

CORRECTED DRAFT Vested Rights Ordinance

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

The public interest in making this addition to the code of ordinances is that developments proceed as they were approved, with any alteration requiring approval. The landowner interest here is in being able to build without having the rules change after approval has been obtained, but before a project is complete. These needs are not properly addressed in the current code.

The current subdivision ordinance is silent on vested rights. They are briefly, but indirectly, addressed in the zoning ordinance: See §153.052 and §153.054. They are also indirectly addressed in the building regulations, §151.11, in a way that is both inconsistent with the law of vested rights and confusing. Because this topic must be addressed in the building, zoning, and subdivision chapters of the code of ordinances, adding a new chapter that supports all three will avoid repetition.

ORDINANCE [NUMBER] CLARIFYING VESTED RIGHTS IN DEVELOPMENT IN BOULDER TOWN

WHEREAS: Boulder Town desires to keep its land-use regulations consistent with state law;
and

WHEREAS: the Town code fails to provide clear, practical direction about vested rights and the relationship of vested rights to permit approvals;

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

Revise §151.10 by adding a new Item (G), as follows:

- (G) The most current edition of the Utah Wildland-Urban Interface Code is hereby adopted and incorporated by this reference.

Revise §151.11 as follows:

~~§151.11 TIME PERIODS IN WHICH LICENSEES MUST COMMENCE AND COMPLETE CONSTRUCTION OF APPROVED BUILDING PROJECTS~~ HOW LONG IS A BUILDING PERMIT VALID? IS THERE A DEADLINE FOR THE COMPLETION OF CONSTRUCTION?

- ~~(A) Each person or entity that has obtained project approval from the town for a building project governed by §§ 151.01 through 151.10 must within 60 days after obtaining project approval apply for a building permit for the project from the County Building Inspector.~~

The final step in obtaining permits for any development that is subject to the codes adopted in §151.10 is to obtain a building permit, as provided here in Chapter 151 and in the applicable code/s.

- (A) ~~Each person or entity that has obtained project approval and a building permit for building projects governed by §§ 151.01 through 151.10 must commence Construction of the project must begin within 180 days 18 months after the date of issuance of the a building permit. Construction ~~will be deemed to have commenced~~ begins when clearing, grading, excavation, and/or the installation or erection of site improvements or buildings materials has commenced at the location site of the project begun and is being diligently pursued.~~
- (B) ~~Each person or entity that has obtained project approval and a building permit for building projects governed by §§ 151.01 through 151.10 must complete Construction of the project must be completed within 18 months after the date of issuance of the a building permit. Construction will be deemed to have been completed when an occupancy or use permit has been issued by the County Building Inspector or if the project is one for which ~~occupancy or use~~ such permits are not required, the project has passed final inspection by the ~~County Building Inspector~~ the Town.~~
- (C) ~~If any either of the time periods established by this section here expire or are not extended as allowed by (D), below, without timely compliance by the applicant with the requirements of this section, the project approval previously issued by the town for the building project will be automatically withdrawn, which will invalidate the building permit issued by the county will expire. In such case, (1) Where no vested rights remain, all fees paid to obtain project approval will be deemed forfeited and the applicant will be required to obtain project approval fulfill any conditions associated with abandoning the project. New development on the site will require new approvals, subject to the most current regulations and fees. (2) Where vested rights do remain, the applicant must obtain an amended approval as provided by §154.06 of this code, then obtain a new building permit. In such case, each applicant will also be required to comply with all laws, ordinances, building and other codes applicable to the project, including those that have become enforceable since the original project approval was granted.~~
- (D) ~~The Zoning Administrator may extend either of the time limits established by this section may be extended by the Town Council to a date certain for good cause shown upon in response to a written request in which the applicant shows reasonable cause for the extension. by the applicant made Such requests must be made filed with the Zoning Administrator at least 30 days prior to the expiration of the applicable time limit.~~

~~All building projects for which the town gave project approval prior to enactment of this section and for which construction has commenced but is uncompleted must be completed within 18 months of the effective date of this section or project approval will be deemed to have terminated.~~

(E) All building permits issued prior to the enactment of this section will be deemed to have terminated ~~90 days~~ 18 months after ~~the~~ its effective date ~~of this section~~ unless construction ~~has been started prior to that date~~ begun.

Delete §153.052 and §153.054 in their entirety. Renumber accordingly. Add a new chapter to the code of ordinances, as follows:

CHAPTER 154: VESTED RIGHTS

§154.01. WHAT IS THE PURPOSE OF THIS CHAPTER? This chapter defines ‘vested rights’, explains how they are established, and addresses changes that may be proposed as development proceeds. This chapter applies to all approvals provided for by this code.

§154.02. WHAT IS A VESTED RIGHT? WHEN IS ONE ESTABLISHED? A vested right is the right to build in compliance with previously approved plans and permits regardless of subsequent changes in the code. A vested right is established on the date that the approved plans were deemed complete by the Administrator if those plans were ultimately approved as required by this code and all fees paid.

§154.03. DO VESTED RIGHTS EXEMPT DEVELOPMENT FROM CHANGES IN BUILDING CODES? Usually not. Vested rights only provide protection from changes in land-use regulations. Changes in building codes usually still apply. There is a 10-year exemption in state law for single-family dwellings built on an approved subdivision lot.

§154.04 MUST I BUILD IN STRICT ACCORD WITH THE APPROVED PLANS? Yes. All representations made on application forms and in the drawings and other materials that accompany any application are binding. This means that the applicant must build the project as it is described and depicted in the plans as they were approved, including revised final plans showing compliance with all conditions of approval.

- (A) Failure to build in accord with the approved final plans, including revised final plans showing compliance with conditions of approval, is a violation. A fine may be imposed and the applicant may be required to remove work that is not in accord with the approved final plans.
- (B) It is understood, however, that changes may be necessary as development proceeds. The applicant must submit revised plans showing minor proposed changes to the Zoning Administrator for review and approval BEFORE those changes are made. See §154.05. Substantial changes from approved plans may require a new approval. See §154.06.

§154.05 WHAT IF A MINOR CHANGE FROM THE APPROVED PLANS IS NEEDED? The Administrator may permit minor changes to approved final plans as provided here.

- (A) Minor Dimensional Changes: The Zoning Administrator may permit minor dimensional changes that do not result in a violation of this code or of any condition imposed on the project’s approval, or in a substantial change, as defined in §154.06.

- (B) Minor Materials Changes: The Zoning Administrator may permit substitutions for proposed materials if the proposed substitution has the same appearance and performance as the material originally approved.
- (C) Referral of Minor Changes. The Zoning Administrator may seek the advice of the Planning Commission about any proposed minor change at its next regular meeting before deciding whether to approve or deny that proposed change.

§154.06 WHAT IF A SUBSTANTIAL CHANGE FROM THE APPROVED PLANS IS NEEDED? You must apply for an amended approval if you propose to make a substantial change in an approved development.

- (A) A substantial change would change the approved use to a use with more potential impact on the environment or community; the location or extent of a proposed open space that is required for compliance with this code; the location or extent of the area that will be cleared, graded, or otherwise disturbed by more than 1,000 square feet (a smaller change in that area is a minor dimensional change that may be reviewed by the Administrator); the extent or design of required improvements, public or private, including, but not limited to, runoff and erosion control measures, utilities, parking areas and access drives, roads, trails, sidewalks, street trees and landscaping; the approved number of lots, buildings, structures, units, or bedrooms; or the approved location, number, type, and size of signs, except that the Administrator may permit minor changes in the location of directional signs.
- (B) An amended approval follows the same procedures required for the original approval, including a public hearing if one was required, but discussion and action by the Planning Commission and/or Town Council are confined to the proposed change/s.
- (C) The Planning Commission may, upon review of a proposal to amend an original approval: (1) find that the approved amendment complies with all requirements of this code and approve it, adding any conditions it finds necessary to ensure compliance, or (2) adopt written findings determining that substantial differences between the proposed amendment and what was originally approved constitute a new development for which full review and a new approval is required.

§154.07 DO VESTED RIGHTS EVER EXPIRE? They can. State law provides that development must be pursued with “reasonable diligence” or vested rights be lost.

- (A) For the purposes of this code, “reasonable diligence” will lapse if a building permit has not been obtained for some phase of an approved development within 18 months, or
- (B) if construction for which a building permit was issued is not completed or extended within 18 months after it has begun, or if work on site improvements for which a building permit was not required essentially cease or their approval is not extended for 18 months. See §151.11.