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# Uhl Property

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<b>ACTIVITY #:</b>	PL20220077
<b>HEARING DATE:</b>	Board of County Commissioners - October 11, 2022 at 9:35 am
<b>PETITIONER:</b>	Jodie Uhl
<b>PETITION:</b>	Subdivision Exemption: an application for an exemption from the Subdivision Regulations
<b>LEGAL DESCRIPTION:</b>	PT OF TR 38 AKA PT OF E2SW4 SEC 1-6-87 SMR TOTAL: 60.35 AC
<b>LOCATION:</b>	Approximately 1.25 miles north from the intersection of County Road 68 and US Highway 40
<b>ZONE DISTRICT:</b>	Agriculture/Forestry (A/F)
<b>AREA:</b>	59.05
<b>STAFF CONTACT:</b>	Alan Goldich, agoldich@co.routt.co.us
<b>ATTACHMENTS:</b>	<ul style="list-style-type: none"><li>• Narrative</li><li>• Vicinity Map</li></ul>

## **History:**

The applicants purchased a 60-acre parcel (PIN 939013001) located on CR 68 on August 31, 2021. In November 2016 this property had been involved in an illegal subdivision. The subdivision involved the division of an approximately 80-acre parcel into a 60-acre parcel (PIN 939013001) and a 20-acre parcel (PIN 939013002). When the illegal subdivision occurred, the County notified the owner (who sold the 20 acres) as well as the buyer of the 20-acre parcel that an illegal subdivision had occurred and to contact the Planning Department to rectify the issue. This was never done. After the current owners purchased the remaining 60-acre property, and while discussing a Special Use Permit application with the County, the owners discovered that their property had been involved in an illegal subdivision. The Planning Department advised them of this and they chose to pursue a Special Use Permit (SUP). The SUP was approved on March 8, 2022 with the requirement that the approval is contingent upon compliance with all local laws.

## **Site Description:**

The subject parcel is located approximately four miles west of Milner on County Road 68 and approximately 1.25 miles north of US Highway 40. County Road 68 is unpaved.

The currently vacant subject parcel lies in a narrow valley flanked by steep hillsides and bluffs. County Road 68 runs along the bottom of the valley through the middle of the subject property. A drainage runs through the property adjacent to County Road 68 where small hay meadows and fenced pastures lie before dense vegetation, aspen trees, and steep topography create the canyon walls.

The property is located directly east of the 480 Ranch Subdivision, which contains a handful of single-family residences, and directly west of the larger Canyon Valley Ranch Subdivisions, both of which contain 35+ acre parcels. All development in the adjacent subdivisions is located on the top of the canyon. Three dwelling units are visible from the proposed build site, all ½ mile away or greater and located at a significantly higher elevation.

### **Project Description:**

The applicant is requesting an exemption from the Subdivision Regulations for their 60-acre parcel to make it legal. This is required so that SUP PL20210018 can be issued and Planning can sign off on building permits associated with that SUP.

### **Staff Comments:**

- The applicant has stated that they have contacted their neighbor and have tried to work with them to rectify the issue, which would involve the neighbor merging his two parcels into one. The neighbor has not responded to their request.
- If approved, this application will only recognize the 60-acre parcel (PIN 939013001) and not the 20-acre parcel (PIN 939013002).

### **Staff Recommendation:**

Staffs recommends **APPROVING** the subject application with the findings of fact and conditions of approval as written in the staff packet.

### **Subdivision Exemption**

Pursuant to Section 30-28-101(10)(d), Colorado Revised Statutes, the Board of County Commissioners (BCC) may grant exemptions from the application of Routt County's Subdivision Regulations if the BCC finds that a particular division of land is not within the purposes of Part 1 of Article 28, Title 30, Colorado Revised Statutes.

### **BOARD OF COUNTY COMMISSIONERS OPTIONS:**

1. **Approve the Subdivision Exemption request without conditions** if it is determined that the subdivision exemption as proposed is not within the spirit or intent of the Routt County Subdivision Regulations or the State subdivision statute, and, therefore, may be exempted from the application of the County's subdivision regulations.
2. **Approve the Subdivision Exemption request with conditions and/or performance standards** if it is determined that the subdivision exemption as proposed is not within the spirit or intent of the Routt County Subdivision Regulations or the State subdivision statute, and, therefore, may be exempted from the application of the County's subdivision regulations, and the application of conditions is appropriate.
3. **Deny the Subdivision Exemption request** if it is determined that the the subdivision was, and is, subject to the Routt County Subdivision Regulations, or mitigation conditions cannot be agreed upon by the applicant and the Board. Make specific findings of fact citing specific regulations or policies by number from the Routt County Master Plan and the Routt County Zoning Regulations.
4. **Table the Subdivision Exemption request** if additional information is required to fully evaluate the petition. Give specific direction to the petitioner and staff.

**FINDINGS OF FACT** that may be appropriate if the **Subdivision Exemption** is approved:

1. The subdivision exemption as proposed is not within the spirit or intent of the Routt County Subdivision Regulations or the State subdivision statute, and, therefore, may be exempted from the application of the County's subdivision regulations
2. The applicant has tried working with their neighbor to rectify this issue and has exhausted all means of doing so. The neighbor has not responded to their request.
3. Approval of the exemption does not add additional residential density to unincorporated Routt County.
4. This parcel is zoned Agriculture/Forestry. The minimum lot size in this zone district is 35 acres. The parcel subject to this approval is 60 acres, which is larger than the minimum lot size.

**CONDITIONS** that may be appropriate may include the following:

**General Conditions:**

1. A resolution for the subdivision exemption shall be finalized and recorded within six months of the Board of County Commissioners' approval. Extensions up to six months may be approved administratively.
2. An agreement, or some other recordable document, shall be entered into dedicating the right of way for County Road 68 to the County. The applicant shall provide a legal description of the right of way. This document shall be recorded concurrently with the Subdivision Exemption resolution.
3. This approval only recognizes the 60-acre parcel (PIN 939013001) and does not recognize the legality of the 20-acre parcel (PIN 939013002).

### History of the Property and Conveyances

To understand the nature of the request, I have outlined our understanding of the attendant conveyances concerning the Uhl Property.

- (1) The Fox Family sold forty (40) acres to Mr. Wayne Haggerty and Mr. Randy Haggerty (the “Haggertys”);
- (2) In 2015, the Haggertys sold the forty (40) acres to Mr. David Ryan Keating and Mrs. Allison Michelle Keating (the “Keatings”) as identified in a Warranty Deed dated July 1, 2015 and recorded at Reception No. 761469 (the “Keating Property No. 1”);
- (3) The Keatings later approached Ms. Anna Louise Fox (“Ms. Fox”) to acquire an additional twenty (20) acres. The Fox Family sold the Keatings an additional twenty (20) acres as identified in a Warranty Deed dated June 22, 2016 and recorded at Reception No. 769615 (the “Keating Property No. 2”); and
- (4) The Uhls purchased the remaining sixty (60) acres owned by the Fox Family from the Estate of Anna Louise Fox by and through her personal representative, Barbara Roadwald as identified in a Personal Representative’s deed dated

### The Legal Issue

Colorado has a law that most attorneys within the community refer to as “Senate Bill 35.” This bill was enacted on May 5, 1972 and is codified at section 30-28-101, et seq., C.R.S. Senate Bill 35 governs the subdivision of land in Colorado, meaning how one large parcel is split into smaller parcels and developed, sold off, etc. Senate Bill 35 requires county approval and permission to split over parcels of land less than thirty-five (35) acre. Failure to obtain county approval may result in the state or county not recognizing the invalid subdivision.

As you can see above, the third conveyance constituted an illegal subdivision because Ms. Fox conveyed less than thirty-five (35) acres to you without county approval. Once the initial illegal subdivision occurs, all remaining parcels are tainted by the act. Here, our property, the “Uhl Property”, the fourth conveyance above, is negatively impacted by this illegal subdivision. Specifically, we are unable to obtain the permits needed to use and develop the Uhl Property.

It is our understanding that both Ms. Fox and the Keatings were made aware of this issue in 2016 when Routt County issued a formal notice to the two (2) of them identifying this illegal subdivision issue. We, the Uhls, were not made aware of this illegal subdivision until recently when we attempted to apply for a special use permit. There was no way for it to show in any records or title searches. It is our understanding that education has recently gone to the real estate brokers. We believe that is because this doesn’t show up with normal due diligence.

### Legal Liability to the Uhls

A subdivider of land is defined as “any person . . . participating as owner, promoter, developer, or sales agent in the planning, platting, development, promotion, sale, or lease of a subdivision.” Here,

the Keatings worked closely with Ms. Fox in promoting, encouraging, and developing the sale of the parcel to them. It is our understanding that Ms. Fox did not list the parcel of land for sale, but that the Keatings instead approached her and inquired about acquiring an additional twenty (20) acres for their use, benefit, and development. As such, they are a subdivider with Ms. Fox for the purposes of this issue.

*Proposed Solution*

The Uhls have been working to mitigate their losses and have discussed possible resolutions with the Keatings to no avail. This has included attempts to discuss directly with a request for the Keatings to merge their parcels, but the Keatings stopped responding to any attempts at communication. We then hired a lawyer to submit the same request with a deadline of June 10, 2022. The Keatings have responded with a request to trade part of our parcels which would give them all water sources or to sell us their land but haven't give us an asking price. It appears they are continuing to stall, but we do not know their motivations.

We have no leverage or authority to force the Keatings into any action and are being restricted in the use of the Uhl Property based on an illegal subdivision that was undiscoverable through the normal due diligence in purchase of a property. For this reason, we are requesting that the penalty of illegal subdivision be removed from the Uhl Property and applied solely to the Keating Property.

