

RECORD OF PROCEEDINGS

Regular Meeting of the Estes Valley Planning Commission

June 16, 2009, 1:30 p.m.

Board Room, Estes Park Town Hall

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

Attending: Chair Doug Klink, Commissioners Alan Fraundorf, John Tucker, Betty Hull, Steve Lane, Ron Norris, and Rex Poggenpohl

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

Absent:

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 new Commissioner Rex Poggenpohl, who is representing Larimer County and replacing Wendell Amos.

1. PUBLIC COMMENT

Paul Newendorp/Sustainable Mountain Living Group extended an invitation to all community organizations to a meeting on Thursday, June 18th at Town Hall. The meeting will include discussion to propose a transition initiative for the future of the Estes Valley and its ability to become a sustainable community within 20 years.

Fred Mares/Town Resident suggested online posting of the agendas and documentation for public meetings seven days prior to the meeting date. If changes are made, please post a revision date. Director Joseph noted more people are using the website, and Staff will keep the information as current and accurate as possible.

2. STAFF REPORT

Planner Shirk notified the Planning Commissioners that the Mary's Meadow Development Plan 06-01B, The Meadow Replat, and the Preliminary Condominium Map has been withdrawn by the applicants, Jim Tawney and Frank Theiss.

3. MEETING CHANGE AND BYLAW AMENDMENT

The Planning Commission meeting time is established in the bylaws and Planning Commissioners discussed revising the bylaws to change the meeting time from 1:30 p.m. to 6:00 p.m., with study session beginning approximately two hours prior to the meeting depending on the agenda content. Commissioner Klink stated the time change would hopefully result in better attendance and more public comment. This proposed change could occur on a trial basis and be revisited in the future based on public input and logistics.

The bylaws include a provision requiring that notice of proposed amendments to the bylaws be given to each Planning Commission member in writing at least seven days prior to the meeting. Town Attorney White advised that the Planning Commission could waive this requirement if all members agreed to the waiver.

It was moved and seconded (Klink/Hull) to waive provision in the bylaws requiring that notice of proposed amendments to the bylaws be given to each Planning Commission member in writing at least seven days prior to the meeting. The motion passed unanimously.

It was moved and seconded (Klink/Tucker) to amend the bylaws to read: "...with the time set by an adopted motion of the Commission," to start study sessions prior to the meeting, with the exact time depending on agenda content, and to start Planning Commission meetings at 6:00 p.m., beginning with the July 21, 2009 meeting. The motion passed unanimously.

3. CONSENT AGENDA

Estes Valley Planning Commission minutes dated May 19, 2009

BLUE SPRUCE SUBDIVISION – Lot 1, Blue Spruce Subdivision and a portion of Lot 10, Greeley-Boulder Colony, located at 2250 Highway 66. This is a request to adjust the internal lot line between two lots originally created in 1918.

It was moved and seconded (Norris-Tucker) that the consent agenda be accepted as amended, and the motion passed unanimously. Lane and Poggenpohl abstained.

4. DEVELOPMENT PLAN 09-03 – BLACK CANYON INN CONDOMINIUMS MASTER PLAN

The Lodges at Black Canyon Inn Condominiums located in the east ½ of section 24, Township 5 North, Range 73 West, located at 800 MacGregor Avenue
Owner/Applicant: Sloan Investments, LLC c/o Jim Sloan

Staff Report:

Planner Shirk noted this is a request for approval to build 26 dwelling/accommodation units. The development plan also includes renovations to some existing buildings and units. Assuming approval and build-out, this would bring the total to 59 units. The applicant proposes development in the eastern portion of the site.

Planner Shirk stated the Overlook Condominium owner's association issued a letter opposing the emergency access through their property. The Applicant has talked to the Overlook board on this issue. Also, comments were received opposing Building G (units 1-5), which has since been removed from the proposal. Planner Shirk noted there is a Supplemental Condominium Map that includes dedication of this emergency access easement that will be going before the Town Board on June 23, 2009.

Planner Shirk noted this proposal does require modifications to street standards; namely, the length of the cul de sac. The developer is proposing more vehicle trips per day (VTD) than code allows on a cul de sac. This modification was approved due to the planned emergency access connection between the Black Canyon property and the Overlook property. The development complies with the setback requirements of 50-feet from wetlands areas, and the building height will also comply.

Planner Shirk noted the Building department has a few issues which will need to be addressed prior to approval. There is also a condition of approval to add a trail along MacGregor Avenue. A correction to the sewer line to the Ridgeview Condominiums will be required. Staff is recommending that 2:1 tree replacement be required for those trees being removed. Concerning the wildlife assessment report, three mitigation techniques were recommended: 1) timing of construction, 2) fence considerations, and 3) bear-proof trash containers. The applicant has requested a reduction in the parking requirement from 2.25 spaces per unit to 1.5 spaces per unit. This request is based on historical usage, and will reduce the impervious coverage. Planner Shirk noted this proposal complies with the density requirements, which were based on the residential land use category. He also noted this proposal includes improvements to four employee housing units. Planner Shirk stated that although Units 1-5 have been removed from this proposal, it does not preclude the developer from submitting a new development plan to construct these units in the future.

Public Comment:

Kerry Prochaska/Cornerstone Engineering, representing the applicant, noted the electrical will be worked into the existing subdivision and will provide a loop service for the entire area. He noted the emergency access easement will not be a thoroughfare, as it will have a locked barrier across the entrance. Mr. Prochaska noted the developer disagrees with the 2-for-1 tree replacement condition, and is requesting no tree replacement. Mr. Sloan believes there are enough shrubs and other landscaping that will suffice for landscaping. Planner Shirk stated a district buffer is required along the east side of the property where many trees are being removed.

Ruthie Cosby/Town Resident/Overlook Condominiums HOA Treasurer notified the Planning Commission of the overwhelming “No” by the HOA for the emergency access easement, with concerns of unintended consequences, liability, additional costs to homeowners for improvements and/or maintenance, etc.

Johanna Darden/Town resident opposes this development.

Patricia Wedan/Town resident believes Mr. Sloan is very conscientious and will do the best job possible to preserve as much as possible.

Gale White/Town resident has concerns about increased traffic and lighting. He would like the Planning Commission to consider the percentage of accommodations units versus single-family units.

Planner Shirk commented the entrance to the development will be reconfigured to become safer. The Traffic Impact Analysis indicates one vehicle for every 1.4 units, and the anticipated increase on weekends during peak hours is 15 vehicle trips per day.

Bill Darden/Town resident approves of the plan, but has concerns about being able to actually use the emergency access easement in an emergency.

Closed public comment.

Comments from the Commissioners included: Commissioner Norris is pleased with the overall project, and agrees with the trail construction and tree replacement; Commissioner Tucker would like to see tree replacement 1:1; Commissioner Fraundorf supports an approved maintenance agreement for the easement, and believes tree replacement should be 1:1; Commissioner Poggenpohl agrees with the 2:1 tree replacement. He also supports the additional 25 feet of right-of-way for future use; Commissioner Lane supports the emergency access easement and a lesser standard than the 2:1 tree replacement; Commissioner Hull supports 2:1 tree replacement; Commissioner Klink is concerned that the trail is not a high priority. He believes the new trail should be paved to St. Bart’s church, due to the anticipated high use. Director Joseph explained the two trail options to the Commission: 1)build the trail, 2)provide cash in lieu of building to pay for their share of the future trail construction.

It was moved and seconded (Tucker/Klink) to APPROVE the Black Canyon Inn Development Plan #09-03 conditional to the findings and recommendations noted by staff. The motion passed unanimously.

CONDITIONS:

1. Compliance with approved development plan and architectural plans. Approval of this development plan shall supersede all previous development plan approvals.
2. The development plan shall be revised to account for the following:
 - a. Proposed Units 1-5 (Building G) and appurtenances shall be removed from the plan.
 - b. Submittal of a phasing plan outlining sequential utility installation (including fire hydrants and stormwater facilities) and development of units.
 - c. Architectural renderings for the proposed bear-proof trash enclosure.

- d. Delineate number of significant trees to be removed, and include number of replacement trees (one replacement tree for each significant tree removed).
- e. Include the note: Significant trees to remain shall be subject to maintenance requirements set forth in Section 7.5.J of the Estes Valley Development Code.
- f. Include the note: No construction activity shall be initiated between April 1 and July 15 of any year.

3. Compliance with the following memos/letters/emails:

- a. EPSD to Dave Shirk dated May 13, 2009.
- b. Greg Sievers to Dave Shirk dated May 8, 2009.
- c. Greg White to Dave Shirk date April 16, 2009.
- d. Public Works (Tracy Feagans) to Dave Shirk dated April 24, 2009.
- e. Estes Valley Recreation and Park District to Dave Shirk dated April 21, 2009.
- f. Will Birchfield to Dave Shirk dated April 27, 2009.
- g. Corps of Engineers to Dave Shirk dated April 14, 2009.
- h. Scott Zurn to Dave Shirk dated June 2, 2009.

4. Prior to issuance of a grading/building permit for new development:

Development Agreement and form of guarantee shall be submitted.

- a. An emergency access easement through the Overlook condominiums shall be recorded with the Larimer County Clerk. This easement shall also provide for emergency access through the Black Canyon property to the Overlook condominiums, maintenance, and shall be subject to review and approval of Town Staff prior to recordation.
- b. Final construction plans shall be approved by the Town of Estes Park Public Works Department, EPSD, and the EVRPD.
- c. The "sheep fence" as noted on page 5 of the wildlife impact assessment shall be removed.

5. PRELIMINARY SUBDIVISION PLAT – THE NEIGHBORHOOD – Lots 15, 16, and 17, Block 2, The Neighborhood, Owner and Applicant: Pawnee Meadows, LLC

Staff Report:

Planner Chilcott stated this is a request to subdivide three lots into five lots in The Neighborhood subdivision. The original 1975 subdivision had 30 homes, with 15 deed restricted to be attainable housing. This application would increase the number of lots from 30 to 32, with the additional two lots being deed restricted. Most of Phase I has been completed. Pawnee Meadows, LLC is in the beginning stages of developing Phase II. This development is helping to meet an important need for affordable housing in this community. Homes are currently being sold for approximately \$100,000 less than the median home price in the area. This proposal, if approved, will keep the project viable in today's economy, reduce infrastructure costs, keep selling prices down, and result in increased home size. All of the proposed lots are conforming within the zoning district. Staff finds the application complies with the subdivision criteria in the EVDC. The applicant is also asking for a reduced setback on one side from 10 feet to 7.5 feet, with a greater setback on the opposite side. Staff is supportive of this reduced setback. This change would require an approval of a minor modification by the Planning Commission. The infrastructure that was planned prior to this application is sufficient to handle the two new proposed lots. If approved, a number of agreements would need revision, including but not limited to: Development Agreement stating a 30-lot development should be changed to 32 lots; an updated Attainable Housing Agreement stating which lots would be designated as attainable housing; and an agreement between the Town of Estes Park and the Housing Authority to ensure the correct income category for buyers should be revised from 15 homes to 17.

Planner Chilcott commented the area is in a mapped elk habitat area, which creates a fencing issue. The applicant has shown proposed fencing of the rear yards, which could tie into each other and restrict elk movement. Planner Chilcott reminded the Commissioners of the 40-inch fence height limit in mapped wildlife habitat areas.

Migration openings are required every 40 feet if the fence is higher than 40 inches. In hindsight, Director Joseph stated there should have been a master fencing plan for this subdivision. He believes the fencing issue is a function of the relatively small lot sizes. Planner Chilcott noted there will need to be some revisions for the utility easements if the setbacks are changed. She also stated the lot numbering system needs to be revised to differentiate between the old subdivision and the new subdivision.

There is also a neighborhood trash issue on some lots, and Planner Chilcott stated most of this junk is on a lot donated by Pawnee Meadows, LLC to the Estes Park Non-profit Resource Center. Code Enforcement Officer Andrew Hart has been working with the Resource Center Board to clean up the area. Planner Chilcott reminded Commissioners that those lots are not part of this proposal. There is also a house that is owned by Pawnee Meadows, LLC, which needs to be removed before a road to the proposed lots can be built.

Staff recommends approval with conditions.

Public Comment:

Paul Kochevar with Pawnee Meadows/Applicant clarified the change in the side setback would involve taking 2.5 feet from one side and adding it to the other side of the lot which would then have a 12.5 foot setback, with no increase in the building area. He would like to make this setback issue an amendment to the application. Mr. Kochevar noted the fence along the south side of the lots will not be solid. Also, the side fencing will be allowed up to the back of the garages or entryways. Commissioner Hull voiced her disappointment in Mr. Kochevar in dealing with the trash in the subdivision.

Marion Dougherty/Town resident has concerns about the trash in the area, as well as the fencing issue. She is also opposed to any fencing of the lots. Also, she is opposed to changing the type of structure on the lots from one-story to two-story.

Sandy Osterman/Town resident is concerned about the trash that blows into the Talon's Point neighborhood from The Neighborhood. She is also opposed to the area fences and believes they violate the requirements. These issues have been ongoing over the last couple of years.

Planner Chilcott noted the applicant has been working with Community Development staff in recent weeks to work on the issues addressed today. A motion to continue was made by Commissioner Lane and later withdrawn. Director Joseph stated a failure by the Planning Commission to act on today's application is deemed a recommendation of approval to the Town Board. Director Joseph reminded the Commission that fencing can only be addressed on lots under this proposal. Applicant Kathryn Kochevar asked for compassion on this project and wants the Planning Commission to realize the reason she and her husband, Paul Kochevar, began this project with the goal of helping residents of the community realize the benefits of homeownership, not with the goal of making a larger profit. She wants to be able to provide affordable housing in the community, and would hope to be provided some leniency on the fencing.

Closed public comment.

Commissioner Norris suggests the developer come up with a communication plan to address the trash problems with neighbors. He supports a 40-inch fencing plan and the minor setback modification. Commissioner Fraundorf indicated the 40-inch fencing plan needs to be very specific. He also supports the setback modification.

It was moved and seconded (Tucker/Lane) to recommend approval of The Neighborhood Preliminary Subdivision Plat to the Town Board of Trustees with the findings and recommendations in the staff report and the following conditions. The motion passed with Commissioner Hull abstaining.

Conditions:

1. **Compliance with the submitted application.**
2. **No changes to the original Neighborhood subdivision approval are approved except those noted in the staff report.**
3. **A minor modification to the side-yard setback to allow platted 7.5-foot side setbacks on one side, provided there is a 12.5-foot setback on the opposite side.**
4. **Fencing on individual lots shall be restricted to 40 inches in height.**

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

- a. **WILDLIFE HABITAT PROTECTION** – revisions to §7.8 of the Estes Valley Development Code, including, but not limited to, removal of the Colorado Division of Wildlife from the review process and updating wildlife habitat maps.

Staff Report:

Director Joseph stated Planning Commission directed Staff to produce a very short and concise code fix that would address the role of the Division of Wildlife and would also firm up the Planning Commission’s position in their ability to turn down a development proposal based on mitigation. This proposed draft focuses on when a wildlife habitat assessment is triggered, and removes elk calving as a trigger for a wildlife habitat assessement since elk calving occurs throughout the entire Estes Valley.

Concerns brought forth by the Commission included – Commissioner Klink is concerned about the large number of raptor areas on maps as well as other areas that would trigger assessments, Commissioner Hull prefers the calving areas remain in the maps, would like to see “Division of Wildlife” removed from E.5, would like to see calving, lambing, and fawning as well as raptor areas back in the code. In 4.a., Commissioner Hull does not recall seeing any “requirements of this Section;” and would like the words “and effective” be added into 4.b. to read Plans found to be adequate and effective by the Decision-Making Body shall become binding upon the Applicant. (Note: ..’and effective’ was removed from the language in the final motion to recommend approval to the Town Board) Finally, Commissioner Hull prefers a qualified wildlife biologist over a qualified person. Director Joseph stated this revision pertains mainly to when an assessment is triggered that could result in a finding of adverse impact. This finding of adverse impact would be taken out of the hands of the Division of Wildlife and be given to Planning Commission, Town Board, and County Commissioners, and further narrows it to remove calving as a trigger since calving occurs valley-wide. Commissioner Norris suggests in 4.b. to use “Wildlife study and any mitigation plans must be found adequate and effective...; in H.2.d, he believes a list of examples should be included. Commissioner Lane supports all changes. Commissioners Tucker and Hull approve of the maps. Commisssioner Fraundorf supports the changes. Commissioner Poggenpohl believes this short-term fix is acceptable.

Public Comment:

Fred Mares/Town resident submitted a letter to the Commissioners that states his support of a wildlife code that compliments an open space plan. He is concerned there is no revision listing requirements for mitigation and implementation, nor mention of density or reduced footprint.

Johanna Darden/Town resident agrees with Fred Mares and believes any code revisions should err on the side of all wildlife.

Mark Elrod/Town resident believes a “qualified person” is not acceptable. Also, he disagrees with the removal of the ability to change the maps when errors are found.

Closed public comment.

Commissioner Lane questions inserting “effective” into Section 7.8.F.4.b, because you cannot determine if a plan is effective until after it has been in place for a period of time.

It was moved and seconded (Klink/Norris) to recommend approval to the Town Board of Trustees the proposed wildlife habitat code revisions with the following additional modifications as approved by the Planning Commission: Section 7.8.E.1, continue to use the map language from December, 1996; Section 7.8.E.5, strike “after consultation with the Division of Wildlife”; Section 7.8.F.4.b, modify to read “wildlife studies and any mitigation plans found to be adequate by the Decision-Making Body shall become binding on the applicant;” Section 7.8.H.1, strike “and is acceptable to the Staff.” The motion passed unanimously.

Commissioner Norris wants Town Board to know this is a first step in improving the wildlife code and urges Town Board to proceed with an open space study. Commissioner Hull supports the ability to amend the maps, and prefers to have calving and fawning in the code. Commissioner Lane is interested to see what Town Board opinion is on remaining problems. Commissioner Tucker believes this code will allow the Commission to be more effective. Commissioner Fraundorf wants to fine tune the code. Commissioner Poggenpohl suggests creating checklists for conservation plans. Commissioner Klink looks forward to hearing from Town Board on other issues to address.

7. REPORTS

Planner Chilcott reported there are two staff-level development plans under review, one being a Safeway fueling station at the current Silver Lane Stables, and the other a small group living facility at 857 Moraine Avenue. Both positive and negative written comments have been received on the Safeway project. The Safeway plan also includes a height variance request that will go before the Board of Adjustment.

Director Joseph noted that staff had a pre-application meeting for the Stanley Park grandstand renovation.

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

Doug Klink, Chair

Karen Thompson, Recording Secretary