

MEMO

TO: Boulder Planning Commission, et al.

FROM: Lee Nellis, FAICP

DATE: August 30, 2021

RE: Immediate Amendments to Subdivision Regulations

This memo proposes subdivision regulation amendments that address the relationships of minimum lot sizes, easements, and rights-of-way. The amendments are in the codified format and reflect both my recommendation and that of your attorney, as I understand it. I will be happy to answer questions (see the notes in italics for additional explanations), but these amendments bring you in line with standard practice and should not be controversial.

Please note that I have also made housekeeping changes that do not address the immediate issue. For example, I reduced the phrase “roads and streets” to just “streets,” which is the term that is used in the definitions. Please note also that some discussion of certain questions (private streets?) will be required, but that these amendments will function well enough in the interim. Finally, note that other subdivision regulation amendments may be required for compliance with changes in state law. We’ll get to those after we have discussed the results and implications of the build-out study.

Ordinance _____

AN ORDINANCE AMENDING BOULDER’S TOWN CODE TO PROVIDE GREATER CLARITY AND PRACTICALITY IN THE REVIEW OF PROPOSED SUBDIVISIONS.

Whereas, experience has shown that certain provisions of Boulder Town’s subdivision regulations relating to minimum lot sizes, easements, and rights-of-way are unclear, inconsistent with standard planning practice, and potentially inconsistent with state law; and

Whereas, these issues in the subdivision regulations create confusion for applicants, the Planning Commission, and the Town Council and could result in outcomes that are not in Boulder Town’s interest;

Chapter 152 of the Boulder Town Code is hereby amended as follows:

Add the following definitions to 152.011 in alphabetical order:

Easement: An easement is created by a recorded document that establishes the right of a party who or which is not the owner to use land in ways and for purposes that are clearly specified in that document. While it is typical for an easement to be lineal and used as a driveway or trail, or for irrigation works or utilities, an easement, like conservation easement, may cover any part or even all of a property. **Easements are included within the area of the lot they affect.**

Right-of-Way: A right-of-way is a linear area that is used as a street or trail, and/or for irrigation works or utilities, and/or other public purposes and that has been or will be dedicated to the public or otherwise acquired by the government or an irrigation or utilities provider. **The area of a right-of-way area is outside any lot.**

Replace the definition of “Street” as follows:

Street: A street is a transportation route that occupies a right-of-way dedicated to or owned by a public entity and that provides direct or limited access to lots or other parcels of land. A street may include a cartway (the driving surface), bike lanes, sidewalks, utilities, and irrigation works, as well as bridges, culverts, signs, traffic signals, and other facilities that support its use. The term “street” includes all synonyms: road, highway, etc. *This definition does not allow for private streets. We need to talk about the pros and cons of private streets and then add a separate definition if that is warranted.*

Amend 152.041 as follows:

(H) *Subdivision ~~roads and~~ streets.*

- (1) The preliminary subdivision plat and other application materials shall ~~identify~~ show the proposed ~~road and~~ street layout.
- (2) The proposed subdivision streets shall make provision for the continuation of existing streets, as required by the Town Council extend the existing pattern of streets, where one exists, and where so doing is consistent with the terrain and adjoining land uses. The preliminary subdivision plat shall also provide for the future extension of the proposed streets onto adjoining properties where so doing is consistent with the terrain and adjoining land uses.
- (3) The proposed street ~~and road~~ layout shall provide ~~adequate and~~ safe access to all proposed lots. ~~and proposed and existing roads and streets. Minimum lot sizes as required by the town’s Zoning Ordinance shall be exclusive of road easements and rights-of-way.~~
- (4) ~~The Town Engineer, as appointed by the Council~~ Planning Commission may require an independent review of the proposed street and road design for compliance with the requirements of the town these regulations by qualified engineers at the applicant’s expense. *Because subdivisions go to the PC first, requirements like this one are best imposed at that level.*
- (5) If the proposed subdivision will be accessed from a state highway, any appropriate access permit as required by the state’s Utah Department of Transportation shall be provided with the application materials.

~~For the purposes of this section, a **STREET** shall be defined as any vehicular way providing access to two or more lots. The Planning Commission and Town Council have some latitude in applying this section to subdivisions proposing the creation of four or less lots, where, in their sole discretion, this section would create an undue~~

~~hardship for the applicant.~~ *This definition of street is not the same as the definition of street that appears earlier in these regulations. "Some latitude" is a particularly unfortunate choice of phrases to use in regulations. Hardships are provided for by the variance process. The design review sections above (2-4) give the Town all the power it needs.*

~~A street may remain in private ownership as a "private street" or be dedicated to the town as a "public street." A private right of way may be used to access up to four lots; provided, such private right of way has direct access to a dedicated or publicly approved road or street. A private driveway is not required to meet the requirements of this section, except a private driveway is required to meet all public safety requirements, as may be required by the town's Fire Marshal.~~ *The terminology used here is inconsistent and confusing. The treatment of driveways is in the wrong place. All this requires discussion. You will be better off just eliminating all this in the immediate amendments. We can then talk about private roads, driveways, etc. and add back in whatever makes sense, where it makes sense.*