

June 21, 2020

Mark Nelson
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Boulder, UT 84716

Boulder Town Appeal Authority
351 N. 100 E.
Boulder, Utah 84716

Subject: Appeal on Conditional Use Permit Decision, Boulder Creek Canyon LLC, Jacqui Smalley Boulder Arts and Cultural Center

Dear Boulder Town Appeal Authority,

I am appealing the Conditional Use Permit decision dated June 11, 2020 for the Boulder Creek Canyon LLC/Jacqui Smalley Boulder Arts and Cultural Center.

Since Garfield County and the State of Utah have gone green with the Covid situation, and I have limited technological capabilities, I request an in-person hearing.

Appeal Key Points:

1. Conflict of Interest

Haylee Apperson: Haylee serves as a Boulder Planning Commissioner and voted 'yes' to approve the Boulder Arts and Cultural Center CUP application. Haylee and her husband Garin own and operate Magnolia's Street Food. As stated in Garin's letter of support for the Boulder Arts and Cultural Center, "The proposed Arts Center would benefit my family from an educational standpoint, but also from a business point of view as well. Magnolia's Street Food caters many events, public and private. Jacqui Smalley, the project's main benefactor, has been one of our best clients, hiring us to cater many of her own events. The construction of this facility will only bring in more potential catering opportunities for us, helping our business and family thrive in Boulder." This is an obvious conflict of interest as the Commissioner stands to benefit financially from the establishment of the Boulder Arts and Cultural Center.

In addition, Haylee is a tenant of the CUP applicant Jacqui Smalley. The disinclination to cast a vote that is out of accordance with the wishes of their landlord is also a conflict of interest.

Curtis Oberhansly: Curtis is one of the original founders and current Treasurer of the Boulder Arts Council. His wife, Diane, is the President. Curtis has been working on developing the Boulder Arts and Cultural Center since 2010. See Town Council November 2010 minutes. Having Curtis lead and design this CUP proposal is certainly a conflict of interest. Especially where Curtis has led the Planning Commission to not consider the General Plan or deed restrictions in their CUP review and consideration of conditions to approve the application. Also note that Curtis asked Commissioner Muse to recuse herself from voting on the Julian RSTR CUP because Muse's father had sold that land with a deed restriction. Muse had no vested interest in the property, but Curtis stated that discretion is the better part of valor. See November and December 2019 Planning Commission minutes.

Elizabeth Julian: Elizabeth speaks for the Boulder school and students, the school board, and is Vice President of the Boulder Arts Council. This creates a conflict of interest for Elizabeth to vote as an appeal board member.

2. Staff Reports

Potential conditional uses are discussed and decided upon the Planning Commission members with advice from the staff and the public. Decisions are not mandated by town staff or the Zoning Administrator.

3. Proposed conditions from Planning Commissioners were not discussed or considered by the Planning Commission Chair.

Commissioners Muse and Cochran brought forward concerns, questions, and suggested conditions for the proposed CUP at the June 11, 2020 Planning Commission meeting. None of these were discussed or considered before the Chair made a motion to approve the CUP with the conditions that Curtis Oberhansly provided in the Staff Report. See Muse and Cochran statement documents.

4. Public letters opposed to the CUP were not read, discussed, or considered at the public hearing

During the public hearing, the Chair stated that she had read all of the letters and she thought that most of the Planning Commission had read them. She said they were available on the town website for others to read. Peg Smith then informed the Commission that right before the meeting she had received a couple of more letters and she posted them on the website (at 6 pm). Commissioner Muse asked the Chair if she was implying that she would not read the letters at the public hearing. She said No, she would not read the letters because there were too many to read. Muse asked that at the very least could she read the letters of the people who were unable to attend the Zoom meeting. The Planning Commission had informed the public the Commission could not hold a regular public hearing at the Community Center due to Covid, but they could participate in the public hearing by sending letters. The Chair stated that the letters were addressed to the Planning Commission, the Planning Commission received them, and she had read the letters and therefore would not read them in the hearing. What is the point of having a public hearing if the issues raised by the public are not discussed and considered?

5. Anonymous letter was censored

An anonymous letter opposed to the CUP application was not included in the compiled comments provided to the public. This letter brought forward valid issues that should be considered. Where does town policy state that anonymous letters will not be accepted?

6. General Plan consideration was not allowed per the Zoning Administrator's legal opinion

Curtis stated that legally, the Planning Commission can't consider the General Plan in approving CUPs because they are only allowed to follow the Zoning Ordinance. Section 104 of the Zoning Ordinance states, **"The purpose of this Ordinance is to implement the goals and policies of the Boulder Town General Plan and the other purposes as provided for by the Act. It is the intent of this Ordinance to provide a means of ensuring predictability and consistency in the use and development of lands located within the Town. These purposes are met by:**

1. Providing for the implementation of the Boulder Town General Plan;
2. Guiding growth and development in an orderly manner consistent with the land use and environmental goals and policies of the Town;
3. Preserving the quiet rural and agricultural quality of life enjoyed by residents and protecting farming and ranching as a life-style choice for residents;
4. Preserving the natural beauty and resources, including open space, clean air and water;
5. Providing opportunities for the establishment of appropriate commercial activities to meet the needs of Town residents and others;
6. Preventing the overcrowding of land;

7. Generally directing that the more intense development be located in areas where services and facilities are available and sufficient to meet the demands of the proposed development;
8. Preventing damage and injury from disasters such as fire, flood, geologic and seismic hazards and other dangers;
9. Directing and managing the type, distribution and intensity of uses and activity;
10. Encouraging pride in the appearance and quality of the Town and providing **necessary** public facilities and amenities;
11. **Protecting all landowners from potential adverse impacts from adjoining uses; and**
12. **Securing economy and efficiency in the allocation and expenditure of public funds."**

This is the **PURPOSE** of the Zoning Ordinance and the purpose carries throughout the entire ordinance, including Chapter 8 Conditional Use Permits.

7. No discussion or consideration of Commissioner Muse's question about taxing Boulder residents for the maintenance and operation of the Boulder Arts and Cultural Center

See #12 in the PURPOSE of the Zoning Ordinance, "Securing economy and efficiency in the allocation and expenditure of public funds." In addition, many of those who spoke in favor of the Boulder Arts and Cultural Center are not residents of Boulder (including the Zoning Administrator) and will not be burdened with additional taxes.

8. No discussion on the Boulder Creek Canyon LLC Conservation Easement

Per the Zoning Administrator's legal opinion, the discussion and consideration of the Boulder Creek Ranch conservation easement is not allowed, nor any deed restrictions for that matter. This has set new precedent in Boulder as deed restrictions have always been considered in Boulder Town proceedings. In addition, surrounding communities (Wayne County, Garfield County, and Panguitch) consider deed restrictions in their approval process. The Garfield County Planner advised that deed restrictions are valid reasons to deny a **Conditional** Use Application.

9. Planning Commission Chairman proceedings were invalid

Following the public hearing on the CUP, the Chairman called for a vote on accepting the application. She said it would be a yes or no vote without mentioning the possibility of tabling the vote until unanswered questions could be addressed. Just the fact that the Chairman failed to mention this option should raise serious doubt about the validity of the proceedings.

10. The letters from the public are not considered a vote and should be substantive in nature

11. The Boulder Arts Council is not a public entity

The Boulder Arts Council is not a public entity. The Council does not include the public in its decisions and is not accountable to the public. A non-profit is still a private corporation and certainly can be a commercial enterprise. Does the public see the articles of incorporation, bylaws or minutes? Are the Boulder Arts Council meetings open to the public? No.

Thank you for your consideration.

Respectfully,



Mark Nelson