

Boulder Town

Planning Commission

Meeting Minutes

December 12, 2019

Commission quorum was present for initial conditional use presentation: Colleen Thompson, chair; Matt Cochran, Josey Muse, Elizabeth Julian, and alternate Marian Johnson. Also attending: Secretary Peg Smith; Town Council Liaison, Peter Benson; Zoning Administrator Curtis Oberhansly, and Garfield County Planner Kaden Figgins.

Members of the public attending all or part: Bill Muse, Michala Alldredge, Troy Julian, Pete Schaus, Steve Cox, Haylee Apperson, Mark Nelson, Anson Fogel, Alyssa Thompson, Keith Watts, Elin Isakson, Donna Owen.

Conditional Use Presentation and Q&A

County Planner Kaden Figgins presented his information on conditional uses. Main point was that ordinances need to include the underlying standards against which specific conditions can be applied. His example: maintaining traffic circulation and ensuring adequate parking. A condition could be applied to a dance studio related to dropoff/pickup times being dispersed to mitigate congestion. Further, he said to add the findings related to that condition in the motion for future reference. "Mitigate" does not mean "eliminate." He said it's considered very rare, legally-speaking, that detrimental impacts can't be mitigated. In other words, consider a conditional use merely a variant of a permitted use.

Colleen called the regular meeting to order at 6:20 p.m. and asked for a motion to approve the November minutes. Matt so moved, Elizabeth seconded. All approved.

Recognize new Planning Commissioners

Colleen recognized Cookie Schaus as the newest incoming Planning Commissioner, serving out the remainder of Perry Tancredi's term (through Dec 2021).

Public Hearing, Sect.11 Amendment to ZO (Building Permits)

Elizabeth moved to close the regular meeting and open the public hearing on amendments to the Zoning Ordinance, Sect 11. Matt seconded the motion, and all approved.

Curtis introduced the proposed amendments. The county issues the official building permits and conducts the building inspections, but the town also requires a permit. This amendment clarifies the difference between the two: an applicant first obtains a project permit from the town to ensure the construction meets town zoning requirements. The application process determines whether a full building permit is required. If building permit is required, and after the fire marshal and zoning administrator sign off, the clerk forwards the application to the county and they handle the rest.

In addition to the process clarification, the application itself and exemptions are being revised. Ag buildings not requiring water/power and not built for human habitation are generally exempt from a building permit, but would still require a project permit to ensure the building complies with zoning, setbacks, etc.

There were no public comments.

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There was a question about yurts. Kaden Figgins brought up the county's glamping ordinance. It addresses yurts as permanent structures, which have to be engineered. If they meet the county's criteria, they would be inspected and passed.

Colleen moved to close public hearing, and reopen the regular meeting, Matt seconded. All approved.

Discussion and action on proposed ZO amendment

Josey said requiring a permit for a 200 sq foot shed or playhouse is excessive. Setbacks important, but will that be an excessive workload to handle playhouses, chicken coops, etc. Fee? Currently not assessed. Matt said fees for multiple sheds, coops, etc. would be excessive and a burden. Curtis said the ordinance doesn't impose an additional requirement beyond what's there. He said 200 square feet is just a standard most towns have adopted. Josey agreed there can be ag buildings that would certainly require a building permit.

Curtis said reason for the town permit is to be able to look at zoning restrictions. For example, what if someone built their shed right on the property line? The neighbor complains, the town didn't enforce their setbacks per zoning ordinance. Who gets to pay for taking down the illegal structure? The project permit is a simple thing that can be submitted online. But it's important to know, before building, that setbacks are met, that the irrigation company is aware of any conflicts, etc.

Pete Benson said the town isn't allowed to charge more than it costs the town to enact. The fee can't be a revenue source. Steve said when they redid the fee schedules, they estimated how much time it would take a clerk to process, which differs by permit type.

Elizabeth said the Planning Commission could recommend no fee.

Josey had three points to make: She read from Utah code, chapter 9, 10-9-103, suggesting that deed restrictions fit under this. She said both Planning Commission and TC have always discussed deed restrictions within the context of a variety of meeting topics. It's been on the record and discussed. Other municipalities have pulled in permit checks for any deed restrictions, if any. Suggested addition would be a simple statement in the zoning ordinance, subdivision ordinance, and applications that "the applicant shall check for any property-specific information such as deed restrictions or restrictive covenants on the property" and "the applicant is responsible for any conflicts.. ..." to remove liability from the municipality. Another wording option: indicate any deed restrictions affecting the development. Or that wording "is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions." She'd like this to be added to the building permit, zoning, subdivision ordinance. There are volumes of case law dealing with deed restrictions. It's common in rural areas where you're developing virgin land.

Kaden said in the county deed restrictions can be more restrictive than their zoning ordinances.

Curtis said he'd talked to the state property rights ombudsman on this issue. The ombudsman said it's a jurisdictional problem. What's the town's power? Right the language isn't there and it's not in the town's jurisdiction to enforce a private land agreement.

Bill: Can you approve a conditional use if it goes against deed restriction? Curtis said yes, because those words aren't in the ordinance.

Josey said she was proposing bringing this language into the ordinance before it goes forward. Matt and Elizabeth said they weren't ready to vote. Colleen said they should table the Zoning Ordinance amendment for the next meeting. Josey suggested adding the words to the building permit checklist.

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Matt moved to close the regular meeting and open the Julian RSTR CUP public hearing. Elizabeth seconded and all approved. Elizabeth recused herself from discussion on the Julian RSTR.

Public Hearing on Julian RSTR CUP

Donna Owen was confused about language in the ADU and RSTR ordinances. Matt tried to answer: the ADU ordinance opens up a structure to long-term rental. The RSTR supersedes that language. This is the first RSTR CUP and I'm concerned it sets the right tone.

Josey asked Curtis if she had to recuse herself as a commissioner from discussing the applications. Curtis said if there's a vested interest in the outcome, no. Josey said there's no money involved. Otherwise, she'd recuse and speak as a member of the public.

Josey (as public comment): I have no conflict at all with a RSTR in your private home. When it comes to the ADU proposing, it's two single family dwellings on a lot that doesn't allow it. The deed restriction doesn't show on the Julian deed, but it doesn't have to. (She read from the Bosworth deed.) I've already made all the arguments about deed restrictions. The RSTR on the ADU is illegal.

Curtis: There's a deed from Muse to Goldman, then a deed from Goldman to Bosworth that says something else. The whole thing is fraught with questions. My comment is this is exactly why a jurisdiction would never pass an ordinance that requires the town to get in the middle of these every time? That would be impossible.

Bill Muse: The restriction is the same in all these lots. When it went from Goldman to Bosworth, it may be a word or two different.

Mark Nelson: This seems so legally complicated, it's ridiculous to consider approving a permit that's this messed up. Why not bring in the town attorney? He needs the whole story and should give the town a letter. It doesn't hurt to table until resolved.

Curtis said he'd talked only to the state property rights ombudsman, who's a specialist in property rights. The attorney is a generalist.

Troy: This seems to be wasting a lot of time here. The amount of communication the two of us (Muse and Julian) might have in the future does not involve the town. I have been advised the language in the deed (sold to Goldman's) and read at Planning Commission meeting Nov 14, 2019, says "buyer will not develop into a density of less than one single family dwelling" 1) That's not in our deed. 2) The literal interpretation is that the owner must develop no less than one home/10 acres, and 3) the language does not bind subsequent buyers to same agreement. Therefore, we should be approved by the Boulder Planning Commission. This was our prepared statement worked on with our attorney.

Anson Fogel: I'd like to speak in support of Troy. It does seem like a lot of time wasted. My experience, as newcomer, is probably comparable. We genuinely were entirely unaware of any alleged deed restrictions. We were surprised. We had the resources to hire multiple attorneys to look through all the title work. I respect what you were trying to do to control density. Through numerous attorneys and discussion, the deed restrictions you believed you had on there were not effectively transmitted. I'd love to discuss this with you. This was the first time any of us had heard of deed restrictions, and to first hear about it in the hearing was disingenuous. I believe Troy and Eliz are acting in good faith. This is a nation of laws. When we purchased and considered various uses, we obsessively read the minutes and ordinances. As applicants, Troy and myself just tried to follow the law. We're continuing to do that. No one is attempting to do something nefarious. The RSTR is really well written. I read all the Boulder ordinances before we bought property. Hats off to PC. It's crystal clear in what you can and can't do. The application process took Alex and myself maybe 200 hrs. We've responded to any request to add

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or remove something. We immediately called on the deed restriction when we heard about it. We still cannot find. If the residents of Boulder can't rely on the law or comply with the law as written and trust that it's enforced fairly and evenly, then the town has a significant problem, ethically and legally. I believe the town and residents are in trouble if you keep kicking the can down the street because of a private property dispute, which is what this is. I'd like to resolve this over a cup of tea.

Alyssa Thompson: A few years back, we looked at the McCabe property, pulled up the deed, and talked to neighbors and heard we'd never be able to do what we wanted, we didn't buy the property because of that. I don't want that to be disheartening on the discussion of ADUs. I feel like if deed restriction is on the table in any way, and I didn't buy the property because of that, you have to table this until it's figured out.

Donna Owen: Look at the two different CUPs available and see if they fit those.

Colleen moved to close the public meeting and reopen the regular meeting. Matt seconded. All approved.

Discussion and action on Julian RSTR CUP

Matt: Given the complication of the issue, I feel it should be tabled. Maybe we need the town attorney here to figure this out. I'm not comfortable voting on it.

Curtis: It's been on for one month already. It's a Conditional Use Permit. I've signed it off as complete. It checks all the boxes in the ordinance. Under the law you owe these people a vote up or down. If down, they can take it straight to the Town Council to appeal. Allow these people to move forward. Or, you could approve because it meets the ordinance, but with language that the decision would be revoked pending court order. The original owner would need to enforce this.

Cookie asked if they wanted to approve it with conditions, can you ask for a written letter from the state authority and let those be the conditions? It worries me that everyone has fulfilled what they thought was the legal thing and they've done that, and I'm uncomfortable saying we're not going to give them their permits. I'd be more comfortable with approval with those conditions. Curtis said there couldn't be a condition requiring a letter to provide the conditions.

Colleen moved to table the vote until the Planning Commission can get information from the town attorney. I feel these applications have everything we want on them, but as commissioners, we want to hear from the attorney.

Steve: There's an appeal process. You can't table and table and table. They need an answer. You either yes, or no we don't want it and they can appeal to the TC and we'll handle it. Either way. The appeal authority is us, and we're fine going to the attorney. That's an option you can consider. You have the right to do what you want.

Colleen: I don't want to table this. I want to see it move forward, but I feel constrained. We're trying to figure out what's going on here. I move to table this until we hear from the town attorney. Matt seconded the motion. Matt--aye, Colleen--aye, Marion--aye. Cookie--abstain, Elizabeth--abstain, Josey--abstain.

Discussion and Action on Fuller/Fogel CUP

Colleen moved to table until they hear from Les Barker. No one seconded.

Josey said their application for RSTR is not in violation of the deed restriction. It was only brought up if they wanted to build a home.

Colleen moved to approve the Fuller/Fogel RSTR for CUP with no conditions. Matt seconded. Cookie--aye, Elizabeth--aye, Matt--aye, Colleen--aye. Josey recused herself. Marian didn't vote because a voting quorum existed.

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Discuss 2020 work meetings on remaining Table of Uses

Proposal from Matt: Due to the amount of items in the ToU, with over 50 terms, I'm suggesting that I head up a working group with a couple Planning Commission members, a couple Town Council members. We'd work toward a goal of April or May to be done. We could include Kaden if he's available.

Josey said the GP group worked well with two commissions, one council member and three citizens. Not everyone is available every time, so more is better. Matt will start organizing and plan to start in January, probably a Tuesday night.

Matt moved to create a ToU work group with two Planning Commission members, one council member, three citizens, Kaden if he can. Colleen seconded, all approved.

Continue discussion on ToU

This will be put on the January agenda to at least announce who's on.

Continue discussion on Economic opportunity

Matt: Consider economic opportunity within focus on specific ToU items that have to do with econ opportunity and prioritize through that.

Discuss upcoming business for January 9, 2020

- Add pledge and public comments to the agenda.
- Determine 2020 meeting schedule
- Vote on chair and vice-chair
- Conduct Utah Open and Public Meetings training
- Tabled Julian RSTR Cup... Colleen will talk to Recorder. And Mark McIff.
- Amendment discussion on RSTR for 15% of permanent residents
- Language proposed for adding to ordinance (deed restrictions)

Elizabeth: Happy with tabling our application, but consider the RSTR that was approved.

Colleen moved to adjourn, Josey seconded, all approved. 8:11p.m.

Peg Smith, Planning Commission Clerk

Date