

MEMO

TO: Boulder Planning Commission
FROM: Lee Nellis, FAICP
DATE: December 5, 2023

RE: Better Zoning for Boulder

This memo supports the PC's continuing discussion of how Boulder might be better zoned. The zoning districts established by the current ordinance are generic. They do not reflect the Town's rural character and varied landscape. The alternative zoning map I have proposed does. You could not photocopy it (or the ordinance language that will accompany that map) and apply it anywhere else.

Zoning That Fits the Landscape

Many other communities already acknowledge the obvious - that not all neighborhoods are alike, even if their predominant land use is the same – and use zoning districts that reflect neighborhood character. Zoning can also reflect natural features of the landscape. Floodplain zoning is routine, and many rural communities have zoning that protects prime farmlands. Zoning may vary with soil types and slopes, and sometimes incorporates scenic views, wildlife habitat, and wildfire hazards.

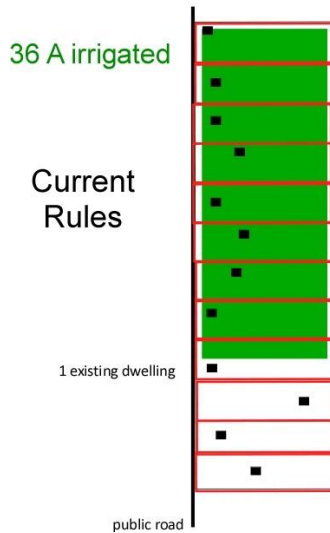
Zoning can also recognize the mixed uses typical of rural places, and the distinctive visual and historic character of different neighborhoods. Done well, zoning that goes beyond land use will be stable over time, avoid the lengthy process required for map amendments; and eliminate the uncertainty inherent in amendments that must be approved (or not) without foreknowledge of what use or uses will appear or the ability to impose conditions.

Zoning that is not rigidly based on use is consistent with Utah law, which allows a city to determine what type of zoning districts are appropriate to its needs and to regulate density and open space, as well as use. The basic limitation in Utah law, like that in every other state, is that the rules must be uniform within a zoning district. The rest of this memo discusses uniform rules or standards for the density of residential development in Boulder. But first let's return to an important underlying idea.

Conventional versus Open Space Development

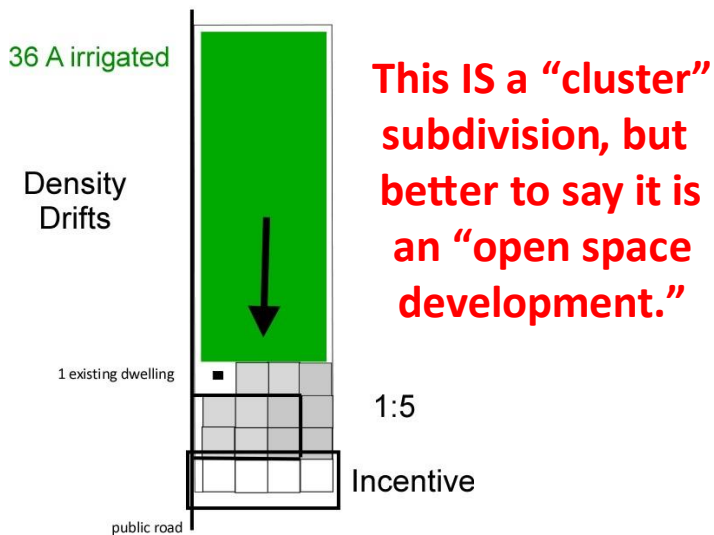
A "Conventional Development" is a subdivision that consists of building lots that conform to a minimum lot size. Such a subdivision may also contain public or private streets, and private driveways. No open space is set aside. The slide below shows a conventional subdivision with a five-acre minimum lot size.

60 Acres, More or Less



An "Open Space Development" is what people in Boulder refer to as a "cluster subdivision." This usage reflects the provisions of the current subdivision ordinance (§152.145, et seq.), which have been ineffective, but do establish the idea of a subdivision in which building lots do not occupy the entire area being platted and one or more areas of open space are set aside and protected from development.

60 Acres, More or Less



There is no difference between a cluster subdivision and an Open Space Development (OSD). The term OSD (we could call them “conservation subdivisions” if you prefer) is used because it emphasizes the community benefit – the protection of open space – that the development provides, rather than the way the housing is arranged, which doesn’t have to be in a cluster, though it often is.

The difference between what you are about to read and the current ordinance is that this provides complete and potentially more powerful incentives to protect open space. This proposal also includes the possibility of incentives for the provision of attainable housing.

Table of Residential Density Standards

The table presented below would become the foundational guidance for residential development in a new zoning ordinance. It would be the key to quickly determining, as the Town must, whether a proposed subdivision complies with the zoning. The three tables in the current ordinance: use (§153.117), dimensions (§153.119), and parking (§153.120) will persist, though with many changes, but they generally do not apply to or affect subdivisions. They are applied to applications for zoning or building permits.

The proposed table includes a row for each zoning district, including the existing High-Density Residential zoning district, which would be retained to provide stable rules for whatever minor changes happen in Boulder King Ranch Estates, and five new districts. The existing GM-U, LDR, and MDR zoning districts would be abandoned. The rationale for each of the new zoning districts is explained later in this memo.

The proposed table includes a column or partial row for each of the foundational standards that will govern the density of residential development in each zoning district. Each of the column headings is explained below.

Minimum Lot Size, Conventional. The first column of the proposed table is the only one that applies to conventional subdivisions. It reflects the assumption, so far, that any changes to the zoning ordinance would allow landowners to create conventional subdivisions using the five-acre minimum lot size that now prevails in most of Boulder. One wonders though, if that policy choice is consistent with the General Plan goal of keeping “agricultural fields open, watered, and productive.” The PC could, if it wants, have a conversation about increasing the minimum lot size for conventional subdivisions in certain zoning districts. I will discuss that possibility in the descriptions of the zoning districts.

Average Density, OSD. This is the average number of building lots that may be placed on a parcel in an OSD. Lots that are not potential homesites, like a lot on which a well serving the subdivision would be drilled or a lot dedicated to open space, are not building lots. *Example. Permitting an average of one lot per 5 acres would allow a landowner with 20 acres to create four building lots. Existing homes are counted toward that number, so if there is already a home on that 20, the landowner could create three new building lots.*

Boulder Town Residential Density Table

zoning district	minimum lot size, conventional	average density, OSD	minimum lot size, OSD	minimum open space protected	open space bonus	housing	housing
Upper Boulder Zoning District	5 Acres (A)	1 lot/5 A Screened: 1 lot/3 A	1 Acre	95%, 1 A minimum	Open: 1 unit/5 Acres Screened: 1 unit/3 A	33% of OSD bonus lots attainable	?
	Transfers? Development rights may be transferred out of the UBZD, but not transferred in.						
Village Center Zoning District	1 Acre	Open Space Development Not Relevant				1 A Lots if attainable	Duplexes By Right
	Transfers? Development rights may be transferred into the BVZD to create attainable homesites. They may not be transferred out.						
East Edge Zoning District	5 Acres	5 Acres	1 Acre	95%, 1 A minimum	1 unit/5 Acres	1 additional bonus lot if attainable	?
	Transfers? Development rights may be transferred out of the BEZD, but not transferred in.						
Lower Boulder Zoning District	5 Acres	1 Acre	95%, 1 Acre minimum	95%, 1 A minimum	20% of open space bonus	33% of OSD lots attainable	?
	Transfers? Development rights may be transferred out of the LBZD, but not in.						
Highway Edge Zoning District	5 Acres	5 Acres	1 Acre	95%, 1 Acre minimum	1 unit/3 Acres	1 additional bonus lot if attainable	?
	Transfers? Development rights may be transferred out of the BWZD. They may be transferred in if the result is an attainable lot.						
High Density Residential Zoning District	This zoning district, which is in the current ordinance, exists in only one location: Boulder King Ranch Estates. It is retained so that the existing development there does not become nonconforming.						

Minimum Lot Size, OSD. This is the minimum lot size required in an OSD. It must be substantially smaller than the average density (if the average were converted to a minimum lot size) to give landowners the flexibility to design a subdivision that sets open space aside. *Example. The owner of a 20-acre parcel that already has one home on it could create three new building lots, each of which could be as small as the minimum lot size, OSD. It is important to remember that the Southwest Utah Public Health Department will not permit the creation of building lots that are inadequate in size for on-site wastewater disposal.*

Minimum Open Space Protected. The new zoning ordinance would list the specific types of open space that must be protected in an OSD. That list will probably include irrigated land, riparian areas, and steep slopes. It could also include identified view corridors or other sensitive or hazardous areas. A practical reality of OSD is that the only feasible way to get access or utilities to a building lot may be across the protected open space. This can be allowed by adopting a standard that puts conditions on such crossings (the Commercial Development Standards include an example, see §153.415(B)(4)) and setting a minimum percentage of the existing open space that must be protected. *Example. Suppose that 10 of the 20 acres in the example are irrigated. Setting the irrigated acreage aside would leave 10 acres on which to place three new building lots, each of which could be as small as the minimum lot size, OSD. If it is the only feasible option, a driveway or utility line could cross the protected open space to reach a building lot, but that crossing would be subject to a standard like that in §153.415(B)(4) and limited to affecting no more than five percent of the protected open space.*

Open Space Bonus. The flexibility afforded by OSD will be appealing to some landowners just because it allows them to make more sensible use of their property. An incentive for OSD should be offered, however, because it will achieve the Town's goals far better than conventional subdivisions. That incentive or bonus would come in the form of an increase in the number of building lots that may be created. *Example. The owner of the 20-acre parcel I am using as an example might be allowed to create one or more additional lots in recognition of the protection of the irrigated land. The PC must determine how large an incentive is needed to be effective in making OSD preferable to conventional subdivision. Would one lot be enough?*

Hundreds of communities have adopted OSD standards like those explained above. Boulder is on that list, but the cluster provisions of the current subdivision ordinance have not been effective. Different ordinances use different jargon (calling it clustering, as Boulder and many other jurisdictions did in the past) but work the same way: additional development is allowed in exchange for open space protection.

Attainable Housing. Adding attainable housing to the goals to be achieved makes the standards more complicated. It is possible to require that a portion of the lots in every subdivision be attainable. Would that be acceptable in Boulder? Or is it necessary to offer incentives? The draft table assumes that the Town will offer incentives.

- One way to promote attainable housing would be to couple it to OSD. What if some portion of the lots or just of the bonus lots in an OSD had to be dedicated to attainable housing? The landowner who creates an OSD is given an incentive in the

form of flexibility in subdivision design and a density bonus. Does that make it reasonable to ask for a lot or two to be dedicated to attainable housing?

- A density bonus for the provision of attainable homesites does not have to be tied to OSD. What if additional units were awarded if half of them were attainable? Would that be effective? How about a third of them? The draft table illustrates bonus possibilities. It also points out the possibility of permitting duplexes in at least one of the proposed zoning districts as a different kind of incentive.

Density Transfers. Finally, the draft table indicates which zoning districts could accept and which could send development rights from or to another parcel in another zoning district. Density transfer involves a lot of paperwork, but as I look at the ownership map of Boulder, I see possibilities.

Please do not take the numbers in this first version of the table too seriously. None of them are outrageous, but they are not, at this time, recommendations. Their purpose is to illustrate possibilities that reflect the character of each zoning district as explained below.

Now for the Zoning Districts

If anyone would like to propose different names for any of the proposed zoning districts, please do.

Upper Boulder Zoning District (UBZD). This part of Boulder is distinct. It is a bit different geologically (related more to the mountains than to the slickrock), it includes large parcels, and the pinon-juniper forest offers opportunities to create homesites that have little visual impact. This is illustrated by Boulder King Ranch Estates. The highest density housing in Boulder is nearly invisible from the road.

- The PC might consider requiring a larger minimum lot size in conventional subdivisions here. The five-acre minimum is incompatible with ranching operations (though not necessarily with smaller-scale agriculture) and the natural assets of this area, while well-designed OSDs could preserve natural assets and financially support ranching. With or without such a change, the Town should offer a strong incentive for OSD in this district.
- At least 95% of the open space on a parcel would have to be protected to create an OSD here or in any of the other proposed zoning districts. That number can be discussed.
- One building lot would be permitted for every five acres in an OSD without effective visual screening. But, here is where the strong incentive I recommend comes in: One building lot would be permitted for every three acres where effective visual screening is provided by terrain and/or vegetation. The minimum lot size, OSD would be one acre.

- One bonus building lot would be added for the first one to five acres of open space protected, then one more for each additional five full acres protected where there are open views. One bonus building lot would be added for the first one to three acres of open space protected, then one more for each additional three full acres protected where there is effective visual screening.
- I am using this proposed zoning district to illustrate one of several ways to promote attainable housing. That is a requirement, but a requirement based in an incentive, that one-third of the open space bonus lots be dedicated to attainable housing. This approach could be used in any of the proposed zoning districts where OSD is allowed. Is it fair? Would it be effective?
- The draft allows development rights to be moved out of this zoning district, but not into it. The PC could discuss allowing transfers in to OSDs where there is effective screening.

Village Center Zoning District (VCZD). This proposed zoning district would include the original Boulder Townsite and adjoining parcels, including Anasazi State Park. The general plan and zoning rules should anticipate the eventual evolution of a walkable village center.

- This is an appropriate location for some commercial and institutional uses, as well as for higher density housing.
- The draft table proposes a minimum lot size of one acre in the VCZD (with health department approval, of course), most of which is now in the MDR zoning district and subject to a 2.5 acre minimum. Lowering the minimum lot size would bring several existing small lots into compliance, allowing their owners to confidently improve their properties.
- The one-acre minimum would allow most existing lots in the VCZD to be split. This potential could be used as an incentive for open space protection, with development rights being transferred in from other zoning districts. It could also be used as an incentive for attainable housing.
- The VCZD might also be a good place to address the housing shortage by allowing duplexes.

East Edge Zoning District (EEZD). The area east of the Boulder Townsite has access via side streets through the Townsite and from the Burr Trail. It is characterized by a mix of smaller and larger parcels. It is mostly irrigated.

- This is another proposed zoning district in which the PC may want to consider a larger minimum lot size in conventional subdivisions. The five-acre minimum is not consistent with continued ranching operations, while well-designed OSDs could

financially support agriculture. For now, the draft table sets an average density of one lot per 5 acres here, with a minimum lot size of one acre.

- The draft table sets the OSD bonus as one additional lot for the first one to five acres protected and then one additional lot for each five full acres protected. The PC could consider a larger bonus here if it believes that is needed to encourage OSD that protects the irrigated land.
- To illustrate the possibilities, the draft table suggests an incentive of one additional lot if it is dedicated to attainable housing for attainable housing.
- Development rights could be transferred out of the EEZD, but not into it.

Lower Boulder Zoning District (LBZD). This is the area served by Lower Boulder Road. It is characterized by limited access (legal and physical), wide open scenic views, and a substantial acreage of irrigated land.

- This is another proposed zoning district in which the PC may want to consider a larger minimum lot size for conventional subdivisions. The five-acre minimum is inconsistent with continued ranching operations (though not necessarily small-scale agriculture) or unimpeded scenic views, while well-designed OSDs could protect views and financially support agriculture.
- The draft table sets the minimum lot size for conventional subdivisions in the LBZD at five acres. The minimum lot size for OSDs would be one acre.
- The density bonus for OSDs would be one additional lot for the first one to five acres of open space protected, then one additional lot for each five full additional acres protected. The PC might consider using this incentive to help address the access issues in this area. It could be available only to landowners who dedicate a full right-of-way for Lower Boulder Road or otherwise help clarify access.
- The draft table illustrates another possibility for promoting attainable housing by suggesting that 33% of all lots (not just the bonus lots) in an OSD be attainable. Each of these variations on the theme of how to encourage attainable housing is subject to the same questions. Is it fair? Would it be effective?
- Development rights could be transferred out of the LBZD, but not into it.

Highway Edge Zoning District (HEZD). This proposed zoning district is accessible from Utah 12 and includes Boulder Creek. There is a mix of larger and smaller parcels. There is less irrigated land here, but the creek corridor and irrigated areas still offer good potential for OSDs. My sense is that a little more development might be tolerable here. To see how the PC responds to that idea, the draft table provides a stronger incentive for OSD. This might also be an appropriate area for an attainable housing bonus that is not tied to OSD.

- The draft table sets the minimum lot size for conventional subdivisions in the HEZD at five acres. The minimum lot size for OSDs would be one acre.
- The density bonus for OSDs would be one building lot for the first one to three acres protected, then one more building lot for each three full acres protected. One additional bonus lot dedicated to attainable housing would be permitted in each OSD.
- Additional lots dedicated to attainable housing could also be created by transfers in from other zoning districts. An owner who has a hard-to-reach and scenic parcel in one of the other zoning districts, but who also owned a parcel here or could make a deal with a landowner in the HEZD, could use the development rights from that difficult-to-develop site to create building lots here. And it might be reasonable, given the benefits to the landowner, to require that some of those transferred in lots be dedicated to attainable housing.

Looking Ahead. Having more zoning districts will enable the PC, if it wants, to revisit the question of commercial development. The Town could, for example, encourage some types of commercial in the VCZD. The PC may also want to discuss the highway “gateways” to Boulder, the UBZD and HEZD. What type of additional commercial development, if any, would be appropriate in a district where visitors form their first impression of Boulder? All that is for another time, though. Let’s resolve the residential development questions.

Dealing with Complexity

The density standards table and accompanying ordinance language could have many configurations, so many that discussion of the possibilities drags on for years. But Boulder doesn’t have years.

Any of the larger landowners could, at any time, propose a subdivision that would substantially suburbanize the Town’s character. And starting about a year from now, such a proposal will be entitled to quick approval without public review or discussion.

The only way the PC, TC, and larger community can assert the community interest within the current reality is to adopt new zoning that will be admittedly imperfect, but reflects the Town’s goals, see what happens, and adapt as you learn. If you’re not willing to act until you’re sure, you will surely get a future you don’t want.

Landscape-Based Zoning Districts

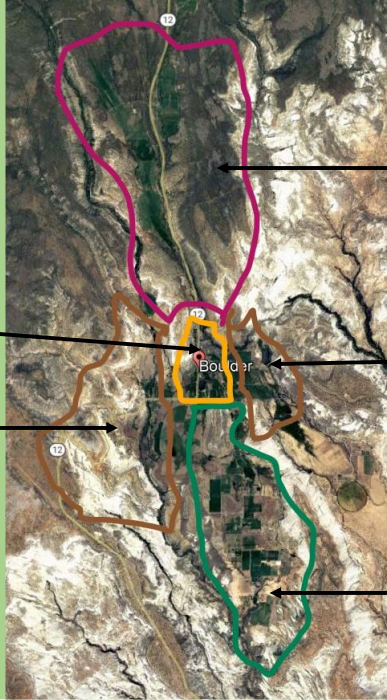
Village Center ZD: mixed use activity center, commercial by right, (in compliance with the standards), small parcels, attainable housing

Highway Edge ZD: mixed parcel sizes, encourage highway access

Upper Boulder ZD: more visual screening, highway access

East Edge ZD: mixed parcel sizes, near center

Lower Boulder ZD: wide open views, ag, limited access



Part 1 General Provisions

10-9a-101 Title. This chapter is known as the "Municipal Land Use, Development, and Management Act."

10-9a-102 Purposes -- General land use authority.

(1) The purposes of this chapter are to: (a) provide for the health, safety, and welfare; (b) promote the prosperity; (c) improve the morals, peace, good order, comfort, convenience, and aesthetics of each municipality and each municipality's present and future inhabitants and businesses; (d) protect the tax base; (e) secure economy in governmental expenditures; (f) foster the state's agricultural and other industries; (g) protect both urban and nonurban development; (h) protect and ensure access to sunlight for solar energy devices; (i) provide fundamental fairness in land use regulation; (j) facilitate orderly growth and allow growth in a variety of housing types; and (k) protect property values.

(2) To accomplish the purposes of this chapter, a municipality may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that the municipality considers necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing: (a) uses; (b) density; (c) open spaces; (d) structures; (e) buildings; (f) energy efficiency; (g) light and air; (h) air quality; (i) transportation and public or alternative transportation; (j) infrastructure; (k) street and building orientation; (l) width requirements; (m) public facilities; (n) fundamental fairness in land use regulation; and (o) considerations of surrounding land uses to balance the foregoing purposes with a landowner's private property interests and associated statutory and constitutional protections.

10-9a-505 Zoning districts.

(1)(a) The legislative body may divide the territory over which it has jurisdiction into zoning districts of a number, shape, and area that it considers appropriate to carry out the purposes of this chapter. (b) Within those zoning districts, the legislative body may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land. (c) A municipality may enact an ordinance regulating land use and development in a flood plain or potential geologic hazard area to: (i) protect life; and (ii) prevent: (A) the substantial loss of real property; or (B) substantial damage to real property.

(2) The legislative body shall ensure that the regulations are uniform for each class or kind of buildings throughout each zoning district, but the regulations in one zone may differ from those in other zones. (3) (a) There is no minimum area or diversity of ownership requirement for a zone designation. (b) Neither the size of a zoning district nor the number of landowners within the district may be used as evidence of the illegality of a zoning district or of the invalidity of a municipal decision. (4) A municipality may by ordinance exempt from specific zoning district standards a subdivision of land to accommodate the siting of a public utility infrastructure.