

FOR IMMEDIATE RELEASE

Plaintiffs Consider Appeal After Boulder District Court Dismisses Case Against Boulder County to Protect Open Space From Commissioners' Development Whims

MARCH 22, 2021 | BOULDER – Just days after Boulder County Commissioners publicly backed away from plans to develop an industrial-scale composting factory on Rainbow Open Space, District Court Judge Patrick Butler today sided with lawyers for Boulder County and dismissed a case brought by residents seeking to prevent the County from developing vulnerable Open Space. However, rather than address the critical merits of the case, the Court bowed to the County's mischaracterizations of the suit in its dismissal

Karl Kumli, Plaintiffs' attorney commented, "We clearly are pleased that the County has withdrawn the application to site a compost factory on Open Space land adjacent to our clients' property. The Court made clear that it took the County's retreat into account in its ruling. We also appreciate the County Commissioners' statements as reported in the media over the weekend, that the County will not be pursuing development of the compost factory at the Rainbow Open Space. However, we are disappointed in the Court's determination made today and we disagree very substantially with the Court's analysis. Accordingly, we are examining the best manner in which to proceed for the benefit of our clients. We have calendared the appropriate deadlines, including those for filing a notice of appeal."

Judge Butler determined the material issue of whether there was merger of the conservation easement when the County purchased the land. This was a substantive issue that was not before the Court on the motion to dismiss. The Court would only be in a position to provide such a determination based on evidence adduced at trial, unfortunately Judge Butler prevented that from occurring and instead took it upon himself to rule without the benefit of proper procedure.

On the issue of standing, the Court went directly to a determination based on the County's recently withdrawn development application. Therefore, the substance of the issue remains unaddressed, and the protection of Open Space lands remains in peril from the whims of the County.

The Court similarly relied on the County's withdrawal of the application to undercut the lawsuit's TABOR claim. The County purchased the property with a wrongful intent and clearly not to use the property for Open Space purposes. Judge Butler determined that because there are no current plans for the property, there must not be a claim which exists for TABOR.

Plaintiff Brandon White added, "we feel very strongly the Court followed the lead of the County in dodging the substance of the plain matter of protecting Open Space lands, purchased for perpetual conservation with restricted tax revenues, from development. In so doing, the Court and County also failed to address the related legal issues. It's unfortunate we now have to turn to the Court of Appeals, but we respect the process on this very important matter for all Boulder County residents."

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