

RESOLUTION 2006-72

A RESOLUTION APPROVING THE GUNBARREL RETAIL CORE PLAN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF BOULDER AND THE COUNTY OF BOULDER, AND, AS PART OF THAT AGREEMENT, ALSO APPROVING THE GUNBARREL COMMUNITY CENTER PLAN IMPLEMENTATION CHANGES TO THE LAND USE DESIGNATION MAPS OF THE BOULDER VALLEY COMPREHENSIVE PLAN (PART OF BOULDER COUNTY LAND USE DOCKET #BVCP-03-002: REQUEST FOR APPROVAL OF THE 2003-2004 BOULDER VALLEY COMPREHENSIVE PLAN ANNUAL REVIEW/UPDATE)

WHEREAS, the Board of County Commissioners ("the Board") of the County of Boulder ("the County"), and the City Council ("the Council") of the City of Boulder ("the City"), along with their respective appointed planning bodies (the County Planning Commission ("the Planning Commission") and the City Planning Board ("the Planning Board"), have adopted a joint Boulder Valley Comprehensive Plan ("the BVCP") governing land use planning, services provision, and related issues and concerns within the area defined as the Boulder Valley, including the City and the unincorporated territory around the City in which the City and the County share a planning interest; and

WHEREAS, the BVCP allows for amendment of its text and accompanying maps from time to time, as further provided in the BVCP; and

WHEREAS, the Board and the City Council (jointly, "the Parties") are authorized to enter into intergovernmental agreements to plan for and regulate land uses pursuant to C.R.S. §§ 29-20-101, et seq.; and

WHEREAS, as part of this authority, the Parties propose to enter into an intergovernmental agreement governing a plan for the Gunbarrel Area Retail Core ("the Proposed IGA"), affecting an area which is generally bounded on the north by Lookout Road, on the east and south by Gun Park Drive, and on the west by the Spine Road corridor, as further shown on Exhibit A to the Proposed IGA; and

WHEREAS, the Proposed IGA provides that buildings located or developed along Spine Road in the designated area as shown on Exhibit A to the Proposed IGA shall not exceed 3 stories in height except through amendment to the IGA; and

WHEREAS, the Proposed IGA further provides that buildings in the area of the Retail Core located east of the Spine Road properties, which include fourth-story elements exceeding 25% of any building's footprint, are subject to review and determination by the County and review and approval by the City, as further set forth in the Proposed IGA; and

WHEREAS, the Proposed IGA further provides for the Board's approval of the BVCP land use map designation changes to implement the Gunbarrel Community Center Plan, which are shown on Exhibit B to the Proposed IGA, which have been approved by the City Council and the Planning Board, and which were submitted to but not acted upon by the Board as part of the 2003-2004 Annual Update to the BVCP (Docket #BVCP-03-002, BVCP Land Use Designation Changes Item #7: see Board Resolution 2004-129); and

WHEREAS, the City Council held a public hearing on and approved the Proposed IGA on May 16, 2006; and

WHEREAS, on May 18, 2006, the Board held a duly noticed public hearing on the Proposed IGA ("the Public Hearing"), at which time the Board considered the testimony and documents presented by the County Attorney, the City's Planning Director, and two members of the public; and

WHEREAS, based on the Public Hearing, the Board determines that it is appropriate and in conformity with the goals, policies, and applicable provisions of the BVCP to approve the Proposed IGA.

NOW, THEREFORE, BE IT RESOLVED that the Board approves the Proposed IGA ("Gunbarrel Retail Core Plan Intergovernmental Agreement"), in the form attached hereto as Attachment A, including the Proposed IGA with its attached Exhibits A and B.

A motion to approve the Proposed IGA was made by Commissioner Toor, seconded by Commissioner Mayer, and passed by a 3-0 vote of the Board.

ADOPTED this 30th day of May, 2006, nunc pro tunc  
the 18th day of May, 2006.

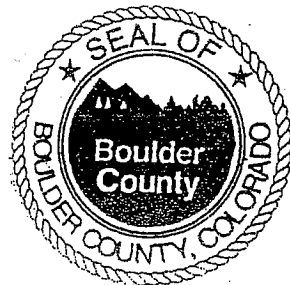
BOARD OF COUNTY COMMISSIONERS  
OF BOULDER COUNTY:




Ben Pearlman, Chair

(EXCUSED)

Thomas A. Mayer, Vice Chair



ATTEST:

  
Clerk to the Board

  
Will Toor, Commissioner

MAY 17 2006

REC'D BY \_\_\_\_\_  
TIME \_\_\_\_\_

ATTACHMENT A (RESOLUTION 2006-72)  
**GUNBARREL RETAIL CORE PLAN  
INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement by and between the City of Boulder, a Colorado home rule city ("the City"), and the County of Boulder, a body politic and corporate of the State of Colorado ("the County"); (the collective signatories to be known as the "Parties") is made to be effective on the 18<sup>th</sup> day of MAY, 2006.

WITNESSETH:

WHEREAS, Section 29-20-101 *et seq.*, C.R.S. as amended, enables the Parties to enter into Intergovernmental Agreements to plan for and regulate land uses to minimize the negative impacts of development on the surrounding areas and protect the environment, and specifically authorizes local governments to cooperate and contract with each other for the purpose of planning and regulating the development of land by means of a "comprehensive development plan"; and

WHEREAS, the Parties have previously entered into various comprehensive development plans by Intergovernmental Agreements, including the Boulder Valley Comprehensive Plan, as amended ("BVCP"); and

WHEREAS, the Gunbarrel area of the City and the County is an area of particular shared interest, given the juxtaposition between areas that are under land use authority of the City and the land use authority of the County; and

WHEREAS, Gunbarrel is of shared interest to the City and the County as it is designated as a planning subcommunity in the BVCP and recognized as a portion of the Boulder Valley Community Service Area in the Boulder County Comprehensive Plan ("BCCP"); and

WHEREAS, the City adopted "Gunbarrel Community Center Plan" (the "Gunbarrel Plan"), on April 1, 2004 which covers the land generally bounded on the north and west by State Highway 119, on the east by the Boulder Supply Canal, on the south by a line that is generally south of properties that have street frontage on Gun Park Drive; and

WHEREAS, included in the Gunbarrel plan is the "Retail Core" which is generally bounded on the north by Lookout Road, on the east and south by Gun Park Drive, and on the west by the Spine Road corridor, as shown on Exhibit A, (the "Retail Core") attached and incorporated by this reference; and

WHEREAS, in connection with the 2005 update to the BVCP, the Parties believe that a comprehensive development plan (the "Plan") which recognizes the unique issues that exist in the Gunbarrel area given the proximity of the annexed areas, made up largely of commercial and higher density residential development, and the unincorporated areas, developed as suburban residential neighborhoods, and provides a method by which the

needs and desires of the property owners and residents in the entire Gunbarrel area can be heard and considered by the City and the County in connection with land development decisions would be beneficial; and

WHEREAS, the residents of Gunbarrel and the City of Boulder desire to have a Gunbarrel Town Center developed; and

WHEREAS, creating denser commercial land uses with structures of greater height and bulk as permitted in the Gunbarrel Plan has caused significant concerns amongst residents of the Gunbarrel area, and the Parties intend this Agreement and Plan to provide a process and decision-making method concerning new development which will respond to these concerns and result in a pattern of compatible land uses and development; and

WHEREAS, chief among the concerns about future development of the Gunbarrel area is the potential for tall structures in the Gunbarrel Town Center and other portions of the Retail Core portion of the Gunbarrel Plan. The limitations upon structures higher than three stories and the criteria and decision making process in this Plan are intended to permit flexibility in the development of the Retail Core while ensuring that overly intensive development does not occur, protecting the character of the area and the mountain views and open space values in the area; and

WHEREAS, one of the recommendations of the Gunbarrel Community Center Plan was to make appropriate changes the Comprehensive Plan land use map designations to allow the rezoning of properties and therefore plan implementation; and

WHEREAS, the City completed the processing of these land use map designations, however, the County has not taken action on the land use map changes in other parts of the subcommunity given its concern over the height of buildings in the retail core; and

WHEREAS, the Parties desire to enter into this Intergovernmental Agreement to plan for and regulate the use of the lands within the Plan Area through joint adoption of this mutually binding and enforceable Comprehensive Development Plan; and

WHEREAS, this Agreement is intended to promote planned, orderly, and compatible development in the Plan area; and to promote the economic viability of the Parties; and

WHEREAS, the functions described in this Agreement are lawfully authorized to each of the Parties that perform such functions, as provided in article 20 of title 29; part 1 of article 28 of title 30; and parts 2 and 3 of article 23 of title 31, C.R.S., as amended; and

WHEREAS, Section 29-1-201, *et seq.*, C.R.S., as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties and the people of the State of Colorado have encouraged such

cooperation and contracting through the adoption of Colorado Constitution, Article XIV, 18(2); and

WHEREAS, the Parties have each held hearings after proper public notice for the consideration of entering into this Agreement and the adoption of a Comprehensive Development Plan for the subject lands( the "Plan Area"), as shown on the Exhibit A.

NOW THEREFORE, in consideration of the above and the mutual covenants and commitments made, the Parties agree as follows:

### GUNBARREL RETAIL CORE PLAN

1. Adoption and Purposes. This Agreement, including Exhibit A, is adopted by the Parties as the Gunbarrel Retail Core Comprehensive Development Plan (the "Plan") governing the Plan Area.
2. Relationship to Other Plans. Except as expressly provided in this Agreement, other comprehensive plans applicable to the subject properties shall continue to apply to the extent they do not conflict with this Plan; to the extent of conflict, this Plan shall govern.
3. B.V.C.P. Land Use Map Changes. County agrees to approve, concurrent with approval of this Agreement and Plan, the pending land use map changes for the Gunbarrel Plan area that are shown on Exhibit B.
4. City Approval. All development in the Retail Core consistent with building height limits in the adopted Gunbarrel Plan as it currently exists will be subject to City approval only and do not require joint review pursuant to paragraph 6, except that, notwithstanding subsequent changes in the Gunbarrel Plan, buildings located or developed along Spine Road in the designated area as shown on Exhibit A shall not be permitted to exceed 3 stories in height, unless this IGA is amended by agreement of the Parties.
5. City & County Joint Review. The Gunbarrel Plan permits development of some buildings with some fourth story elements, on the property shown on Exhibit A as the area east of the Spine Road properties. Development plans for this area that include fourth story elements that exceed 25% in area of any building's footprint (for the purposes of this Agreement, referred to as "3.25 stories") will be subject to review and determination by the county and review and approval by the City.
6. Approval Process. All development in the Retail Core that exceeds 3.25 stories will be approved pursuant to City development regulations, with separate findings adopted by the City and County as described below.
  - a. Application. When an application is made, copies will be provided to both the City and the County.

b. Application Review. After receipt of an application, the City will commence its review process. County staff will concurrently review the proposal and provide any comments that it may have to the City. The City will seek to get a decision on the application through its site review process.

- i. If an application is denied in the City's site review process, it will constitute a final action on the application.
- ii. If an application is approved in the City's site review process, the City Council and the County Commissioners will jointly review the application and make a joint determination on whether the application meets the standards and criteria in Paragraph 7 below. The joint determination may be made at a joint meeting or at separate meetings of the City Council and the County Commissioners.
- iii. If the County Commissioners determine that the standards of Paragraph 7 below cannot be met, except through the addition of conditions, the Commissioners shall supply the conditions to the City Council for its final approval together with the reasons why the application should be denied if such conditions are not imposed. The City Council will either add the conditions to the approval or allow the project to be denied based upon the action of the County Commissioners.
- iv. If the City Council and the County Commissioners jointly find that the application meets the criteria in Paragraph 7 below, then the City Council will approve the application. If either the City or the County finds that the application does not meet the standards and criteria in Paragraph 7 below, the application will be denied by the City Council.
- v. The City and the County will adopt findings approving or denying the application, based upon the standards and criteria described in Paragraph 7 below. This action will constitute the County's final action on the application. The City's final action for a denial will be made if it finds, during the joint determination process, that the application does not meet the standards and criteria in Paragraph 7 below. The City's final action for approval will be the City Council's final action on the Application, after the joint determination.

c. County Review. The County will process the application through its normal development review process, which will include:

- i. Staff review;
- ii. Planning Commission for a recommendation; and

iii. Board of County Commissioners for final action on the application.

7. Standards and Criteria. The County will apply and make findings upon whether the project meets the City's "Building Design, Livability, and Relationship to the Existing or Proposed Surrounding Area" criteria in §9-4-11, Boulder Revised Code, and make its findings based upon the same. City will retain the right to amend its development regulations in a manner consistent with this Agreement, using county referral process outlined in the B.V.C.P. However, conformity of a development plan to the Gunbarrel Plan as it exists on the date of this Agreement shall continue to be an applicable criterion in the joint review pursuant to paragraph 6 of all development plans in the Plan area.

8. Amendments to the Gunbarrel Plan. If there are any amendments to the Gunbarrel Plan, the City will refer amendment proposals to the County for its review and comment in a manner consistent with the referral process in the B.V.C.P. For the Gunbarrel Retail Core property, such amended provisions of the Gunbarrel Plan, if adopted, shall apply to required joint reviews only to the extent that the County has consented to any such amendments that increase the height of buildings beyond those heights provided for by this Agreement or the Plan.

9. Enforcement of the Agreement. As between the City and the County, the enforcement remedy is an action for specific performance or declaratory or injunctive relief in Boulder District Court. No other person or entity shall have any right to enforce the provisions of this Agreement or the Plan.

10. Amendments to this Plan. This Plan contains the entire agreement between the Parties, but is supplemental to the Underlying Plans. Any proposed amendment of this Plan must be referred to the Parties. Amendment of this Plan shall take place only upon approval by resolution or ordinance adopted by the governing body of each of the Parties, after notice and hearing as may be required by law.

11. Severability. If any portion of this Plan is held by a court in a final, non-appealable decision to be *per se* invalid or unenforceable as to either Party, the entire Agreement and the Plan shall be terminated, it being the understanding and intent of the Parties that every portion of the Agreement and Plan is essential to and not severable from the remainder.

12. No Third Party Beneficiaries. The Parties, in their corporate and representative governmental capacities, are the only entities intended to be the beneficiaries of the Agreement and the Plan, and no other person or entity is so intended or may bring any action, including a derivative action, to enforce the Agreement or the Plan.

13. Legal Defense of Decisions. If any person allegedly aggrieved by any provision of the Plan and who is not a Party to the Plan should sue either Party



concerning such Plan provision, the other Party shall be notified promptly by the Party served; the Party served shall, and any other Party may, defend such claim. Defense costs shall be paid by the Party providing such defense. Notwithstanding the foregoing, if the claim concerns any approval of a property development plan, or any denial of such plan as a result of City action, the City shall provide a defense of such action, and pay any resulting monetary judgment. If the claim concerns any denial of a property development plan as a result of the County's denial, the County shall provide a defense of such action, and pay any resulting monetary judgment.

14. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue shall lie in the County of Boulder.

15. Effective Date. This Agreement shall become effective when signed by an authorized representative of the governing bodies of Boulder County and the City of Boulder. Except as provided herein, this Agreement shall remain in effect for a period of fifteen (15) years from its initial effective date, unless terminated prior thereto by agreement of all the Parties or pursuant to the terms of section 10 above.

16. Party Representatives. Referrals made under the terms of this Agreement shall be sent to the Parties' representatives as follows:

ENTITY:

REPRESENTATIVES:

CITY OF BOULDER

City Manager with a copy  
to the Planning Director  
P.O. Box 791  
Boulder, CO 80306

BOULDER COUNTY

Director, Land Use Department  
P.O. Box 471  
Boulder, CO 80306

Name and address changes for representatives shall be made in writing, mailed to the other representatives at the then current address.

17. Affect of this Agreement. The parties agree that the joint review process in this Agreement shall not set a precedent for any future development projects outside the Gunbarrel Retail Core Comprehensive Development Plan Area.

THIS AGREEMENT made and entered into to be effective on the date as set forth above.

CITY OF BOULDER

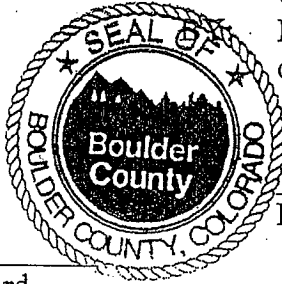
BY: Mark Ruzzin  
Mayor Mark Ruzzin

Approved as to Form:  
Ariel Calonne  
Ariel Calonne, City Attorney

Attest:

Alisa D. Lewis  
Alisa Lewis, City Clerk

COUNTY OF BOULDER  
Board of County Commissioners  
of Boulder County, Colorado



ATTEST:

Jana Petersen  
Jana Petersen, Clerk to the Board

Ben Pearlman  
Ben Pearlman, Chair

Tom Mayer  
Tom Mayer, Vice-chair

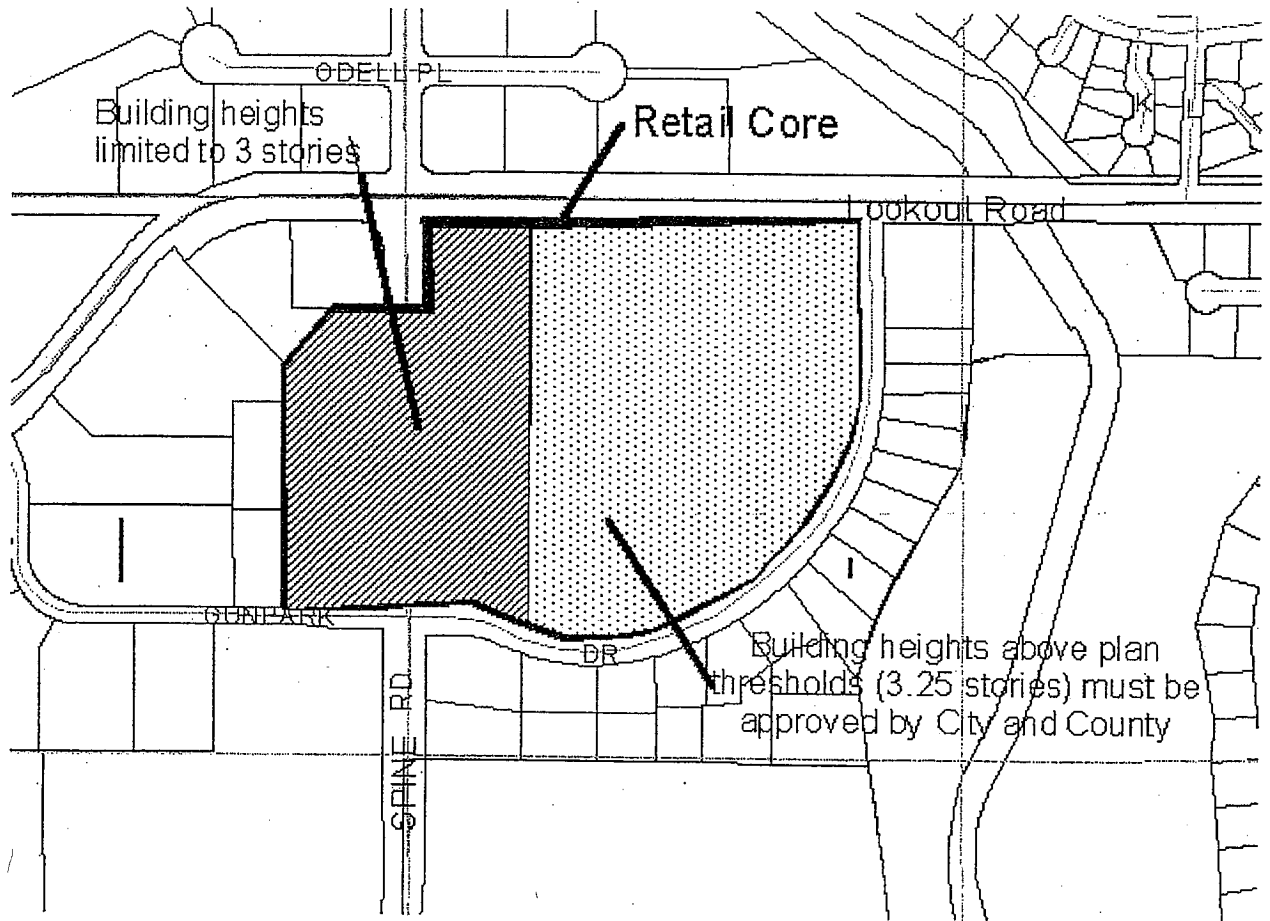
APPROVED AS TO FORM:

H. Lawrence Hoyt  
H. Lawrence Hoyt, County Attorney

Will Toor  
Will Toor, Commissioner

EXHIBIT A

GUNBARREL RETAIL CORE IGA



**EXHIBIT B**

LAND USE MAP CHANGES

Parcel No. 7      Description: Gunbarrel

	<u>Existing Land Use Designation</u>	<u>Proposed Land Use Designation</u>	<u>Existing Zoning</u>
a.	Performance Industrial	High Density Residential	IG-D
b.	Performance Industrial	Mixed Use Industrial	IG-D
c.	Performance Industrial	Community Business	IG-D
d.	Performance Industrial	Mixed Use Business	IG-D, CB-D
e.	Regional Business	Transitional Business	RB-D

