



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: May 4, 2023**

**AGENDA TITLE**

Call-Up Item: Call-up consideration of a final plat approval for the 2150 Folsom Subdivision (TEC2020-00009) located at 2150 Folsom Street pursuant to a court order remanding to the Planning Board for additional findings.

**PRESENTERS**

Nuria Rivera-Vandermyde, City Manager  
Planning & Development Services  
Brad Mueller, Director  
Charles Ferro, Senior Development Review Manager  
Shannon Moeller, Planning Manager  
City Attorney's Office  
Hella Pannewig, Senior Assistant City Attorney

**EXECUTIVE SUMMARY**

The purpose of this item is for the City Council to consider whether to call up the Planning Board's approval of a final plat, in particular, additional findings of fact by the Board that the Title Report submitted by the applicant satisfies requirements for a final subdivision plat under Section 9-12-8(c)(2), B.R.C. 1981, and the Board's reaffirmation of the final plat approval based on those findings.

This item came before the Planning Board on April 18, 2023, pursuant to an order by the Colorado Court of Appeals remanding the final plat approval to the Planning Board for additional findings. The Planning Board unanimously (6-0)(J. Boone absent) moved to find that the final plat approval was based on the Title Report submitted by the applicant,

that a title report provided for purposes of meeting the final plat requirements of Section 9-12-8(c)(2), B.R.C. 1981, does not have to be based on an abstract of title, and that the Title Report that was submitted satisfies the final plat requirements of Section 9-12-8(c)(2), B.R.C. 1981. The Board also reaffirmed the approval of the final plat under TEC2020-00009. A Notice of Disposition is attached (**Attachment A**).

The staff memorandum to Planning Board for this item and recorded video are available under the following link (see Item 6D): [Record Archive for Planning Board April 18, 2023 meeting](#).

The call up period concludes on May 18, 2023. City Council is scheduled to consider this application for call-up at its **May 4<sup>th</sup>, 2023** meeting.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Economic: None identified.
- Environmental: None identified.
- Social: None identified.

## **OTHER IMPACTS**

- Fiscal: no fiscal impacts are anticipated
- Staff time: the application was completed under standard staff review time.

## **BOARD AND COMMISSION FEEDBACK**

### **Planning Board**

On July 30, 2020, the Planning Board held a public hearing and considered the 2150 Folsom Subdivision (TEC2020-00009) for a property generally known as 2150 Folsom Street. The Planning Board approved the final plat. City Council did not call up the final plat approval. Following this approval, Niall O'Toole; Mary Anne Carroll; Renala Condominium Association, Inc.; Thomas J. McWilliams; and M3 Investments, LLC, neighboring property owners to the property at 2150 Folsom Street (hereafter collectively referred to as "Neighbors"), filed a Rule 106(a)(4) proceeding in the Boulder District Court challenging the final plat approval.

The Neighbors argued that the City abused its discretion in approving the final plat, in particular, in finding that the "Title Report" submitted by the applicant met the final plat requirement of Section 9-12-8(c)(2), B.R.C. 1981. This section requires submittal of "**An update to the preliminary title report or attorney memorandum based upon an abstract of title current as of the date of submitting the plat.**" The District Court disagreed with the Neighbors and affirmed the final plat approval.

The Neighbors then appealed the District Court decision to the Colorado Court of Appeals. On November 3, 2022, the Colorado Court of Appeal (hereafter referred to as "Court") issued an order interpreting the final plat approval requirement under Section 9-

12-8(c)(2), B.R.C. 1981. 21 CA 1067, O'Toole v. Boulder. The Neighbors had argued that this section required the title report to be based upon an abstract of title. The Court disagreed and found that only an attorney memorandum has to be based upon an abstract of title.

It was not clear to the Court of Appeals, however, how the City had interpreted the language in making the final plat decision. The Court therefore remanded the case for further proceedings “during which the city may assess, in a manner consistent with this opinion, whether Folsom’s “Title Report” satisfies the requirements for a final subdivision plat.” The document referred to herein as “Title Report” is attached as Attachment A to the Planning Board Memo which is available under the following link: [April 18, 2023 Staff Memorandum](#).

On April 18, 2023, the Planning Board acted in response to the Court’s order and considered whether the “Title Report” that was submitted by the applicant satisfies the requirements of Section 9-12-8(c)(2), B.R.C. 1981, based on the Court’s interpretation that a title report does not have to be based on an abstract of title. The Planning Board adopted the following motion:

On a motion by **M. McIntyre** and seconded by **L. Kaplan**, the Planning Board voted 6-0 (**J. Boone** absent) to find that the final plat approval was based on the Title Report submitted by the applicant, that a title report provided for purposes of meeting the final plat requirements of Section 9-12-8(c)(2) does not have to be based on an abstract of title, and that the Title Report that was submitted satisfies the final plat requirements of Section 9-12-8(c)(2), B.R.C. 1981, and the board therefore reaffirms its approval of the final plat under *TEC2020-00009*, as made on July 30, 2020, and incorporates the staff memorandum as findings as fact.

## **PUBLIC FEEDBACK**

There was no public hearing associated with this item as it was in response to a court order seeking findings of fact based on an existing hearing record.

## **PROCESS**

Following the Planning Board’s action on April 18, 2023, the city council may call up a board decision within thirty days of the board's action.

## **BACKGROUND & ANALYSIS**

Please refer to staff’s April 18, 2023, memorandum to Planning Board: [April 18, 2023 Staff Memorandum](#)

## **NEXT STEPS**

The City Council may call up this action within thirty days of the Planning Board's decision. Any decision that is called up, the City Council will review at a public meeting within sixty days of the call-up vote, or within such other time as the city manager or council and the applicant mutually agree. The City Council is scheduled to consider this decision for call-up at its **May 4, 2023** meeting.

## **ATTACHMENT**

Attachment A - Planning Board Notice of Disposition dated April 18, 2023

**CITY OF BOULDER PLANNING BOARD  
NOTICE OF DISPOSITION**

You are hereby advised that on April 18, 2023 the following action was taken by the Planning Board based on the standards and criteria of the Land Use Regulations as set forth in Chapter 9-12, B.R.C.1981, as applied to the proposed development.

|                    |  |
|--------------------|--|
| ACTION:            | Adoption of additional findings <b>and reaffirmation of Final Plat approval</b>  |
| PROJECT NAME:      | <b>2150 FOLSOM SUBDIVISION</b>   |
| DESCRIPTION:       | <b>Findings of fact on whether the title report submitted by the applicant satisfies the requirements for a final subdivision plat pursuant to a court order in</b> Colorado Court of Appeals case 21CA1067. The court had remanded the final plat approval for additional findings based on the Court's interpretation of the final plat requirement of Section 9-12-8(c)(2), B.R.C. 1981. The FINAL PLAT was approved by the Planning Board on July 30, 2020, combining existing lots, tracts, and a vacated alley right-of-way into one lot with a total area of 27,506 SF. |
| LOCATION:          | <b>2150 FOLSOM STREET</b>  |
| LEGAL DESCRIPTION: | <b>See Exhibit A</b>   |
| APPLICANT:         | <b>ERIN BAGNALL, SOPHER SPARN ARCHITECTS</b>   |
| OWNER:             | At time of Final Plat approval on July 20, 2020: <b>2150 FOLSOM, LLC and James Tyrell</b>  |
| APPLICATION:       | <b>Subdivision/Final Plat, TEC2020-00009</b>   |
| ZONING:            | <b>Residential - Mixed 1 (RMX-1), Residential - High 2 (RH-2)</b>  |
| CASE MANAGER:      | <b>Shannon Moeller</b>   |

This decision may be called up by the City Council on or before **May 18, 2023**. If no call-up occurs, the decision is deemed final on **May 19, 2023**.

On April 18, 2023, the Planning Board approved the request with the following motion:

On a motion by **M. McIntyre** and seconded by **L. Kaplan**, the Planning Board voted 6-0 (**J. Boone** absent) to find that the final plat approval was based on the Title Report submitted by the applicant, that a title report provided for purposes of meeting the final plat requirements of Section 9-12-8(c)(2) does not have to be based on an abstract of title, and that the Title Report that was submitted satisfies the final plat requirements of Section 9-12-8(c)(2), B.R.C. 1981, and the board therefore reaffirms its approval of the final plat under **TEC2020-00009**, as made on July 30, 2020, and incorporates the staff memorandum as findings as fact.

By: *Brad Mueller*  
Brad Mueller, Secretary of the Planning Board

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**EXHIBIT A**  
**LEGAL DESCRIPTION**

**PARCEL 1:**

LOT 7, BLOCK 133, EAST BOULDER,  
COUNTY OF BOULDER, STATE OF COLORADO.

**PARCEL 2:**

**NORTH PARCEL**

A PARCEL OF LAND (PARCEL 2A), LOCATED IN THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

GPS DERIVED BEARINGS BASED ON A BEARING OF NORTH 15°06'31" WEST ALONG THE CENTERLINE OF FOLSOM AVENUE, BETWEEN A FOUND NO. 4 REBAR IN RANGE BOX AT THE INTERSECTION OF SPRUCE STREET AND FOLSOM AVENUE AND A FOUND 2" BRASS CAP (ILLEGIBLE) IN RANGE BOX AT THE INTERSECTION OF PINE STREET AND FOLSOM AVENUE AS SHOWN HEREON. COLORADO STATE PLANE COORDINATE SYSTEM, COLORADO NORTH ZONE, NORTH AMERICAN DATUM 1983 (NAD83). ALL BEARINGS SHOWN HEREON ARE RELATIVE THERETO.

COMMENCING AT SAID INTERSECTION OF PINE STREET AND FOLSOM AVENUE, THENCE SOUTH 89°05'28" EAST, A DISTANCE OF 143.11 FEET TO THE NORTHEAST CORNER OF BLOCK 133, CORRECTED AND ENLARGED PLAT OF EAST BOULDER, RECORDED WITH BOULDER COUNTY ON JANUARY 21, 1874 IN BOOK 2, PAGE 46, AND ALSO BEING ALONG THE SOUTH RIGHT OF WAY LINE OF PINE STREET, SAID POINT BEING THE POINT OF BEGINNING; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE, NORTH 74°45'37" EAST, A DISTANCE OF 34.05 FEET TO THE NORTHWEST CORNER OF RENALA CONDOMINIUMS, RECORDED WITH BOULDER COUNTY ON JULY 18, 1984 AT RECEPTION NO. 634332; THENCE ALONG THE WESTERLY LINE OF SAID RENALA CONDOMINIUMS, SOUTH 00°13'22" EAST, A DISTANCE OF 144.95 FEET TO THE SOUTHWEST CORNER OF SAID RENALA CONDOMINIUMS, SAID POINT ALSO BEING ALONG THE NORTH RIGHT OF WAY LINE OF A 20' ALLEY; THENCE ALONG SAID NORTH RIGHT OF WAY LINE, SOUTH 74°42'20" WEST, A DISTANCE OF 34.06 FEET TO THE SOUTHEAST CORNER OF LOT 5, BLOCK 133 OF SAID CORRECTED AND ENLARGED PLAT OF EAST BOULDER; THENCE ALONG THE EASTERLY LINE OF SAID LOT 5, NORTH 00°13'22" WEST, A DISTANCE OF 144.98 FEET TO THE POINT OF BEGINNING.

**SOUTH PARCEL**

A PARCEL OF LAND (PARCEL 2B), LOCATED IN THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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GPS DERIVED BEARINGS BASED ON A BEARING OF NORTH 15°06'31" WEST ALONG THE CENTERLINE OF FOLSOM AVENUE, BETWEEN A FOUND NO. 4 REBAR IN RANGE BOX AT THE INTERSECTION OF SPRUCE STREET AND FOLSOM AVENUE AND A FOUND 2" BRASS CAP (ILLEGIBLE) IN RANGE BOX AT THE INTERSECTION OF PINE STREET AND FOLSOM AVENUE AS SHOWN HEREON. COLORADO STATE PLANE COORDINATE SYSTEM, COLORADO NORTH ZONE, NORTH AMERICAN DATUM 1983 (NAD83). ALL BEARINGS SHOWN HEREON ARE RELATIVE THERETO.

COMMENCING AT SAID INTERSECTION OF SPRUCE STREET AND FOLSOM AVENUE, THENCE NORTH 40°04'10" EAST, A DISTANCE OF 70.36 FEET TO SOUTHEAST CORNER OF LOT 7, BLOCK 133, CORRECTED AND ENLARGED PLAT OF EAST BOULDER, RECORDED WITH BOULDER COUNTY ON JANUARY 21, 1874 IN BOOK 2, PAGE 46, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE ALONG THE EAST LINE OF SAID LOT 7, NORTH 00°13'22" WEST, A DISTANCE OF 144.92 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF A 20' ALLEY; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE, NORTH 74°42'20" EAST, A DISTANCE OF 34.06 FEET TO THE NORTHWEST CORNER OF LOT 17, BLOCK 5, PLAT OF PINE STREET ADDITION, RECORDED WITH BOULDER COUNTY ON JANUARY 4, 1901 IN BOOK 2, PAGE 170; THENCE ALONG THE WEST LINE OF SAID LOT 17, SOUTH 00°13'22" EAST, A DISTANCE OF 144.93 FEET TO THE SOUTHWEST CORNER OF SAID LOT 17, SAID POINT ALSO BEING ON THE NORTH RIGHT OF WAY LINE OF SPRUCE STREET; THENCE ALONG SAID NORTH RIGHT OF WAY LINE, SOUTH 74°43'05" WEST, A DISTANCE OF 34.06 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

LOTS 5 AND 6, BLOCK 33, EAST BOULDER, COUNTY OF BOULDER, STATE OF COLORADO

TOGETHER WITH THAT PORTION OF VACATED ALLEY PURSUANT TO DEED OF VACATION RECORDED FEBRUARY 6, 2020 AT RECEPTION NO. 3764877 OF BOULDER COUNTY RECORDS.