

RECORD OF PROCEEDINGS

Regular Meeting of the Estes Valley Planning Commission
April 21, 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: Vice-Chair John Tucker; Commissioners Alan Fraundorf, Betty Hull, Steve Lane, and Ron Norris

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

Absent: Commissioner Klink, Commissioner Amos, Planner Chilcott

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

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

1. PUBLIC COMMENT

None.

2. CONSENT AGENDA

Estes Valley Planning Commission minutes dated March 17, 2009.

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

3. STAFF REPORT – Accessory Dwelling Unit timeline for approval

Planner Shirk notified the Commission that the first reading of the Accessory Dwelling Unit Code revisions by the Town Board will be April 28th, and will allow public comment. The Town Board public hearing is tentatively scheduled for Tuesday, May 26th, 2009, and the public hearing date before the Larimer County Commissioners has not been set.

4. DEVELOPMENT PLAN 09-02 – SUNFIELD ESTATES – Metes and Bounds located directly southwest of 1095 Moraine Avenue, Estes Park; Owner/Applicant – Stonewood Properties, c/o Mark Hollenbeck; Request to construct a 3-unit development

Staff Report: Planner Shirk stated this is a request for development plan approval to build three detached residential dwelling units on property zoned A–Accommodations, which is an allowed use in that zone district. This property has been approved for a development plan of seven units called Rippling River. If this Sunfield Estates plan is approved, the Rippling River Development Plan would be null and void. This proposal meets the required density standards, impervious coverage requirement, and complies with setback requirements, including the 50-foot river corridor setback.

The current proposal would bring in fill in order to move the flood plain back towards the river. A retaining wall will be built, and will be designed to allow maintenance vehicle access to the river. Changes in limits of disturbance between the two development plans includes “pulling in” the proposed retaining wall between the units, minimizing utility cuts, and adding more protection to the slope between the units and the highway. Landscaping for Sunfield Estates exceeds the minimum requirements in terms of volume.

The developer plans to subdivide the lots for single-family dwellings at some point, and all lots will maintain the minimum size and required setbacks for the zoning district. Staff recommends approval after compliance with the conditions listed below.

Public Comment:

Mark Hollenbeck/Stonewood Properties, DJ Chasen/Stonewood Properties, Bryce Brady and Rod Harr/Landmark Engineering were in attendance to explain the project and answer questions.

Mr. Hollenbeck expressed genuine concern about building a quality development and wants their first major project to be high quality. He hopes to have all site work completed this summer. The proposed three units will average 3500 square feet, with a mountain style architectural theme using native building materials.

Commissioner Lane questioned the decision to create a development plan prior to subdividing the lots. Hollenbeck replied the group of developers decided to wait until this proposed concept was approved before moving forward with subdividing the lots. Director Joseph interjected that although rezoning is an option, single-family use is permitted in the A-Accommodations district. Agreements will need to be reached between the owners for shared access, maintenance, etc.

It was moved and seconded (Norris/Hull) to APPROVE Development Plan 09-02, SUNFIELD ESTATES, with the following conditions recommended by Staff, and the motion passed unanimously with two absent.

Conditions:

1. **Compliance with approved development plan. Approval of Development Plan 08-05 shall become null and void upon final approval of Development Plan 09-02 "Sunfield Estates".**
2. **Prior to issuance of any grading/building permits, the applicant shall:**
 - a. **Submit final construction plans (including drainage/erosion control) for review and approval of utility providers and Larimer County Engineering;**
 - b. **Obtain a Development Construction Permit from the Larimer County Engineering Department;**
 - c. **Updated Conditional Letter of Map Revisions-Fill shall be provided to Larimer County Engineering for review and approval if necessary, and a copy submitted to Community Development;**
 - d. **Fence Limits of Disturbance, as required by Section 7.2.D5 of the Estes Valley Development Code;**
 - e. **Provide Restoration Landscaping Guarantee letter;**
 - f. **Provide lighting cut sheet to ensure compliance with Section 7.9;**
 - g. **Provide development agreement and letter of credit.**
3. **Prior to issuance of a certificate of occupancy, the applicant shall:**
 - a. **Dedicate proposed easements and right-of-way;**
 - b. **Provide engineer certificate's verifying grading and drainage complies with approved plans;**
 - c. **Provide as-built plans for review and approval of utility providers and Larimer County Engineering;**
 - d. **Letter of Map Revisions-Fill shall be provided to Larimer County Engineering, and a copy submitted to Community Development.**
4. **Compliance with the following:**
 - a. **Letter from Community Development to Stonewood Properties dated April 8, 2009;**
 - b. **Memo from Estes Park Public Works and Utilities to Dave Shirk, Bob Goehring, and Scott Zurn dated March 25, 2009 (except Note 9 regarding street lights);**
 - c. **Letter from Upper Thompson Sanitation District to Dave Shirk dated March 19, 2009 (this will require minor changes to the development plan to ensure accessibility to the sewer main).**

5. **AMENDED PLAT – 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; Owner/Applicant Abundant Properties of the Rockies, LLC, c/o Kevin Schwery; Request to combine two existing lots into one lot and reduce the utility and access easement**

Staff Report:

Director Joseph stated this is a request to adjust the property line between Lots 1 and 2 of Block 4 of the Second Amended Plat of the Town of Estes Park; vacate the property line between Lot 1 and the metes-and-bounds parcel; and reduce the width of a public utility and access easement on the metes-and-bounds parcel from nineteen feet to ten feet wide.

The proposed property line vacation eliminates a lot line, which runs through a building and is not centered on a common wall. The lot line adjustment of .033 feet will center the lot line on the common wall between Kirk's Flyshop and the Shirt Shack. Additionally, the property owner wants to narrow the public easement down the alleyway on the east side of the property. This easement is currently used for access to a parking area behind building as well as utility access.

Staff does not recommend vacating nine feet of the nineteen-foot wide public access and utility easement on the metes-and-bounds parcel due to the responses received from the Public Works and Utilities departments. Estes Light and Power and the Fire Department also recommended against the vacation.

Director Joseph stated the location of this easement is valuable to the Town due to the existing limitations. If this easement is reduced, emergency vehicles will not be able to get to the riverwalk.

Public Comment:

Kevin Schwery, Owner/Applicant stated the reason behind the easement reduction was to develop behind the building, but he understands the reasoning against the reduction.

It was moved and seconded (Fraundorf/Norris) to APPROVE the Amended Plat of Lots 1 & 2, 2nd Amended Plat, Town of Estes Park, and Metes-and-Bounds Parcel located at 240 E. Elkhorn Avenue with conditions recommended by Staff. The motion passed unanimously with two absent.

Conditions:

1. Denial of the requested reduction in the width of a nineteen-foot wide public access and utility easement and removal of the language vacating nine feet of this easement from the plat.
2. All signs on the property shall be properly permitted prior to plat recordation.
3. Prior to plat recordation, the dumpster on the Abundant Properties, LLC property should be animal proof and screened as described in the Estes Valley Development Code. The proposed dumpster location and screening design should be reviewed and approved by Staff.
4. The existing size for Lot 2 shall be provided on the plat.
5. The vicinity map shall be to scale with the scale noted.
6. Font sizes for the existing lot sizes shall be increased so as to be legible.
7. The dedication statement shall be revised to dedicate any new easement proposed with this plat, and only those easements.
8. Kirk's Flyshop, LLC shall be added to the dedication statement and signature blocks for Kirk's Flyshop shall be added.
9. The reception number or book and page shall be provided for the nineteen-foot wide public access and utility easement.
10. The month shall be added to the Board of Trustee's Certificate.

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

- 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.

Staff Report:

Director Joseph stated Planner Chilcott has prepared Code revisions to address concerns expressed by residents about the impacts of short-term rentals, such as vacation homes and bed and breakfast inns, in residential neighborhoods. Staff did not want short-term rentals to be more restrictive, but rather desired to tighten the language as to what constitutes a business-related activity and what does not. It is important to clarify if you are using your home as a short-term rental, you are not allowed to have a home occupation at the same residence. It was also clarified in this proposal that B&Bs will be allowed only in RM, R-2 (multi-family residential) districts and in A and A-1 (commercial accommodations) districts. The Town Board issued a directive that these zones were most appropriate for this use.

This proposed Code revision brings the Municipal Code into alignment with the current Land Use Code. With this revision short-term rentals are elevated to a permitted principal use by right in all residential zoning districts.

Commissioner and Staff Comments:

Commissioner Hull thinks the requirements of B&Bs being owner-occupied full time and vacation homes requiring a local manager who is available 24/7 are positive code changes.

Commissioner Lane believes the maximum occupancy of eight is unrealistic and would like to see it increased to 10. He also would like Staff to rethink how this proposed code relates to nightly rentals in the commercial districts.

Commissioner Tucker agrees with the concept and thinks the proposed controls address most issues. He believes that vacation homes should pay commercial water and electricity rates.

Town Attorney White explained the current code limits on occupancy and the reasoning behind limiting occupancy of vacation homes to eight individuals.

Public Comment:

Frank Theis/Town Resident – Questioned grandfathering of current B&Bs in residential areas. Director Joseph indicated the grandfathering would stay in place only if the structure was to remain a B&B and not a vacation home. Larimer County officials state that short-term rentals in the county have never been an explicitly permitted principal use; therefore, grandfathering of vacation homes does not come into play. Mr. Theis also suggested either using the same language concerning occupancy as is in the current code, or changing the language to eight *adults* instead of eight people, with a limit of four vehicles.

Jim Tawney/Town Resident – As a lodge owner, he does not agree with permitting short-term rentals in residential zoning districts, due to the inequality of the playing field where property taxes are concerned.

Closed public comment.

Commissioner Lane thinks the language in section 1.d should be revised to say “except in the CD district”. Commissioners Norris and Tucker agreed.

It was moved and seconded (Norris/Fraundorf) to **CONTINUE** the proposed **Block 12 Amendments to the Estes Valley Development Code regarding Short-Term Rentals to the next regularly scheduled Planning Commission meeting. It was requested this item be the first on the agenda. The motion passed unanimously with two absent.**

- 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:

Director Joseph gave a brief history of the code revision background. In today’s proposed Code revision, Staff has removed any references to setbacks from riparian vegetation and kept language concerning setbacks from aquatic habitat, i.e. wetlands, streams, rivers, and standing bodies of water, including seasonal.

Staff is proposing a 50-foot setback from the annual high water mark (not from riparian vegetation) for undeveloped lots and a 30-foot setback for developed lots which were developed prior to 2000. Different standards apply to downtown areas and also for parking lots as opposed to buildings. The current Code operates as a two-tiered system, and today’s proposal abandons one of the tiers; the current 30-foot setback for smaller drainages would be removed and all areas containing aquatic habitat would have a 50-foot setback. Wetlands area setbacks are currently 50 feet and no changes are proposed. Studies show a proportionate relationship between the amount of water flowing through a drainage and its value as habitat. The current proposal works with a “one size fits all” concept.

If the proposed setbacks are adopted, the number of non-conforming properties will approximately double, creating a lot of discussion and concern. In response, Staff has written into the code whereas existing non-conforming developed properties that are set back at least 30-feet would be allowed to expand vertically and be exempt from the 50-foot setback. Any horizontal expansion of these new non-conforming structures would be subject to the 50-foot setback regulations.

Staff and Commission Discussion:

Director Joseph commented that a suggestion was made to add mitigation recommendations following the habitat assessment. Also, the right to deny a development plan that does not comply with the Code is clearly stated; however, Planning Commission will have the authority to continue an agenda item if the development plan does not comply with the Code to allow the developer time to make necessary modifications. Director Joseph clarified that in urbanized areas, the value of the habitat has already been compromised and, therefore, those areas will not be designated as severe winter range for deer and elk.

Commissioner Norris would like a better understanding of property owner’s rights and guidance as to how to judge the setbacks.

Public Comment:

Rick Spowart/Colorado Division of Wildlife (DOW) thinks the change in the Code language helps the DOW act as an advisor rather than a decision-making body. DOW will become an affected agency that will be allowed to comment on proposed developments. It is DOW’s opinion that aquatic areas are the most important to protect, with raptor nesting areas and bighorn sheep habitat also having major significance. Mr. Spowart believes smaller setbacks can create loss of wildlife populations and species for those animals that are not very mobile. Several species, like elk, are very adaptable and in some ways actually benefit from development. He noted that various maps and other information is available on the Division of Wildlife website.

Cheri Pettyjohn/Town Resident believes all affected property owners should be notified by personal letter. She is against changing the setback from 30 to 50 feet. Ms. Pettyjohn also

recommended an evening Planning Commission meeting in order to accommodate members of the public that are unable to attend the afternoon meetings. Director Joseph noted that from a legal standpoint, newspapers are adequate notification. While Staff is always striving to improve the accessibility to the public, a mass mailing such as this will lengthen the process as well as be very time-consuming and costly. It is very difficult to determine how specific to make your notification list.

Frank Theis/County Resident likes the two-tiered system that is currently in place, and worries about unintended consequences. From a design standpoint, he is unsure about the allowance to expand vertically and the potential for bureaucratic problems where building permits are involved.

Rick Spowart/DOW responded to a question by Dave Albee/Town Resident and stated that if the town were able to purchase land for open space, he would consider bighorn sheep habitat to be important. Conservation easements and the Estes Valley Land Trust would also be good options to acquire additional open space.

Eric Waples/Town Resident encouraged the Commissioners to keep the future in mind when making decisions. His goal for Estes Park would be a more pedestrian-friendly community. He believes significant adverse impact is usually cumulative.

Sandy Osterman/Town Resident has continuing concerns about how decisions will be made in determining "maximum extent feasible" and "significant adverse impact".

Mark Elrod/Town Resident reminded Commissioners that abuse of the Code rather than the exercise of using the Code is where problems will lie. He is having difficulty with acceptable definitions for "aquatic habitat" and "qualified biologist". Also, he does not see language allowing for changes in errors on adopted maps.

Sandy Lindquist/Town Resident thinks the Town should move quickly on establishing an open space plan to incorporate into the Estes Valley Development Code.

Closed to public comment and called recess at 4:15 p.m. Meeting reconvened at 4:25.

Commissioners Norris and Hull supports the suggested addition to the code about the option to expand vertically if the structure is non-conforming in the setback.

Commissioner Lane wants to understand the in's and out's of the proposed code before approval. He is supportive of moving forward with the issues that are not controversial. To this point, he hasn't heard of any specific quantitative benefits that would come with increasing the setbacks. He believes the multi-level tier approach makes more sense than a one-tier approach.

Commissioner Tucker would like to see a calendar that lists when the map will be updated. He does not support the proposed 50-foot setback.

Commissioner Fraundorf thinks the two-tiered system seems very appropriate. He believes the Commission could go ahead and approve the proposal and make modifications as they come up through the Board of Adjustments. He supports the 30-foot setback on developed lots.

After discussion about pulling the setback portion of the proposed code out for further review, Director Joseph stated it is easier to defend broad legislative guidelines than specific ones. All of the proposed wildlife habitat code revisions to date have created the expectation that property adjacent to areas containing aquatic habitat is going to be held to a higher standard of development. When setbacks are not changed, developments will possibly be subject to a wildlife habitat assessment and it will be this Commission's duty, on a case-by-base basis, to determine if the minimum setback standard is adequate. After more discussion among the Commissioners, it was determined that Staff should revise the code to a level of completeness

in order for them to vote on the revisions without addressing the setback issues. This setback issue will be addressed separately.

It was moved and seconded (Hull/Lane) 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.

7. ADOPTION OF THE 2008 ESTES VALLEY HABITAT

It was moved and seconded (Hull /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.

8. REPORTS

- a. Burr Minor Special Review – Planner Shirk noted the Larimer County Commissioners are hearing a minor special review for a detached Accessory Dwelling Unit, located at 2978 Lory Lane, which is just outside of the Estes Valley Zoning District towards Glen Haven.
- b. Pre-Application Meetings that Staff has received this past month include one for an amended plat, another for an amended Development Plan for Mary's Meadow, a Development Plan for the Black Canyon Inn Condominiums, and one application for a minor subdivision.
- c. Town Board and County Commission decisions on applications reviewed by Planning Commission include a Supplemental Map on the Stanley Avenue Condominiums and the Final Plat for the Deer Ridge Subdivision.
- d. The Board of Adjustment heard a variance request for a setback variance in the Little Valley area.

Director Joseph noted a joint meeting with the Board of County Commissioners, Town Board and Planning Commission is tentatively scheduled for June 4, 2009 at 9:00 a.m.

Commissioner Tucker suggested commissioners attend the Town Board meeting on April 28, 2009 to hear the first reading and comments concerning the code revisions for Accessory Dwelling Units.

Director Joseph announced a public forum to discuss regulations on wind turbines in residential areas. This meeting will be held Thursday, April 30, 2009 in the Town Board Room. This meeting is strictly to obtain public input before regulations are drafted by Staff. Staff will be in attendance to facilitate discussion.

Finally, Directly Joseph stated he has received direction from the Community Development Committee to organize a task force to take a critical look at the current sign code. The objective of this task force will be to critique the sign code. There will be seven (7) citizens on this task force, with Staff available to facilitate discussion.

There being no further business, Vice-Chair Tucker adjourned the meeting at 5:35 p.m.

John Tucker, Vice-Chair

Karen Thompson, Recording Secretary