To: Elbert County Planning Commission  
From: Kyle Fenner, CDS Director  
Date: April 19, 2016  
RE: Amendment to Elbert County Subdivision Regulations - NEW SECTION - Section XV - Administrative Lot Consolidation

**Intent:**
To propose an amendment to the Elbert County Subdivision regulations to address small “town-like” parcels/ lots that are generally within the communities of Elbert, Matheson and Agate. This administrative process will allow an owner of one or more contiguous lots to eliminate lot lines to create a single, larger, more buildable parcel.

**Request:**
This proposed amendment “Elbert County Subdivision Regulations: Section XV - Lot Consolidation” began as a request from the Board of Commissioners. The Board expressed to staff that they wanted CDS to find a way to universally address the small “town-like” parcels that are either very hard or impossible to build on when governed by Elbert County Zoning Regulations (ECZR). Some of these lots are so small that it is impossible (or nearly so) to meet the current setbacks of the smallest zone district in the ECZR.

**History:**

*Unincorporated Town of Agate:* The town of Gebhard was established by the Union Pacific Railroad (UPRR) about 1876. The Gebhard Post Office opened on April 8, 1881. The name of the town was changed to Agate on April 24, 1882. Although “Gebhard” was established by the UPRR, the town of Agate existed, by that name, as a locality used by local ranchers prior to the construction of the railroad.

*Unincorporated Town of Elbert:* The Town, like the County was named after Samuel Hitt Elbert. The town of Elbert grew alongside of the Railroad tracks of the Colorado and Southern, Denver and New Orleans, Rock Island. It was once a busy business center in the middle of some of the best farms and ranches in Colorado. A flood swept away most of the town on May 31, 1935. Elbert never fully recovered from the flood. In 2012 Elbert County Planner and Floodplain Manager Carlyon Parkison was able to have the flood insurance maps amended through FEMA taking much of the...
town out of the floodplain and allowing the towns to develop more easily and for citizens to save substantial amounts on flood insurance.

**Unincorporated Town of Matheson:** In 1876 Duncan homesteaded an area of southern Elbert County that now includes the present town site of Matheson, CO. There he raised sheep and added to his land becoming one of the largest sheep ranches on the country. Duncan Matheson was not alone the founder of the once thriving town of Matheson, Colorado, but ranked for over forty years as one of the leading sheep men of the state. It was due largely to his initiative that Elbert County became one of the most prominent sheep feeding sections of the west. He saw and utilized possibilities in this direction and the results achieved were most gratifying.

None of these three communities is incorporated and therefore they are governed by the Elbert County Zoning Regulations. County regulations and “town” regulations are usually very different. County Regulations don’t often address nor have consideration for very small lots because they usually are within incorporated town boundaries allowing the Towns to self-regulate. In the case of these three historic communities, there are plats and parcels that pre-date county regulation. But because they are governed by County regulation, which is designed for larger lands, we are often faced with regulations that make these small town-like lots very difficult or impossible to develop. The smallest zone district in the ECZR is the R-2 zone district. This zone district requires, if creating a new parcel, the lot be at least 75 feet wide. This requirement allows room for a building to be built while also being able to maintain reasonable setbacks from property lines.

In the Communities of Agate, Matheson and Elbert it isn’t unusual to find historic but platted lots as narrow as 25 feet and many more between 50 and 75. Most of these parcels are zoned “R-2” simply because it is the smallest zone district the County Regulations has. R-2 zoning is the “catch all” zone district for any parcel smaller than 1 acre in Elbert County. What is true though is just because they have legal zoning does not mean they are buildable lots. Many of these parcels would require a variance from setbacks just to build a small structure.

It is also not unusual to find that a single person owns several contiguous town-like lots in these communities. Despite owning several connected lots an owner still is not permitted to build on top of an existing property boundary even if he or she owns all the land around the proposed building site; all buildings must meet setbacks or be granted a variance from setbacks. It is still considered a property boundary despite the same ownership on either side of it. Even if a single person doesn’t own more than one contiguous lot, having this administrative process available may make some of the single lots more saleable to someone who owns the neighboring lot.

This administrative lot consolidation process will allow an owner of multiple, contiguous lots to easily eliminate lot line between two parcels or more than one dividing lot line between several parcels to create a larger, more buildable lot. This lot consolidation process does not change the zoning of the lot(s) therefore the resulting lot, after consolidation cannot exceed the acreage allowed in the original
zone district.

**Process:**
This process must be initiated by the land owner. Elbert County will not seek out these parcels or encourage owners to engage in this process. This must be undertaken by and completed by the owner (or assign) of the property. Following is a step by step discussion on each part of the proposed amendment.

This is an NEW section in the Elbert County Subdivision Regulations. The following is the entire amendment in italics and staff comments are non-italicized and prefaced with “Staff Comment”.

**BEGIN PROPOSED AMENDED LANGUAGE** (this is an entirely new section following Section XVII):

SECTION XVIII   ADMINISTRATIVE LOT CONSOLIDATION
(NEW SECTION of ELBERT COUNTY SUBDIVISION REGULATIONS)

**Purpose:**

The purpose of this Section is to establish an administrative process applicable to proposals to consolidate and combine Lots into one or more larger Lots (otherwise known as a "Lot Consolidation"). This Section is intended to provide for the more efficient processing of plats proposing lot consolidation without the need to undertake a formal public hearing process provided that all requirements of this Section are satisfied.

1 See Part II, Section 25 of the Elbert County Land Use Regulations, Definitions for “Lot"

**Definition of Lot Consolidation:**

A "Lot Consolidation" is any proposal and application that is determined by the Community & Development Services (CDS) Director or designee to meet all of the following criteria:

A. The proposal affects Lots as such term is defined in Part II, Section 25 of the Elbert County Land Use Regulations (as amended); and

B. The proposal would consolidate property with the same ownership and form of tenure; and

C. All lots to be consolidated are in the same zone district and, if in a subdivision, both must be in the same subdivision and in the same filing; and

D. All lots to be consolidated shall remain in the same zone district as the original Lots. This means that, when combined they cannot be made to be so large that they meet the definition of another zone district.
Example 1: An owner owns two 1.5 acre parcels. These parcels by virtue of their size are zoned R-1. When added together, they comprise 3 acres. A 3-acre parcel would, by virtue of its size, be zoned RA-2. This “consolidation” would not be permitted under this section. This parcel would be required to go through a plat amendment and a rezone process.

Example 2: An owner owns two .25 acre parcels. These parcels by virtue of their size are zoned R-2. When added together, they comprise .5 acres. A .5-acre parcel would, by virtue of its size be zoned R-2. This “consolidation” would be permitted under this section.

E. The proposal seeks to consolidate or combine two or more contiguous and adjacent Lots into a fewer number of lots by the vacation or elimination of one or more lot lines; and

F. The proposal does not propose the relocation or reconfiguration of previously established lot lines.

Lot Consolidation Review Procedures:

Following a pre-application meeting and the submission of a lot consolidation application and plat, the CDS Director or designee shall determine whether the application and plat are complete as required by this Section. Following receipt of a completed application and plat, the CDS Director or designee shall reach a final decision concerning the application within forty-five (45) days of the date of submission of the completed application and lot consolidation plat unless such deadline is waived by the Applicant. The forty-five (45) days does not begin until all fees are paid and the application has been determined complete by the CDS Director or designee. A failure by the CDS Director or designee to reach a final decision within forty-five (45) days shall be deemed an administrative decision to deny the application, which may be appealed as soon as is practicable as provided in accordance with Section XIII, E. 5. of these regulations.

Contents of Lot Consolidation Application:

A. The Applicant shall deliver one (1) original and one (1) copy of all Lot Consolidation application materials required by this Section to the CDS Department in hard copy. At time of application, the Applicant shall also deliver an identical digital version of the application materials on a non-returnable CD or flash drive. The CDS Director or designee may request additional copies of documents larger than 8½ by 11 inches where necessary to provide sufficient documentation for unanticipated referrals. The digital copies of the application (with all accompanying documentation) shall be digitally collated into individual and complete applications capable of easy distribution to referral agencies.

B. Submittal Requirements. The following submittals, materials, and information shall comprise a complete application for a Lot Consolidation
review:

1. A completed application in the form approved by the County;

2. Payment of all required application fees;

3. Proof of ownership for all lots to be consolidated;

4. A Final Plat substantially in the form required by Section IX of these regulations, except that the Community & Development Services Director or designee may exercise discretion to relax some of the formal Plat requirements for good cause. The Applicant shall also provide or satisfy the following:
   a. The title of the plat shall prominently identify the name of the recorded subdivision or a basic legal description, together with the phrase "Administrative Lot Consolidation Plat."
   b. The final plat shall require an approval sign off from the jurisdictional Fire District and the CDS Community & Development Services Director.

5. Evidence that property taxes have been paid and are current.

Standards for Approval:

An application and plat for a Lot Consolidation shall be administratively approved by the Community & Development Services Director or designee where the Community & Development Services Director or designee finds:

A. The proposed subdivision meets the definition of a "Lot Consolidation" contained in this Section; and

B. The lot consolidation plat meets all content requirements of this Section; and

C. Either the proposed Lot Consolidation fully conforms to all applicable zoning or other standards or any existing legal nonconformities are not increased and;

D. The proposed lot configuration and arrangement does not, in the opinion of the CDS Director or designee, create illogical or substantially unusable lot areas; and

E. The lot consolidation does not, in the opinion of the Community & Development Services Director or designee, substantially and adversely affect adjacent lots or raise significant issues of policy which are not addressed by the Elbert County Master Plan/Comprehensive Plan and all adopted Elbert County Land Use Regulations.
F. The CDS Director or designee shall deny a lot consolidation application for failure to meet the requirements of the Standards of Approval of this Section. Any decision to deny an application shall be made in writing stating the specific reasons for denial and the decision shall be promptly mailed to the Applicant. The Applicant may appeal a denial by the Community & Development Services Director or designee to the Board of County Commissioners as described in Section XIII, E. 5. of these regulations.

G. Once lots have been consolidated they cannot be re-split or divided without following the criteria set-forth in and the standards of the Elbert County Subdivision Regulations.

H. Upon a finding by the CDS Director or designee that the proposed lot consolidation meets the standards for approval set forth in the Standards of Approval in this Section, the Community & Development Services Director or designee shall cause a fully executed lot consolidation plat to be recorded with the Elbert County Clerk and Recorder at the Applicant’s expense.

Conditions for Approval:

The CDS Director or designee may impose, or on appeal the Board of Commissioners may require the Director or designee to impose, reasonable conditions upon any approval of a plat consolidation that are necessary to ensure continued conformance with the standards of approval and/or the Elbert County Zoning Regulations and the Elbert County Subdivision Regulations.

Appeal:

This administrative decision may be appealed to the Board of County Commissioners in accordance with Section XIII, E. 5. of these Regulations. In hearing such an appeal, the Board shall also consider a recommendation from the Planning Commission.

END PROPOSED AMENDMENT LANGUAGE

Staff Comment: All administrative processes require an appeal process; the appeal process is already spelled out clearly in the existing subdivision regulations in Section XIII, E. 5. This process would channel it first to the Planning Commission and then to the Board for a final decision. It is unlikely that appeals will be seen because there are very few instances where this process would result in an administrative denial. If an application meets the criteria of this section, it is most likely to be approved.

Conclusion

Elbert County has never had a universal way of addressing very small, town-like lots that are governed by Elbert County Zoning Regulations. In the past, compliance required a land owner or applicant to go through a formal variance process to build on some of these lots – many more sit vacant, unimproved because of the
development hardships and the time and costs associated with applying for variances. The variance process can cost in excess of a thousand dollars after paying application fees and the professionals required to create the application materials and the final plat. Variance applications also take time and may be required to follow the public hearing process if the variance requested exceeds the CDS Director’s administrative authority which is clearly outlined in the ECSR. The public process can take several months to complete. In the interest of efficiency and expediency and to promote development in these unincorporated communities, it is staff’s opinion that creating and adopting this administrative lot consolidation process is in the County’s best interest.

Recommendation

To approve Amendment to Elbert County Subdivision Regulations - New Section: XV - Administrative Lot Consolidation.

Respectfully,

Kyle Fenner
Director, CDS
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