

Meeting Minutes

Planning Commission, Boulder Town

November 9, 2010, 7:00 p.m.

Commissioners present: Tom Jerome, Brian Dick, Ray Gardner, and Bobbie Cleave. BJ Orozco was absent. Also present was Commission Clerk, Peg Smith. Brian called the meeting to order at 7:04 and recognized the members of the public present: Don Montoya, Boz Bosworth, Donna and Robert Owen, Mark Nelson, Cookie Schaus, Matt Cochran, Constance Lynn, Ashley Coombs. Brian recused himself from the McCabe portion of the hearing and meeting, as he is serving as Bevin's representative. Tom Jerome was assigned to act as chair. Bobbie moved to open public hearing, and Ray seconded the motion. All approved.

Public Hearing on McCabe Preliminary Subdivision

First, Brian put in a pitch for creating a "minor subdivision" ordinance for situations when a single lot is being carved out of a larger piece of property. Many other entities apparently would consider this situation to be a "boundary realignment." He was surprised at the cost so far--\$7,525—to complete the preliminary application process per our subdivision ordinance. Don recalled an early discussion of problems created in having a "minor subdivision" ordinance: an owner was able to break off segments of property, one at a time, creating a defacto subdivision but without providing any infrastructure.

Brian reiterated the situation: in 2005, Bevin McCabe bought 10 acres in the northernmost piece of a 3-piece, (10-acres each) property originally bought by a group. Besides her 10-acre piece, she has controlling interest in another 10 acres that she's in the process of purchasing from Troy Chatwin. To pay him off, she wants to subdivide that 10 acres, creating a 5-acre piece fronting Lower Boulder Road. The driveway accessing the back property and barn is to be retained with the original 10 acre lot (with the house); the driveway will be shared with adjacent landowner (of the third segment) Jay Kelly. Each of the 10-acre pieces is 178 feet wide by almost 2500 feet long. With such an odd shape, she thought it would be best to cut off the front 5 acres. The building envelope is the front part of the piece, currently a weed field, but also within the viewshed of neighbors Robert and Donna Owen. However, building there also leaves the back piece as part of greenspace adjacent to existing pastures. The 5-acre lot has access to culinary water and power off Lower Boulder Rd; the nearest fire hydrant is approximately 210 feet from the property line. All SW Public Health requirements have been met; a letter from Boulder Farmstead Water Company authorizes the water hookup. There are no irrigation shares sold with this lot. Brian said the odd shape of the entire parcel made subdivision difficult. He alluded to an original gentlemen's agreement to put all houses at the back of the 30-acre parcel, but said that agreement is not in Bevin's deed. He said all other stipulations of the preliminary application had been met.

Tom opened the floor for comments.

Boz asked about the density stipulations on the deed. Brian read, "...Said parcels shall not be developed into a density of less than one single family home per 10 acres." Bevin has a contract with Troy Chatwin, not a warranty deed; Chatwin still pays the property tax. Brian received a notarized statement from Chatwin that he has the right to act as agent to sell the property. Wording regarding building density is already included on the property plat. Boz asked why the seller wants to define the location of the building envelope. Brian said it seems to be the best place, with easiest access to services. Boz

says this location seems to affect the neighbors most, but Brian says any place being built will bother the neighbors. Future owners could decide to build elsewhere on the property if they wanted to go to a little more expense extending the utilities.

Donna Owen: First, previous general plans have described maintaining “small town feeling” and “limited development,” and this plan would seem to fly in the face of that. But the information that Troy Chatwin is paying the property taxes is critical because this is also a greenbelt issue. In her opinion, Bevin owns one 10-acre piece on which she is paying taxes. She’s in the process of buying this Chatwin piece. Just because she *intends* to own it, she isn’t the owner. Donna said on a 10 acre lot, you have to have at least five of those acres “in production” for greenbelt. Bevin will go out of greenbelt if she is allowed to subdivide. She wants to sell the land to pay for the land. If we approve, and she defaults on her payment, then who actually “owns” the subdivision?

Tom asked about greenbelt. Is she allowed to remove it from greenbelt status? Yes. But how can she subdivide someone else’s property? If the land can’t be greenbelt and instead becomes a \$30K trophy home, then it affects the tax base of the rest of the neighbors. Is this legal? Yes. But is it moral, and is it what we want for our town? Owens’ had been given the impression that the deeds retained the words from the original land covenant regarding density and greenbelt. Bevin’s doesn’t contain that language, but Kortbawi’s original agreement does talk about density. As long as the covenant is recorded at the county, which it is, then that language is binding.

Regarding legal process, Brian said he and Bevin first got a letter from Troy Chatwin giving Bevin the right to sell his property; also they have a notarized statement authorizing Brian to act as agent. Tom asked Brian if he’s gone to an attorney to ensure that this approach is a legal process? Donna said too that Boulder Farmstead would return the share deposit if the subdivision doesn’t go through.

Robert: There’s no way you can greenbelt five acres. The other residents are in a “farm club” with their 10-plus acre lots and are trying to keep their greenbelt status. “You’re taking a five-acre piece out of greenbelt and have a potential lawsuit. Some of us knew as soon as we saw the 178 feet x 2000 feet pieces of property that Bevin was buying into a problem, and now she seems to be desperate to sell. Maybe is legal or maybe isn’t, but you’re putting a high price tag on the property. All people wanting to spend the rest of their lives there and are concerned about the current doubling of prices. We don’t like what it’s going to do to our property values.... You can’t sustain farming when land is going for those prices. It’s not true that that land was never farmed; but now it’s gone back to tumbleweeds... By removing this from greenbelt, not only does this affect our property values, but it takes away the hopes that this would ever be farmed again. ..Verbal agreements are binding. Going back to try to undo what’s been done may be impossible, but the attitude of getting \$30K an acre, no matter what, hurts everyone. What market are you attracting who can pay \$30 thousand an acre? Farmers? No.” Brian said his understanding is that the Owens’ property wasn’t part of those 10-acre subdivisions.

Constance asked about greenbelt. Donna said that you need six acres if you’re going to put a house on the land, as a minimum of 3-5 acres has to be productive land. If the land does sell, the acres neighbors own on their own greenbelt will be valued at the new rate.

Mark Nelson: Taxes are based on assessment of property and when land gets turned into investment property, your values will go up. If property goes out of greenbelt status, there is a rollback period where it can go back in

Robert: Dividing the property in another direction wouldn’t cause us a problem, because the person buying it would have chance of staying in greenbelt. When you let that go out of greenbelt, you’ll never get it back. Taking five acres out of greenbelt is worst case scenario of what’s possible with this piece of property.

Tom: We have no control over past promises. But is this a legal subdivision or not, as presented?

With the conclusion of public comment, Bobbie moved to close public hearing, Ray seconded. All approved closing the public hearing. Ray moved to open the regular meeting, Bobbie seconded.

Discussion of Results of Public Hearing

Tom reopened the public meeting at 8:10 p.m. and summarized his understanding of circumstances. Bevin's agreement to buy Chatwin's 10 acres may have been ill-defined, and promises prior to that on how the land was to be developed were apparently not put in writing or clarified for future owners. That has led to general frustration with the situation. First, there was no legal stipulation requiring 10 acres to build a house, but the way it was sold simply specified you couldn't build more than three houses on the 30-acre parcel. 2) the seller is stipulating the house site, and we don't know the legality of this, but it ties the buyer, and I'd like to know more. (Brian said it's like Black Boulder Mesa, where all lots have building envelopes and setbacks defined on the deeds. He also pointed out that "greenbelt" is a county tax designation, whereas he and Bevin are talking about maintaining "green space," and "green space" is what has been called out in the Boulder General Plan.)

Brian said his understanding is that a town water hookup allows for irrigating an acre and a half.

Tom: The main issue seems to be the legality of a person who doesn't own the land wants to subdivide it to sell it, with no guarantee the divided piece will actually sell. Our goal is to follow ordinances and protect the community from possible, future liability.

Ray asked: Has Bevin put up earnest money to buy the property? Brian said she has been making payments, but now the balloon is due. Ray said that people express their commitments to do something with money, and wondered how much or what percent Bevin already has paid in.

Bobbie said she'd like the town attorney to look at this. What happens if suddenly Bevin has to sell off? The Commission would effectively have approved building of two houses on 10 acres, which runs contrary to the initial density covenants.

Tom: We'd like clarification of 1) Bevin's continuance to pay even if she doesn't make the balloon payment, and 2) the legality of her even subdividing this property. Brian wondered if Bevin bought an option from Troy, would this solve the ownership problem? Don asked if the sales contract constitutes a valid instrument to define the property (boundaries) being sold.

Bobbie said the issues of the 10-acre density and verbal agreement not to further subdivide need to be defined, along with the binding nature of any such agreement.

Matt asked about the barn. Does it belong to the Chatwin property? Brian said the barn isn't on Bevin's property [therefore is on the Chatwin property]. It's not a residence, but states a commitment to maintaining the remainder of the Chatwin property.

Don: The town attorney had previously addressed putting restrictions on a deed. As property owner, you can put restrictions on your own property, and you can take restrictions off your own property; whether it's on the deed or not, that is your right. It only becomes a legal issue if you convey those restrictions on the sale of the property. So regardless of what Bevin has that's in greenbelt, she can take out. But Brian argued that you can put conditions on sale. Tom said he'd be concerned about density covenants, in particular because once someone does something, it can happen elsewhere in town.

Brian said the plat shows the remaining acres (14.86, in this case) wouldn't be further developed.

Mark: Regarding restrictions, that's why you always have a trustee. In a group, when you have covenants on yourselves, you can change restrictions if you're all in agreement. For a single owner,

you can have a restriction, but you need to designate a trustee who maintains the deed. For example, the town could dedicate a piece of property to the town park, but the next council could override that unless a trustee had been designated who would represent the original intention. On the contract, usually there is a subordination clause that would state that you can't develop property before you have the deed, but it sounds like this wasn't on the deed. Basically, Troy's letter sounds like what should have been in the deed as a subordination clause.

Ray said we need legal advice regarding Bevin's level of commitment and whether that's sufficient to proceed. Donna wondered if more than just a letter should be required.

Tom called for a vote: It was unanimous to table a final decision until the Commission 1) has a legal opinion on the legality of Bevin actually subdividing this property, 2) gets a description of the legal relationship between Troy and Bevin, as in a purchase agreement document and whether she has controlling interest, 3) can understand how binding was the legality of agreement not to further subdivide, and 4) has what is determined to be a legal document in place of the letter that Troy signed.

Tom closed the preliminary application subject and returned chairing of the meeting to Brian.

Town Survey

Brian continued the meeting, first asking for approval on the October minutes. With an editing correction (Ray was present at that meeting), Tom moved to approve, Ray seconded, and all approved.

Peg said the survey is basically completed with wording changes, although the numbering needs to be corrected. Ranking scales on responses have been cleaned up. Some introductory clarification has been done. The final questionnaire will be available at the December meeting.

There was discussion about including "arts facility" in question 4, and it will be added.

Mark had several comments on the town survey draft:

- 1) #15---add "low-flying private and commercial aircraft" to ordinance question.
- 2) #5—recycling (Tom suggests to the statement, "Do you believe financial support should be provided by...")
- 3) #8 ---growth strategy--- change to "preferred growth rate."
- 4) #9 on 5-acre lots --- "Do you support a Planning Commission discussion regarding lot sizes smaller than 5 acres?"

Add a question on enforcement to see what type of support exists for improving this. Separate fire and EMS services. The voting registration (from the state) and property tax roles (from the county) will be available electronically/as labels, respectively.

Next Meeting

The next meeting is December 14.

- Bill's preliminary application for subdivision and public hearing thereof.
- survey

Bobbie moved to adjourn, and Tom seconded the motion. Brian adjourned the meeting at 9:05 p.m.

Peg Smith, Planning Commission Clerk

Date

Approved: _____ Date: _____