

Meeting Minutes

Planning Commission, Boulder Town

January 11, 2011, 7:00 p.m.

Commissioners present: Tom Jerome, Brian Dick, Ray Gardner, BJ Orozco, and Bobbie Cleave. Also present was Commission Clerk, Peg Smith. Brian called the meeting to order at 7:05 and recognized members of the public: Keith Watts, Donna and Robert Owen, Bill Muse, and Jack Pollack.

Brian asked for a motion on the December minutes. Bobbie noted one typo to correct. Ray moved to approve the minutes with the correction, Bobbie seconded the motion, and all approved. The Town Council, at its January meeting, approved Brian be staying on the Planning Commission for another term and he will continue functioning as chairperson.

Tom moved to close the public meeting and open the first public hearing. BJ seconded the motion, and all approved. The Orchard Subdivision public hearing started at 7:10.

Public Hearing on Preliminary Application for Subdivision (Bill Muse)

Bill presented all his required materials, went through the ordinance checklist, and showed his compliance. The property in question is a 6-acre piece behind the Peterson house on Lower Boulder, to be sold to one of the children of the Peterson brothers who is moving back to Boulder. The property-- three acres of it is the old Orchard and three acres are from Bill's field--, 6.05 acres in total will remain in greenbelt. The access is 50-feet between Bill's boundary on the north with utility easement. The already in, power comes from road, has a copy of the certificate for a water hookup. The perc test is completed. The title report is due within 30 days of approval from this meeting, tax clearance was provided, and notifications were done. Contours were not required. The Fire Marshall's signature is on the signature list on the plat. "Approval as to form" will be signed by Judi as Town Clerk, or if the Mayor's signature is required, Bill will make Gladys temporary mayor to sign it.

"Owner's dedication"---this section is not required, as the owners are not dedicating any streets. Brian asked about road dedication, and Bill said it's an issue for all Lower Boulder--Lower Boulder roads have never been dedicated to the county or to the town. Landowners' property taxes include the public streets. Robert asked about irrigation on the property. Bill is selling two or three A shares, and the buyers already own some shares out of Peterson pasture.

The Commission had no other questions, nor did the public. Brian asked for a motion to close the public hearing. Tom moved to close, BJ seconded to close. All approved.

Discussion on Orchard Subdivision

Tom moved to open public meeting, Ray seconded, and all approved. Brian asked for a recommendation. Tom moved to approve the application, Ray seconded the motion, and all approved. Tom moved to close public meeting. At that point, Brian recused himself as chairperson for the public hearings, and Tom assumed the chair. BJ moved to open the public hearing and Bobbie seconded the motion. All approved. Tom opened the public hearing for the McCabe subdivision at 7:30 p.m..

Public Hearing on McCabe Subdivision

Tom recognized the re-application submitted by Troy Chatwin and Bevin McCabe on the McCabe Subdivision. Troy Chatwin has co-signed all the application papers as joint petitioners on the application. It's the same subdivision plan being presented but applications filled out by both owners.

Brian said the layout hasn't changed except Bevin has requested that there be no building envelope defined. New owners could still build along the road if they so choose. Brian was also asked to provide some guarantee that the rest of the 15 acres wouldn't be built on. A deed restriction will be enacted with a trustee named, and the best trustee for that would be the town. This would go on the land deed. The two owners together are creating a 5-acre subdivision.

Donna asked where the deed restriction would be placed. Three pieces of property are being discussed. Bevin's 10 acres, Troy's 10 acres, and 2.5 acres out of each; which deed will have the deed restriction? Brian said once the land is sold, Bevin will own the remaining 15 acres. That's where the restriction will be. Donna said this if this is being approved before Bevin owns the land, where does the deed restriction go? Brian drew a map: two 10s, Bevin's and Troy's: 2.75 out of Bevin's and 2.25 from Troy's.

Tom said once the five acres is divided off, and Bevin owns the remaining acreage, the remaining acreage could be subdivided again--that is legal within the existing town's subdivision ordinance, and any understanding among landowners is between them. "We can only make recommendations based on the ordinances of the town." If there is an argument between owners of property, that's for them to thrash out. How can the town be a trustee in this matter? Donna said the county has this recorded as a 10-acre covenant, and if the town says it is just going to ignore the covenant, then it puts itself at risk.

Bill asked about the road easement. Has J. Kelly has been consulted about giving up 20 feet of land for the road? He's happy to do so, but needs to have it in writing or there would be a protest. Bill isn't representing Kelly, but he is representing Nathan Avery. Any easement that affects the adjacent landowners needs to be consulted with them and put in writing on each other their deeds. Bill said there was originally supposed to be one and only one access road through that property.

Brian said Town Attorney Mark McIlff's response on the original density covenant was it contained "unfortunate wording" that could be misinterpreted. You seem to be looking at 10 acres, one house. Our idea is that one house on five acres and one house on 15 is still maintaining the sense of 1 house on 10 acres. Also, there isn't a homeowners' association to enforce or maintain these covenants.

Donna asked when would the 15-acres actually have a covenant on it about the non-subdividing? There's no guarantee before Bevin owns the land. And if the Planning Commission can approve two owners getting together to subdivide their land, they can do again and again without any restriction. BJ says this would change everything in Boulder, not just this property. That's a different kind of thing. The density deal is written into this situation. I see where this is going with both signatures, it's not just Bevin's word, it's Troy's word that all this is going to go as written.

Keith said his main concern is there's a precedent in the old Baker place of a 5-acre piece being sold, but because of the 10-acre density covenant that everyone agreed to that's what guarantees us that we have half the housing the rest of Boulder has. By breaking off, for the first time, a 5-acre parcel, this sets the precedent that it's possible to divide up the parcels. What I want to see is when they sell the land, it's a 5-acre parcel and it remains a 5-acre parcel regardless of what happens in future ordinances. And Bevin needs to provide a legal document that when she acquires Troy's remaining land and her two parcels turn into one, she won't further subdivide.

BJ asked if Bevin had signed on to that the original covenant. No, Kortbawi did (from whom Bevin bought her initial land.)

Bill asked, "Why does it have to wait until the ground is sold to take care of these requirements? Why not take care of the wording before the sale?" Troy could go ahead and add in his deed that commits to the covenant before the fact. Bevin could do that too. It's a simple document that would take away the fear. Also, would Bevin consider putting a building envelope 100 feet further back so it doesn't come straight out [the Owen's] window. It wouldn't change anything. Is that a possibility? Brian said Bevin just thought having a restricted building envelope, regardless of where it was, would limit ability to sell the property. Brian thought putting a building envelope toward the front would maximize green space in the back, but it could be changed. Brian said the initial building (house, then barn) is located almost in the center of Bevin's land when subdivision wasn't being considered. The 10 acres in the front provides the building area and leaves greenspace open in middle. We haven't been able to water that upper section, but a buyer could water some of it from the culinary hookup. If the building envelope were placed lower, the same water couldn't be provided.

Donna said Constance and Matt were unable to attend the meeting, but they don't know where they stand on this. She was unable to contact any other adjacent landowners.

Robert's statement: A) It's a complicated land deal where a party is dividing 7.5 and 2.5, and I feel that the Commissioners need to convince us that a dangerous precedent isn't being set. I protest this subdivision. B) Bill's subdivision isn't being protested, because it maintains the greenbelt status. It accomplishes keeping all the surrounding people in greenbelt. This 5 acres will be removed from greenbelt forever. There is a way to creatively water this property, and the fact it hasn't been is only that, a choice that a landowner can make. The greenbelt issue---the part now brown, you're talking about moving the line back now. Now it's a brown piece of property, I appreciated the legacy that Bill created in this land. Now this will be a 5-acre piece that's not greenbelted. A 6-acre piece would have made a difference. C) In essence, we are zoned agricultural. You'll be creating the second non-agricultural zone. You're opening a dangerous precedent, and it affects our zoning and ultimately our taxes.

Bill: I know more about this piece of property than anyone in this room. The property was watered to the road with the shares available to the whole ranch. When John (Kortbawi) built his house, he moved it back and it was his decision to remove the water in the way it was. There are ways to work this. One is the building envelope. The other, as the Baker Ranch association, is that we have a major problem with the water delivery: The end of Hansen's field is like a swamp, and the WhyNot/Hansen road effectively makes a dike that the water flows down. It could be fixed by putting pipe back under the road and restoring the old ditches. The resulting waterflow would enable all those neighbors---the Whynots, Brian, the Owens---to water considerable amounts of their land. The best thing is to get the neighborhood and the neighbors to sit down and settle it. It's just a suggestion.

Keith said he had come tonight thinking of this as a density issue alone. He agrees with the Owens' concern about greenbelt and the absence of irrigation water being sold with the property.

Donna asked Brian when you sell that five acres, is that going to be two different deeds of 2.5?

BJ said Donna's question is a good point: it has to be a single, 5-acre piece before it sells. As to any other legal issues, he said the neighbors need to get a lawyer if that's what is wanted. The Planning Commission isn't the body to do that. The density issue is a neighbors' association deal.

Jack said he envisioned the day when people would be looking at Boulder's 7-acres, 10-acre pieces, 14-acre, 5 acre pieces, and drooling over how to get it to developed? BJ said they rent a ¾ acre lot with building rights and people come asking. He said, "When I first started the Planning Commission, there was lots of talk of bringing density lower in some areas so people could actually buy property here. If you have covenants, obviously that's property's not the place. But is it a bad thing to open up a piece of property?. That brown land could be green again if it goes to a new owner who waters it. There are different ways to look at this."

Tom asked for more comments. Bobbie moved to close the public hearing, BJ seconded, and Tom, Ray, BJ, and Bobbie voted to close the public hearing.

Discussion on McCabe Subdivision

BJ moved to open the public meeting, Ray seconded, all approved. The meeting reopened at 8:15 p.m.

BJ said from what's been presented, we have what we need to approve the application. However, with so much contention, maybe we should wait and give the neighbors a chance to talk to a lawyer.

Tom said if [Bevin and Troy] had come to us separately about dividing 2.5 acres each, we wouldn't have approved that. It just wouldn't have happened that way. "We're not setting a precedent that it's OK to break off 2.5 acres to sell because that's against the town ordinances. What happened was that someone came to us wanting to sell a 5-acre piece, and we said it couldn't be done the way it was set up, and to change that and come back. Our town lawyer provided a remedy, and that was met. I'd prefer to see the piece remain in greenbelt if Bevin would increase the lot to six acres, but we can't force her to do that. I'd personally like to not approve this until have legal papers from Bevin guaranteeing no further subdividing of the remaining 15 acres, and I'd like to have that prior to approving the subdivision, but I don't know if we can legally require that."

BJ said it doesn't sound the Planning Commission would need to see that. But this has already gone through so much contention that it he would like to see that everyone has gotten their fair share, especially with the concern about bad precedents being set.

Bobbie agreed with BJ and wondered if the town could put a deed restriction on the land? Bill said there has to be an entity, and probably the town would be that. The deed restriction would be recorded at the county. When [the owners] went to 10-acre lots, the county didn't pick up the words from the original deed, but those words don't go away. The only way the covenant would change is if all the people who signed it throw it away, but it has to be unanimous among them. That protects them somewhat. If it's all recorded legally, the town can be the watchdog, and that would work because of the process a subdivision application has to go through.

Tom asked Robert and Donna would seek legal council if they were given another month. Donna said yes. Bobbie asked Brian is Bevin would consider increasing her lot size to six acres, and Brian said yes. Robert said that would help as long as there are some water shares. "As long as you can farm the five acres and stay in greenbelt, that means a lot to me. The small farm area is part of our culture, and we take the 10 acres we own very seriously. We've gone from tumbleweed farmers to horse hay farmers."

Ray said, "I'm hearing legitimate concerns about the land but they're beyond the purview of the Planning Commission and beyond the subdivision ordinance. We've been given what is required, and we have what we need to make a decision. If neighbors want to seek legal council, and Brian, on behalf of Bevin is OK with holding off, that's generous, but we have what we need. Continuing to put it off when we have what we need places us in liability from other direction."

Brian said this [process] has been going on for six months, and he preferred the Planning Commission make a decision tonight.

Tom recommended the commission approve the application with the request that the Town Council require a deed restriction on the remaining 15 acres to maintain the density covenant.

(There was considerable discussion of Tom's recommendation): BJ said he preferred to not move ahead with all the contention, but if everyone is comfortable with that, he would too. Bobbie asked if there was any way to keep the subdivided land in greenbelt. She wondered if there was a way to

include that concern in the recommendation to the Town Council, given that the neighbors are so concerned about retaining greenbelt status. Tom had had a conversation with Matt and Constance; Matt's primary concern regarded density and retaining the density of the original covenant. Bill, representing Nathan Avery, was also concerned about the subdivision, but OK as long as the 1 – 10 density was upheld.

Tom made a motion to accept the McCabe preliminary subdivision application and include a letter asking the town to consider requiring a deed restriction on the remaining 15 acres that there be no further subdivision of that property in order to maintain the original intent of the density covenant of one house per 10 acres.

Ray seconded the motion. All approved. Tom remarked that it's not easy to mediate between neighbors who are unhappy with what's going on, and that everyone is just trying to do their best. Tom returned the chairmanship to Brian.

Report on Town Survey

Deadline is Feb 1. Brian and Peg will start collating; Tom and Bobbie have put in more than their fair share in getting the survey questions prepared. Peg will check with the county on any assistance they can provide.

Plans for February 8 meeting

BJ will be absent. Brian asked commissioners to think of priorities for next year. He also wanted to express thanks to Don Montoya, who is leaving Boulder, and that his input has been appreciated his input.

Tom moved to adjourn, and BJ seconded the motion. Brian adjourned the meeting at 8:45 p.m.

Peg Smith, Planning Commission Clerk

Date

Approved: _____

Date: _____