

March 1, 2012
Appeal Hearing

Hearing began at 6:07 p.m.

Present: Bill Muse, Mayor; Gladys LeFevre, Tom Jerome, Steve Cox, Sue Inman, Council Members; Mark McIff, Attorney; Judi Davis, Clerk; Mark Nelson, Appellant.

Public Present: Judy Drain, Keith Watts and Lisa Varga, Mary and Farlan Behunin, David and Susan Heaton, Alyssa Thompson, Ray Nelson, Peg Smith and Sergio Femenias, Daniel and Jodi Reeder, Dennis Bertucci.

The hearing was held to consider an appeal made by Mark Nelson of the decision the Planning Commission made at their February 7, 2012, meeting to allow larger directional signs.

Mark's letter had been given to everyone, so he had nothing else to say. Gladys stated she would like Mark to read the appeal, which he did. (Tim Mutcher and Jim Catmull came.) Bill discussed certain points of the appeal about which he felt differently than Mark does. (B. J. Orozco came.) Mark's point was that the ordinance needs to be enforced. Bill stated we will not go back to past issues. Mark stated that no applications are on file for Conditional Use Permits and no photographs were submitted for any current Boulder Mesa Restaurant signs and that the signs are illegal. (Conrad Jepsen came.) Bill asked Mark how he would like to have him (Bill) censured and stated that he was at the PC public hearing as a citizen and not as the mayor.

Steve stated that Mark, in his appeal, was hard on the PC for rushing to judgment and would like to hear from them. Mark stated that they rushed the vote because Randy was in a hurry to get a decision. Mark presented alternatives, but they didn't discuss them. He felt they hurried to a vote without consideration and thinks they should have tabled the matter to think it through. The letter, of course, is one-sided because it presents Mark's point of view. B. J., chair of the PC, stated that it was a tough decision to make. Initially they wanted to wait, but after discussion, there were reasons to move ahead, and they felt they had heard all they needed and wouldn't have changed their decision. He apologized for not waiting if they should have.

Tom took issue with Mark's claim that it was done to accommodate Randy. He read from the minutes. Helping Randy was not the only reason to change the ordinance. Mark stated that the 15" x 5' signs are visible and that the directional signs as they are are visible. He suggested that maybe using a sign with a different configuration would be as effective.

Appeal Hearing held March 1, 2012

Page 2

Mark McIff explained the appeal process. There are legislative and quasi-judicial decisions made by the PC and the Town Council. If it's a quasi-judicial decision, like a variance or a Conditional Use Permit where the body is applying the existing ordinance to a certain situation, that's where a person has the right to appeal if he feels like the wrong decision was made based on the existing ordinance. If you feel the existing ordinance was applied incorrectly, then you have the right to appeal. But his understanding that what is contemplated here is a legislative change in the ordinance that will be in effect from here on. There is really no right to appeal legislation. If a person doesn't agree with the initial decision, his recourse is to go to the next public hearing, which is next on tonight's agenda, and try to convince the next body hearing it not to adopt the change. You can't appeal what they did; you just try to talk them out of doing it. If you look at the Boulder Zoning Ordinance, either Section 1804 or 1810, it talks about it. He then read section 1810.3: "Only those decisions in which a Land Use Authority [the Planning Commission] has applied the requirements of this Ordinance, or the Town's other . . . Ordinances to a particular application, person, lot or parcel may be appealed to an Appeal Authority." So only *that* can be appealed. So the only proper forum to address the concerns expressed by Mark N. is at the next public hearing. The only proper thing to do is to say that the appeal doesn't comply with Sec. 1810 of the Town Code and it isn't an issue that is appealable.

The Mayor complimented B. J. on the way the PC public hearing was handled.

The appeal hearing was closed at 6:34 p.m.