

RECORD OF PROCEEDINGS

Regular Meeting of the Estes Valley Planning Commission

March 17, 2009, 1:30 p.m.

Board Room, Estes Park Town Hall

Commission: Chair Doug Klink; Commissioners Wendell Amos, Alan Fraundorf, John Tucker, Betty Hull, Steve Lane, and Ron Norris

Attending: Chair Doug Klink; Commissioners Alan Fraundorf, Betty Hull, Steve Lane, and Ron Norris

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

Absent: Commissioners Wendell Amos and John Tucker

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

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

Chair Klink introduced and welcomed Commissioner Steve Lane as the newest member of the Estes Valley Planning Commission. Commissioner Lane was appointed by the Larimer Board of County Commissioners and will serve as replacement for Commissioner Kitchen.

1. PUBLIC COMMENT

Town Resident Mark Elrod presented a document concerning the current Estes Valley Board of Adjustment application for a variance to install a wind turbine. It is his opinion that this type of variance request should be heard by the Estes Valley Planning Commission rather than the Board of Adjustment. Commissioners Hull and Norris would like to see this topic discussed at a future Planning Commission meeting.

2. CONSENT AGENDA

Estes Valley Planning Commission minutes dated February 17, 2009.

It was moved and seconded (Hull/Fraundorf) that the Consent Agenda be accepted, and the motion passed unanimously with two absent.

- 3. ABUNDANT PROPERTIES OF THE ROCKIES, LLC – Lots 1 & 2, Block 4, 2nd Amended Plat, Town of Estes Park, and Metes and Bounds Parcel located at 240 E. Elkhorn Avenue - 230, 234, and 240 E. Elkhorn** – Request to combine two existing lots into one lot, adjust the boundary line between two lots, and reduce the width of a utility and access easement

Planner Chilcott stated the applicant has requested this item be continued to the next regularly scheduled meeting.

It was moved and seconded (Norris/Hull) to CONTINUE this agenda item to the next regularly scheduled meeting, and the motion passed unanimously with two absent.

- 4. DEVELOPMENT PLAN 09-01 – YMCA OF THE ROCKIES PARADE GROUNDS – Metes and Bounds located directly north of Ruesch Auditorium, 2515 Tunnel Road, Estes Park** – Request to convert Kallenberg Drive parking lot into parade grounds and an improved parking lot

Staff Report:

Dave Shirk reported this request is to redevelop and improve the existing parking lot, five-point intersection, and parade grounds immediately in front of the Ruesch Auditorium at the YMCA of the Rockies. This development plan is central to the overall concept of the YMCA's Master Plan to have a pedestrian-centered core area. The new parking lot will have higher landscaping and lighting standards than required by the Estes Valley Development Code and the YMCA Master Plan.

Mark Holdt, Vice President of Planning and Project Development at the YMCA gave a presentation which included a brief overview of the Master Plan. The current request will eliminate a five-point intersection, allow a safer and more aesthetic pedestrian promenade, and reduce vehicle traffic in this high pedestrian area.

Roger Sherman of BHA Design presented a more detailed version of the plan. This area was strategically designed to preserve many of the existing traditional elements (fire ring, flag pole, etc). Parking lot will contain 118 stalls, seven being ADA compliant. Proposed lighting is below the maximum allowable light levels. In front of Ruesch Auditorium, it is proposed to have a guest drop-off point as well as an outdoor dining area. A small amphitheatre is proposed between Hyde Chapel and the Administration building, as well as a garden between the Administration and Walnut buildings. It is anticipated to have this first phase completed by May, 2010. Currently, construction of the western-most part of the loop road is taking place and is to be completed by Memorial Day, 2009. Mountainside Drive will be closed most of the summer in order to complete these improvements. Mr. Sherman noted that these construction projects are donor driven and will proceed as funding allows. Planner Shirk indicated the vesting period on this project is three years.

Planner Shirk recommended conditional approval of the development plan.

Public Comment:

Brian Michener/County Resident – The proposed roads are an improvement that will promote the safety of guests. Mr. Michener expressed concerns about people driving faster once the road improvements are completed, and he also foresees a need for pedestrian crossings over the roadside ditches. He would like to see improved lighting on the trail system as well as the street signs. Having some unanswered questions, Mark Holdt from the YMCA invited Mr. Michener and any others to call him or stop by his office. Planner Shirk noted the new street signs will comply with the county sign codes, be reflective at night, and have consistent height throughout the property.

It was moved and seconded (Hull/Norris) to approve Development Plan 09-01, YMCA of the Rockies Parade Grounds, for the Metes and Bounds Property located directly north of Ruesch Auditorium, 2515 Tunnel Road, Estes Park, with the findings and conditions recommended by Staff, and the motion passed unanimously with two absent.

Conditions:

1. **Compliance with the approved Development Plan;**
2. **Approval of the final construction plans by the Larimer County Engineering Department prior to the issuance of the grading permit and/or first building permit;**
3. **Landscaping legend should graphically delineate the proposed landscaping;**
4. **Legal description shall include the land area;**
5. **Planning Commission signature block should include the current Chair (Douglas Klink);**
6. **Compliance with memo from Larimer County Engineering to Town of Estes Park dated February 23, 2009, which is a request for As-Built plans following completion of the project;**
7. **CS1 and LS sheets shall be submitted in mylar form.**

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

- a. **ACCESSORY DWELLING UNITS (ADU)** 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, 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.

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Staff Report:

Planner Shirk gave a brief history of the code change impetus and what has transpired thus far. It was noted that the option for detached units has been removed from the revisions subsequent to the February 17, 2009, Planning Commission meeting.

Staff has revised the proposed code to allow ADUs in all single-family residential zoning districts, except the R-1 district, regardless of lot size, but with only one definition. The proposed definition of an accessory dwelling unit states: (a) an accessory dwelling unit is a second dwelling unit either in or added to an existing single-family detached dwelling on the same lot as the principal dwelling, for use as a complete, independent living facility with provisions within the accessory unit for a kitchen, eating, sanitation/bathing, and sleeping. Such a dwelling is an accessory use to the main dwelling; (b) an accessory dwelling unit may or may not have interior access to the principal dwelling unit. Exterior access to the accessory dwelling unit may be included, but is not required. At least 12 feet along one wall of the accessory dwelling unit must be contiguous to a wall of the principal dwelling unit. Planner Shirk intentionally did not specify the definition of kitchen because it already exists in the current development code.

Due to requests from the public, the code was revised to require review and approval of ADUs by the Estes Valley Planning Commission. It was noted that due to the removal of the rental option, Staff believes the need for owner occupancy of homes containing ADUs is unnecessary. Staff believes using the "development plan" process and calendar would be most beneficial for the review process. Waivers of certain plans or reports could be granted. A fee structure will be set in the near future.

Concerning (8) Limit on Tenancy, the code was revised to state vacation homes shall not be an allowed use on lots with ADUs, and no ADU shall be leased and/or rented separately from the principal dwelling unit. This language eliminates the option for short-term rental.

Planner Shirk explained the code revision concerning size of the ADU, which states the ADU can be 49% of the size of the existing floor area of the principal dwelling (excluding attached garage), or 1000 square feet, whichever is less.

Due to the removal of the option to construct detached ADUs, the requirement for underground utilities is no longer necessary.

Staff has also removed the portion of the code requiring similar architectural design to the principal dwelling, as well as that portion concerning the granting of exceptions and modifications to the architectural standards. Staff recommends the lighting standards be met as well as the entrance to the ADU being concealed and not visible from the front of the dwelling.

Concerning the non-conforming ADUs that already exist, Staff recommends to continue using the current code which states repairs and maintenance can occur but no expansion is allowed.

Commissioner Hull thanked the Estes Valley Contractor's Association for their summarizing the types and locations of existing ADUS in the Estes Valley.

Public Comment:

Jay Heineman/County Resident – Does not agree with allowing ADUs on every lot in the valley. He thinks rentals will eventually become an issue, and the unintended consequences will not be positive. He also does not think the demand justifies the need for a code revision.

Dave Albee/Town Resident – Wanted clarification that ADUs will not be allowed in R-1, R-2 and RM zoning districts. He also wanted assurance that adjacent property owners will be notified when applications are submitted.

Johanna Darden/Town Resident – Thinks the size limit should be less than 1000 square feet. Commissioner Lane clarified that the 1000 square feet counts towards the total accessory

uses for the lot (i.e. garage or detached woodshop), which would take away from the maximum size allowed for an ADU.

Planner Shirk noted that, if approved today, the first reading of the code by the Town Board would be April 28, 2009.

It was moved and seconded (Norris/Hull) to APPROVE the proposed Block 12 Amendments to the Estes Valley Development Code regarding Accessory Dwelling Units as revised. The motion passed unanimously with two absent.

Chair Klink called a 10-minute recess at 2:35p.m. The meeting reconvened at 2:45 p.m.

- b. **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 Report:

Planner Chilcott focused on aquatic and riparian setbacks. Current setbacks are 30 feet from streams, drainages, and rivers next to developed property. Setbacks are 50 feet from rivers next to undeveloped property and wetland areas. Staff is recommending 50-foot setbacks from aquatic habitat, including rivers and streams, and from riparian habitat. There is currently no minimum setback from riparian habitat.

Commissioner Hull commented on the usefulness of the riparian documents that Planner Chilcott distributed to the Commissioners per their request. Having the additional data provided more food for thought. Of the six documents reviewed, Planner Chilcott's opinion is that Protecting Stream and River Corridors and Design Recommendations for Riparian Corridors and Vegetated Buffer Strips provided the best information. She stated when comparing other areas and research, a 50-foot setback is minimal. In general these studies found that 30-foot setbacks are not effective, 50 foot setbacks offer some benefits for water quality, and larger setbacks are required for wildlife habitat protection. Staff is recommending the setbacks be increased to 50 feet. The Estes Valley Habitat Assessment recommended 100-foot setbacks.

Non-conforming structures within the setback could continue being used and repairs and maintenance would be permitted. Planner Chilcott stated according to the current setbacks, there are approximately 150-175 structures that are non-conforming. If the setback is changed to 50 feet, approximately 300 structures would become non-conforming. This is using only the high water mark, and not taking any riparian setback into consideration.

Planner Chilcott indicated there is language in the current code prohibiting the removal of existing vegetation to put in a "lawn" along streams and rivers. She noted that native grasses/vegetation carry value to the buffer, and although there are no explicit restoration standards in the code, there would be site-specific studies that would most likely recommend restoration of any affected areas.

Commissioner Klink would like more information about how the Commission would deal with the grey issues concerning trail setbacks versus setbacks for structures on private property.

Director Joseph estimates the current build-out along the rivers today is 90%. Many of these areas are prime for redevelopment. He encouraged the Commissioners to think about the current code, which allows the razing of existing developments and rebuilding in the same footprint with 30-foot setbacks.

Scott Zurn, Director of Public Works, stated that the FEMA floodplain maps are based on assumptions that need updating. When these assumptions are updated, floodplain boundaries are likely to change resulting in properties that are currently designated as outside the 100-year floodplain being redesignated as being within the 100-year floodplain. Mr. Zurn is also concerned about encroachment and development of areas close to rivers and streams and

how it relates to the Clean Water Act. He anticipates the State designating Estes Park as a Phase II community, and imposing tighter restrictions as the population increases. Mr. Zurn recommends the maximum amount of buffer due to the difficulty of meeting requirements of the Clean Water Act in the future if setbacks are not large enough. Natural filtration is important when dealing with stormwater, and the more natural areas a community has, the less costly it will be to meet any new requirements.

Public Comment:

Robert Ernst/Town Resident – After listening to Mr. Zurn, he thinks a 100-foot setback is acceptable in order to allow for filtration.

Mike Menard/EVCA President – His association is concerned about property owner's rights and the affect of greater setbacks on those rights.

Johanna Darden/Town Resident – She supports the 50-foot setback. She is concerned about the impacts of fencing on wildlife in her neighborhood, and Commissioner Klink suggested she talk to the neighbor involved and possibly Andrew Hart, the Code Enforcement Officer.

Fred Mares/Town Resident – Reviewed the letter that he presented as public comment for this month's meeting. Mr. Mares stressed the need to have goals and clear objectives when revising codes. He recommends the required "approval" of a plan, and does not think the proposed language about significant adverse impact is strong enough.

Judy Anderson/Anderson Realty & Management – Would like to remind the Planning Commission that the proposed setbacks will make some riverfront property unbuildable. Personal property rights should be considered with a possible allowance for those owners.

Sandy Osterman/Town Resident – According to Rick Spowart of CDOW, development in the North End has affected the severe deer/elk winter range.

Brian Michener/County Resident – Commented on the Spur 66 Management Plan. Some changes have been made since the plan was implemented, and many vegetation/habitat areas have been lost. The YMCA development and subsequent increased density as well as development along the highway is not conducive to healthy habitat for wildlife. Mr. Michener would like to see stronger language about what we want to preserve, as this concerns the entire future of the Estes Valley, including sustainability and economic health of the area.

Chair Klink closed the meeting to public comment.

In discussion with the Commission, Director Joseph noted Staff's view that the current setback standards should still apply to the Commercial Downtown (CD) zoning district, and possibly the Commercial Heavy (CH) and Industrial (I-1) districts. Single-family lots would be exempt from site-specific study but not from setbacks. He reminded the Commission that there are some lots that cannot be developed even with the current 30-foot setback. Board of Adjustment will continue to be the "relief valve" for the current and proposed regulations. Director Joseph noted very few variances have come to the Board concerning single-family residences located on streams or rivers.

Commissioner Norris supports a 50-foot minimum setback. Agrees with exempting the CD, CH, and I-1 zoning districts from the proposed setback requirement. Agrees with exempting single-family lots from site-specific wildlife studies. Thinks wetland and riparian areas need more definition to eliminate some of the gray area.

Commissioner Hull agrees with the CD, CH, and I-1 exemptions. She prefers 50-foot setbacks on new development and redevelopment, while keeping the 30-foot limit for existing development. She agrees with single-family lots being exempt from wildlife studies. She is in support of code language which would allow the Planning Commission to approve or disapprove a project based on inadequate wildlife protection.

Commissioner Lane agrees with CD, CH, and I-1 exemption. Agrees with single-family lots being exempt from wildlife study. Strongly agrees with measuring the setback from the edge

of the river rather than the riparian edge. Would support 50-foot setbacks in areas of redevelopment, but not in single-family zoning districts.

Commissioner Fraundorf agrees with CD, CH, and I-1 exemptions. Agrees with single-family lots being exempt from wildlife studies. He supports measuring the setback from the river's edge, and supports a 50-foot setback in areas of redevelopment and new development. He is undecided about 30-foot setbacks on single-family lots. He agrees with Planning Commission's ability to deny a development proposal based on inadequate wildlife protection. He thinks that §7.8.H concerning feasibility needs to be reworded.

Commissioner Klink agrees with CD, CH, and I-1 exemptions. Agrees with exempting single-family lots from wildlife studies. Supports a 50-foot setback from the river's edge. He cannot support 50-foot setbacks on single-family lots, but does support a 50-foot setback on redeveloped lots. He believes the wildlife habitat protection should be balanced with property rights and any vote to deny an application based on inadequate wildlife protection needs to be carefully considered.

Director Joseph stated with this issue, the objective of the Planning Commission is to be the judge of what constitutes adequate mitigation where it is required. Staff will deliver code language that allows the objectives to be met. There will always be arguments on both sides, and it will be the Planning Commission's job to weigh the arguments and make a decision.

Attorney White noted municipalities do not have the right to deny property owners the economic value of their property, which would be considered a "taking" of the property. The penalty of that "taking" is the town buying the property at fair market value. He stated there is the possibility of a development plan where impacts on wildlife cannot be mitigated, and the Planning Commission will not be able to deny the development of the property based entirely on that issue. There must be language that states "to the maximum amount feasible" or similar verbiage in order allow the Planning Commission to address any unique situations that will undoubtedly come before the Commission.

Director Joseph recommended that in areas designated as severe winter range for deer or elk, developers have the option of not submitting a wildlife study if they propose clustered single-family subdivisions that do not involve a density bonus or a rezoning. The value of the severe winter range is in its openness and clustering would maintain this habitat value. In the majority of cases, he believes a study would most likely recommend clustering the development. This concept would still give the land owner their use by right and also give them some certainty as to the outcome.

It was moved and seconded (Hull/Fraundorf) to CONTINUE the proposed Block 12 Amendments to the Estes Valley Development Code regarding Wildlife Habitat Protection to the next regularly scheduled Planning Commission meeting, and the motion passed unanimously with two absent.

a. **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/Fraundorf) to recommend CONTINUANCE of the proposed Block 12 Amendments to the Estes Valley Development Code regarding Short-Term Rentals to the next regularly scheduled Planning Commission meeting and the motion passed unanimously with two absent.

6. ADOPTION OF THE 2008 ESTES VALLEY HABITAT

It was moved and seconded (Norris/Lane) to CONTINUE the proposed 2008 Estes Valley Habitat Assessment to the next regularly scheduled Planning Commission meeting. The motion passed unanimously with two absent.

7. REPORTS

a. Staff-Level Reviews

Boyd Residence, Lot 15 of the Village Green Subdivision, 466 Skyline Drive

Director Joseph stated this particular lot was platted with building envelopes. The residence was renovated and a deck was built with a minor error that encroaches less than one square foot outside the envelope. Because it is a platted envelope, it is not subject to a staff-level variance. The lot has an adjacent lot dedicated as open space, and the property owner would normally have to go through an amended plat process to make the correction. Staff would like to have permission to approve this adjustment. The Planning Commission agreed to allow staff to make the necessary correction to the building envelope.

Director Joseph commented on current projects being reviewed by Staff: a pre-application for relocating a radio antennae which is under the 30-foot height restriction; a new Development Plan for Black Canyon Inn Condominiums; a minor proposal at Wildwood Inn, which will most likely be a staff-level review; and an Amended Development Plan at Mary's Meadow, which includes a modification to move the buildings uphill and create more open space in the meadow.

There being no further business, Chair Klink adjourned the meeting at 4:45 p.m.

Douglas Klink, Chair

Karen Thompson, Recording Secretary