

Meeting Minutes

Planning Commission, Boulder Town

July 12, 2011, 7:00 p.m.

Commissioners present: Ray Gardner, BJ Orozco, and Alyssa Thompson. Tom Jerome and Bobby Cleave were absent. Also present was Commission Clerk, Peg Smith, and members of the public: Bill Muse, Mark Austin, and Sergio Femenias.

Ray called the meeting to order at 7:08 p.m. The June minutes could not be approved because BJ hadn't attended that meeting and Alyssa wasn't on the Commission at that point. Approval will be delayed until the August meeting.

Public Hearing on Amending Table of Uses, Boulder Zoning Ordinance to Include "Borrow Pit" and Definition

Peg read a Wikipedia definition of "borrow pit": an excavated area where materials can be dug for fill used at another location."

BJ moved to open the public hearing, Alyssa seconded the motion, and Ray opened the public hearing at 7:14. Background is that recently the Planning Commission received an application to open a borrow pit, but since doesn't exist in Table of Uses of Boulder's Zoning Ordinance's, we weren't allowed to consider it. Ray reviewed the five districts: greenbelt, low density, medium, high density, and commercial. Some of the uses are permitted under each of those districts, some are not, and some are permitted only with a conditional use permit. For the zoning to accommodate a borrow pit, would need to amend the ordinance and add borrow pit to the table of uses.

Peg read Ray Nelson's written comment, the only comment received. [see back page] BJ asked Mark Austin for his comments.

Mark Austin: My position is that with very specific conditions, there is a need for a borrow pit in this community. The pit I have, for gravel and concrete operation, I remove very little borrow from there. The problem is, there are two types of borrow needs. One is the white dirt/clay needed for roadbase; other is blow sand. If you mix the two, they adhere well together. There are places in the community that would meet the types of requirements the town should create. But to just blanket say there shouldn't be (a borrow pit), no I can't say that. I think the town needs that. There are a lot of places that could fill and meet Ray's concerns. One of the reasons I was willing to comply is I thought it was a good thing, and it would set a precedent. Borrow pits are unsightly and it's good to consider those complaints. There are areas in town that could satisfy need for a borrow pit as well as mitigate concerns, and this has nothing to do with Joe. If Joe could comply and get legal, I'd favor that. But it's very hard to compete against unfair competition. Yes, there is a need for borrow pit, with conditions. The Town can retain its ag considerations. It doesn't have to be highly visible from Highway 12. Dust and other issues can be addressed. Maybe an area north of town, in the draw, or other areas more hidden. We just need to consider if this is a need for the community.

Bill Muse: We figured the issue would soon be in our lap and we wanted to hear from people. I don't have my mind made up one way or the other, other than there is a need. I haven't heard that many comments from people in town.

Peg said what is called for in this meeting is to consider the addition of the item in the Table of Uses, and to add a definition. *If* borrow pits were added to the Table, as a conditionally permitted use in certain zones, each conditional use application would be considered on its own merits, in the same manner as any of the other dozens of items on the Table of Uses.

Mark: The issue to me is need. But before you state a need, you need to establish conditions, to ensure things are being done in proper sequence so things don't sneak in the back door. From a Planning perspective, you have to look at the General Plan. All things are subject to interpretation. The conditions are a way to paint more clearly. Much like the argument the town went through on the Hogsback, if is highly visible, the town should do what it can to limit that usage.

Bill: (to Mark) Would you establish the conditions first?

Mark: Yes. What are the parameters that need to be met by the conditional use permit? It helps establish the vision of what the town wants to see happen. In my situation, the town sent me a letter telling me to comply, and I was a little taken aback. The town was actually considering the neighbors, the noise, etc. and I had to comply. The town worked with me, but it established a precedent. It cost me a lot of money. It's not because I owned a piece of property that I thought I had a right to irritate the neighbors. It's important to make as many people as possible happy. I suggest talking to a few people in other towns who have had experience with this.

BJ asked about not establishing parameters right now. Wouldn't it be best tonight to leave it off the table of uses at this point? Then we're not opening it up and we let applicants in the future help build our conditional uses. If they present something and we do the research it helps build our ordinance.

Mark: I think we need to start now and proactively look at this. I think an attorney could pull it apart if conditions aren't established.

BJ: In past meetings we've talked about not changing ordinances unless we really need to do. I think if we are going to add this, we need to have everything we want to put in there ready to go.

Bill: If it is in a zone, it would be in an ag multiple use, not in a high density residential area, and the whole idea of a conditional use is that it's specific to a use and a location. There would be different issues depending on the location. I do think this needs to be advertised to get more input on this.

Ray: If this were to be approved, and don't anticipate it being approved without conditions. At last month's meeting, Tom made comments related to hours of use, dust control, noise, restoration, time limit placed on the permit, etc. so I don't expect Boulder to pass a borrow pit without parameters. Do we have enough input at this point to move forward or do we need to continue the public hearing to the next meeting to gather additional information?

BJ: Right now my opinion is we don't have enough info to go ahead with it. I'd be willing to open it up again where there might be more input.

Alyssa: I would like to hear additional public comment, although I currently favor adding it to the Table of Uses.

Peg: To clarify: on the Table of Uses, none of the items includes any stipulation on conditions. You apply for the permit, and the Commission considers each application on its individual merits.

Ray: Would you apply the same set of conditions to each conditional use application? Peg repeated Tom's previous comments from the June meeting. All elements are on the table, depending on the situation.

Alyssa: If it's not added to the Table of Uses, then the Planning Commission can't even consider an application, correct? (true)

Mark: I don't think you need to be so specific, just establish basic things that need to be considered. The Division of Environmental Quality requirements address only some of the concerns of the

community. For example, visual issues are big issues in Boulder. Can do simultaneously, and do generally with a set of parameters.

Sergio: I think it was established at the beginning of the meeting that there is a need in the community for a borrow pit. Allow it as a possibility (by putting it on the Table of Uses). Then consider it as each person applies. There is a process. Is there a need for it? Yes. Handle the conditions as they come up.

Mark: However, from my experience of being challenged in Springdale, our conditions were insufficient, and we lost. There's no giant hurry here. You need preestablished parameters. Get some legal advice.

Ray asked the Commissioners how they wanted to proceed. BJ said he thought we needed some parameters determined, and even though each permit will have its own public hearing, I think we need more input. Alyssa said she feels there is a need for it to be on the table of uses. By holding off to think up more conditions to add, would this not possibly just be opening up a larger can of worms?

Ray: Perhaps we should wait for the return of the other two commissioners and continue the public hearing at next meeting? There's no guarantee that waiting a month will get more input.

Bill: I would encourage having more of the board here before voting on it. This is a big change, and we've said ordinances are living ordinances and can be changed. I don't want to go back through the whole book of ordinances to define the whole thing. I would suggest postponing a decision.

BJ moved to continue the public hearing at the August meeting, and Alyssa seconded; all approved. BJ moved to reopen the meeting, and Alyssa seconded the motion. Ray reopened the public meeting and stated that continuance of the public hearing will be scheduled for August 9 at 7 p.m. at the Firestation

Ray: As the Planning Commission we make a recommendation and present it to the Town Council; the town may agree or disagree. We are just part of the process. It involves a lot of steps and input, and nothing we decide is necessarily set in stone. It still needs input from town to adopt it.

Plans for August 9 meeting

Peg: For agenda items, the Commissioners have been reading through the ordinances anyway. Reviewing Chapter 8, Conditional Use, would be timely. Ray suggested also researching other municipalities have with same issue to see what works with them.

Peg said the preliminary town survey results could be available in August.

Ray asked for final comments. Mark said he liked the idea of research other communities. Not looking specifically at borrow pits, but any conditional use, you should look at how a piece of property may be able to comply to a set of conditions and another piece of property may not. But both are complying with same set of conditions.

Bill: What about if you leave out an important condition? You can't add it at the last minute.

Alyssa moved to close the meeting, and BJ seconded. Ray adjourned the meeting at 8:06 p.m.

Peg Smith, Planning Commission Clerk

Date

Approved: _____ Date: _____

Email received from Ray Nelson:

At 09:58 AM 7/9/2011, you wrote:
Hi Peg,

Some things to consider on an ordinance change for a borrow pit inside Boulder City Limits:

1. I believe the existing ordinance excluded things like "borrow" pits for several reasons:
 - a. Unsightliness within town limits
 - b. Degraded property values in the immediate vicinity (This affects my property more than others)
 - c. Creates Noise, that is not temporary. The illegal activities already affects our "right to piece and quite"
 - d. Dust is created and we are usually directly down wind. There has been no dust control and no consideration for neighbors as yet to the illegal operation.

2. What has changed for Boulder to now want a borrow pit within city limits? Why not require it to be outside city limits. It just makes sense. If it were located down town, would this even be a consideration? Or, how far away from down town, or other more influential owners, would it take to be unconsiderable as a change?

3. If the zoning is changed to allow a "borrow" pit please consider the following:
 - a. Changing the land use from agriculture to anything else activates a 4 or 5 year retroactive tax increase - This is state law and can be verified by calling Joe Thompson, County Assors Office in Panquitch. This should be divolged to Joe Thompson so the taxes can be corrected/collected.
 - b. Consider limits on how long the pit can be used.
 - c. Require restoration after use to native (or at least replanted and watered) conditions ?
 - d. Require a deposit/bond/? in a sufficient amount to guarantee restoration after use.
 - e. Requie 24 hour dust control during the life of the pit. That would be watering in a manner that will not allow the surface to dry and blow out as dust.
 - f. How are these changes and other ordanances going to be effectively enforced

Thanks for your considerations in this matter,

Ray