

DOCKET #DC-03-07: PROPOSED TEXT AMENDMENTS TO SECTION 18-121 OF THE BOULDER COUNTY LAND USE CODE (DEFINITION OF "BUILDING LOT"), TO ADD A NEW SUBSECTION "C." TO CODIFY SECTION 30-28-139, C.R.S., ENACTED FROM SENATE BILL 03-67 EFFECTIVE OCTOBER 1, 2003, REGARDING COUNTY REGULATIONS PROVIDING FOR THE MERGER OF TWO OR MORE PARCELS OF LAND (REQUIRING, IN ESSENCE, REGULATORY MERGERS OCCURRING ON OR AFTER OCTOBER 1, 2003 TO HAVE THE CONSENT OF THE AFFECTED PROPERTY OWNERS)

ADD A NEW SUBSECTION "C." TO SECTION 18-121, AS FOLLOWS --SEE PAGE 4, BELOW (added text is underlined; text which adds to or clarifies the exact language of SB 03-067 is italicized):

[Subsections A. and B. of Section 18-121 remain unchanged, as follows:

18-121 BUILDING LOT A parcel occupied by, or designated by the Director pursuant to this Code to be occupied by, a use which is required by the Zoning District provisions of this Code to comply with the minimum lot area requirements of the zoning district in which it is located. Except as provided in subsections (A) and (B) below, the parcel shall be of sufficient size and shape to conform to all requirements of the zoning district within which it is located.

- A. Except as otherwise provided in Subsection (B)(2), below, a substandard parcel shall be considered a building lot only if it meets one of the following criteria:
1. A parcel upon which a use, which is required to comply with the minimum lot area requirements of the zoning district in which it is located, lawfully exists or, if none exists, has lawfully existed prior to the effective date of this Code.
 2. A parcel which the Board of County Commissioners has exempted from the definition of 'subdivision' with the specific intent, as stated in the exemption Resolution, of allowing the parcel to be designated as a building lot; provided however that said parcel shall remain subject to any use and building requirements imposed pursuant to Article 9 as well as all other provisions and requirements of this Code.
 3. A lot, tract, undivided block, or other plot of land, other than an outlot or right-of-way, within an area of subdivided land, which met the lot area and lot frontage requirements of this Code in effect at the time of the approval of the subdivided land, such land shall be designated as a building lot in accordance with those area and/or frontage requirements in effect at the time of its approval, subject, however, to all other provisions and requirements of this Code, as amended.
 4. Any subdivided lot which does not contain a developed principal use will be considered to be combined into a single building lot with any contiguous subdivided lot (whether developed or undeveloped), when the following circumstances exist:
 - a. the subject lots are combined on a single deed; and

- b. the subject lots are in a subdivision which was recorded prior to March 22, 1978 and has less than 25% of the lots developed as of May 15, 1996; and
- c. any one of the following additional criteria are met:
 - i. The Land Use Director determines that the lots have been combined due to shared physical improvements other than roads, drives, and fences; or
 - ii. The subject lots have been combined on or after January 1, 1997 on the County Assessor's records for property tax purposes; or
 - iii. the Land Use Director determines that the lots cannot be built upon without significant scarring or erosion, or without significant damage to environmental resources identified in the Boulder County Comprehensive Plan

Any subdivided lot combined under this subsection (4) may be considered to be a separate building lot only if the Board of County Commissioners in its discretion approves an exemption plat under Article 9 of this Code. (6/6/95 and 5/23/96 & 5/16/02)

- 5. 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, and with all other provisions and requirements of this Code, as amended.
- B. A substandard parcel located in the mountainous areas described in Section 18-178A of this code, shall be considered a building lot only if it meets one of the following criteria:
 - 1. The criteria set forth in Subsections (A)(2) or (A)(3), above.
 - 2. The criteria set forth in Subsections (A)(1) or (A)(5), above, with the following exceptions:
 - a. A substandard parcel which does not contain a lawfully existing use as of May 19, 1993, and which is contiguous to a parcels held in the same ownership as of May 19, 1993 or at any time thereafter, shall not be a legal building lot unless it is combined to form a single parcel with the contiguous parcels. Combination of more than two contiguous parcels held in the same ownership shall not be required once the current minimum lot size is met or exceeded, provided that no contiguous, substandard parcel which is

in the same ownership and which does not contain a lawfully existing use as of May 19, 1993 is left uncombined.

- b. In interpreting Subsection (B)(2), the following provisions shall apply:
 - i. A lawfully existing use shall be a legal use existing on a substandard parcel as of May 19, 1993, and shall also include a complete application for a building permit for a legal use which was filed with the Boulder County Land Use Department as of that same date, provided that the application is pursued and finalized in accordance with all applicable laws and regulations.
 - ii. 'Held in the same ownership' shall refer to the fee owners of the parcels in question, and shall mean ownership by the same person. In making this determination the Zoning Administrator shall consider the fee owners of record as of May 19, 1993, or the prospective fee owners under a written contract for purchase of the parcel(s) which has been executed by all parties to the contract as of May 19, 1993 and which is notarized or otherwise attested to by a reliable uninterested third party as being fully executed by that date. The Zoning Administrator may also consider, based upon the available facts, whether any transfer of ownership or execution of contract was not bona fide, but was done for the purposes of evading the combination requirements of this Subsection.
3. A patented mining claim which would be contiguous but for the intersection of one or more other patented claims, shall be considered contiguous under this Subsection.
4. Nothing in this Subsection shall be construed to prohibit divisions which State law exempts from county subdivision regulation (see Article 5 Subdivision Regulations), provided that all applicable provisions of this Code are otherwise met.]

C. For any merger of parcels of land or lots under the provisions of this Code, which merger is not requested in writing by each owner of an affected parcel, and which merger occurs for the first time on or after October 1, 2003 (the effective date of Senate Bill 03-067 as codified in C.R.S. Section 30-28-139), the following provisions shall govern, as expressly required in C.R.S. Section 30-28-139:

1. Prior to the completion of the merger, the County shall send notice of the County's intent to complete the merger to each owner of the affected parcels by certified mail, at the address shown on the records of the County Assessor. The notice shall also specify that each such owner may request a hearing on the proposed merger pursuant to Subsection 2., immediately below, and shall specify action to be taken by such owner to request such hearing, including, without limitation, the requirement that said owner shall request the hearing no later than 120 days after the date on which the owner receives the notice. The date of the owner's receipt of the notice shall be the date on which the notice arrives at the owner's stated address, which date the County may presume to be three days after the date of the County's mailing of the notice, unless the circumstances known to the County clearly indicate a later receipt date.

2. Prior to the completion of the merger, where each owner of an affected parcel has timely requested a hearing on the proposed merger satisfying the requirements of Subsection 1., immediately above, a public hearing on said merger shall be held before the Board of County Commissioners. The hearing shall be conducted for the purpose of allowing the Board to discuss with the owner of each affected parcel the Board's reasons for proceeding with the merger, and to give each owner the opportunity to submit any basis provided under law for challenging the merger. In the case of a timely hearing request, the County shall provide notice of the time, place, and manner of the hearing to each owner of the affected parcels and shall also publish the notice in a newspaper of general circulation in the County in a manner sufficient to notify the public of the time, place, and nature of said hearing. In order to give each such owner of an affected parcel the opportunity to take whatever remedial action is allowed under the law prior to the hearing before the Board, the County shall not hold the hearing any sooner than 90 days after the date on which the owner received the County's initial mailed notice as provided in Subsection 1, above.

3. Where the owner of each affected parcel fails to timely request a hearing on the proposed merger satisfying the requirements of Subsection 1., above, no such hearing is required, and the affected parcels shall be merged in accordance with the requirements of this Subsection C.

4. No merger of parcels that is the subject of a hearing pursuant to Subsections 1. and 2., above, shall be effective unless:

a. The owner of the parcels has given his, her, or its consent to the merger of said parcels; and

b. The merger has been approved by a majority of the Board of County Commissioners.

5. Nothing in this Subsection C. shall be construed to abrogate or otherwise diminish or expand any rights a landowner may have under Article 68 of Title 24, C.R.S., pertaining to vested property rights.