

BUSINESS MEETING ITEM COVER SHEET

DEPARTMENT County Attorney

DIVISION

TITLE Resolution 2011-50, approving Land Use Docket (Proposed Text Amendments to make a variety of policy clarifications to Articles 3, 4, 8, 9 & 18 of the Land Use Code)

DOCUMENT TYPE Resolution

SUBTYPE DC-11-0002

BUSINESS MEETING DATE 04/19/11

COMMISSIONERS' ACTION

Approved

Denied

Other

ORIGINAL(S) RETURNED TO Vault + Abby Janusz

AGENDA ITEM NUMBER

5

COMMENTS

RESOLUTION 2011-50

A RESOLUTION APPROVING BOULDER COUNTY LAND USE DOCKET #DC-11-0002: PROPOSED TEXT AMENDMENTS TO MAKE A VARIETY OF POLICY CLARIFICATIONS TO ARTICLES 3, 4, 8, 9, AND 18 OF THE BOULDER COUNTY LAND USE CODE

WHEREAS, pursuant to C.R.S. Sections 30-28-112 and -116, as amended, the Board of County Commissioners of Boulder County ("the Board") is authorized to amend the text of County's Zoning Regulations in accordance with the procedures set forth in those provisions and the applicable County regulations; and

WHEREAS, pursuant to C.R.S. Section 30-28-133, as amended, the Board is authorized to amend the text of the County's Subdivision Regulations in accordance with the procedures set forth in those provisions and the applicable County regulations; and

WHEREAS, pursuant to other statutory authority, the Board is empowered to adopt additional regulations which are related to the control of land use, including but not limited to Article 65.1 of Title 24 (Areas and Activities of State Interest); Articles 67 and 68 of Title 24 (Planned Unit Developments and Vested Rights, respectively); Article 20 of Title 29 (Local Land Use Enabling Act); Articles 11 and 15 of Title 30 (County Powers and Police Power, respectively); Article 1 of Title 32 (Special District Control); and Article 2 of Title 43 (County Highways), C.R.S.; and

WHEREAS, pursuant to the above-referenced authority, by Resolution 94-185 adopted October 18, 1994, effective October 19, 1994, the Board approved a unified Boulder County Land Use Code ("the Land Use Code" or "Code"), which the Board first amended by Resolution 95-27 effective March 9, 1995, and has amended on subsequent occasions thereafter; and

WHEREAS, in Docket #DC-11-0002 ("the Docket"), the Boulder County Land Use Department ("Land Use Department") proposed certain additional text amendments to the Land Use Code ("the Proposed Amendments"), to make a variety of policy clarifications to certain articles of the Land Use Code, all as described in the memorandum and staff recommendation of the County Land Use Department to the Board dated April 14, 2011, with its attachments ("the Staff Recommendation"), which is incorporated into this Resolution by this reference; and

WHEREAS, the Proposed Amendments include, specifically, amendments to: the application signature requirements for conservation easement holders in Art. 3-203(A)(1); the types of conservation easements which trigger site plan review under Art. 4-802(A); the classification of the Garage Sale zoning use in Article 4 as an Accessory Use (changing it to a Temporary Use classification); the square footage triggers for site plan review

involving residential and nonresidential floor area in Art. 4-802(A)(2) & (3); the one-time, 200 square-foot exemption from the residential floor area size presumption in site plan review in Art. 4-806(A)(2)(b)(i)(G); the reference to the Colorado Department of Health (changing it to the State Engineer) in Art. 8-511(B)(3); the description of the subdivision exemption process in Art. 9-100(A) (supplying the missing word "land"); and the definition of Building Lot in Art. 18-121(A)(4) to make clear that existing building lots coming into government ownership after December 13, 1983 remain legal building lots, even if subsequently conveyed out of government ownership; and

WHEREAS, due to the need for further staff analysis of drafting concepts and language, the Land Use Department decided not to process as part of the Proposed Amendments an amendment which the Board had authorized as part of the Docket, involving possible changes to the transferable development credit ("TDC") eligibility requirements in Article 4-1300 of the Code pertaining to larger parcels that can be divided into 35-acre parcels, with the aim of encouraging owners to retain such larger tracts intact; and

WHEREAS, on March 16, 2011, the Planning Commission held a duly-noticed public hearing on the Proposed Amendments, and, based on that hearing, recommended approval of the second of the Proposed Amendments, and certified the Docket for action to the Board; and

WHEREAS, on April 14, 2011, the Board held a duly noticed public hearing on the Docket as certified to it by the Planning Commission ("the Public Hearing"), at which time the Board considered the Staff Recommendation and the documents and testimony presented to the Board by the Land Use Department staff, with no members of the public being present to speak to the Docket, all as further reflected on the official record of the Public Hearing; and

WHEREAS, based on the Staff Recommendation and the Public Hearing, the Board finds that the Proposed Amendments, specifically in the form presented to the Planning Commission and as set forth in Exhibit A to this Resolution, below, meet the criteria for text amendments contained in Article 16 of the Land Use Code, in that the existing text is in need of amendment; the Proposed Amendments are not contrary to the intent and purpose of the Land Use Code; and the Proposed Amendments are in accordance with the Comprehensive Plan; and

WHEREAS, the Board thus determines that the Proposed Amendments, as approved and set forth in Exhibit A to this Resolution, below, should be and hereby are incorporated into the Land Use Code, effective on the date of adoption of this Resolution as stated below.

NOW, THEREFORE, BE IT RESOLVED that the Proposed Amendments, specifically in the form set forth in Exhibit A to this Resolution, below, are hereby approved for incorporation into the Land Use Code, to be effective on the date of adoption of this Resolution as stated below.

BE IT FURTHER RESOLVED that, pursuant to C.R.S. Section 30-28-125, the Board authorizes the Clerk to the Board to arrange for the immediate transmittal of this Resolution, with its Exhibit A, to the County Clerk and Recorder, for filing and appropriate indexing with that official, so that the Clerk and Recorder may make this Resolution, with its Exhibit A, accessible to the public. This transmittal should state recording Reference No. 2735571, the recording of the Boulder County Land Use Code on November 4, 2005, which this transmittal supplements and amends.

A motion to approve the Proposed Amendments in the Docket (#DC-11-0002), as set forth above, was made at the Public Hearing by Commissioner Domenico, seconded by Commissioner Toor, and passed by a 3-0 vote.

ADOPTED on, and to be effective as of, this 19th day of April, 2011.

BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:

Ben Pearlman

Ben Pearlman, Chair

Cindy Domenico

Cindy Domenico, Vice Chair

Will Toor

Will Toor, Commissioner



ATTEST:

Mike Ryder

Clerk to the Board

EXHIBIT A TO RESOLUTION 2011-50 (BOULDER COUNTY LAND USE CODE TEXT AMENDMENTS APPROVED IN DOCKET #DC-11-0002)

Article 3

Art. 3-203(A)(1) Application Submittal Standards

(a) An application form with all agents designated, exhibiting all landowner signatures, and all necessary information completed. ~~Where the proposal, if approved and commenced or constructed, would conflict with the terms of an existing conservation easement on the subject property, the form shall also contain a signature from the conservation easement holder consenting to the proposal.~~ The signature on an application form will be deemed to indicate the landowners' concurrence with all submissions and commitments made by their designated agent. If the proposal is located on property over which a conservation easement has been granted, the application shall include either:

- (i) a signature from the conservation easement holder consenting to the proposal being processed under the Code, or
- (ii) a written statement from the easement holder(s) indicating that, in the opinion of the easement holder(s), the proposal, if approved and commenced or constructed, would not conflict with the terms of the easement.

Article 4

- Art. 4-101 (C)(8) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales
- Art. 4-102 (C)(10) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales
- Art. 4-103 (C)(9) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales
- Art. 4-104 (C)(8) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales
- Art. 4-105 (C)(7) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales
- Art. 4-106 (C)(7) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales
- Art. 4-107 (C)(6) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales
- Art. 4-108 (C)(6) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales
- Art. 4-109 (C)(6) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales
- Art. 4-110 (C)(6) ~~Garage Sales or Occasional Sales~~

(D)(2) Garage Sales or Occasional Sales

Art. 4-111 (C)(8) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales

Art. 4-112 (C)(8) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales

Art. 4-117 (C)(7) ~~Garage Sales or Occasional Sales~~
(D)(2) Garage Sales or Occasional Sales

Art. 4-802(A)

2. ~~For residential development, Site Plan Review shall be required for the more restrictive of either any cumulative increase in residential floor area of more than 1,000 square feet on a parcel over that legally existing as of September 8, 1998 or a~~Any cumulative increase in residential floor area which results in a total residential floor area greater than 125% of the median residential floor area for the defined neighborhood in which the subject parcel is located. In determining if the proposed development is greater than 125% of the residential median floor area, any demolition and rebuilding of any existing residential structure or any portions thereof, shall be counted toward the threshold.

- a. ~~In calculating the 1,000 square foot threshold or determining if the proposed development is greater than 125% of the residential median floor area, any demolition and rebuilding of any existing residential structure or any portions thereof, shall be counted toward the threshold~~
- b. ~~Any construction of residential floor area not legally existing as of September 8, 1998 shall be counted toward the threshold~~
- c. ~~Applies to all parcels in unincorporated Boulder County~~
- d. ~~Applies to all residential floor area, as defined in Article 18-189D.~~

3. Any cumulative increase in ~~nonresidential~~ residential floor area of more than 1,000 square feet on a parcel over that existing as of September 8, 1998

- a. In calculating this 1,000 square foot threshold, any demolition and rebuilding of any existing ~~nonresidential~~ structure or any portions thereof, shall be counted toward the threshold
- b. Any ~~construction of nonresidential~~ residential floor area not legally existing as of September 8, 1998 shall be counted toward the threshold
- c. ~~Applies to all parcels in unincorporated Boulder County~~
- d. Applies to all principal ~~or~~ and accessory ~~nonresidential~~ structure(s)

Art. 4-802(A)

6. New structures or additions to existing structures of any size on property over which a conservation easements held by Boulder County has been granted.

Art. 4-806(A)(2)(b) Either the applicant or the Director may demonstrate that this presumption does not adequately address the size compatibility of the proposed development with the defined neighborhood.

(i) Factors to be considered when determining the adequacy of this presumption and whether it can be overcome include:

- (G) Existing residential floor area that already exceeds the size presumption and has not been ~~approved~~ limited through a prior County land use approval.

(1) Up to a one-time maximum of 200 square feet of residential floor area may be granted under this factor.

Article 8

Art. 8-511(B)(3) Adequate water supplies, as determined ~~from the Colorado Department of Health by the Colorado State Engineer~~, are available for the proposal, if applicable.

Article 9

Art. 9-100(A) The Board of County Commissioners may grant exemptions from the application of the Subdivision Regulations for any subdivision of unsubdivided **land** which the Board determines, pursuant to this Article 9, is not within the purposes of the Subdivision Regulations, as evidenced in Section 1-300 and Article 5 of this Code, and Part 1 of Article 28, Title 30 of the Colorado Revised Statutes.

Article 18

18-121(A) Building Lot

4. A parcel which conformed to the lot area and lot frontage requirements of the zoning district in which it was located at the time it was created, and which has continued to be held as a separate parcel, shall be designated a building lot in accordance with those area and frontage requirements in effect at the time of its creation, and with all other provisions and requirements of this Code, as amended; provided, however, if such parcel was at any time owned by a governmental entity, it may be occupied only in accordance with the area and frontage requirements in effect at the time legal title was transferred from the governmental entity to a person, unless it was acquired by the governmental entity after December 13, 1983, and was a building lot at the time of acquisition ~~and with all other provisions and requirements of this Code, as amended.~~