



Land Use

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930 • Fax: 303.441.4856
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.org

BOULDER COUNTY PLANNING COMMISSION AGENDA ITEM #5

April 16, 2014 – 3:30 P.M.

**Hearing Room, Third Floor
Boulder County Courthouse**

PUBLIC HEARING

Docket DC-14-0002: Land Use Code Text Amendments related to the Floodplain Regulations, Articles 4 and 18

Request: Proposed Boulder County Land Use Code Text Amendments related to the Floodplain Regulations, Articles 4 and 18, Concerning Cumulative Retroactive Application of "Substantial Improvement" Definition and Related Amendments

Staff Planners: Varda Blum, Floodplain Administrator – Transportation Department;
Kimberly Sanchez, Planning Division Manager – Land Use Department

SUMMARY

Staff is proposing text amendments to Articles 18 and 4-400 of the Land Use Code to address challenges experienced after the September 2013 Flood event in relation to the cumulative provision of the "substantial improvement" definition, which requires that substantial improvements to a structure in the FO District be calculated cumulatively back to November 1, 1991. The proposed amendments are a discrete set of changes and will not include changes to the floodplain maps-- including boundaries and base flood elevations. Any changes to those regulations will be brought forward for consideration when information is available to make such changes.

The proposed amendments to the floodplain regulations include the following:

- some technical updating-type changes to the floodproofing section in 4-405
- an amendment to the requirement for floodplain development permits in 4-407 (adding in exemptions for minor building permit work)
- "cleanup" of the nonconforming use/structure provisions in 4-408 (to track with the "substantial improvement" changes and to overall make this section clearer)
- companion change to the "market value" definition in 18-178A (making clear that Assessor's actual value can be used in lieu of an appraisal)
- changes to the definition/retroactive cumulative calculation for determining "substantial improvement" in 18-206 to amend the definition to make it cumulative back to the 2013 Flood event.

BACKGROUND AND DISCUSSION

Following the major Front Range Flood event of September 2013, County staff has been intensively engaged in applying the Land Use Code's floodplain development permitting requirements in Article 4-400 of the Code governing the Floodplain Overlay ("FO") District. This effort has revealed certain difficulties in administering Article 4-400 and its companion definitions in Article 18, which the Board of County Commissioners last amended in Docket DC-12-0005 (adopted by Resolution 2012-123 effective November 13, 2012), and prior to that in Docket DC-09-001 (adopted by Resolution 2009-72 effective May 26, 2009). One major challenge has been applying the cumulative provision of the "substantial improvement" definition, which requires that substantial improvements to a structure in the FO District be calculated cumulatively back to November 1, 1991– the time when Boulder County joined FEMA's floodplain management Community Rating System ("CRS").

The Community Rating System (CRS) is a voluntary program for National Flood Insurance Program (NFIP) participating communities. The goals of the CRS are to reduce flood damages to insurable property, strengthen and support the insurance aspects of the NFIP, and encourage a comprehensive approach to floodplain management. The CRS has been developed to provide incentives in the form of premium discounts for communities to go beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.¹

The cumulative provision is one tool that is recognized by the CRS to help go beyond minimum floodplain management requirements. Staff has found that this cumulative requirement has been difficult to administer, since it required tracking improvements back 18 years prior to the amendment's adoption (2009). The prior building permit data was not maintained in a manner that contemplated a cumulative improvements' calculation throughout a structure's lifetime from late 1991 on. Staff did not discover these data shortcomings until the September 2013 flood event, which has obviously led to a much higher volume of floodplain development permit applications being sought to repair or rebuild damaged and destroyed structures.

Staff thus is proposing to amend the definition of "substantial improvement" to make it cumulative back to the 2013 Flood event rather than the November 1, 1991 date. This will assure that accurate building permit data (costs of improvements and the market value of the structures being improved/repaired) will be kept comprehensively and accurately from this event on.

Staff also is proposing certain companion amendments to track the re-clocked "substantial improvement" definition, and to reflect how the substantial improvement/damage calculation has been done under FEMA's guidance following the 2013 Flood. For example, because current FEMA guidance uses the ratio of **cost** (not the market value) of the proposed improvement, to the overall structure's market value, this docket includes an amendment to delete the current requirement that the **market value** of the improvement be calculated. This calculation can be difficult from an appraisal point of view, especially when the nature or variety of the proposed improvements make market valuation hard to ascertain; in addition, requiring only improvement costs to be shown is simpler for property owners/permit applicants, who can have their contractor draw up a list of improvement costs as opposed to hiring an appraiser to do an improvement market value analysis.

Other companion amendments in the docket involve simplifying Article 4-408 (that governs nonconforming structures and uses in the FO District) with respect to the amended "substantial improvement" definition in Article 18-206.

¹ http://www.fema.gov/media-library-data/45d30e14bdec841d92462f9424567b73/19_crs_508_oct2013.pdf

Finally, a minor change is proposed to Section 4-405.C. of the FO District’s floodproofing requirements, to reflect current administrative practice regarding flood elevation requirements for replacing heating, water, and other structure utility systems that have been damaged or destroyed by causes outside the owner’s control, such as the September, 2013 Flood: under this proposal, replacement appliances/systems would not need to be flood-elevated except when they are part of a restoration project qualifying as a “substantial improvement.”

IMPACT OF PROPOSED CHANGES ON COMMUNITY RATING SYSTEM (“CRS”)

A community’s optional participation in the CRS program of the National Flood Insurance Program (NFIP) can result in flood insurance premium discounts for its residents in the 100-year floodplain. The percent discount depends on the community’s “CRS class” – a number from 1 to 10 that reflects the activities that a community undertakes that go above and beyond those activities necessary for a basic level of participation in the NFIP. A community that has just joined the CRS is a class 10, and for every 500 points worth of activities, the community drops a class, and receives an additional 5% discount on insurance rates.

Boulder County is currently a Class 7 community, with 1,767 points, and receives a 15% discount on flood insurance premiums. Class 7 ranges from 1,500 to 1,999 points. Boulder County receives 30 of its 1,767 points for including in its regulations a requirement for calculation of cumulative substantial improvements. By implementing the proposed code changes that reset the clock for the beginning of cumulative improvement tracking to September 11, 2013, all 30 of these points will be lost. Half of the 30 points will be regained in 2018, and the full 30 points will be regained in 2023. This points impact is relatively small and unlikely to have much effect on our CRS class rating.

PUBLIC COMMENT

Staff sent a referral to, and met with, representatives from the Federal Emergency Management Agency (FEMA) and Colorado Water Conservation Board (CWCB) to discuss the proposed regulations on March 24, 2014. Neither agency had conflict with the proposed regulations as drafted and supported the changes.

The proposed changes were emailed to the Land Use Code and flood listservs on April 9, 2014. Information related to this docket was also posted on the County’s website:
www.bouldercounty.org/property/build/pages/lucodeupdatedc140002.aspx

CRITERIA REVIEW

No text amendment shall be adopted [by the Board of County Commissioners] unless the Board has Determined that:

1. the existing text is in need of the amendment;
2. the amendment is not contrary to the intent and purpose of this Code; and
3. the amendment is in accordance with the *Boulder County Comprehensive Plan*

The proposed changes related to the cumulative provision of the “substantial improvement” definition were found to be necessary given the difficulty of administering this provision due to data shortcomings. Resetting the clock to make the provision cumulative back to the 2013 Flood event rather than the November 1, 1991 date will assure that accurate building permit data will be kept comprehensively and accurately from this event on.

Staff finds that the need for the amendments has been demonstrated, the amendments are not contrary to the intent and purpose of the Code, and the amendments do not conflict with the

Boulder County Comprehensive Plan; consequently, the criteria for text amendments in Article 16-100.B. of the Land Use Code are met.

RECOMMENDATION

STAFF RECOMMENDS THAT THE PLANNING COMMISSION APPROVE AND RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS APPROVAL OF Docket DC-14-0002: Land Use Code Text Amendments related to the Floodplain Regulations, Articles 4 and 18 Concerning Cumulative Retroactive Application of "Substantial Improvement" Definition and Related Amendments, and certify the Docket for action to the Board, which certification includes the approved text of the Docket, and the official record of the Docket before the Commission with its staff comments, public testimony, and Commission discussion/action.

The Board of County Commissioners is scheduled to review the draft regulations at a public hearing on ***Tuesday April 22, 2014 at 2:00 P.M.***