

Boulder Town  
**Planning Commission**  
**Meeting Minutes**  
**March 12, 2020**

Commission quorum was present: Colleen Thompson, chair; Matt Cochran, Josey Muse, Cookie Schaus, Haylee Apperson, and alternate Marian Johnson. Also attending: Secretary Peg Smith; Zoning Administrator Curtis Oberhansly; Town Council Liaison Judy Drain.

Members of the public: Steve Cox, Michala Alldredge, Donna Owen, Susan Heaton, Jacqui Smalley, Pete Schaus, Andy Rice, Tom and Caroline Hoyt, Sean Babbington, Mark Nelson, Elin Isakson, Hans Ringger.

Colleen opened meeting at 7:02. Josie moved to approve the February minutes. Matt seconded the motion. Minutes approved unanimously.

There were no initial public comments.

***Sugarloaf Valley Farm Conditional Use Permit, Initial Presentation***

Curtis displayed the submitted application. SVF has an existing CUP for three guest units. This would be an addition of two tiny houses, 350sq ft each, just south of the big house. Pads had been installed for employee housing but will now be used for these tiny houses. They still need a building permit: wheels need to be taken off, needs to be put on foundation, wired and plumbed to code and inspected by county. Septic tank and drain field were installed last year, separate from previous system. Donna Owen was representing the farm for questions.

Josey: This is a 39.4-acre lot with three existing dwellings now. It's zoned GMU, which allows for one single family unit plus one ADU. Now bring in two additional single-family dwellings, which would be five single family dwellings. The lot would have to be subdivided or maybe cluster development considered.

Curtis said as a guest ranch, it's a different classification, and not the same as ADUs on a single-family lot. Josey disagreed saying the guest ranch definition does not override our zoning, it's just a use. The three existing structures are likely non-conforming structures. There are 10 legal, contiguous lots of record on that property. We have flexibility on how to deal with this. Curtis: said he would research it.

Donna: We have 600 acres under a single tax entity. Josey said there are 10 separate parcel numbers now. She said the pads were already there and they wanted the separate septic system for the tiny houses. They thought clustering the dwellings was a good thing. Josey agreed it's a good thing but needs to be done correctly.

Cookie asked if SVF has a general plan of future development. Donna said there are no other plans right now. The moving of the tiny house came about when it was found their presence at Hills n Hollows was illegal and this was a remedy. They've been going through the process for a long time, disconnecting things and moving it. Curtis explained why the tiny house was illegal at Hills.

Josey mentioned how it could fit a cluster development. They would designate open space with a conservation easement. Donna said they are considering doing some conservancy work, intending to continue as working cattle ranch.

### **Boulder Mountain Lodge CUP, Initial Presentation**

There are currently 22 units, and this is an application for another building: a duplex between the office and the newest building. They have their Division of Environmental Quality letter, which SW Public Health deferred to. When they previous duplex was constructed five or so years ago, the septic and drain system were upsized in anticipation of building this second structure.

Susan Heaton, representing the Lodge, said this CUP will result in 24 total rooms, maxing out plans for development. In 2012, they were going to build both buildings, but decided one could be built quicker, as the town was on the verge of losing its TRT (bed -to-population ratio).

Josey asked if the septic needs to be re-inspected for this project. Susan said it was built to handle 30 units. They were told they didn't need another inspection, but will do so if requested.

A public hearing will be scheduled for next month.

### **Table of Uses Work Group:**

Matt said the group has figured out the best way to get at definitions, discussing campgrounds and RV Parks most recently. They are planning to finalizing all 50 definitions by June.

### **Deed Restrictions Discussion**

*[Recorder's note: This discussion consisted of detailed explanation interspersed with dialogue, impossible to fully capture. This is not a transcript. What follows is a close rendition of the discussion, but the recording should be referenced for nuances and details.]*

Josey said last month the Planning Commission discussed carrying over language into ordinances and applications requiring that existing covenants, deed restrictions, etc. were checked before moving ahead with an application. She said it doesn't put the enforcement onto the town, it just ensures this consideration doesn't slip through the cracks. She read General Plan language already in referring to use of conservation easements as a goal for preserving open space. There is also a cluster development for subdivisions already. The next step, as a suggestion, would be in the ZO CUP site-development checklist, adding a #11 asking about all agreements, covenants and deed restrictions. In SD ordinance, section 400, Preliminary SD application, adding language to the requirement for title company report and adding "all titles, covenants, and deed restrictions." Same for Final SD application, and on CUP, Project Permit, and Building Permit applications. (see presentation document, attached.)

Matt said use of deed restrictions and covenants are in alignment with Boulder's General Plan. He believes it is important to be able to consider all the evidence in evaluating applications and at present the Planning Commission isn't allowed to consider these elements as they aren't currently written into the record [included in our ordinances?]. He asked, "What's the point of not having full transparency of people developing the land?" He understands there are legal ramifications but thought there was no reason not to be able to include an item that should be considered.

Curtis had emailed everyone the written opinions from the state ombudsmen and the town attorney. The subject is complicated: A conservation easement fits under the general category of deed restriction. A deed restriction can be anything that restricts the use or sale of property in any way. Curtis had pulled a sample property title that included 24 different types of deed restrictions. "The term is so broad it's almost meaningless." He'd encourage the Planning Commission to narrow it down to what they want to get at. As used in the General Plan, Curtis said everyone agrees deed restrictions can be a good thing--- attaching a conservation easement, develop for clustering, disallows types of development or density, etc. Preserving the open space on a big property should be applauded. The question is how the town figures in? Curtis said the Muse case, as written, applied only to the seller (Muse) and the first buyer. In the Boulder Creek

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Canyon Ranch case, the conservation easement applies to the owner of the property and the holder of the easement (recognized by the state of Utah). That easement was done correctly as it meets state requirements, runs in perpetuity, and includes enforcement capability. For the town to become effectively involved it has to do it legally and within its jurisdiction and ordinances; it would need to be a signer on the deed at the beginning and rights and duties would have to be spelled out. This applies to any kind of private contract the town wants to be involved in.

Colleen: Regarding the two previously approved RSTRs. Even if we put the deed restriction language in those, it's still up to the signers--- buyer/seller--- to figure out. Curtis said Josey's suggestion is a disclosure item. There are ways for the town to be involved, and in fact revamping the clustering ordinance is a way. You want to encourage this type of thing. The Town can be a holder of a deed restriction, being a qualified 501c3.

A dialogue ensued between Curtis and Josey regarding town jurisdiction and limits of authority vs applicant disclosure and resolving a deed restriction issue. Josey maintained that the applicant can disclose a deed restriction, the Planning Commission can process the rest of the application while awaiting a resolution between the parties. Curtis maintained the town would then be in the position of not issuing a building permit pending the expenditure of several thousand dollars to file a lawsuit to get the issue resolved.

Colleen said Josey has given examples of what she'd like to see. She'd like to continue discussing if the town is able to bring deed restriction language into our documents.

Curtis, as Zoning Administrator, is the intake person on all land use applications. He handles project/building permits in their entirety; he signs off CUP and SD applications as complete before passing them on to the Planning Commission.

Ordinance/deed restriction. Ordinance is based on state regs. Deed is private contract between A and B. An ordinance specifies 5- acre minimum. The deed restriction says 10 minimum acres. In that case, the deed restriction takes precedence over the ordinance. But what if deed restriction specifies 2.5 acres minimum and the ordinance says 5 acre minimum--- the ordinance takes precedence and the deed can't override it. Another example is Black Mesa property: is it the county inspector's job to look over compliance with each of their 100+ deed restrictions? We need to make sure the owners has title to the property. But we can't

Colleen said when we approved the RSTRs, someone recommended the CUPs be approved with the condition of a clean title and no deed restrictions. Curtis said if you put that language in there's a question, we'll deny, they have to spend money and we'll be sued.

Haylee: So it would have been up to the Goldmans to go to the Julians to enforce? Yes. Curtis said it is a straightforward manner to make a deed restriction enforceable. You can do it through a conservation easement, a trust, a homeowner association. If an upcoming subdivision continues the process, the applicant will be required to form a road association. That's a deed restriction. It'll be recorded against every lot in the subdivision. We're setting it up and we need to determine what part the town might play in this.

Matt asked if the town doesn't have jurisdiction and can't enforce anything, why can't it still be included as a checkoff box so there's some level of transparency?

Curtis said, for the record, if you put this check box in the application and the application comes to me, I don't have to do anything? I can sign off the permit regardless of whether the box is checked or not? Josey said yes, or is there a better way to state that? I've had conversations with other people wanting to do it on their land. It isn't just the Muse property, it can't be framed that way. This is future planning for the entire community. Curtis said if someone wants to do that on their land, I'll help them do it. We have 1000 acres up there (Black Ledge), and 950 acres of it are under conservation easement. If I'm around, I'll help them, because I firmly believe its

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necessary to try to develop sensibly (cluster, density, deed restrictions..) with an organization to enforce it and the town would never have to be involved.

Josey said the point is to ensure the applicant researches the information and discloses what they know. Curtis still had a problem with reviewing an application without the authority to do anything about it.

Haylee asked about the checklist on the application. If the deed restriction checkbox is checked, is there latitude to decide if there's gray area? Matt agreed: "Why not" as a disclosure item on the public record. At least it doesn't leave something invisible.

Curtis said he needs more specifics than just "Wayne County." Who specifically can I talk to or what part of their ordinance can you refer me to? The record shouldn't include "someone says.." I have to deal with facts. Also what is the applicant's duty? Josey reread her suggestions. "Disclose all deed restrictions." On the Building permit application, "indicate any deed restrictions" or "applicant has checked for."

Josey moved to table discussion until next month, Cookie seconded, and all approved.

### ***Map of RSTR:***

Kaden Figgins has started creating a map. Curtis said he has access to better maps. Also Steve will allocate money to hire someone to mark everyone on the map. Once we have the data, then you can make logical choices to make a distribution. He also has a new zoning map in process with Five Counties (Association of Governments). Matt asked if primary and secondary residence can be shown. Curtis said the new zoning map identifies parcels with parcel number and where there's a question, the taxes will reveal: if actual value and assessed value shows the 45% discount. If actual and assessed values are identical, then it's a secondary residence.

Josey said mapping will change over time as the town grows. She proposed looking instead at using our zoning districts: we originally set 12 RSTRs, four per Upper, Middle, and Lower district. We have four land use zones: HDR, MDR, and LDR, plus GMU all of which allow RSTRs. There are fewer landowners in GMU because that's where the big ag parcels are. I propose creating the RSTR districts by zone, allowing three RSTRs per district (zone). Any disadvantage for GMU is offset by their being the only zone in which guest ranches are allowed, which is a use that increases traffic, plus RSTRs aren't the best fit for GMU because of the ag activities. But GMU would still get three RSTR permits, along with HDR, MDR, and LDR. We wouldn't need to come up with the mapping, the zones are set.

Curtis said it would still be a good thing to do the mapping both for future growth as well as what wildland fire want to have. Josey said, so let's look at the mapping exercise, but keep in mind doing RSTRs by zoning districts. Matt reminded everyone the reason for the discussion was to cap RSTRs at the total number as of May 2019 ordinance approval. I think the map should reflect ownership at that point. Steve said you need the data before you make any decisions. I wouldn't vote to change anything unless there is substantial evidence that what is there isn't working and what is proposed will work better. So the map is necessary.

Matt suggested offering Tessa the job to collect the data. Next month will be an update on progress and talk about Josey's zoning methodology.

### ***Schedule Work Meeting on Nellis Decision-Making Process***

Cookie said the Planning Commission needs a paper trail on how decisions are made. Real projects are on the horizon but we also talked about using a previous project as a sample. Peg suggested reviewing basic concepts, which might only take an hour. Tuesday, April 7, 7pm.

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### ***Upcoming business:***

- The Boulder Mountain Lodge and Sugarloaf Valley Farm guest ranch CUPs. Schedule them for 6:30.
- Update on Table of Use group
- Clarifying deed restriction language
- RSTR mapping and zoning concept
- Follow up on Nellis workshop.

### ***Final Comments***

Donna Owen: Did everyone have the CUP application ahead of time? (Yes, it was distributed by email), but it hadn't been discussed prior to the meeting. There is a need to clarify what can and can't be conducted via electronic means. Peg said information, applications, supporting material, etc. can be sent around electronically and even discussed electronically, but no decisions can be made (without the public notified.) Also, Donna wanted clarification on the mention of the Farm's lots and building limits. Peg explained that CUP discussion tonight was purely information-gathering and standard for an introduction to the application.

Tom Hoyt: Can the Table of Uses languages be shared before the next meeting? Josey said there isn't a compiled version of all the comments they have so far. Matt suggested shooting for a draft after their April meeting, plus all the public hearings that would ensue anyway.

Colleen moved to adjourn, Haylee seconded. All approved. Colleen adjourned the meeting at 9:04 p.m.

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Peg Smith, Planning Commission Clerk

Date