

**Anson Fogel & Alexandra Fuller**

2175 South Lower Boulder Rd  
Boulder, UT 84716  
970.948.2040  
ansonfogel@gmail.com

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**Planning Commission, Town of Boulder, UT**

PO Box 1329  
Boulder, UT 84716

Re: Fogel Fuller Minor Subdivision Application Follow Up From Initial Meeting

CC: Daniel Boyer, Counsel, via email.

Planning Commission,

Thank you for your time and consideration in our initial meeting last month. As a result of your input, we have worked to address the issues remaining in anticipation of our next public hearing this coming week. Please find below a summary of the issues, actions taken and enclosed documents.

1. **OUR PRIVATE ROAD:** In our last meeting, your commission suggested some lack of clarity with respect to the ordinance's requirements for roads in small subdivisions. We consulted with our Attorney in Moab, Daniel Boyer, who (again) researched the ordinances and related county and state laws and addressed the issue in a letter to your commission on March 24th. This issue seems quite clear - our road complies with the requirements of the Ordinances. We attach a copy of his letter here.

We also attach here a draft Private Road Maintenance and Sharing agreement. We may not execute a final agreement until we give or sell the land to Nick and have a final subdivision in place - even after we subdivide, we will own all 3 lots and an agreement with ourselves may be obviated. We have shared this draft with the Kelly's to our South for their input, should they wish to participate, as well as with Nick.

2. **SEPTIC:** A State Certified septic designer performed percolation and soils tests on the potential future site of Nick's home (on the new lot adjacent to Lower Boulder Road). As expected given the Kelly's recent success nearby with the same, the soils are well suited to an individual septic system. We attach here the results of those tests.

3. FIRE SUPPRESSION: We met with Pete Bensen, and spent over an hour with him walking the property and reviewing our existing water distribution and fire protection systems in detail. Pete remarked that our water distribution and fire systems are “better than most.” He asked that we:
  - a. FIRE PROTECTION PLAN: Pete asked that we prepare a fire protection plan that could be kept on hand with the Fire Department providing detailed information about how to connect to our hydrants, locations of water sources, electrical panels, etc. We sent him a draft last week via email, to which he replied asking for locations of electrical shut off’s, remarking that it looked otherwise acceptable. We revised our plan with that information, re-sent it to Pete via email, and enclose it here.
  - b. STANDARD FIRE HOSE FITTINGS: Pete suggested that we alter our current fire hose fittings to that which the fire department uses and expects (2.5” Male NST). We ordered and installed those parts per Pete’s emailed specifications this week on all 5 of our hydrants.
  - c. INSPECTION: In Pete’s letter to your commission this week, he suggested an “inspection” of the systems. We are happy to submit to such.
  - d. POA or SIMILAR ENTITY: We would welcome your commission’s suggestions with regards to Pete’s request to have a “POA” to administer, maintain and test the fire/water systems. We do this now, as a family and team of residents, regularly. Our subdivision will consist of 3 lots owned by related family members, and is not a for profit development - so we are happy to continue to work together as a family in an organized way with whatever authority is suggested,.
4. IRRIGATION WATER ALLOCATION: Anson Fogel spoke with Katie Coleman last week, in Katie’s capacity as a representative of the Irrigation Company. Katie advised that the splitting of our shares is unrelated to the subdivision process. She advised that the Town has no role in that process, that splitting is relatively straightforward, and advised us as to the nature of the process. If your commission approves our small subdivision we expect to allocate approx. 2.5 A shares to Nick Vincent on the Eastern Lot, and retain the other app. 5 A shares in our (Fogel/Fuller) ownership as it is now.
5. ACCESS EASEMENT WITH KELLY PROPERTY: We have had a friendly relationship with Jay and Susan Kelly, our neighbors to the immediate south, for years. We discussed our intent to give a piece of our land to Nick often over the years with Jay Kelly, and sent them a draft of a road sharing agreement with them recently.

We have an access easement on our southern boundary that we created with the Kelly’s, about which they recently submitted a public letter to your commission. In their letter, they suggest that our subdivision “violates the terms of the access easement.” We have discussed this with our attorneys, who created the access easement originally - and this is simply not correct. The easement “runs with the land” (see item 4-D in the easement, attached here). As with most easements, the ownership of the property, or boundaries along that easement are irrelevant to the conditions of the easement itself. This subdivision has no bearing on or relationship with the access easement except that any

future owner of our 3 lots or the Kelly's lot, must abide by the terms of the easement along the boundary. It doesn't matter who, or how many who's, own the lands along the boundary - that is not a part of the agreement. That is the specific legal definition of "runs with the land" and is clearly addressed in section 4-d of the document.

There are two conditions in the easement regarding the road itself, and only the road, that are relevant - these items suggest that the road may only be used to access 3 dwellings. Should the Kelly's wish to maintain that clause if and when we sell a lot to Nick, Nick would be required to build his own driveway directly to Lower Boulder Road. The Kelly's are not required to include Nick or any other future owner of Lot 1 in the easement or road sharing agreement. We will suggest that they do so, and have another party help pay for the maintenance costs to everyone's benefit, however, they are not required to do so. That does not, however, impact the subdivision legality itself - it only would, worst case, mean that they can choose not to share the road with Lot 1, and Lot 1 would then simply need to build their own road/driveway to Lower Boulder Road, a relatively easy task given that the property fronts Lower Boulder Road directly along its eastern boundary.

We believe that in combination with the information we previously submitted, we now comply 100% with all requirements as described in the Ordances. We look forward to our public hearing next week.

Best Regards,

Anson Fogel & Alexandra Fuller

Boulder, UT