

RESOLUTION 2024-012

A resolution conditionally approving Boulder County Community Planning & Permitting Docket V-23-0001/EP-23-0003: Boulder County Public Works Easement Vacation

Recitals

A. On behalf of Boulder County Public Works (the “Applicant”), Mike Thomas applied to Boulder County to vacate the entirety of a platted 60-foot-wide access easement on Outlot A of Block 3, The Farm in Boulder Valley NUPUD providing access to Lots 1, 2, 3, and 4 of Block 3, The Farm in Boulder Valley NUPUD. The Applicant also applied for an associated Exemption Plat, as the existing access easement in a platted easement.

B. The subject property is located at 0 N 95th Street, Outlot A of Block 3 of The Farm in Boulder Valley NUPUD, located approximately 0.35 miles east of the intersection of N 95th Street and Kestrel Lane, in Sections 9 and 16, Township 1 North, Range 69 West, in an Agricultural zoning district of unincorporated Boulder County.

C. Outlot A of Block 3, The Farm in Boulder Valley was platted by SD-80-0014 in 1982, with the Final Plat of the NUPUD occurring in 1992 through SD-89-0024. The Final Plat was recorded at Reception No. 1228797 and included the platted 60-foot access easement the Applicant proposed to vacate. Lots 1 through 4 of Block 3 of the NUPUD were originally intended to be accessed through three platted outlots: Outlot A, with an access easement; Outlot Q, which ran east from N 95th Street to the western edge of Outlot A; and Outlot R, which looped from N 95th Street to the eastern edge of Outlot A.

D. The apparent plan of the NUPUD developers was that the Access Easement would connect with Outlots Q and R to form a circular road that would provide ingress and egress to owners of multiple residential lots and two access points on N 95th Street. If the NUPUD had been fully developed, the developers would have needed to either create easements for lot owners to use Outlots Q and R, or they would have needed to dedicate those outlots to the County as county roads. However, as a result of the City of Boulder’s acquisition of the vast majority of the NUPUD as perpetual open space, there is no longer a need for a circular drive or two access points on N 95th Street. Outlot Q has never been developed. Outlot R is owned by the City of Boulder and provides access to Lots 1–4 of Block 3 in the form of a gravel access road.

E. Outlot A is also encumbered by a Boulder County conservation easement recorded at Reception No. 1228802. Outlot A, along with Lots 1 and 2 of Block 3, are owned by Craig and Nicole Harrison, and their residence is located on Lot 2. Lots 3 and 4 of Block 3 are owned by David and Tracy Nassar, and their residence is located on Lot 3. Currently, the eastern portion of Outlot A is comprised of mature trees lining an existing improved access drive used to provide access to Lots 2, 3, and 4 of Block 3. The western portion of Outlot A is undeveloped, and since its creation has not been developed with any residential or non-residential structures. Outlots in

platted subdivisions are typically created as open space or undeveloped space, and Outlot A has historically been used this way. The Boulder County conservation easement limits development on Outlot A to only non-residential structures.

F. In 2020, the Board of County Commissioners (the “Board”) approved application V-20-0006/EP-20-0006 to vacate a portion of the access easement and to replat Outlot A, reducing the 60-foot-wide easement to a much smaller area that more accurately reflected the area where an access easement was necessary. Prior to the 2020 approval, there had been conversations between the County, the owners of Outlot A, and the former owners of Lots 3 and 4 about the County vacating the access easement in favor of the two sets of property owners establishing a permanent, private access easement through Outlot A to provide access to Lots 3 and 4. At that time, the former owners of Lots 3 and 4 were not willing to enter into a private access easement. As such, the partial vacation of the Boulder County easement and the establishment of a new, smaller easement was pursued and was approved through Resolution 2021-23. The post-approval requirement to record the updated plat with the smaller easement was not completed, due to the owners of Outlot A wanting to pursue the private access easement option with the new owners of Lots 3 and 4.

G. Since the approval of V-20-0006/EP-20-0006, Lots 3 and 4 have been purchased by the current owners David and Tracy Nassar, and they have agreed to the private access easement. The Harrisons and the Nassars have entered into an access easement and maintenance agreement that will provide access from Outlot R (the city-owned outlot road) to Lots 3 and 4 through a portion of Outlot A. The access easement and maintenance agreement has been recorded under Reception No. 03986787, dated October 26, 2022. County staff have reviewed this easement and agreement and have determined that it provides uninterrupted and permanent legal rights of access from the public street system to each of the residential lots.

H. As the County-held access easement is no longer necessary to serve the needs of County residents, the Applicant proposed the completed vacation of the County-held access easement through Outlot A.

I. The Boulder County Planning Commission (the “Planning Commission”) considered only the vacation application at a public hearing on August 18, 2023. With a unanimous vote, the Planning Commission recommended approval subject to the conditions of approval recommended by staff, and certified the docket for action to the Board.

J. The above-described request was processed and reviewed as Boulder County Community Planning & Permitting Docket V-23-0001/EP-23-0003 (the “Docket”), as further described in the memorandum and written recommendation to the Board by Boulder County Community Planning & Permitting Department planning staff dated January 4, 2024, together with its

attachments (the “Staff Recommendation”). The Staff Recommendation found that the Docket could meet the criteria for approval, and therefore, recommended that the Board conditionally approve the Docket.

K. At a public hearing on the Docket held January 4, 2024 (the “Public Hearing”), as further reflected in the official record of the Public Hearing, the Board considered the Staff Recommendation as well as the documents and testimony presented by Community Planning & Permitting Department planning staff. The Board also heard testimony from Mike Thomas on behalf of the Applicant. No members of the public spoke at the Public Hearing.

L. Based on the Public Hearing, the Board finds that the Docket meets the criteria for the vacation of public roads, alleys, and easements under Article 10-100 of the Code.

M. The Board further finds that the Docket meets the applicable criteria for an Exemption Plat under Article 9-400 of the Code, subject to the conditions stated below.

N. Therefore, the Docket can be approved subject to the conditions stated below.

Therefore, the Board resolves:

Docket V-23-0001/EP-23-0003 is approved on the basis and terms set forth in this Resolution, above, and subject to the following conditions:

1. The Applicant shall meet all the post-approval requirements within one year after the date of the Board’s Resolution approving this vacation. This Resolution and associated documents shall be recorded by Community Planning & Permitting staff with the County Clerk and Recorder’s Office within this one-year timeframe. This vacation approval shall not be considered final or effective until this recordation. Finally, this vacation approval shall expire if recordation does not occur within the required one-year timeframe (unless an extension is granted).

2. The Applicant shall be subject to the terms, conditions, and commitments of record and in the file for Docket V-23-0001/EP-23-0003: Boulder County Public Works Easement Vacation.

[Signature Page to Follow]

A motion to approve the Docket was made by Commissioner Ashley Stolzmann, seconded by Commissioner Marta Loachamin, and passed by a 3-0 vote.

ADOPTED as a final decision of the Board on this _____ day of January 2024.

**BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:**

Ashley Stolzmann, Chair

Marta Loachamin, Vice Chair

Claire Levy, Commissioner

ATTEST:

Clerk to the Board