

THE SLOAN LAW FIRM, PLLC

www.thesloanlawfirm.com | 76 S. Main Street, Suite 1, Moab, Utah 84532 | 435.259.9940
CHRISTINA R. SLOAN · sloan@thesloanlawfirm.com | DANIEL W. BOYER · dan@thesloanlawfirm.com

March 23, 2022

Boulder Planning Commission
Attn: Peg Smith, Commission Clerk
PO Box 1329
Boulder, Utah 84716
pc@boulder.utah.gov

VIA EMAIL AND MAIL

Re. Fogel and Fuller's Subdivision Application – 2175 South Lower Boulder Rd.

Dear Planning Commission,

I represent Anson Fogel and Alexandra Fuller, who on or about February 21, 2022, submitted an application to subdivide their twenty-acre property on 2175 South Lower Boulder Road into three lots of approximately 5.5, 7.5, and 6.5 acres, respectively.

During the preliminary Planning Commission meeting on March 10, 2022, the Commissioners discussed the “public street” language in Boulder’s Land Usage section of its ordinances. Fogel and Fuller were instructed to obtain a legal opinion from their counsel, to be submitted to the Commission in letter form, addressing whether they should be required to dedicate the road accessing the three lots as a “public street.”

The relevant provisions of Boulder’s Land Usage section make abundantly clear that Fogel and Fuller have no legal obligation to dedicate their road as a “public street.”

Chapter 152 of the Land Usage Section governs minor subdivisions such as Fogel and Fuller’s proposed 3-lot subdivision. Specifically, Section 152.041(H) provides that “all streets proposed to be created in the town, whether proposed to remain private or proposed to be dedicated to the town, shall meet the requirements of this section.” This Section defines “street” as “any vehicular way providing access to *two or more lots.*” *Id.* § 152.041(H)(5) (emphasis added).

The critical provision at issue here: “A street may remain in private ownership as a ‘private street’ or be dedicated to the town as a ‘public street.’ A private right-of-way may be used to access up to four lots; provided, such private right-of-way has direct access to a dedicated or publicly approved road or street.” *Id.* § 152.04(H)(5). Fogel and Fuller’s new road providing access to only three lots, which has direct access to public Lower Boulder Road, can under the plain language of this Section remain in private ownership. It does not need to be dedicated to the town or otherwise deemed public.

This Section further provides that “if the proposed street is not proposed for dedication to the town, or if the town is unwilling to accept dedication, an appropriate method for long-term maintenance of the private street must be proposed, for approval by the Town Council.” *Id.* § 152.041(H)(3). Here, Fogel and Fuller have proposed that all three lot owners would execute a road sharing and maintenance agreement. This satisfies Section 152.041(H)(3), which further reinforces that the Town has intended for private access roads to four or less lots to be kept in private ownership if the owners so elect.

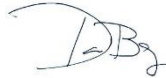
And the “Planning Commission and Town Council have some latitude in applying this section to subdivisions proposing the creation of *four lots or less*, where, in their sole discretion, this section would create an undue hardship on the applicant.” *Id.* (emphasis added). This provision directs Planning and Council to give additional weight to the owners’ preference in keeping their road private.

These provisions, read in harmony, leave no doubt that Fogel and Fuller’s road providing access to the three lots can remain private and does not need to be dedicated as public to the town.

Fogel and Fuller’s road is compliant in all other ways with the Town’s ordinances.

If you have any questions or concerns, please feel free to contact me.

Sincerely,
THE SLOAN LAW FIRM, PLLC



Daniel W. Boyer

DWB/
cc: Anson Fogel and Alexandra Fuller