

April 7, 2011

Meeting began at 7:07 p.m.

Present: Bill Muse, Mayor; Randy Ripplinger, Dennis Bertucci, Sue Inman, Gladys LeFevre, Council Members; Judi Davis, Clerk; Mark McIff, Attorney.

Public Present: Peg Smith and Sergio Femenias, Matt Cochran, Boz and Bobbie Bosworth, Bob and Naomi Brems, Ashley Coombs, Judy Drain, Keith Watts, Brian Dick, Mike Nelson, Alyssa Thompson, Niki Taysom.

Pledge of allegiance

Gladys made a motion the minutes of the February 3 meeting be approved. Dennis seconded the motion. The vote was unanimous, with Randy abstaining because he wasn't at the meeting.

Randy made a motion the minutes of the March 3 meeting be approved. Sue seconded the motion. Randy, Sue, and Bill voted in favor. Gladys and Dennis weren't at the meeting so abstained.

Gladys made a motion to approve the minutes of the March 11 meeting. Dennis seconded the motion. The vote was unanimous, with Randy abstaining because of his absence from the meeting.

Boz, representing the Boulder Community Alliance, gave an informational update on projects of the BCA. There has been an energetic effort to eliminate Russian Olive growth on 100 acres of private land along Deer Creek, and there has been an extensive effort to do the same along the Escalante River drainages. They are also supporting an effort to officially reintroduce beaver on Boulder Mountain. There will be a free workshop in June to teach people how to get along with beaver without moving, trapping, or killing them. There will also be a program to facilitate dealing with problem beavers. They want to be proactive. On April 20 in Escalante at 1:00 and again at 7:00 Mark Buckley will be looking at the economic effects of beaver on the Escalante drainage area. There is no charge for this program. (Jabe Beal came.) The value of water storage benefits brought about by beavers was discussed. There have been a few local jobs created as a result of the Russian Olive project.

Judi conducted the annual open meetings training. (Constance Lynn came.)

Brian Dick introduced himself. He is the Chairman of the Planning Commission and is

frustrated with how the town is doing business. He did not come to place blame and recognizes that we are all volunteers, but he thinks we are on a dangerous path. His feelings are based mostly on the process he has been through with the McCabe Subdivision. They are giving up on the project. He feels the town ordinances have prohibited their developing their property as they would like to do and is frustrated at the loss of expenses they have already incurred. He thinks we are over regulated and wants to begin a discussion on the appropriateness of our ordinances. Are all the provisions required by state law, or can they be changed? He predicts an out-migration of good, hard-working people because there are no affordable lots.

Dennis stated that the Town Council would entertain changes in the ordinances. Brian is concerned about the processes. He offered solutions, at the same time expressing a willingness, as Planning Commission chair, to take part of the blame. 1. We need to give the members of the public bodies (PC, TC, BoA) time to look at the paperwork they are being asked to consider in order to come to meetings better prepared; 2. We need to have an attorney at every meeting; 3. We need to legitimize the variance system; and 4. We must enforce our ordinances.

Bill responded by stating that the Town does enforce its ordinances, but that we try to do it with compassion by giving people time to come into compliance. He then stated that the purpose of the conceptual hearing is to give everyone time to study the issue. Brian was on the PC when the ordinances were adopted. At the conceptual hearing for the McCabe Subdivision, Brian brought the nonconformity to the attention of the PC. He should have figured out then what could and couldn't be done with the property. He didn't have to go to the expense of buying a water hookup; all that was required was that the Water Company give a letter of feasibility. When the application reached the Town Council, their only recourse was to recommend that he apply for a variance. The blame for the problems encountered doesn't all fall to the Town.

Brian asked if it was up to the person applying to know everything. He only spent the money because he was allowed to go forward. There was a discussion on a barn that is out of compliance because of its height. That is not the town's fault; personal responsibility of the contractor has to be considered. Judy Drain asked why we don't fix the problem if it's fixable. The TC has already asked the PC to review the ordinances to see what, if any, changes need to be made. Brian said his biggest personal mistake was assuming he could do it, and Bill replied that subdivisions can be done if the homework is done. Matt feels it is complicated if left up to the individual to navigate alone. Each project is unique. Bill stated that the recent survey should identify some of the problems that need to be addressed. He likes the project and would like to have seen it approved, but the problems should have been identified and ruled on earlier in the process.

Naomi stated that we do need rules, and that they need to be published. When you buy a

lot or build a house, you should do your homework first. Our ordinances are online on the Town website and are available to everyone. Brian feels that we're a community and are here to help each other but doesn't feel that anyone helped him through the process. The current problem with the barn is one that was brought to the Town's attention by an individual and was not negligence of the Town. Bobbie, as a member of the PC, felt that Brian's neighbors slowed the process down, which is fine—people should have their say. Peg stated that the TC directed the PC to review the ordinances, and the PC is working on that now. It will be a long, arduous process, and the public is welcome to participate. The survey will bring some problems to light. Because the title to the parcel(s) of land wasn't clear, the BoA couldn't make a decision when the variance application was considered, but they were accommodating and did give of their time to go over the five provisions that have to be met in order to grant a variance.

Niki stated that an applicant should look at the plans then go to the entity to see if the project is possible. The government has already decided what it wants and has ordinances in place to define the process to get there. Then they work together to make it happen according to regulations and code. But it shouldn't be so difficult that you squash what you're trying to accomplish. There will be disagreements from time to time, and the people do have a voice, so we come together to work it out, remembering that the people do have rights.

Keith had made a comment on this issue at a previous meeting in which he said that 14:1 is not a good ratio. He doesn't know if 3:1 was chosen after a lot of thought or if 5:1 would be just as good. But he does feel that 5:1 is better than two 14:1 lots, so it would be a net improvement. If we change the ordinance to 5:1, then every subdivision in the future will use that number. He asked whether it would be wise to change the whole ordinance for a one-time situation, or could we say something to the effect that, if it's a net improvement but still doesn't meet the requirement, it's okay. Does State law allow for such a provision?

Mark responded that, since the ordinance is what it is, that's what we have to go by for now. But if the ordinance were changed, something different could be done. The Town sending Brian to the BoA was not a waste of time, because, with the 3:1 provision being there, the only relief he could get was to ask for a variance. If the Board felt he didn't meet the five requirements, they couldn't approve it, but that wasn't a waste of time because he has to do that to get to the next step. Even though the Mayor would like it to be approved and the Council likes it, they have to send you there. They don't know how the Board will vote—they are individuals—so it's not guaranteed when they send you to the BoA that they're going to approve it. The lesson is: until you have the approval, don't spend the money. You can't rely on it happening until it actually happens. Commenting on Brian's suggestion that there be an attorney at every meeting, Mark said it helps, but even if you had a full-time attorney, he wouldn't have every particular thing memorized,

nor could he say that, if you apply for a variance, it will be granted. That's why we have different levels of authority who make different decisions, so until you have the approvals, you shouldn't proceed. If you think we are overregulated, the ordinances should be reviewed, and he hopes we will take comments from everyone. He doesn't know if 3:1 is a good thing or not, but since that's what we have, the only way to get around it is to get a variance.

Bill emphasized that this is the first time this issue has come up, and he wished we could do something about it, but it is what it is. Brian stated that he isn't here to talk about this particular subdivision but to talk about the future and how we can make things go more smoothly. Bill stated that the Town didn't get a complaint on the barn. It was brought to our attention by employees of the owner in the process of trying to get a building permit. Keith said most of the ordinance is very good, and the barn wouldn't have been a problem if they had followed the process. Dennis repeated that the only way to get past the situation at hand is to go through the process of changing the ordinance. Brian asked if we are just going to do business as usual and allow people to go through without any help and make the same kinds of mistakes he made. Bill replied that we do care and that we do whatever we can to help people in the building permit process. Peg closed the discussion by reminding Brian to think of how often he has helped people through the subdivision process. This is just something that slipped through because the PC just flat out missed the problem. Brian admitted that he should have stopped it, but no one was there to help him through it. Judi stated that this was a one-of-a-kind situation that is not found anywhere else in town. Having never been faced with it before, it somehow just slipped through. Brian asked that no one take his concerns personally—he's just frustrated with the process.

Bill received a call from County Commissioner Leland Pollock regarding the Hogsback project. He has had time to study it more and has had a change of heart. He will be meeting with Ted Wilson from the Governor's office and Juan Palma to see if they can relocate it to the head of the rocks and give the remaining money to the Escalante Heritage Center project. It may or may not happen.

The Town will be writing another letter to Division of Water Rights on the Robison well issue. The letter will give the history of the water right, the location of the well, etc., and will request that they hold a meeting here. Bill will combine the three previous letters we have written. There will be an amendatory hearing at which we will request answers to previous questions: if the well's approved, why the location, how much water is being used, where it's coming from. The advertised notice for the amendatory change hearing was published in Kane County and will be readvertised in Garfield County. If anyone wants to write a protest letter, updated figures are available. The deadline for letters is April 13. The history of the process is available online by looking at the water right numbers (97-2362 and 97-9790.) The water is being taken from the Navajo Sandstone

aquifer rather than from Boulder Creek, which is where the water right is. We want to know why they approved what they did. The BLM lawyers are planning to protest also. If it is approved, they should tell us why. Keith feels that, at this point, instead of saying, "Why did you do it?" we should say "You shouldn't do this because . . ." Anyone protesting should have standing, i.e. should have a water right, and your water right number should be listed in your letter. Anyone having membership in Boulder Farmstead Water Company has a water right. Keith will post details and numbers for anyone who wants to use them in writing their letter. Bill will email the Town's letter to members of the Council for their approval.

The agenda was reversed, with the recycling item being presented now. Peg reported for the recycling group. They want to keep as much recyclable material here for reuse as possible. They have arranged to have a glass crusher here, and the glass will be reused by the County for road base. They met at the UDOT yard with Jeff Johnson to get permission to site the crusher there. He is in favor of it but needs approval from his superiors. They would like to store cardboard, plastic, and aluminum at the landfill until enough can be baled to make it worth hauling out. The process would bring in income. They would need volunteers to monitor the incoming material, crush glass, and drive if needed. Bill reported from the Mayors' meeting that the County promised a crusher and baler until they found out how serious we are. The answer there was "no." We're about the only town working on it but are working with other communities.

They asked if we can help solve the storage problem by approving a storage spot at the landfill. The Division of Solid Waste said we can use the landfill for storage under the same conditions as the rest of the landfill is operated: locked gate, attendant on site during open hours, control of blowing materials, etc. They would need to rent a generator to crush and bale when the need arises. They are not asking for money. The Planning Commission survey included a question on recycling. Of 135 surveys returned, 66.6% supported recycling and 28.8% oppose it. They were pursuing a grant but learned that only one application can be submitted per state, and we probably wouldn't be the one selected, but we may be able to ride along on the Five County grant.

Sue asked us to check on our liability if the recycling center is located at the landfill. Gladys wondered how much room it would take. They can't collect anything yet. The logistics of balers and storage are still being worked out. All we can do this year is create large bins for aluminum, plastic and cardboard. Keith commented that long-term storage would be a problem, because if it doesn't flow through, it becomes garbage. He recommended that they not try to stockpile. Money from selling the recyclables would go back into the program to pay for equipment, manpower, etc. For now, they are working on a larger plan. There will be no recycling this year.

Our Rural Development grant for \$50,000 for the building project is waiting on Congress

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to adopt a budget. In order to have the full amount budgeted for the renovation, we will need to apply to CIB for an additional amount of loan/grant to make up the difference. If the RD money becomes available before CIB meets in June, we can withdraw the application. If they approve our application, it will probably come in the same loan/grant mix that we have now. Gladys made a motion we apply to CIB for \$50,000 additional money. Dennis seconded the motion. The vote was unanimous.

In Department Reports, Gladys stated that we need to start moving things out of this building. There was a discussion about the organ. Dennis will find out what its value might be. If it is valuable, we need to decide its disposition. We may put it up for bid. There was a question as to where to store the piano. Large variations in temperature are not good for it. It should be in a home. Maybe someone would babysit it and return it in good condition. We will dispose of the old fax machine. We need to have everything out before May 23.

The Planning Commission will be reviewing the Zoning and Subdivision ordinances to see if changes need to be made. Public input is welcome. The survey is still being tabulated.

The Fire Department plans to burn the yard waste pit at the landfill Saturday unless it is windy or wet. If it is, they may do it some evening. Farlan wanted the big trailer but changed his mind. Bill may want it. Pieces of siding are coming off and being blown around. The firemen will gather those pieces and bring them to the construction pit.

The BKRE road washed out, but it has been graded and is usable. The culverts weren't installed where they were supposed to be but will be put in when the water lines are put in. Eric is continuing the cleaning of the brush along the roadsides.

Gladys made a motion we pay \$20 to each of the drivers who brought the picnic tables from Bryce Canyon. Dennis seconded the motion. The vote was unanimous.

Judi was approached by someone who would like to see a fine assessed to people who put construction materials in the dumpsters. She will check with Escalante and the County to see what they do about the problem in other areas.

Randy made a motion the meeting adjourn. Dennis seconded the motion. The vote was unanimous.

The meeting adjourned at 9:53 p.m.

Minutes prepared by Judith Davis, Town Clerk