

Joint Meeting of the Planning Commission, Board of County Commissioner

May 3, 2011
Cliff Lanes
Westcliffe, Colorado

Present:

Board of County Commissioners: Lynn Attebery Chairman, Jim Austin Vice Chairman
Allen Butler Commissioner

Planning Commission: Vic Barnes, Sherry Rorick, Rod Coker, Bill Donley, Keith Hood, Paul Buckles

Associate Members: Dale Mullen, Ken Lankford, Dorothy Nepa, Lockett Pitman

County Attorney John Naylor

Staff: Jackie Hobby

Absent: Pat Bailey, Cindy Howard, Brad Stam

The meeting was called to order at 1:05 P.M. by VIC BARNES Planning Commission Chairman.

COMMISSIONER ATTEBERY: Reconvened the Board of County Commissioners May 11, 2011 meeting back into session at 1:06 P.M.

Pledge;

BARNES: The first item on the agenda will be to approve the minutes for April 5, 2011.

BUCKLES: I move that we approve the April 5, 2011 minutes.

RORICK: Seconded the motion.

BARNES: All in favor

Motion passed unanimously

BARNES: We need to replace one Board Member. KEN LANKFORD replaced PAT BAILEY.

BARNES: JACKIE will give a Zoning report.

HOBBY: In the month of April we had 9 septic inspections, 0 violation, 7 Special Conferences and 2 compliance inspections. In 2010, in the month of April, we had 9 septic permits and in the month of April 2010 we have 26 zoning permits. Permits issued to date in 2011 were 42 and in 2010 were 46. Septic permits issued to date are 15 septic in 2011 and in 2010 we had 12. A couple of items that we need to discuss are that the last draft of the Subdivision Regulations will be in your possession by the end of the week. We would like you to review them and they will be sent by e-mail. You will have ten days to review them and to make comments. Please keep in mind that we have been on this document for over seven years and please try to refrain on re-writing the entire document again.

BARNES: The last draft the wording on water has changed and the applicants have the option of skipping the Preliminary and going straight to the Final Plan, if the Commissioners approve it. We added a flow chart that reflects this. We will put a time limit of ten days on this document. We will then have the public hearings, and the document will be available in the Zoning Office for the public to review.

BARNES: We have one agenda item. It is a Special Use Permit request by DINA and WAYNE SOCKRITER. The applicant's statement is fairly long and very detailed; I will read your opening paragraph and whichever one of you is going to do the presentation, can go into detail then. Will that be alright with the applicants?

SOCKRITER: Yes

BARNES: JACKIE, were the adjoining land owners notified and were there any responses?

HOBBY: Yes, six adjoining land owners were notified and three interested parties. The Zoning office received two adjoining land owner replies from DAVIS and JOHNSON who were against the Special Use Permit. JACKIE read the letters to the Boards and they were entered into the record. Also we received a letter from CHERYL LEONARD who is not an adjoining land owner who is in favor of the Special Use Permit.

BARNES: As I mentioned earlier, I will read the applicants statement and then if they would like to they can go into detail." *Dina and Wayne Sockriter of 12 Bassick Circle are presenting this to run a one man auto repair shop at our home. There will be no expanding of the business as far as size and no employees, we only want to try to make a decent living*". Then they go on to have a list of eleven items. I will tell you what the categories are, Water, Sanitation, Traffic/Parking, Signage, Fire Protection, Environmental Issues, Sales Tax License, Covenants, Max building height, Employee housing and Neighbors. Anyone who would like to ask any questions about this we will refer you to the SOCKRITERS.

DINA SOCKRITER: I will make the presentation.

BARNES: After hearing the responses from the adjoining neighbors, do you want to change your mind on pursuing this?

SOCKRITER: Just the one question that we have is about the lawsuit.

BARNES: What JACKIE read is that they refer to the covenants and even though the HOA has been disbanded, the covenants still remain in effect. We have a letter in our packets reflecting this. It is up to the individual land owners to sue on their behalf rather than the HOA in cases of what they consider a violation of the covenants.

HOBBY: The Zoning Office does not enforce covenants and in the pre-application conference we asked if you were in compliance with the covenants. When a Homeowners Association is active they enforce the covenants and represent the Homeowners. When you do not have a Homeowners Association then individuals may enforce the covenants. What MR. DAVIS stated in his letter is that if the Planning Commission would approve this, then he would take the position to sue you.

BARNES: PAUL has a statement and if you do have a statement does it come from your background of living in the Subdivision of Rosita Hills.

BUCKLES: I was on the Board of Directors of Rosita Hills when we voted to disband. We disbanded the Board of Directors and there never was any intention, movement or any action to rescind the covenants. In those covenants there are parcels that are named that commercial enterprises are permitted. We would need to look and see in the covenants which lots would be permitted for commercial use. As I recall those were corner lots along side Rosita Road.

BARNES: Does that clarify your question DINA?

SOCKRITER: Yes

BARNES: Do you want to pursue the application?

SOCKRITER: Yes, WAYNE and I would like to continue to run the shop. We think that we are doing the right thing. I did not know when we started this about the Special Use Permit. When we found out we received a letter and we called JACKIE and found out what we needed to do. We wanted to do it the right way. It took us a little bit longer to get the information together because I was trying to take care of my father who passed away on the twelve of April. Regarding the water issue, we will absolutely have no employees, no public restrooms. There will be no extra water use at all. This is our home and will be our home unless we decide to sell it. The well was tested when we bought the property in 2007. We pick up and deliver 90% of our vehicles. There is not a lot of stuff sitting on the property. The sanitation, we do not have any employees so there is no need for public restrooms. We will not have customers sitting and waiting on their vehicles. There is no extra use on the septic system and that was also checked in 2007 when we bought the house. As far as traffic and the parking area, we pick up and deliver 90% of the work preformed. We have a designated 50 x 50 area for the vehicles waiting to be repaired. We keep the vehicles on our property to a minimum. There are no RV'S, Tractors Trailers, and Fifth Wheels, or anything like that, on the property. We don't feel that there will be any extra traffic due to the fact that in our business we pickup and deliver. We spoke with the neighbors. Some of them do not have a problem others did as we found out today. I spoke with DAVE from Road and Bridge and he said he did not need to come out to the property, that he would look at the application and submit a letter. We will not have any signs at the location. If any advertising is done it will be done through the Tribune and most of it is done through the word of mouth. We had the Fire Dept come out and check the property and the garage, it was stated that all the aisles were clear and we have fire extinguishers and working smoke detectors installed. It was recommended that we get a larger extinguisher for the garage and we did and we placed up some extra signs. A copy of that report was in the packet that I submitted. On the environmental issues the operation of the business is Monday through Friday eight to five. We try to do all the work inside the garage with the door closed. There is minimum noise with the air impact wrench. We had talked with our neighbor BILLY JACK and he said he did not have a problem with the noise. We take all our waste oil to Central Building Supply, which was also submitted in the packet. We take all the anti-freeze to Western Tire. DAVE LIGGETT picks up all our scrap metal once a month and will pick it up if needed more frequently. We cut down all our cardboard and recycle it. Our parts washer is environmentally friendly and I attached the form to show this also in the packet. We take all our trash to Lil Eagle trash dumpster. The old batteries are returned for a core charge; we have no batteries lying around. We have a sales tax license; we went to Sangre Solutions who set up the business for us. The covenants, I had talked to our Realtor and they said that the HOA was dissolved in 2003. The garage was constructed per the County Regulations and all that passed. There will be no employee housing, we do not have any employees. The neighbors, we spoke to them and sent letters. We spoke to BILLY JACK and other neighbors and I have some letters from them stating that they did not have a problem.

BARNES: Thank you, any comments or questions from the Planning Commission?

RORICK: How long have you lived at the present location?

SOCKRITER: We bought it in 2007.

BARNES: Any other questions from the Planning Commission?

BUCKLES: If this approved, would this be taxed as commercial?

HOBBY: That would be up to the Assessor's office and I believe that comes from the State. All could be considered commercial or a portion of it.

BARNES: DINA, you indicated in here that you spoke with five neighbors and there are five letters. Are these neighbors different from the letters that the Zoning Office sent?

SOCKRITER; No, I have the two other courtesy letters and I had sent letters to the adjoining property owners. STEINER said he approved and a letter from MR. HANOVER that was included in the packet. MR. and MRS. JOHNSON called us letting us know their concerns. BILLY JACK talked to us earlier and now I believe he has changed his mind. We did not hear anything from MR. DAVIS until today.

BARNES: Board of County Commissioners do you have any questions?

No response

BARNES: Any other questions from the Boards?

LANKFORD: DINA, when you purchased your property in 2007 did you receive a copy of the covenants?

SOCKRITER: Yes, it was marked that there were no acting covenants at all. I can supply that if you need it.

HOBBY: We do not enforce covenants.

DONLEY: Yes, I know, but if the property was misrepresented I would like to know.

LANKFORD: Yes, I would like to see that also.

NEPA: Did you ask the realtor about the covenants?

SOCKRITER: Yes, BOB SENDERHAUF and DARRELL SHUMENSKI from Pueblo, who was our realtor who went through BOB SENDERHAUF. BOB was going to be here today but must have gotten another call.

NEPA: Did you make it clear to them when you purchased this home that you would like this kind of business?

SOCKRITER: No, we did not know we were going to have a business.

NEPA: When did you decide to have a business?

SOCKRITER: In September of 2009

COKER: There are some lots in this subdivision that are designated for commercial business. This lot is not designated for commercial business?

BUCKLES: Yes, I am not in the position to state if this is a lot that is designated or not for commercial business but, I thought the lots were on the Rosita road.

DONLEY: These covenants were filed in 1971 for filing 1 Rosita Hills Subdivision.

BARNES: I will take questions and comments from the audience and if you would state your name for the record.

BILLY JACK: I am the neighbor that would be most affected by this business, since I can see it from my dining room table. The SOCKRITERS are good people and good neighbors, but I don't feel like this business is appropriate for this residential area. Initially I was in favor of it, because they are good people. I started to think about it and changed my mind. My property value will be reduced and I will have a harder time selling this property because of this business. I spoke with JACKIE HOBBY later and I did not hear her express that so I thought I should. I don't understand why this process has started a year after they have already started their business. Why did this process not take place before they invested all this money?

BARNES: The reason that this process is starting now is because JACKIE received a complaint. Then JACKIE pursued it and found out that the business was being advertised in the local newspaper. So we were not aware that the business was going on for whatever time period it was going on. Any other comments from the audience?

GLEN MILLER: I have owned and operated Miller Automotive for twenty years in town. I don't have anything against the SOCKRITERS. Wayne used to work for me and he is a good guy. My big beef with this whole thing is commercial. We have been hammered with commercial taxes in town and they keep going up and up. We have to have garage keepers insurance and all these different regulations. I know they have ways to get rid of their waste oil just like I do. I have a company pick mine up and I sign off on it and where it all went, I have done this for twenty plus years. Whenever commercial businesses are allowed in residential areas it's a slap in the face to the people in town that run commercial business. There are a lot of different factors in there and if the county continues to allow this these businesses pretty soon people in town will close their business down and move out in the county. We would not have any city sales tax to collect so less paper work. We will pay county tax and we will need to pay commercial property tax that would not be at the same rate as it would be in town. We are under different rules here in town. I spoke with quite a few businesses in town and they all agree, commercial should be in town. I understand that there is a commercial area in the town of Rosita where the Letter Drop Saloon is and there was actually a town there. I am sure some of it is commercial. I do not know if the town of Rosita actually exists anymore. Rosita Hills is a subdivision. We have different restrictions in town, signage, how many lights we are allowed. I could go on and on with different issues is what I am concerned about. You will have an auto repair in Rosita Hills and pretty soon someone comes along and wants a gas station and convenience store and then trinket shop. Each time it takes away from the town of Westcliffe and Silver Cliff these two towns are trying to survive. If they want to come into the commercial district and run a commercial business that is fine. Its free enterprise. That is why I am here. I do not have anything against these people I like them. I do not know the property owners out there and how they feel.

RUSSELL HARTBAUR: I own Westcliffe Petroleum and have been there for thirty plus years. I agree with MR. MILLER. I think commercial should be with commercial and hopefully add employees to the factor. That is part of being commercial. I believe the SOCKRITER'S would be more beneficial if they had employees and they would serve the community better. Glen is right we could all go out in the valley and have no employees and be by ourselves. It needs to be in a commercial area.

SANDRA JONES: My comment for Rosita Hills is the Rosita area how many businesses are out there that are not in a commercial area?

HOBBY: In Rosita Hills we have one business and that would be a gun repair and that is a Home occupation.

JONES: What about where you live JACKIE?

HOBBY: That was a town at one time and some of the lots were zoned commercial prior to Zoning in 1971.

JONES: How many businesses are in Rosita?

HOBBY: Two or three.

JONES: Do they pay sales tax to Rosita?

HOBBY: No, the town of Rosita was abolished in the early 1980's. It was a pre-platted town in the early 1880's.

JONES: So they would pay county and state sales tax. I would like to state that I do support DINA and Wayne. They have worked on my car and my husband's car. They do a great job their honest and wonderful people. If they could afford it they would like to be in town, with the economic times right now it would be difficult.

HOBBY: I would like to point out that and it would be up to the SOCKRITERS if they want to go forward. Even if they would receive approval, they would run the risk of being personally sued because of the Rosita Hills covenants. If the Planning Commission and Board of County Commissioners denied it, then the neighbors would not have an issue to sue over. If the SOCKRITERS want to go forward, it was stated that they could be sued.

JONES: That would depend on what covenants say and I guess the original realtor stated something different.

BARNES: We have a letter in our packets from RON DAVIS, the president of the Rosita Homeowners. Did you give that to us DINA?

SOCKRITER: Yes

BARNES: That letter indicates that they dissolved the Association; it also indicates that the covenants will remain in effect.

ATTORNEY NAYLOR: You can have covenants without a Homeowner Association. If a Homeowners Association has disbanded, the covenants are still there. These covenants that we have we will need to see the whole document. Sometimes covenants expire after a certain date, most of them that I have seen automatically renew unless some action is taken. They probably should talk to an attorney and save themselves a lot of time. MRS. SOCKRITER mentioned that she had some letters, those will be made a part of the record also.

BARNES: Following the recommendation of MR. NAYLOR it would be good for you to find out about the covenants.

HOBBY: The hearing for the Special Use Permit will be June 14, 2011 and you will need to get in touch with the Zoning Office and tell us what you would like to do.

SOCKRITER: I will get our sales packet to you stating that there is not a Homeowners Association by tomorrow morning.

BARNES: MR. SOCKRITER do you have a comment?

SOCKRITER; Yes, I would like to add that when I first started this business, it was advertised as a P.O. Box , because my work was mostly mobile, I still pay a 6.9% sales tax, not just the county sale's tax.

BARNES: Paul do you have a comment?

BUCKLES: Yes, the County Courthouse has two sets of covenants. The more recent set was amended and a realtor had challenged that in Court. They were not amended in the proper manner and so the more recent covenants are not the covenants.

DONLEY: The 1971 covenants are the covenants?

BUCKLES: Yes

MULLEN: I have a comment, I think it should be understood that this is in play. It started from a complaint that you received that caused the Planning and Zoning Office to take a look at this. Something has to be resolved. On the 14th of June if no further action is taken, this will come to a hearing in front of the Planning Commission and Board of County Commissioners. You cannot go back as if it never occurred because the County put it in play and there will have to be a resolution.

HOBBY: Yes, that is correct if they receive non approval they will have to cease and desist the operation.

BARNES: DINA, BOB SENDERHAUF just walked in. Do you want to ask him a question?

SOCKRITER: BOB, when we got the house in 2007, with you and DARRELL, on those sale papers for the house, the box with the Homeowners Association was checked that there was not a Homeowners Association.

BOB SENDERHAUF: The question that was just posed to me, was there a Homeowners Association. Supposedly it was checked off in the contract that there was. I cannot comment I do not have that paper work in front of me.

BARNES: You are at a disadvantage because you came in late. You are familiar with the process. We have letters that JACKIE sent out to the adjoining property owners. One property owner responded. MR. and MRS. DAVIS responded by saying they were opposed to the Special Use Permit and indicated that if they proceeded, since the covenants were still in effect, that they would bring a law suit against the SOCKRITERS. That is the reason this has come up. Thank you, do we have any more comments?

No response

BARNES: Do you have anything else JACKIE?

HOBBY: No

BARNES: MR. CHAIRMAN

ATTEBERY: I will make a motion to adjourn the County Commissioners meeting at 2:08 P.M.

AUSTIN: Seconded the motion

Motion passed unanimously

BARNES: Planning Commission?

DONLEY: I will make a motion that we adjourn the Planning Commission meeting at 2:09 P.M.

HOOD: Seconded the motion

Motion passed unanimously