

Proposed Amendments Regulating Land Divisions

This draft contains no explanations beyond this introduction. Please refer to the February 3 and February 4, 2022, memos to the Planning Commission for detailed explanations of many of the proposed changes. Additions to the current code are underlined. Deletions from the current code are struck through.

AN ORDINANCE _____ AMENDING BOULDER TOWN'S SUBDIVISION REGULATIONS

WHEREAS: Boulder Town can implement its general plan and protect the public interest during development only via the effective regulation of land divisions;

WHEREAS: Boulder Town's current requirements for parcel boundary adjustments have been partially superseded by changes in state law and also require substantial clarification;

WHEREAS: Boulder Town fails to provide a process for the amendment of subdivision plats, as required by state law; and

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

Revise 152.005 as follows:

~~§152.005 "SUBDIVISION" DEFINED; SUBDIVISION IS TOWN APPROVAL REQUIRED FOR ALL SUBDIVISIONS? DEVELOPMENT APPROVALS AND BUILDING PERMITS.~~

~~—(A) For the purposes of this chapter, and the Act, *SUBDIVISION* shall be and shall mean:~~

~~—(1) Any land that is divided, resubdivided or proposed to be divided into two or more lots, plots, parcels, sites, units or other division of land for the purpose, whether immediate or future, for offer, sale, lease or development either on the installment plan or upon any and all other plans, terms and conditions.~~

~~—(2) *SUBDIVISION* includes:~~

~~—(a) The division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat or other recorded instrument; and~~

~~—(b) Except as provided in § 152.006 of this chapter, divisions of land for residential and non-residential uses, including land used or to be used for commercial, agricultural and industrial purposes.~~

Yes. No person shall subdivide any land except in compliance with all applicable requirements of this code, specifically including the requirements of this chapter.

~~(A) nor shall any No building permit shall be issued by the town for uses, buildings or any other improvements on any lots, plots, parcels, or sites, units, which is located wholly or in part within the municipal boundaries of the town, except~~

~~in compliance with that was created in violation of this chapter this code. and all applicable local, state, and federal laws.~~

~~Any subdivision filed or recorded without the approvals required by this chapter, and the Act is void, for the purposes of development approval or the issuance of a building permit, as required by UCA §§ 10-9-811 et seq., as amended.~~

- ~~(B) Any owner, or the agent of the any owner, of any land located in a subdivision, as defined herein, who transfers or sells any land located within the a subdivision before such that subdivision has been approved and recorded consistent with the requirements of as required by this code and the Act state law is guilty of a separate violation of this chapter code and state law for each lot or parcel transferred or sold.~~
- ~~(C) The description by metes and bounds or other instrument used in the process of selling or transferring of any lot or parcel of land does not exempt the that transaction from being a violation of this chapter code and the laws of the state law, or from the penalties provided as provided by this chapter code and the or state laws of the state.~~
- (D) Parcel boundary adjustments, as defined by this code and state law are not subdivisions, nor can they be made within subdivisions. The procedure for parcel boundary adjustments is established by §152.200.
- (E) Lot line adjustments within a subdivision require a plat amendment. The procedure for plat amendments is established by §152.202.

Delete §152.006 in its entirety. Renumber accordingly

Delete §152.011 in its entirety. Renumber accordingly.

Replace §152.115 with the following. Renumber accordingly.

§152.115 HOW CAN I WORK WITH AN ADJOINING LANDOWNER TO ADJUST THE BOUNDARIES OF MY PARCEL OR LOT? What you must do depends on your location.

- (A) Outside recorded subdivisions, property owners may agree to adjust boundaries as provided by UCA §10-9a-523. Parcel boundary adjustments outside recorded subdivisions are not reviewed by the Town. You should consult an attorney or a surveyor.
- (B) Within recorded subdivisions, you must amend the subdivision plat, as required by §10-9a-608 of the Utah Code. Plat amendment procedures are established in §152.116.

§152.116 HOW CAN A SUBDIVISION PLAT BE AMENDED? Two types of plat amendment are possible: those for which public hearings may be required and those for which public hearings may not be needed. Both types of amendments require that a plat be prepared by a licensed surveyor. Both types of amendments are reviewed by the Planning Commission.

- (A) **When is a public hearing not required?** No public hearing is required for a proposed plat amendment that: (1) involves only adjusting the boundaries of adjoining lots or parcels that are in a single ownership; (2) involves only adjusting the boundaries of adjoining lots when the plat is signed by all affected lot owners; (3) does not propose to eliminate or change any public way, easement, or dedicated open space; and (4) will not result in a violation of this code.
- (B) **What is the procedure for reviewing a proposed amended plat when no hearing is required?** (1) The Zoning Administrator will send notice that a plat amendment has been proposed to all affected agencies, all owners within the subdivision, and all adjacent property owners who are not within the subdivision at least 10 days before the Planning Commission meeting at which the proposed plat amendment will be reviewed. This notice will give the date, time, and place of the Planning Commission meeting and either include or explain how to access a copy of the proposed plat and any accompanying materials. (2) The Planning Commission will review the proposed plat amendment and decide either to approve it or, due to a lack of required signatures, the filing of a protest, or questions raised about compliance with this code, to schedule a public hearing. (3) Upon approval, including approval with conditions imposed to ensure compliance, by the Planning Commission, the proposed plat amendment may be recorded.
- (C) **When may a public hearing be required?** A public hearing is required when a proposed plat amendment is not signed by all affected lot owners; if any lot owner within the subdivision files a written protest of the proposed amendment; or when, as provided by §152.116(B)(2), the Planning Commission determines that it could adversely affect a public way, easement, or dedicated open space, or that the proposed amendment could result in a violation of this code.
- (D) **What is the procedure for reviewing a proposed amended plat when a hearing is required?** (1) The Zoning Administrator will send notice that a plat amendment has been proposed to all affected agencies, to all lot owners within the subdivision, and to all adjacent property owners who are not within the subdivision at least 10 days before the Planning Commission meeting at which it will be heard. This notice will give the date, time, and place of the Planning Commission hearing and either include or explain how to access a copy of the proposed plat and any accompanying materials. (2) The Planning Commission will employ its standard hearing procedure, including taking formal statements, then deliberate. (3) If the Planning Commission finds that the proposed plat amendment has no adverse impact on adjoining properties or public infrastructure, including public ways, easements, and dedicated open spaces, and results in no violation of this code, the Commission shall approve it, imposing any conditions the Commission finds necessary to ensure compliance. If the Planning Commission finds that there will be adverse impacts or a

violation of this code, it shall deny the proposed plat amendment. (4) The approved plat amendment, revised as necessary to fulfill any conditions imposed, may be recorded.

- (E) ***What must be shown on a proposed amended plat?*** It must (1) show the portion of the subdivision that is proposed to be amended, which could be the entire subdivision; (2) show both the original lot lines and any proposed changes in lot lines; (3) show all public ways, easements, and dedicated open spaces, and other information depicted on the affected portion of the recorded plat, specifically including all utility easements; (4) have a name that clearly distinguishes it from the recorded plat of the subdivision; (5) have a signature block for all owners involved; (6) have a space for a signature indicating Planning Commission approval and (7) bear a signed surveyor's certificate. The proposed amended plat must also be accompanied by the completed application form/s provided by the Town and the fee for a plat amendment established by the Town Council.

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

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.

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 Zoning 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 HOMESITES WITHOUT THE COMPLICATED PROCESS REQUIRED FOR LARGER SUBDIVISIONS? Yes, but only if your proposed development complies with the standards established here.

§152.202 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.
- (B) **How many lots are permitted in a minor subdivision?** Four.
- (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.
- (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.

- (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.
- (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.

§152.203 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.**
- (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.
- (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).