

September 8, 2015
Public Hearing - ZO Change

Public hearing opened by the Mayor at 6:35 p.m.

Present: Bill Muse, Mayor; Pete Benson, Steve Cox, Cindy Wilson Gladys LeFevre,
Council Members; Judi Davis, Clerk.

Public Present: Farlan and Mary Behunin, Larry Davis, Peg Smith, Dennis Bertucci, Bill
Geil, Donna Owen, Loch Wade, Tina Karlsson, Lisa Varga*, Julie Robinso.,**
Bob and Naomi Brems.***

This is a public hearing to receive comment on the Planning Commission's
recommendation that the Zoning Ordinance not be amended to replace the Board of
Adjustment with a Land Use Hearing Officer.

The original recommendation that the Board of Adjustment be replaced with a Land Use
Hearing Officer came from our planner, Bruce Parker, with a second, independent
recommendation from Meg Ryan, Planner for the League of Cities and Towns (ULCT.)
The Mayor explained that the Council had received a detailed memo from Bruce
explaining the reasons many communities are making this change. The Land Use
Hearing Officer (LUHO) would be one person who is not a Boulder resident and who is a
planning professional. It would limit our liability, which is a much greater possibility
with decisions made by the BoA than those made by other public bodies.

Larry, who is on the BoA, commented that, if the person were a trained professional and
not a town resident, it would eliminate the problem of biases, perceived or real. He
thinks that would be a better way to go.

Dennis, also a member of the BoA, stated that the group of five members is not well
trained but is willing to be trained by someone from the ULCT. He feels it is a
democratic board like the Town Council and Planning Commission (PC) and that it
would not be good to remove that democratic process. The Board is made up of a good
sampling of people in town. One person would make a decision without any input from
anyone else. He thinks it would be like having just one person on either of the other
boards. Not everyone agrees on everything. He is opposed to making the change. An
outsider doesn't know Boulder. Even though Bruce says many communities are going
this way, Dennis feels it takes away from the democratic process. A group can discuss
the issues. If the Council votes to keep the five-member BoA, they will take the training
to be sure they're making legal decisions.

Peg, although she doesn't live in town, is secretary to both the PC and BoA. The BoA
meet so infrequently that she at first thought the LUHO made sense, but after the PC
public hearing and discussion, has changed her mind. Again, after the BoA meeting last
week, her impression was that it is a learning experience. Donna benefitted from the

discussion. They don't just rule on variances; they also make decisions on nonconforming uses and structures. She thinks information sharing is beneficial.

Donna stated that she felt comfortable at the BoA meeting and learned a lot. She doesn't think one person is best. Although we're talking about Meg Ryan or Bruce Parker filling the LUHO position, that may change in the future. She opposes the change and thinks we need to simplify our ordinances.

*(Loch, Tina, and Lisa came.) Bill Geil stated that he attended the PC public hearing and meeting and is bothered that a BoA decision is final. Just having one person bothers him. There are citizens who want to volunteer and to be part of the town, and he doesn't want to see that opportunity taken away. When it is reduced to one person, it removes the checks and balances and any dissent, no matter how trained or knowledgeable that person is. There's no chance for discourse with just one person.

Loch is on the PC but is speaking as a citizen. He thinks having a LUHO is unwise, that there is greater possibility for conflict of interest, the person may not be available, he may be unduly influenced and unfairly blamed. We advocate self-rule, and a five-person board allows more people to be involved. It is also good training for other positions. One person is vulnerable. Keeping the BoA keeps alive self-rule.

***(Julie came.) Mary likes it as it is.

Dennis stated that Bruce is not a member of the town. He suggested a hypothetical scene: if we decide not to use an outside professional and take one person who lives in town and has proper training to be the LUHO, it still doesn't address the democratic process of having five people and five opinions.

Farlan agrees that five people are better than one.

Lisa hasn't heard the discussion but agrees with what has been said.

Steve read a section from Bruce's memo. "Decisions related to both variances and nonconformities are administrative and typically very highly technical, with any decision dependant on the evidence and facts presented." He still thinks there will be opportunity for people to speak before a LUHO. Ultimately, the Town is responsible for that decision and will pay the price if it's taken to court. He wants someone who is an expert. He wants an unbiased opinion but doesn't know if five members of the town can give an unbiased opinion. Reading about what they have to do and knowing that the cases they will receive are very technical, he thinks one professional person is better.

Pete thinks the advantage of having a BoA would come in requiring good training. Their

work is technical, but he doesn't know if one person is best.

Loch stated that having a Land Use Hearing Officer is not required by the State. Bill Geil agreed that Steve's arguments are good but is bothered that Bruce seems to have self-nominated himself. This misunderstanding was corrected. Either Bruce, Meg or any other professional planner in the state could be contracted to do it. Bruce suggested that we post an RPF on the League website and see if we can find someone that way.

Gladys said we could hire anyone we want; it doesn't have to be Bruce or Meg. When a decision is made, that decision has to be legal. She wondered how much training we would have to do to be sure the decisions are legal.

Cindy agrees with Pete and stated that the public hearing is being held to see how the public feels, and those who are here feel we should keep the BoA. She feels she is smart enough to make a legal decision. ***(Bob and Naomi Brems came.)

Donna thanked Cindy for her comments. The BoA is technical, and she feels that having a professional is no guarantee that we can avoid a lawsuit. Loch said that the training will show that the laws are cut and dried, technical, and that there is no leeway in making the decision. The BoA need more training. He added that Bruce, Meg and the ULCT are ready to help with advice and with training. Expertise is available.

Steve wondered if all the members of the BoA are ready to take the training, and Dennis responded that they are. Peg commented that, when Brent Cottam applied for a variance, the process was one of discovery and was good for the members. Bill said local people who are acquainted with an applicant could be easily misled and thinks it would be beneficial to make the change.

Dennis stated that the issue seems to be training. We have access to help. He asked if the BoA had had any training. There has been some training. He also wondered whether the Council and Commission have had training. They have, plus we have the resource of our attorney when we have questions. Larry said that the majority of the townspeople here tonight would like it to stay as is, and that should count for something. He has not had training, and there should be some. The Mayor stated that Sidney Foncesbeck of the ULCT gave BoA training some years ago.

Bill Geil said that those in favor of LUHO seem to be in favor of having a professional, and there may be a benefit from being from away. But that still is no guarantee. A professional could have a financial interest in a decision and may be swayed. No one person is infallible. It may not be the protection we think.

Donna suggested that we give the BoA training and see how it goes. We can change later

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if we need to. Larry responded that changing back and forth isn't easy. Judi repeated Meg Ryan's comment when she was here training the PC that we have an excellent ZO, with the one glaring flaw being keeping a BoA instead of replacing it with a LUHO.

Lisa thinks Donna's suggestion is good. Why don't we test the new system with the BoA, and if it doesn't work, we can change.

Mary stated that, even though many other cities/towns in the state have changed to the LUHO, Boulder is different. Judi was concerned that, because the BoA member terms are five years, every year there would be someone new needing training, and everyone could conceivably serve five years without having used the training they received.

With no more public comments, the Mayor closed the public hearing at 7:35 p.m.