

# **Background Information for Attorney Consultation re Access to Subdivision Lots**

Version 2 - November 6, 2023

The Boulder Planning Commission would like to get advice from the town's attorney regarding both case law and normal practice of other municipalities for addressing transportation and access in new subdivisions.

## **Priority Questions**

- 1) What is appropriate language regarding legal access to subdivision lots that balances property rights, municipal interests, and housing affordability?
- 2) How to define and map "public streets" given Boulder's history and Utah case law?
- 3) Are minimum road construction standards based on the fire access requirements in the Utah Urban-Wildland Interface Code appropriate to protect public safety?
- 4) What are the legal concerns for town liability resulting from continuing past practice regarding relatively primitive and informal transportation access to lots in new subdivisions?

## **Problem Statement**

In developing objective subdivision standards that are required under SB 174 the previous "approved with conditions" language needs to be replaced. Access to lots is the major area where objective standards are currently lacking. The following statements in layperson language reflect the current thinking of the planning commission.

- 1) Require all new subdivisions to have recorded legal access from each lot to a public street.
- 2) Include a definition of public street that is considers Boulder past practices and Utah case law. Public streets include Highway 12, the Burr Trail road, the Class C roads indicated on the current map prepared by Jones and Demille, and the platted streets within the Boulder Townsite.
- 3) Allow the access to be either by a private driveway serving one lot or by a private street on a recorded easement and serving multiple lots.
- 4) Require new private streets and driveways crossing adjacent property to have an easement and a maintenance agreement that runs with the land.
- 5) Require new subdivisions to provide access easements necessary to avoid creating landlocked lots or parcels including public lands and easements for historic access routes, utilities and irrigation developments crossing the property.

## Background

Most municipalities require all lots to front on a public street that is constructed at developer expense, meets generally accepted engineering specifications, and is dedicated to the town for future ownership and maintenance. Boulder has chosen to be different.

Boulder, like many rural areas in Utah, has a state highway, a map showing Class C roads receiving state maintenance funding, platted town street rights-of-way the are currently not developed or maintained, and platted private street rights-of-way. In many cases the established travel alignment on the ground differs from what is platted. More problematic are the numerous historic roads ranging from paved driveways to dirt tracks that have no recorded easement or documentation and where the prescriptive rights have not been adjudicated. A related issue is the fact that some Class C roads within the town, including portions of both the Burr Trail and Lower Boulder Road, are not on recorded rights-of-way. This situation leads to frequent questions regarding responsibility for tree maintenance on the road shoulder and questions about constructing any improvements.

The Boulder Town council has been reluctant to accept dedication of new streets as public streets and the street standards in the current subdivision ordinance are both expensive and incompatible with the rural character of the town. Requiring public streets was extensively discussed in the December 2021 and January 2022 planning meetings. The January 2022 minutes include the comment by a Town Council member: *“Boulder can’t afford to maintain the public roads we have. All snow removal and equipment is done by the county. There would have to be restrictions on where you can build if you require dedicated roads. It’s not something to be decided right away.”* Past practice has been to rely on private driveways as the lot access when approving subdivisions where all lots are not adjacent to a public street.

Past practice has caused access issues with several recent and pending subdivisions. Problems have included delaying subdivision pending upgrade of a platted town road, a private road agreement that restricted access to an additional lot, uncertainty as to where the town road ended relative to a private driveway, and proposal of a subdivision where ownership of the land under the existing unimproved access route is either unknown or disputed.

The town is generally supportive of “do-it-yourself” subdivisions where a buyer and landowner work together to create one new lot, and then the buyer manages site development. There is general acceptance that the town wants to promote attainable housing options and not excessively burden such projects with stringent road design criteria.

## **Secondary Issues**

The following questions are not as urgent as the subdivision ordinance changes required by SB 174, but are concerns for the next General Plan revision and legal comments are welcome.

### Defacto public streets (prescriptive use)

Our planning consultant has proposed language referring to public streets being roads “claimed by the town.” Guidance is needed regarding necessary policies and procedures for municipalities asserting public ownership by 10 years of continuous public use under § 72-5-104 of Utah Code.

### Legalizing existing rights-of-way

Lower Boulder Road is mapped as a Class C road but does not have a platted right of way along most of its length. Guidance is needed regarding a planning strategy for resolving existing maintained roads that lack a recorded right-of-way.

### Mapping public streets

There is interest in mapping existing streets in the general plan. There are concerns regarding misclassification of the numerous road segments with unknown status (not publicly maintained, not recorded). Indicating a road as public for the purpose of approving a subdivision could lead to challenge by the affected landowner. Indicating a road as private on a town-issued map could be later used as evidence of abandonment. Guidance is needed on criteria for any mapping of the legal status of roads beyond the current Class C roads submitted to UDOT.