

# Meeting Minutes

## Planning Commission, Boulder Town

**April 17, 2012, 6:00 p.m.**

### ***Work Meeting, 6 p.m. Discuss General Plan***

Commissioners present: Alyssa Thompson, Bobbie Cleave, and BJ Orozco. BJ started the work meeting at 6:15. Commissioners began looking at each section in sequence, with the idea of breaking up work when they hit a place that needs more revision. Revisions will be based on the 2011 Town Survey results.

- No changes noted specifically in Chapter 1, other than adding to the background section.
- Chapter 2--- Historical setting, minor edits
- Chapter 3 – Regional Setting, minor edits
- Chapter 4 ---check Relationships with Governmental Agencies; add placeholder about looking into Annexation Plan that could affect public lands in town; mention of Town Park and BLM land; on 1-8 add coordination with emergency services and fire protection.
- Chapter 5 --- 5.2 General Community Goals: add to the list about new groups that represent various community interests; #9—“fostering” economic viability
- Chapter 6 --- Climate---add another sentence or two to 6.2--- current temperature and waterfall data need to be added; add mention of climate change; paragraph about water usage, sources, protection (Loch?); Dark Sky: “both 2004 and 2011 surveys show strong support”. Alyssa will work on Climate section; talk to Loch about water—new section 6.6?

Skip Chapters 7 and 8 for now to rework later. The work meeting stopped at Chapter 9 with discussion about providing housing for workers. BJ adjourned the work meeting at 6:55.

### ***Hear Public Comment on BCC Ranch Sign CUP Application***

Commissioners present: Alyssa Thompson, Bobbie Cleave, BJ Orozco, and Loch Wade. Ray Gardner was absent. Also present was Clerk, Peg Smith and members of the public: Randy Catmull, Mark Nelson, Sergio Femenias, Alan and Anna Scott, Curtis Oberhansly, Rod Torgerson, Donna Jean Wilson, Mike Nelson, and Boz Bosworth.

Bobbie made a motion to open the meeting, Alyssa seconded, and BJ brought the meeting to order at 7:01 p.m. Bobbie moved to approve the March 13 minutes with the date correction, Alyssa seconded, and all approved. Alyssa moved to close the meeting and open the public hearing on the Boulder Creek Canyon ranch sign application; Bobbie seconded the motion, all approved, and the hearing was in session.

Mark Nelson: I officially requested background information on the sign [and received it]. The application is almost four [sic] years old, I have to object. We need an updated solution. The commission can't ask questions of or negotiate with the applicant. Mark presented a list of his objections:

1. Why not have updated application?
2. History of sign...originally erected illegally: oversized.
3. No approved application given.
4. Shed built. Tore down, put up illegally again. Who authorized, who was told to do it?
5. Emotions seem to be calling the shots on this. Told this is a solution. Don't see it that way. Don't think it would be wrong or inappropriate.
6. Take oversize sign, put up on barn and remake a new sign.
7. It's now called a sign shed. This is an expansion of a misuse, not a solution.
8. Can't cover everything in an ordinance that people will try to pull on you. This is subterfuge of intent. Not a good way to go.
9. Sends a wrong message. Not consistent with John and Jacqui's vision of aesthetics.
10. Wrong message for John's legacy.
11. Current proposal is an attempt to circumvent standards.
12. Thought there was support for sign ordinance in town survey
13. Other sign applicants held to the process.

Margaret Smith: I'm speaking as the registered agent for the Boulder Creek Canyon Ranch: A dead man didn't make that application, a living one did. John Austin applied in March 2009 was trying in good faith to work with the town to come to some resolution on the sign. With this application of 2009, the issue was in the town's court. He died two months later, and the town decided to not complete action on the application for the time being. Fast forward to now, the owner wanted to put the sign issue to rest. Since putting the existing sign on a building would satisfy the ordinance requirements, the only addition seemingly necessary was getting the structure approved and constructed. The original application with the new drawings was put forward---probably as much to provide historical context for this commission as anything else. When I heard the "flap" about a "dead man's application," I decided to add my signature as the registered agent, "resubmitted 3/30/12." I did this after sending out the application copies to the Planning Commission [as Planning Commission clerk], but emailed them that I had done so. The shed dimensions are dated 3/18/2012, and brought to the town by Adiyhan Haran, the contractor. This application was submitted in good faith, the shed setbacks and dimensions meet requirements, the sign dimensions [mounted on the shed] now meet requirements, the sign isn't lighted, its aesthetics fit with the town, and there is no reason this isn't a perfectly legal application for a sign, and it should be approved.

Loch: How did the application get revived? Did you resubmit it? Peg: No, Adiyhan did the legwork on the application. Loch: Why is the sign up when there is no conditional use permit for it? Couldn't the sign have sat on the ground until this process was completed? BJ: The sign has been out of compliance for a few years, there's been enough borderline harassing letters that the owner wanted to take care of the issue.

Loch: My problem is, the sign [on the shed] already exists. It's hard to issue a conditional use permit when the thing already exists. I don't know what kind of conditions we can put on it. I just think we're doing this backwards.

Randy Catmull: This seems like a continuation of an application. I don't see that the application isn't a legal application.

Mark: You have the ability to ask for a new submittal. That structure was built to be a billboard.

Loch: I don't have a problem with the application. But it's one thing to submit application, then hold a meeting and nothing is built. Then we get to say. Big problem is we're doing this after the fact. As a Planning Commission this is something we need to discuss. There's nothing we can really do at this point other than disapprove the application ask them to take it all down. That puts us in bad position, and I don't appreciate that. The sign is an attractive sign; the shed is an attractive shed. The application is fine. All that is extraneous. But the people should have waited.

*Bobbie moved to close the public hearing, Loch seconded the motion, and all approved. Bobbie moved to reopen the public meeting, Alyssa seconded, and all approved. Discussion on the results of the public hearing proceeded:*

BJ summarized what was heard: 1) the actual application itself may be outdated, 2) the content of the application may be skirting issues, and 3) the structure has already been built.

Mike Nelson raised a question regarding point of order: can a commissioner vote on this if he/she has a relationship with the owners or the ranch? Peg said she'd looked that up for previous situations; a stipulation in state code called disclose and vote allows a member to vote as long as the nature of any relationship is disclosed.

BJ disclosed that he worked on the BCC ranch for three years, and his wife has been employed there for the past seven years and also has a personal relationship with the owner.

Bobbie: I agree we've been put in a bad situation, but disagree that this is subterfuge. The owner is trying to find a way to stay within our ordinances and still have the sign. Yes, we've been put in a bad position since the sign has already been built.

BJ: I do know for fact that word came from the town that this was the way to proceed. The owner was basically told that this was the solution to stop getting the annoying letters. I'm in full agreement that this wasn't the way to go about it, but this is some history of why this happened so quickly. There was a timing issue; she'd been told she needed to do something about the sign.

Loch: This isn't the first time this has happened. Is there some way that unsolicited consultation can stop? Maybe the Planning Commission can write a letter to the town council asking that? I'd like to say to their credit they went on good faith that they had the solution. I know this person is only trying to help, but it puts us in a bad position. I really believe that Jacqui Smalley and the rest of the BCC ranch crew simply went ahead on good faith that they had the go-ahead.

BJ: When the BCC sign first went up, it was the same thing. The owner was informally told it would be OK to directly replace Red Wing sign. So the BCC ranch sign was made exactly the same size as the Red Wing sign. Again it wasn't mal intent.

Alyssa: History aside, I feel that we as a commission should have been permitted to go through the appropriate process, and the person involved in erecting the sign was perfectly aware of that. Although it falls within our ordinances, it was still installed without approval.

Loch: Adiyen is a contractor with enough experience to know the ropes--- when he has a permit or doesn't have permit. Even though he may have received unauthorized permission, I think he just wanted to get it done. What we should do: go ahead and approve the application because

making them tear it down or build something bigger is going to be more of a problem. The Planning Commission should draft a letter to the Town Council asking that they and other officials keep statements to “here are the applications” and “I’ll help you through the application process but will not tell you that you should go ahead.” Just encourage proper procedure to be followed so we hopefully eliminate this problem for the future.

Anna Scott: In the future, maybe you can be clear about a set of actions that the applicant should be aware that you can take, such as removing unauthorized construction. Put a mechanism in place now with no issues on the table so it’s in place for the future.

BJ: Enforcement is hard. We can threaten to pull business permits. We can write letters. The borrow pit example was great--we were able to put reasonable conditions on that and could monitor usage for a year. There has to be something the town can do with conditional use permits. Not just enforcement, but something preemptive.

Loch moved to approve the application, and to send a letter telling town officials to not give informal approval and to refer to the application process at all times. If the application had just come before us, we could have discussed the sign, what conditions would have been appropriate, have a meaningful discussion about some of the points Mark brought up. As it is now, it’s like closing the door after the horse has gotten out. Now we can only send a punitive message. We could deny the permit and ask them to tear the sign down, and that just exacerbates the problem. It’s in the best interests of everyone in the town to resolve this now. We can either be super punitive or super lenient, and that’s not a nice position to be in.

Randy added that signs need bounded dimensions, so that the structure itself isn’t considered part of the sign.

Loch repeated: I move to approve the application and that we write a letter to the Town Council [stating our objections with what happened]. Bobbie seconded the motion. BJ called for a vote: Loch, BJ, and Bobbie voted to approve the application; Alyssa voted no.

Alyssa: I personally asked Adiyen to not put up the sign before approval, and I think we should have been allowed our due process, so I have to vote no.

Peg will draft a letter to the Town Council, and will send out a review draft first.

### ***Discuss Full Moon Preliminary Application Subdivision***

Rod Torgerson said Springhill Subdivision vacation should be discussed concurrently.

Rod: Since the original application, we’ve received a letter from Public Health requesting the protection zone for the well be 200 feet instead of 100 feet; this has been corrected on the plat. We’ve received a letter from Boulder Farmstead requesting a valve on the end of the water line and an easement through Lot 5 for the water company. That’s been added to the plat. We’ve received a request from the Scotts that the Full Moon Farm plat shows the correct location of their road (in Springhill). That’s been added.

Alan Scott: We want to see the actual course of the road on the vacation of Springhill.

Rod: Rather than changes to Lots 1 and 2 on the Springhill plat, we might need easements prepared; Scott should talk to their attorney.

Alan: We want to make sure the easement covers the same ground, even though the subdivision plat is being vacated. We want the governing document (Full Moon Farm plat) to show our easements and correct course of the road.

Rod: We can add a note specifically saying this does not vacate any road easements in lots 1 and 2. Scotts want that clear on their plat, not just Full Moon Farm plat.

Curtis: why vacation and not amendment?

Rod: My understanding is that if the whole Springhill subdivision is amended, that amendment would be subject to the current codes of Boulder town. I don't think the road that serves 1 and 2 meets current code requirements. We're vacating a portion, leaving Lots 1 and 2 in place.

Curtis: The end result, whether it's called a vacation or an amendment, is that you'd file a new plat which would reflect five new lots where three existed, and leave lots 1 and 2 and their access and utility easements untouched.

Alan: The vacation plat shows only 1 and 2 remain in Springhill subdivision. Only referring to course of road, but not showing on our plat. So there is an easement change. (Rod said the vacation does not change the easement.)

Rod: Full Moon plat does not include Lots 1 and 2 (Springhill). It does show the easements.

Alan: Fixing the easement is no problem. It should follow the course of the road.

Rod: We've received all the required letters. (Donna Jean had the irrigation company letters.)

Loch asked about requiring the same size culvert—actually a 30-inch—that crosses the road now. Rod said it would. And the letter stipulates the water company is not liable if the installed culvert causes overflow or backup.

Alyssa asked about lots 4 and 5—to be accessed on BJ Millers road. Lot 3 is to be served by the well, but it looks like the well is above Arrowhead Rd. Rod said this won't be the primary access for the residents, but they need the ability to access facilities, not only the well but also power. Loch asked if the maintenance access is legally granted to the well? If someone decided to gate the road, and the well broke?

Alan said their preference would be for the lot owner to give up the road easement for that portion, but in lieu of that they would need to have a road agreement in place prior to signing the vacation plat that would say we all share maintenance responsibility.

Curtis said a simple fix is to grant a "limited service easement" to the well and power with no other road access and add that to the plat. Full Moon Farms should have a road association that would give grant it. Rod said that agreement could be worked out with Rachel.

Alyssa: My concern is that lot owners in the future who would be using that road. Alan said our condition would be that anyone who uses the road helps maintain it. Servicing the well is fine. But if others want full road access, then maintenance must be shared. Curtis said to just add a note on the final plat reflecting limited use.

Alyssa: The letter from Full Moon Farms regarding their CCRs and road maintenance didn't include all the roads. There was a question.

Randy asked about the emergency turnaround on lots 4 and 5. Alyssa said it's a T on the property line. According to the ordinance, either two separate driveways or a cul de sac are

required. Loch said there's no reason you couldn't put in two culverts and two separate drives, but Rod said where you're putting a culvert across a canal, one access is better than two.

Curtis: There's no other way to access Lots 4 and 5; they do their own driveway. There's only one road into the subdivision. It doesn't bisect the lots. There's no issue with the 3:1 ratio. They have a 50-foot turnaround (hammerhead, not cul de sac). All that's needed is for Lots 4 and 5 to enter into a special provision to maintain that road. Rod said Rachel's CCR letter says Lots 4 and 5 will have a separate road-sharing provision.

Alan asked about an intent he'd heard for using a secondary access. Curtis said if it's called a service access only, that's a different thing.

Bobbie: It looks like all the required components are in the packet. She asked if the Springhill access is no longer a problem, and Alan said the county now maintains that [problematic] portion up to Arrowhead Drive, so it's not a problem for Springhill.

Curtis: For subdivisions over four lots the town needs an independent engineer to verify it, at the applicant's expense. Things like the culvert sizing, drainage, slope, accesses; basically reviewing all of the Subdivision section (400), pages 10 to 18. Once the Planning Commission is satisfied that all questions can be answered, a public hearing can be scheduled.

BJ: Make sure those points are on the plats as described and limited service agreements in place.

Alan: Do we have the right to put up a gate? Curtis said as long as other owners are given a key. Anna asked if they need to resubmit a plat? Curtis said if the correct description exists on the plat, they should be unaffected by this plat. They don't need to fix the road on their plat, just get both owners to sign an agreement.

Curtis: Put a code on the final plat and use plat notes to describe service easements. Are there any drainage issues during really heavy rains that need to be called out? This is for buyers to know what they're dealing with. That's what the independent engineer will be looking at.

Rod: (indicated two areas)---Curtis said there may need to be a plat note added for the consumer.

Alan: Is there an existing septic tank on lot 3? Rod said it is on lot 4, it's never been used.

BJ summarized: We need the vacation plat to better note roads vacated and roads existing, a limited service agreement; various other notes, and then refer this to a third-party engineer.

Alyssa: Can you specify on the plat the emergency turnaround that indicates adequate space?

Curtis: (reading) 50 foot radius turnaround—hammerhead is OK. Rod said he'd check with the fire marshall, but a hammerhead would be more aesthetic.

Rod asked about the next step. If a public hearing is to be scheduled for the June meeting, the materials will need to be received by June 1, and Peg will need to notify adjacent landowners.

Randy: By the time of the final plat approval, the three water hookups will need to be purchased. (Or make final approval contingent on hookups available.)

### ***Discuss Open Country Investments Conceptual Plan for Subdivision***

Alyssa announced a conflict of interest with Gibbs and Catherine over access to this property, and she recused herself from the discussion.

BJ: This is a conceptual plan, the first we've received dealing with clustering development.

Bobbie mentioned the matter of current ownership listed on the plat. (No longer Lovato.)

Mike Nelson asked about total acreage of lots and whether roads are included or excluded from the measured acreage. (Road should be excluded from acreage. Curtis said you can have a trail easement over the lots. You still have to have adequate acreage exclusive of the road. )

Donna Jean: The open space is considered a lot. You're dividing a certain amount of acres into a certain amount of lots. When you exclude the road from the lots, you don't have enough acreage for eight lots.

There was a discussion about the requirements within the clustering section and Donna Jean's assertion that 40 acres divided among eight lots, plus a road, does not work. Donna Jean questioned the fenceline, and Bobbie said existing buildings are actually within the boundary shown as the subdivision property. Rod agreed this is a problem for somebody.

Rod said the intent is that road easement goes all the way to the property line. The easement includes more than what the actual road entails.

Alyssa asked if the road would be called a trail. It's called a road on the plat map. Rod's opinion is that they would probably want to be able to do more than walk up it. Alyssa said the access currently doesn't exist; what would it be called? It's a sensitive area.

Curtis said the ordinance allows latitude in planning, giving common ownership to seven lots. Rod cited the ordinance that states the open area can either be owned commonly or retained by Smiths. Loch said it would have to be defined. Also, what types of vehicles are allowed? A sensitive area can't be developed at all.

Mike asked about access for power. Rod said that hasn't been defined; this is only a concept discussion. Maybe a joint arrangement among property owners can be worked out? More discussion continued on dealing with clustered development. There are many questions that haven't been addressed before, such as lot size, how an undevelopable lot (the open space area) is to be handled, the latitude the town has in establishing public policy.

Curtis said this doesn't strike down the rest of the subdivision requirements. BJ said he likes the idea of open space being part of the whole development. Now the lot sizes need to be refigured with consideration to where power comes from, etc.

The main access is off the Burr Trail and down the road to Mike and Alyssa's property. There has to be a provision for making that full access (emergency vehicles and more usage), on a road that now involves three gates and grazing cows. A road easement is now 40 feet wide. Randy said that's a problem, and it's exacerbated by the concept of private roads---access, maintenance, usage. "The town made a mistake of accepting Clarkson's 40 foot road--- there's no room for sidewalks, snow removal, etc."

Curtis said the choice for applicant is to meet the 40 foot requirement, get it fenced, and ensure proper and safe access for the buyer. Rod asked if other property owners would contribute to maintenance? Mike said his initial reaction was the development would mainly benefit Gibbs.

BJ said he'd like to see an overlay showing that each lot has a proper building spot, given the slope of the property. Donna Jean asked if a house can be built into a hill? Curtis said it would be OK as long as you didn't go into the hill past the unbuildable slope. And you have to consider the driveway too. Section 1205 says any slope over 15 percent needs to be identified on the plat.

That could affect the Full Moon plat too. Areas over 15 percent could be shaded differently. Anything between 15-30 percent slope becomes an issue for building, for a driveway, etc.

### ***Discuss Upcoming Business and May 8 agenda***

Rod asked about the next step for the Full Moon public hearing. Once the questions brought up tonight are answered, corrections made to the plat, notices out, adjacent landowners notified, the public hearing will be scheduled, presumably for June 12. The intent of the vacating and the Full Moon approval need to happen in sync.

Topics for the May meeting may include the following:

- CUP for the Boulder Mountain Lodge. A duplex is being planned, but a building permit can't be signed because additional buildings on the property must receive conditional use approval.
- Loch will put in a Zoning Ordinance change application dealing with replacement of non-conforming buildings.

Next work meeting, 6 p.m. on May 8, will be chapters 7, 8, and 9.

Alyssa moved to close the meeting, Bobbie seconded the motion, and all approved. BJ adjourned the meeting at 9:42 p.m.

---

Peg Smith, Planning Commission Clerk

Date

Approved: \_\_\_\_\_

Date: \_\_\_\_\_