**MEMO**

TO: Boulder Planning Commission

FROM: Lee Nellis, FAICP

DATE: April 8, 20222

**RE: Response to John Veranth’s Suggestions – Latest Version of the Proposed Minor Subdivision Ordinance**

Mr. Veranth is correct in urging the PC to move onto bigger questions. We differ a bit on what needs to happen to liberate us to do that.

We should begin as Mr. Veranth says, with a return to goals. That will involve discussions about the general plan and both the subdivision and zoning regulations. When we’re ready, I will provide a template for the subdivision ordinance that I know works and can be adapted as necessary to Boulder’s particular needs. Trying to wade through the existing ordinance will take twice as long. Before all this, however, we need to send the work that is ready foS to the Town Council.

**Parcel Boundaries/Lot Lines.** I appreciate Mr. Veranth’s support for moving the lot line adjustment ordinance on to Council. I ask you to resist the idea, if it comes up, that you can simplify the draft by amending it to refer to provisions of state law. Those parts of the statutes are unclear and incomplete. The jurisdictions in Utah that face the biggest development challenges and that have invested the most professional effort (Park City and Summit County) in their development codes do not refer to state law at all for this purpose.

**Vested Rights.** I urge you to move the Vested Rights ordinance forward. The draft you have has been revised in response to Mr. Veranth’s thoughts (and I am reasonably sure he will agree that it is, at least, better). Setting it aside to save time for later discussion is necessary only if you envision Boulder Town somehow changing concepts that are well-established in professional practice and the case law of vested rights. Dropping the idea altogether subjects the Town to unnecessary risk.

**Various Amendments.** The various amendments Mr. Veranth proposes to answer immediate questions include changes with which I agree. But they perpetuate the bad habit of changing things piecemeal, a habit that is the single most important reason why this work has been so slow. His suggestions also include some problems.

These proposed changes commit the Town to accepting private streets, not just private access easements in minor subdivisions. That is not a good idea. But even if you end with that being the policy, it shouldn’t come under the guise of minor changes. This is a big issue.

The proposed correction to §152.080 changes language that should have appeared in Chapter 151 not in 152 and is redundant of some existing Chapter 151 language. What’s in Chapter 151 needs to be improved sometime, but suffices for now. This is also entangled with the permit language in Chapter 153. I have added deleting §§152.080 and 081, which will not play a role in the bigger “fix” of the subdivision ordinance, to the draft of the minor subdivision ordinance.

We will learn more and be better prepared for questions that arise as we work together on the bigger issues if we adopt the proposed minor subdivision ordinance. It’s a good trial run.

I will also point out that anyone who tries to take a small, straightforward subdivision through the existing ordinance is not going to be pleased. Its unclear and cumbersome. The proposed minor subdivision ordinance provides a clear path to follow. I hope you will schedule it for hearing with the changes shown in this edition.

This is a clean copy except for changes I made re water supply and wastewater following a conversation with Jeremy at the health department. The disclosure language that came out of our discussion of water supply will not pass muster. Our best choice is to defer this particular question to the health department. See the yellow highlighting for these and other changes from what you have seen before.

**AN ORDINANCE \_\_\_\_\_\_ CREATING A MINOR SUBDIVISION**

**PROCEDURE AND STANDARDS**

**Whereas:** Boulder Town can implement its general plan and protect the public interest as land development occurs only with effective regulation of land divisions; and

**Whereas:** Boulder Town’s current subdivision ordinance does not provide a procedure for minor subdivisions, but levies the same requirements on four new lots as it would on 40:

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

**Delete §152.080 and .081, renumber accordingly.**

**Revise §152.132 as follows:**

**§152.132 NOTICE REQUIRED FOR PUBLIC HEARINGS AND PUBLIC MEETINGS TO CONSIDER A MINOR OR PRELIMINARY SUBDIVISION APPLICATION AND NOTICE OF FINAL ACTION.**

***What public notice must be given before a*** ***public hearing on an application to permit a minor subdivision or for the review of a preliminary plat?*** The Planning Commission Secretary shall provide notice of a public hearing to consider a minor or preliminary subdivision application as follows:

1. At least ten (10) calendar days before a public hearing, notice of the date, time and place of that hearing, shall be: (1) mailed to the applicant and each “affected entity,” as defined in this code; (2) posted in at least three public locations within the Town and/or posted on the official website of the Town; (3) published in a newspaper of general circulation within the Town; and (4) mailed First Class to all owners of record of real property within 300 feet of the outer boundaries of the property proposed for minor or preliminary subdivision application approval.
2. The public hearing notice shall also explain how to obtain or access (a) a copy of the application for a minor subdivision or approval of a preliminary plat and (b) a copy of the Zoning Administrator’s report on the application.

**Subsections (B) and (C) of §152.132 remain as they are.**

**Add a new division to Chapter 152 entitled, “MINOR SUBDIVISIONS,” as follows.**

**MINOR SUBDIVISIONS**

**§152.201 CAN I CREATE JUST A FEW HOMESITES WITHOUT THE PROCESS REQUIRED FOR LARGER SUBDIVISIONS?** Yes, if your proposed development complies with the standards established here.

**§152.202 WHAT ARE THE STANDARDS FOR MINOR SUBDIVISIONS**

1. ***What land uses are permitted in minor subdivisions?*** The only uses permitted in a minor subdivision are agriculture and residential, which includes: (1) home businesses permitted by §153.400 and other applicable requirements of this code, and (2) accessory dwelling units permitted by this code*.*
2. ***How many lots are permitted in a minor subdivision?*** Four.
3. ***What type of street access is permitted to lots in a minor subdivision?*** A minor residential subdivision may not create a new public street. All lots must be directly accessible from an existing public street or served by private access easements that are clearly delineated on the proposed minor subdivision plat and in the accompanying materials.
4. ***What type of water supply is permitted for lots in a minor subdivision?*** There are two ways to comply with this standard.
5. All lots in minor subdivisions must be connected to a central water supply regulated by the State or demonstrate that an adequate water supply will otherwise be available, as provided in (D)(3), below.

~~the recorded plat must bear a disclosure stating in bold lettering that no central water supply is proposed and the provision of culinary water is the responsibility of the lot owner~~. *The stricken language here is to remind you of what we came up with, but the health department requires more.*

1. If connection to a regulated water supply is proposed, the application for a minor subdivision must include a written statement from the proposed supplier indicating that it has both adequate capacity and the physical capability to serve the proposed lots. The proposed minor subdivision plat must clearly show all easements needed for water connections.
2. Where connection to a regulated central water supply is not proposed, the minor subdivision must demonstrate that an adequate water supply will be available in accord with the current version of the *Non-Public Drinking Water System Regulation* of the Southwest Utah Public Department.
3. **What about wastewater treatment in minor subdivisions?** The proposed minor subdivision plat and accompanying materials must clearly show that there is a suitable location for an on-site wastewater treatment system on each lot. Installation of on-site wastewater systems is separately regulated by the ~~state~~ Southwest Utah Public Health Department.
4. ***Must minor subdivisions avoid natural hazards and protect natural assets?*** Yes. The proposed minor subdivision plat must clearly show a building envelope on each proposed lot that does not include: (1) any flood hazard area mapped by the Federal Emergency Management Agency; (2) any wetlands subject to Federal jurisdiction; (3) any stream or wetlands buffer required by §152.201(H); (4) any slope of 30% or more; (5) more than a small area of slopes between 15 and 30%; or (6) any known archeological or paleontological site. (7) The proposed building envelopes shall be designed to minimize grading, excavation, or other surface disturbance, and in no case shall more than 10% of a lot be graded or otherwise disturbed. (8) Access drives and utilities may cross streams, wetlands, or slopes to reach the building envelope, but only where the disturbance for that crossing is minimized and held within the 10% overall disturbance limit. (9) Existing trees shall be retained, except where the Planning Commission finds that removal of a minimal number of trees within the building envelope is necessary to permit reasonable use of the proposed lot.
5. ***Must minor subdivisions take measures to reduce wildfire hazards?*** Yes. The proposed minor subdivision plat and accompanying materials shall show how applicable provisions of the current *Utah Urban Wildland Interface Code* will be implemented.
6. ***What are the requirements for watercourse or wetland buffers?*** Minor subdivisions must provide a vegetated buffer along all watercourses, permanent and intermittent, including irrigation works and wetlands. Where feasible, the buffer along a watercourse shall include the entire riparian or wetland area and an additional upland buffer of at least 25 feet. Where the Planning Commission finds that physical limitations of the property make it infeasible to include the entire riparian or wetland area, the minimum buffer along a watercourse or around a wetland, shall be 50 feet. The minimum buffer along an irrigation ditch shall be determined in consultation with the owner of that ditch. Irrigation ditches may, with permission of the owner, be moved underground or relocated.
7. ***Must minor subdivisions protect agricultural resources?*** Yes. (1) There shall be no adverse impacts on the irrigation of other lands. All irrigation ditches or other irrigation structures, and safe, adequate access to them, shall be maintained or, with the written permission of the owner/s, they may be rerouted or relocated at the applicant’s expense. (2) Wherever the site permits, building envelopes shall not include irrigated lands.
8. ***Does the Planning Commission review the layout of lots and building envelopes in minor subdivisions for compatibility with existing uses?*** Yes. The Planning Commission must find that the layout of the proposed lots and building envelopes: (1) provides ample buffers from incompatible uses, existing or potential and may expand the required setbacks to meet this standard; (2) and is generally compatible with the pattern of development on neighboring parcels. (3) The Planning Commission may approve the platting of multiple building envelopes on a lot, but only one of those building envelopes may be used.

**§152.203 HOW ARE MINOR SUBDIVISIONS REVIEWED?**

1. ***Must I submit a sketch plan before filing an application to create a minor subdivision?*** Yes. A sketch plan for a proposed minor subdivision may be filed with the Administrator for consideration at the next regular Planning Commission meeting for which adequate notice of the sketch plan review can be given.
2. ***What must be shown in a sketch plan for a minor subdivision?*** The purpose of sketch plan review is to allow the Planning Commission to be made aware that an application may be filed and to discuss the requirements of this code and any immediately apparent issues with the applicant. The public will be allowed to ask questions, but no statements will be taken. **The applicant should not make a significant investment in preparing plans before sketch plan review.**
3. ***When can I file an application for minor subdivision review?***An application to create a minor subdivision may be filed with the Administrator at any time within two years after the sketch plan review.
4. ***What must be included in the application for minor subdivision review?***The application must include the form/s required by the Town, the fee required by the Town, a proposed minor subdivision plat, and accompanying materials that are needed to explain and support what is shown on that plat. Everything listed below must be submitted before the Administrator can determine that application is complete. (1) Preliminary plat review is not required for minor subdivisions, but applicants must be aware that the Planning Commission may require revisions that must be brought to future meetings before making its decision. (2) Proposed minor subdivisions plats must include: (a) everything required on a subdivision plat by UCA §§10-9a-603, et seq; (b) where they are proposed, private access easements; (c) the building envelopes required by §152.201(G); (d) watercourses, irrigation works, and the buffers required by §152.201(G)(3);(e) a surveyor’s certificate with the contents required by UCA §10-9a-603(6)(b); (f) a signature block on which the Planning Commission may indicate its approval, if the proposed minor subdivision is approved; (g) a signature block for the owners, including any person or institution that holds a lien, mortgage, or other security on the land being subdivided. (3) The accompanying materials for a proposed minor subdivision plat must include: (a) the most recent aerial imagery of the parcel proposed for subdivision and its immediate environs; (b) one or more overlays over that aerial imagery showing the proposed lots, easements (if any) and building envelopes, flood hazard areas, jurisdictional wetlands, slopes by percent category (0-3%, 3-8%, 8-15%, 15-30%, 30% plus), jurisdictional wetlands, known archeological or paleontological sites; and trees proposed to be removed (c) a draft of any proposed private access easement/s; (c) evidence that the applicant has notified the owner/s or beneficiaries of any easement that is within or adjacent to the proposed minor subdivision, specifically including any easement for irrigation works or utilities, that a subdivision is proposed; (d) evidence that all taxes due on the land proposed for subdivision have been paid.
5. ***Is a public hearing required for a minor subdivision?*** Yes. Upon receipt of a complete application to create a minor subdivision, the Administrator shall schedule a public hearing at the next regular Planning Commission for which at least 10 days advance notice of that hearing can be provided as required by §152.132(A).
6. ***What happens at that public hearing?*** The Planning Commission will follow its adopted hearing procedure. At the end of the hearing, the Planning Commission may (1) table action and request additional information to be provided by a date certain; (2) adopt findings of fact and conclusions of law approving the proposed minor subdivision, imposing any conditions it finds necessary to ensure compliance with this code; or (3) adopt findings of fact and conclusions of law denying the proposed minor subdivision. The Administrator will notify the applicant and interested parties who have requested such a notice in writing within 10 days after a decision is made.
7. ***What happens after approval of a minor subdivision?*** The applicant must revise the minor subdivision plat, if necessary, before submitting it to the Administrator who will schedule it for final review and signature by the Planning Commission.The signed minor subdivision plat must then be recorded with the Garfield County Recorder.
8. ***When may the lots created for sale be advertised or transferred?*** You may not advertise for sale, sell, or otherwise transfer any of the lots until the minor subdivision plat is recorded. Note also that no site work is permitted before the minor subdivision plat is recorded.
9. ***What rights do I have if my application to create a minor subdivision is denied or if I find one or more of the conditions imposed to be unfair?*** You may, within 30 days, appeal the Planning Commission decision to the Town Council. Appeal procedures are found at §§153.355, et seq. of this code.

**Revise the table found at §153.119 delete the minimum lot width ratio.**