

**Presentation on  
Subdivision Ordinance Language and Consistency Corrections to**

March 9, 2023

I want to thank our ZA for pointing out that Ordinance 2022-1 corrected driveways being subtracted from lot area in the table of development standards but did not correct a similar statement in the subdivision ordinance. This illustrates a ordinance language problem that should be corrected even though the policy intent was clear in the “Whereas” statements of the ordinance. In response, I suggested that rather than going through the ordinance change hearings PC recommendation and TC action for a single item we should carefully examine the subdivision ordinance, and correct other similar issues at the same time. There are many problems in the Boulder land use ordinances, and a sound approach is to set priorities and deal with the big problem in manageable pieces.

I have spend several hours marking up the codified subdivision ordinance text to flag situations where the language should be changed to make our ordinances internally consistent, remove redundant clauses, correct grammar that could obscure meaning, and make the ordinance text match current administrative practice. Tonight I will discuss the goals of this effort and provide examples of recommended changes. Commission members are welcome to ask questions as I go along.

The review that I am conducting focuses on ordinance language problems and does not address any changes in policy. I recommend that policy changes are better addressed in our future discussions of a new performance-based subdivision ordinance that incentivizes the General Plan goals.

This ordinance review is a work in progress. I welcome the help of others in this effort because I am sure I have missed or misinterpreted some items. With the consent of the PC I will next circulate my list of recommended corrections to our secretary and zoning administrator who are on the front line of applying the ordinance. The goal will be to have a full list of recommended language and consistency corrections distributed to the PC in advance of our April meeting.

**Goals and Illustrative Examples**

Before drafting ordinance text I recommend first identifying and reaching consensus on the goals to be accomplished. The high-level goals recommended by this review include:

1) Goal: Provide information only in one place. Repeating statements of requirements leads to inconsistency if one reference is changed and the other is not.

Example: The specific example was having text regarding deducting driveways from lot area in both the table of development standards, 153.119 (zoning) and a similar reference to rights-of-way and easements in 152.041 (H)(2)(a) (subdivision roads and streets).

2) Goal: Correct instances where different ordinance sections and codes that the town has already adopted provide different standards for the same requirement.

Example: Consider the issue of road width. The subdivision ordinance Table of Standards for Proposed Streets has 18 ft, but two other documents which Boulder has adopted by reference, the International Fire Code which Pete Benson provides applicants, and the Utah Wildland-Urban Interface Code require 20 ft.

3) Goal: Do not paraphrase mandatory requirements from state law or adopted codes. Quoting a quantitative requirement from a code in an ordinance loses the definitions, exceptions, and other context provided by the full law or code. Restatement can introduce errors and inconsistency. Also, problems result if the referenced code or law is updated but the ordinance is not changed.

Example: Regarding road width the ordinance refers to “drivable surface” whereas the UWIC refers to “width clear of obstructions” and includes exemptions for short driveways, gates, and the provision of turnouts.

4) Goal: Do not overly restrict how the town council, planning commission, and town staff carry out town business.

Example: The ordinance refers to a subdivision application “provided by the Town Clerk” but forms can be provided by the PC secretary and Zoning Administrator as well. It is better to just say “provided by the town” or “the town’s current form.”

5) Update procedures in the ordinance to match current practice.

Example: Several places in the ordinance refer to publishing notice in “a newspaper of general circulation” which is no longer required by state law or being done by the town.

6) Goal: Do not have outdated methods and procedures codified in ordinance requirements:

Example: 151.041 (B) Preliminary Subdivision Plat requires the drawing be “prepared in pen” and submittal of “12 paper copies.” However for decades surveyors have been preparing drawings using computer drafting software and submitting the documents electronically. The only needed physical copies are the originals for signature, and these signed documents are then scanned for both digital archiving and distribution to users.

7) Goal: Where possible move all requirements regarding a single topic to one ordinance section.

Example: “Building Permits” have requirements in both 152.080 - .081 (which is part of subdivisions) and in 153.216 (which is part of zoning). Zoning is a more logical place for all

building permit rules, but a separate ordinance section for Building Permit requirements and procedures is even better.

8) Goal: Eliminate redundant text. Many near-identical paragraphs are in the ordinances and this can cause confusion. If slightly different text on the same topic actually applies to distinct circumstances that should be clear from the wording.

Example: The requirement that the South West Utah Public Health Department approve the wastewater system appears in the subdivision ordinance at 152.041 (G) (2), 152.045 (B)(1), and 152.045 (E)(1) but all three refer to the information submitted for a preliminary subdivision application.

9) Goal: Correct the grammar where the intended meaning is not clear.

Example: 152.045 (E) (3) reads “An engineer approved by the town, the County Engineer, any affected special service district, special service area or any affected irrigation company may present information and materials to the Town Council for review in considering the preliminary subdivision application.” Strictly read this actually means that ONLY an engineer approved by one of the listed parties may present information. The apparent intent is that a town-approved engineer OR one of the listed parties may present information.

Rewording will clarify. This type of change sounds minor, but lawsuits have been lost over the placement of a comma.

10) Remove the procedure flowchart figures from the ordinance and put this information in the ZA handout. The figures contain potential contradictions with ordinance text leading to possible inconsistency. The ordinance text should be the only statement of a requirement.

Example: Figure 4 in the codified ordinance is labeled “Final Subdivision Application Review Procedures” but the actual figure is for the Preliminary Subdivision Application. Figure 2 Concept Subdivision Plan Application Review Procedures” shows a step for ZA determination of application completeness, but the ordinance text 152.026 states there are no specific requirements for conceptual plans, and our practice is to allow multiple informal discussions between the PC and the applicant.

### **Input Required**

Lee Nellis can provide valuable input on this review. The assistance of Peg Smith is needed to clear up all the “Noticing” language. The assistance of April O’Neal is needed to clear up language regarding the administrative processing of documents. I recommend that the topics like number of copies and formatting of files be put in non-binding administrative procedures.

## Other Ordinance Issues

To repeat, this review is focused on making the subdivision ordinance consistent internally and with current practice and none of the recommendations should be controversial. There are other land use ordinance provisions which are problematic, but would involve a substantive change in policy. Those should be handled separately.

## Next Step

A itemized table of recommended changes will be prepared for a subsequent PC meeting. The PC should review each change and given an opportunity to amend or delete the recommendation. The revised list of changes should be voted on by the PC as a list of bullet points before drafting an ordinance for formal public hearing and vote to recommend to Town Council.

## Sample of Table of Recommended Changes

Citation	Existing Text	Recommendation	Comment
152.041 (B) (1)	<b>Delete</b> "A preliminary subdivision plat, prepared by a licensed land surveyor, shall be provided. The preliminary subdivision plat shall be prepared in pen and all sheets shall be numbered. A minimum of 12 paper copies shall be presented to the Town Clerk, as part of the preliminary subdivision application. The Planning Commission may request additional copies if required."	<b>Insert:</b> A preliminary subdivision plat, prepared by a licensed land surveyor, shall be provided in an electronic or hard copy format approved by the Zoning Administrator.	Allow modern procedures.
152.041 (H)(2)(a)	<b>Delete</b> "Minimum lot sizes as required by the town's Zoning Ordinance shall be exclusive of road easements and rights-of-way."	Leave the rest of section H)(2)(a) unchanged.	The definitions in 152.006 make clear that rights-of-way are not part of the lot but easements are part of the lot.