**MEMO**

**TO: Boulder Planning Commission and Interested Parties**

**FROM: Lee Nellis, FAICP**

**DATE: April 4, 2022**

**RE: Vested Rights Mark-Up – Two Further Changes**

Given the confusion that has ensued, I am changing how I do mark-ups for you. I am going to do them all as complete replacements, section-by-section. Each section of the existing ordinances that is changed in any way will be deleted in its entirety and replaced in its entirety. I have changed this mark-up to that format.

I realized, having gone through this so many times now, that we can make one further simplification. We’ll need a motion to amend the draft do that. The motion will simply be to delete §151.11(E) as shown here from the draft that goes to Council. If the ZA (or PC?, I would like to return to the question about who should authorize extensions) can extend the deadlines, there is no need for that language. Anyone who has a building permit that was valid when these amendments become effective can request an extension.

We also need to delete the last sentence of §154.03. The Legislature repealed that unusual grant of vested rights, hopefully because they realized it was unnecessary. But since it was in our hearing draft, we should formally remove it.

**ORDINANCE [NUMBR] CLARIFYING VESTED RIGHTS**

**IN DEVELOPMENT IN BOULDER TOWN**

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

**There are no other changes in §151.10.**

**Revise §151.11 as follows:**

**~~TIME PERIODS IN WHICH LICENSEES MUST COMMENCE AND COMPLETE CONSTRUCTION OF APPROVED BUILDING PROJECTS.~~**

**§151.11 HOW LONG IS A BUILDING PERMIT VALID? IS THERE A DEADLINE FOR THE COMPLETION OF CONSTRUCTION?**

~~Each person or entity that has obtained project approval from the town for a building project governed by §§~~[~~151.01~~](https://codelibrary.amlegal.com/codes/boulderut/latest/boulder_ut/0-0-0-959#JD_151.01)~~through~~[~~151.10~~](https://codelibrary.amlegal.com/codes/boulderut/latest/boulder_ut/0-0-0-995#JD_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 the applicable code/s.

~~Each person or entity that has obtained project approval and a building permit for building projects governed by §§~~[~~151.01~~](https://codelibrary.amlegal.com/codes/boulderut/latest/boulder_ut/0-0-0-959#JD_151.01)~~through~~[~~151.10~~](https://codelibrary.amlegal.com/codes/boulderut/latest/boulder_ut/0-0-0-995#JD_151.10)~~must commence construction of the project within 180 days after the date of issuance of the building permit. Construction will be deemed to have commenced when excavation and/or erection of building materials has commenced at the location site of the project.~~

1. Construction must begin within 18 months after a building permit is issued. Construction begins when clearing, grading, excavation, and/or the installation or erection of site improvements or buildings has begun and is being diligently pursued.

~~Each person or entity that has obtained project approval and a building permit for building projects governed by §§~~[~~151.01~~](https://codelibrary.amlegal.com/codes/boulderut/latest/boulder_ut/0-0-0-959#JD_151.01)~~through~~[~~151.10~~](https://codelibrary.amlegal.com/codes/boulderut/latest/boulder_ut/0-0-0-995#JD_151.10)~~must complete construction of the project within 18 months after the date of issuance of the 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 permits are not required, the project has passed final inspection by the County Building Inspector.~~

1. Construction must be completed within 18 months after it begins. 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 such permits are not required, the project has passed final inspection by the Town.

~~If any of the time periods established by this section expire 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. In such case, all fees paid to obtain project approval will be deemed forfeited and the applicant will be required to obtain project approval, obtain a building permit and pay all applicable fees as if prior approval had never been given. 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~~.

1. If either of the time periods established here expire or are not extended as allowed by (D), below:

(1) Where no vested rights remain, all fees paid to obtain approval will be forfeit and the applicant will be required to 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.

~~The time limits established by this section may be extended by the Town Council for good cause shown upon request by the applicant made prior to the expiration of the applicable time limit~~.

1. The Zoning Administrator may extend either of the time limits established by this section to a date certain in response to a written request in which the applicant shows reasonable cause for the extension. Such requests must be 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.~~

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

1. All building permits issued prior to the enactment of this section will be deemed to have terminated 18 months after its effective date unless construction has begun.

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

**~~CONTINUING VALIDITY OF LAND USE APPLICATION APPROVALS~~**

~~The validity of an approval of a land use application shall terminate 180 calendar days from the date of the approval by the land use authority unless an alternative date is specifically provided by the applicable land use ordinance, or the applicant has proceeded within 180 calendar days from the date of approval with reasonable diligence to implement the approval.~~

~~The validity of an approval of a land use application shall expire and shall be invalid and null and void after 180 calendar days from the date of approval by the land use authority or after the expiration of the time provided by the alternative date, as provided by the applicable land use ordinance.~~

~~An approval by a land use authority shall be invalid and null and void if a use is conducted, or a building or structure is established in violation of any requirements of the town’s land use ordinances, including this chapter.~~

**~~LAND USE APPROVALS REQUIRED TO COMPLY WITH LAND USE ORDINANCES.~~**

~~The approval of any land use application:~~

~~Shall continue to comply with all requirements, conditions, terms and standards of approval, as required by the land use authority; and~~

~~Shall continue to comply with the requirements of all land use ordinances, including this chapter.~~

**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 necessary to demonstrate compliance with Chapter 152 and 153 of this code 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.

1. Failure to build in accord with the approved final plans, including revised final plans showing compliance with conditions of approval, is a violation of this code. A fine may be imposed and the applicant may be required to remove work that is not in accord with the approved final plans.
2. 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. Changes that do not affect compliance with this code do not require approval.

**§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.

1. 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.
2. 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.
3. 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.

1. 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.
2. 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.
3. 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.

1. 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

1. 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 ceases or their approval is not extended for 18 months. See §151.11.