

## **Addendum to Housing Future Plan**

Additions and corrections to Lyons Housing Futures Plan ("HFP") "accepted" by Board of Trustees ("BOT") on 1/16/24:

### **1. Population Forecast/Graph**

**A. Effect of Buildout.** The HFP (Part 2, "Forecasted Needs", pp. 20-21) includes a graph and related numerical data projecting future population growth (and thus housing needs). It projects historical trends into the future, suggesting possible increases of 733 people and 342 households through 2050.

However, during the historical period reflected in the graph, Lyons had a substantial number of residential lots remaining, primarily in larger subdivisions such as Lyons Valley Park, Stone Canyon and Eagle Canyon that were eventually built out, or nearly so. As of 2024 Lyons is near buildout, with only 10 vacant residential lots remaining. At 2.5 persons per residence, that would add only 25 people through 100% buildout if all those lots are built on.

Lyons has encouraged infill in the form of Accessory Dwelling Units ("ADUs") since the 2013 flood, including waiving utility tap fees for ADUs. About 12 ADUs have been added under those policies. At 2 persons per unit (ADUs are currently limited to 800 sq. ft or less), another 12 ADUs would add about 24 people. As discussed below, space for more ADUs is limited.

Accordingly, at 100% buildout and assuming another 12 ADUs, Lyons' population would grow by about 50 people rather than 733 and by 22 households rather than 342.

**B. Distorted Graph.** The key graph on p. 20 of the HFP has an X axis divided into 5-year increments – except for the years 2020 - 2025, which are in 1-year increments. Changing increments in the middle of the graph produced a flattening-out effect. Keeping increments constant (5-year periods) shows a different trend line. Exhibit 1 compares the two graphs.

**C. Recent Legislation.** Two bills enacted in 2024 by the Colorado legislature and signed into law by Gov. Jared Polis may affect the future populations of Lyons and other Colorado municipalities.

HB 24-1007 eliminated most occupancy limits on residential properties in Colorado. LMC Sec. 16-1-160 has defined "family" as including "[a]ny unrelated group of persons consisting of not more than three (3) persons." That limitation is likely rendered unenforceable by HB-1007. It is therefore now possible that more unrelated persons may live in what were "single-family" residences, though the extent to which that possibility may affect Lyons' long-term population is unknown.

HB 1152 declared void as against public policy any "declaration, bylaw or rule of an association" prohibiting detached dwelling units in subdivisions. As noted in Section 7 below, at least three of the larger subdivisions in Lyons (Lyons Valley Park, Stone Canyon, and Eagle Canyon) have restrictions prohibiting detached ADUs.

The effect of HB 1152 on Lyons and other municipalities is uncertain at this time. The bill does not become effective until June 2025. Its language may be subject to different interpretations. Lawsuits may challenge its constitutionality as an alleged "taking" of private property rights without compensation. The outcome of any court challenges is uncertain. See "The Power of State Legislatures to Invalidate Private Deed Restrictions: Is It an Unconstitutional Taking?" Pepperdine Law Review, Vol. 50, Iss. 3 (March 15, 2023).

Once HB 1152 becomes effective, if courts uphold its validity, the new law could have the effect of allowing more ADUs to be built in Lyons and elsewhere, potentially increasing populations. As with the elimination of occupancy limits, the long-term effect in Lyons is unknown.

## **2. Annexation**

Because population and household numbers through buildout of current Town limits would produce lower numbers as discussed in Paragraph 1 above, it is likely Lyons would only approach the HFP's "Forecasted Need" numbers if it annexes new areas for development. The HFP, p. 25, briefly alludes to this in a single passing reference: "Thoughtful consideration of annexation and the prioritization of infill development will be crucial if Lyons is to achieve its desired increase in overall housing stock."

Residential annexation is controversial and rare in Lyons. In 2000, Lyons voters approved by 254 - 157 (62%) a referendum to require voter approval of any annexation of a property 5 acres or more. The BOT codified that rule in Lyons Municipal Code ("LMC") 15-1-340. In 24 years since the referendum, only one residential annexation – a proposed additional phase of Stone Canyon – has been put to voters. It was voted down 191-134 (59%).

## **3. Restrictions on Town-owned Land**

Strategy 4 on HFP p. 41 is: "Use Vacant Publicly-Owned Land for Affordable Housing Development." The HFP omits, however, significant limitations on using vacant Town-owned land in Lyons.

**A. Parks and Open Space Land.** Within the approximate 1.4 square mile Town limits, Lyons owns a considerable amount of Parks and Open Space land, as shown in the zoning map on HFP p. 30. In 2016, citizens adopted by a 54% margin an ordinance which requires voter approval to develop more than 0.5 acre of POS-zoned property. No residential development has been proposed on any POS-zoned property since 2016.

**B. Restrictive Covenants and Easements.** Two substantial parcels of Town-owned land are the 10-acre dog park and a 10-acre tract (Lot F) south of the dog park. Figure 25 on HFP p. 30 identifies those parcels as potential development locations. Both parcels are subject to restrictive covenants or conservation easements running in favor of Boulder County (Lot F) and a neighboring property owner (dog park). When the Planning and Community Development Commission reviewed the HFP, the neighboring property owner advised that under no circumstances would the dog park restrictive covenant be waived. Although Boulder County suggested, after the 2013 flood, that it might consider modifying conservation easements on Lot F for affordable housing, the post-flood housing was built elsewhere. The conservation easements remain. Lot F has been neither annexed into Town limits nor zoned.

**C. Municipal Zoning.** The zoning map on HFP p. 30 includes multiple Town-owned parcels zoned Municipal. Such parcels, shaded blue, include: the dog park, Sandstone Park, Lyons Depot block, Lyons Cemetery, Town Hall and annex property, Walt Self Center and post office property, and substantial property in the Eastern Corridor, including the old Burlington Northern right of way and the Public Works Building property. Under LMC 16-3-260, residential housing development is not allowed on properties zoned Municipal.

#### **4. The Blue Line**

In addition to the 5-acre rule noted above, under LMC 13-1-130 Lyons will not provide water or wastewater service above a "blue line" at 5,450 feet altitude. That may limit potential annexation and development. For example, land in upper Steamboat Valley (above Vasquez and Horizon Streets) is above the blue line. Blue line variances can be granted, but only if they comply with the Comprehensive Plan and "will not detrimentally affect the health, safety or welfare of the residents of the proposed development or consumers of the public water and wastewater systems." Any variance is "subject to public referendum." LMC 13-1-130.

#### **5. Stormwater Drainage Master Plan**

In 2017, Lyons adopted a Stormwater Drainage Master Plan, a comprehensive, detailed analysis of risks from stormwater runoff. Such risks enter into the analysis of any proposed development in identified drainage basins. For example, the Stormwater Master Plan states as

follows with respect to the Steamboat Valley area and the parts of town (including downtown) into which the Steamboat Valley basin drains:

"4.3.9 Steamboat Valley The most significant flood hazard impacting downtown Lyons is runoff from Steamboat Valley. The runoff from the upper watershed concentrates behind the old railroad embankment. The area behind the old railroad embankment poses a significant flood hazard to downstream properties. ... Downstream of the railroad embankment development within the natural drainage path has confined the runoff to an undersized open channel through private property. The lack of conveyance capacity of this channel and culvert roadway crossings between 4th Avenue and 5th Avenue creates a flooding hazard damaging private property. Any flow that is not intercepted by the historic stone culvert continues on the surface flowing through backyards with additional impact to private property and structures. The existing conveyance within Steamboat Valley does not have the hydraulic capacity to convey storms greater than the 5-year return period."

The HFP does not address risks discussed in the Stormwater Drainage Master Plan.

## **6. Longs Peak Drive Area**

One possible area identified on HFP p. 36 for potential residential development (though termed "less ideal") is the west end of Longs Peak Drive ("LPD"). Most of the area surrounding existing homes on LPD is owned by the LPD Homeowners Association. The LPD HOA's expressed intent is to preserve the HOA-owned property as non-developed open space. There are also two Town-owned properties near LPD. Those properties are zoned Parks and Open Space. See paragraph 3.A above as to restrictions on developing POS-zoned land.

## **7. Limited Locations for Accessory Dwelling Units**

HFP Strategy 6 on p. 42 is "Incentivize the creation of accessory dwelling units on previously developed residential parcels." The HFP does not address at least two significant constraints on implementing that strategy:

A. Deed Restrictions. The three largest subdivisions in Lyons are Lyons Valley Park, Stone Canyon and Eagle Canyon. Single family deed restrictions in those subdivisions do not allow construction of detached accessory dwelling units. (However, recent state legislation addresses those restrictions, as discussed in Section 1.C above.)

B. Topographical Limitations. Suitable physical space for ADUs is lacking in many previously developed residential areas due to topography (steep hills and rocky cliffs). Among streets where topographical limitations exist are Indian Lookout Rd., Upper 5th Ave. (west side), streets around "Tank Hill", Longs Peak Dr., Mountain View Dr., Upper 2nd Ave., 1st Ave.,

Kelling Dr. and Ewald Stt. Due to those limitations and others noted above in paragraphs 3 - 6, the number of potential ADU sites within Lyons' 1.4 square mile area is limited.

## **8. Fire Safety Concerns**

In the HFP review process, citizens expressed concerns about fire risk from possible development in areas on Lyons' periphery, but not currently annexed. For example, residents in northern Lyons pointed out that a single access street (Upper 5th Avenue) would have to convey emergency evacuation traffic. The need for multiple ingress and egress routes is another factor limiting potential residential development outside current town limits.

The 2023 Comprehensive Plan (p. 70) recognizes development limitations in such natural hazard areas: "New homes or neighborhoods should be designed and sited to protect significant natural areas, wildlife habitat, and avoid locations at significant risk from natural hazards."

## **9. Confluence/Deed-Restricted Buyout Properties**

Although the HFP (pp. 29-30) discusses possible use of deed-restricted buyout properties in the Confluence area, Lyons Mayor Hollie Rogin responded as follows to concerns about the HFP expressed by multiple Confluence residents at a January 16, 2024 BOT meeting: "What are the plans for the Confluence? None. Are we planning to change DRBOP? No." The Board of Trustees adopting this Addendum agrees: Confluence/DRBOP properties "are earmarked as open space or recreational lands in perpetuity" under the approved DRBOP plan.