**MEMO**

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

**FROM: Lee Nellis, FAICP**

**DATE: March 28, 2022**

**RE: Vested Rights Again**

Here is a clean copy of the next version of the proposed amendments on vested rights. It has become apparent to me that, while a mark-up must be available, our discussions need to focus on what we’re trying to accomplish. I would like to see if working from clean copies will facilitate that.

This draft reflects a great deal of conversation with John Veranth. I believe the changes made represent a reasonable compromise between our understandings and an improvement from his perspective. He may still propose additional changes.

The changes in what you have here are to make it clearer that the proposed rules for vested rights are applicable only to development that requires Planning Commission approval, which is to say only to development for which a CUP is required or subdivision improvements. They were never intended to apply to the construction of a single-family dwelling on an existing approved lot. Perhaps that was unclear. Likewise, I thought the draft made it clear that vested rights result only from land-use approvals. Hopefully that is more clear now.

It is my interpretation that these changes are to clarify, that they do not change anything that would happen on the ground (or to say it another way, that they are procedural), and that, therefore, another public hearing is not required to send these on to the Town Council. You can certainly hold one if you want to, though.

Final question for the Planning Commission:

This draft evolved to where extensions of the time limits set on applications for building permits and the completion of construction are issued by the Zoning Administrator. That’s most practical for permittees, for sure, but are you comfortable with it in Boulder’s context?

**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 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.

**Revise §151.11 as follows:**

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

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.

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.
2. 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.
3. 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 forfeited 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.
4. 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.
5. 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:**

**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.