

ORDINANCE NO. 2019-4

AN ORDINANCE AMENDING THE BOULDER TOWN SUBDIVISION ORDINANCE TO REQUIRE CULINARY WATER FOR LOTS AND AN ALTERNATE MEANS OF REQUIRING INFRASTRUCTURE CONDITIONS AND CONSTRUCTION.

WHEREAS the Town of Boulder finds it beneficial to the health, safety and welfare of its residents and essential to the Town's discharge of its duties to assure that adequate provision and assurances for culinary water are provided by the developer to each lot in any proposed subdivision; and

WHEREAS the Town of Boulder, due to its small size, staff and budget, finds that it is an undue burden to be a party to an infrastructure bonding or surety agreement with a developer; that the Town is not sufficiently staffed or equipped to complete the infrastructure required by a bonding or surety agreement in the case of developer default; and that the Town is better served by having the option of approving a Preliminary Plat with conditions set forth in a development agreement, which requires that the developer fulfill those conditions and all infrastructure construction prior to the execution and recordation of the Final Plat authorizing the sale of lots in the subdivision; and

WHEREAS the Boulder Town Planning Commission has reviewed and recommended the changes and amendments herein; and

WHEREAS, the Boulder Town Council finds good cause to amend the Ordinances as set forth below.

NOW THEREFORE, be it ordained by the Boulder Town Council as follows:

Section 400, PRELIMINARY SUBDIVISION APPLICATION, Section 500, FINAL SUBDIVISION APPLICATION, and Section 700, SUBDIVISION CONSTRUCTION, of the Boulder Town Subdivision Ordinance is hereby amended and supplemented as follows:

1. Section 400-2(7) is hereby amended as follows:

7. Evidence of Availability of Necessary Services.

The following information is required to be presented as part of the Preliminary Subdivision Application, necessary to establish the availability of basic services to the proposed subdivision.

a. Culinary Water Requirements.

- i) The South West Utah Public Health Department, or the Utah Department of Environmental Quality, as applicable, identified herein as the "Culinary

Water Authority," shall review and approve the feasibility of the culinary water system and sources for the subject property.

- ii) The Town of Boulder shall review and approve the applicant's ability to provide culinary water or water rights to each lot in the subdivision. The Preliminary Plat shall not be approved without the applicant providing assurances of culinary water to each subdivision lot in the form of:
 - (1) a binding contract with or shares in Boulder Farmstead Water Company providing one connection for each lot in the subdivision, or
 - (2) underground water rights available to the applicant as shown by, and on file with, the Utah State Engineer's Office sufficient in amount to provide one single family culinary water right in an amount no less than one-half (0.5) acre feet to each lot in the proposed subdivision from an approved underground source.
- iii) It shall be the responsibility of the applicant to provide information and materials as required by South West Utah Public Health Department, the Utah Department of Environmental Quality, Utah State Engineer's Office and the Town of Boulder, all as determined by the Town of Boulder, necessary to review and approve the feasibility, of the culinary water system availability and assurances as required herein for culinary water to each lot in the proposed subdivision.

b) Wastewater Requirements.

The South West Utah Public Health Department or the Utah Department of Environmental Quality, as applicable, identified herein as the "Sanitary Sewer Authority," shall review and approve the feasibility of sanitary sewer services or onsite wastewater systems for the subject property. It shall be the responsibility of the applicant to provide information and materials as required by the South West Utah Public Health Department, or the Utah Department of Environmental Quality, necessary to review and approve the feasibility of the sanitary sewer services or onsite wastewater systems.

c) Fire Protection and Suppression Requirements.

The Boulder Town Fire Authority shall review and make necessary recommendations, as determined necessary by the Fire Authority for necessary fire protection and suppression services for the subject property. It shall be the responsibility of the applicant to provide information and materials as required by the Boulder Town Fire Authority necessary to review and make recommendations of the fire protection and suppression facilities and services.

(Modified by Ord. # _____, passed _____.)

2. Section 500-2(4) is hereby amended as follows:

4. Other Final Subdivision Application Information and Materials. The following information is required to be presented as part of the Final Subdivision Application:

- a) Establishment of any ~~bonds~~ cash escrows and agreements, or proof of fulfillment of all the conditions imposed on the Preliminary Plat approval to be completed prior to Final Plat approval, and the payment of any engineering inspection fees.
- b) Final design and construction drawings for all proposed or required public improvements, prepared by a licensed engineer, including the profiles and cross sections of all existing and proposed streets, and designed as required by the Town, all storm drainage and flood control facilities, the elevations and location of fire hydrants, required culinary water facilities, sanitary sewer facilities, and all other provided and required public facilities and improvements.
- c) Unless the Town has entered into an agreement with the applicant to proceed with an improvement completion assurance for all improvements pursuant to Section 700-4 hereof, the final Plat shall not be approved, signed by the Town officials, nor recorded with the Garfield County Recorder's Office unless and until all the conditions imposed upon the Preliminary Plat approval have been completed, inspected and signed off by the Zoning Administrator, Town Engineer and Council; and, in addition thereto, each lot in the subdivision has either:
 - i) a proven connection to Boulder Farmstead Water Company through a certificate dedicating a share in the company to each lot in the subdivision, or
 - ii) one (1) underground culinary water right for each lot in the subdivision in an amount no less than one-half (0.5) acre foot as evidenced by a separate "Special Warranty Deed – Water" from the applicant in recordable form for each lot in the subdivision to be recorded concurrently with the Final Plat in the office of the Garfield County Recorder.
- b) In no event and under no circumstances shall any lots in the proposed subdivision be sold or offered for sale to the public until the requirements of this Section 5(2)(4) have been met.

(Modified by Ord. # _____, passed _____.)

3. Section 700 is hereby amended as follows

SECTION 700. SUBDIVISION CONSTRUCTION.

Section 700-1. Construction of Required Subdivision Improvements.

Construction of any required subdivision improvements, including infrastructure and facilities, necessary to meet the requirements of this Ordinance, and any conditions required by the Town Council for final subdivision approval, shall comply with the public infrastructure construction and design requirements, as established by the Town Council.

- a) The Town Council shall have the option to either:
 - i. require the applicant to post improvement completion assurances in the form of a cash escrow to be held by the Town and enter into agreements as required under this Ordinance, or
 - ii. impose conditions as part of the Preliminary Plat approval in the form of a development agreement signed by the applicant and the town requiring the applicant, prior to Final Plat approval, to provide, construct, install and otherwise complete all the required amenities and infrastructure together with any other conditions imposed by the Town prior to the execution and recordation of the Final Plat with the Garfield County Recorder's Office, in which case the applicant shall not sell or offer for sale any lots prior to said Final Plat recording.
- b) Whether the development agreement is entered into pursuant to Section 700-1(a)(i) or (ii) above, it shall include and encompass all of the requirements set forth in this Subdivision Ordinance, any other relevant requirements found in the Boulder Town ordinances, and any valid discretionary items imposed by the Town to assure that the intent of this Subdivision Ordinance is fulfilled.

Section 700-2. Proceeding With Subdivision Construction.

Following the recording of the final subdivision plat in the office of the Garfield County Recorder as set forth in Section 700-1(a)(i), or approval of the Preliminary Plat with conditions as set forth in Section 700-1(a)(ii), the landowner may proceed with construction of the subdivision. However, no improvements shall be installed until their location and "cut sheets" have been approved by ~~an~~ the engineer approved by the Town. The services of the engineer representing the Town shall be paid for by the applicant. Water mains, sewer lines, laterals, drainage facilities, and fire hydrants shall be installed and tested prior to the surfacing of roads and the installation of road base. A preconstruction meeting shall be held, as directed by the Zoning Administrator and an the engineer approved by the Town, prior to the installation of any ~~public~~ improvements called for in the development agreements.

Section 700-3. As-Built Drawings.

At the completion of subdivision construction (and prior to final escrow release under Section 700-1(a)(i), or recordation of the Final Plat under Section 700-

1(a)(ii), as the case may be) the landowner shall deliver to ~~an~~ the engineer approved by the Town two (2) sets of "as-built" drawings. These drawings shall show all approved changes made during construction and provide physical ties for all water lines, valves, sewer lines, manholes, etc. No bonds escrow funds held by the Town, nor Final Plat withheld pending completion of all conditions and improvements, will be released or recorded until the as-built drawings are received by the Town.

Section 700-4. Guarantees and Escrow Bond

In the event that the Council permits the applicant to proceed under this Section, and based on a cost estimate submitted by the applicant's engineer, an the engineer approved by the Town will prepare the bond estimate for the cash escrow revising the costs as required to match prevailing conditions for the construction and installation of all required public improvements, and including a twenty percent (20%) contingency fee. An escrow bond and public improvement agreements bond payment, and inspection fees shall be submitted to ~~an~~ the engineer approved by the Town before the final subdivision plat is recorded by the Town Clerk.

The amounts stated in the bond estimate shall be considered individual and separate with respect to releases by the Town Council, but each amount shall be applicable to every other part in the event of the applicant's failure to perform one or more of the improvements to the satisfaction of by an engineer approved by the Town and Town Council. Notwithstanding the itemization of type and cost of improvements, any sum available pursuant to the bond may be used by the Town, and not released to the applicant, for any other improvement covered by the bond as well as the specified improvement.

The Town Council shall have authority to release to the applicant any funds held by the Town. The Town Council shall not release, prior to final acceptance, any amount(s) for each specified improvement in excess of eighty percent (80%) thereof. Before the Town Council shall release more than fifty nine percent (59%) of such amount related to any one or each separate improvement, the Town Council shall require that the applicant to certify in writing that no material-man's or mechanic's liens have been filed with respect to the required improvement(s).

After final acceptance of any public improvements by the Town Council, twenty percent (20%) of the amount pertaining to the particular public improvement shall be held for a minimum period of two (2) years. The said twenty (20%) percent shall be held to guarantee the materials and workmanship of the completed improvements.

The Town Council shall have the power to require payment of all amounts remaining in the bond, upon certification by an engineer approved by the Town that the applicant has failed to comply with an obligation to install the required public improvements in a manner satisfactory to an engineer approved by the Town, or that the applicant is in default, whether the two (2) year guarantee period has

elapsed or not. Any such funds shall be segregated by the Town Treasurer in a special account and expended for the purposes set forth in the public improvements contract entered into by the applicant. Should an emergency arise, the Town may, after providing the applicant with a fourteen (14) day notice period, complete the required improvement(s), and be compensated from all bond amounts plus fifteen percent (15%) to recover overhead and other costs incurred by the Town to complete the required improvements.

Section 700-5. Subdivision Construction and Improvement Inspections.

The Zoning Administrator and an ~~the~~ engineer approved by the Town shall inspect, or cause to be inspected, all public improvements and facilities, including but not limited to all water supply and sewage disposal systems in the course of construction, all streets and roads, all drainage and flood control facilities, all fire hydrants, and all other subdivision improvements and facilities. Excavations for fire hydrants and water and sewer mains and laterals, drainage and flood control facilities shall not be covered or backfilled until such installations have been approved by an engineer approved by the Town. If any such installation is covered before being inspected, it shall be uncovered after notice to uncover has been issued to the responsible person by an engineer approved by the Town.

(Modified by Ord. # _____, passed _____.)

4. That the town clerk or recorder is hereby ordered, in accordance with the requirements of Section 10-3-711, Utah Code Annotated, 1953, as amended, to do as follows:

A. Cause a copy of this ordinance to be deposited in the office of the town recorder; and

B. Either:

(1) Cause a short summary of this ordinance to be published for at least one publication in _____, a newspaper of general circulation within Boulder Town;

or

(2) Cause to be posted a complete copy of this ordinance in three
(3) public places within Boulder Town.

APPROVED and PASSED this 5th day of September, 2019

ATTEST:

BOULDER TOWN

Judith Davis
Judith Davis
Boulder Town Clerk

Steven Cox
Steven Cox, Mayor

Peter Benson Councilperson
Gladys LeFevre Councilperson
Conrad Jepsen Councilperson
Judy Dravins Councilperson

VOTE
Yes
Yes
Yes
Excused

ADOPTION OF ORDINANCE AFFIDAVIT (MUNICIPAL)

STATE OF UTAH)
 : ss.
COUNTY OF GARFIELD)

I, the undersigned, the duly qualified and acting Town Clerk of Boulder Town, Garfield County, Utah, do hereby further certify, according to the records of said Town Council in my official possession, and upon my own knowledge and belief, that I have fulfilled the requirements of Section 10-3-711, Utah Code Annotated, 1953, as amended, by:

☒ (a) Causing one (1) copy of this ordinance to be deposited in the office of the Town Recorder; and

Either

☐ (b1) Causing a short summary of this ordinance to be published for at least one publication in _____, a newspaper of general circulation within Boulder Town;

or

☒ (b2) Causing to be posted a complete copy of this ordinance in three (3) public places within Boulder Town.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the official seal of Boulder Town, Utah, this 5th day of September, 2019.

[Seal]

Judith Davis
Judith Davis
Boulder Town Clerk