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MERGER UPDATE: 08/24/04 HEARING RESULTS

Dear Boulder County Land Owner:

On August 24, the Boulder County Commissioners unanimously approved text amendments to create an administrative “unmerge” process. At the hearing, the Land Use Coalition recommended to the Commissioners that they throw out the proposed text amendments and either rescind the 1993 “merger” policy altogether or adopt a simpler procedure. Close to a hundred people attended the hearing and all who testified were against the proposed amendments. The Commissioners acted against the recommendations of the affected landowners, their own Planning Commission, land use attorneys, local newspapers, and all fair-minded citizens. We’ve included a few of the articles that have been published in local newspapers concerning Boulder County’s merger policy.

The LUC plans to continue to fight Boulder County’s automatic merger policy and to get the County to rescind the policy altogether or institute a simpler, non-subjective procedure that will restore property rights to all merger victims. We plan to take this up with the new commissioners who will be seated in January 2005. If they are unresponsive, we will go back to the Colorado State Legislature and ask them to correct the problem.

As a possible merger victim, you need to know that the County’s proposed “unmerge” procedure (called the “Administrative Parcel Division Process”) is confusing and has risks. You can choose to wait until January or you can choose to file now to have your properties “unmerged” under the County’s new procedure. The LUC cannot give legal advice on this issue. You need to determine your best individual course of action. You may want to seek legal advice. Please know that whatever your decision, the LUC stands ready to help. We will continue to provide updates on our merger actions. Should you submit an application under the County’s new “unmerge” procedure, we have included a list of (hopefully) helpful suggestions.

STEP 1: DETERMINE IF YOU ARE VICTIM OF PARCEL COMBINATION (MERGING)

There’s a good chance that if you’ve received this letter, the County may consider your properties merged. However, the County has been unable to provide a reliable list of merger victims. As the Land Use Department (LUD) will tell you, the only way to determine whether or not the County thinks your lot(s) are merged is to submit a “Building Lot Determination” application for each of your vacant lots. If you have submitted a building lot determination application since 1993 or after you purchased adjacent lot(s) (between 1993 and 2003), and you’ve confirmed that your lots have been merged, you can proceed to Step 2. To view the Building Lot Determination Application and instructions, visit the LUD’s website: http://www.co.boulder.co.us/lu/help_center/handouts.htm, visit the LUD’s office (located in the Courthouse Annex Bldg. at 2045 13th St.), or send us a self-addressed, stamped envelope and we’ll mail you a copy.

The Land Use Dept. requires the following attachments when submitting a Building Lot Determination Application:

- MAP(S)** – Obtained from the Assessor’s Office showing lot, parcel numbers, and surrounding area
- DEEDS FOR THE LOT AND SURROUNDING LOTS** – The Assessor’s Office can provide a list of the recent deeds. The Clerk and Recorder’s Office will provide copies of the deeds and can provide resources for searching for older deeds. Depending on the size of your lot, you may be required to provide deed history for your lot and the surrounding lots going back to 1944.
- Any known history of the property as pertains to County matters (previous applications, etc.)

The amount of research required to submit a Building Lot Determination can be significant. If you do not feel comfortable doing this research yourself, you can hire an attorney or title company to do it for you. After submitting your application(s) and the \$30 application fee(s), the Land Use Dept. will send you a letter confirming whether or not your property is deemed buildable by Boulder County. If they confirm that your lots have been merged, you need to consider your options as discussed in Step 2.

STEP 2: DETERMINE YOUR NEXT COURSE OF ACTION AS A MERGER VICTIM

If you have the time and can afford to wait, you may find yourself in a better position to get your properties unmerged once the new commissioners take office. If you cannot afford to wait, we once again recommend that you consult with an attorney **prior to** submitting an Administrative Parcel Division Process Application, as there are consequences and risks as described below. **There is no guarantee that your application will be approved.** At the August 24 hearing, the Land Use Dept. Director estimated that **20% of these applications will be DENIED.**

If your lots meet any of the following conditions, your unmerge request will likely be DENIED

(text below is taken from new text amendments passed by the Commissioners on 08/24/04)

- The subject parcels have been combined due to shared physical improvements other than roads, drives, and fences; or
- The subject parcels are currently combined on the County Assessor's records for property tax purposes at the request of the property owner; or
- One or more of the parcels cannot be built upon without significant scarring or erosion, or without significant damage to environmental resources identified in the Boulder County Comprehensive Plan, which scarring, erosion or damage can not be reasonably mitigated with engineering solutions or best management practices; or
- One or more of the parcels do not have legal access as determined by the County Engineer; or
- Due to parcel size, configuration, dimensions, or other physical constraints, one or more of the resulting building parcels cannot be practically built on separately.

The attachments required to apply for an Administrative Parcel Division are basically the same as those for the Building Lot Determination (listed in Step 1). If you have already submitted a Building Lot Determination application, you can use the same attachments. In addition to submitting map(s) and deeds, you are required to list property improvements and provide proof of legal access. **You need to understand that unlike the Building Lot Determination application, by submitting the Administrative Parcel Division application, you are granting the LUD permission to visit and inspect your property and to contact owners of surrounding properties.** It's also important to note that other than submitting the application, you have no input in the process. The LUD's determination of any perceived "limitations" of your property is entirely at their discretion. NOTE: If your lots are listed under one deed, you are ineligible to apply for an "Administrative Parcel Division."

To view the Administrative Parcel Division Process Application form, visit the LUD office, download it from: http://www.co.boulder.co.us/lu/help_center/handouts.htm, or send us a self-addressed, stamped envelope and we'll mail you a copy. Those anticipating or experiencing difficulties assembling the materials required for the "unmerge" process may call Dick Schillawski at 303-664-0156 to discuss the problem. If your application to unmerge is a success – we congratulate you on having your property rights restored. If your application is denied, you need to be ready to pursue the next level of action as your time to appeal is limited. Again, please consult an attorney.

CONSEQUENCES OF THE COUNTY DENYING YOUR REQUEST TO UNMERGE:

- If your application for parcel division is denied, your next available administrative remedy is to go through the County's Subdivision Exemption (SDE) process. This process is much more involved and includes a public hearing before the commissioners, a staff presentation stating reasons why the commissioners should deny your application (it is Boulder County policy for staff to recommend that all SDE's for merged properties be denied), and can involve the investment of thousands of dollars for application fees, staff's time, and your legal fees.
- Under the new text amendments, the Commissioners also changed the requirements for SDE's as they apply to mergers to reflect the same requirements as an Administrative Parcel Division. So, if your Parcel Division application was denied, it is very likely that the Commissioners will uphold the staff's determination.
- **IMPORTANT: If your Subdivision Exemption Application is denied, it is likely that your next option is to file a lawsuit. Your timeframe to file a lawsuit could be limited to 30 DAYS FOLLOWING YOUR SUBDIVISION EXEMPTION DENIAL.** This is why we encourage you to consult an attorney and know your plan of action before submitting any applications to the County.

We will continue to pursue this matter with the County, the State Legislature and if need be, the Courts. Please keep us informed as to your course of action – we want to hold the County accountable. You can reach us by e-mail (contactus@landusecoalition.org), phone (303-666-7903), fax (501-325-6918), or mail (PO Box 20265, Boulder, CO 80308). Many thanks to those who have taken the time to write letters and testify at the hearings! We encourage you to get involved with the LUC and help us out with the merger issue and other land use issues in Boulder County. For meeting dates and times, please visit our website: www.landusecoalition.org or call us at 303-666-7903. In order to help us keep up with the costs associated with these mailings, please make a donation to the Land Use Coalition.