

**CASCADE COUNTY SPECIAL COMMISSION MEETING
JULY 29, 2013
COMMISSION CHAMBERS
COURTHOUSE ANNEX, ROOM 111
9:30 AM**

NOTICE: THESE MINUTES ARE PARAPHRASED AND REFLECT THE PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS. MCA 7 - 4 - 2611 (2) (b).

PRESENT: Chairman Joe Briggs, Commissioner Jane Weber, Commissioner Bill Salina, Bonnie Fogerty, Brian Hopkins, Tristan Riddell, Susan Conell, Steve Potts, Dave Dickman, Donald A West & Rina Fontana Moore.

Chairman Briggs called the meeting to order at 9:30 am.

AGENDA:

- Motion to Approve or Disapprove:
Resolution 13-46:
Intent for Proposed Zone Change (Initiated by: Dave & Sandy Dickman)

Tristan Riddell read the timeline which is included in the agenda action report and also noted that there was a timeline from the applicant as well. In the report it indicates that there was a zoning change in 2005.

Commissioner Briggs asked if the packing plant was non-conforming in 2005.

Tristan Riddell responded that it was non-conforming. To be a legal conforming use a special use permit would have been required. Tristan also noted that the planning department did not have a change of use permit on record for the property. Tristan then read the updated list of motions which can also be found in the agenda action report.

Dave Dickman of 130 Gibson Flats Road said that he had done his best to gather data about the land and the fact that it had continuous use. He said that the packing plant was closed in 2008 but Paradise Meats was in the building and smoking buffalo until 2009. He said that his neighbor will testify that the property has never been vacant. Dave also said that he was not aware that he needed a compliance permit. He said that he didn't understand why no one had informed him about the permit throughout the entire time he had spent with the planning department. He also told the commission that the land was being taxed as commercial and that it has a good tax base. He said that the area was clean and was providing jobs. He noted that there had been two public hearings and that there were no opponents. He stated that the zoning board had unanimously recommended approval and asked that the commission please take all of this information into consideration.

Commissioner Salina asked Mr. Dickman how the staff would know that he moved in to the barn or packing plant. In planning's eyes, Miceys was closed. If you moved in and change the use, what would trip them into knowing anything? How would they know to ask about a change in the land use? In April of 2008 and until the request for the zone change to accommodate industrial used in the barn, there would have been nothing to trigger a change of use permit.

Tristan Riddell said that the planning department had issued a cease and desist order late in 2010 because the barn was being used for light industrial purposes.

Commissioner Briggs noted that the department's zoning enforcement is complaint driven.

Mr. Dickman questioned whether Mr. Tedford had gotten a permit for the ground he leased from Mr. Graff for a storage facility. He noted that he was not the only one that was guilty of not knowing the regulations.

Commissioner Weber read aloud the bold print pertaining to that issue at the top of the barn permit. She also mentioned that she thought the building was just a barn for agricultural purposes. The barn permit gives no other implication of anything other than a barn.

Mr. Dickman made it very clear that he wasn't blaming anyone for the fact that he didn't know he needed a permit for light industrial use. He said that when he got the barn permit that he was not questioned as to when the barn was built.

Commissioner Salina noted that Mr. Dickman needed to secure the zone change to agricultural before he could seek the special use permit to use the barn for industrial purposes. He noted that a location conformance permit for the barn had been issued. But the reason for change the zoning is not to pursue agricultural processes, but to secure that building for its current use.

Mr. Dickman said that the land was zoned SR1, he said that if the barn could not be grand-fathered in that he would have to vacate Rocky Mountain Structures.

Steve Potts stated that Susan Conell had encouraged this re-zoning action and said that it would solve the problem.

Susan Conell proceeded to read the letter that was sent to Mr. Dickman. This letter is included in the packet. She said that the planning department had returned his money for the application for variance that he had originally applied for.

Steve Potts said that the first time he had been involved was November 16, 2012 and hadn't realized the need for such applications.

Chairman Briggs asked that everyone move on and that there was an obvious misunderstanding.

Steve Potts questioned why they had re-zoned that area to residential when much of it is in the flood plain. He stated that there are on-going groundwater problems. At the last meeting there was discussion by Commissioner Weber that we should be considering the criteria in the planning report and the minutes.

Commissioner Weber stated that that was true and that she planned on asking the chairman to go through all of the criteria before a decision is made.

Steve Potts also asked that they go through the criteria with the planning board. He stated that the property is pretty close to unusable as residential.

Commissioner Weber noted that if the property were in the flood plain, there would be no barn or commercial business.

Steve Potts spoke about Criteria 9, Criteria 8 & 10 noted that this land should have remained in agricultural zoning because of the ground water problems.

Commissioner Salina noted that the land was suitable for farming.

Steve Potts said that the land was re-zoned by mistake according to the planning board. He told Commissioner Salina that he understood that his position was that it could still be used as agricultural, but that is not why we are here. We are here to consider zoning.

Commissioner Salina reminded him that the topic of discussion was re-zoning. He also asked why the hay barn was being used as light industrial.

Steve Potts asked again, why it had been rezoned residential and why should it not be returned to agricultural?

Commissioner Weber referred to the report that was originally given by planning and bounce back and forth between planning department and planning board.

Tristan Riddell began to review but stated that it was very difficult to go back and forth between what the planning department said and what the planning board decided. In any zone change request they must meet the criteria, which boils down to 11 separate criteria. He said that Criteria #1 must be made in accordance with the 5 goals in the growth policy. The current zoning was reviewed by staff and was approved by the commission on December 18, 2012. The request failed to show compliance with Goal #1.

Commissioner Weber asked why in Goal #1 were they referring to the Bestwina property. She clarified that the zoning was contiguous SR1 between Bestwina and this property.

Tristan Riddell stated again that it is really difficult to go to the planning board minutes and the staff report and tie them specifically with each criterion. The planning board had a broader discussion about the project and was not tied specifically to the criteria. They did make it clear that they disagreed with staff on its analysis of the growth policy goals and the other criteria. They felt that the predominant use of the area should allow for the zone change to occur. They had concerns with ground water and the flood plain and not specifically with this property, but with the whole area. They commented that the property had been used as commercial in the past and should be allowed to continue. The planning board did not discuss each of the criteria in order.

Commissioner Weber noted that there are buildings on the property and that they are not in the flood plain and there could have been a home built on the property. There are other places in Gibson Flats where there are homes that have been built out of the flood plain.

Tristan Riddell stated that that was correct and pointed out where the flood plain ran.

Steve Potts asked to go back to the analysis of the property. He said that it was full of boiler plate comments on Criteria #1. He said that the staff comments didn't really address anything. He noted that the planning board had actually looked at the objectives and questioned what the staff did to support their comments. How did staff consider Criteria #1 which talked about sustaining the well-being of the people in Cascade County?

Chairman Briggs told Steve Potts that the goals come out of the growth policy. It is intentionally written vaguely. There is no issue that you couldn't argue on both sides of the issue and is not regulatory.

Brian Hopkins said that he did not want to visit goals 1-5 in their entirety, but that he had suggested to the planning board that if they wanted to look at compatibility with the growth policy, that Goal #1 was the best place to hang their hat. He said that if they were going to go contrary to the planning staff, that they should focus on Goal #1 and they did.

Steve Potts said that the zone change is not inconsistent with the growth policy. They almost can't be if he understands the document correctly.

Commissioner Briggs said that as a guidance document it is flexible. The staff must follow the rules and regulations. This is how the process is supposed to work although it is painful sometimes.

Steve Potts stated that someone should have looked at this. There is nothing inconsistent with this request. He continued by saying that there was no analysis by staff. He said that it must have been addressed in the past as the zoning had not been changed in 2005 or in 2009. It wasn't changed until 2012. Why wasn't this addressed? This may not have been intentional but was surely unconscionable to think that the zoning process was going on the same time their issue was within the planning department and nobody thought to mention anything?

Brian Hopkins stated that all of the hearings had been covered by the Tribune and went through a public process. The property was zoned for Agricultural use in 2005 and SR-1 in 2009. All of this had been publicly noticed in compliance with the law.

Susan Conell read the dates that had been published in the paper.

Chairman Briggs noted that everything had been done in the public sector, but these two pieces of information didn't get married.

Steve Potts inquired as to why they were using this against them when they were going through the issue at the same time. The average person doesn't read the Tribune anymore.

Commissioner Salina told Steve Potts that he should have taken notice as counsel.

Steve Potts responded by saying that all notices had been published before he had taken this on. He said the whole concept of this application had come up at the November meeting.

Commissioner Salina inquired as to what Potts would have done.

Steve Potts noted that the property was involved in this issue in November and that the zoning was changed after that date.

Commissioner Salina asked whether the building had existed at that time. He also stated that the reason that they were having the hearing today was because of the new hay barn.

Steve Potts stated that there were no residential buildings.

Chairman Briggs said that they must consider the underlying uses of the land. He said that it was difficult, but one must be able to isolate the zoning of the land. He noted that the barn had triggered this issue, but what needed to be dealt with at this time was the land.

Commissioner Weber said that the current zoning maintains the current agricultural culture of the economy. She stated that they know for a fact that the intention of the applicant is not for agriculture. She asked why they should re-zone if there is a known underlying reason for the request which is unrelated to agriculture.

Chairman Briggs commented that if the process is granted, the underlying zoning remains. It is difficult to separate the zoning from the buildings and this must be done. The zoning remains even if the buildings are destroyed.

Brian Hopkins noted that SR1 can have agricultural process and Ag can have light industrial through special use. He also asked for a clarification on the zoning.

Tristan Riddell said that this was zoned Ag in 2005 and re-zoned to SR1 in 2009. He said that zoning adoption looks at the growth policy. The overall ideal from the county in 2009 & 2010 is that this property should be zoned residential. Tristan moved onto Criteria No 2, whether the proposed zoning was designed to secure safety from fire or other dangers. He noted there is no decrease in fire danger and rezoning would not benefit safety. Because of the storage of wood products, staff decided that the property was not deemed safe from potential fire. To re-zone to agriculture is not beneficial to the property and fire issues under this criterion.

Steve Potts stated that the planning board found the opposite for Criteria 2. They all agreed. You can't look at the building as that is for a future discussion. Changing the zoning does not validate the present use as that will have to be determined through a special use permit. No one should be looking at the building use as the present issue is a zoning issue. Criteria No 2 went back to fire safety area and that is not what we are here to discuss.

Tristan Riddell moved onto Criteria 3 which is whether the proposed zoning is designed to promote public health and welfare. He read Criteria 3 from the planning notes and concluded that a change in zoning would not promote public health, safety and welfare.

Steve Potts said that this is a conclusion that has no analysis.

Brian Hopkins disagreed with Steve Potts and noted that the whole premise must be viewed in the context of the existing zoning. When the County approved County-wide zoning, this is what the planning department and the commission saw as the future use of the property in question.

Tristan Riddell said that everything was considered at the point of adoption.

Steve Potts said that Tristan stated that there was no compliance with Criteria No 3 and the planning board disagrees.

Tristan Riddell moved to Criteria No 8 which considers the character of the district. There must be a special use permit to allow for industrial use if the property is re-zoned and he proceeded to read the criteria. He noted that the change in zoning was not a guarantee that the special use permit would pass. He read from the Planning Board's report stating that the best use of the property is light industrial, unfortunately this could be considered spot zoning and would not be appropriate in an area of SR-1 and agricultural zoning, and he cited the case.

Steve Potts stated that the original purpose for the request was not for spot zoning.

Commissioner Weber said that a zone change was the next logical step according to the planning board. She said that the planning board was trying to fix this situation. If agriculture is the purpose then that is allowable under SR1. There was no discussion at the planning board meeting about that. The board was trying to make an illegal use legal.

Tristan Riddell noted that the board discussion was more of a general conversation as to why this area had been changed to SR1. The majority of the members on the planning board were on the board when the zone change took place.

Commissioner Weber noted that agricultural practices are allowed under SR1.

Tristan Riddell said that during the planning process, they look at the area and not individual lots. That area is close to the city limits and the predominant use is residential. The area that was left agricultural was in the MAFB flight path.

Steve Potts also asked why it had been changed in the first place.

Tristan Riddell said that the ideal is to have lots zoned with respect to growth. Many area parcels including the one in question were less than 20 acres, which would be non-conforming lot sizes for agricultural zoning, so they were changed to SR-1 . Anything in the flight path for MAFB was left alone because they did not want to increase densities.

Brian Hopkins noted that this is all premised on the previous zoning. He repeated his point which is that the current zoning was not done in a vacuum. It was the result of public processes run in 2005, 2009, and 2012.

Steve Potts noted again that today's discussion was to pertain to zoning the land only. He reiterated that they were discussing the zone change in 2009. It was clear that the previously existing buildings on this property have always been used as commercial.

Tristan Riddell noted Criteria No 10 which encourages the most appropriate use of the land in the jurisdictional area. Tristan read the criteria straight from the Board's minutes and the staff report.

Commissioner Weber asked who processes the information for the special use permits.

Tristan Riddell responded with 'Zoning Board of Adjustments.'

Commissioner Weber asked whether they could segregate an area, a specific area for a second look at the zoning. Could they segregate the Gibson Flats area?

Tristan Riddell said that the commission could instruct the staff to take a look at it.

Chairman Briggs stated that there was no magic timeline as to when and how often you could open re-zoning.

Dave Dickman said that he knew of two other parcels in that area that wanted a change in their zoning, but that didn't want to pay the \$750.00 to re-zone. He noted that a great deal of the area was swamp. He said even the Aryshire Dairy has been re-zoned residential.

Susan Connell noted that there had been two front page articles on the past rezoning process.

Chairman Briggs said that all the legal notices are required but unfortunately no one pays attention until it impacts them.

Commissioner Salina noted that the reason the commission knew about it is that someone had complained about the business. Someone in Gibson Flats complained, so they must have been aware.

Susan Conell echoed Commissioner Salina's comments and stated that someone complained and that they had to proceed.

Commissioner Weber inquired as to what the staff recommendation would be if they re-looked at the Gibson Flats area. What would the recommendation of staff be if they looked at this? Is Mr. Dickman in a suspense mode?

Tristan Riddell said that that was true.

Commissioner Salina asked if the business had been allowed to continue since the cease and desist order had been given.

Brian Hopkins said that there was a cease and desist action in place because the use in the barn was an illegal, non-conforming use.

Susan Conell said that they had allowed him to continue. She said that they were trying to work with Mr. Dickman because they knew that he had leased the building out. She said that he was still in violation but they were trying to accommodate his one-year lease. She noted that because of several scheduling issues, they had not been able to get the issue before the Planning Board and Commission any sooner.

Commissioner Weber noted that Brian Ruckman from the planning board was wondering how many applications for zoning change they would see if they allowed this to happen. She said that Stuart Boylan and Pete Fontana agreed but that if the property had remained agricultural, that Mr. Dickman would not have been in violation. That is not true because under the 2005 zoning regulations, there was no opportunity for a special use permit in an area zoned for agricultural use.

Tristan Riddell said that Mr. Dickman could have come into compliance in 2009.

Steve Potts stated that his client didn't own the property until late in 2009. He also said that all of the planning board members discussed this and voted unanimously

Brian Hopkins said that there was a property to the south that was a legal non-conforming use and one to the north that was deemed to be an illegal non-conforming use. A cease and desist was issued on the latter property and the use stopped.

Commissioner Salina said that planning is done to encourage certain activities. He wondered if this would be an appropriate spot for light industrial.

Tristan Riddell said that that discussion had not taken place. Industrial districts were mostly north of Great Falls, to the south side down I-15 and along the Vaughn Road. This area was never considered to be an industrial area.

Susan Conell noted that the planning department did not want to go forward with light industrial. By allowing light industrial, it would open up the property to many uses.

Tristan Riddell explained that there should always be a buffer between residential and light industrial.

Commissioner Weber stated that the planning board was not looking at the underlying use of the land, but were trying to make an illegal use legal. If the existing grandfathered uses are not in use for a 12-month period they cannot re-start. However, the barn was a new issue because it had not been grandfathered for commercial or industrial use.

Steve Potts asked the commission whether they had ever reversed a unanimous decision made by the planning board.

Chairman Briggs noted that, yes, they had, but not very often. This is very atypical.

Steve Potts commented that the planning board told him that that had never happened before if it were unanimous.

Brian Hopkins commented that the challenge was because of staff vs planning board.

The statute set forth the 11 criteria for establishing the zoning regulations and any amendments would also have to be consistent with those regulations. This was zoned agricultural with a grandfathered legal and non-conforming use on the property. To stay within this the property square footage would only be allowed to increase by one-third. Once you have a hay barn that is used for industrial, you clearly have an illegal and non-conforming use and that is why this issue has come up. This would be allowable under agricultural with a special use permit. This comes down to the processes that took place in 2005, 2009 and 2012 and to a lesser extent in 2007 with county zoning.

Steve Potts asked why the permitted uses in an agricultural area were broadened in 2009.

Chairman Briggs said that there was a review of the uses. There was discussion about wind mills, bill boards, etc. In general, all definitions were torn apart. They wanted to make this easier for commercial endeavors in agricultural zones. They wanted to have the ability for increased commercial activities without creating light industrial zones.

Steve Potts inquired whether some of this was because of the coal plant.

Chairman Briggs said that that was most likely why. He stated that there was no guidance from the courts. He felt that the Supreme Court decision was onerous.

Steve Potts said that he had talked with Brian Clifton and that it appeared that he had taken it as a personal blow.

Chairman Briggs said that there was much work that had gone into it. He stated that he personally does not understand the Supreme Court decision on the spot zoning issue.

Steve Potts agreed that there had been a great deal of effort from both sides.

Commissioner Weber noted that she wanted to re-look at zoning in this area even though she believes that this is predominantly a residential area.

Chairman Briggs said that he did not want to delay this current process, but he too would like to re-visit this area. He said that he does not feel that it is appropriate for residential because of all the storm water run-off issues that they have had to deal with along with the septic tank issues. The commission has become very familiar with the drainage issues.

Commissioner Weber stated that the existing zoning allows for agriculture.

Chairman Briggs agreed but noted that the size of the lots did preclude agricultural endeavors.

Commissioner Salina said that it wasn't a great place for residential, but asked if it was conducive to industrial. He said that if anything had been missed, that he too would like to take another look.

Dave Dickman assured the commission that his buildings and his bundles of timber were not in the flood plain.

Commissioner Salina reiterated that the building was out of the flood plain. He also noted that all the houses on the rim were out of the flood plain.

Don West questioned how Liberty Electric was even allowed to build in the flood plain.

Commissioner Salina said that the rim was suitable for residential.

Brian Hopkins noted that Tristan Riddell hadn't mentioned that the creation of a non-conforming lot size to agricultural would go against the Department of Revenue rules.

Tristan Riddell said that making this agricultural zoning would go against the Dept of Revenue and their 20-acre ag parcel standard, because the lot in question for which re-zoning was being requested was for 12.6 acres. But he also said that there were 1000's of legal (grandfathered), non-conforming lots throughout the county.

Commissioner Salina made a motion to accept the staff report and deny the zone change.

Commissioner Weber said that if Mr. Dickman truly wanted to use the land for agricultural purposes that that was allowed under SR1, but that did not appear to be the case here. Therefore, the requested zone change did not appear consistent with the surrounding zoning.

Chairman Briggs voted against the motion, stating that this property used to be a commercial operation and that he would like to look at the area again. He stated that he meant no disrespect to the planning staff.

Commissioner Weber voted in favor of the motion made by Commissioner Salina.

The motion carried 2-1.

Meeting Adjourned at 11:25 am.

- Public comment on any public matter that is not on the meeting agenda, and that is within the commissioners' jurisdiction.

The special commission meeting concluded at 11:25 am.