

Joint Meeting of the Planning Commission, Board of County Commissioner and Board of Zoning Adjustment

February 9, 2010
Custer County Courthouse
Westcliffe, Colorado

Present:

Board of County Commissioners: Lynn Attebery Chairman, Jim Austin Vice Chairman and Carole Custer Commissioner
Planning Commission: Vic Barnes, Keith Hood, Pat Bailey, Sherry Rorick, Rod Coker, Bill Donley
Board of Zoning Adjustment: Gerry Dearborn, Skip Northcross; Dave Tonsing, Dee Hoag, Ken Patterson
Associate Members: Dorothy Nepa and Brad Stam, Dale Mullen and Cindy Howard
County Attorney John Naylor
Staff: Jackie Hobby
Absent: Paul Buckles, Roger Camper and Ken Lankford

The meeting was called to order at 1:06 P.M. by Jackie Hobby Custer County Planning and Zoning office Director/Code Enforcement.

Pledge;

HOBBY: This will be a joint meeting to elect officers and do the annual "housekeeping duties" for each Board.

HOBBY: Introduction of new Associates: DALE MULLEN, BRAD STAM and KEN LANKFORD. KEN LANKFORD was absent due to a previous commitment.

Each BZA member was given a nomination slip to mark their choices for Chairperson and Vice Chairperson. ATTEBERY verified that five (5) nomination slips were filled out.

ATTEBERY and HOBBY verified the nominations for N. N. SKIP NORTHCROSS as Board of Zoning Adjustment Chairperson and GERRY DEARBORN as Vice-Chairperson. The nominations were unanimous. HOBBY: Asked if they would accept the positions. NORTHCROSS and DEARBORN accepted the positions.

NORTHCROSS moved to the Chairpersons seat to continue the meeting.

We need to select a Secretary, official newspaper and a posting place. Usually the secretary is employed at the Custer County Planning and Zoning office but any Board member is welcome to the position.

DEARBORN: Motion for JACKIE HOBBY, Secretary to the Board of Zoning Adjustment, the Wet Mountain Tribune the official newspaper and the bulletin board at the Custer County Courthouse the official posting place.

TONSING: Seconded the motion. Motion passed unanimously.

NORTHCROSS: The State of Colorado holds members of community boards and commissions immune from personal liability as long as the members follow the laws, rules and regulations of the state. NORTHCROSS reviewed six (6) instances that could cause a member to lose immunity as mentioned in the Information Booklet, pages 53-58, and told the members to refer to Title 24- Article 6-401 for the Colorado Sunshine Law, should they have questions. NORTHCROSS returned to his seat.

HOBBY: Each Planning Commission member was given a nomination slip to mark their choice for Chairperson and Vice Chairperson. BUCKLES was out of town but had e-mailed his nomination to the Zoning Office. HOBBY asked AUSTIN to verify the six (6) nomination slips in the ballot box. AUSTIN and HOBBY verified the unanimous nominations of VIC BARNES as Planning Commission Chairperson and KEITH HOOD as Vice-Chairperson.

HOBBY: Asked both if they would accept the positions. BARNES and HOOD accepted the positions.

BARNES moved to the Chairpersons seat to continue the meeting.

We need to select a Secretary, official newspaper and posting place.

DONLEY: Motion for JACKIE HOBB, Secretary to the Planning Commission, the Wet Mountain Tribune as the official newspaper and the bulletin board at the Custer County Courthouse as the official posting place.

HOOD: Seconded the motion. The motion passed unanimously.

ATTORNEY NAYLOR: Explained to the Boards the differences between the Board of Zoning Adjustment and the Planning Commission. The Planning Commission is a recommending board to the County Commissioners to approve or disapprove an application. The Board of Zoning Adjustment approves or disapproves a variance from the Zoning Regulation based on the information received from the applicant on the application to the Zoning Office. He also explained proper conduct on site tours. All applicants must have a fair and impartial decision. All decisions must be made only during a public hearing. Do not have any ex-parte contacts. Conflicts of interest by the state law are restrictive. It is a conflict of interest if the decision that you make affects you personally or financially. A rule of thumb—if you have anxiety about a conflict of interest situation, the safe thing to do is recuse yourself. When you read through the Information Booklet that the Zoning Office provided for you there are examples of conflict of interest on Pages 53-56. You must follow the rules to protect your liability. Page 57 of the Information Booklet has an article from HAYES, PHILLIPS and MALONEY on avoiding personal liability. If you completely disregard the rules and prejudge a matter, you can lose your immunity. There needs to be publication and open meetings for the public, although some meetings are not open to the public. For example, there may be an executive session but these are severely limited, such as to obtain legal advice. No decisions will be made in an executive session. When decisions are made at a public meeting a reason why the motion was

approved or disapproved must be in the record. Be prepared to have reasons on the decisions that you make. After the vote each member will be asked the reason for their vote. If there are special circumstances on a particular application, the reasons are especially important.

HOBBY: Gave an update on the KNOTH situation recently headlined in the Wet Mountain Tribune. The Zoning Office received phone calls expressing concern that the applicant had not paid use tax. Upon checking the file, it was learned that the dwelling had not had a compliance inspection. There was also a note that the dwelling appeared over height. HOBBY and NAYLOR displayed blueprints for the KNOTH property. Mr. KNOTH presented the plans to the former Zoning Director two years prior to the start of the building project. The former Zoning Director signed off on the set of plans that indicated the new dwelling was not over height. The former Zoning Director also told the applicant that if he kept the roof of the new dwelling under the height of the existing dwelling that it would not require a bench mark. The Board of County Commissioners received a complaint and the Zoning Office investigated the situation. The building was approximately seven feet over height. As a result of this case, the Custer County Zoning office is working on a check and balance system to ensure that everyone follows the proper procedure.

NAYLOR: When KNOTH applied for a Zoning permit two (2) years later, the blueprint indicated a benchmark was not needed. What happened then is a question of equitable estoppel. The applicant was told by a person of authority that he had met the requirements, even though the Zoning Director didn't have the authority to grant a variance. The applicant, through no fault of his, cannot be forced to tear down the over height section after it is built. A hearing was held before the County Commissioners and because of the equitable estoppel the permit was closed out. Even though the County allowed the structure to be over height, KNOTH still had to close out the permit with the Zoning office and there was a use tax issue. Use tax is due on items purchased outside of Custer County for the dwelling with no sales tax being paid. The policy at the Zoning Office is that use tax payment is on the honor system. KNOTH said he did not owe any use tax. KNOTH had receipts from the local hardware store and for items purchased internationally which he had paid tax on.

HOBBY: ZONING OFFICE REPORT

- 2009 the Zoning office permitted 46 Dwelling permits, 2008 the Zoning office permitted 48 Dwelling permits, 2007 the Zoning office permitted 67 Dwelling permits and in 2006 85 Dwelling permits.

Calendar

- February 24, 2010 workshop on the Master Plan for Planning Commission and Associates, BZA is welcome to attend. 2:00-4:00 P.M.
- March 9, 2010 will be a Planning Commission meeting for a Re-Plat.
- There is no BZA agenda for the month of March

Everyone has an updated copy of the DRAFT MASTER PLAN. The Planning Commission has already approved the pages without shading during last year's series of workshops. The grey shaded areas have not been approved. On February 24, 2010 2:00-4:00 P.M. the intention is to go over the grey shaded areas first, and then address any other corrections, comments or opinions as time allows. At this meeting we will set a date to go over the Subdivision Regulations. Copies of the DRAFT SUBDIVISION REGULATIONS and the comments

submitted by COUNTY ATTORNEY, JOHN NAYLOR and suggestions from COUNTY SURVEYOR, KIT SHY will be available.

Corrections to the Information Booklet: CAROLE CUSTER's correct phone number is 371-0076. DEE HOAG has a new e-mail address, dbhenterprises@yahoo.com.

ATTEBERY: The BOARD OF COUNTY COMMISSIONERS would like to thank each and every one of you for your help and the fact that you volunteered to do this. We understand that your time is valuable.

Also in the news lately was an item about the County purchasing the Lone Pine Restaurant in Wetmore. The hope is to tear down the building and turn the property into open space and a park. There will be a meeting at the Wetmore Firehouse February 18, 2010 at 6:00 P.M. with Wetmore residents for suggestions on uses. You are welcome to join us. We would appreciate any input from the Planning Commission and Board of Zoning Adjustment that you care to share with us.

CUSTER: A landscape design student associated with the Rural Technical Assistance Department from Colorado State University will attend the meeting with several landscape design suggestions to show the community.

AUSTIN: Coming up, there will also be a presentation from Colorado State University about a biological inventory program.

BARNES: You may have heard about the West End project. Two lots at the end of Main Street in Westcliffe were donated for the project. One of the conditions is to make a long range plan for multi use of the property. Another is the view cannot be obstructed. There will be two public meetings. The first, for key contact people will be on March 11, 2010 at 5:30. Anyone who would like to comment on what they want to see at the end of Main Street in Westcliffe is welcome to attend the second meeting on March 18, 2010 at 5:30. Both meetings will be held in the meeting room at the Cliff Lanes.

ATTEBERY: Motioned for the BOCC to adjourn.

CUSTER: Seconded the motion

MOTION passed unanimously

NORTHCROSS: Motioned for the joint meeting to adjourn

BARNES: Seconded the motion

Meeting adjourned at 2:11 P.M.