

August 6, 2020 Town Council Meeting

Meeting began at 7:00 p.m.

Council present: Steve Cox; Mayor, Elizabeth Julian, Gladys LeFevre, Judy Drain, Conrad Jepsen Council members, Judi Davis, Michala Alldredge; Town Clerks

Public Present: Josey Muse, Tessa Barkan, Peg Smith, Colleen Thompson, Tina Karlsson, Loch Wade, John Andrews, Mark McIff, Mark Nelson, Kipp Greene, Pete & Cookie Schaus, Lisa Varga, Keith Watts, Jacqui Smalley, Curtis & Dianne Oberhansly, Ashley Coombs, Tom Hoyt, Scott Aho, Matt Cochran, Ana Sanders, Dan Pence & Jennifer Geerlings, Chuck Flake, Devaki Murch, Keri Venuti, Judith & Bill Geil.

Pledge of Allegiance

Approval of minutes of June 18 and July 2 meetings:

Technical issues, minutes will be approved at next month's meeting.

Consideration of Mark Nelson appeal of Planning Commission approval of Smalley CUP application

- Hearing on standing of appellant, including presentation and discussion by both parties on points of law regarding standing of appellant
- Council decision on appeal.

Mayor Cox stated that it was broken into three sections to establish timelines. He then introduced participants Mr. Mark McIff, our town attorney, present to help the Town Council (TC) with questions, Mr. John Andrews, attorney representing Mrs. Jacqui Smalley, and Mr. Mark Nelson. He then stated that he would read from a prepared script to make certain there would be a clear trail should either party appeal to district court. "This hearing is being held in accordance with the Boulder Town Zoning Ordinance, Section 1802, which designates the Town Council, as the appeal authority, or Appeals of Planning Commission Decisions. On advice from our town attorney, Mr. Mark McIff, our duty tonight is only to determine whether Mr. Mark Nelson is qualified, under Utah state law, to appeal the Planning Commission's approval of a Conditional Use Permit (CUP) for an arts and cultural center on the Boulder Creek Canyon Ranch, owned by Jacqui Smalley. If we decide that Mr. Nelson is qualified to file an appeal, then his appeal will be placed on the agenda for a future meeting. As stated in our Zoning Ordinance, Section 1809. The burden of proof is on Mr. Nelson as the appellant. Proof he has standing to appeal." Mayor Cox then detailed a timeline of events and a record of evidence given to TC members and involved parties. Next, he recognized Mr. John Andrews, Mr. Mark Nelson and Mr. Mark McIff and thanked them for participating

in the meeting. He stated that on advice from our attorney, Mr. Andrews would be allowed to

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present his arguments on the points of law regarding standing. Mr. Nelson would be allowed to respond to Mr. Andrews arguments and then present his own arguments on the points of law regarding standing. Mr. Andrews would then be given time to respond to Mr. Nelson's arguments. Then, he would open the discussion to questions or statements from the TC. He stated that this is not a public hearing and no other public comments would be taken on this matter.

Mr. Andrews presented his arguments. Mr. Nelson responded to Mr. Andrews arguments and presented his own. Mr. Andrews then responded to Mr. Nelson's arguments. Mayor Cox opened it to TC for discussion. Gladys and Elizabeth had questions that Mayor Cox and Mr. McIff answered and clarified. Conrad asked a question. Mayor Cox answered. Then there was a discussion between Mayor Cox, Mr. Nelson and Conrad about conflict of interest and recusal from voting on proposals. Conrad then asked if Mr. Nelson was determined to be of standing could the issue be handled within ourselves (town) rather than escalating the problem. Mayor Cox stated that as he understood it, the next level would be one or the other parties could appeal it to the district court, and that's why he wanted to create a pretty specific record, because evidence, both written and oral, and questions and discussion, would all be part of that record, as would our reasons for deciding one way or the other. Mr. McIff clarified that if the TC decided that Mr. Nelson has standing, then there would need to be another hearing, which would be the actual appeal of the merits of the decision of the PC...it would be another meeting like this one, where both sides would have their chance to present their arguments as to why the PC made the right or wrong decision. Mr. McIff clarified that the TC was to decide whether or not Mr. Nelson qualifies as an adversely affected party.

Mayor Cox then made a motion to dismiss the appeal based on the fact that he has heard or seen no evidence that the appellant will suffer damage, different in kind, or injury distinct from that of the general community as a result of the land use decision. Gladys seconded the motion. Roll call vote: Mayor Cox-yes, Gladys-yes, Elizabeth-yes, Conrad-no. Motion to dismiss passed 3-1.

Consider bid from Bryce Thompson for cutting Town's dead trees by the dumpsters: Mayor Cox tabled the discussion until he could check with the Tree board and others about advice on whether or not we can salvage the tree.

Department Reports:

EMS, Arts Council, Fire Council, Library Board:

Elizabeth reported that there was no news from the Fire Department. The EMT's received several calls this month, and their radio communication remains inadequate. The testing for the national exam is available but Taylor and Andy haven't registered or

taken the exam yet. There has been no movement on Peter's (Benson) initial proposal earlier this year due to COVID-19 and it is still tabled for now. No news or updates from
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the arts council. The Fire Council gave her a list of things they would like help with. The Library board asked the town to pay the full, annual internet bill since they haven't been able to hold any fundraisers to raise money for their half. Judi and Cookie will coordinate to get that bill paid in full. Boulder Elementary School will open with in person attendance and mandatory masks per Utah Governor and protocol procedures passed last month. First day of school is Wednesday, August 19th. Boulder Elementary will be conducting many classes outdoors under tents and pavilion. Mayor Cox thanked Boulder EMT's and first responders specifically for all their hard work, continued training and maintaining their licenses. Elizabeth added thanks to the fire department. Mayor Cox stated he will forward information from the Five Counties Association of Government that has combined the Wildfire Council into a larger plan, yet still allows us to obtain Federal assistance and funds.

Enforcement Issues, Landfill:

Conrad reported that Dean will contact Sam Stout about digging a new pit. He identified Jimmy Catmull as a backup landfill attendant. Conrad will get the title for the town side by side and get it re-registered.

Cemetery, Buildings, Tourism Council:

Gladys reported that the Travel Council generally doesn't meet during the summer. They keep everyone updated online and there is nothing to report right now. The Town Hall is fine, as far as she knows. Chyleen Mackey has moved and is no longer on the Cemetery Board so Gladys appointed her daughter, Elayna to map and plot the cemetery because she has received requests to reserve plots. Mayor Cox asked her if she would identify the graves of Veterans so we can put flags on for Veterans day. He also thanked her for her work on the 4th of July parade.

Planning Commission, Roads:

Peg reported that next week's PC meeting there is a public hearing on the Wireless Communication Tower and Facilities Zoning Ordinance change recommendations. There will be a Lee Nellis workgroup meeting to go over the General Plan Table of Uses and processes. There will also be a conceptual information presentation from Tom Hoyt regarding the proposed Burr Trail Meadows subdivision.

Clerks - including approval of July checks issued

Mayor Cox made a motion to approve the checks for July 2020, Gladys seconded the motion, and a roll call vote was unanimous in favor of approving.

Mayor:

Mayor Cox gave an update from the community economic development board. They are still in the process of applying for 95k funding. They are also developing an application to apply for funding in the coming months and next few year(s).

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Public Comments:

Tessa expressed that regarding the concerns voiced in Mark Nelson's appeal she is confused about whether the issues that were voiced can be addressed in any other way. Mayor Cox stated that any member of the public can bring it forward to be addressed.

Matt Cochran expressed his concern that as a citizen of Boulder, a lot of the important things to discuss are not happening. Over the last few months, during open discussion with certain things going on in town, there is no room to discuss them. While liability for financial sake and town and following the law is important, there is also another liability that, to him, is pretty crucial...when a town forgets its heart and soul, and doesn't know how to communicate. A place for open communication, understanding, healthy debate and ways to collaboratively come to solutions that reflect the actual spirit of this town. He stated things feel out of balance. He asked the Mayor and TC if we can start creating more room for something like that.

Josey expressed regret in not filing an appeal on the Smalley CUP decision. She agrees with all eleven points in Mr. Nelson's appeal. As a member of the PC her standing would not have been questioned and the appeal hearing would have moved forward. She feels Mr. Nelson does have standing because he is both aggrieved and adversely affected. She felt that there were procedural errors in the CUP decision. She read from a Boulder Town ordinance regarding an appeal petition to support Mr. Nelson's...she identified Mrs. Julian as having a conflict of interest as vice president of the Boulder Arts Council (BAC) as well as being part of Jacqui Smalley CUP team and stated she should not have been part of the tonight's vote.

Judith Geil spoke in support of Mrs. Julians comments regarding Wildfire Council needs and asked for access to the RSTR mapping information from Michala. She asked how TC feels about doing a person to person survey on roads, driveways, utilities and gas sites. Mayor Cox encouraged her to submit a proposal on this.

Elizabeth stated, in response to Josey's comments toward Mr. Nelson's allegations of having a conflict of interest, that she is on the BAC and is the head teacher at Boulder Elementary School. She has no financial interest in the project, and nothing financial to gain. She was able to be impartial and follow the law to the best of her ability in this hearing, and she believes that the state law required her not to recuse herself from participating and voting as proposed by Mr. Nelson's appeal.

Mayor Cox made a motion to adjourn the meeting, Elizabeth seconded the motion, roll call vote was unanimous to adjourn. Meeting ended at 8:49pm.