**MEMO**

TO: Boulder Planning Commission

FROM: Lee Nellis, FAICP

DATE: December 1, 2023

**RE: Better Zoning for Boulde**r

This memo supports the PC’s continuing discussion of how Boulder might be better zoned. PC members have seen the rough draft zoning map I suggested. It is appended to this memo for easy reference. I am working on a version in which the zoning district boundaries follow property lines. It is more important, however, to get the PC thinking about how the rules within the districts will be structured and how they might vary from district to district.

**Zoning Doesn’t Have to Be by Use**

The first zoning ordinances (beginning around 1920) were intended to separate homes from industrial uses and the accompanying hazards and nuisances. It didn’t take long for cities to use zoning for other purposes, including unfortunately, ethnic and racial segregation, but they also created historic districts, in which architectural character was more important than land use. Zoning for purposes other than use separation was upheld in the courts, including the US Supreme Court, in decisions beginning in the 1940s.

By the 1970s, communities were acknowledging the obvious – not all neighborhoods are alike, even if their predominant land use is the same – and creating zoning districts that reflected neighborhood character. Zoning also began to reflect natural features. Floodplain zoning became routine, and many rural places adopted regulations that protected prime farmlands from development. Communities also adopted zoning that varied with soil types and slopes, and sometimes incorporated wildlife habitat and wildfire hazards.

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Zoning can recognize mixed uses, where appropriate, the distinctive visual and historical character of different neighborhoods, and the opportunities and limitations inherent in the landscape. Done well, zoning that considers factors other than use can be stable over time, avoid the lengthy process required for map amendments; and eliminate the uncertainty inherent in map amendments that must be approved without foreknowledge of what use or uses will actually appear or the ability to impose conditions.

Zoning that is not rigidly based on use is consistent with Utah law. I have appended the language from the statutes, with highlights. It 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 operational 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.

**Zoning Density Standards**

PC members know that there are three tables in the current zoning ordinance: use, dimensions, and parking. Those tables will also appear in a new ordinance, though with at least some changes. This memo introduces what, for residential development, would become the first, foundational table, a table of density standards for residential development.

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 Boulder King Ranch Estates, and five new districts. The existing GM-U, LDR, and MDR zoning districts would be abandoned.

The proposed table includes a column or row for each of the foundational standards that will govern the density of development in each district: a minimum lot size for conventional subdivisions; the average density permitted in open space developments (OSD); the minimum lot size required in OSDs; the minimum open space that must be protected to qualify as an OSD; the bonus awarded to OSDs; the bonus awarded for dedicating lots to attainable housing; and whether or not development rights may be transferred out of or into the district. Each of the column headings would be explained in a new zoning ordinance. This memo offers a less formal explanation of these terms. None of this is new. PC members have heard these ideas explained in the ever evolving “Boulder Density Questions” presentation.

**Minimum Lot Size, Conventional.** It has been assumed, 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. That assumption is reflected in the draft table. I wonder though, if this 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 this possibility below.

**Average Density, Open Space.** 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 a 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.*

**Minimum Lot Size, Open Space.** 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 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, open space, listed in the table. 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.*

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| **Boulder Town Residential Density Table** |
|  |  |  |  |  |  |  |  |
| zoning district | minimum lot size, conventional | average density, OSD | minimum lot size, OSD | minimun open space protected | open space bonus | housing | housing |
|  |
|  |  |  |  |  |  |  |  |  |
| UBZD | 5 Acres (A) | Open: 1 lot/5 A | 1 Acre | 95%, 1 A minimum | Open: 1 unit/5 Acres | 33% of OSD bonus lots attainable | ? |  |
| Screened: 1 lot/3 A | Screened: 1 unit/3 A |  |
| Transfers? Development rights may be transferred out of the UBZD, but not transferred in. |  |
|  |  |  |  |  |  |  |  |  |
| BVZD | 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. |  |
|  |  |  |  |  |  |  |  |  |
| BEZD | 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. |  |
|  |  |  |  |  |  |  |  |  |
| LBZD | 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. |  |
|  |  |  |  |  |  |  |  |  |
| BWZD | 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. |  |
|  |  |  |  |  |  |  |  |  |
| HDR | This zoning district exists in only one location. It is retained so that the existing development there does not become nonconforming. |  |
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**Minimum Open Space Protected.** The revised zoning ordinance will list the specific types of open space that must be protected by an OSD. That list will probably include irrigated land, riparian areas, and steep slopes. It could also include specifically identified view corridors or other sensitive or naturally hazardous areas.

*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, open space.*

**Open Space Crossings.** A practical reality of OSD is that the only feasible way to get access or utilities to a lot may be across protected open space. This can be allowed by adopting a standard that puts conditions on such crossings (the Commercial Development Standards include an example that the Town has already adopted) and setting a minimum percentage of the existing open space that must be protected.

*Example. If crossings are limited to five percent or less of the protected open space, crossings for which there is no feasible alternative could occupy no more than half an acre of the 10 acres of protected open space.*

**Open Space Encouraged.** 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 general plan goals far better than conventional subdivisions. That incentive or bonus would come in the form of an increase in the number of lots that may be created.

*Example. The owner of the 20-acre parcel I am using as an example might, for instance, be allowed to create one additional lot 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.*

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 have done in the past) but work the same basic way; additional building is allowed in exchange for open space protection. Adding attainable housing to the goals to be achieved makes the standards more complicated.

**Attainable Housing.** 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 use 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 must be dedicated to attainable housing? The landowner who creates an OSD is given 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 some bonus possibilities. It also points out the possibility of permitting duplexes in at least one of the proposed zoning districts.

**Density Transfers.** Finally, the draft table indicates which zoning districts could accept and which could send development rights. Density transfer is complicated, but as I look at the ownership map of Boulder, I see possibilities.

**Explaining the Table**

Please do not take the numbers in this first version of the density standards table too seriously. None of them are outrageous, but their purpose is to illustrate the possibilities. Also, if anyone would like to propose less literal 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 some 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 not compatible with ranching operations 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.
* One building lot would be permitted for every five acres in an OSD without effective visual screening. 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, open space 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.
* Here’s where the “strong incentive” I suggest comes in. 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 the several ways to promote attainable housing; a requirement – as opposed to 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 in. The PC could discuss allowing transfers in to OSDs where there is effective screening.

**Boulder Village Zoning District (BVZD).** 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 BVZD (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 BVZD 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 BVZD would be the best place to address the housing shortage by allowing duplexes.

**Boulder East Zoning District (BEZD).** 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 density standards 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.
* To illustrate the possibilities, the draft table suggests an incentive of one additional lot if it is dedicated to attainable housing rather than a requirement (as suggested for the UBZD) for attainable housing.
* Development rights could be transferred out of the BEZD, but not in.

**Lower Boulder Zoning District (LBZD).** This is basically 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 not consistent with continued ranching operations or unimpeded scenic views, while well-designed OSDs could protect views and financially support ranching.
* 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 draft table illustrates another possibility 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 in.

**Boulder West Zoning District (BWZD).** 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 offer good potential for OSDs. My sense is that this is the proposed zoning district in which a little more development might be tolerable. To see how the PC responds to that idea, the draft table provides a stronger incentive for OSD here. This might also be an appropriate area for an attainable housing bonus that is not tied to an OSD.

* The draft table sets the minimum lot size for conventional subdivisions in the BWZD 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 OSDs in other zoning districts.

**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 BVZD. The PC may also want to discuss the highway “gateways” to Boulder, the UBZD and BWZD. 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 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 change the Town’s character. And starting about a year from now, such a proposal will be entitled to quick approval without significant 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 is 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.



Chapter 9a Municipal Land Use, Development, and Management Act Utah Code

**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.