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Planning Commission, Town of Boulder, UT

PO Box 1329
Boulder, UT 84716

Re: Fogel Fuller Minor Subdivision Application

CC: Christina R. Sloan, Counsel, via email.

Planning Commission,

We own and live on 20 acres (two contiguous 10-acre parcels) on Lower Boulder Road. The address, predating our ownership, is known as 2175 South Lower Boulder Rd. Legally, it is described as 990 and 995 East Chatwin McCabe Lane, a reflection of the previous owners' attempts to name their own road on the way out of town. Many Boulder-ites know it as "Bevin's Old Place." Our land spans roughly a half-mile from Lower Boulder Road on the West to the Monument boundary on the East, and 350 feet north-to-south, in two parcels which were originally subdivided by Bill Muse. A third 10-acre lot to the immediate south of our property, owned by John and Susan Kelly, matches the dimensions of our two lots and was subdivided by Mr. Muse at the same time.

We are applying to subdivide and reconfigure our two 10-acre parcels into three lots of roughly 5.5, 7.5 and 6.5 acres respectively. We intend to alter the lot boundaries to a) better reflect the existing placement of dwellings, structures and roads on each lot; b) bring the lots into compliance with the law in respect to aspect ratios; and c) carve out a legal parcel to sell to our longtime employee and full-time Boulder resident, Nick Vincent.

With respect to compliance, it is not clear how Mr. Muse was able to subdivide our and the Kellys' lots with the current measurements. Each popsicle stick-shaped lot is roughly 2,500 feet wide and 175 feet tall, not a legal dimension then, or now, from our understanding. As we remodel and build roads, barns, a new house, sheds and gardens, the nonsensical boundaries have become a real hindrance. We live in the pre-existing home which sits on the north of our two lots, yet the adjacent barn and new garden next to it are on the south lot. Attempting to refinance this convoluted property has greatly perplexed appraisers and lenders, as well. Our solution here is to simply redraw the lot lines north/south, not east/west, which also brings them into compliance with current law.

We then also would like to take the westernmost pasture portion of our land—the section directly bordering Lower Boulder Road—and sell that roughly 5.5-acre lot to Nick Vincent. Nick is a young, hard-working, full-time Boulder resident, who is earnest and committed to living here for decades to come. We would like to help him become a landowner in Boulder by owner-financing the lot we carve off for him at a below market price. He currently rents our downstairs apartment along with another full-time local couple. Nick will be a great steward of that land.

We met via phone and email with Curtis Oberhansly and, later, with Michala Aldridge in early 2021 in preliminary conceptual meetings to discuss this process. Curtis agreed at the time that our approach appeared to be in line with the ordinances, and suggested we move to this next step. Michala was copied via email and included in discussions at the time but did not reply to further emails or voicemails. We understand that neither are currently active members of the Planning Commission, so we are submitting a more complete Preliminary Subdivision Application per the guidelines on the town website.

We have carefully rebuilt the infrastructure on the land since purchasing it five years ago. We believe that work now meets the requirements of the Subdivision Ordinances:

- Boulder Ordinance 153.190 and 152.041 - Roads: We built a new road that runs along our southern land boundary from Lower Boulder Road almost all the way to the eastern boundary of the land, where we are building a new home. That road provides access along the south boundary of all three proposed lots.
- Ordinance 152.041 - A - Roads: The road is new, raised, properly drained and built to be plowable, durable and accessible for large trucks. It appears to comply with all elements of section A. It is not clear to us how much of this section of the Ordinance applies to “minor” subdivisions of four or fewer lots, as ours is.
- Ordinance 153.186 - General Requirements: The new proposed lot for Nick is not in a “sensitive area”, nor does it display any other conditions that would limit its legal conforming use as zoned.
- Ordinance 15.041 Section 4 - Road Requirements: The existing road ends in a compliant turnaround at the far eastern end, and there is a hammerhead turnaround for large trucks at both the current and new houses. Both appear to be required in the ordinances for larger subdivisions but perhaps not for smaller subdivisions like ours. In any case, they exist.
- Ordinance 152.041 (4) - Utilities: We have run all new utilities to the new house on the far east end of the land, and replaced the poorly installed utilities to the existing lot, barn and house. These lots meet the requirements for utilities as well as access. The proposed new lot adjoins Lower Boulder road where power, phone/internet and water are all readily available at the lot line. We also ran conduit for fiber optics from South Central’s Pedestal on Lower Boulder, along the road with risers periodically, to the end of the road, servicing all three lots.
- Ordinance 153.93 A - Culinary Water: We have both an existing well and Boulder Farmstead supplying culinary water to two of the three proposed lots. Farmstead Culinary water is available at the lot line on Lower Boulder Road for the 3rd new lot.

- Ordinance 152.041 (3) - Fire Protection - All lots new and proposed are within 400 feet of a hydrant however the definition of and requirement for a hydrant are unclear. In 2020 we installed a 3" pressurized water line buried along most of the nearly 2,300 foot long new road with hydrant risers every few hundred feet for general and irrigation use, as well as for fire protection. The hydrants are all fitted with standard 2" fire hose fittings. This line is fed by irrigation water when we have it, and can be fed by culinary water for fire control if needed by rotating a couple valves. We met with Pete Benson in 2020 and he approved our approach for the new house and barn when we obtained building permits. The new lot is on Lower Boulder Road with a fire hydrant nearby so this may not be an issue. .
- Ordinance 152.041 (4) - Storm Drainage: We have installed various culverts and berms to manage the monsoon flows, and these measures are working well. All current dwellings and structures would avoid major damage in a 100-year rainstorm. The new proposed lot is at the land's high point and is well drained, mildly sloping irrigated pasture.
- Ordinance 153.93 B - Septic: two of the three proposed lots already have approved installed septic systems. We will obtain state health department approval for a septic system on the proposed new lot at final application, pending your response to this Initial application. The Kellys successfully obtained state septic approval for their under-construction house very nearby (400 feet south of Nick's likely new home site), where conditions are the same. It's highly likely the new lot will pass a percolation and soils test and thus be approved for a small, on site wastewater system.
- Ordinance 152.041 (3) Road Maintenance: We intend to generate a new, legally binding road maintenance and sharing agreement for all three lots, and will offer to also include the Kellys to the south (their participation is not necessary, as the road is 100% on our land, however, it seems sensible). We hope to keep our mutual driveway private. We welcome your input on this aspect of our small family subdivision.
- Ordinance 152.041-J - Irrigation Water: We intend to sell 2.34 shares of our total 7.34 A shares of Boulder Irrigation Company rights to Nick with the new lot. In general, our goal is to reduce our use of water for irrigation as we continue to rehab the fields and land toward a more sustainable, low-water ecosystem. We would continue to align our approach to land restoration and water usage with Nick's. Subdividing per this application will not materially change overall water use, as Nick already resides on the land, and the fields on the proposed new lot are already irrigated.
- With respect to traffic, this subdivision will have little or no net impact. Nick and we already reside on the land, so the total number of vehicle trips through town and on our road would not change.

We do not intend to sell any of our land other than the lot to Nick. We hope that this land remains in our family for as many generations as we can control. The subdivision is the way to get Nick his own piece of the land, and to resolve the wacky boundaries that currently exist.

In the interest of transparency, we want to address the issue of a rumored deed restriction on our land. As part of a series of permit meetings we had with the Planning Commission in 2019, Bill and Josey Muse both verbally expressed concern in reference to a “deed restriction” on our land (his stated concern extended to other land developed by Mr. Muse on Lower Boulder Road). Mr. Muse stated in that meeting that he had once intended to limit development of his original Lower Boulder subdivisions to one dwelling per 10 acres. We respect and believe that he may have intended to do that. However, he never actually did so. We did extensive title and legal searches with the County when we purchased the property, and never found even a hint or mention of any deed restrictions on any of the deed and title work or even on records of prior transactions when the land changed hands.

Upon hearing this from Mr. Muse, we, along with our land use attorney, other impacted landowners and *their* counsel, various Boulder Town staff, the Title Company and The County Clerk’s Office all searched extensively through property records, old meeting minutes and other records and were all unable to find, well, anything. Your Commission ultimately approved our RSTR permit, in spite of Mr. Muse’s claim.

Mr. Muse, in a second meeting, produced a document he claimed to have filed with the County consisting of a single typed sentence on a single page document stating that there was to be “*no less than* one dwelling per 10 acres” (the emphasis is ours, the words are a direct quote). The original buyer was mentioned by name on the document, however he had not signed it where indicated. This document was never filed with the County as part of the title work on our land. There is no evidence that he or any other subsequent buyer was aware of that document or any other restriction, much less that they signed and accepted it. Not the County, our Attorney, the Title Company nor Mr. Muse himself has been able to locate any documentation of any restrictions on our land aside from this one unsigned, one-sentence document that appears to encourage more, not fewer, dwellings, and which was never legally filed. A deed restriction simply does not exist. As such, we enclose with this application proof of clean title as required.

We enclose all of the items (we hope!) requested in the application, and look forward to further discussion with Your Planning Commission to help us answer some of the above questions and move the process forward.

Best Regards,

Anson Fogel & Alexandra Fuller

Boulder, UT