

June 7, 2012
Appeal Hearing

Hearing began at 6:09 p.m.

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

Public Present: Mark Nelson.

The mayor called the hearing to order, then turned the time to Mark Nelson to present his appeal.

Mark is appealing the Planning Commission's decision to approve a Sign Permit for Boulder Creek Canyon Ranch. He asked us to overturn the decision based on four points outlined in his written appeal. (Alyssa Thompson came.) The Planning Commission had written a letter to the Mayor, with copies to Tom and Judi, regarding what they felt were problems with the CUP process. Because the other Council members hadn't yet seen the letter, time was taken so each could read it.

Mark reviewed the history of the sign, stating that it was initially put up illegally without approval. Tom responded that he had heard unofficially that the sign was a thorn in the side of people who thought certain issues were unresolved. He, as enforcement officer but unknown to the Council, talked to Jacqui Smalley and Abbe Orozco about the sign, just initiating a process, telling Jacqui there was a problem and suggesting that a possible solution would be a building sign. Bill then continued with the negotiations. He talked with Jacqui and Abbe and said that what Tom had told them was correct and the sign needed to be in compliance. John had started the process in 2008, and Judi had the paperwork. Jacqui also had a copy of it. John had tried to get the sign approved, but was denied. The only way it could be a legal sign was for it to be placed on a building. Jacqui was leaving town, and Bill told her that she would need to get a building permit and offered to walk it through for her since she wouldn't be here to do it. He has done that for others who haven't been here as a matter of kindness and public service to them. He suggested a 12x12 building that had a legitimate use.

Jacqui hired a contractor, who went through the process and obtained a legal building permit. He then built the shed. The application for a Conditional Use Permit for a sign was submitted to the Planning Commission, went through the process, and the sign was approved. It may be a good idea for the Planning Commission to define the minimum size of a building on which a sign can be placed. Mark stated that he understood they were told they could build the building and put the sign on it without a sign permit.

Bill polled the Council, and no one told them they could do that. Tom said it was possible that Jacqui and Adiyen had a misunderstanding and believed that they could put the same size sign on the building without further approval. When he was on the Planning Commission, he realized that there is no clear checklist of things that need to be done to get permits, and he is trying to fix that.

The historical facts of the sign were reviewed. Mark stated that the Red Wing sign was not standing when John bought the property, so he re-erected it. Mark opposed it at the time. Mark also contends that sign sheds are not an approved use. He feels that the intent of the sign ordinance was that signs were to be allowed on business buildings. It would not be confusing if the proper procedure was followed. He feels Peg should have known they needed an application and feels this is proof that there were shenanigans. He said that Alyssa talked to Adiyen and told him not to put up the sign until the permit was approved, and he ignored her. Mark asked Alyssa for verification of that statement, and she said Adiyen said there's nothing we can do.

At Tom's request to know whether he could suggest a remedy for this situation, Mark said he thinks Jacqui should go back and have a new, proper-size sign made and put it up. He thinks that would be more consistent with the intent of the Austins' desire to keep the aesthetics of the ranch intact. It would send a message of her support of the sign ordinance and her support of preserving the view shed.

He thinks if we require this sign to be made legal, it will stop the attitude of, "We'll just go ahead and do it, and it will be okay." The idea of "we'll just redefine the ordinance, and make it more understandable" has to stop. It's not okay just to dot a few "i's" and cross a few "t's." There will always be some kind of loophole that someone can find or some misunderstanding or misinterpretation, because this is what's happened in the past. He thinks there was a feeling all along that someone wanted to keep the sign and there would be a way to do it. He thinks they thought that, if they took it to the PC, they may deny it, so they went ahead and put it up anyway, knowing the town wouldn't make them take it down, because that's the way it works.

Judi read from John's earlier communication that he would be building a tool equipment shelter that would meet the requirements of the ordinance. Adiyen did label the drawing of the building "sign shed," but that was his own interpretation of the situation, not John's. The ordinance allows a sign to be placed on a building. Mark's contention is that a sign is allowed to be on a building of a business, not on a chicken coop or on the outhouse. Steve replied that the ranch is a business. How else would they advertise their business? Is a person to interpret the ordinance as Mark wants it to be interpreted or as it reads? Mark replied that, not once, but twice they did the wrong thing. Steve replied that it looks like they were trying to follow the proper procedure by putting the sign on a building and getting a permit for it. Mark stated that, just because John sent Judi a letter

saying, "this is what we want to do," does not mean it's the legal thing to do. He should have taken the sign down.

He then asked Alyssa, as a PC member, if the PC did not approve the sign-- the building permit was issued first, and then the PC approved the sign? The PC did approve the sign? Alyssa: yes. Bill: the sign has been approved, so both things have happened. Alyssa responded that it [putting the sign up before being approved] was a mistake, to which Bill agreed, but it's done. After some discussion on whether the sign being hung before being approved was reported to anyone, the mayor restated that the approval for the sign was given.

Mark said there really was no discussion on the sign at the PC meeting, and suggested we refer to their minutes. He said a board member told Jacqui she could do it, it's already done, so what are we going to do? He thinks we're rewarding wrong behavior again. Over the years thousands of hours have been spent hammering out ordinances, with the sign ordinance being one of the special things about Boulder. Alyssa said that, at their next meeting, they're having a discussion on the consequences of non-compliance. Their hands have been tied in the past where they felt like they didn't have a solution, so they will be dealing with that. Steve wondered if they had discussed recommending to the Council that the sign be taken down. It was discussed. The result of that was the letter they sent to the Mayor that was read at the beginning of the meeting.

Bill stated that no one is saying a mistake wasn't made. No one is trying to sneak around the ordinances. Bill has been offended many times over the years by statements made by Mark suggesting that Bill has some personal motives driving his actions and feels Mark complains too much. This is not an issue that we should spend thousands of hours on. Mark responded that he feels it would have worked out fine if Bill hadn't interfered. His complaints are driven by interference by the Town Board from the top down and have never been answered. He thinks the process should be allowed to run without interference. Mark thinks Bill is taking it personally because he is being called on not following proper procedures, but he is also taking it personally, because he has a stake in this town. He thinks none of this would be happening if proper procedure had been followed.

Steve asked if they were to take the sign down and reapply, does Mark think the Planning Commission would deny it or approve it. Mark doesn't think a sign shed is an approved use. Tom disagrees. The ordinance defines a building, and this structure meets that requirement. Intent is a different issue. Mark thinks it's about spirit and intent, that everything can't be spelled out. He doesn't think this sign shed meets the intent of the ordinance. He doesn't think the intent was for any outhouse, tool shed, chicken coop, etc., to have a sign on it.

We need to clarify the ordinance, but it is what it is now. Mark thinks we should ask them to take it down, apply for a permit, and put up a compliant free-standing sign. Bill replied that it has now been approved, the sign is on a legal building, and once it's been approved, we shouldn't have to keep discussing it. The Council are also unpaid volunteers, and he stated that he had given up more time to Mark on this issue than on larger projects. Mark asked what time he had given up. Mark was only given half an hour at the previous hearing and an hour at this one and doesn't think that's too much time to ask. Bill responded that we've given him the opportunity to present his appeal.

Tom suggested that we recommend to the PC that building signs be limited to buildings on which the business is occurring, i.e., if you're a restaurant, the sign would be on the restaurant building, if you're a manufacturer, the sign would be on the building in which the manufacturing was being done. A special exemption for a larger sign would be allowed for ranches, since there is not a building in which their business occurs. Mark thinks that, because we like the sign, we're allowing it to stay.

Tom stated that the issue here is the process. The process wasn't followed the way it should be, and do we want to do something about that or don't we? That's the question for him; he's not going to change anything because of the size of the building. Judi clarified the process that John had gone through: in 2008 he applied and was told that the sign was too large. In 2009 he submitted a sign application for a 24 sq. ft. sign to be placed on agricultural land and was told it was too large for a free-standing sign and that the option he had would be to put it on the side of a building. He submitted an application for a sign to be placed on the side of a tool shed, and then he was killed in an accident. The application was determined complete, but for some reason, it didn't continue through the process at that time. We have in the file a letter signed by Jacqu Smalley that Margaret Smith is the Registered Agent for BCCR, so Peg did have the authority to sign and resubmit the application.

The Mayor reviewed the matter at hand. Mark has asked us to overturn the Planning Commission's decision to approve a sign for the Boulder Creek Canyon Ranch. We need a motion to overturn or to uphold that decision. Gladys asked for Mark McIff's advice.

Mark Mc is hearing two things. 1) Was the sign erected before its approval, and what's the consequence of that? 2) Did the PC make the right decision? That's what the appeal is. Did they read the code right? Did they make the right decision when they allowed it to go on that shed? Did they follow procedure? Either they did or they didn't, and they need to enforce it in the future, but that's not the issue here. The appeal is, does it qualify under the definition or not? That's what we're really here to decide. The building permit is not a part of this decision. The Conditional Use Permit has been issued. The definition of a building was read. Tom asked for clarification of his understanding that we cannot overturn the PC because of the fact that the sign was put up before the decision was

made. Mark Mc said that the decision has to be made based on whether the sign is legal under the ordinance. If the question is, what's the result of having put up the sign before the PC's approval, if you're going to say take down the sign forever, you're forever banned from getting any signs even though the town ordinances allow it, then I don't think you can do it. But if the sign doesn't qualify, it needs to come down right now. The question is, is the decision that they made a proper decision or not?

Bill clarified that it is a building and that the sign is within the square footage of what is allowed on a building, then called for a motion. Tom made a motion that we accept the decision of the Planning Commission as it was passed down to us. Steve seconded the motion. Voting in favor were Bill, Gladys, Tom and Steve. Voting against was Sue.

The appeal hearing was closed at 7:15 p.m.