

MEMO

TO: Boulder PC, Interested Parties

FROM: Lee Nellis, FAICP

DATE: July 24, 2023

RE: Proposed Amendments – Installment 1, Revised

The amendments for hearing in August will come to the PC in three installments. This first one includes the “housekeeping” amendments discussed at the last meeting. I assumed that your direction to me included permission to edit liberally, correct errors as I encountered them, and suggest improvements in and related to what the PC acted on. A bit of what I propose here anticipates the memo that will address average lot sizing. See the notes below for the reasoning behind these proposed changes.

There are defects in Chapter 152 that will not be corrected by these amendments, but it would be easier to replace the entire chapter than to incrementally make all of the corrections and improvements it needs. Given that it will be replaced sometime next year, I suggest that what you see here and in the forthcoming memos is about as much as the PC should try to change at this time.

Preamble. Please help me make the “Whereas’es” that will precede the amendments clear and complete.

Definitions. The definitions of “private driveway” and “private street” will be added to the other recently adopted definitions in §152.006. I tweaked them to be consistent with the other definitions there and these proposed amendments. I also clarified §152.006(F). I will add these important definitions to the zoning ordinance in the next installment, so that the two chapters match.

Who Does What? The PC discussed how the ordinances assign what is often shared work to a particular position (ZA, PC Secretary, Town Clerk). I changed specific assignments to just say “the Town,” when these amendments offered that opportunity. To systematically fix this would, however, be a serious distraction from what we’re trying to accomplish right now. There is existing language in §10.08 that should defuse any challenge.

Engineering Fees. There are three or more separate requirements that applicants pay the engineering fees incurred by the Town in subdivision review. One ought to be enough. The proposed amendments will partially correct this redundancy.

Flow Charts. I’m not sure the flow charts were ever accurate, but they have not been for some time. The proposed amendments will remove them.

Application Forms, etc. The proposed amendments will add authority for the ZA to create forms and educational materials (which could include accurate flow charts if people find them helpful) in Chapter 152. This authority already exists in the zoning, but responsibility is assigned to the TC. The proposed amendments will make the ordinances match.

Joining the Digital Age. The obsolete requirement that plats be done in pen will be removed and the digital format required (pdf) specified.

Application Requirements. These amendments clarify and expand on what is needed in an application to subdivide. They also propose that the Town adopt a State surveying standard that will cover most, though not all, requirements for preliminary plats.

Public Notice. Since newspaper notice is no longer required by law it will be removed.

Water Supply. The proposed amendments will allow the Town to find that sufficient water is available to subdivision lots without depending on a specific type of agreement between the developer and the water company, which is a private transaction.

Access/Streets. Existing §152.041(H) is redundant, inconsistent, and incomplete. Showing all the changes needed would result in an extensive tangle of strikethroughs and underlines. The proposed amendments will replace it with more straightforward language, and additions that address questions the PC has been trying to answer.

- As requested by April, the proposed amendments will eliminate the final vestige of the requirement that the area included in private driveways be deducted from lot size. They will also clearly establish the need for enforceable maintenance agreements for private streets and private driveways.
- The proposed amendments will allow “flag lots” to help landowners make the best use of their property and minimize reliance on private driveway easements. The PC received a memo explaining why flag lots are appropriate in Boulder in May 2022. I will ask Peg to distribute a slightly updated version.
- The proposed amendments correct a “chicken-and-egg” problem for applicants by requiring that they have applied for an access permit from UDOT, rather than having obtained one. This means that every subdivision with access to UT 12 will have to be approved with a condition that UDOT approve the access permit.
- The proposed amendments will eliminate references to lot widths and frontages. This is a prerequisite both of adopting the averaging of lot sizes and minimizing the use of private driveways. The zoning ordinance will be amended to match in a future installment.
- These proposed amendments make it clear that historic routes of access to and from adjoining lots or parcels must be identified and preserved.
- The proposed amendments will provide for a complete set of standards that are specifically for rural roads or streets. That will come to the PC later.

Building Permits. Why there was duplicative, but not identical, building permit language in Chapter 152 is a mystery. Everything provided there is covered well enough in Chapters 151 and Chapter 153. The existing language will be eliminated.

Timing of Improvements. John has pointed out that it is impossible to comply with the current requirements for the timing of subdivision improvements. What is in the ordinance is just plain mistaken and must be replaced. The proposed amendments will also make it clear that grading and related activities for agricultural purposes may be done while a subdivision approval is pending.

Single Lot Subdivisions. The proposed amendments will make it one step easier to create a single lot subdivision.

Finally, in order to share something of the conversations that have led us to this point with all PC members. I will ask Peg to distribute a set of notes that John prepared and sent to me following a July 20 conversation between Tina, John, and I. I invite any PC member who has questions or concerns about these draft amendments to contact me directly, via email.

Ordinance 2023 - _____

Whereas Boulder Town desires to implement its General Plan;

Whereas Boulder Town desires to keep its land use ordinances consistent with the ever-changing requirements of Utah law;

Whereas Boulder Town desires to simplify compliance with and the administration of its Code of Ordinances by removing internal inconsistencies and correcting errors;

Whereas Boulder Town desires to ensure safe, adequate access to all properties, including preserving historic, but sometimes informal, routes of public access when that makes sense;

Whereas Boulder Town desires to expand the availability of housing that is affordable for local workers by removing regulatory obstacles to the provision of such housing; and

Whereas Boulder Town desires to permit more flexibility for landowners to provide housing, protect agricultural land and operations, and protect other natural assets;

NOW BE IT ORDAINED BY THE TOWN COUNCIL OF BOULDER TOWN THAT THE BOULDER TOWN CODE OF ORDINANCES BE AMENDED AS FOLLOWS:

Amendments to Chapter 152

Correct the definition of “lot line adjustment” and add definitions to §152.006, in alphabetical order, as follows:

A **LOT LINE ADJUSTMENT** occurs when the owners of adjoining lots within a recorded subdivision agree to change lot lines or when the owner of a lot ~~line~~ within a subdivision agrees with the owner of an adjoining parcel to change boundaries between the lot and the parcel. A lot line adjustment cannot create a new parcel or lot. It can be used to change the boundary between a right-of-way and adjoining lots. For the regulation of lot line adjustments, please see § [152.116](#).

A **PRIVATE DRIVEWAY** provides access to one or more lots or parcels. It is maintained by the landowner/s it serves pursuant to a maintenance agreement that runs with the land and is approved and enforceable by the Town. A private driveway may be created only by the recording of an easement that is shown on the final subdivision plat. Private driveways are included within the area of any lot they cross for the determination of lot size.

A **PRIVATE STREET** is a transportation and utility right-of-way that provides access to multiple lots and/or parcels. It meets Town standards for streets, but is maintained by the landowners it serves pursuant to a maintenance agreement that runs with the land and is approved and enforceable by the Town. The area of private streets may be included within the area of any lot they serve for the determination of lot size.

Correct §152.006(F), as follows:

- (F) **SUBDIVISION** does not include a bona fide division of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if ~~neither the resulting combined parcel nor the parcel remaining from the~~

~~division or partition violates this Code or~~ such a division is a parcel boundary adjustment, as defined by §152.006(C) of this code.

Amend §152.007 and add a new (C), as shown below:

§ 152.007 FEES, AND CHARGES, AND FORMS.

- (A) The Town Council shall, by resolution, establish all fees and charges payable for the review ~~by the Town, for~~ of subdivision applications, including planning and engineering review, and for the inspection services of subdivision improvements, ~~and other requirements of this chapter by resolution.~~
- (B) Such fees and charges may be amended from time to time, ~~as considered necessary,~~ by resolution of the Town Council to cover the actual costs of subdivision review.
- (C) All administrative documents, including application forms, instructions, and educational materials needed for the administration of this chapter shall be prepared and updated as necessary, by the Zoning Administrator, with the advice of the Planning Commission.

Remove Figure 1.

Remove Figure 2.

Amend §152.041(A), as follows:

§ 152.041 REQUIREMENTS FOR PRELIMINARY SUBDIVISION APPLICATIONS.

~~All preliminary subdivision applications filed with the town are required to provide the following information. The applicant may be required to provide other information required by the Planning Commission or Town Council necessary to evaluate the merits of the proposed subdivision.~~

- (A) Application. Anyone proposing to subdivide land must submit the a preliminary subdivision application form provided by the Town Clerk, completed, and signed by the owner/s, as identified on the property assessment rolls of the county, or by an authorized agent of the owner(s), of the lands proposed to be subdivided. The preliminary subdivision application shall be accompanied by:
 - (1) ~~the preliminary subdivision application fee, including a non-refundable administrative processing fee,~~ as established by the Town Council,
 - (2) a preliminary plat meeting the requirements of (B), below.
 - (3) the attachments required by the application form and (C), below, including, where any required improvements are proposed, a draft development agreement, which may include a plan for the phased installation of those improvements; and
 - (4) all other information needed to demonstrate compliance with the Boulder Town Code of Ordinances.

- (5) All digital application materials shall be submitted in a clearly legible PDF format. Paper copies may also be required, as noted on the current Town application form.

Delete §152.041(B) in its entirety and replace as follows:

(B) Preliminary Subdivision Plat. The preliminary plat must be prepared by a professional land surveyor in accordance with the current edition of the Utah Council of Land Surveyors Final Subdivision Plat Guidance Document/Model Standard, which is here adopted by reference, and the following Boulder Town requirements:

- (1) provide a vicinity map clearly showing the location of the proposed subdivision relative to local landmarks;
- (2) show all adjoining lots and parcels, rights-of-way, and easements, including both recorded and unrecorded easements known to the owner or that may be inferred by observation, with the names of the owners of record or the beneficiaries of the easements;
- (3) show proposed building envelopes, if any;
- (4) provide a table showing the total area of the proposed subdivision, the area of each proposed lot and right-of-way in square feet and acres, and all calculations made in averaging lot sizes where that option is used;
- (5) provide a signature block for the signature of the Mayor to indicate approval of the preliminary plat; and
- (6) show proposed lots or areas within lots that will be dedicated to common use, affordable housing, or open space protection; including continuing agricultural use.
- (7) The signature block for owners must include all beneficiaries of easements.

Amend the introductory sentence of 152.041 (C) as follows:

(C) *Required subdivision site information.* ~~On separate sheets, at the same scale as the preliminary subdivision plat information,~~ The following subdivision site information is required:

Revise §152.041(C)(3) by removing the word “railroads.”

Revise §152.041(G)(1)(b) as follows:

- (b) The Town shall review and approve the applicant’s ability to provide culinary water or water rights to each lot in the subdivision. The preliminary plat shall not be approved without the applicant providing

assurances of culinary water to each subdivision lot in the form of: 1. a ~~binding contract~~ connection with ~~or shares in the~~ Boulder Farmstead Water Company providing ~~one connection~~ service sufficient for each lot in the subdivision; or 2. underground water rights available to the applicant as shown by, and on file with, the State Engineer's office sufficient in amount to provide ~~one single-family~~ culinary water ~~right in an amount no less than one-half (0.5) acre feet~~ to each lot in the proposed subdivision from an approved underground source.

Replace §152.041(H)(1)-(3) and (5) in their entirety, as shown below.

(H) *Subdivision roads and streets*

- (1) The street layout and design shown on the proposed preliminary plat shall provide safe access to all proposed lots via a public or private street. Access may also be extended to a limited number of lots within the subdivision or, where it historically has existed, to adjoining lots or parcels by private driveways, but only as provided below.
- (2) A professional engineer retained by the Town may review the proposed street and driveway layout and design for compliance with these and other applicable Town standards.
- (3) If the proposed subdivision will have access to a State highway, a copy of the application for the access permit required by the Utah Department of Transportation (UDOT) shall be provided with the preliminary plat. Approval of the final plat will be conditioned on approval of the access permit.
- (4) The preliminary subdivision application shall include a proposed permanent arrangement for the maintenance of all existing and proposed streets, private or public, and for private driveways. The maintenance options that may be proposed are:
 - (a) dedication of a proposed street to the Town, making it a public street, maintained by the Town; or
 - (b) private streets on rights-of-way dedicated to public use, but not accepted by the Town for maintenance. A proposed maintenance arrangement for the private streets must accompany the application for preliminary subdivision approval.
 - (c) The Town is not obliged to accept any street for maintenance. It may require the use of private streets.
 - (d) Private driveways may be used to access no more than four lots within a proposed subdivision. They may also be used to preserve historic routes of access to adjoining lots or parcels, though platting a public

or private street for that purpose may be required if it is reasonably anticipated that the existing lot or parcel being served may be subdivided in the future. A proposed maintenance agreement for any private driveway/s must accompany the application for preliminary subdivision approval.

(e) The maintenance arrangements required above must run with the land and be enforceable by the Town. If approved, they must be recorded prior to the Town's review and approval of the final plat. They may include a clause rendering them inoperative if the final plat is not approved and recorded.

(5) Flag lots extending to an existing or proposed public or private street will be permitted, and may be required, as an alternative to private driveways. The "pole" of a flag lot must be at least 40 feet in width.

(6) PLACEHOLDER FOR NEW STREET STANDARDS

Delete §152.042 in its entirety, leave this number as a placeholder so that renumbering at the section level is not required.

Revise §152.046 as shown below.

§ 152.046 EFFECT OF PRELIMINARY SUBDIVISION APPROVAL AND EFFECTIVE PERIOD.

(A) ~~For subdivisions not proposing or not being required to provide any public dedications, new public infrastructure or infrastructure providing any required improvements and subdivisions creating only one lot~~

(1) ~~For subdivisions not proposing, or being required to provide any dedications, or any new public infrastructure or infrastructure that will provide no required improvements and/or create only one new lot, a preliminary subdivision application approval by the Town Council shall serve as the final subdivision approval. Following the approval of the preliminary subdivision application, the preliminary subdivision plat shall be revised, as required by the Town Council, and presented to the Town Clerk for review. If it complies with all Town requirements for a final plat and all conditions imposed by the Town Council, it may be recorded~~ recordation in the office of the County Recorder. At a minimum, the preliminary subdivision plat shall be revised, as necessary, to be in a form acceptable for recordation. For such subdivisions, a subdivision

(2) Approval by the Town Council shall not authorize the division, transfer, sale, or development of land until the final subdivision plat has been recorded.

(3) ~~The Approval of a preliminary subdivision application not proposing, or being required to provide any public dedications or new public infrastructure or infrastructure that will provide no required improvements and/or create only one new lot shall be effective for a period of one year from the date of approval by the Town Council.~~

- (4) If a preliminary subdivision plat is not revised as required by the Town Council and ~~is not presented to the Town Attorney for review and recordation and is not recorded~~ within one year from the date of approval by the Town Council, the preliminary subdivision application approval shall be void, and the applicant ~~shall be~~ required to submit a new preliminary subdivision application, subject to the then existing application and approval requirements ~~in effect, and all other applicable town, state and federal requirements.~~
- (B) ~~For subdivisions proposing, or being required to provide any public dedications, new public infrastructure or infrastructure providing required improvements.~~
- (1) For subdivisions proposing, or being that are required to provide any public dedications, ~~new public infrastructure or infrastructure~~ required improvements, the approval of a the preliminary subdivision application by the Town Council shall ~~not constitute final approval of the subdivision by the town, but~~ include approval and execution of a development agreement that permits the applicant to proceed with the construction and installation of improvements, either for the entire subdivision, or by phase. ~~preparation of the final subdivision application and all required documents.~~

~~For such subdivisions, a preliminary subdivision application approval shall not authorize the division or development of land, but shall allow the presentation to the town of a final subdivision application.~~

- (2) A final plat or, for phased subdivisions, plats shall be prepared and submitted to the Town for review and recording upon completion, inspection, and acceptance of the required improvements. No lot may be offered for sale or transfer, sold or transferred, until the final plat is recorded.

~~The approval of a preliminary subdivision application proposing, or being required to provide public dedications, new public infrastructure or infrastructure improvements shall be effective for a period of one year from the date of approval by the Town Council, at the end of which time the applicant shall have submitted a final subdivision application for approval.~~

~~If a final subdivision application is not received by the Town Clerk within the one-year period, the preliminary subdivision application approval shall be void, and the applicant shall be required to submit a new preliminary subdivision application, subject to the then existing application and approval requirements in effect, and all other applicable town, state and federal requirements.~~

- (3) Each development agreement shall include provisions stating what happens if improvements are not completed and/or a final plat is not recorded as scheduled in that agreement. Renegotiation of the agreement may be allowed, but failure to comply or to renegotiate in a timely manner (with 'timely' being specifically defined) shall render the Town's approval of the subdivision void.

Replace §152.047 in its entirety as shown below:

§ 152.047 SITE PREPARATION WORK PROHIBITED.

No excavation, grading or regrading preparatory to subdivision development shall take place on any subdivision site, and no building permit shall be issued by the Town, until a development agreement that includes approval of all required improvements has been executed as provided by this chapter or, where no improvements are required, a final subdivision plat has been approved and recorded. This prohibition is not meant to prevent excavation, grading, or regrading for agricultural practices or the routine maintenance of existing structures and improvements.

Remove Figure 3.

Revise §152.061(B)(1) as shown below:

§ 152.061 REQUIREMENTS FOR FINAL SUBDIVISION APPLICATIONS.

(B) Final Subdivision Plat

- (1) A final subdivision plat, prepared by a ~~licensed~~ professional land surveyor, conforming to current surveying practice and in a form acceptable to the County Recorder for recordation. ~~The final subdivision plat shall be prepared in pen and all sheets shall be numbered. All required certificates shall appear on a single sheet (along with the index and vicinity maps). A minimum of ten paper copies shall be presented to the Town Clerk as part of the final plat application.~~ The final subdivision plat presented to the Town Clerk shall contain the same information as required by § 152.041(B) of this chapter and shall include plus any revisions or additions as required by the Town Council as ~~part~~ a condition of preliminary subdivision application approval.

Remove Figure 4.

Delete §152.080 in its entirety. Delete §152.081 in its entirety. Leave these section numbers as placeholders so that renumbering at the section level is not required.

Replace §152.095 in its entirety, as follows:

§ 152.095 CONSTRUCTION OF REQUIRED SUBDIVISION IMPROVEMENTS.

- (A) Subdivision improvements required by approval of the preliminary plat shall be made in compliance with all Town requirements and an approved development agreement before a final plat may be recorded and any lots offered for sale.
- (B) The construction or installation of required improvements and the recording of final plats may be phased, if so provided by the approved development agreement.

Delete §152.096 in its entirety. Leave the section number as a placeholder so that renumbering at the section level is not required.

Delete (c) from §152.131 (A)(1), as shown below:

§ 152.131 NOTICE REQUIRED BY THE ACT FOR PUBLIC HEARINGS AND PUBLIC MEETINGS TO CONSIDER THE ADOPTION OR ANY MODIFICATIONS OF THIS CHAPTER; NOTICE OF FINAL ACTION.

(A) *Public hearings.* The Town Clerk, for public hearings before the Council and the Planning Commission Secretary before the Commission, shall provide notice of the public hearing to consider the adoption or any modification of this chapter as follows:

- (1) Notice of the date, time, and place of each public hearing, at least ten calendar days before the public hearing, which notice shall be:
 - (a) Mailed to each “affected entity,” as defined herein;
 - (b) Posted in at least three public locations within the town or posted on the official website of the town; and
 - (c) ~~Published in a newspaper of general circulation within the town.~~

Delete (c) from §152.132 (A)(1), as shown below, re-letter accordingly:

§ 152.132 NOTICE REQUIRED BY THE ACT FOR PUBLIC HEARINGS AND PUBLIC MEETINGS TO CONSIDER A PRELIMINARY SUBDIVISION APPLICATION AND NOTICE OF FINAL ACTION.

(A) *Public hearings.* The Planning Commission Secretary, for public hearings before the Commission, shall provide notice of the public hearing to consider a preliminary subdivision application as follows:

- (1) Notice of the date, time and place of the public hearing, at least ten calendar days before the public hearing, which notice shall be:
 - (a) Mailed to each “affected entity,” as defined herein;
 - (b) Posted in at least three public locations within the town, or posted on the official website of the town;
 - (c) ~~Published in a newspaper of general circulation within the town;~~ and
 - (d) Sent by United States Mail to all owners of record of real property within 300 feet of the subject property proposed for preliminary subdivision application approval.

Amendments to Chapter 153

Remove Figures 1-6.

Replace §153.047 in its entirety, as follows:

§ 153.047 PROVISION OF ADMINISTRATIVE GUIDELINES.

All administrative documents, including application forms, instructions, and educational materials needed for the administration of this chapter shall be prepared and updated, as necessary, by the Zoning Administrator, with the advice of the Planning Commission

Delete §153.189. Leave this number as a placeholder so that renumbering at the section level is not necessary.

Delete (a) from §153.381(A)(1) as shown below, re-letter accordingly:

§ 153.381 REQUIRED NOTICE OF PUBLIC HEARINGS AND PUBLIC MEETINGS TO CONSIDER GENERAL PLAN OR GENERAL PLAN AMENDMENT APPLICATIONS.

(A) *Public hearings.* ~~The Town Clerk for public hearings before the Council and the Planning Commission Secretary for public hearings before the Commission shall provide notice of each public hearing to consider the adoption or any modification of the General Plan, as presented by a General Plan amendment application, as follows:~~

- (1) Notice of the date, time and place of each public hearing, at least ten calendar days before the public hearing, which notice shall be:
 - (a) ~~Published in a newspaper of general circulation within the town;~~
 - (b) Mailed to each “affected entity” as defined herein and the Act; and
 - (c) Posted in at least three public locations within the town or on the town’s official website.

Delete (a) from §153.382(A)(1) as shown below, re-letter accordingly:

§ 153.382 REQUIRED NOTICE OF PUBLIC HEARINGS AND PUBLIC MEETINGS TO CONSIDER THE ADOPTION OR ANY MODIFICATIONS OF LAND USE ORDINANCES, INCLUDING THIS CHAPTER, ZONING DISTRICTS MAP, OTHER OFFICIAL MAPS AND NOTICE OF FINAL ACTION.

(A) *Public hearings.* ~~The Town Clerk for public hearings before the Council and the Planning Commission Secretary for public hearings before the Commission shall provide notice of each public hearing to consider the adoption or any modification of a land use ordinance, including this chapter, Zoning Districts Map or other official map, as presented by a land use ordinance amendment application, zoning districts map amendment application or official map amendment application as follows:~~

- (1) Notice of the date, time and place of each public hearing, at least ten calendar days before the public hearing, which notice shall be:
 - (a) ~~Published in a newspaper of general circulation within the town;~~
 - (b) Mailed to each “affected entity” as defined herein and the Act; and
 - (c) Posted in at least three public locations within the town, or on the town’s official website.

Delete (A)(1) from §153.383 as shown below, re-letter accordingly:

§ 153.383 REQUIRED NOTICE FOR OTHER PUBLIC HEARINGS.

When required by the provisions of this chapter for a land use application, the Town Clerk ~~for public hearings before the Council and the Planning Commission for public hearings before the Commission~~ shall provide notice of each public hearing as follows:

(A) Notice of the date, time and place of each public hearing, at least ten calendar days before the public hearing, which notice shall be posted in at least three public locations within the town or on the town's official website.

~~(1) Published in a newspaper of general circulation within the town; and~~

~~(2) Posted in at least three public locations within the town or on the town's official website.~~

(B) Notice of the date, time and place of each public hearing shall be mailed at least ten calendar days before the public hearing to each applicant;

(C) Provide to each applicant a copy of each staff report regarding the application at least three business days before the public hearing; and

(D) The Town ~~Clerk~~ shall notify the applicant of any final action taken by the Zoning Administrator, Planning Commission, or Council for any land use application.