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City of Boulder Planning Board
Elaine McLaughlin, Senior Planner, City of Boulder Planning Department
Boulder City Council

Re: Land Use Review Application (LUR2020-00063)
4775, 4725 and 4649 Spine Road - Proposed 230 unit development on 9.9 acres
Gunbarrel Community Alliance Comment:
Celestial Seasonings PUD and annexation agreement

Dear Elaine, City Council and Planning Board:

This comment is submitted on behalf of the Gunbarrel Community Alliance (“GCA”).

I. Introduction

In the first week of June 2021, I obtained and reviewed for the first time documents related to the Celestial Seasons property annexation in Gunbarrel and related PUD documents. I appreciate staff providing these documents when GCA requested.

The documents include Gunbarrel and Celestial Seasonings annexation agreement, Planned Unit Development (PUD) and associated maps and staff memos.

These documents raise some important questions about conditions, limitations and expectations as to future land uses at the time of the annexation of what are now Celestial Seasonings parcels in the 1980s. To the best of my knowledge, these documents have not been previously considered or referenced in the context of the proposed development.

When the Planning Board considered the Shining Mountain Waldorf School’s (“SMWS”) site use review and development plan, staff and the Board considered and referenced consistency with the original annexation agreement including those lands on North Broadway, as well as the North Boulder Subcommunity Plan. The SMWS issues went to building heights, something about whether a third story was allowed. The Board’s conclusion was that the proposal it approved “substantially complied” with relevant documents and plans.

II. Excerpts and Initial Analysis or Questions

The Gunbarrel Celestial documents appear to raise some very interesting issues as to the Spine proposals lack of consistency on significant, material aspects of the annexation and PUD documents.

First, the total tract was just over 51 acres. That included

- 3.6 acres of “Estate Residential – Established in the southwest quarter
- 32 acres for Celestial Seasonings
- 9.741 acre “Scenic Area, page 10/21, easement described at pages 1-10 Addendum to Deed

- 2.85 acres for a scenic easement on the north side of the site, page 18/21

Second, the Annexation and Initial Zoning section of the 9/2/82 Staff Memo states: “ The request to designate approximately 3.6 acres of land in the southwest corner of the site as ER-E (Estate Residential-Established) represents a minor change to the BVCP.” 9/2/82 Planning Board Memo at page 2 (page 16/21 of the full PDF). This provides support for the contention that lower or medium density residential consistent with the neighborhood character at the time of annexation was anticipated for future residential development.

Third, PUD components included the following highlighted items:

B. Planned Unit Development

The site plan for the proposed Celestial Seasonings site has the following features:

- 1) two phases of building coverage for Celestial Seasonings, totaling 180,000 square feet;
- 2) a main entry for employees and visitors from Gunbarrel Avenue;
- 3) various playfields in the central area of the site;
- 4) two future industrial areas;
- 5) a three unit residential development at ER-E densities with an employee day care center;
- 6) service access and loading docks from Spine Road at the southern portion of the site;
- 7) parking for both phases north of the main offices with deferred parking, to be constructed should the need arise, on the playfields; and
- 8) a 150 foot open space buffer between the site boundary along the Longmont Diagonal and any other development, secured by a scenic easement.

Id.

The map depicts a softball field and a soccer field. No playing fields were built. The fields referred to in the PUD and mapped do not exist. The community never received the benefit of these fields or equivalent amenities.

This omission goes directly to GCA’s public amenities argument that annexed lands in Gunbarrel lack amenities prioritized by the BVCP and available to other City residents, neighborhoods and sub-communities. Celestial made commitments that it did not comply with.

The gardens, day care center, employee housing and possible other features from the PUD document were also not built. Some of these may have been community amenities.

Overall, material and significant amenity features were ignored, with the playing fields being perhaps the most significant omissions. This underlines and reinforces the need for Gunbarrel Subcommunity Planning being completed prior to any approvals currently sought by the developer.

Overall, Celestial was a good corporate citizen and neighbor. As the Board knows, it committed to permanent preservation of the 10 acres of grasslands habitat – a pledge that Hain chooses to ignore. Hain, the current owner, is an absentee billionaire corporation with no apparent interest in the community. It seems most interested in a maximum price for the land, which it might

obtain under a maximum development scenario. Good planning or a healthy, vibrant, welcoming, resilient community is not a priority for Hain or the developer.

Applying the annexation and PUD terms requires an equivalent acreage being dedicated to amenities as a condition of approval for allowing any new development on Hain Celestial lands. What uses are prioritized might be an open question in 2021, appropriate for subcommunity planning and a stakeholder dialogue.

The PUD commitments are equivalent to a subdivision dedication. A developer who reneged on such commitments would not expect to receive approval for more development until upholding its end of the bargain and covenants. The same is true today for Hain and the developer proposing the residential development that ignores substantive BVCP guidance and direction regarding high density residential projects.

Fourth, Policy Considerations from the Staff Memo provide:

IV. POLICY CONSIDERATIONS

A. Is the proposal consistent with the intent of the Boulder Valley Comprehensive Plan?

At the June 17th Planning Board meeting, a change from Area JIB to IIA was approved for this site with the condition that it be used predominantly by a single user. Planning Board further defined a predominant user to be a user of at least 35 acres. The Celestial Seasonings site is 32.15 acres. However, the 150 foot scenic easement associated with the future industrial site on the northern portion of the site is 2.85 acres. Together these equal 35 acres. Planning staff feels that although the scenic easement would be owned and maintained by the future industrial user, the result is the same as if it were owned by Celestial Seasonings. The Planning Board has the option of requiring that this 150 foot buffer be held in ownership by Celestial Seasonings.

The proposed initial zoning of I-D (Industrial-Developing) is consistent with the BVCP designation of Performance Industrial. The proposed initial zoning of ER-E (Estate Residential-Established), however, requires a minor change to the BVCP. It is staff 1s feeling that this proposed initial zoning is, in fact, a minor change and is merited, as expressed in the attached staff memo to the County planning staff. The County planning staff has concurred as seen in their letter, also attached. The proposed change to Very Low Density Residential land use is consistent with the adjoining Juhl Subdivision, also shown as Very Low Density Residential.

B. Is the proposal consistent with the standards established for the review of planned unit developments?

1. Are the uses permitted? An industrial use and its associated office are permitted by right in an I-D zone. Residential use is permitted by right in an ER-E zone. Day care centers are permitted by special review in an ER-E zone.

2. Is the proposal consistent with the Boulder Valley Comprehensive Plan? With a minor change to permit the creation of the ER-E zone, the proposal is consistent with the Boulder Valley Comprehensive Plan.

Id. at page 3 of Memo (17/21 of packet).

GCA asks that the Planning Board consider these questions, and the applicability of these provisions.

Fifth, the Staff Memo addresses lot requirements, common park area, parking, site planning, functional open space and an *active* recreation area (playing fields):

7. Site Planning.

a. Required buffer between high and low density residential.

Not applicable. [* * *]

d. Variety. The central recreation core provides an active area while the scenic easement is passive in nature.

e. Privacy. The proposed ER-E zone serves to buffer the existing houses in the Juhl subdivision from the industrial uses

Id. at page 4 of Memo (18/21 of packet).

More questions are raised. The importance of the of the central recreation core stands out.

Sixth, the staff recommendation refers to “very low density residential”:

V. RECCOMENDATION

Planning staff rec01T111ends that the Planning Board take the following actions:

A. Approve a minor change to the Boulder Valley Comprehensive Plan designating an area of the Celestial Seasonings site as very low density residential, finding that the six criteria for a minor change have been met.

B. Recommend to City Council approval of the proposed annexation #A-82-11, and initial zoning, #Z-82-11, finding that the property is eligible for annexation and that the initial zoning of 1-D and ER-E

is in compliance with the intent of the Boulder Valley Comprehensive Plan. Approval of this request 1s subject to the following conditions: [* * *]

Id. at page 5 of Memo (19/21 of packet).

The annexation and PUD documents again indicate the current proposed high density residential was not contemplated.

Seventh, the 1983 “Annexation Agreement” refers to a minor BVCP change regarding “Estate Residential – Established” zoning (Recital B, page 1; and paragraph 4, page 2) and to the PUD (Recital C, page 1).

Paragraph 2 of the Annexation Agreement provides that: “If the entire property is annexed and zoned as requested, all development of and construction of improvements on the Entire Property shall be done in accordance and conformity with the P.U.D. , as the P.U.D. may be amended or modified from time to time subject to the City’s consent.” Annexation Agreement at page 2.

Paragraph 8 provides: “If Applicants breach the covenant under paragraph 2 above, the City may withhold approval of any or all building permits applied for on the Entire Property until the breach or breaches has or have been cured.” Id. at page 8 (underlining added).

This raises serious questions. Playing fields or other active recreation facilities were not built as depicted in the PUD? Other material PUD commitments going to the larger public good and amenities may not have been meant.

GCA asks that the Board withhold approval of (deny) the proposed site plans and building permits until Celestial or successors in interest (Hain Celestial and the developer) comply with the PUD. Commitments going to land and amenities must be met.

III. Conclusion

The original commitments were not kept. Gunbarrel's quality of life suffered and continues to suffer as a result. We can't undo the past, but we can condition new development on meeting past commitments that were ignored. Playing fields were promised. Low- or medium-density residential appeared to be envisioned for lands not initially used by Celestial.

The SMWS review establishes that annexation and PUD documents – and subcommunity plans – are all relevant to site use review and development decisions. These documents have not been considered as part of the Site and Use Review processes for the Hain Celestial site in Gunbarrel. The BVCP Update commits to Gunbarrel Subcommunity Planning, which should be pursued and completed before granting development approvals, especially if requested by landowners/developers or for parcels that have not complied with the annexation and PUD conditions.

The Planning Board should deny the proposed development at this time pending the completion of the pending Gunbarrel Subcommunity Plan. Questions about the failure to deliver on active recreation acreage in the PUD raises important questions which must be resolved prior to any development approvals.

Please don't hesitate to contact me with any questions.

Very sincerely yours,

/s

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Attachments: 1983 Annexation Agreement
Planning Board Notice of Disposition (1986)
1982 Deed Addendum between Celestial and Boulder (PUD?)