

RECORD OF PROCEEDINGS

Regular Meeting of the Estes Valley Planning Commission December 16, 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 Hull, Kitchen, Tucker, and Klink

Also Attending: Planner Shirk, Planner Chilcott, Town Attorney White, and Recording Secretary Thompson

Absent: Commissioners Amos and Grant, Director Joseph

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

Sandy Lindquist/Town Resident – Ms. Lindquist read her statement communicating information about the uniqueness of the Estes Valley and the high quality of the community members. It is her opinion that the Board should not try to emulate other mountain resort towns, and she feels the Planning Commission is leaning that direction. We should be the ones setting the high standards rather than following other community's development standards. She has concerns about the natural migration of wildlife and how it may relate to new development. Finally, she encouraged the Planning Commission and Staff to be cautious in their decisions on new development in the Estes Valley. A copy of Ms. Lindquist's statement was given to the Recording Secretary.

Brian Michener/County Resident – Mr. Michener would like to see a unifying vision between the Estes Valley and YMCA. Mr. Michener stated the wildlife is the loser when it comes to development, and would like to see less development in the Estes Valley.

2. CONSENT AGENDA

a. **Approval of meeting minutes dated November 18, 2008.**

b. **AMENDED PLAT, Sarkisian Properties, LLC, Lots 29 & 30, Block 7, Country Club Manor, 557 Driftwood Lane**

Applicant:	Sarkisian Properties, LLC
Request:	Combine two existing lots into one lot
Staff Contact:	Dave Shirk

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

3. ADOPTION OF THE 2008 ESTES VALLEY HABITAT ASSESSMENT

Planner Chilcott gave a brief update on the progress of the Habitat Assessment, stating Staff is anticipating that Planning Commission will vote on the Habitat Assessment prepared by EDAW and the development code revisions at the same Planning Commission meeting. The current draft of the code revisions is not complete enough to vote on and staff is recommending that Planning Commission continue the Assessment and the Code revisions to the next regularly scheduled meeting in January. Staff is reviewing the comments Planning Commissioners and the public provided in prior meetings. An updated draft of the Code revisions will be available for review at the January meeting. We do not have any new information to present at this meeting. Since we published a legal notice placing these items on today's agenda, staff recommends that we take new public comment.

Public Comment:

Betty Nickel/County Resident – Mrs. Nickel is unhappy with the quality of the maps, as she thinks they have too little detail for community residents to be able to recognize their specific property. Her personal residence has a footprint of less than 1000 square feet on five acres of land, and the possibility exists that they may not be able to expand the existing structure. Mrs. Nickel endorses open space and has donated land to the Land Trust. She opposes the habitat maps as they relate to the possibility of property owners discovering their property is unbuildable.

Planner Chilcott stated that a full-size map is available for viewing in the Community Development office, and the maps on the Town website are designed to be able to zoom in on specific locations. Staff will review the website to make sure the maps are available.

John Spooner/County Resident and Estes Valley Contractor's Association (EVCA) representative – Mr. Spooner reported the EVCA met and reviewed the minutes from the October meeting. He would like to see draft minutes of the most recent meeting available to the public at an earlier date. Currently, minutes are not posted to the website nor made available to the public until after approval by the Planning Commission (i.e. November minutes are posted to the website after the December meeting). He stated the EVCA is not opposed to wildlife studies and attaching them to particular pieces of property. He indicated that the proposed code has no section specifying standards, by which to approve or disapprove a project. According to the EVCA, written standards or other mechanisms are needed so property owners and/or potential buyers will have assurance there can be a project built before they go through the study process. These standards should be clearly delineated. For example, if a land owner has an assessment completed by a biologist, there is no clear definition in the proposed code as to who makes the decision on the project's ability to proceed. With different biologists having different opinions, Staff and the Planning Commission will be put in uncomfortable situations when making final decisions. The EVCA is also concerned about the Habitat Assessment maps needing more detail and they would like to see property lines included. They also believe the property owners should be notified of the potential impact on their property due to the Habitat Assessment and proposed code revisions. They feel there should be a mechanism for the developer or property owner to have some idea whether or not a proposed project would be approved. The EVCA recommends a review of the application by the Planning Commission that would determine possible constraints on the development prior to moving forward. Additionally, a clearer definition of riparian should be written in order to simplify the survey process. Concerning setbacks, EVCA is concerned about the size of the proposed setbacks in certain habitat areas, and feels a clearer definition is needed.

Commissioner Klink appreciates the thoughts brought by the EVCA. Standards are a difficult subject, and Staff is looking for other communities that may have standards in place to use as a guide for writing code that will pertain to our unique community. They will also be contacting EDAW to see if more information can be provided on the maps. Commissioner Klink directed Planner Chilcott to search for standards in other communities and report back to the Planning Commission next month.

Commissioner Hull suggested the local newspaper could possibly help by publishing a full-page map. She stated the public need to be aware of what is going on and have the right to know which habitat category is connected to their property.

Betty Nickel/County Resident – Mrs. Nickel wants assurance from the Commission that a home could still be built on a piece of property zoned residential at the time of purchase. Commissioner Klink stated that there may be constraints on the property that limit the footprint, etc., depending on the habitat label placed on the property.

Frank Theis/Town Resident – Mr. Theis noted the Town Board decided not to pursue the contract for the open space study, where Staff was going to provide the mapping of the public and private open space in the Estes Valley. Mr. Theis suggested Staff proceed with

the open-space mapping to provide a valuable tool for the wildlife code revisions and assessment. Planner Chilcott indicated the Community Development department has access to GIS maps showing private and public open space but is unsure whether or not these could be made accessible on the Town website. She will look into this matter.

Fred Mares/Town Resident – Mr. Mares agrees with Mr. Spooner. He is very willing to work with the Staff and EVCA on the complex issues. Commissioners Klink and Hull suggested the possibility of a citizen's committee.

Celine LeBeau/Town Resident – Mrs. LeBeau has ten years experience as a biological consultant, and has written several studies on habitat. She sees several flaws in the habitat assessment completed by EDAW. One of her concerns is the information used in the assessment came from a study in the National Park, which is higher in elevation than the Estes Valley and notably different in the types of habitat involved. Mrs. LeBeau stated a clearer definition of aquatic and riparian are needed. Commissioner Klink would like to see the riparian issue clarified with EDAW, as well as more definition of critical habitat. Planner Chilcott indicated that Staff has been in contact with EDAW and is awaiting a response. Mrs. LeBeau stated that because species lists will always be updated, she does not see a need for a defined species list. She feels the buffer for aquatic habitat is too extensive, as there are various levels of functionality with aquatic habitat. Mrs. LeBeau suggested flexibility with the assessment depending on the type of development. Finally, she believes there are too many unknowns to adopt this habitat assessment as written into the code.

Matthew Heiser/Town Resident – As an architectural designer in the Estes Valley, Mr. Heiser is in favor of some type of assessment, but feels the proposed setbacks are too extreme, stating that a 300-foot buffer around riparian areas is 10% of the Estes Valley. Mr. Heiser noted the proposed buffer for raptor areas could possibly cover 43% of the valley. Also, he stated there is no clear definition of what the buffer area entails. Mr. Heiser agrees with the importance of having standards, and suggests the standards of the assessment be the requirements for the developers. With standards, conflicts could be discovered and addressed early on. Mr. Heiser also suggested that biologists hired to conduct the studies could possibly be pre-qualified by Staff and Commissioners.

Bill Van Horn/Local property owner – Mr. Van Horn stated that an area on Fall River Road currently proposed as critical sheep habitat is on land that he owns. He has never seen bighorn sheep there. Mr. Van Horn considers himself knowledgeable about sheep habitat, and said sheep tend to congregate in small areas and are creatures of habit. He agrees that resources for very detailed maps are limited, but the Planning Commission is dealing with resident's property rights and encouraged them to be cautious in their decisions. Also, according to the map, there is a raptor nest at Nicky's Restaurant, which he believes is incorrect. Mr. Van Horn stated there is more wildlife in the Estes Valley than in the past, which is directly related to development and irrigated property. He does not believe development would encroach on elk migration.

Commissioner Tucker noted that neither the Planning Commission nor the public can expect the map to be accurate to within 1/8 mile, which is the reason for the proposed required site visit before a project is approved. Town Attorney White said the resources for upfront individual parcel evaluations are not available, and at some point we will either have to come up with a process that works, or stop the process. If property owners think there are errors in the mapping process, it would be up to the individual property owners to bring it to Staff's attention. Commissioner Klink believes both sellers and buyers need a mechanism to be able to challenge the habitat assessment. Planner Chilcott agrees more clarification is needed for critical and important habitat definition. Town Attorney White stated the key is predictability from all sides about what happens to a particular piece of property upon development.

Ron Norris and Sandy Osterman, Town Residents, also spoke in favor of a better-defined assessment.

Seth Hanson/Local Developer – Mr. Hanson stated Planners Shirk and Chilcott are already very sensitive to wildlife when reviewing development plans, and feels the people with undeveloped property are those that will be hurt the most.

All Planning Commissioners thanked the members of the public who attend the meetings to present their views, as the information given is invaluable.

It was moved and seconded (Klink/Hull) to CONTINUE discussion of the proposed ADOPTION OF THE 2008 ESTES VALLEY HABITAT ASSESSMENT and item 4.a WILDLIFE HABITAT PROTECTION to the January meeting. The motion PASSED unanimously with two absent.

Ten minute recess at 3:10 p.m. Meeting resumed at 3:20 p.m.

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

a. WILDLIFE HABITAT PROTECTION – New public comment is being accepted to the 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.

Public Comment: Joint discussion with habitat assessment – see above.

b. ACCESSORY DWELLING UNITS – New public comment is being accepted to the 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

Public Comment:

Planner Shirk stated that today’s focus will be on the text in the code and followed-up with discussion about said text. After hearing public comment at previous meetings, Planner Shirk stated there are possible negative aspects of allowing ADUs: potential for increase in population density, increase in neighborhood traffic, potential stress on the current infrastructure, changes in the neighborhood character, and possible impact on property values. Today will hopefully bring clarification on many of those concerns.

In the proposed code there are three different types of ADUs; Detached, Attached (may or may not have interior access but has a common wall), and Integrated (i.e. basement finish). A change in the proposed code will base the type and size of ADUs on lot size rather than zoning districts. It is proposed that ADUs will be allowed as use by right, not by special review by a governing board. The review process would include a staff-level review for all integrated and attached units, with appeals going to Planning Commission and Town Board or County Commissioners. A staff-level review would allow for notification of neighbors and the opportunity for comment, but there would be no public hearing. Detached units would be allowed as a use by right, but a public hearing with the Planning Commission would be required, with appeals forwarded to Town Board or County Commissioners. Those with the right to appeal would include the applicant, property owner, and adjacent property owners within 500 feet of the proposed ADU. Ownership of the ADU shall be common, where the owner of the principle residence is the owner of the ADU, and only one ADU per parcel would be allowed, regardless of lot size. The occupancy shall not exceed the current code for eight unrelated individuals per parcel. Concerning home occupations (no employees reporting), either an ADU or a home occupation would be allowed, but not both. Proposed tenancy regulations state a

minimum stay of 90 days, which is a decision based on summer employment. No short-term or vacation rentals would be allowed.

Commissioner Klink stated he is against renting any ADU as a short-term rental or vacation home. After conversations with the public, he was made aware of the adverse affect of unpaid sales tax by most owners of vacation homes. Consequently, if short-term ADU rentals are allowed, there is great potential for the loss of sales tax revenue due to enforcement issues of ADUs.

Commissioner Hull sees occupants of ADUs either as caregivers or summer employees. She believes ADUs should not be rented, and there should be strong language in the code stating such. Planner Shirk states the current demand from the public is not for rentals, but for guest suites. Commissioners Kitchen and Eisenlauer also stated their opinion against the rental of ADUs. Commissioner Klink indicated code disallowing rentals could be revised if demand changed and the community was supportive of allowing rentals.

Planner Shirk indicated the proposed code for the size of ADUs states detached shall not have more than two bedrooms, and shall be no larger than 49 percent of the floor area of the principle dwelling (excluding attached garages and other areas of accessory use), with a maximum of 1000 square feet. A typical house in Estes Park would allow a 980 square foot ADU. The square footage of the ADU would count towards the cumulative area of accessory use on the parcel. Planner Shirk indicated Staff arrived at the 1000 square foot maximum in order to minimize the impact on the neighborhood and infrastructure. Utilities for the ADU will need to comply with current infrastructure. If the parcel is on a well, the owner will need to have permission and a letter of interpretation from the state Division of Water Resources in order to build the ADU. Private water systems still need to be addressed. Some of these associations purchase their water from the town and have private distribution systems. More specifically, Dunraven Heights is on a community well, which will need to be resolved. Staff will work on addressing these issues over the next month.

Staff is recommending that ADUs would be exempted from road standards. Planner Shirk stated Larimer County staff recommended against requiring approval from road associations to build an ADU. Planner Chilcott indicated the need to clarify which road standards would be exempted, as some would still require compliance. Planner Shirk said thought should be given to those with private roads and/or shared driveways and whether the need for approval from the users exists. It is proposed that off-street parking would be allowed only in defined parking spaces not located in yard setback areas and existing landscaping standards would apply. Parked vehicles should be located in approved locations in order to avoid parking on the street. The total number of vehicles on the property must comply with the existing code. Also, all vehicles would be required to use the same driveway. Concerning site design, it is proposed that existing code for limits of disturbance as well as landscaping requirements would apply. The proposed architectural requirements (roof pitch, trim, etc.) would keep the ADU subordinate and tied to the main dwelling. Of all the architectural requirements, Planner Shirk thinks the most important of these regulates the location of the main entrance. For attached units, it is recommended that Staff have the ability to grant exceptions and modifications through a review process. Exceptions and modifications to detached units would go before the Planning Commission. Discussion followed with the Board about which proposed words and sentences to add and which to discard. Staff has also proposed a Land-Use Affidavit requirement, which the property owner signs to acknowledge the land-use requirements. This document would be recorded with the county clerk, would run with the deed on the property, and would also be tied to any building permits. It is proposed that any appeals would go through Town Board or County Commissioners. Building permit fees would apply as well as any applicable impact fees that may be applied at the time of the approval. Utility fees and regulations would be applied by their respective departments. Staff will review the current Development Plan Review fees to establish an acceptable fee. The number of animals shall be limited and the code rewritten to ensure an acceptable but not excessive number be allowed. Code still needed includes those

dwellings that are only used as sleeping quarters, with no kitchen or bath. Under the current code, “bunkhouses” are prohibited. In order to be considered an ADU, it must be an independent living unit with cooking facilities. After a short discussion about what constitutes the definition of cooking facilities, the Commission decided to continue the bunkhouse issue to another month in order to allow public comment on today’s subject. Commissioner Tucker indicated he would like to hear public comment on the size of the lot and when it becomes acceptable to construct attached or detached ADUs. Planner Shirk stated that until the code changes in 2000, most of the Estes Valley allowed multiple units on lots of 20,000 square feet (1/2 acre) or more. Commission Hull supports attached ADUs on a minimum lot size of one acre, and supports detached ADUs on no less than 5 acre lots. Klink indicated the current proposal states ADU type and size would be based on the zoning district; detached units would be allowed on land zoned E-1–Estate, attached units would be allowed in R-1 areas, and integrated units would be permitted in R zoning districts. However, the Commission is considering changing the proposal to have the requirements based on actual size of the lot rather than the zoning district.

Public Comment:

Ron Norris/Association for Responsible Development (ARD) – Mr. Norris would like to remind the Commission of unintended consequences and changes in the character of the neighborhood when ADUs are allowed. He wants to reinforce that the code should state the purpose of ADUs (seasonal workers, extended family, etc.) Also, the rights of the existing property owners can be protected by requiring a case-by-case public review for all ADUs. ARD supports the disallowance of ADUs as rentals. ARD supports attached units on one acre or larger, detached units on 2.5 acres or larger, including the case-by-case review with Planning Commission for all units. ARD also recommends limiting the size of the ADU to 1000 square feet or less.

Rita Kurelja/Estes Park Housing Authority – Ms. Kurelja would like to have Commissioners revisit the rental issue. Rentals may not be a primary purpose, but it could be one of the purposes. The proposed definition of how ADUs can be used is very narrow and could ultimately create more problems. ADUs will not solve the housing issues in the valley. Also, these issues are more readily solved by a collection of small changes rather than one big change. As an example, Ms. Kurelja would encourage the approval of seasonal rentals for those cases where a change occurs from the original purpose of the ADU. These rentals could have a big impact on the families that come to the Estes Valley to work for the summer. Other resort communities have encouraged the Housing Authority to consider ADUs as prospects for housing. Please consider being able to allow rentals.

Steve Nickel/County Resident and representative of Portfolio Group – Mr. Nickel stated the proposed definition of an ADU is specifically for cooking facilities, and questioned what determines a “cooking facility” in an ADU. An ADU needs to be defined as a permanent and independent living, cooking, and sleeping facility. Mr. Nickel suggests “kitchen” be defined as having installed cook tops and/or ovens with 220 volt electric or gas hookups. Microwaves, refrigerators, and sinks should not define a kitchen. He would suggest a very clear definition of an Accessory Dwelling Unit.

Betty Nickel/County Resident – Mrs. Nickel stated permits are not required for cabinets, microwaves, etc., but are required for ranges or ovens due to the electric/plumbing requirements. Planner Shirk indicated that wording for the definition of kitchen came from the building code definitions.

Ray Duggans/Local Business Owner – Mr. Duggans has a client on High Drive with a bunkhouse who is unable to improve the property due to the ADU issue. Prior to the code change in 2000, the property owner’s structure was compliant. Mr. Duggans would appreciate clear definition and timely action on this issue.

Joe Coop/County Resident – Mr. Coop thinks the main problem with the definition is where it involves detached units. He has a detached garage and would like to convert it to a bedroom with a bathroom for guests. Planner Shirk reminded those in attendance that guest quarters are only allowed in certain zoning districts. Mr. Coop thinks that ADUs and

guest quarters are two separate items and should not be combined. It is his opinion that guest quarters should be approved by staff with a site plan review. ADU review should go before the Planning Commission. Mr. Coop agrees with Ron Norris' size and acreage suggestions.

Mark Elrod/Town Resident – Mr. Elrod brought up the possibility of aging parents or children living in an ADU and being asked or offering to pay rent. He encouraged the Planning Commission to allow enforceable rentals. Commissioner Tucker suggested solving that issue by writing code about renting to non-family members.

Kevin Schwery/Town Resident – Mr. Schwery supports detached ADUs. He was recently required to move out of his ADU in the E-1 zoning district due to non-compliance. He is currently renting the principal dwelling. Mr. Schwery also supports detached ADUs on one acre parcels. As a local business owner, he would like the opportunity to be able to house his employees in his ADU.

Matthew Heiser/Local Designer – It is Mr. Heiser's opinion that the architectural standards or design flexibility should be left in the hands of the designer. As a board member of the Estes Park Housing Authority, he reminded the Commission of the section in the Estes Valley Comprehensive Plan that relates to affordable housing, and he would support rentals of ADUs.

Paul Brown/Town Resident – Mr. Brown gave Recoding Secretary Thompson a handout with previous zoning code that lists locations where detached guest houses were allowed. Many substandard detached ADUs already exist and owners are not allowed to improve them due to the current code. Mr. Brown suggests allowing detached ADUs based on lot size: nothing smaller than 300 square foot minimum to 400 square foot maximum on lots 10,890 square feet to 21,779 square feet. This would allow upgrades to already existing ADUs on small lots. Next, 300 square foot minimum to 600 square foot maximum ADUs allowed on lots sized 21,780 square feet to 43,559 square feet to allow a new detached unit. A 300 square foot minimum to 800 square foot maximum ADU allowed on lots 43,560 square feet to 108,899 square feet. Finally, 300 square foot minimum to 1000 square foot maximum ADUs allowed on lots over 108,900 square feet. Mr. Brown also included photo examples of various sized units. He feels that small units are not imposing on a small lot, and it gives the property owners the ability to maintain what they already have. Mr. Brown suggested the Commission ask Will Birchfield to review past building code books for more complete definitions of a kitchen.

Planner Shirk stated that legally established detached ADUs may be grandfathered in, but they should check with the planning department to make sure they can be remodeled. Non-conforming uses and intermittent rentals create problems when owners want to upgrade. Mr. Brown has had some success with the county on obtaining building permits to reinstall bathrooms that were originally on summer water systems and removed from the units. Mr. Brown would like to see code written so these types of situations can be dealt with legally.

Commissioner Tucker asked that these non-conforming buildings be included in the January study session to begin to determine if there are ways to improve them either using current codes or writing new codes.

Cherie Pettyjohn/Town Resident – Ms. Pettyjohn thinks that quick action should be taken to get this code approved due to the EVDC being a living document. She feels the Commission should be able to come up with an equitable solution without months of discussion/study.

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 January meeting. The motion PASSED unanimously with two absent.

- c. **SHORT-TERM RENTALS** – revisions to vacation home regulations, including revisions to the definition of accommodation use, guest room, guest quarter, household living, and nightly rental in the Estes Valley Development Code Chapter 13, and revisions to distinguish between Bed & Breakfasts and vacation home uses and the districts in which these uses are permitted.

It was moved and seconded (Hull/Kitchen) to CONTINUE agenda item 4.c, SHORT-TERM RENTALS, to the February meeting. The motion PASSED unanimously with two absent.

5. **REPORTS**

None

6. **ADJOURN**

Chair Eisenlauer adjourned the meeting at 5:10 p.m.

Ike Eisenlauer, Chair

Karen Thompson, Recording Secretary