

**From:** [Bista, Shabnam](#)  
**To:** [Laura Kaplan](#)  
**Cc:** [boulderplanningboard](#)  
**Subject:** RE: CALL UP ADDED: 05.26.2022 PB Packet is Ready  
**Date:** Wednesday, May 25, 2022 5:52:20 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Good Afternoon Laura,

Thank you for the questions.

Please see below a response to your questions regarding the call-up for Raising Canes.

1. There were a few changes made that address the Community Cycle's comment letter. As you pointed out, the applicant proposed additional bicycle parking on the site. The multi-use path is now 10 feet across the driveway, addressing point number 2. The MUP is also part of the city's 28<sup>th</sup> Street Improvement Project; therefore Pedestrians can access the site closest the north property line and enter the site to cross at the proposed crosswalk, into the restaurant. In terms of the comment regarding the driveway access width (#7), 28th Street is a state highway facility as US-36. The width of the access point (curb-cut) serving the site from US-36 (28<sup>th</sup> Street) is consistent with the design standard for access width contained in the State Highway Access Code. The CDOT standard for access width is between 25' and 40'. Staff received CDOT's concurrence for the 24' wide access width. Lastly, any sign on the property will not be approved through the use review. The conditions of the approval state that signs will need to be reviewed and approved through a separate sign permit process.
2. The DCS goal to "decrease the potential for and/or severity of conflicts between all users (motorists, bicyclists and pedestrians) by ... increasing visibility between modes at intersections" is part of the goals for the DCS update and not an actual item in the DCS at this time.

Thank you,  
Shabnam Bista

**Shabnam Bista**  
**City Senior Planner**  
(pronouns: she/her/hers)



**City of Boulder**  
**Planning**

O: (303) 441-1896  
[bistas@bouldercolorado.gov](mailto:bistas@bouldercolorado.gov)

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1739 Broadway | PO Box 791 | Boulder, CO 80306  
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**From:** Laura Kaplan <laura.j.kaplan@gmail.com>  
**Sent:** Wednesday, May 25, 2022 2:26 PM  
**To:** Bista, Shabnam <BistaS@bouldercolorado.gov>  
**Cc:** boulderplanningboard <boulderplanningboard@bouldercolorado.gov>; Walbert, Sloane <WalbertS@bouldercolorado.gov>; Stafford, Edward <StaffordE@bouldercolorado.gov>; Spence, Cindy <SpenceC@bouldercolorado.gov>  
**Subject:** Re: CALL UP ADDED: 05.26.2022 PB Packet is Ready

**External Sender**

Hi Shabnam! Thank you and your colleagues for the packet on the Raising Caine's project. I have a couple of questions that may be pertinent to the decision of whether to call this up for Planning Board review. Please feel free to answer them via email or address them at Thursday's meeting. If it is not appropriate to ask this level of question prior to a call-up, please let me know! I'm still learning the ropes.

1. It looks like some changes were made to the project after the receipt of Community Cycle's comment letter. For example, the letter states there is no bicycle parking shown in the plans, while the project in our packet shows 12 bicycle parking spaces, so that point in the comment letter is out of date. Could you please describe if there were any other changes made that address issues raised in the Community Cycle's letter (PDF pp. 64-64, page 62 of 62 in the Agenda Item 3A memo)? And if staff did not agree with Community Cycle's points, could you please explain staff's rationale? I would like to better understand.

2. The project describes "a landscaping strip...positioned along 28th Street to screen the vehicles in the drive-thru area" along with a "screening wall...at varying heights...proposed to include decorative features and art to provide pedestrian interest." I'm sure staff have thought of this, but can you help me understand how this design aligns with the DCS goal to "decrease the potential for and/or severity of conflicts between all users (motorists, bicyclists and pedestrians) by ... increasing visibility between modes at intersections"?

Many thanks,

Laura Kaplan  
Facilitator / Mediator  
916.529.1531 (cell phone / text / primary contact number )  
916.529.4971 (desk line / alternate number)  
[laura.j.kaplan@gmail.com](mailto:laura.j.kaplan@gmail.com)

On Mon, May 23, 2022 at 1:24 PM Spence, Cindy <[SpenceC@bouldercolorado.gov](mailto:SpenceC@bouldercolorado.gov)> wrote:

Good Day Board Members,

I have added a Call Up for your review that will expire by **June 2nd** to the **May 26<sup>th</sup> packet/webpage** for your consideration. It can be viewed here:

<https://bouldercolorado.gov/planning-board-upcoming-meeting-materials-packets>

If you have any questions, please refer them to Shabnam Bista at [bistas@bouldercolorado.gov](mailto:bistas@bouldercolorado.gov):

- A. CALL UP ITEM: Use Review for a 3,716 square foot restaurant (Raising Cane's) with a double drive-thru and 615 square foot outdoor patio at 3033 28<sup>th</sup> Street. A 23% parking reduction has been approved pursuant to administrative review #ADR2022-00062. **The call-up period expires June 2, 2022.**

Thank you,

*Cindy*

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**From:** Spence, Cindy  
**Sent:** Tuesday, May 17, 2022 3:51 PM  
**To:** boulderplanningboard <[boulderplanningboard@bouldercolorado.gov](mailto:boulderplanningboard@bouldercolorado.gov)>  
**Cc:** Walbert, Sloane <[WalbertS@bouldercolorado.gov](mailto:WalbertS@bouldercolorado.gov)>; Stafford, Edward <[StaffordE@bouldercolorado.gov](mailto:StaffordE@bouldercolorado.gov)>  
**Subject:** 05.26.2022 PB Packet is Ready  
**Importance:** High

Hello Everyone,

The May 26<sup>th</sup> Planning Board packet has been uploaded to the web and may be found here: <https://bouldercolorado.gov/planning-board-upcoming-meeting-materials-packets>

Please note that the meeting will begin **at 6 p.m. virtually. The link will be sent out 24 hours prior to the meeting.**

Thanks,

*Cindy*

**Cindy Spence**  
**Administrative Specialist III**



**City of Boulder**  
**Planning**

O: 303-441-4464

[spencec@bouldercolorado.gov](mailto:spencec@bouldercolorado.gov)

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**From:** [Ferro, Charles](#)  
**To:** [Sarah Silver](#)  
**Cc:** [boulderplanningboard](#); [Bista, Shabnam](#)  
**Subject:** RE: A few clarifying questions re: Call Up/LUR2020-00061  
**Date:** Wednesday, May 25, 2022 5:18:51 PM

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Hi Sarah,  
Thanks for the questions.  
Please find staff's responses **below**.  
Best,  
Charles

Charles Ferro, AICP  
Development Review Manager  
(Pronouns: He/Him/His) [What's This?](#)



**City of Boulder  
Planning**

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Department of Planning and Development Services

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#### **Question #1:**

9-2-15(b)(4)(A) and (B) – having to do with (A) air pollution audits and (B) Long term plans for reducing air emissions and use of hazardous materials.

#1: Did the city manager request (A) or (B)?

#2: If no, why not?

#3: Would it make sense for the city to start to do so with drive-in use reviews, given the concentration of idling cars, with concentrated emissions?

What would trigger (A) and (B) being requested?

***No, neither were requested as a drive thru restaurant is considered a typical commercial use on an automobile-oriented corridor. The practice has been to require those types of studies for uses of land that may emit pollution from the actual use (i.e. manufacturing uses). These standards have not been applied to drive thru uses in the past.***

#### **Question #2:**

Does Valmont have a median at the point where a driver could conceivably make a left hand turn from Valmont into the private alley?

***Valmont Road has a center concrete median which only allows right-in / right-out movements between the private alley and Valmont Road.***

**Question #3:**

The proposal is that this drive through remain open until 3:30 a.m. Friday and Saturday. Are there any other drive throughs in town that remain open that late on the weekends? I can't find any evidence of any other restaurants allowed to stay open that late?

***The following restaurants maintain late night hours:***

***McDonald's at 2920 Baseline - open 24 hours a day, 7 days a week.***

***IHOP at 1675 28<sup>th</sup> - open 24 hours a day, 7 days a week***

***Fat Shack at 1110 13<sup>th</sup> - open until 3:00 A.M.***

***Gaia Masala & Burger – open until 3:00 A.M***

**Question #4:**

Approval condition #1e (Drive through and parking operations of the use shall not result in vehicles queuing onto the 28th Street multi-use path or travel lands, the Valmont Road sidewalk or travel lanes? What can the city do to enforce this condition?

***The development will have to comply with the conditions of approval. If a condition of approval is violated, the city could take an administrative or criminal enforcement action to impose a consequence for the violation. In addition, staff or any person aggrieved by the failure to comply could request a quasi-judicial hearing in front of the planning board. At the hearing, the planning board would determine whether the conditions of the approval have been met and may revoke the use review approval, impose additional conditions or modifications to carry out the purposes of the original approval; and seek administrative or criminal enforcement remedies.***

***Administrative enforcement actions allow imposition of fines and issuance of an order that will reasonably ensure compliance with the conditions of approval. A criminal enforcement action would most likely also result in imposition of a fine, if a guilty verdict is entered.***

**Question #5:**

Does the "private alley" off of Valmont already exist?

***Yes. The "private alley" is the result of an unusual property configuration and is currently utilized as an access drive leading to uses on the property and appears to also be utilized by the adjacent property. The proposed development would install a sidewalk and curb along the east side of the private alley.***

**Question #6:**

What is the height of the privacy wall? What is required by city? Is there a required height?

***The height of the screen wall varies. The architectural drawings show alternating heights between 5', 4', and 3'. There is not a required height specified in the city's code for a screen wall.***

**Question #7:**

Landscaping: in the renderings, I see trees and then ground cover, but no shrubs that might beautify what is essentially a painted concrete block wall. What leverage does city have to require landscaping to cover that wall?

***There are a series of shrubs specified in front (public-side) of the wall to attenuate the rigidity of that vertical screen wall. The shrubs selected will range from 3'-6' in height. Staff has worked with the applicant team on a planting plan to provide adequate screening.***

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**From:** Sarah Silver <sarahjsilver@hotmail.com>

**Sent:** Tuesday, May 24, 2022 11:01 AM

**To:** Bista, Shabnam <BistaS@bouldercolorado.gov>; Ferro, Charles <ferroc@bouldercolorado.gov>

**Subject:** A few clarifying questions re: Call Up/LUR2020-00061

### **External Sender**

**Question #1:**

9-2-15(b)(4)(A) and (B) – having to do with (A) air pollution audits and (B) Long term plans for reducing air emissions and use of hazardous materials.

#1: Did the city manager request (A) or (B)?

#2: If no, why not?

#3: Would it make sense for the city to start to do so with drive-in use reviews, given the concentration of idling cars, with concentrated emissions?

What would trigger (A) and (B) being requested?

**Question #2:**

Does Valmont have a median at the point where a driver could conceivably make a left hand turn from Valmont into the private alley?

**Question #3:**

The proposal is that this drive through remain open until 3:30 a.m. Friday and Saturday. Are there any other drive throughs in town that remain open that late on the weekends? I can't find any evidence of any other restaurants allowed to stay open that late?

**Question #4:**

Approval condition #1e (Drive through and parking operations of the use shall not result in vehicles queuing onto the 28th Street multi-use path or travel lands, the Valmont Road sidewalk or travel lanes? What can the city do to enforce this condition?

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**Question #7:**

Landscaping: in the renderings, I see trees and then ground cover, but no shrubs that might beautify what is essentially a painted concrete block wall. What leverage does city have to require landscaping to cover that wall?

Thanks in advance for your help.

Sarah

Sarah Silver  
917-864-5403

"Listen with the intent to understand, not with the intent to reply."



**From:** [Ferro, Charles](#)  
**To:** [boulderplanningboard](#)  
**Cc:** [Walbert, Sloane](#)  
**Subject:** FW: 5-26-22 Agenda Item 4A  
**Date:** Wednesday, May 25, 2022 2:32:11 PM  
**Attachments:** [Responses.pdf](#)

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Dear Board Members,

Please find staff's responses to some questions ml posed regarding tomorrow night's public hearing item.

Please feel free to contact me directly with questions.

Best,

Charles

Charles Ferro, AICP

Development Review Manager

(Pronouns: He/Him/His) [What's This?](#)



**City of Boulder  
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**From:** Walbert, Sloane <WalbertS@bouldercolorado.gov>

**Sent:** Tuesday, May 24, 2022 6:07 PM

**To:** ML Robles <mlrobles.pb@gmail.com>; Gehr, David <GehrD@bouldercolorado.gov>; Ferro, Charles <FerroC@bouldercolorado.gov>

**Cc:** Allen, Michelle <AllenM@bouldercolorado.gov>; Pannewig, Hella <Pannewig@bouldercolorado.gov>; Poe, Erin <poe@bouldercolorado.gov>

**Subject:** RE: 5-26-22 Agenda Item 4A

ml,

Staff has compiled responses to your questions in the attached document. Please review and let us know if you have any additional questions. Have a nice evening.

**Sloane Walbert, AICP  
Senior Planner**

(pronouns: she/her/hers)



## City of Boulder Planning

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**From:** ml robes <[mlrobes.pb@gmail.com](mailto:mlrobes.pb@gmail.com)>

**Sent:** Monday, May 23, 2022 3:22 PM

**To:** Gehr, David <[gehrd@bouldercolorado.gov](mailto:gehrd@bouldercolorado.gov)>; Ferro, Charles <[FerroC@bouldercolorado.gov](mailto:FerroC@bouldercolorado.gov)>;  
Walbert, Sloane <[walberts@bouldercolorado.gov](mailto:walberts@bouldercolorado.gov)>

**Subject:** 5-26-22 Agenda Item 4A

### External Sender

Good afternoon David, Charles, and Sloane,  
I am reviewing the PB Agenda Item 4A: Annexation 302 and 334 Arapahoe Ave. and I have 4 questions that I will appreciate your input on, mostly to do with Key Issue #2.

#### Question 1.

Project Description p8

*The applicant has provided concept-level site and architectural plans to show how the site could be developed outside of areas of steep slopes, the ditch buffer, and mature trees.*

**Isn't the sketch showing the housing developed on the steepest and most vegetated part of the site?** The development is not proposed to be concentrated on Arapahoe but rather on the upper parcel, **is this not correct?**

#### Question 2.

Draft Annexation Agreement 18. p25

Affordable Housing *The applicant may demolish the four existing units...new replacement dwelling units shall not be considered new dwelling units for the purpose of determining the number of deed restricted Affordable Units...* **How was this compromise (less than 50% of total number of new units) arrived at?**

Draft Annexation Agreement 18. g) p26

There was some math involved in figuring out the number of units and therefore the affordable units, could you provide that (the site allows 13.52 units, should staff allow 14 (with the extra unit being affordable) what does that shake out to be:  $13 - 4$  (that were excluded)=9,  $9/2=4.5$  of which 5 are affordable, 4 are market, if staff agrees to 14 total, then it would be 6 affordable and 4 +4 market. For a total of 6 affordable and 8 market, if staff does not agree to 14 units then it is 5 affordable and 8 market, is this correct?). **g) should not allow the City Manager to allow less than 6 affordable units rather that allow the 14 and give the extra one to the market rate units.**

#### Question 3.

p59 (survey map of southern parcel)

I believe this parcel is where the proposed units are located. **How many trees will be removed and how much grade will be altered to accomplish the concept plan?**

p60.

*The annexation agreement has been written to enhance the physical, social, and economic assets of the community. As written, the annexation would require access from Arapahoe*

*Avenue, which will concentrate development outside of the steep topography and mature vegetation on the upper site. this does not appear to be so?*

Question 4.

Section 9-2-18 (f) p62

*Slopes: Notwithstanding the provisions of subsection (a) of this section, any land proposed for annexation that contains slopes at or exceeding fifteen percent shall not be zoned into a classification which would allow development inconsistent with policies 4.13, 4.16, and 4.17 of the Boulder Valley Comprehensive Plan. **I do not seem to be able to find these in my BVCP ?***

*Areas of the site exceed fifteen percent slope. Staff finds that the proposed zoning and conditions of the annexation agreement will ensure development consistent with the policies of the BVCP. **Can't find the referenced BVCP policy?***

I appreciate your time and attention and look forward to your responses.

Kind regards, ml

--

ml Robles, NCARB Architect LEED AP  
City of Boulder Planning Board member, 2022  
Architect at STUDIO POINTS  
[www.studiopoints.com](http://www.studiopoints.com)  
[ml@studiopoints.com](mailto:ml@studiopoints.com)  
303-443-1945

Responses to Questions in Email dated 5/23/22

City responses in black and bold text

Good afternoon David, Charles, and Sloane,

I am reviewing the PB Agenda Item 4A: Annexation 302 and 334 Arapahoe Ave. and I have 4 questions that I will appreciate your input on, mostly to do with Key Issue #2.

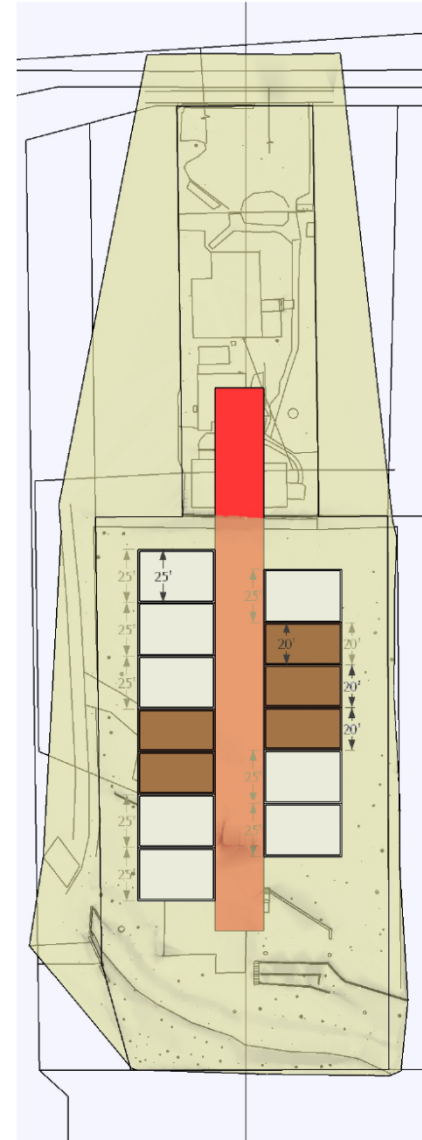
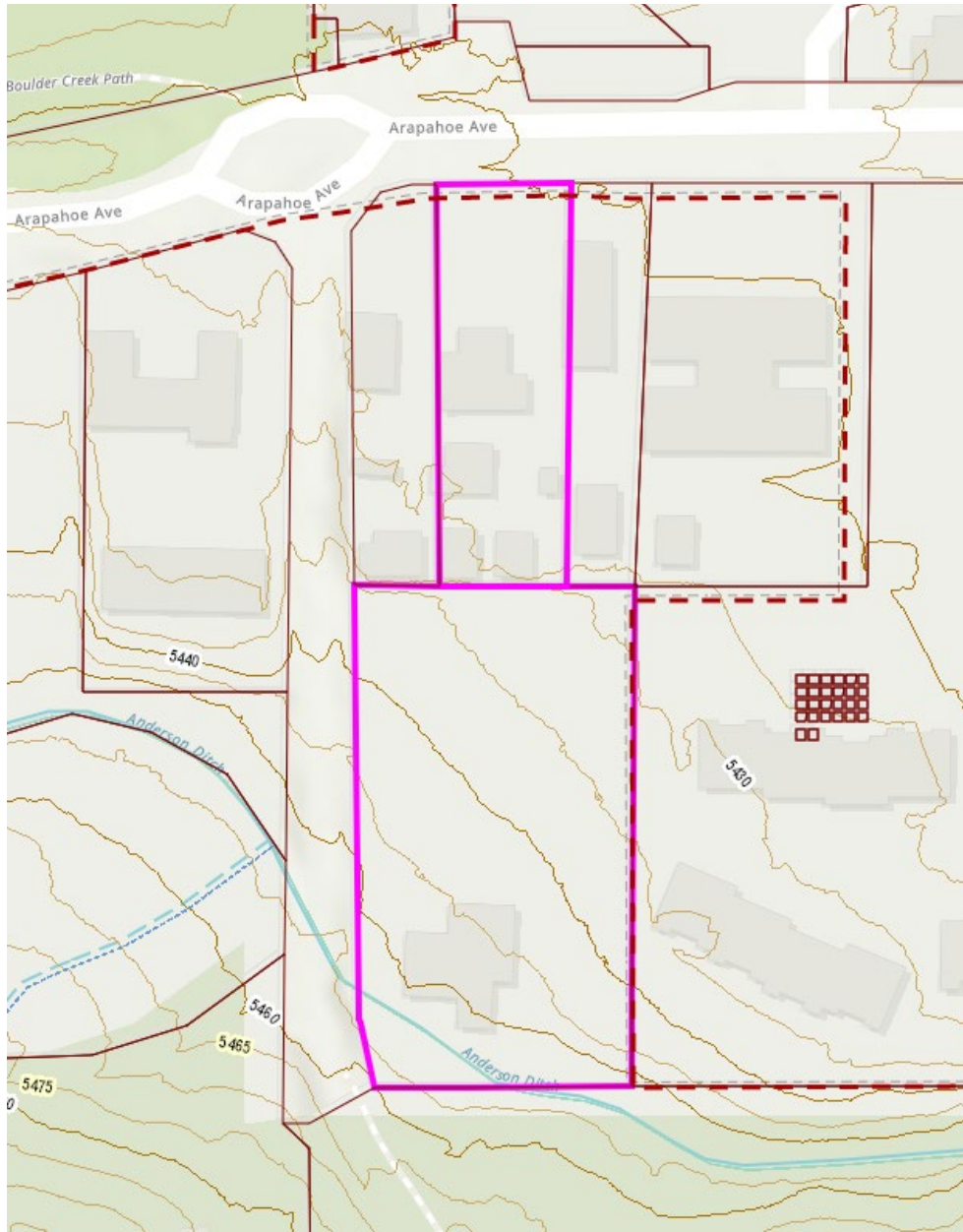
Question 1.

Project Description p8

*The applicant has provided concept-level site and architectural plans to show how the site could be developed outside of areas of steep slopes, the ditch buffer, and mature trees.*

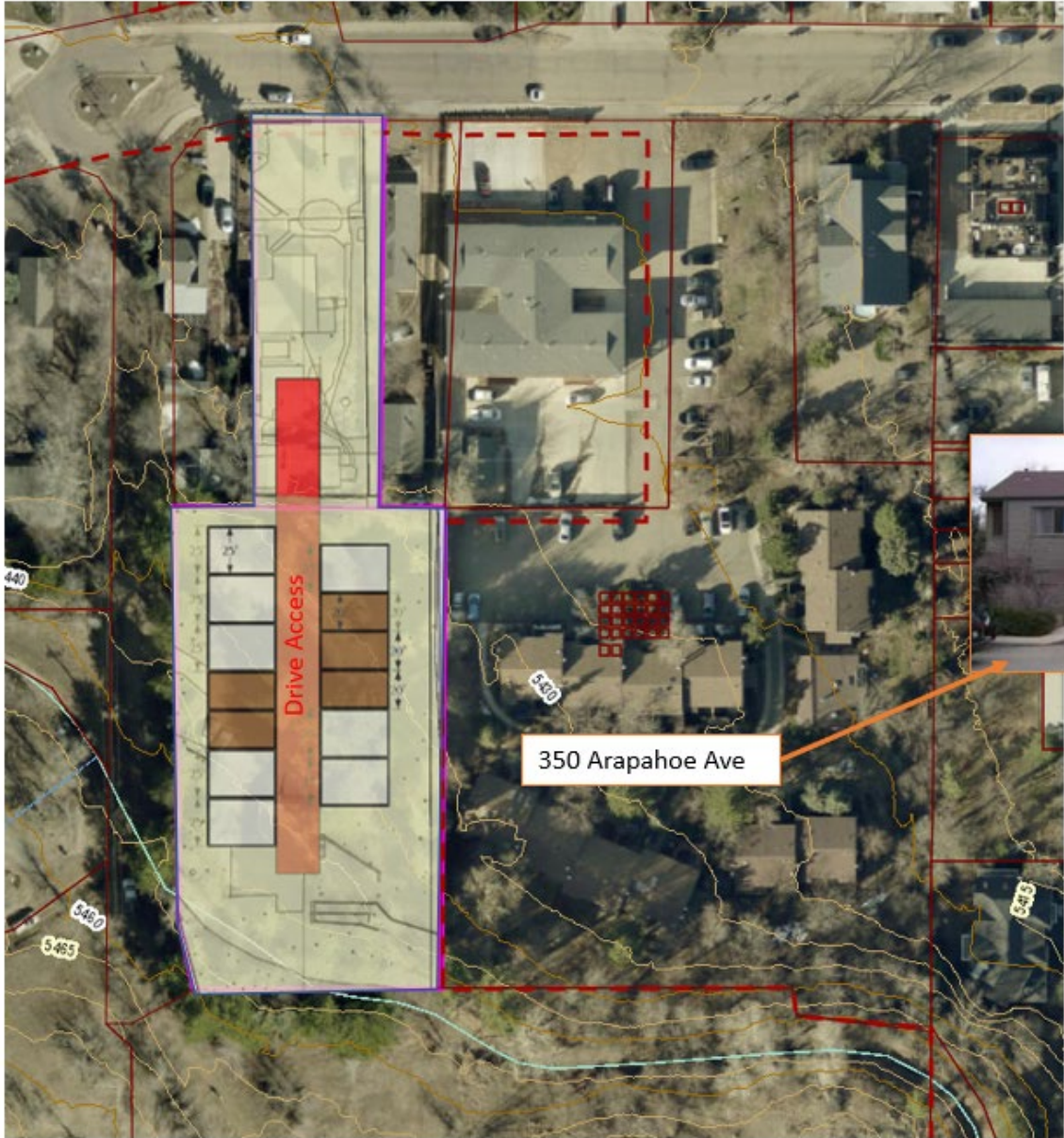
**Isn't the sketch showing the housing developed on the steepest and most vegetated part of the site?** The development is not proposed to be concentrated on Arapahoe but rather on the upper parcel, **is this not correct?**

**The conceptual plans show the buildings out of the steep slopes that lead up to the ditch on the far south end of the site. See graphics below. The proposed development appears to be consistent in orientation and mass/scale with developments in the vicinity, like the adjacent site at 350 Arapahoe Ave. The applicant is limited to taking access and bringing utilities from Arapahoe Ave. There are maximum slopes for drive access lanes and limitations in bringing utilities up the slope, which will ensure the development is not constructed too far up the slope. However, it does appear that a few mature trees would be removed in this scenario.**



SIDE PLAN





## Question 2.

Draft Annexation Agreement 18. p25

Affordable Housing *The applicant may demolish the four existing units...new replacement dwelling units shall not be considered new dwelling units for the purpose of determining the number of deed restricted Affordable Units... **How was this compromise (less than 50% of total number of new units) arrived at?***

**The Boulder Valley Comprehensive Plan (BVCP) the city's policies regarding annexation in Policy 1.17. Terms of annexation are based on the amount of development potential. Policy 1.17 (e) provides:**

"In order to reduce the negative impacts of new development in the Boulder Valley, the city will annex Area II land with significant development or redevelopment potential only if the annexation provides a special opportunity or benefit to the city. For annexation consideration, emphasis will be given to the benefits achieved from the creation of permanently affordable housing. Provision of the following may also be considered a special opportunity or benefit: receiving sites for transferable development rights (TDRs), reduction of future employment projections, land and/or facilities for public purposes over and above that required by the city's land use regulations, environmental preservation or other amenities determined by the city to be a special opportunity or benefit. Parcels that are proposed for annexation that are already developed and which are seeking no greater density or building size would not be required to assume and provide that same level of community benefit as vacant parcels unless and until such time as an application for greater development is submitted."

**As a result, community benefit is typically required only for annexations with additional development potential. Any existing development, units in this case, are not considered additional development. For example, and similarly the nearby Saddle Creek annexation determined a "baseline" number of dwelling units subject to the 45% affordable housing requirement that exempted three existing habitable dwelling units which could be either retained or replaced.**

Draft Annexation Agreement 18. g) p26

There was some math involved in figuring out the number of units and therefore the affordable units, could you provide that (the site allows 13.52 units, should staff allow 14 (with the extra unit being affordable) what does that shake out to be:  $13 - 4$  (that were excluded) $=9$ ,  $9/2=4.5$  of which 5 are affordable, 4 are market, if staff agrees to 14 total, then it would be 6 affordable and 4 +4 market. For a total of 6 affordable and 8 market, if staff does not agree to 14 units then it is 5 affordable and 8 market, is this correct?). **g) should not allow the City Manager to allow less than 6 affordable units rather than allow the 14 and give the extra one to the market rate units.**

**The ultimate density will be resolved when a development plan is proposed based on the capacity of the site given all other planning (road, open space, utility) constraints.**

**12 total units minus 4 existing = 8 additional units, 50% is 4 affordable 4 market (total 4 new affordable, 8 existing and new market)**

**13 total units minus 4 existing = 9 additional units, 50% is 4.5 which rounds up to 5 affordable 4 market (total 5 new affordable, 8 existing and new market)**

**14 total units minus 4 existing = 10 additional units, 50% is 5 affordable 5 market (total 5 new affordable 9 existing and new market)**

The clause in 18.g. would allow the city manager to modify the requirements only if the proposed development would provide an affordable housing benefit at **least equivalent to the housing benefit provided under the terms of the annexation agreement.**

### Question 3.

p59 (survey map of southern parcel)

I believe this parcel is where the proposed units are located. **How many trees will be removed and how much grade will be altered to accomplish the concept plan?**

p60.

*The annexation agreement has been written to enhance the physical, social, and economic assets of the community. As written, the annexation would require access from Arapahoe Avenue, which will concentrate development outside of the steep topography and mature vegetation on the upper site. **this does not appear to be so?***

**The submitted survey shows trees on the site over 6" caliper. The majority of trees are located on the southern parcel at 302 Arapahoe Ave., most of which are pine trees. Review staff has not requested a tree inventory with the review, which would include the species and overall health of each tree. Since the plans are conceptual it is hard to say how many trees would be removed. The applicant would be required to meet all landscape standards in Sections 9-9-12, 9-9-13, and 9-9-14, B.R.C. 1981 when the site is redeveloped.**

**Regarding grading, refer to the conceptual site section, which shows some modifications to the grade. It appears that the building would step up with the slope to avoid extensive grading and large retaining walls.**





Question 4.

Section 9-2-18 (f) p62

*Slopes: Notwithstanding the provisions of subsection (a) of this section, any land proposed for annexation that contains slopes at or exceeding fifteen percent shall not be zoned into a classification which would allow development inconsistent with policies 4.13, 4.16, and 4.17 of the Boulder Valley Comprehensive Plan. **I do not seem to be able to find these in my BVCP ?***

*Areas of the site exceed fifteen percent slope. Staff finds that the proposed zoning and conditions of the annexation agreement will ensure development consistent with the policies of the BVCP. **Can't find the referenced BVCP policy?***

**This was a typo on my part. The language in subsection (f) reflected in my criteria analysis is outdated. Subsection (f) has been revised to remove the reference to specific BVCP policies, in addition, the number of BVCP policies has changed since this was referenced in Subsection 9-2-18(f). Now, Subsection 9-2-18(f) states the following: "Slopes: Notwithstanding the provisions of Subsection (a) of this section, any land proposed for annexation that contains slopes at or exceeding fifteen percent shall not be zoned into a classification which would allow development inconsistent with policies of the Boulder Valley Comprehensive Plan." No specific BVCP policies are listed. The intent of this section is to ensure that the proposed zoning meets the overall policies, goals, and intent of the BVCP. This is consistent with other sections of the land use code (like site review).**

**That said, I was trying to refer to the policies listed under "Protecting Geologic Resources & Reducing Risks from Natural Hazards". Staff finds that the proposed zoning is consistent with these policies since the site can be developed outside of the portions of the site that are over 15% slope, which are primarily on the southwest corner of the site. The intensity in the RM-3 zone district is determined by a minimum lot area per dwelling unit (regardless of constraints on the site). This means that the portions of the site with steep slope can count toward the allowable intensity elsewhere on the site, as opposed to other districts where intensity is based on usable open space.**