

March 16, 2022

Article 19 Draft

To Boulder County Commissioners:

I would like to offer my professional opinion about the proposed draft of Article 19. We have been in dialogue with Deputy Director Sanchez and her team (Hannah and Alisa) since the conversation about fire rebuilding requirements began. We would like to compliment the entire department for their active engagement of the professional design and building community during this process. They have effectively solicited our experience and perspectives, and incorporated that feedback in intelligent and balanced ways into the current proposal. I and the other home building professionals involved have decades of projects under our belt in Boulder County and a deep understanding of how the County's Codes and rules directly impact homeowners, and can lead to better outcomes.

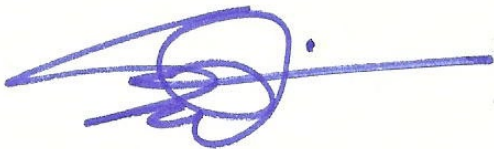
We are currently working with six homeowners who lost their houses, and we were able to consider the proposed regulations as applied to these real world projects. We believe that the current draft works well to achieve the outcomes desired by the County (allowing homeowners to swiftly rebuild while updating their homes to reflect their current preferences and needs, maintaining robust sustainability requirements, increasing wildfire resilience, protecting neighborhood character, among others).

We encourage the County to adopt the proposed Article 19 draft as written. We believe that it strikes an excellent and nuanced balance between the need for flexibility in allowing people to rebuild according to their current needs, while still protecting the public interest in the form of reasonable regulations.

The form of Article 19 is also very well done. It is intelligible, but also includes sufficient detail and specificity to deal with both typical and unusual property conditions.

Thank you for presenting this process for consideration so quickly. Speaking on behalf of all our clients, and the professional design community, we greatly appreciate it.

Sincerely,



Scott Rodwin, AIA, LEED AP

Director of The American Institute of Architects, Northern Colorado Section

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From: [Chris Singer comcast](#)
To: [Hippely, Hannah](#)
Subject: [EXTERNAL] Re: Article 19
Date: Tuesday, March 15, 2022 10:46:51 PM

On minimum acreage - recommend 1/3 of an acre and if below that removal of other structures like barn, workshop , hay storage etc. may be an option

On 3/15/2022 9:45 PM, Chris Singer comcast wrote:

Hannah Hippely

I appreciate you seeking comments for the Article 19 meeting Boulder County on March 16 and vote in March or early April

The decision if the county allows building permanent ADU - Accessory Dwelling Unit - for mother in law, aging in place is critical to us since December 30 - our daughter's family's house on Muirfield in Louisville was destroyed completely and rebuild will take late to 2023 or 2024. Her family of 4 is living with us at 144 Vaquero Spanish Hills Boulder County. My wife and I would like to build an ADU but timing is not on our side since we do not know what the code requirements are for an ADU. If article 19 allows building an ADU what are:

Minimum acreage to build an ADU for families that have 1 destroyed house

Square footage and max height / 2 levels /no basement

2 or 3 bedrooms

Septic tank adjustment

existing Xcel gas, electric (or electric only for ADU ?) and existing solar.
existing city Lafayette water

Is rustic insulated log home ADU acceptable with proper insulation?

Off road parking is no problem - we have a large driveway

If we know the ADU criteria -we can move forward - **right now everything is unknown about whether or not we can even add an ADU since we are NOT a farm and this is NOT for a disabled person**

If ADU is a no go on Article 19 - then unfortunately our families need to consume a rental or interim home purchase during a massive housing shortage in Boulder county, or move out of the county. A decision on ADUs will enable planning for a housing solution, and reduce the housing

stock impact from the fire. **Timing of a BC building code decision is of the essence.** ADUs will also enable aging in place and reduce the demand for other aging facilities. ADUs are environmental friendly using existing resources. ADUs will reduce move outs of long term Boulder County residents. **ADUs have the potential to increase the BC housing stock by a few 100 ADUs using existing building lots and without compromising open space.** I have seen a similar ADU program in Palo Alto CA about 30 years ago that worked well to reduce the housing shortage in a university town without diluting open space and quality of life- 100s of ADUs work well there.

Thank you if you can accelerate the ADU decisioning under article 19 as a trial and then considered as a permanent solution - so we can work with a real solution for Marshall for fire impacted residents

Chris Singer

144 Vaquero Boulder CO 80303

720 339 8146

From: [Deborah Cave](#)
To: [Hippely, Hannah](#)
Cc: [!MarshallRebuilding](#); [Sanfacon, Garry](#); [Cheryl Gordon](#)
Subject: [EXTERNAL] Comments on Draft Article 19 document
Date: Wednesday, March 16, 2022 12:24:47 PM

I apologize for not getting these submitted sooner:

1. Please do not include the abbreviated Zone 1 fire mitigation requirements under Article 19. We were told at a meeting on 3.11.22 that the County intends to incorporate Zone 1 fire mitigation requirements as part of Zone 2 building requirements, and estimated that this change to the building code could be within 6+ weeks after completion of Article 19. However, there is language in many insurance policies for fire survivors that states that the insurance company would cover rebuild costs based on codes that were in place at time of disaster (or current code requirements?). It is very possible that if rebuilds are submitted between the passage of Article 19, and prior to passage of the change to the building codes, that homeowners will be responsible for paying for the new fire mitigation requirements. Unless the county can ensure that no fire survivor will have to pay out-of-pocket for the new fire mitigation measures if these measures are incorporated under Article 19, then these measures should only be implemented (as quickly as possible) under the building code – otherwise, it will be creating a two-tier payment system where fire survivors may have to pay higher costs than other rebuilds.

We absolutely will be building to the new requirements, whether or not they are required under Article 19, and other property owners impacted by the Marshall Fire have stated the same (for safety issues, resale value etc.). And once the building codes have been changed to include the new fire mitigation measures, it is my understanding that the building code will supercede Article 19.

Please do not create the unintended consequence of requiring fire mitigation measures under Article 19 if there is a possibility that Marshall Fire survivors will end up paying more/out-of-pocket because their insurance company will not reimburse for those 'new' costs.

2. Please reconsider allowing ADUs under Article 19. I completely understand that this is a larger question that must be addressed under the building code for the County as a whole, but there are probably small changes that could be implemented under Article 19 that would be beneficial for many property owners. For example, currently, an attached ADU is only allowed under 3 categories (farm workers, caregivers, ?). Could this limitation be relaxed (for extended family, small # of non-family members, etc. in the primary building, or in accessory buildings that are rebuilt consistent with structures present before the fire) under Article 19, with the understanding that any ADUs ultimately included in any revised county building codes would supersede Article 19. This could greatly benefit homeowners who will be rebuilding under Article 19, and would not allow ADUs in any other new construction until/unless this issue is addressed as part of the county building codes.

It was clear from the survey results distributed to Louisville and Superior, compared to the

one distributed to UBC residents, that allowing ADUs under Article 19 is much more important to UBC residents compared to the other two areas. Again, if possible and to support the needs/interests of UBC residents, please consider relaxing the restrictions on ADUs under Article 19.

Thanks for your consideration of these issues.

Deborah Cave, UBC resident

From: [ellen_berry](#)
To: [!MarshallRebuilding; Hippely, Hannah](#)
Subject: [EXTERNAL] Art 19 - on behalf of Marshall residents
Date: Wednesday, March 16, 2022 10:42:24 AM

HI team -

Thanks for trying to make a speedy rebuild code for all of us in the UBC. This email is reflecting the collected comments from our neighborhood meetings of Marshall town and surrounding mine areas.

Residents are concerned about:

-Being able to rebuild their homes that are in the setbacks of road/ditch/neighbors in the old Marshall Town site. Many of these neighbors would like to have assurances they can rebuild on their footprints. Also - these neighbors might want to expand footprint or possibly add a second floor to enable aging in place on their properties.

- Neighbors on new Marshall Rd. (Now CO 170) would like to be able to move the footprint of their houses around and away from this very busy road. Most of these neighbors have larger parcels and could move 200 ft from the road. They really don't want to go through the long and expensive site plan review process - we know that 3 other properties in our immediate area are having years long and expensive SPR. The Marshall Fire rebuild need a truly fast process.

-Residents are concerned about being forced out of their property between setbacks, mining areas, and the OSMP demand for visual impacts. Residents have been told they can't be by the road, can't be on the mine and can't even have their homes seen from trails on Open Space. They are worried that Ron West is going to stand on their property and tell them what they can and cannot do. This cannot be how the planning system is supposed to work.

-Passive house/high efficiency/thick walls not in be included in PSM (max size). We don't want our PSM to be limited to the 1998+1K and then have high insulation/thick walls taken out of the floor area. We don't want to be penalized for choosing high efficiency homes.

-Neighbors who had homes over the PSM need reassurance that they can build back what they had without a whole new SPR.

- We want ADUs to be permitted in Marshall to help solve the housing crisis and to help our aging population.

-We want a reduction in permitting fees for the fire rebuild. We heard there was a reduction in fees for properties under 2500sqft, but what about the rest? Most of our homes are not very big.

- We want clear rules to follow without so much subjectivity in the planning process. It should be much more clear like what Louisville and Superior have.

From: [Ellen Berry](#)
To: [Hippely, Hannah](#); [!MarshallRebuilding](#)
Subject: [EXTERNAL] Concerns from Art 19 for our home
Date: Wednesday, March 16, 2022 11:27:01 AM

Hi team -

We have high hopes that Art 19 will enable us to rebuild, but we have concerns about the code and how it will be enforced.

1) who decides if a rebuild fits within Art 19 or triggers SPR?

2) who decides if a ground based solar array is Ok with Art 19? We would like to put up solar panels.

3) We feel squeezed on our property because of road setbacks, mine subsidence, OSMP visual pickiness and now the Davidson Ditch flexing a large setback through the middle. We want to rebuild our home and barn but we will need to move the home away from the road (CO 170). We don't want to go through long, expensive Site Plan Review like our neighbors to move away from the road, and therefore will need a driveway.

4) We want to build a fire wise high-efficiency home and take advantage of the Xcel incentives. We are worried if we can do this because of the complicated PSM calculations of Art 19. It seems that our Art 19 PSM is what we had in 1998 plus 1000sqft. If we had 1886 sqft cabin in 1998, then is our PSM for ALL things now limited to 2886sqft? That does not leave much area for home/garage and the thick walls needed for passive house. We want our true PSM and wish it was compatible with our neighbors on the mesa all around us (Wildflower, Buerge home, Schoolhouse, Zane Blackmer)

5) We are particularly concerned about our neighbor OSMP having an outsized impact on the Marshall Fire rebuild. Our home and barn can be seen from open space no matter where we put it. We feel like the decisions about what can be built or rebuilt is subjective and not our ability to decide. This feels completely unfair and like we are subjects to a feudal war lord.

Thank you and wishing we can find a way for this to work for everyone.

Ellen Berry
5743 Marshall Dr.

From: [Beck, Darren](#)
To: [Hippely, Hannah](#)
Cc: [cpeterson](#); [Melanie Asquith](#); [Johnathon Oppermann](#); [Joan Truesdale](#)
Subject: RE: Docket DC-22-0001: Text Amendments to Article 19, Procedures Following Disasters, to Add Article 19-500 (Marshall Fire 2021)
Date: Wednesday, March 16, 2022 3:52:56 PM
Attachments: [image001.png](#)

Hannah,

The Goodhue Ditch board feels the amendment to Article 19, provided below, would negatively impact ditch maintenance and operations. Specifically, Paragraph F.1.b.i, which states, "Setbacks for Nonconforming Structures and Structures containing Nonconforming Uses from an irrigation ditch shall be 20 feet from the centerline of the ditch." If this amendment is adopted as written, it would allow for future encroachment and development within the ditch easement. We understand that this amendment hopes to allow home owners impacted by the Marshall fire to rebuild, but we feel the amendment is too broad and all-encompassing and would allow for encroachment not related to rebuilding after the fire.

We request the language relating to the 20 foot setback from ditch centerline be removed from the amendment.

Thanks,
Darren

*Darren Beck P.H. | Water Resources Specialist
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From: Hippely, Hannah <hhippely@bouldercounty.org>
Sent: Thursday, March 10, 2022 6:52 PM
To: Beck, Darren <dbeck@bouldercounty.org>; [cpeterson <cpeterson@louisvilleco.gov>](mailto:cpeterson@louisvilleco.gov); manager.goodhue@gmail.com; larryfrico@wildblue.net
Subject: Docket DC-22-0001: Text Amendments to Article 19, Procedures Following Disasters, to Add Article 19-500 (Marshall Fire 2021)

Good Evening,

As the members of the Goodhue Ditch Board that we have on record I wanted to notify you that the following docket is scheduled for a public hearing at Planning Commission on March 16, 2022 at 5:00 p.m. and for the Board of County Commissioners on March 17, 2022 at 1:00 p.m.

Docket DC-22-0001: Text Amendments to Article 19, Procedures Following Disasters, to Add Article 19-500 (Marshall Fire 2021)

Text amendments to the Boulder County Land Use Code to add a new Article 19-500 in response to the December 2021, Marshall Fire.

Within the text amendment the ditch setback is proposed to be 20 feet from the ditch centerline for nonconforming structures being rebuilt after the Marshall Fire whereas the current regulations require a 50 foot setback from the centerline with the potential for it to be reduced to 20 feet. The Goodhue Ditch is within the area of Marshall where nonconforming structures were destroyed and will be rebuilt.

The full staff recommendation packet including the draft regulations can be accessed using [this link](#).

Please consider the proposed regulations and provide any comments you may have and I will pass them along to Planning Commission and Board of County Commissioners. You are also welcome to speak at these hearings as there is a public comment period.

Thank you,

Hannah L. Hippely | Long Range Planning Manager

Boulder County Community Planning & Permitting

Service Hours: 8 a.m.- 4:30 p.m. Monday, Wednesday, Thursday, Friday, and 10 a.m.- 4:30 p.m. Tuesday

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Sign-up for Boulder County news at boco.org/e-news



Due to COVID-19, the Boulder County Community Planning & Permitting Department is conducting business and providing services virtually. Our physical office in Boulder is currently closed to the public. Please visit us online at <https://www.boco.org/cpp> for more information.

From: [Lars Kalnajs](#)
To: [Hippely, Hannah](#)
Cc: [!MarshallRebuilding](#)
Subject: [EXTERNAL] Comment on Article 19
Date: Tuesday, March 15, 2022 8:45:02 PM

I appreciate the work the County has done on behalf of those impacted by the Marshall fire, and am very supportive of both the goals of Article 19 and the majority of the draft Article. However, I have concerns about section 19-500.F.2 of Article 19 regarding fire resistant building requirements. I fully support including these provisions in the broader Boulder County Land Use Code, and intend to rebuild to these standards regardless of the code. However, I am **not** supportive of including these provisions in Article 19.

To summarize: including 19-500.F.2 in Article 19 risks adding regulation that only applies to fire survivors, provides little measurable benefit to the community over directly including it in the broader code, adds uncertainty to having these upgrades reimbursed by insurance and projects an image that is inconsistent with the stated goals of Article 19.

In detail:

1. Fire survivors in UBC are concerned that these fire resistant building requirements would only apply to fire impacted residents rebuilding under Article 19. Both Commissioner Levy and Ron Flax assured us that these requirements would also be implemented in the broader code, and therefore apply to all new building in the county. It was indicated that implementing these requirements in the broader code would be a quick process, on the order of six weeks. If the process is truly this fast, then there is no need to include 19-500.F.2 in Article 19 as it will apply to all new building well before the vast majority of rebuilding begins. Conversely, if the County cannot guarantee that fire resistant building can be quickly adopted to the general land use code, then they will in fact applying a more restrictive standard to fire survivors than to the rest of the county for an indeterminate length of time - exactly the situation we were assured would not happen.
2. By including these provisions in Article 19, which is an optional path in the land use code, there is a risk that these added code related expenses will not be covered by fire survivors 'Codes and Ordinance' coverage. This is analogous to the optional energy codes in Louisville - if these requirements can be avoided by using the standard permitting process (not Article 19) they are not technically requirements and may not be covered by some insurance policies. Including these requirements only in the broader code would avoid this potential issue.
3. There is a growing feeling amongst UBC residents that the County is less serious about assisting County Residents rebuild than either Superior or Louisville. Both of these jurisdictions are actively reducing both the cost and regulatory/code requirements for rebuilding. The role of Article 19 is to expedite the rebuilding process, not to expedite the introduction of code requirements above and beyond the broader land use code.

Thanks,
Lars Kalnajs
12 Benchmark Dr.

From: [Laura Schmonsees](#)
To: [Hippely, Hannah](#); [!MarshallRebuilding](#)
Subject: [EXTERNAL] Rebuilding in Old Town Marshall
Date: Wednesday, March 16, 2022 5:11:36 PM

HI! Thanks so much for spending so much time working on the proposed amendment. I see some really good attempts to make rebuilding easier for those in non-comforming Marshall. Allowing accessory structures to be rebuild if they existed prior to modern codes is the only fair thing to do. We all rely on our property value as an asset and if we purchased or owned two structures, we should be able to rebuild that. I also appreciate the allowance of temporary structures on these rural properties.

I live in downtown Marshall. This area was full of homes from the late 1800's on, and many of those homes and structures existed when the fire occurred. The land owners there have the right to rebuild what was on their land. I understand some additional constraints, however, the properties in downtown Marshall are all surrounded by irrigation ditches. We have kept those ditches clean, and the ditch companies have been very happy with us and they understood that most of our homes existed before the ditch companies did. It was a symbiotic relationship.

I think the 20 foot set back is actually too much for downtown Marshall. I think the wording in the article should specifically state that if a non conforming structure was within the 20 (or 25, 50) foot setback of a ditch, then it will be allowed to rebuild on that site. Especially for the old homes that had been there forever!!

I hope you will step in the shoes of those who have lost everything in the fire and also loved their neighborhood. We all want to return to Marshall, We want to rebuild. Everyone loved driving, riding, running through our neighborhood for a reason. They loved the quaintness, and not so boulder feel. Please let us rebuild this back and understand that Marshall is VERY different from the rest of UBC.

Thanks,

Laura Schmonsees
lkschmoo73@gmail.com

From: [Megan Monroe](#)
To: [MarshallRebuilding](#); [Hippely, Hannah](#)
Subject: [EXTERNAL] Article 19 comment
Date: Tuesday, March 15, 2022 9:02:09 PM

I thank the County for all the work you have done and for the opportunity to comment on Article 19.

My biggest concern is that Article 19 does not adequately address the many unique/nonconforming situations that were lost in my neighborhood, Marshall; and that disproportionately, property owners in the Marshall area will be pushed from Article 19 and forced to go through a lengthy Site Plan Review (SPR) process in order to work through those conditions largely because this will impact historical properties where the zoning didn't match the development. Because of this, I feel the Marshall town site (everyone really) ***needs reassurance (codified) that this process will not take months or years but will be limited to the code established 6 week long process SPR is supposed to be, at a maximum. SPR waivers should be a 2 week long process per the code and many of these issues should not require more than that time. I respectfully request these time limits be added to Article 19.***

Additionally, at some point in the past few years, Marshall was deemed a "view corridor". I don't even know if this is an official process or establishes official areas but what we do know is in the recent SPRs in our area, it has become the top issue limiting our homes (along with PSM, but I won't even go there). Our community certainly recognizes this as a uniquely beautiful area, that's why many of us lived there and are fighting to get back as fast as possible – but, if you could pause for a moment and try to see this from our perspective: the County's narrow interpretation to protect view corridors "as much as possible" has had significant impacts on our properties. A review of current SPRs shows that the County has placed "visual impacts" above all other concerns. Homes in the Marshall area have been forced into slivers of their properties, some restricted to areas where hazards such as flooding are more common; they are forced to be out of sight from trail users or from being seen even from roads, properties are told to screen their homes with trees so they're not seen (what's that mean for our fire risk now?) and shockingly, properties are forced to limit southern glass (one SPR actually says its, "commendable" that the southern glazing is minimized). Limiting south facing glass goes against the most basic concept of building in an energy efficient way and I am shocked that Boulder County would encourage that, would you rather we heat with gas? All of this because there's a concern that a trail user's experience may be impacted by the fact that homes exist near open space. It's even more insulting when WE are the people that use those trails every day, to be told that our own homes are somehow an "impact" to look at. Our friends in Superior, on the opposite side of the adjoining Open Space, would never be told their homes are a negative visual impact; as my neighbor said, it certainly doesn't feel good to have that term used against our homes. Mind you, Marshall was a town well before "open space" was established, in fact, Marshall was a town before Colorado was established. Boulder County needs to recognize that Marshall is a beautiful little community and it's OK to see us.

Finally, it should be noted that in multiple SPRs in our area, the City failed to disclose the potential risk of an underground coal fire that sits on their property. Adjacent or nearby property owners were not made aware of the 2005 grass fire that was started by that coal fire; many of us recently learned of that fire from a [9News report](#). We certainly weren't made aware of the warnings that the report says the State gave the City regarding the potential risk. Simply disclosing that risk could have allowed things to be managed and built differently, more fire-wise. Perhaps resources could have focused on mowing or worked with officials to bring fire hydrants to the area to help mitigate the risk. All of this would have helped in this fire whether or not the underground fire was the cause, we could have been more prepared. It is known that the area – from Marshall to Spanish Hills to Harper Lake is ALL undermined; foundations are engineered with that in mind. But the thought that the City potentially failed to disclose (in SPRs) the underground coal fire, one that they were told needed monitoring and maintenance but can then, honestly, have the audacity to say our homes need to be screened with trees and kept out of sight is complete negligence. At the core of what I'm trying to say is the feeling that we really need to start focusing on serious issues, especially considering climate change, and should be moving beyond the pettiness of "visual impacts" or subjective

judgements passed on personal properties. We need you, as our leaders and our planners, to bring us together as a community, especially in these times, to help us love our neighbors regardless of the character of their home and focus on larger issues like saving the climate for our children.

With respect and love for our community.

Megan Monroe,

Marshall Road

9 News. "Officials warned Boulder after 2005 wildfire that underground mine fire was 'imminent hazard', long term danger"

<https://www.9news.com/article/news/investigations/marshall-fire-underground-mine-was-imminent-hazard/73-c0e1dbae-1b8c-4fa4-be04-6143d83df0b0>

From: [Pam Decker](#)
To: [Hippely, Hannah](#); MarshallRebuilding@bouldercocounty.org
Subject: [EXTERNAL] Article 19 Concerns
Date: Tuesday, March 15, 2022 8:36:43 PM

I would like to address some of the concerns for the Marshall and Unincorporated area with Article 19. I know you are meeting tomorrow and would like you to continue to consider the unique needs of the Marshall region, the historical significance, and the character of our community.

- Passive house/high efficiency/thick walls not in be included in PSM (max size)
- fairness of PSM in Marshall for rebuild (not limiting to what was in 1998)
- be able to move Marshall houses around & out of setbacks without long site plan review
- rebuild assurances for those who were over PSM in writing
- allowances for old Marshall town to rebuild despite setbacks from road/ditches/neighbors
- we want ADUs allowed in our neighborhood
- reduction in permitting fees for fire victims

Thank you so much for the work you are doing,

Pamela Decker -5608 Marshall Rd, Boulder, CO 80303

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March 15, 2022

Sent via Email: hhippely@bouldercounty.org

Boulder County Board of County Commissioners
Boulder County Planning Commission
c/o Ms. Hannah L. Hippely
P.O. Box 471
Boulder, CO 80306

Re: Comments on Docket DC-22-0001: Text Amendments to Article 19, Procedures
Following Disasters, to Add Article 19-500 (Marshall Fire 2021)

Dear Boulder County Board of County Commissioners and Planning Commission:

This letter is on behalf of the Davidson Ditch & Reservoir Company (“Ditch Company”). The Ditch Company is a mutual ditch company created in 1919 to own, operate, and maintain the Davidson Ditch (the “Ditch”) for the benefit of its shareholders. The Ditch has water rights dating back to April 15, 1872, when the Ditch was originally constructed. The Ditch now carries water not only for irrigation use, but also for municipal and other uses in Boulder County. Pursuant to Colorado law, the Ditch Company owns an easement for the Ditch which includes the width reasonably necessary to permit full use and enjoyment of the Ditch, including access, maintenance, operation, repair, and replacement of the Ditch (“Ditch Easement”). *See, e.g. In re Tonko*, 154 P.3d 397, 404 (Colo. 2007), *Leonard v. Buerger*, 276 P.2d 986, 989 (Colo. 1954). The Ditch Company also has the obligation under Colorado law to reasonably maintain and operate the Ditch. *See, e.g. C.R.S. § 7-42-108*.

As with most large ditches, the Ditch Easement requires a minimum fifty-foot setback from the Ditch centerline along the length of the Ditch; however, topographic conditions may require a greater setback in places, which is at the sole discretion of the Ditch Company. This standard minimum fifty-foot setback is necessary for the Ditch Company to permit full use and enjoyment of the Ditch. The Ditch Company requires that setback because fifty feet is the width deemed necessary in most instances to allow access with equipment and machinery to perform Ditch maintenance and repairs; however, topographic conditions may require a greater setback in places, which is at the sole discretion of the Ditch Company. This right exists regardless of whether any structures currently exist or existed within the standard fifty-foot setback. In some instances, structures have been allowed to encroach within the Ditch Easement if the Ditch Company

determined the encroachment did not impact the utility of the Ditch Easement. In other instances, structures or fences have been placed within the Ditch Easement without notice to or approval of the Ditch Company, and in those instances, the structures must either be removed or approved by revokable license agreement after-the-fact. The Ditch Company also faces challenges with (1) landscaping such as trees, patios, gardens, and compost piles placed within the Ditch Easement; (2) small sheds that do not require a permit and are placed within the Ditch Easement without Ditch Company permission; and (3) septic systems located within the Ditch Easement. In any type of instance where obstructions have been placed or encroached within the Ditch Easement, the Ditch Company shall have the right to make the ultimate decision to require their removal or allow them to remain, regardless of the opinions of other parties.

With the above context, the Ditch Company takes this opportunity to submit comments and concerns regarding the proposed text amendments to Article 19 of the Boulder County Land Use Code, responding to the December 2021 Marshall Fire. Specifically, subsection F.b.i of the proposed Article 19-500 states that “[s]etbacks for Nonconforming Structures and Structures containing Nonconforming Uses from an irrigation ditch shall be 20 feet from the centerline of the ditch.” This language directly conflicts with the Ditch Easement and the standard 50-foot setback. It is essentially an invitation and Boulder County approval to landowners to trespass on the Ditch Easement.

The Ditch Company truly does not want to make it more difficult for landowners to rebuild after the fire. In fact, the Ditch Company has already been working in collaboration with several landowners along the Ditch to expedite approvals for Ditch crossings. However, the Ditch Company’s property rights need to be respected as they are essential to Ditch Company operations. Moreover, landowners may not fully understand the potential for ditch seepage and stormwater surges that can impact structures built too close to the Ditch. In this way, the traditional setback not only protects the Ditch Company’s property rights so it can maintain and operate the Ditch, it also benefits the landowners. Please also be advised that the Ditch Company does not allow any drains or sump pumps within 50 feet of the Ditch to address seepage issues as such infrastructure can result in a loss of water in the Ditch.

The Ditch Company’s recommendation is that impacted landowners desiring to reconstruct structures within 50 feet of the Ditch centerline be required to first meet with the Ditch Company. The Ditch Company will implement a streamlined process to (1) ensure any rebuilt structures are placed no closer to the Ditch than they were before the fire; (2) move structures further from the Ditch where practicable and if necessary for utility of the Ditch Easement; and (3) execute a simple revokable license agreement with the Ditch Company for structures within the Ditch Easement which recognizes the dominant rights of the Ditch Easement, the potential to request removal if the structure interferes with the Ditch Easement, the potential for seepage and stormwater issues, and the prohibition on drains and sump pumps within the Ditch Easement.

Although these are difficult circumstances, we encourage Boulder County to preserve the integrity of Ditch Easement rights for local, historic ditches so they can be properly operated, maintained, and repaired. These ditches remain a vital source of water for irrigation and cities within the county. A shortcut that circumvents and does not respect property rights will only create future conflicts with possible significant financial and administrative burdens to the landowner and the

Ditch Company. The language proposed in Subsection F.b.i of the proposed Article 19-500 invites future unauthorized and potentially damaging construction within the Ditch Easement and is thus not acceptable to the Ditch Company.

If there are any questions, or if we can be of further assistance, please do not hesitate to call me. Thank you again for the opportunity to provide these comments.

Sincerely,

BUSHONG & HOLLEMAN PC

A handwritten signature in black ink, appearing to read 'S Bushong', with a stylized flourish extending to the right.

Steve Bushong

Legal Counsel for Davidson Ditch & Reservoir Company

cc: Board of Directors, Davidson Ditch & Reservoir Company

karina hauser <karinahauser0805@gmail.com>

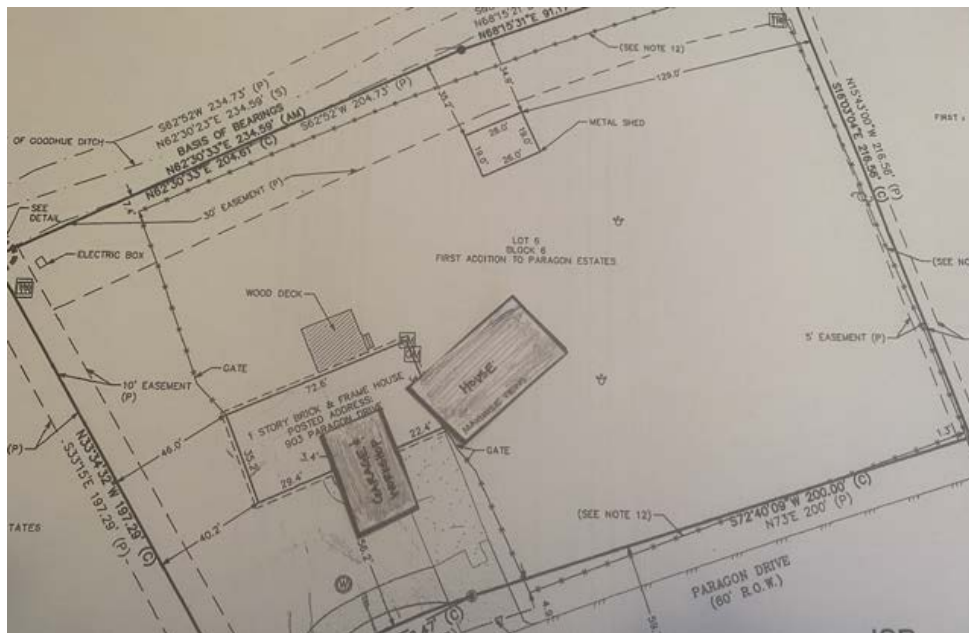
Comments to improve article 19 Section F.b. Location for fire safety and smaller houses on larger lots.

Section F.b. Location. "Structures must be located in the same general location as the previously existing structure and shall reuse 50% of the footprint of the previously existing structure location" **negatively affects owners of smaller houses on large lots**, as we will show for our situation at 903 Paragon Drive.

Our main goal for the new house is to build a highly energy-efficient house that is also wildfire resistant. We are also planning to rebuild within the square footage of our old house and improve fire safety by moving towards the middle of our property away from the neighbors on the west side (see our original rebuild plan). Increasing the distance to our neighbors will create more defensible space and provide additional fire resistance for our house. Based on the burn patterns, it is pretty clear that the ambers from the 2-story neighbor house/barn were responsible for setting the roof of our 1-story house on fire. The property to the east of us survived the fire partially because of the significant distance between the houses.

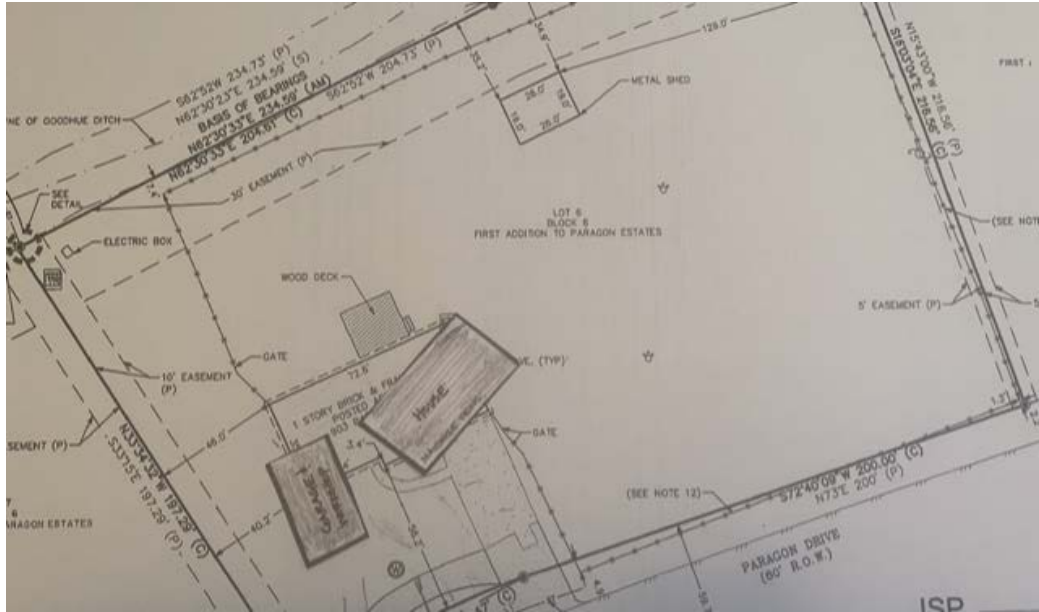
Our original plan to rebuild was:

A 1-story ranch-style house, the finished square footage would decrease from 1978 to 1782, but the garage/workshop would increase from 483 to 960 since we want an additional workshop.

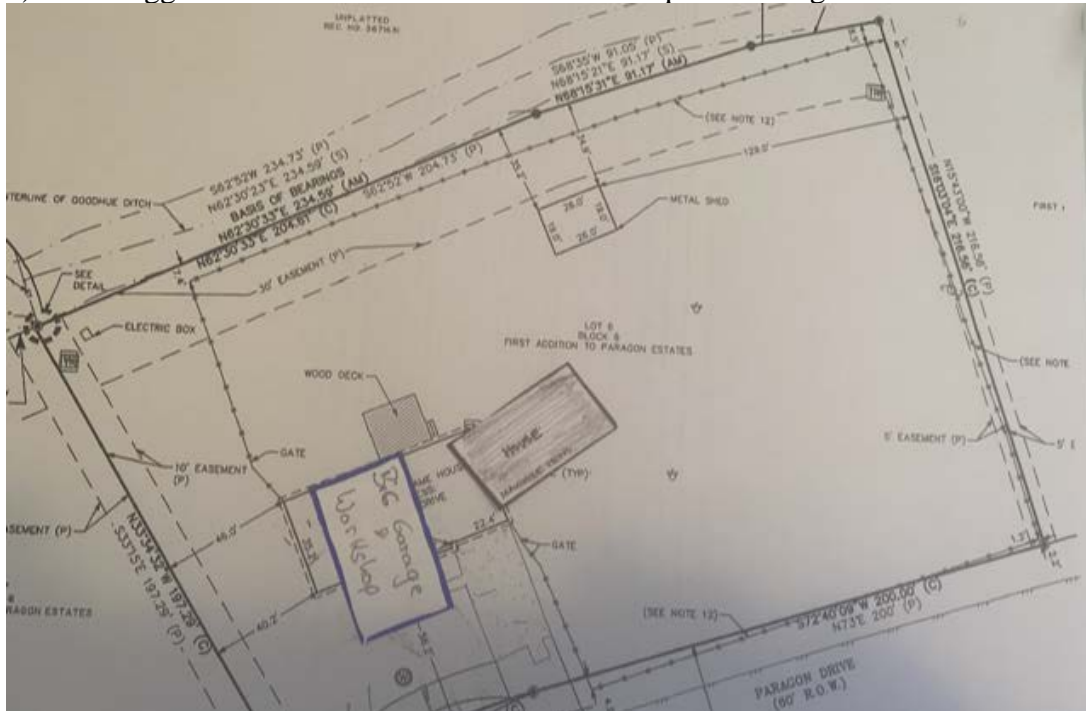


Article 19 in the current version would leave us with two options:

a) Move the structures towards the neighbor and increase our risk of burning down again if their house/barn catches fire.



b) Build bigger since we are allowed to add 1000 sqft according to article 19



Both of those options do not align with our primary goals, and other homeowners in similar situations (small house/large lot) might run into the same issue.

We would propose changing section Fb of article 19 to make the %coverage depending on the size of the existing structure:

A modified section FB taking the size of the house into account could look like:

- Structures under 2500 sqft must be located in the same general location as the previously existing structure and shall reuse 25% of the footprint of the previously existing structure location
- Structures between 2500 sqft and 5000 sqft must be located in the same general location as the previously existing structure and shall reuse 35% of the footprint of the previously existing structure location.
- Structures over 5000 sqft must be located in the same general location as the previously existing structure and shall reuse 50% of the footprint of the previously existing structure location.

This could be generalized:

- The percentage of reuse of the footprint of the previously existing structure location should be 1/100% up to 5000 sqft
 - Example: A 2780 sqft structure would have to cover 27.8% of the footprint of the previously existing structure location
- Structures over 5000 sqft must be located in the same general location as the previously existing structure and shall reuse 50% of the footprint of the previously existing structure location.

From: [GLENN SALAMAN](#)
To: [Hippely, Hannah](#)
Subject: [EXTERNAL] Article 19 comments
Date: Tuesday, March 15, 2022 3:44:55 PM

Comment:

Any height change should be subject to some review. Prefer to remove the 20' increase from Article 19 provisions.

Background:

My name is Glenn Salaman; my parents are Roger and Naomi Salaman, of 7222 Spring Drive. In addition to "son", I'm also their "power of attorney". They were the first property up near Benchmark in the 60s, and they sold a chunk of land to Reich in order to let them put the road down to benchmark.

One of the stipulations of that sale was the house roof-lines couldn't block my parents view; of specific concern is Benchmark #1. I've talked to Katie Arrington about this; we're trying to dig up the original contract. (My Dad's copy burned in the fire).

In addition to the roof lines, we've had issues with neighbors planting trees and blocking views. Would like to see some addressing of vegetation as well as actual property lines.

Let me know if you have any other questions.

Regards,
Glenn

Glenn Salaman
720-467-0671