BUSINESS MEETING ITEM COVER SHEET

DEPARTMENT County Attorney

DIVISION

TITLE Resolution 2008-131 (LU Code text amendments Articles 3, 4, 7, 9, 18)

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BUSINESS MEETING DATE 10/21/08

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RESOLUTION 2008-131

A RESOLUTION APPROVING BOULDER COUNTY LAND USE DOCKET #DC-08-005: PROPOSED TEXT AMENDMENTS TO ARTICLES 3, 4, 7, 9, AND 18 OF THE BOULDER COUNTY LAND USE CODE, TO CLARIFY/MODIFY MINOR AND MISCELLANEOUS PROVISIONS OF THE 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"), 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-08-005 ("the Docket"), the Boulder County Land Use Department proposed certain additional text amendments, this time to make minor clarifications/modifications to miscellaneous provisions of the Code, including Section 3-202.A.4. regarding application submittal requirements; Section 3-205.A.2. regarding public review by the Board of Adjustment; Section 4-102.F.3.b. regarding the review process required for floor area greater than 25,000 square feet in the Agricultural Zoning District; Section 4-502.E. regarding the additional provisions related to open agricultural uses; Section 4-516.D.2. regarding the review process for family care accessory dwelling units; Section 4-602.A.1.c. regarding provisions governing special use review for mining uses; Section 7-1700.A. regarding wildlife impact reports; Section 9-300.B. regarding the expiration of subdivision exemption and exemption plat approvals; and Section 18-204.D. regarding the definition of the term "Subdivision Regulations" (collectively,

"the Proposed Amendments"), all as set forth in the memorandum and recommendation of the County Land Use Department to the Board dated October 7, 2008, with its attachments ("the Staff Recommendation"); and

WHEREAS, the Boulder County Planning Commission ("the Planning Commission") held a duly-noticed public hearing on the Proposed Amendments on August 20, 2008, and recommended approval of the Proposed Amendments and certified the Docket for action to the Board; and

WHEREAS, on October 7, 2008, 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 testimony presented by the County Land Use Department staff, with no members of the public being present to speak to the Docket; and

WHEREAS, based on the Public Hearing, the Board finds that the Proposed Amendments, specifically in the form set forth in Exhibit A hereto, 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 Boulder County Comprehensive Plan, all as set forth in and supported by the record of the Public Hearing; and

WHEREAS, the Board thus determines that the Proposed Amendments, as set forth in Exhibit A hereto, should be approved for incorporation into the Land Use Code.

NOW, THEREFORE, BE IT RESOLVED that **the Proposed Amendments, specifically in the form of Exhibit A attached hereto** and incorporated herein by this reference, **are hereby approved** for incorporation into the Land Use Code, **to be effective beginning on the date of adoption of this Resolution, as set forth 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, as set forth above, was made at the Public Hearing by Commissioner Toor, seconded by Commissioner Domenico, and passed by a 3-0 vote.

ADOPTED on this 21ST day of October, 2008.

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY:

Ben Pearlman, Chair

Will Toor, Vice Chair

Cindy Domenico, Commissioner

ATTEST:

Clerk to the Board

Sec. 3-202 A. 4. Application Submittal Requirements

Add a line (Exemption Plat) to the Application Submittal Requirements Table and correct one of the listed submittal requirements.

Discussion: Article 3 of the Land Use Code describes the various land use processes. In Sec. 3-202, submittal requirements for various processes are described in text and in a table format. Under Exemption Plats (item #4), a *Final Plat Map* is listed as one of the application submittal requirements. Staff believes this should be corrected to require an *Exemption Map* instead. Final Plat Maps are required as a post-approval requirement but an Exemption Map would suffice as a submittal requirement. These terms are defined in Sec. 3-203. Requirements for Exemption Plats are omitted in the table on page 3-6 of the Land Use Code. This text amendment would seek to correct this omission as well.

Sec. 3-202 A. Application Submittal Requirements

4. Exemption Plats
   a. Application Form and Fee
   b. Vicinity Map
   c. ~~Final Plat~~ Exemption Map
   d. Referral Packets
   e. Development Agreement, if necessary
   f. If the application anticipates new surface development, certification of compliance with Article 65.5 of Title 24, C.R.S. (see Section 3-203A.1.d.i.), except that such certification shall not be required for the platting or replatting of an additional single lot.

Article 3: 3-202 Application Submittal Requirements Table

Application Submittal Requirements

	Adjacent Property Owners [1]	Application Form	Building Plans [2]	Development Agreement	Development Report [3]	Engineering Report [4]	Exemption Map	Final Plat Map	Interpretation Letter [5]	Landscape Plans	Letter of Credit [6]	Preliminary Plan Map	Referral Packets	Service Area Description	Site Plan	Sketch Plan Map	Vicinity Map
Appeal of Interpretation of Regulation	✔	✔							✔								
Correction Plat		✔															
Land Use Code Text Amendments		✔															
Limited Impact Special Review	✔	✔	✔		✔								✔		✔		✔
Location and Extent	✔	✔	✔										✔	✔	✔		✔
Planned Unit Development	✔	✔	✔		✔	✔		✔		✔		✔	✔			✔	✔

A row titled "Exemption Plat" would be added with check marks in the columns labeled *Adjacent Property Owners*, *Application Form and Fees*, *Vicinity Map*, *Exemption Map*, *Referral Packets*, and *Development Report* with a #2 superscript to indicate that this may be required.

EXHIBIT
A (5 pages)
(Res. 2008-131)

Sec. 3-205 A. 2. Public Review – Board of Adjustment

Clarify the Board of Adjustment public review requirements to include the time frame required for the Director to make written materials from staff available to the Board and the public for appeal dockets.

Discussion: The Board of Adjustment hears only two types of land use cases: variances and appeals. The Land Use Code includes rules for public review for Board of Adjustment proceedings which describes a number of requirements for both types of dockets including timeframes for submittals, when signs must be posted, when newspaper notices should appear and when written notification of the public hearing must be sent to appellants and members of the public who request notice. For appeal dockets, the regulations are silent as to the requirements for when the staff recommendation and supporting materials must be provided to the Board of Adjustment and the public. This text amendment will require the Director to provide recommendations and supporting materials for appeal dockets to the Board and members of the public at least 7 days prior to the public hearing. This is the same timeframe required for variances.

Sec. 3-205 A. 2. Public Review

A. The Board of Adjustment shall hold a public hearing on all applications for variances and appeals subject to the following conditions:

1. The applicant shall submit all written or other materials to be used in the hearing no later than 14 days prior to the hearing. If the applicant plans to call any expert witnesses on its behalf, the applicant shall submit a written summary of the expert's anticipated testimony to the Director within this same time period.
2. The Director shall provide the Board of Adjustment and make available to the public copies of the recommendations, decisions and supporting material 7 days prior to the hearing at which the variance or appeal is to be considered.

Sec. 4-102 F. 3. b. Agricultural (A) District, Additional Requirements

Clarify the process required for parcels with 25,000 sq ft or greater of agriculturally used structures.

Discussion: There has been confusion over the years regarding which process is required for parcels in the Agricultural zone district with development in excess of 25,000 square feet. Special Use review is required for all parcels with more than 25,000 of non-agricultural square footage. Limited Impact Special Use review is required for parcels that have more than 25,000 square feet of development related to an agricultural use. This subsection in particular is confusing and difficult to apply, and does not address whether special use review (as opposed to limited impact special use review) may be applicable to agricultural development over 25,000 square feet in some cases. The intent of this text amendment is to make clear that if all 25,000+ square feet is agricultural as defined by the Land Use Code, then limited impact special review applies.

This latter provision also allows agricultural parcels greater than 35 acres to be exempt from the Limited Impact process under specific conditions including the dedication of a conservation easement (Sec. 4-102 F.3.b.i.). Staff has not proposed any alterations to this allowance. This allowance states that an additional 1,800 square feet may be added for every 5 acres over the minimum 35 acres. This additional square footage must be agricultural in order to be exempt from limited impact special review as described in subsection (i).

Sec. 4-102 F. Agricultural (A) District, Additional Requirements

2. Special review is required for any use which:
   d. is ~~not an agricultural use and has a total floor area which is not part of an agricultural use and is~~ on a parcel with a total floor area greater than 25,000 square feet ~~per parcel~~ any portion of which is not part of an agricultural use;
3. Limited Impact Special Review is required for any use which is:
   b. ~~an agricultural use having more~~ on a parcel with a total floor area greater than 25,000 square feet all of which is part of an agricultural use ~~for the first 35 acres of a subject parcel size~~.
      (i) A parcel may have 1,800 square feet of additional floor area for every additional 5 acres of parcel size above 35 acres, without triggering limited impact special review, but only if the owner grants the County a conservation easement on the property which prohibits any division of the property which would result in a violation of this Code; and prohibits the addition of structures to the property;

Sec. 4-502 E. Agricultural Uses, Open Agricultural Uses

Clarify the Open Agricultural Use to explicitly require legal building lots for residence accessory to the 'Open Ag use.

Discussion: Open Agriculture Uses are not required to be located on a building lot, however the use description also states one single family dwelling is permitted as "customary and incidental" if occupied by the owner or manager of the farm. Staff suggests clarifying this to state that a building lot is required for a single-family home. Boulder County Parks and Open Space supports this amendment to help clarify the Land Use Code (see attached email from Janis Whisman, September 29, 2008).

Planning Commission discussed the requirement that the dwelling be occupied by the "owner or manager of the farm." They directed staff to look at this requirement and determine if it is truly necessary, or if it would be appropriate to allow families not connected to the productivity of the farm to live in the dwelling. This statement is common in the Land Use Code and can be found in the use classifications for Commercial Feed Yard, Keeping of Nondomestic Animals, Commercial Nursery, Equestrian Center, Farm Stand, Intensive Agricultural Uses, Kennel, and Forestry. Staff is not proposing any changes to this clause until a more comprehensive assessment of the provision can be conducted.

Sec. 4-502 E. Agricultural Uses, Open Agricultural Uses

5. Additional Provisions:
   c. One single family dwelling, occupied by the owner or manager of the farm, will be considered customary and incidental as part of this use. Single family dwellings must be located on building lots.

Sec. 4-516 D. 2. Accessory Dwelling, Family Care Units

Change the process required for Accessory Dwelling Unit – Family Care from Special Use to Limited Impact.

Discussion: Accessory dwellings for family care units require a lengthier review process than accessory dwellings for historic units or agricultural farm-worker units. There does not seem to be a rational reason for the discrepancy therefore staff supports changing the required process from special use to limited impact special review.

Sec. 4-516 D. 2. Accessory Dwelling, Family Care Units

2. For family care units, by limited impact special review in all districts.

Sec. 4-602 A. 1. c. Special Provisions, Special Review Approval for Mining

Clarify requirements for mining applications.

Discussion: In the requirements for special use and limited impact specific to mining applications, the regulations state that mining must be in compliance with a reclamation plan, use, location, and setback regulations, and bulk regulations. This last item seems to be redundant. Some long-time staffers believe this was taken verbatim from the previous zoning ordinance but has no meaningful place in the current regulations. Staff recommends this requirement be removed from the Land Use Code.

Sec. 4-602 A. 1. c. Special Provisions, Special Review Approval for Mining

1. In addition to the standards of approval set forth in paragraph 4-601 (A), an applicant for open mining, subsurface mining, or limited impact mining must also meet the following:
   a. compliance with a plan of reclamation; and
   b. compliance with use, location, and setback regulations established by the Board for the proposed operation~~; and~~.
   ~~c. compliance with bulk regulations established by the Board for areas reclaimed in accordance with the plan of reclamation.~~

Sec. 7-1700 A. Wildlife Impact Reports

Clarify the requirements for retaining wildlife experts for wildlife impact reports. Remove Rare Plant Areas from the areas that require wildlife impact reports.

Discussion: Wildlife Impact Reports are required in a number of instances when land use development is proposed. The Code currently requires Boulder County Parks and Open Space to retain an approved wildlife expert to prepare the report, presumably on behalf of the landowner. The onus should be on the landowner/applicant to retain an expert for development proposed. One of the items that can trigger the Wildlife Impact Report is Rare Plant Areas. Rare Plant Areas do not necessarily impact wildlife therefore this trigger should be removed from the Land Use Code requirements for Wildlife Impact Reports.

Planning Commission had concerns about staff's proposed language for this section; the language below was recommended by Planning Commission and staff concurs that this clearly portrays the intent of the requirement.

Sec. 7-1700 A. Wildlife Impact Reports

A. Unless exempted pursuant to Subsection (I) below, all land use development applications which require a development report under Article 3-203 (F) of this Code (subdivisions, PUDs, special review and limited impact special review approvals, rezonings, and exemptions), shall be required to include a wildlife impact report as provided herein, prepared by ~~an approved~~ a wildlife expert approved by the County Parks and Open Space Department and retained by the applicant ~~the County Parks and Open Space Department~~, whenever the property which is the subject of the application meets any one of the following criteria:
   1. Is located within a Critical Wildlife Habitat, a Significant Natural Community, ~~a Rare Plant Area,~~ or a Riparian Corridor, as designated on the adopted Environmental Resources maps of the Boulder County Comprehensive Plan.

Sec. 9-300 B. Expiration of Subdivision Exemption and Exemption Plat Approvals
Extend the deadline for Subdivision Exemption post-approval requirements by one year at the discretion of the Board of County Commissioners. Reign

Discussion: The Subdivision Exemption regulations require all post-approval requirements to be completed within one year of approval. One one-year extension is permitted. Under extreme cases, applicants are unable to complete the post-approvals within this timeframe yet the Code is unforgiving, even if the applicants are actively seeking to complete their requirements. This text amendment would allow up to two one-year extensions.

Sec. 9-300 B. Expiration of Subdivision Exemption and Exemption Plat Approvals

B. The Board of County Commissioners may grant up to two extensions of deadlines of no more than one year each for those dates specified in this Section, if it finds that there has been no change in this Code, the Comprehensive Plan, or the surrounding neighborhood which would substantially affect the approved exemption.

Sec. 18-204D Subdivision Regulations (definition)
Clarify the definition of Subdivision Regulations to be consistent with the Land Use Code.

Discussion: The definition of Subdivision Regulations seems to indicate that modern subdivision began in the County on March 3, 1954. While this is true for the majority of subdivisions in Boulder County, there are a few subdivisions that were approved by the Planning Commission prior to this date. This text amendment would include those older subdivisions which were only approved by the Planning Commission (and not the Board of County Commissioners as well). This text amendment would not include Townsite plats in the definition of Subdivision Regulations as defined in the Code.

Sec. 18-204D Subdivision Regulations
The regulations contained in Article 5 of this Code and predecessor regulations enacted by the County ~~beginning on March 3, 1954,~~ pursuant to the authority granted in Part 1 of Article 28 of Title 30, C.R.S. and predecessor Colorado county planning statutes, which set forth the process and requirements to plat subdivided land.

Conclusion
These Land Use Code text amendments will clarify a number of sections in the Land Use Code. These text amendments meet the criteria of Article 16 of the Land Use Code: the need for the amendments have 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. Both Land Use Staff and the Planning Commission recommend the Board **APPROVE DC-08-005: TEXT AMENDMENTS TO ARTICLES 3, 4, 7, 9, AND 18 OF THE LAND USE CODE**.