

RECORD OF PROCEEDINGS

**Regular Meeting of the Estes Valley Planning Commission
October 21, 2008, 1:30 p.m.
Board Room, Estes Park Town Hall**

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

Attending: Chair Eisenlauer; Commissioners Amos, Kitchen, Klink, and Tucker

Also Attending: Director Joseph, Planner Chilcott, Town Attorney White, Public Works Director Zurn, Recording Secretary Thompson, Outgoing Recording Secretary Roederer

Absent: Commissioner Grant, Commissioner Hull

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

Chair Eisenlauer called the meeting to order at 1:30 p.m.

1. PUBLIC COMMENT

None.

2. CONSENT AGENDA

a. Approval of meeting minutes dated September 16, 2008.

It was moved and seconded (Amos/Klink) to approve the consent agenda, and the motion passed unanimously with two absent.

3. UPDATE TO THE ESTES VALLEY COMPREHENSIVE PLAN, APPENDIX TWO, RESOURCE INFORMATION

This is a request by Director Joseph to adopt the updated Wildlife Habitat map, which was created by EDAW as part of the 2008 Estes Valley Habitat Assessment. Director Joseph stated this map is proposed to become a part of Chapter 7 of the Estes Valley Development Code. In the past year, the Colorado Division of Wildlife (CDOW) made it clear they did not want to participate as a decision-making body, meaning we will need to determine how to make decisions without their input. EDAW assessed habitat throughout the Estes Valley and ranked habitat as critical, important, other valuable, and disturbed. This habitat is mapped on the Priorities for an Ecological Network map found in the Assessment and indicates those areas that may be adversely impacted by development.

Site-specific confirmation of habitat is required. A process needs to be put in place as to when site-specific studies are triggered. The habitat guidelines include several factors for the study. Initially, the main objective will be to take a physical inventory at the site level, taking into consideration all vegetarian, riparian, wildlife, and raptors habitats. Second, a description of the populations of the wildlife species that live in that section of habitat would be compiled, including a qualitative description. Third, there would be an analysis of potential adverse post-development on-site impacts, and a list of the mitigation measures completed. Discussion would also take place concerning an implementation plan for the mitigation and subsequent probability of the success of such mitigation. A list of mitigation factors and subsequent plans for the mitigation would be the final objective in the study. Commissioner Kitchen stated that as proposed, a single-family residence being built on a lot that was zoned as Residential prior to 2000 would be exempted from the guidelines of this habitat plan. Director Joseph stated that staff is in the process of developing an outline for the basic content of the site-specific studies. After review of the impact area, it shall issue a finding as to whether or not the plan adequately addresses the adverse impact. Commissioner Klink stated there is the possibility that protected species that will need to be dealt with at some point. Director Joseph agreed there is connectivity between habitat and wildlife, and stressed that if you are successful in protecting the habitat, you are concurrently protecting the wildlife.

Commissioner Tucker indicated that the purpose of the habitat plan has changed from enhancing particular habitats to minimizing the adverse impacts on habitats by development. If it cannot be minimized further, Tucker's opinion is that the Planning Commission should support it. If the studies bring forth a denial by the Commission, the applicant could appeal to the Town Board. Director Joseph stressed that zero impact and 100% mitigation is not the standard. Planner Chilcott questioned whether or not we want to define "significant adverse impact", and to state whether the impacts should be minimized to the "maximum extent feasible" or the "maximum extent practical", with feasible being a more stringent standard that places less weight on the economic impacts of the regulation and how it affects the development. She would like to see language added that the study area be mitigated to the maximum extent feasible to ensure that the affected species will survive the adverse impact.

Director Joseph noted that there is not a way to take out the grey areas because of the natural systems we are working with. The Estes Valley Planning Commissioners, Larimer County Commissioners, and Town Board members are faced with making decisions that are going to rest on good-faith judgments based on the best information available.

Commissioner Klink noted that from a practical point of view, this section would modify the limits of disturbance on a site. It was noted that mitigation may or may not include reduction of density.

There was further discussion concerning educating the developers and potential property buyers in order to make them aware of potential impacts of wildlife habitat mitigation. The exception is a single-family home. If you buy a lot that is platted for single-family development, you will be able to build a single-family home. Other undeveloped areas have a level of uncertainty, where the size of the structure could also be a factor. Commissioner Amos said that generally speaking, the architects and developers are well-acquainted with the code and would be able to advise the future buyers of the review process.

Public Comment and Discussion with Commissioners and Staff: Ron Norris/Town Resident and President of the Association for Responsible Development (ARD) referred to the letter that was sent in October 21, 2008, and distributed to the Board before the meeting. He believes the Habitat Assessment and draft regulations are a step in the right direction, but would appreciate more definition with "significant adverse impact". ARD supports riparian setbacks of fifty feet, as well as the process of using the new map as a starting point and site visits to decide if a wildlife conservation plan is required. ARD would also like to see provisions added to require preparation of a Wildlife Conservation Plan for all areas designated as "Important Habitat" in addition to those areas designated as "Critical Habitat". Important Habitat is defined in the study as rare or having sensitive resources, and ARD believes this must be included in the conservation study area since these habitats do not currently enjoy any type of special protection.

ARD also suggested requiring the review of any wildlife conservation plans and mitigation plans by CDOW or other qualified, independent professionals. ARD recommends empowering staff to require conservation plans for property that falls under the third classification (Other Valuable Habitat) in the case of special circumstances. Also, provisions should be added to explicitly allow denial based on negative impact. Finally, they suggest an annual audit be required to assess how well the code is working. Commissioner Klink thanked ARD for their diligent work on this topic. ARD expressed concern about raptor nesting areas and rare vegetation areas that may not trigger a conservation plan based on the proposed code revisions. Director Joseph asked Mr. Norris for more specifics about other "professionals", and stated that staff will continue to route items to those groups but are not certain as to what type of response they may or may not receive. Mr. Norris requested assurance that any outside comments would be taken into consideration by the decision-making group.

Mark Elrod/Town Resident, is concerned about inaccuracies in hydrological mapping. One map shows a stream going through his property, which he believes is not accurate.

According to the Habitat Assessment his property lays in one of the “high value habitat” areas by virtue of the stream going through it. It is his opinion that inaccurate maps are not, but should be corrected. Several comments were made by the Commissioners and Director Joseph indicating that site-specific studies will overrule the map. Director Joseph indicated that there are some stream channels above and on his property that contain riparian vegetation areas, though they may not be well-defined.

Sandy Osterman/Town Resident, stressed that the definition of adverse impact is different for different people, especially the Planning Commissioners. She hopes that all the residents of the Estes Valley, along with the Planning Commissioners, realize the importance of the words as they write the code because it will have a lasting effect on all of the Estes Valley. This proposed change will need to be considered in the planning of today, tomorrow, and years into the future. All those involved should be reminded that these changes may affect the elk, which is the basis of much of the Estes Valley economy.

Johanna Darden/Town Resident, indicated concern about the removal of the phrase “prior to approval of any development application” in section G.4 of the code revision. She believes that the words “prior to approval of any development application” should be re-inserted at the end of the sentence. It is her opinion that any wildlife habitat plans should be submitted prior to approval of the application in order to be aware of the adverse impacts prior to development.

Fred Mares/Town Resident, agrees with the comments made by ARD, and complimented the Planning Commission and Planner Chilcott on the work done thus far. Integration of this assessment with an open space plan will be a valuable tool for connectivity and linking of habitats. He agrees that more definition is needed to determine what triggers a habitat plan, and prefers to include “important habitat areas” as a trigger for a conservation plan. Mr. Mares stated that the Planning Commission needs to be able to have some specific options with enforcement provisions, one of which would be density. Finally, he questions whether or not this new code will give the Planning Commission the tools needed to be successful with its decisions.

Director Joseph explained that the actual maps will be produced on ArcGIS so they will be easier to read. Criteria could be widened to include the important habitat. While critical habitat areas would automatically trigger a study, there could be unusual circumstances that converge on a site that could also trigger a study. Planner Chilcott cited the Elkhorn Lodge property as a good example in that it does not have any critical habitat according to the map, but the size of the property/development could impact the habitat. Director Joseph noted that the limits of disturbance criteria in the existing code would still be in effect and would come into play in these situations. Information gathered today will be reviewed at the staff level and a revised proposal will be presented at a future Planning Commission meeting.

It was moved and seconded (Klink/Amos) to CONTINUE the UPDATE TO THE ESTES VALLEY COMPREHENSIVE PLAN, APPENDIX TWO, RESOURCE INFORMATION and the motion PASSED unanimously with two absent.

4. PROPOSED AMENDMENTS TO THE ESTES VALLEY DEVELOPMENT CODE, BLOCK 12:

- a. **WILDLIFE HABITAT PROTECTION**—proposed changes to §7.8 *Wildlife Habitat Protection*, to provide review standards for land identified as critical wildlife habitat, require preparation of a wildlife habitat conservation plan for land identified as critical wildlife habitat, and provide for Planning Commission review of said conservation plan

This agenda item was discussed concurrently with the update to the Comprehensive Plan concerning the Wildlife Habitat Assessment.

It was moved and seconded (Klink/Amos) to **CONTINUE** agenda item 4.a, **PROPOSED AMENDMENTS TO THE ESTES VALLEY DEVELOPMENT CODE, BLOCK 12, proposed changes to §7.8 *Wildlife Habitat Protection***. The motion **PASSED** unanimously with two absent.

- b. **ACCESSORY DWELLING UNITS**—proposed changes to §5.2.B *Accessory Uses/Structures Permitted in the Residential Zoning Districts*, to allow accessory dwelling units (ADUs) within all single-family residential zoning districts except the R-1 district, to allow the lease of one unit, to allow detached units, and to adopt architectural standards for ADUs; also proposed changes to §13.3.3 *Definition of Words, Terms and Phrases*, to redefine the term Accessory Dwelling Unit

Director Joseph is making this presentation today in the absence of Planner Shirk. We are neither expecting nor recommending action on the item today, but would appreciate public input while focusing on the incremental steps towards putting forth the final draft of the code change. The items discussed today should include minimum lot size for all types of ADUs (detached, attached, and integrated); allowances for ADUs (the current draft states they should be available for long-term residency); size limits of 49% of the principle dwelling or 1000 square feet, whichever is less; and finally whether or not the Commission should subject detached ADUs to a special review process and public hearing.

Commissioner Klink stated that discussion in the study session revolved around using the actual lot size rather than zoning district due to the large number of non-conforming lots in different zoning districts, hoping this would lead to more consistent implementation of the regulation. Definitions of attached, detached, and integrated ADUs were explained.

Public Comment and Discussion with Commissioners and Staff: Tom Ewing/Town Resident, believes the current ADU draft seems to overlap the current code concerning short-term rentals, bed & breakfasts, and vacation homes. An existing bed and breakfast and another structure being built on the property could present a problem if there is no clear definition of the code. He stated there are many non-conforming lots and questions if this is just a way to increase density in some areas.

Greg Sievers/Town Resident, lives in an E-1 area (one acre minimum), and purchased specifically for that type of zoning. According to the proposed draft, all detached, attached, and integrated ADUs would be permitted in E-1. He believes that allowing ADUs in E-1 areas would defeat the true purpose of zoning. The proper enforcement and support of the current code should take place prior to modifying a new code or absolving current offenders. Mr. Sievers proposes that any changes be quantified, and suggests a case-by-case basis rather than using the zoning map as the only tool. He thinks the current code is acceptable as long as it is enforced. Commissioner Klink indicated there is not a good feedback system in place to see if code enforcement is in place, and we rely on residents like Mr. Sievers to notify the code enforcement officer if codes are being violated.

Sandy Lindquist/Town Resident, is concerned about the potential number of ADUs that would, in effect, change the zoning. These things are good ideas if they are pre-planned, but Ms. Lindquist is concerned about the worst-case scenario in existing developments. Ms. Lindquist thinks ADUs should be limited to lots over one acre (preferably 2.5 acres), and also thinks ADU approval should be site-specific and more defined than what is currently written. She stated property buyers in the area have a right to know and understand the zoning where they are buying, without expectation that it may change.

Commissioner Amos stated that if the Planning Commission is leaning toward minimum lot sizes for detached ADUs, there would be restrictions in place to control quantities. He does not think there will be a lot of requests for ADUs if the code is approved, and believes that any new code could be more restrictive rather than less restrictive.

Alan Miller/County Resident, opposes ADUs if it would allow other residences to be built on individual lots in his neighborhood, as it would alter the neighborhood's character. He believes that his neighborhood is an elk migration route that could be adversely affected.

Mr. Miller's concern with the current draft is the loss of control in the number of units that could be built in an area. A fundamental flaw would be the rental possibility, which would only encourage property owners to construct an ADU. A case-by-case basis would be appropriate if neighbors were allowed to comment. He believes that individual property owners should have the right to continue to live in an area as it is currently zoned.

Director Joseph clarified the current code reads ADUs are allowed only if they are attached, occupied by non-paying guests and family members, and situated on lots that have one-third more land area than the basic minimum land area for the zoning district. There is a provision that this proposal contemplates relaxing the land-area requirement, meaning more sites would qualify to build ADUs. While some people have compelling reasons to build an ADU, uncomfortable situations could arise when those owners want to sell the property.

Todd Jirsa/Town Resident noted that the impetus of this proposal is based on "when a wet bar becomes a kitchen." He wonders how the character of the neighborhood will change if ADUs are allowed and the density increases. Mr. Jirsa also questions how new residents coming in to the areas via ADUs will affect vehicle traffic, foot paths, etc. Mr. Jirsa indicated that more feedback is needed, as well as better enforcement of the current code.

George Hoffman/Town Resident, stated he thinks people should be able to expect their property will be used in the manner which it is zoned. He does not live in an area with a home owner's association and does not have any recourse if an ADU would be built in his neighborhood.

There being no further public comment, it was suggested by Director Joseph to focus on some of the bulleted items that were mentioned at the beginning of the discussion.

Commissioner Klink is concerned about code violations and subsequent enforcement. Director Joseph stated that the process is a slow one, and procedures are being followed according to policy. The Town of Estes Park now has a dedicated staff person that focuses on code enforcement, but the Commission still needs to be mindful of the enforceability of an issue. The majority of property owners request land-use regulation information for their particular property and voluntarily comply with the code. He believes that detached ADUs tend to have increased enforcement problems.

In conclusion, each Commissioner gave their comments on the code options:

Commissioner Klink – Prefers a 2.5 acre minimum lot size for detached ADUs, which would not be based on acreage per the zoning district but an actual 2.5 acres, possibly five acres. He recommends at least a one-acre actual lot size for attached and integrated units. He opposes the rental option. Commissioner Klink also believes there should be an absolute limit on size of 1,000 square feet or less. Finally, he would be willing to consider a review process for detached ADUs unless specific code is written.

Commissioner Amos – Supports detached buildings, but today's comments and concerns are valid and he believes there may be more than the average (one per thousand) ADUs built in the Estes Valley area. He supports Commissioner Klink's proposal on the specific lot sizes. He would recommend to Home Owners Associations to put controls in place concerning ADUs. Commissioner Amos would prefer long-term rentals, if any, and also supports a 1000 square-foot limit on detached units. He would prefer attached rather than detached, with no size restrictions on the lot size for attached ADUs. Finally, he supports a review process.

Commissioner Tucker asked for clarification from Director Joseph about the initial purpose of ADUs, and wondered if we could change the current code to allow attached ADUs to house care-givers, family, in-laws, etc. while using existing driveways and utilities. Director Joseph noted the current code addresses that need, although an expansion of

the current living space would probably be more practical. There is a local need for employee housing, making attached units impractical.

Commissioner Tucker – Supports a 2.5 acre minimum lot size for detached units, and one-acre lot size for attached ADUs. If the path is leading to multi-family housing, then he supports the current code, which allows detached units only in those areas currently zoned for multi-family residences. Commissioner Tucker supports being able to rent detached ADUs on lots 2.5 acres and larger due to the difficulty of enforcement, while ADUs on one-acre lots should not be allowed as rentals. He supports implementing the review component for now, but would also support removing it later on if it proved to be unnecessary.

Commissioner Kitchen – Agrees with the aforementioned lot sizes and subsequent ADU types. She prefers to see ADUs limited to less than 1000 square feet, and would support rentals if the size of the family unit was enforced. Commissioner Kitchen strongly opposes using a percentage of the principle dwelling as a guide to determining the size of the ADU. Finally, she supports the review process to allow neighbor comment.

Director Joseph stated that the proposed draft contemplates keeping the family (household) limit in place on a per-parcel basis. This would be in effect even on lots 2.5 acres or larger. In the current and proposed code, some ADUs would be prohibited based on the current size of the family living in the principal dwelling.

Commissioner Eisenlauer – Agrees with the size suggestions of the lots, as well as the ADU square footage recommendations of 1000 square feet or less. He would appreciate a review if a good process can be drafted.

It was moved and seconded (Klink/Amos) to CONTINUE agenda item 4.b, ACCESSORY DWELLING UNITS—proposed changes to §5.2.B Accessory Uses/Structures Permitted in the Residential Zoning Districts, to the November meeting. The motion PASSED unanimously with two absent.

Staff would like to nominate two Commissioners to serve on an Open Space Committee. This committee will interview the consultants who are proposing to do the work on the open space study.

It was moved and seconded (Amos/Klink) to NOMINATE Commissioners Tucker and Kitchen to serve on the Open Space Committee interview team. The motion PASSED unanimously with two absent.

5. STAFF REPORTS

a. STAFF-LEVEL DEVELOPMENT PLAN 08-06, YMCA OF THE ROCKIES CRAFT & DESIGN BUILDING

This report was postponed until the November meeting due to the absence of Planner Shirk.

b. STAFF-LEVEL DEVELOPMENT PLAN 08-07, YMCA OF THE ROCKIES LEGETT CHRISTIAN CENTER

This report was postponed until the November meeting due to the absence of Planner Shirk.

c. MARY’S MEADOW DEVELOPMENT PLAN UPDATE

Director Joseph reported on the approved plan for Mary’s Meadow, a co-housing development located between Mary’s Lake Road and the Mary’s Lake Lodge. The owner’s original intent was to build co-housing units with common kitchens, living areas,

etc. However, support for this proposal lacked community interest. Planner Chilcott indicated in the co-housing scenario, fewer cars would be on-site due to the community nature of the project; therefore, the approval includes fewer than the minimum number of required parking spaces and an area set aside where the community could meet. The proposed plan modifies the duplexes from the original plan and replacing them with four four-plexes. The current proposal has different footprints and floor plans, but the changes are within the original parameters of the approval. Today's report is an update for the development because building permits are due to be issued for two of the buildings. The first phase will have the quota of 2.25 vehicles spaces per unit. As they continue to build, the site will need to be monitored to ensure the developers do not have more units than required parking spaces per unit. It would be expected for the developer to comply with all current regulations concerning parking and if it is modified, they would be required to discuss the matter with the Planning Commission.

Chair Eisenlauer adjourned the meeting at 4:15 p.m.

Ike Eisenlauer, Chair

Karen Thompson, Recording Secretary