

MEMO

TO: Boulder Planning Commission
FROM: Lee Nellis, FAICP
DATE: February 4, 2022

SUBJECT: Minor Subdivisions

The purpose of this memo is to propose a procedure and standards that provide direction to both the Town and those who wish to create small subdivisions. The conversation about this has pivoted around the question of how access may be provided to the lots. Some feel that the current requirements are burdensome. Whether that is true or not, they are confusing.

The section of the zoning ordinance reproduced below disagrees with §152.041(H)(5), the language that has been used to allow private access easements for up to four lots. (H)(5), in turn, sets a different standard for access than (H)(2)(B), part of the same section of the code. It's a tangle.

§153.190 FRONTAGE REQUIRED. Every lot shall have frontage upon a dedicated or publicly approved road or street, or right-of-way providing direct access to a dedicated or publicly approved road or street.

This is not the only problem with the subdivision ordinance. That long memo Planning Commissioners just received from me begins to correct a few of the deficiencies with the definitions (the most important of which is not even in the definitions section) and better guidance for parcel boundary adjustments and plat amendments. A second installment will continue that work.

There is also the curious fact that the subdivision ordinance includes a building permit requirement that overlaps and is inconsistent with both the building regulations and zoning. I'm not going to address that or other flaws here. I am going to propose a minor subdivision procedure that addresses your current concerns. It is designed to be amended in with only minor changes in other parts of the code.

**AN ORDINANCE _____ CREATING A MINOR SUBDIVISION
PROCEDURE AND STANDARDS**

Please note that the italicized language included here is NOT part of the proposed ordinance. It is included for explanatory purposes. It will not appear in the adopted version.

Whereas: Boulder Town can implement its general plan and protect the public interest as land development occurs only with effective regulation of land divisions; and

Whereas: Boulder Town's current subdivision ordinance does not provide a procedure for minor subdivisions, but levies the same requirements on four new lots as it would on 40:

BE IT HEREBY ORDAINED THAT THE BOULDER TOWN CODE OF ORDINANCES IS AMENDED AS FOLLOWS:

Revise §152.132 as follows:

§152.132 NOTICE REQUIRED BY THE ACT FOR PUBLIC HEARINGS AND PUBLIC MEETINGS TO CONSIDER A MINOR OR PRELIMINARY SUBDIVISION APPLICATION AND NOTICE OF FINAL ACTION. *No need to cite state law here. These requirements are consistent with it, but will be implemented by the Town.*

(A) ***What public notice must be given before a public hearings on an application to permit a minor subdivision or for the review of a preliminary plat ?*** The Planning Commission Secretary, ~~for public hearings before the Commission,~~ shall provide notice of ~~the a~~ public hearing to consider a minor or preliminary subdivision application as follows:

- (1) At least ten (10) calendar days before a public hearing, notice of the date, time and place of ~~the public that~~ hearing, ~~at least ten calendar days before the public hearing, which notice~~ shall be: (1) mailed to the applicant and each “affected entity,” as defined ~~herein in this code~~; (2) posted in at least three public locations within the Town and/or posted on the official website of the Town; (3) published in a newspaper of general circulation within the Town; and (4) ~~sent by United States~~ mailed First Class to all owners of record of real property within 300 feet of the ~~subject~~ outer boundaries of the property proposed for minor or preliminary subdivision application approval.
- (2) The public hearing notice shall also explain how to obtain or access (a) a copy of the application for a minor subdivision or approval of a preliminary plat and (b) a copy of the Administrator’s report on the application.

~~Notify each applicant of the date, time and place of each public hearing, at least ten calendar days before the public hearing; and~~

~~Provide to each applicant a copy of each staff report regarding the application at least three business days before the public hearing.~~

Subsections (B) and (C) of §152.132 remain as they are.

Add a new division to Chapter 152 entitled, “MINOR SUBDIVISIONS,” as follows.

MINOR SUBDIVISIONS

§152.201 CAN I CREATE A DEVELOPMENT WITH JUST A FEW HOMES WITHOUT THE COMPLICATED PROCESS REQUIRED FOR LARGER SUBDIVISIONS? Yes, but only if your proposed development complies with the standards established here.

§152.201 WHAT ARE THE STANDARDS FOR MINOR SUBDIVISIONS

(A) ***What land uses are permitted in minor subdivisions?*** The only use permitted in a minor subdivision is residential, which includes: (1) home businesses permitted by §153.400 and other applicable requirements of this code, and (2) accessory dwelling units permitted by this code and as required by state law. *We can insert a better citation when the ordinance regulating accessory dwelling units is codified.*

- (B) ***How many lots are permitted in a minor subdivision?*** Four. *The maximum could be lower, I suppose, but the question is more likely to be about making it a little larger. That can be discussed.*
- (C) ***What type of street access is permitted to lots in a minor subdivision?*** A minor residential subdivision may not create a new public street or any other dedicated public way or space. All lots must be directly accessible from an existing public street or served by private access easements that are clearly delineated on the proposed minor subdivision plat and in the accompanying materials. *It would be good to have an attorney draft a model private access easement.*
- (D) ***Will “flag lots” be permitted to facilitate direct access from an existing street in minor subdivisions?*** Possibly. The Planning Commission may waive the minimum lot width requirements of §153.119 where it finds that a “flag lot” will provide safe, adequate access while eliminating the need for a private access easement serving the lot.
- (E) ***What type of water supply is permitted for lots in a minor subdivision?*** All homes in minor subdivisions must be connected to a water supply regulated by the state. The proposed minor subdivision plat shall clearly show the easements needed for water connections. *This may be controversial, but until hydrological studies show otherwise, I recommend limiting the proliferation of private wells.*
- (F) ***What about wastewater treatment in minor subdivisions?*** The proposed minor subdivision plat and accompanying materials must clearly show that there is a suitable location for an on-site wastewater treatment system. Installation of on-site wastewater systems is separately regulated by state law.
- (G) ***Must minor subdivisions avoid natural hazards and protect natural assets?*** Yes. The proposed minor subdivision plat must clearly show a building envelope on each proposed lot that does not include: (1) any flood hazard area mapped by the Federal Emergency Management Agency; (2) any wetlands subject to Federal jurisdiction; (3) any stream or wetlands buffer required by §152.201(H); (4) any slope of 30% or more; (5) more than a small area of slopes between 15 and 30%; or (6) any known archeological or paleontological site. (7) The proposed building envelopes shall be designed to minimize grading, excavation, or other surface disturbance, and in no case shall more than 10% of a lot be graded or otherwise disturbed. (8) Access drives and utilities may cross streams, wetlands, or slopes where there is no alternative way to serve the lot, but only where the disturbance for that crossing is minimized and held within the 10% overall disturbance limit. (9) Existing trees shall be retained, except where the Planning Commission finds that removal of a minimal number of trees is necessary to permit reasonable use of the proposed lot. (10) The proposed minor subdivision plat and accompanying materials shall show how applicable provisions of the current *Utah Urban Wildland Interface Code* will be implemented.

(H) ***What are the requirements for watercourse or wetland buffers?*** Minor subdivisions must provide a vegetated buffer along all watercourses, permanent and intermittent, including irrigation works and wetlands. Where feasible, the buffer along a watercourse shall include the entire riparian or wetland area and an additional upland buffer of at least 25 feet. Where the Planning Commission finds that physical limitations of the property make it infeasible to include the entire riparian or wetland area, the minimum buffer along a watercourse or around a wetland, shall be 50 feet. The minimum buffer along an irrigation ditch shall be determined in consultation with the owner of that ditch. Irrigation ditches may, with permission of the owner, be moved underground or relocated. *This is essentially the same standard already adopted for commercial development. The current subdivision ordinance is almost entirely procedural and lacking in standards for land division and development. You may want to consider adding an expanded version of the standards proposed here for minor subdivisions to apply to other subdivisions.*

(I) ***Must minor subdivisions protect agricultural resources?*** Yes. (1) There shall be no adverse impacts on the irrigation of other lands. All irrigation ditches or other irrigation structures, and safe, adequate access to them, shall be maintained or, with the written permission of the owner/s, they may be rerouted or relocated. (2) Wherever the site permits, building envelopes shall not include irrigated lands. *This could be controversial, but if Boulder loses any significant portion of its irrigated lands, it loses its character. This is a part of the proposed ordinances (and there are possibly others) where we could use relative standards as we do in the commercial development standards.*

§152.202 WHAT IS THE PROCEDURE FOR REVIEWING MINOR SUBDIVISIONS?

(A) ***Must I submit a sketch plan before filing an application to create a minor subdivision?*** Yes. A sketch plan for a proposed minor subdivision may be filed with the Administrator for consideration at the next regular Planning Commission meeting for which adequate notice of the sketch plan review can be given.

(B) ***What must be shown in a sketch plan for a minor subdivision?*** The purpose of sketch plan review is to allow the Planning Commission to be made aware that an application may be filed and to discuss the requirements of this code and any immediately apparent issues with the applicant. The public will be allowed to ask questions, but no statements will be taken. **The applicant should not make a significant investment in preparing plans before sketch plan review. Is this clear enough to prevent people from claiming that they already have a big investment in their application? I've seen adequate sketch plans that were drawn in one of those old Big Chief tablets. You're not going to make any type of decision based on what they bring. What you want is for them to leave the room thoroughly aware of the code requirements and any obvious issues. Hopefully that awareness will be reflected in the plans they submit.**

(C) ***When can I file an application for minor subdivision review?*** An application to create a minor subdivision may be filed with the Administrator at any time within two years after the sketch plan review.

(D) ***What must be included in the application for minor subdivision review?***

The application must include the form/s required by the Town, the fee required by the Town, a proposed minor subdivision plat, and accompanying materials that are needed to explain and support what is shown on that plat. Everything listed below must be submitted before the Administrator can determine that application is complete. (1) Preliminary plat review is not required for minor subdivisions, but applicants must be aware that the Planning Commission may require revisions that must be brought to future meetings before making its decision. (2) Proposed minor subdivisions plats must include (a) everything required on a subdivision plat by UCA §§10-9a-603, et seq; (b) where they are proposed, private access easements; (c) the building envelopes required by §152.201(G); (d) watercourses, irrigation works, and the buffers required by §152.201(G)(3); (e) a surveyor's certificate with the contents required by UCA §10-9a-603(6)(b); (f) a signature block on which the Planning Commission may indicate its approval, if the proposed minor subdivision is approved; (g) a signature block for the owners, including any person or institution that holds a lien, mortgage, or other security on the land being subdivided. (3) The accompanying materials for a proposed minor subdivision plat must include: (a) the most recent aerial imagery of the parcel proposed for subdivision and its immediate environs; (b) one or more overlays over that aerial imagery showing the proposed lots, easements (if any) and building envelopes, flood hazard areas, jurisdictional wetlands, slopes by percent category (0-3%, 3-8%, 8-15%, 15-30%, 30% plus), jurisdictional wetlands, known archeological or paleontological sites; and trees proposed to be removed (c) a draft of any proposed private access easement/s; (c) evidence that the applicant has notified the owner/s or beneficiaries of any easement that is within or adjacent to the proposed minor subdivision, specifically including any easement for irrigation works or utilities, that a subdivision is proposed; (d) evidence that all taxes due on the land proposed for subdivision have been paid.

(E) ***Is a public hearing required for a minor subdivision?*** Yes. Upon receipt of a complete application to create a minor subdivision, the Administrator shall schedule a public hearing at the next regular Planning Commission for which at least 10 days advance notice of that hearing can be provided as required by §152.132(A).

(F) ***What happens at that public hearing?*** The Planning Commission will follow its adopted hearing procedure. At the end of the hearing, the Planning Commission may (1) table action and request additional information to be provided by a date certain; (2) adopt findings of fact and conclusions of law approving the proposed minor subdivision, imposing any conditions it finds

necessary to ensure compliance with this code; or (3) adopt findings of fact and conclusions of law denying the proposed minor subdivision. The Administrator will notify the applicant and interested parties who have requested such a notice in writing within 10 days after a decision is made. *We need to add a hearing procedure to the ordinances or, at least, have the PC adopt one as a bylaw.*

(G) ***What happens after approval of a minor subdivision?*** The applicant must revise the minor subdivision plat, if necessary, before submitting it to the Administrator who will schedule it for final review and signature by the Planning Commission. The signed minor subdivision plat must then be recorded with the Garfield County Recorder.

(H) ***When may the lots created for sale be advertised or transferred?*** You may not advertise for sale, sell, or otherwise transfer any of the lots until the minor subdivision plat is recorded. Note also that no site work is permitted before the minor subdivision plat is recorded.

(I) ***What rights do I have if my application to create a minor subdivision is denied or if I find one or more of the conditions imposed to be unfair?*** You may, within 30 days, appeal the Planning Commission decision to the Town Council. Appeal procedures are found at §§153.355, et seq. of this code.

Revise the table found at §153.119 to include a footnote stating:

The Planning Commission may waive the minimum lot width required here as provided by §152.201(D).