overburdening of public facilities and traffic facilities, creating fire protection problems, creating problems of aesthetics and generally imposing on the community's public health, safety and welfare problems.

Therefore, this ordinance should be adopted to take effect in accordance with the provisions of the Charter of the City of Boulder, Colorado.

**INTRODUCED, READ, AND ORDERED PUBLISHED** this 20th day of July, A.D. 1971.

JOHN C. BUECHNER  
Acting Mayor

Attest:  
STEPHEN F. DICKSON  
Director of Finance and Record  
Ex-officio City Clerk  
Pub. July 22, 1971, in the  
Boulder Daily Camera.

*Adopted 8 3 7 1*

# **ATTACHMENT AA**

## Building Height Limit Defended <sup>1971</sup>

In its zeal for high-rise, the Camera is certainly breaking new ground in political science. Its editorial seems to argue that because the proposed 55-foot height limitation was not sponsored by "professionals", then if it does not work out well there will be no one to hold "responsible." If the argument is accepted, it means the people must always accept meekly whatever the professionals say is good for them. A premise of democracy used to be that the citizens were capable of doing their own thinking, and of taking responsibility for the consequences. Some of us still accept the premise.

The Camera goes equally far astray in its venture into city planning. The gist of its argument is in the epithet, "Chinese wall," which apparently refers to a combination of low buildings and high ground coverage. Epithets aside, why is that bad? You will notice that the most agreeable downtown areas in this region, such as Larimer Square in Denver, downtown Santa Fe, downtown Aspen, and much of our own Pearl Street, have precisely that combination.

Chinese wall, my foot!

It is no accident that the vital

downtown areas have low buildings and high ground coverage. A lively downtown is not made by placing well sculptured skyscrapers in a setting of greensward and parking lots. It is made by having pedestrian areas — sidewalks — that run along side of interesting human activities: stores, repair places, entertainment spots, restaurants, etc. These activities must be concentrated at ground level, where passers-by can see and see and enjoy them; they must not be unduly separated by gaps that have no interest for pedestrians. An occasional plaza, as in Santa Fe, is fine, but if there were much more the town would lack the excitement that comes from having lots of people going about their business in a relatively small area.

You don't have to be an architect or hold some fancy degree to notice what it takes to make a lively downtown. All you have to do is look around.

By voting YES on height control, Boulder citizens can save their mountain backdrop and the city's core.

STEPHEN F. WILLIAMS

1001 10th St.

## Great 55-Foot Misunderstanding

10/30/71  
It is unfortunate that Ruth Wright in her Colorado Daily article Oct. 26 has to resort to such pure emotionalism regarding the 55-foot high rise limitation amendment. It is true that many businessmen, environmentalists, and architects and planners, and educators and other citizens have contributed to defeat what many of us consider one of the most serious threats to our Boulder environment that has come before us as voters. It's not that any of us likes spending money on ads, but that this proposal is too serious to ignore.

Only if all of these criteria are met can a proposal be approved. This gives the Planning Board and City Council the legal strength to deny any poor proposals.

Now in terms of the potential number in downtown or Crossroads, that will be governed by the economics and market demand, which will not change by the permitting of high rise. And the density allowed by the Zoning Ordinance does not change either. It's a simple matter of what shape that density takes. If the 55-foot Amendment goes through, it would effectively cut in half the potential density allowed, because it would take up 2 to 3 times as much ground area to satisfy the same amount of building area. That means we use more land (necessitating sprawl) but get less open space, less parking area, less land to percolate water back into the soil and less space between buildings to see the mountains. Occasional high rise as counter points to low rise add to variety of the townscape. Many European cities, including almost all the new towns in the world, use high rise (cathedrals and campaniles in times past) to create focal points, open up space for plazas or create views as a positive urban design tool.

Human scale is not a direct function of low rise buildings, but rather a function of the interrelationships and the kinds of spaces created in and between buildings.

And to suggest that man should design his whole urban environment around 50-foot hydraulic elevators vs. electric and around the height of the presently available "cherry picker" fire truck in town is, to say the least, rather narrow minded.

So there are many environmentalists (including many in Plan-Boulder), businessmen, architects, planners, teachers, kids and other citizens of Boulder who also want to control and create the most outstanding environment of man in the world right here in Boulder. But we can't accomplish this by ignoring the problem. Please help save Boulder by being informed. Vote NO on the 55-foot Amendment.

CARLA A. WORTHINGTON

Architect  
Planner

Landscape Architect

1309 Spruce

1. They can only be located in the two designated areas: 11th-16th Streets, Pine-Whiterock ditch or Folsom-33rd, Arapahoe-Pearl.  
2. The buildings if over 55 feet can be no wider than 100 feet — that means no slab buildings.  
3. There is a sliding scale for required open space — 10 percent - 35 percent for landscaped plaza or park-dedicated for pedestrian use.  
4. There are required setbacks for buildings of 10 - 25 feet.  
5. There is a minimum spacing of towers equal to the average of the two buildings' height.  
6. The total site plan layout and design must be well done with regard to shadows, reflected light, disruption to views.  
7. Building height is limited to: 24 feet first floor; 100 feet remaining floors; 16 feet penthouse.

**ATTACHMENT BB**

**S**<sub>AVE</sub> **O**<sub>UR</sub> **S**<sub>CENE</sub>



**HEIGHT CONTROL**

**YES # 5**

VOTE

ON

PLAN - Boulder Height Control Committee - Ruth Wright, chm.

**ATTACHMENT CC**



be authorized to issue its negotiable bonds or notes, in an approximate amount of \$1,000,000, for the purpose of financing and furnishing a public building necessary incidental and appurtenant to the City's public works, and that the City's excess taxes pertaining to the full faith and credit of the

**LIBRARY BONDS**

9 FOR 9 AGAINST



City, shall bear interest at a net effective interest rate not exceeding five and three-quarters per centum (5 3/4%) per annum, and mature serially within a period of twenty years from their date of respective dates, to be issued and sold in such amounts, terms, and conditions, and including at its option, and provisions for the redemption of bonds prior to maturity with or without the payment of a premium not exceeding three per centum (3%) of the principal amount of each bond so redeemed?

12 FOR 12 AGAINST



**CHARTER AMENDMENT TO SECTION 97 (GREENBELT)**

An amendment to Section 97 of the Charter of the City of Boulder, as amended, by the addition of a new paragraph to such Section 97, to allow the City Council, without approval by vote of the qualified electors of the City, to create and incur indebtedness of the City and expend its moneys and revenues therefor, and to pledge its full faith and credit by charter provision or by

ordinance approved by vote of the qualified electors of the City to the proceeds of which said bonds are to be issued prior to the acquisition of property or interests therein, and to permit the City to issue bonds to be additionally secured by a pledge of the

19 FOR 19 AGAINST



A measure to amend the Charter of the City of Boulder by enactment of a new provision therein which shall read as follows: The City Administration and Council shall adopt regulations and policies to stabilize the ultimate population of the City of Boulder near one hundred thousand.

14 15 16 17 18 19 20 21 22 23

- 14A Horvey N. PLATTS
- 15A Robert A. PUDIM
- 16A Penfield W., II TATE
- 17A Howard E. VOGT
- 18A Thomas D. WAUGH
- 19A Katharine S. WELCH
- 20A Robert W. WHITE
- 21A David H. WILLIAMS
- 22A Roland R. WOELFEL
- 23A Kenneth R. WRIGHT

**ATTACHMENT DD**

miten geite.

# -pudim-

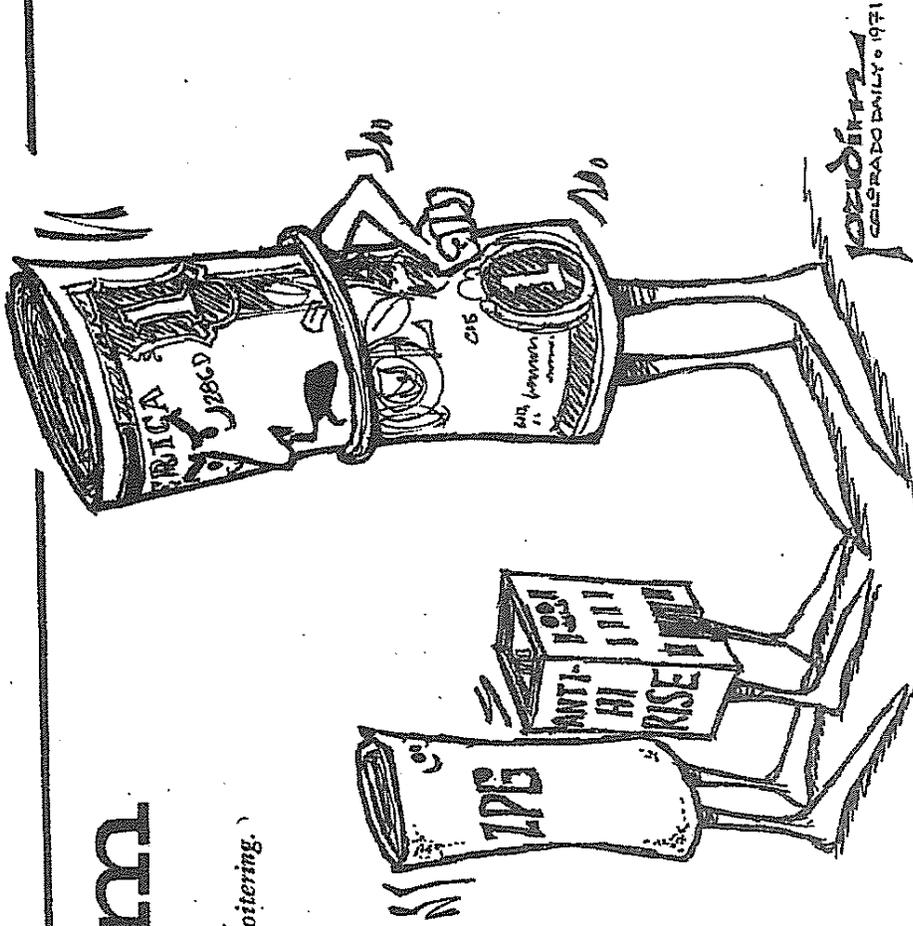
"Highrise In The Canyon? He Did It."



**PUDIM**  
COLORADO DAILY (1971)  
WITH APOLOGIES TO  
THOMAS NAZET  
N.Y. TIMES 15 DEC. 1978

# Widdim

Move On.  
You're Loitering.



**ATTACHMENT EE**

# Youth Vote Key In Building Height Amendment OK

By PHIL GRUIS  
Daily Camera Staff

Boulder voters said "no" to high rise buildings in the city Tuesday, but with a voice that was far from unanimous.

In the most closely contested of six ballot measures, voters approved a charter amendment limiting building height to 55 feet. The final count was 11,577 for the amendment, and 10,273 opposed — a margin of 1,340.

Something less than surprising was voter approval of the recreation, library and greenbelt bonding issues on the ballot. All passed by approximately 3-1 margins, with the greenbelt issue drawing the most support, and the library bonding the least.

## Youth Vote Crucial

Ruth Wright, who headed the PLAN-Boulder County petition to drive to place the controversial height amendment on the ballot, cited the youth vote as crucial to the measure's success at the polls. Early returns Tuesday night went in opposition to the amendment, but later returns from precincts with higher percentages of young voters put the measure

clearly over the top.

Mrs. Wright explained the youth support by stating, "Young people are very environmentally concerned — and this was an environmental issue."

Leo C. Riethmayer, chairman of A Bolder Coalition — a group which launched an extensive advertising campaign against the height amendment and the proposal to limit the city's population to 100,000 — acknowledged "the youth vote probably had a great deal to do with" the height amendment's success. But he offered no opinion as to why young voters favored the measure.

The present city height ordinance, which has only been in effect for two months, allows construction of buildings up to 140 feet in height, through the granting of variances, in only the downtown and Crossroads Shopping Center areas. It was this provision of the present law which proponents of the charter amendment attacked, and overcame.

On the impact of the amendment, Riethmayer said, "I really don't know. We'll just

have to wait and see."

## Reverse Impact

Mrs. Wright said she had expected the amendment to pass by a larger margin. But she said she felt the advertising "onslaught" by A Bolder Coalition — which she said was comprised of "vested commercial interests" — narrowed the margin. Some thought the efforts had a reverse impact.

She also complained that the high rise amendment was difficult to locate on the ballot because it had no bold face heading, as did the other five

measures. Also, she said the six issues were not numbered on the ballot, although the city and others generally referred to the issues by numbers.

University of Colorado student body president Gary Svoboda said he believes "a lot of young voters were very put off by the high-expense campaign" launched by A Bolder Coalition. Svoboda served on the executive committee of the group, although he said he disagreed with the extensive advertising campaign.

Svoboda said he knew of some

young people who opposed both the height and population limit amendments, but switched their votes because of A Bolder Coalition's efforts. "Young people aren't very impressed by hard-sell advertising campaigns," he said.

#### Probably Disband

Riethmayer said A Bolder Coalition was "concerned with this particular election," and would probably now disband. He said he didn't know how much money the group had spent on advertising in its one-month existence.

Riethmayer said he objected to the height amendment partly because it deprived the city of flexibility in governing building heights and because he thought it best not to put "all kinds of detail in the city charter."

Mrs. Wright noted that the amendment could be modified or nullified by another amendment. She said that if A Bolder Coalition "wants to go the

petition route, they can go right ahead."

San Francisco voters Tuesday rejected a proposed six-story limit on construction of new buildings, by a 2 to 1 margin. The San Francisco campaign was a bitter one, with conservationists pitted against the Chamber of Commerce, real estate interests, banks, major corporations, labor unions and city officials, headed by Mayor Joseph Alioto, who was re-elected.

In August, Laguna Beach, Calif., voted 3 to 1 in favor of a charter amendment limiting building heights to 36 feet.

#### Greenbelt Popular

The city's greenbelt land acquisition program proved almost as popular as motherhood Tuesday, with 17,743 voting in favor of allowing the city to issue bonds, within limits, to take advantage of favorable market conditions to accelerate land purchases.

5,005 votes were cast against the measure, but it carried by more than 3½ to 1.

Assistant City Manager Larry Blick called the vote "a tremendous shot in the arm for the greenbelt program. I will be contacting HUD (U. S. Department of Housing and Urban Development) this week to see if there is any possibility of getting a significant amount of aid...since we now have the bonding authority to provide matching funds."

Blick said the strong show of support for the ballot measure "demonstrates that people are committed to the greenbelt program...they're very proud of it." He pointed out that Boulder is "unique," in that it is "the only city in the United States with a program of this kind."

Voters approved a \$600,000 bond issue for expansion of the main city library by a vote of 2½ to 1, with 16,158 in favor of the measure and 6,627 opposed.

#### Clears Way

Approval clears the way for construction of a two-story addition across Boulder Creek from the main structure, and connected by an enclosed bridge. Parts of the existing building will also be modified.

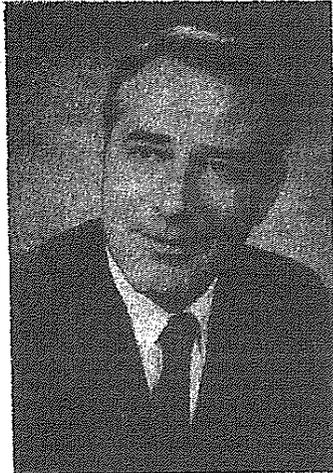
Marcelee Gralapp, library director, said today she is "very pleased that the community has evidently felt that they want to see the library move ahead." She said those who use the library facilities are "well aware" of the need for additional "people-space." Miss Gralapp said she expects the city "will start interviewing architects fairly quickly" to get the expansion project underway.

Also approved Tuesday, by a margin of nearly 3 to 1, was a bonding issue enabling construction of two community centers new or upgraded tennis courts and hall fields. Cost of the work will be \$1.6 million.

**ATTACHMENT FF**



**ATTACHMENT GG**



**Re-elect**

**John  
BUECHNER**  
**City Councilman**

**ON RECORD FOR:**

- 55-Foot Building Height Limitation
- Library and Recreation Proposals
- City's Growth Policies
- Street and Traffic Improvements

(Citizens to Re-Elect Buechner, Clayton "Swede" Johnson, Chairman) (Pol. Adv.)