

RECORD OF PROCEEDINGS

**Regular Meeting of the Estes Valley Planning Commission
November 18, 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 Grant, Hull, Kitchen, Klink, and Tucker

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

Absent: Commissioner Amos

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 October 21, 2008.

b. BOUNDARY LINE ADJUSTMENT, Johnson Boundary Line Adjustment, Lot 1, and Lot 2 of the Johnson-Leuthold Boundary Line Adjustment, 1660 & 1671 Hummingbird Lane – Request to adjust the common lot line between two existing lots under common ownership.

c. AMENDED PLAT, Sulley Amended Plat, Lots 52 & 54, Second Amended Filing of the First Addition of Charles Heights, 1585 Spur Lane - Request to combine two lots into a single lot.

It was moved and seconded (Klink/Hull) to APPROVE the consent agenda, and the motion passed unanimously with one absent.

3. SPECIAL REVIEW 08-03, Circle of Friends Montessori School, Lot 1, Masonic Subdivision, 1820 S. St. Vrain Avenue

Staff Presentation:

This is a request for the Montessori School to use the Masonic Lodge as a temporary location while they continue to search for a permanent location. The school operates a morning pre-school and afternoon day-care and after-school programs. There are currently 38 children enrolled and six staff members employed. The hours are Monday through Friday, 8:00 a.m. to 6:00 p.m. The Masonic Lodge property is zoned R-2–*Two-Family Residential*, and day-care centers are permitted by Special Review in this zoning district. Staff approved a temporary use permit on September 12, 2008, to allow the Montessori School to relocate to the Masonic Lodge while the Special Review application is being reviewed. This permit expires December 9, 2008, the date the Town Board is scheduled to make a decision on the Special Review application. If the Town Board does not approve the Special Review application, the Montessori School will be required to immediately vacate the property.

It should be noted that although 38 children are enrolled, not all attend the school at the same time. No building expansion is proposed; however, a 2,265 square-foot playground has been installed. This area is fenced off and contains moveable play equipment.

Single-family residences surround the Lodge. The school currently shares the building with the Masonic Lodge and the Wesleyan Church. The Lodge has addressed interior improvements and has been issued a Certificate of Occupancy. The Special Review standards will be met when they comply with the conditions of approval.

Planner Chilcott recommends the approval last one year in order to give the School time to locate and move to their permanent location. Another review will be required to extend the one-year approval. Planner Chilcott also recommends waiver of fencing gaps for wildlife, as the fenced area surrounding the playground is a state requirement for day-care operations. It is also recommended to waive landscaping requirements for one year. Parking is not a problem, as there are an adequate number of spaces provided. One neighbor commented about exterior lighting, and a Masonic Lodge representative is communicating with these neighbors to resolve the issue. Notes have been made about which lights should be off at night. ISO calculations determined there is enough water for fire protection. There are now two points of access; one on Acacia Drive and the other on S. St. Vrain Avenue. Colorado Department of Transportation and Estes Park Public Works would prefer having Acacia Drive as the only access, but will accept both because of the temporary status. Staff recommends approval with two conditions.

Public Comment and Discussion with Commissioners and Staff:

School Director Kay Lawson indicated that they are currently searching for a permanent location.

It was moved and seconded (Tucker/Hull) to APPROVE the SPECIAL REVIEW 08-03, Circle of Friends Montessori School, Lot 1, Masonic Subdivision, 1820 S. St. Vrain Avenue with the following conditions. The motion PASSED unanimously with one absent.

CONDITIONS:

1. This approval shall expire on March 24, 2010, and the Montessori School shall:
 - a. Submit a new Special Review application for review by December 23, 2009 for Planning Commission review on February 17, 2010 and Town Board review on March 24, 2010: or
 - b. Shall vacate the property no later than March 24, 2010.
2. Compliance with the affected agency comments.

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

Note: Discussion of this agenda item is combined with the related item number 5, Proposed Amendments to the Estes Valley Development Code, Block 12

Staff Presentation:

Director Joseph stated a new, expanded, and improved draft created by Planner Chilcott which connects §7.8 of the Estes Valley Development Code to other vital sections of the Development Code. The focus today should be to determine the threshold for completing habitat conservation studies. Some members of the community think the important habitat category should be used as a trigger alongside the critical category for habitat conservation studies. The important habitat category includes areas of severe winter range for elk and deer, and/or potential sites for rare or at-risk vegetation and vegetative communities. It is unknown whether or not specific rare species actually exist in these areas, but the possibility is very real. In order to bring about some idea of how the studies may be applied, Director Joseph gave several examples relating regions of the Estes Valley to the corresponding habitat categories according to the Habitat Assessment.

Staff would appreciate public discussion about the important habitat to determine whether or not it warrants a site-specific conservation study. Primarily, a designation of critical protects streams, rivers, and big-horn sheep; a designation of important captures potential existence of rare vegetative communities and severe winter range for deer and elk. The method of the

mapping system of the habitat assessment contains different ecosystem characteristics that are combined to create critical, important, or low habitat, and these change from area to area. Urbanized areas will have habitat in those areas, but it has been compromised and fragmented. The proposal is that the linear features of the water bodies would be labeled as critical areas even when located within the urbanized areas zones. There is hope of a mutual agreement for critical habitat areas to be included in the studies, and discussion needs to occur as to whether or not to lower the threshold to also include the important habitat areas.

Public Comment and Discussion with Commissioners:

Ron Norris/Association for Responsible Development President (ARD) – Mr. Norris stated that ARD's supports including the important habitat areas in the trigger for study in order to avoid over-degrading of areas.

Frank Theis/Estes Valley Contractors Association – Mr. Theis indicated local contractors are concerned about creating and nurturing a sustainable economy through good development. His association is concerned about the possible lack of definition of both the critical and important sections of the assessment and the repercussions it could bring upon those actually completing the studies and making arbitrary decisions. Mr. Theis encourages the commission to be aware of unintended consequences that may arise in critical habitat areas and how it may affect property values. It is his opinion that riparian areas are very difficult to define once they have been removed, and the motivation of some developers to remove these areas in order to avoid the regulatory process on property could be an unintended consequence.

Sandy Osterman/Town Resident – Mrs. Osterman stated that in a conversation with Rocky Mountain National Park (RMNP) Superintendent Ron Baker, he indicated that Colorado Division of Wildlife Reports would be better indicators to compare and assess the Estes Valley habitat rather than the Rocky Mountain Environmental Impact Statement from 2007. Mrs. Osterman believes this Impact Statement is the basis of most of the information gathered for the Wildlife Habitat Assessment. She feels there may be conflicting information in this Impact Statement when compared to the RMNP study. Considering herself very familiar with the Devil's Gulch/Dry Gulch area, she is concerned that some elk movement areas have been left out of the Composite Analysis Map. It is her opinion that elk are an essential component of the Estes Valley economy and need to be protected as well. She has concerns that the Assessment is not written specifically enough to protect the entire habitat.

Fred Mares/Town Resident – Mr. Mares would like to see the important category included in the studies. He does not see it as limiting development, but as proposing that developers look at the habitat before creating their development plan. Important areas provide a lot of the connectivity between the different habitat areas, and should carry more weight than what they are possibly carrying now.

Seth Hanson/Rock Castle Development Company – Mr. Hanson's concern is the potential for limiting development. For example, a minimum setback of 50 feet in riparian areas could significantly impact development when compared to the current 30-foot requirement. Mr. Hanson would appreciate keeping the developers in mind when making decisions about the setback limits.

John Spooner/Architects, Engineers, and Designers Committee of the Estes Park Contractor's Association – Mr. Spooner indicated this committee was formed to address concerns about development in the Estes Valley. The committee submitted a letter which is included in today's Planning Commission materials. Mr. Spooner indicated the committee would be willing to meet with Staff/Commission to discuss details and concerns in a friendly manner.

Various townspeople spoke. All had the general opinion that close attention needs to be paid to habitat, development, and how the local economy and health of habitat may be affected by both. Director Joseph pointed out the possibility of a trial study to gain a better understanding of how a study may look. He also assured developers that variance procedures would still be in place and setback variances could be brought before the Board of Adjustment.

Director Joseph stated that working definitions for the various zones will need to be written. He offered a sampling of riparian definitions that could be part of the proposed code. Staff is open to suggestions from the public for crafting the best definition possible for the Estes Valley. He has confidence that workable definitions can be written and agreed upon by all interested parties.

Commissioner Grant appreciates the effort Staff and Planning Commission have put forth thus far on this study. The purpose of this Commission is to render the best judgment according to the code. A lot of grey areas will have to be weighed. He is confident that the process is working. The Planning Commissioners are not experts in the field, but always use their best judgment to reach a conclusion.

It was moved and seconded (Tucker/Hull) to CONTINUE the UPDATE TO THE ESTES VALLEY COMPREHENSIVE PLAN, APPENDIX TWO, RESOURCE INFORMATION to the December meeting. The motion PASSED unanimously with one absent.

5. 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

Staff Presentation:

The basic revision presented this month is to replace the Division of Wildlife (DOW) as a determining body for Wildlife Conservation Plans with the newly prepared Estes Valley Habitat Assessment. The DOW will still be involved as a referral agency, but they will not be required to determine “significant adverse impact” in order to trigger a site-specific wildlife study. Instead, any land that contains areas identified as Critical Habitat on the Priorities for an Ecological Network exhibit found in the Estes Valley Habitat Assessment in Appendix A and in the Estes Valley Comprehensive Plan will automatically be subject to site-specific assessment and preparation of a Wildlife Conservation Plan. Other notable revisions include the elimination of the thirty-foot river setback for properties developed prior to 2000. This is proposed to revert to a fifty-foot setback. New features include the provision of a Riparian zone setback of fifty feet.

Public Comment and Discussion with Commissioners and Staff:

Ron Norris/ARD President – Mr. Norris commented on the code revisions being positive ones. He suggests having the important category inserted with a sunset clause of one or two years to allow time to determine feasibility. Mr. Norris would like to see the annual review included to verify compliance.

Fred Mares/Town Resident – Mr. Mares thinks more specific definition is needed to explain “to the maximum extent feasible” in §7.8 and §7.4.C.1. Developers, biologists, planning commissioners, attorneys, etc., will all have their own definitions, which could vary greatly. In §7.8.F.2, he questions whether the language used is strong enough to grant the decision-making body the authority to require a study. He would also like to see the words “in writing” added to the study procedures. Mr. Mares views §7.8.F.4 as stating a finding will be issued, but feels it does not go far enough in assisting the Planning Commission with authority to approve or deny the project based on that finding. Finally, Mr. Mares supports the waiver of the study as long as there is public notice prior to the waiver.

Director Joseph indicated there are already definitions in place for “maximum extent feasible” and “maximum extent practicable” that have legal meaning and defensible basis in case law. The Estes Valley is a community that has to balance the needs for growth in the community with the needs to protect the natural setting that attracts growth.

It was moved and seconded (Tucker/Hull) to CONTINUE agenda item 4.a., PROPOSED AMENDMENTS TO THE ESTES VALLEY DEVELOPMENT CODE, BLOCK 12, to the December meeting, with Staff directed to continue to work on drafting specific definitions. The motion PASSED unanimously with one 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

Staff Presentation:

Planner Shirk summarized the past history of the proposed code changes for ADUs in the community. Discussion today will center on lot size, number of units, size of the ADU, and attached versus detached units. Concerning the basis of lot size versus zoning district, Commissioner Klink stated there are very few lots that would actually meet the minimum lot size requirement and believes we need to agree on using an actual physical lot size measurement rather than the zoning district in order to maintain consistency. Director Joseph questioned the Commission on detached units having a higher standard and only be allowed on lots of a larger size than what you might otherwise allow in terms of integrated or attached units. Also, should there be a minimum lot-size standard for detached ADUs? The proposed code states the ADU has to be closer to the principle dwelling than the property line. Some statements in the proposed code apply to ADUs differently than other types of detached structures (i.e. garages). ADUs would be required to comply with architectural standards, there would be a maximum size of 49% of the principle dwelling or 1000 square feet, whichever is less. Limits of disturbance would apply. Concerning properties with water wells, the Division of Water Resources will not allow detached accessory dwelling units if the principle unit is on a well unless the well permit specifically contains such allowances. Other communities allowing detached ADUs include Larimer County, Summit County, Glenwood Springs, Longmont, Ft. Collins, and others. None require minimum lot sizes. Aspen requires any ADU to be detached. To quantify applications, Larimer County had zero applications in 2004-2005, six in 2006, nine in 2007, and seven applications thus far in 2008.

Planner Shirk pointed out that according to code in effect today, detached units are not allowed. The restrictions on integrated units are a function of the lot size with relation to the zone district. For attached units, code requires the unit be integrated within the principle structure; meaning common walls and living areas must exist. The code changes proposed include three different types of units. The chart of non-compliant lots supports that we should go with zone district instead of lot size due to number of odd lots. Three definitions have been written, which are based zoning district, regardless of lot size; the larger the zoning district, the more separate the ADU could be from the principle dwelling.

The second point deals with occupancy and rental options. Town Attorney Greg White has stated the Town does not have the statutory authority to evict tenants in rentals. Planner Shirk indicated most other counties allow rentals of one unit on the property. Some allow a minimum three-month rental period. Vacation-home rentals are not allowed in any counties compared. Planner Shirk stated the proposed code would still maintain single-family dwelling status with the number of occupants capped at eight unrelated individuals, and would also require a land-use affidavit that property owners would have recorded with the Clerk and Recorder's office. This document would run with the deed on the property. It is Planner Shirk's thinking that the Comprehensive Plan supports the concept of ADU rentals under its housing policies, which puts an emphasis on creating attainable housing.

The third point is the proposal of an ADU size limit of 49% of the size of the principle dwelling, with a maximum of 1000 square feet. Most ordinances in other counties have a variety of size limits between 800 and 1000 square feet. After talking with local designers and contractors, Planner Shirk concluded that a 1000 square-foot could easily be a two-bedroom dwelling.

Finally, concerning review by Planning Commission, Planner Shirk indicated Larimer County requires going before the County Commissioners for approval of a detached ADU. For the Estes Valley, Planner Shirk recommends a review by the Planning Commission for detached units in order for affected property owners to be notified and given the opportunity to comment. If covenants are in place for the neighborhood, they can be addressed at that time. Commissioner Klink pointed out from discussion with Town Attorney White that covenants can be written to include the approval or denial of ADUs. Also, other restrictions on certain lots in a neighborhood can be added to the covenants upon agreement by affected neighbors. Commissioner Hull noted that any approved ADU will be required to share the driveway on the property.

Public Comment and Discussion with Commissioners and Staff:

Ron Norris/ARD President – This particular group has researched and talked to other neighborhood groups about the proposal and they support any clarification and specific examples. He indicated there were concerns about the extent of the code revisions as described in October, including extensive code changes when the demand for ADUs seems low; unnecessary code changes when many properties already qualify; potential drastic neighborhood changes if many people constructed ADUs by applying use-by-right privileges; impact on utilities; and the enforcement of rentals, if allowed. Mr. Norris stated that ARD supports review by the Planning Commission, and would appreciate being able to provide input on lot sizes, square footage, etc.

Tom Ewing/Town Resident – Mr. Ewing would appreciate clarification on details. He is concerned about the enforcement issues if rentals are allowed, and supports using actual lot size rather than zoning district. If rentals are allowed, Mr. Ewing would prefer long-term rentals.

Ray Duggans/Local Business Owner – Mr. Duggan has a client on High Drive with a situation of possibly not being able to expand or improve the existing detached unit on his property if these code changes occur, and would appreciate consideration of these types of instances when writing the new code.

Steve Lane/Basis Architecture – Mr. Lane believes the detached concept is a very good idea. He has recently seen an increased demand for on-site dwellings for caregivers. Mr. Lane supports long-term rentals (90 days or longer). He feels the proposed architectural standards are not well-written, and should be left up to architectural control committees in individual neighborhoods. It is his opinion that because the proposed code is so specific, it could create design difficulties and also over-burden the architects, property owners, and designers. He indicated most inquiries for detached ADUs are property owners of 10-acre lots or larger, with specific reasons to build the unit. Director Joseph indicated the proposed architectural standards were written in order to avoid seeing the very worst structures, and it could be possible to include an option for exception when reviewed by the Planning Commission. It is Staff's goal to create the code so the integrity of the community will be maintained.

Several Town residents commented. Concerns expressed were high density, landlord/tenant rights if rentals are permitted, and standard sizes versus size based on the square footage of the lot.

Thomas Beck/Local Architect – Mr. Beck believes the intent of the architectural standards is good, but the practicality brings unintended consequences. Regarding lot size, he does not think a 1000 square-foot ADU will not greatly impact the neighborhood on a lot of ½ or 1 acre. Mr. Beck supports long-term rentals used for employee housing, long-term care,

etc., and opposes short-term rentals unless they are already allowed in that zoning district.

Planner Shirk reminded those in attendance that the current code allows a maximum of 1200 square feet of structure for accessory use (attached or detached). Therefore, garages and storage sheds would take away from the total amount of square footage allowed for an accessory dwelling unit. He also noted that current regulations show 27% of the residential lots in the Estes Valley meet the 1.33 minimum lot size; however, some of these are on wells which could not support a detached ADU.

Paul Brown/Town Resident – Mr. Brown supports detached units on all lots. The size of the ADU could be directly related to the size of the lot. He expressed this as a way to be fair to all property owners. Mr. Brown also corrected a statement he made at a previous meeting concerning minimum square footage of ADUs. Larimer County currently allows detached units as small as 120 square feet. Because of this, he would like to see Staff and the Commissioners consider a minimum size of 300-400 square feet.

It was moved and seconded (Hull/Klink) 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 December meeting. The motion PASSED unanimously with one absent.

6. REPORTS

Director Joseph reported that interviews to create an Estes Valley Open Space Plan have taken place, and a contractor will be awarded after Town Board approval. He thanked Commissioners Kitchen and Hull, John Erickson, Richard Homeier, and K-Lynn Cameron for their participation in the open space interviews. Conservation Partners, a well-established conservation consulting firm, is the choice of the committee and the contract agreement will be presented to the Town Board for approval. Public hearings will most likely begin after the first of the year.

Planner Chilcott reported that vacation rentals and Bed and Breakfast code revisions will be on the agenda for the December Planning Commission meeting. A draft is ready to be presented to the Planning Commission for recommendation to the Board of Trustees and Larimer County Commissioners.

Planner Shirk reported on the staff-level approval of two YMCA projects. The Legett Christian Center will be a small chapel across the street from Hyde Chapel, and the Arts and Crafts Building has also been approved. Both are included in Development Plan 08-06. Improvements are progressing nicely at the YMCA.

Chair Eisenlauer adjourned the meeting at 4:50 p.m.

Ike Eisenlauer, Chair

Karen Thompson, Recording Secretary