



# Nederland Planning Commission

## MINUTES

Wednesday, April 25, 2012 ~ 7:00 pm  
Nederland Community Center  
750 Highway 72 North

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### 1) Call to Order

Chairman Martin called the meeting to order at 7:10 pm.

### 2) Roll Call

Present: Chairman Bill Martin and Commissioners Kris Larsen, Mikki Osterloo, Roger Cornell, and Denise Jackson

Also present: Town Administrator Alisha Reis and Deputy Town Clerk Michele Martin

Absent: Mayor Pro Tem Kevin Mueller and Commissioner Williams

### 3) Approval of minutes from March 28, 2012

A motion to approve the minutes was made by Commissioner Cornell, seconded by Commissioner Jackson, and unanimously approved.

Chairman Martin suggested changing the order of the agenda to allow Teens, Inc. to go first to allow the students to leave earlier.

### 4) Public Comment

### 5) Discussion Items

#### a. Proposed Graffiti Wall at Teen Center

Paul Fruth, 845 Cold Springs Road, was present on behalf of the View (Voices in an Expressive World), a youth employment program from Teens, Inc., to discuss their proposal of a legal Graffiti Wall on Town-owned property that houses the Teen Center. The Town has a 99-year lease with Teens, Inc.

The wall will be approximately 25' long, 7' tall, and 8" wide, and very similar to the Graffiti Wall at the skate park in Boulder at Arapahoe Road and 30<sup>th</sup> Street. The View has been in contact with Alice Swett of Boulder Parks and Recreation in regards to their wall and process. The View's goal is to be approved by the Town advisory boards, ultimately the Board of Trustees (BOT), and then begin their fundraising stage this spring, with plans for construction over the summer. Fruth explained the View's belief in graffiti as an art form and not as a form of destruction or rebellion. The graffiti wall would provide free space for expression.

Town Administrator Reis stated that this proposal was the first to come under the new Nederland Planning Process (NPP) that was just passed by Resolution at the BOT's meeting on March 20. The NPP is an innovative approach to involve local residents, business owners, and community members in the public policy-making process and consideration of public projects. By using the NPP, the BOT will have a means of gauging public concerns and enthusiasm for various new projects. The View has gone before the Parks, Recreation, Open Space Advisory Board (PROSAB) and the Sustainability Advisory Board (SAB), with the Planning Commission its last stop before going back to the BOT on May 15.

Chairman Martin asked how our code would apply to this use and Reis said this would be regulated as an accessory structure and would not be required to seek a SRU agreement. This would generally be reviewed by staff, but since it falls on public property, the BOT wanted to implement the NPP. Reis went on to say that staff is working with the group on technical aspects, and they would still need to pull a building permit and have their plan reviewed by Safebuilt. There are no zoning issues, the visual clearance is fine, and it is by the roadway adjacent to the site on the ball field property to access the Wastewater Treatment Plant (WWTP) property. The project is well outside of any WWTP concerns. There would be an amendment to the Teens Inc. agreement to state that this would be a self-policed structure and the Town would not get involved in any conflicts.

There was no public comment.

Chairman Martin opened the discussion to the Commission. Martin asked if there was any comment back from the SAB or PROSAB. Lara Ruggles, who leads the View, said that PROSAB told them it wasn't in their jurisdiction, given that they implement the Parks/Recreation/Open Space/Trails Master Plan, which did not address such development. PROSAB chair Randy Lee raised concerns over what impacts it would have with other parks.

Commissioner Larsen wondered why they chose this location. Fruth and Ruggles stated there were other sites considered, but they were ruled out due to floodplain, proximity of cars, or future expansion areas.

Commissioner Cornell asked if the wall would be painted on both sides, or only one side. Fruth confirmed both sides. Cornell also asked if they had the approval by Teens, Inc. for the wall. Ruggles stated they did have approval by the Board of Directors. Cornell suggested they have that in writing.

Commissioner Osterloo asked about their plan for offsetting their carbon footprint since concrete is the biggest culprit. Fruth stated there were plans for the teens to volunteer at the community garden. Osterloo also pointed out from the View's research that 27% of surveyed responders said that having a legal graffiti wall "may" reduce their illegal tagging, and she wanted to know what they proposed in this instance and wondered if there were any studies done on illegal tagging. Emma, another View member, said when they had spoken to Alice Swett, from Boulder Parks and Recreation, she mentioned that illegal tags will occur and they were always quick to cover them up and with persistent maintenance the illegal tags eventually stopped. Teens, Inc. plans to keep supplies on hand for this situation.

A motion was made by Commissioner Larsen, seconded by Commissioner Osterloo, and unanimously passed to recommend to the Board of Trustees to approve the proposal as is.

## **b. Comprehensive Plan Update**

Town Administrator Reis provided an update to the Comprehensive Plan RFP Process. The Town has received two RFPs from the six firms chosen from the RFQ step. One firm decided they could not work within our budget, one firm became overloaded with projects and had to withdraw, one decided Nederland had too much of a controversial political environment, and one simply did not submit. The two RFPs received were from very reputable firms: AECOM out of Ft. Collins and SE Group out of Frisco. A Steering Committee has been formed at the request of the Board of Trustees to proceed with this project. The Steering Committee is made up of the Planning Commission members, Town Administrator, Donna Sue Kirkpatrick (downtown business owner), Dallas Masters (Sustainability Advisory Board), Lisa Mayhew and Steve Taormina (residents), Betty Porter (former Trustee), and Paul Turnburke (Downtown Development Authority). A meeting has been scheduled for the Steering Committee on Monday, April 30 at 6:00pm. The two firms are scheduled for interviews at 6:00pm and

6:45pm. Reis has made the scoring matrix and RFPs available to the Committee members through Dropbox and has asked that members fill in the matrix prior to the interviews based on the written RFP, and to bring them to the meeting on Monday. Reis will have blank score sheets available at the meeting for members to then fill out after the interviews to compare the scoring. Once the discussion and scoring are complete, a recommendation can be made to the BOT for their award of contract at their May 15 meeting.

### **c. Sections of the Nederland Municipal Code, re: Non-Conforming Lots**

Town Administrator Reis introduced this item as having been a subject on the Planning Commission's (PC) backburner for over a year. There was a lot of visibility on this issue over the summer as residents came in for various building projects on their property. The first item staff looks at when someone comes in with a request is if they meet zoning requirements, one of which is their minimum lot size for the zoning district where they are located. Staff started to see the pattern in having to turn away so many residents due to not meeting their minimum lot size requirement, even though they otherwise met zoning and building requirements. Board of Zoning Adjustment (BZA) Chairman Mark Stringfellow and BZA member Debbie Davenport were in the audience to testify to the issue. The pattern continued at the BZA meetings where a lot of applicants came before the BZA for variances due to this issue and nonconforming structure issues. Staff has been able to quantify the issue by conducting a lot-by-lot analysis of four neighborhoods in town: Big Springs, Sunnyside, Hilltop, and Old Town. Research found that 64% of Big Springs did not have conforming lots. Big Springs is zoned Mountain Residential (MR) where the minimum lot size is one (1) acre (or 43,560 s.f.) minimum. The Hilltop Terrace area is also zoned MR and came in at 43% of lots not conforming. The Sunnyside area is zoned Low Density Residential (LDR), where the minimum lot size is 16,000 s.f. This area came in the best, at only 6% of lots non-conforming. Old Town is zoned High Density Residential (HDR), where the minimum lot size is 4,000 s.f; non-conforming lots in Old Town totaled 24%. The majority of these lots are just shy of the requirement. This is not a new issue; it just has not been enforced in the past.

Reis went on to explain what the definition of non-conforming lot means in our code: "any parcel of land, held in separate ownership from adjoining properties, that does not conform to the minimum lot area or any other lot requirement required by Chapter 16, prior to the effective date of the ordinance codified herein or any predecessor or amendment thereto" (NMC Section 16-6 Definitions). In the code,

there are several provisions that do not allow any work, of any kind, on structures located on non-conforming lots. Town Attorney Carmen Beery reviewed this and determined the code does two things: prevents the ability to upgrade your existing structure, but it does not prohibit new building on a vacant non-conforming lot.

The history behind this rationale stems from Ordinance 455, which was approved in July 1997. This Ordinance amended Chapter 16 to specifically add Sections 16-185 Restoration of Damaged Structures on Non-Conforming Lots and Section 16-186 Maintenance of Structures on Non-Conforming Lots. These sections contain prohibitions on expansion of a structure on a non-conforming lot, or the ability to remodel such structures. Additionally, Ordinance 455 added to Section 16-182 “that a variance shall not be allowed for a non-conforming structure, use or lot unless the variance granted reduced or eliminates the existing factor(s) of non-conformance.”

Reis researched Planning Commission and Board of Trustees minutes as they led up to Ordinance 455 and found that this was initially created to deal with a large number of properties that had been illegally subdivided and developed. In the Big Springs neighborhood specifically, there were a number of lots that were subdivided, but were not platted, and not approved by the Town and recorded by the County Clerk and Records Office. Prior to 1981’s enactment of the Town Zoning Code there were no density requirements or other zoning requirements within Town. Most subdivisions occurred between 1966 and 1976. In addition to being illegally split, a number of these lots have been developed with single family dwelling units. These structures are use by right on a non-conforming lot. Prior to the passage of Ordinance 455, NMC Section 16-184 governed non-conforming lots, accepting as legal any such lots created prior to the 1981 Zoning Code. Thus, property owners maintained the ability to renovate or build additions to homes on such lots, as long as that development did not violate any other zoning regulations. Ordinance 455 removed that ability.

Non-conforming structures do not meet setbacks and other zoning requirements. The Commission directed staff to draft language to also address this condition, to allow for development on such structures that would not violate zoning regulations.

Reis went on to say that there were a number of ways to address the issues once the PC determines what goals they want to meet. If the Commission were to seek total conformance, then they could revert back to Section 16-184 which recognizes that any of those non-conforming lots of record prior to 1981 are to be legal and to remove

Sections 16-185 and 16-186; they could decide to proceed by variance approval and remove Section 16-182; or they could recognize it as a non-conforming lot, structure, or use and as long as a property owner did not exacerbate the current non-conforming condition and met the other requirements of zoning code, then they could further develop their property. Staff is seeking direction from the PC.

Chairman Martin thanked Reis for her thorough explanation and stated that the history provided was very useful. Martin opened the floor to public comment.

Scott Harris, 37 Doe Trail, asked why only since last summer this has been considered an issue, why was it not recognized earlier. His property is .76 acre. He also submitted a letter to the PC, which is part of the packet. He wants to install a storage shed that wouldn't even require a building permit. Also, he is concerned about market value and having to reveal this information if he were ever to sell or refinance. His recommendation would be to allow improvements, as long as they met density, setback, and height requirements. No neighbor he met knew about this. Why wasn't it disclosed?

Reis stated that a number of pieces of code in the past were not properly enforced.

It was also noted that the Town is not aware of nor is notified about every transfer of property within Town limits and that a transfer of property does not constitute an agreement by anyone that the property is a buildable lot.

Mr. Harris then asked how one would know if their lot was illegally split. Reis stated that the plat map of your subdivision compared to what is on the ground and a survey of your property should all match. Reis went on to say that often illegal splits come from generational families, as they portioned off lots for family members. Those split lots usually aren't left vacant for long, and zoning staff should catch those splits when they come in for building permits.

Sandy Sanchez, 36 Doe Trail, thanked Reis for an excellent job in clarifying the issue. She wanted to state that she was astonished to hear of these restrictions and wondered what could be the point to those sections of the code, what purpose does it serve? If it does not serve a purpose, it should be eliminated. It seems ridiculous to have them.

Elizabeth Guertin, 65 Arikaree Circle, stated that her home and lot are conforming, but came here tonight from a flyer that was

circulating regarding this issue. She feels strongly about zoning laws to help preserve property values, community, and neighbors. She is asking the PC to be very careful because zoning laws can be very helpful, but they should not prohibit people from maintaining and improving their home. She suggested to perhaps developing some code for pre-existing conditions, or an easy waiver process for people to make normal improvements to their property.

Bill Kucera, 69 E. 4<sup>th</sup> St. His lot is 45' x 100', and he bought it back in 1965. The house was built in 1940. He is looking for flexibility from the Town. He has a storage shed from 1940 that is falling down and needs to be replaced.

Steve King, 46 Doe Trail, originally came in for a building permit in 2011 for the addition of a garage. His property is .89 acre. He pulled the permit, submitted plans that Safebuilt reviewed and approved, and then was told that no improvements could be made to his home because he was non-conforming, and he couldn't even seek a variance. He wrote a letter as well, which was part of the packet.

Mark Stringfellow, 69 Barker Road, is the Chairman of the Board of Zoning Adjustment. He wanted to state the good insight from the public and thank staff for putting this together. He recommends getting rid of some sections of this code and introducing some new legislation to address the concerns; it is something that needed to be done for 20-30 years. The way the Town is being run now is the reason why it is becoming more apparent that this is a problem.

Debbie Davenport, 77 Navajo Trail, is a BZA member, as well as a licensed Architect. Through the years she has seen a lot of cases come through the BZA, not only non-conforming lots, but non-conforming setback issues as well. As an Architect over the last 14 years, she has witnessed clients giving up on their improvement plans and selling their homes to move on because of the issue. Right now there is a home on West First Street next to the Wolf tongue Mill, that has a failing foundation and the owners can't fix it because they don't meet their setback requirements. She suggests allowing folks to remodel and build as long as it doesn't encroach further on setbacks or violate other zoning laws.

David Walter, 3201 West Avenue Place in Broomfield, is looking at property to buy in Nederland and was concerned about the issue.

There were no further comments from the public.

Chairman Martin opened the discussion up to the Commission and noted they need to come up with a structured approach with good relief scenarios, without any conflicts.

Commissioner Cornell stated that it is complicated, but if we work with staff there is light at the end of the tunnel. He reiterated that back in the 1990s there was an argument about illegal lot splits in Big Springs, where there were a couple of duplexes. Staff at that time was trying to make a policy for illegal lots. The term used was non-conforming. Cornell suggested the first thing to do would be to accept a non-conforming lot as long as everything else conformed. Then look at the zoning map, because there was a point when some of those lots were not illegal. Very few plat maps were signed by the Town. Reis has the ability to determine which lots would be considered legal vs. illegal. Cornell thought the lots just missing acreage would be the biggest obstacle to take away first, to remove the hardship from people. He felt there were very good examples that people brought up, and the PC should handle it through a uniform way. He felt that the non-conforming use and structures sections should stand, but the idea of maintaining your home with improvements should be looked at.

Commissioner Larsen asked if during the analysis, whether the folks who were short on acreage met the other zoning requirements. Reis said that study was not done at this time, but those would be caught in a building permit stage. Larsen also asked how long this issue has been going on. Reis went on to say that 60% of the non-conforming lots were in place prior to the 1981 zoning map and then most other lots were set by plat and filed. Approved Planned Unit Developments (PUD) on file had also been designed to allow lots to be shorter than code required, but that this does not constitute a non-conforming lot, as it was part of an approved PUD process. Ordinance 209 enacted the Zoning Code in 1981. Ordinance 455 attempts to solve one problem without recognizing the consequences it would cause.

Commissioner Jackson commented that structures on non-conforming lots would end up falling down for lack of being repaired, and the way our code reads they would still be non-conforming because of the lot size. But homes only 10 years old would not fall into this category for another 50 years. She wondered if the PC should be handling all non-conformance issues vs. just the lot issue. Jackson sat on the BZA in the past and can also testify to the number of cases she saw because of this issue.

Cornell noted that the administration back then hadn't looked at the whole issue like current staff is doing now.



It was suggested to repeal Ordinance 455, but Reis explained there were good sections of 455 that are relevant. The Town never had issues with the damage section; the expansion and remodeling sections have been the biggest problem. To provide the relief people are seeking, Reis suggested focusing on the highlighted areas she delineated in the summary regarding Sections 16-182, 16-185 (b) and 16-186, and then can fine tune Sections 16-181 and 16-183. She stated that Section 16-184 should be kept intact. Another purpose of zoning is to allow property value to be maintained. The Zoning Map from 1981 is planned to be updated and approved as part of the Comp Plan update. The PC wanted to address all the non-conformance pieces while making the amendments as they are all intertwined. Staff was directed to put together a draft amendment to this code and present it at the next meeting, scheduled for May 30.

## 6) Action Items

### **a. Consideration of SRU application – David Walter (The Roasted Toad BBQ), mobile food cart, requesting approval to park permanently at the Kwik Mart retail building, 229 Boulder Canyon Drive, also known as 229 Highway 119.**

David Walter, 3201 West Avenue Place, Broomfield, is the owner of Dawfish Inc., dba The Roasted Toad BBQ, and he is before the Commission tonight to request approval to park his mobile food trailer and smoker at the Kwik Mart retail building on a permanent basis. He has lived in Broomfield for 16 years, but plans to sell and move to Nederland to commit further to his business. He wanted to stress that even though he is using a mobile trailer, his intent is to relocate to a permanent structure in the next year or two after he is able to raise the capital funds necessary to do so. He is waiting to submit his final plans to the Health Department, while his application is being reviewed. He has learned that if his trailer is not fully equipped with all the water and cooking requirements needed, then he would have to drive his trailer up to the Community Center each day to dump water and do dishes. If that is the case, he would park in the same location every day back at the Kwik Mart. Other options would be to hook up to Town water and sewer, or move into the building. These options are still be explored once he meets with the County Health Department.

The Commission received his Special Review Use (SRU) application packet with details and photos of his proposal, as well as Town staff reviews.

Town Administrator Reis introduced the application by reminding the Commission that the property in question is where Ben's Emporium

was once located. It is located in the Central Business District (CBD) zoning district, where outdoor sales, eating and drinking, or other outdoor commercial activities or establishments are allowed by SRU. It was noted that this application was properly noticed within the 15 day public noticing period. Town staff felt Mr. Walter met all requirements of the SRU, so Reis and Town Attorney Carmen Beery took the liberty to draft an SRU Agreement with conditions, for the Commission's consideration.

Mr. Walter had conducted further research on the State Health Department's Performance Standards and handed out Section 11.A.6 Exemptions where it relates to smoke and opacity. He went on to explain the difference between a smoker and a grill. Smokers have a fire box off to the side, making it impossible for the grease to fall down to create a grease fire. Also, smokers burn pure hard wood. There is no dripping grease.

Mr. Walter also handed out new drawings of where his smoker and picnic tables would be located. He wanted to move the picnic tables closer to the Kwik Mart, as he would be directing patrons to use their bathroom facilities, if needed. He found out from the Health Department that if he offered tables for sitting, then he was required to provide bathrooms.

There was no public comment, so Chairman Martin opened the discussion to the Commission.

Commissioner Osterloo asked about the fire ban and red flag days. Mr. Walter explained the restriction days relate to open fires not contained fires in a fire box as his is. It was noted that NFPD Chief Dirr had approved the application as part of staff's review process.

It was noted that Town Attorney Beery, in her review of the application, requested the Town receive an executed lease between the property owner and Mr. Walter verifying Mr. Walter's authority to use and occupy the land in the manner proposed.

Reis stated that he is scheduled before the Board of Trustees on May 1 to have a lease approved between himself and the Community Center to use the Center's kitchen for his commissary.

Commissioner Cornell was unclear how many parking spots were proposed. Mr. Walter explained that it is a big open lot and he plans to use railroad ties to section off his trailer, smoker and picnic tables, which will leave parking on the east side of the building by the Peace Garden. There is public parking behind the building, and he

anticipates people parking at the Kwik Mart and walking over. Cornell suggested that if approved, the parking spots should be defined. There was concern that parking should meet code and not backup on the highway. Three spaces, plus one handicapped space, would meet the code based on the proposed seating area. There is parking available behind the building on the property as well. Staff will work with him to define his spaces. Reis noted that Public Works will help and oversee the placement of the railroad ties, so there won't be a drainage problem.

Commissioner Jackson didn't think the amount of parking spaces was that crucial, and that Mr. Walter could use signage to tell people where to park.

Martin wondered what the use of the adjacent building would be. Mr. Walter explained that since there are no sinks or grease traps in the building, he can't cook there, which is the reason for the lease with the Community Center. Once his business and finances begin to grow, the goal would be to remodel the interior and to get rid of the trailer to move it all indoors. Martin suggested a 3 to 5 year timeframe trial in the SRU to see if this works. Mr. Walter plans to be open seven (7) days/week during the summer and Friday-Sunday for winter months.

Lighting was discussed next. He plans to be open from 11am-7pm, so there may not be a need for additional lighting. He will have the lights from the gas station, and the building has a little porch light. He thought maybe just a spotlight on his smoker/cart for security would be needed. Reis commented that he would have to come in for an electrical permit and would have to meet Town lighting code.

Martin asked about CDOT. Reis stated that all rights of way are granted for this site. Smoker and cart are not permanent structures, and CDOT will take that into account. CDOT will not get involved unless it is a new development.

Mr. Walter handed out a copy of what his artwork/logo will look like on his trailer. He is not in need of a sign at this time.

Reis will talk with the Fire Department on the Fire Ban question for the SRU Agreement. Martin suggested as part of the Agreement that Mr. Walter include a scaled, detailed map with delineated parking and the location of the smoker and trailer.

Commissioner Larsen moved to approve the application as is with a condition of agreement with the Kwik Mart for bathroom use, seconded by Commissioner Jackson, and unanimously passed.

**7) Other Business**

Town Administrator Reis wanted to mention that the Board of Trustees at their May 15 meeting will be discussing liaison appointments to their advisory boards.

**8) Adjournment**

The next meeting is scheduled for May 30.

A motion to adjourn was made by Commissioner Larsen, seconded by Commissioner Cornell, and unanimously approved at 8:58 pm.

Approved by the Planning Commission,



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Bill Martin, Chairman, Planning Commission

ATTEST:



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Michele Martin, Deputy Town Clerk