

RECORD OF PROCEEDINGS

Regular Meeting of the Estes Valley Planning Commission

June 17, 2008, 1:30 p.m.

Board Room, Estes Park Town Hall

Commission: Chair Ike Eisenlauer; Vice-Chair Doug Klink; Commissioners Wendell Amos, Bruce Grant, Betty Hull, Joyce Kitchen, and John Tucker

Attending: Vice-Chair Klink; Commissioners Amos, Hull, Kitchen, and Tucker

Also Attending: Director Joseph, Planner Shirk, Planner Chilcott, Town Attorney White, Town Board Liaison Homeier, and Recording Secretary Roederer

Absent: Chair Eisenlauer, Commissioner Grant

The following minutes reflect the order of the agenda and not necessarily the chronological sequence of the meeting.

Vice-Chair Klink called the meeting to order at 1:30 p.m.

1. PUBLIC COMMENT

None.

2. CONSENT AGENDA

a. **Approval of meeting minutes dated May 20, 2008.**

b. **SPECIAL REVIEW 08-01, Cricket Communication Tower, A Portion of S36-T5N-R73W of the 6th P.M., 1435 Prospect Mountain Drive, Cricket Communications/Applicant—Request for continuance to the July 15, 2008 Estes Valley Planning Commission meeting**

c. **AMENDED PLAT, Lots 1, 2, & 4, Replat of Lot 26, Block 1, Fall River Estates, 1135 Fall River Court, John & Peter Simonson/Owners, Van Horn Engineering/Applicant—Request to combine three lots into one lot**

d. **AMENDED PLAT, Lots 2 & 3 of the Amended Plat of Lot 3, Broadview Subdivision, and a Portion of E ½ of W ½ of the SW ¼ of S35-T5N-R73W of the 6th P.M., 1425 Upper Broadview, David Followill/Owner, Van Horn Engineering/Applicant—Request to adjust the boundary line between two adjoining lots**

It was moved and seconded (Hull/Kitchen) to accept the consent agenda, and the motion passed unanimously with two absent.

3. REPORT: Presentation of Draft Management Plan, Estes Valley Recreation and Park District

Stan Gengler, Estes Valley Recreation and Park District Executive Director, presented information regarding the draft management plan for the recreation district, which is a resource management plan developed in conjunction with the Bureau of Reclamation (property owner) and EDAW (consultant). The plan is a 10-year plan for four properties managed by the recreation district—the East Portal, Mary's Lake, Lake Estes, and Common Point. Mr. Gengler outlined the recreation district's process for development of the plan and provided specific details of contemplated improvements at Lake Estes as an example of the results of the planning process. There is not funding for all the improvements identified at the sites; however, the management plan provides a guideline for improvements as funding becomes available over the next ten years. Improvements to provide or improve ADA accessibility have a high priority. The primary revenue stream is provided by the Bureau of Reclamation, with additional funding via matching grants and additional incremental funding. The complete draft management plan is available online at www.estesvalleyrecreation.com. All comments regarding the plan must be submitted in writing by June 23, 2008 to Kara Lamb at klamb@gp.usbr.gov. Planning Commissioners expressed general support for the management plan and briefly questioned Mr. Gengler about improvements and operations at Mary's Lake Campground and Cherokee Draw.

4. DEVELOPMENT PLAN 08-05, RIPPLING RIVER ESTATES, A Metes and Bounds Property Located in the SE ¼ of S34-T5N-R73W of the 6th P.M., TBD Moraine Avenue, Ann Toft/Owner, Steve Eck & Steve Williams/Applicants**Staff Presentation:**

Planner Shirk summarized the staff report. This is a request to build seven residential/accommodations units on a 2.5-acre property zoned A–Accommodations, which allows both of these uses. This is the third development plan application for this site; two previous development plan applications were disapproved. Rippling River Development Plan 07-07 was disapproved at the staff level due to non-compliance with several requirements of the Estes Valley Development Code (EVDC), and Development Plan 08-01 was disapproved by the Planning Commission due to limits of disturbance standards, development in the floodplain, and increase in density due to fill in the floodplain. The current proposal would meet the criteria for staff-level review if not for the previous disapprovals because only seven units are proposed; ten or more units requires review by the Planning Commission.

The applicants have made changes to the site design and now propose three duplexes and a single, detached unit. The site design complies with applicable zoning requirements such as density, setbacks (including the river setback), and building height.

The property is largely open with the exception of trees adjacent to the road and along the Big Thompson River. The majority of the site lies within the floodplain, and the proposal includes fill in the floodplain, which will raise portions of the site by three to four feet. The applicant has received a conditional letter of approval from FEMA (a CLOMR-F) to allow alteration of the floodplain by placement of fill material. The southern/eastern perimeter of the fill material would coincide with the required 50-foot setback from the river. The proposed seven units do not exceed the density allowed on the site prior to placement of any fill material. A recommended condition of approval is that final approval be obtained from FEMA (a LOMR-F) prior to issuance of the first certificate of occupancy.

The applicants propose to dedicate an additional ten feet of road right-of-way to Larimer County and were granted a variance approval by the Estes Valley Board of Adjustment in October 2007 to allow portions of the access drive and parking to be located within the 25-foot arterial landscaping buffer area along the road. Approval of the variance included a condition that district-buffer landscaping be installed along the road, which requires a greater number plantings, including evergreens, that should conceal the development from the road once the plantings mature. The current development plan proposal (08-05) satisfies the landscaping requirements.

The applicants submitted a wildlife analysis and wetlands report prepared by a qualified consultant, who found that the property contains no wetlands except for wetland fringes along the Big Thompson River. No endangered species use the site. The consultant provided recommendations to mitigate impacts of the development; compliance with these recommendations is included as a recommended condition of approval.

The applicants propose additional riparian landscaping along the river, including willows, dogwood, river birch, and alders. It is staff's opinion that these plantings offset the proposed fill in the floodplain area. The applicants also propose three porous landscaping detention ponds to detain runoff. A retaining wall is proposed at the driveway entrance, which will minimize grading and allow retention of existing vegetation in that area.

The applicant's request has been submitted to all applicable reviewing agency staff and to neighboring property owners for consideration and comment. Comments were received from the Estes Valley Trails Committee, Upper Thompson Sanitation District, Town Attorney Greg White, the Town Light and Power Department, Larimer County Addressing Coordinator, and Fire Chief Scott Dorman. No written comments were received from neighboring property owners.

The proposed impervious coverage is approximately 19%, less than one-fifth of the site, which will result in minimal site disturbance. Planning staff recommends approval of the proposed Rippling River Estates Development Plan 08-05 with five conditions of approval as shown below.

Applicant Presentation:

Lon Sheldon/Van Horn Engineering was present to represent the applicants. In response to a question from Commissioner Tucker, he stated his belief that the requirement to provide a handicapped-accessible unit is triggered with development of eight units. The applicants will comply with applicable regulations and will modify plans to provide an accessible unit if necessary. He noted the original floodplain mapping for the property was erroneous. The applicants corrected the error through FEMA, which resulted in a much larger portion of the property being placed in the floodplain and was to their detriment in terms of developing the site. Mr. Sheldon stated Van Horn Engineering, the developer, and Town staff have learned three things during the reviews of development proposals for this property:

- Floodplain errors need to be quantified and corrected early.
- The pre-development and post-corrected floodplain residual area is the basis for density in the Estes Valley. Developers must incur the costs associated with floodplain mapping correction, which, in turn, may reduce the developable area of the lot.
- The shape and orientation of units on uniquely shaped lots is a very important aspect in site design. Units must be shaped to fit the developable area.

The applicants have worked to address all issues associated with the site and are in agreement with the conditions of approval recommended by staff.

Public Comment:

None.

Planning Commissioners' Comments:

Commissioners Hull and Tucker expressed appreciation for the work done to change and improve the proposal.

It was moved and seconded (Kitchen/Hull) to approve Development Plan 08-05, Rippling River Estates, for the Metes and Bounds Property located in the SE ¼ of S34-T5N-R73W of the 6th P.M., with the findings and conditions recommended by staff, and the motion passed unanimously with two absent.

CONDITIONS:

1. A Development Construction Permit shall be issued through the Larimer County Engineering Department prior to issuance of any permits.
2. Construction plans shall be approved by the Town of Estes Park Water and Light and Power Departments, and the Upper Thompson Sanitation District, prior to issuance of a building permit.
3. All units shall require a setback certificate prepared by a registered land surveyor. These certificates shall verify the foundations comply with approved plans.
4. Compliance with the following:
 - a. Wildlife Habitat Evaluation and Impact Analysis for the Rippling River Estates Development Plan, dated April 23, 2008.
 - b. Letter from Community Development to Van Horn Engineering dated June 6, 2008.
 - c. Letter from the Estes Valley Recreation and Park District to Dave Shirk dated May 20, 2008.
 - d. Letter from Upper Thompson Sanitation District to Dave Shirk dated May 13, 2008.
 - e. Letter from Greg White to Dave Shirk dated May 23, 2008.
 - f. Memo from Mike Mangelsen to Bob Goehring dated May 14, 2008.
 - g. Comments from Karlin Goggin, Larimer County Addressing Coordinator, dated May 19, 2008.
 - h. Memo from Scott Dorman to Alison Chilcott dated May 19, 2008.
5. Prior to issuance of the first certificate of occupancy, compliance with the following:
 - a. Right-of-way and easements shall be dedicated to and accepted by Larimer County. The applicant should begin this process as soon as possible to ensure no delays in issuance of a certificate of occupancy.
 - b. Postal box, stop sign, and trash enclosure shall be installed.
 - c. Street and river landscaping, as well as landscaping for the specific unit, shall be installed. The applicant should account for this requirement in their project phasing.
 - d. A copy of the LOMR-F, as approved by FEMA, shall be submitted to Community Development and Larimer County Engineering.

5. PROPOSED AMENDMENTS TO THE ESTES VALLEY DEVELOPMENT CODE, BLOCK 11: APPEALS

Town Attorney White stated that since the Estes Valley Development Code's adoption in 2000 few, if any, appeals have been filed. When an appeal to the Town Board was received last year, staff realized the appeals section of the Code was nebulous. Proposed changes address issues such as how and when to file an appeal, what to include in an appeal, and when a public hearing will be scheduled. The changes would provide certainty to those involved in the appeal process. The changes would not affect court appeals, which are governed by Colorado state statutes.

Proposed changes are as follows (text to be added is underlined; text to be deleted has been ~~struck through~~):

- F. **Timing of Appeals.** Unless a different time frame is set forth in a specific provision of this Code or in applicable provisions of the Colorado Revised Statutes, all appeals shall be ~~taken to the appropriate appeal authority or court~~ in writing and filed within thirty (30) days after the final action or decision being appealed. ~~There shall be no right to appeal any action or decision if a written notice of appeal has not been filed challenged, and all decisions that have not been appealed within said thirty (30) days period. shall become final.~~
- G. **Filing of Appeals.** Written notice of appeals shall be filed as follows:
 - 1. Appeals to the Town Board of Trustees shall be filed with the Town Clerk.
 - 2. Appeals to the Board of County Commissioners shall be filed with the Estes Park Community Development Department.
 - 3. Appeals to the Estes Valley Planning Commission shall be filed with the Estes Park Community Development Department.
- H. **Hearing of Appeals.** The hearing before the Estes Valley Planning Commission, Board of County Commissioners, or Board of Trustees shall be held within sixty (60) days of filing the written notice of appeal.
- I. **Form of Appeal.** Each written notice of appeal shall state specific grounds for the appeal and cite all relevant Sections of the Estes Valley Development Code. The Board hearing the appeal shall only consider those matters specified in the written notice of appeal.

Public Comment:

None.

It was moved and seconded (Hull/Tucker) to recommend approval of the proposed Block 11 Amendments to the Estes Valley Development Code regarding Appeals to the Estes Park Town Board of Trustees and Larimer County Board of County Commissioners, and the motion passed unanimously with two absent.

6. REPORTS:

Special Events Permits for Properties Outside Town Limits:

Planner Shirk stated at their June 16, 2008 meeting, the Larimer County Commissioners approved a provision that requires special events permits for properties inside the Estes Valley planning area but outside Town limits to be reviewed through the County Administrator's office if the event is planned for 300 people or more. Commissioner Hull questioned whether approved permits must be renewed annually. Planner Shirk indicated he would find out and let the Commissioners know.

Potential Amendments to Estes Valley Development Code Regarding Accessory Dwelling Units:

Provisions of the Estes Valley Development Code (EVDC) currently allow accessory dwelling units (ADUs) if the property is zoned for single-family residential use (unless the property is zoned R-1, in which case it is disallowed), if the lot exceeds the minimum lot size by one-third, and if the ADU is integrated within the principal structure. The planning department has a policy in place to determine when a living area becomes an ADU. An appeal regarding staff's determination that a proposed remodel resulted in an ADU on a lot that did not meet the minimum-lot-size requirement was heard by the Board of Adjustment in June 2006. The Board upheld staff's determination but requested the EVDC be amended to provide better definition of what constitutes an ADU.

Planning staff researched ADU regulations for dozens of other communities and found some commonalities. Staff suggests that ADUs would help advance a number of community-wide policies found in Estes Valley Comprehensive Plan Chapter 6, including policies found under 3.0 *Growth Management Policies*, 5.0, *Housing Policies*, and 7.0 *Economics*. Staff also received comments from the Estes Park Housing Authority indicating that ADUs would help address the need for affordable housing and should be allowed to contain two bedrooms. Based on this research, staff provided sixteen suggestions for Planning Commission consideration. Staff and Planning Commissioners' discussion/comment on each item is summarized below. Staff will use feedback from Commissioners to draft proposed Code amendments, which will be available for public comment and presented during public hearings within a few months.

1. *Allow in all single-family residential zoning districts, provided the lot is at least ¼ acre and meets minimum lot size.*

Discussion/Comment: It may be reasonable to use a sliding scale because an ADU would not be allowed on a 9.8-acre lot in a ten-acre zoning district under this guideline and non-conforming lot sizes are common in the Estes Valley. The terms and conditions imposed by conservation easements may prohibit an ADU or may specifically address allowed structure size and location. Consider adoption of a minimum lot size requirement that would apply only to lots less than 2.5 acres in size. The requirement to meet minimum lot size would establish more of a sliding scale as opposed to a minimum standard. The value of a sliding scale would be that it sets standards that are more tailored to the character of existing neighborhoods.

2. *Allow to be detached by Special Review or "by right" if the subject lot is twice the minimum lot size for the zone district.*

Discussion/comment: ADUs could be distinguished as detached, integrated within, or connected. Special review of detached ADUs would provide for a higher standard and would allow an ADU to be denied based on impact to a neighborhood. Suggestion #15 addresses standards for slope, limits of disturbance, and so forth. ADUs should not be allowed in the R-2 (Two-Family) or RM (Multi-Family) zoning districts. Consider adoption of a standard that would limit the distance of a detached ADU from the principal residence to keep building massing more compact, which would mitigate some of the potential negative effects to the neighborhood. If topographic conditions on a site required an ADU to be located at a greater distance from the principal residence than allowed, the applicant could request variance approval from the Board of Adjustment. Driveway access to detached ADUs should be limited to the existing curb cut. The current policy is to require a common wall between an ADU and heated, conditioned living space; a garage would not count. A sound barrier may be extremely important to a homeowner; defining an ADU that is connected to an attached garage as an "attached" ADU would serve that purpose and would provide greater flexibility for property owners. Some flexibility in the Code provisions is important due to topographic constraints on many lots in the Estes Valley.

3. *All "by right" ADUs require staff-level site plan review before applying for building permit. Impose 30-day timeframe for staff review and tie to xxx fee.*

Discussion/comment: Attorney White expressed his opinion that if ADUs are allowed they should be a use-by-right, even if they are detached. Special review requires a hearing before the Planning Commission and Town Board or County Commissioners. Since it is a discretionary review, the Commission/Board may be pressured by neighbors to deny an application if the property owner is disliked by neighbors, and a decision for denial is subject to appeal. Additional comments included: A detached ADU has the potential for greater neighborhood impact than an ADU integrated within the residence. The special review process provides for legal notice and public comment. Neighbors may point out issues specific to their neighborhood that may not occur to staff. Once a structure is built, it affects a neighborhood for a long time. Although some other jurisdictions do not require special review, it is not uncommon to require it; for instance, Larimer County requires special review (a public hearing) for all detached ADUs. Because there is

such variety of topography, lot sizes, and mixed uses within neighborhoods, it would be important to have the opportunity for special review for situations not covered by adopted standards. By allowing an attached ADU to be a use-by-right and requiring special review of detached ADUs, a balance would be provided.

4. *Shall be owned together with main dwelling.*

Discussion/comment: Planner Shirk noted this provision is universal in other jurisdictions. It would prohibit the conversion of an ADU into a condominium (a subdivision of property) and prevent an ADU from being sold separately.

5. *Require land-use affidavit be recorded to ensure future homeowners are aware of regulations.*

Discussion/comment: Vice-Chair Klink stated this provision seems straightforward and necessary.

6. *Allow one unit (either the principal or accessory) to be rented separately, provided the owner lives full-time in the other unit.*

Discussion/comment: This is a very common provision for ADUs because it stabilizes communities. For instance, “empty nesters” or retirees could live in their ADU and rent their residence or a caregiver could live on-site. The term “full-time” needs to be defined. It may be reasonable to expect a property owner could take an extended vacation. An owner may live elsewhere part of the year. The Code should specify that rental of both units is prohibited due to the accessory nature of ADUs.

7. *Require a minimum three-month lease (prohibit short-term use, but allow summer workers to stay in units without burden of year-long lease).*

Discussion/comment: This provision would prohibit nightly, weekly, or monthly rentals but would help provide living quarters for seasonal workers, an important need in resort communities. Enforcement would be handled through the code enforcement officer.

8. *Allow two bedrooms in an ADU.*

Discussion/comment: The wording should be clarified to indicate that up to two bedrooms are allowed; it is not a requirement to provide two bedrooms.

9. *ADU size may be ½ that of the primary dwelling, but not to exceed 1,000 square feet (excluding mechanical areas).*

Discussion/comment: Nearly all jurisdictions impose a size limit on ADUs; limits generally range from 800 to 1,200 square feet. There is no limit on the size of a principal dwelling. An ADU should be limited in its purpose and scope—it is meant to be accessory and it is important to have a hard-and-fast square-footage limitation. The proposed 1,000-square-foot limit is based on input from local architects and designers and would provide room for two bedrooms, cooking and laundry facilities, etc. Staff would prefer to have a way to determine whether a proposed ADU would result in a duplex. By allowing attached ADUs, a duplex-style use would be allowed, although unity of ownership would be retained, both “sides” could not be rented, and the “duplex” would be lopsided.

10. *All ADUs count toward cumulative accessory-use square footage.*

Discussion/comment: Because an ADU is an accessory use, it is sensible to count the square footage of an ADU in the total accessory-use square footage allowed on a property. For instance, garages, whether attached or detached, count toward the total accessory-use square footage—staff has not observed property owners substantially increasing the size of their proposed residence in order to have a larger garage. The Commissioners would like public input on this issue.

11. *Coordinate with utility providers to determine their needs regarding utility service lines and tap fees.*

Discussion/comment: Staff will contact utility providers to determine their requirements for attached and detached ADUs and will seek information on requirements/limitations for properties that are on wells. The Code should include

the provision that if the ADU and primary residence are on separate meters, both meters must be under the primary owner's name.

12. Require architectural compatibility, prohibit mobile homes, trailers, RVs.

Discussion/comment: Although the Code standards regarding mobile homes, trailers, and RVs appear elsewhere in the EVDC, staff would like the standards reiterated in the section governing ADUs so that all the ADU guidelines are found in one place in the Code. There are very minimal architectural/design standards in the EVDC, but they are commonly applied to ADUs in other jurisdictions.

13. Include site design standards such as increased setbacks, off-street parking standards, landscaping, and lighting restrictions.

Discussion/comment: Staff suggests it may be appropriate to provide standards specific to ADUs, such as increased setbacks so that a detached ADU would be closer to the owner's residence than the neighbor's property or so that parking for the ADU must be located behind the ADU. Staff requests additional feedback from the Commissioners regarding specific items that should be addressed.

14. No home occupation allowed in the ADU or principal dwelling (the ADU would essentially function as the "home occupation" in terms of vehicle trips generated).

Discussion/comment: Following general discussion about whether a home occupation should be allowed in an ADU or in a principal dwelling provided there was no increase in traffic above that allowed under home occupation guidelines, it was agreed this would be unenforceable. There was general agreement that no home occupation should be allowed if an ADU is on site—the ADU would be considered the home occupation.

15. Should be subject to all General Development Standards set forth in Chapter 7 (including those that do not apply to existing single-family lots of record, but excluding paving requirements).

Discussion/comment: The suggestion to exempt paving requirements was made because so many homes in the Estes Valley are on unpaved streets. The requirement to meet paving standards would protect neighbors on unpaved roads from impacts of additional traffic generated by ADUs, which may be more noticeable on unpaved roads due to dust and so forth. It may also encourage some neighborhoods to pave their roads. The requirement to meet paving standards would prohibit ADUs in areas such as Little Valley or Carriage Hills, where ADUs may be beneficial. Many private road agreements would prohibit ADUs or require approval of other property owners. It may not be possible to meet ISO standards for fire protection, particularly on a property that is served by a well. Issues being discussed regarding ADUs are intended to expand the community's housing options via ADUs; however, there is nothing inherently unfair about setting standards for where ADUs would be allowed or disallowed. The Commissioners would like public input on this issue.

16. A total maximum occupancy of eight (8) individuals on a single-family lot if the parties are not related.

Discussion/comment: There was brief, light-hearted discussion about how to determine whether individuals are related.

Director Joseph complimented Planner Shirk, noting his exceptionally thorough work on the subject of ADUs. Commissioners expressed their appreciation and stated the matrix provided by Planner Shirk was very helpful.

Vice-Chair Klink adjourned the meeting at 3:30 p.m.

Doug Klink, Vice-Chair

Julie Roederer, Recording Secretary