

RECORD OF PROCEEDINGS

Regular Meeting of the Estes Valley Planning Commission

May 20, 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 Amos, Grant, Hull, Kitchen, Klink, and Tucker

Also Attending: Director Joseph, Planner Shirk, Planner Chilcott, Town Attorney White, Town Board Liaison Homeier, Public Works Director Zurn, and Recording Secretary Roederer

Absent: None

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

Tom Ewing/Town Resident expressed concern that the ongoing valley-wide wildlife habitat study is being conducted too late to protect and preserve open-space lands and areas for wildlife.

2. CONSENT AGENDA

a. Approval of regular meeting minutes dated April 15, 2008 and special meeting minutes dated April 17, 2008.

b. SPECIAL REVIEW 08-01, Cricket Communication Tower, A Portion of S36-T5N-R73W of the 6th P.M., 1435 Prospect Mountain Drive, Cricket Communications/Applicant—Request for continuance to the June 17, 2008 Estes Valley Planning Commission meeting

c. THEISS BOUNDARY LINE ADJUSTMENT, Metes and Bounds property located at 3266 & 3270 H Bar G Road, Mark A. & Meghan M. Theiss/Applicants—Request to reconfigure two tracts of land to create one 10.47-acre tract and one 90.999-acre tract

d. PROPOSED AMENDMENTS TO THE ESTES VALLEY DEVELOPMENT CODE, BLOCK 11:

Appeals—Request by staff for continuance to the June 17, 2008 Estes Valley Planning Commission meeting

Vacation Home Rentals—Request by staff for continuance to future date to be determined

It was moved and seconded (Hull/Amos) to accept the consent agenda, and the motion passed unanimously.

3. REZONING, PRELIMINARY SUBDIVISION PLAT, and PRELIMINARY P.U.D. 08-01, ELKHORN LODGE REDEVELOPMENT/BIG BEAR ESTATES SUBDIVISION, Four Metes and Bounds Parcels (parcel identification numbers 35261-00-001, 35261-05-046, 35261-06-001, 35252-53-018, Portion of 35261-06-001) and Outlot A, Sallee Resubdivision, currently known as the Elkhorn Lodge property, including 600 West Elkhorn Avenue, Zahourek Conservatory, LLC/Owner, Rock Castle Development Co./Applicant (Continued from April 17, 2008 Estes Valley Planning Commission meeting)

Staff Presentation:

Planner Chilcott summarized the staff report. This is a continuation of the review of the application for a preliminary subdivision plat, preliminary P.U.D., and rezoning for redevelopment of the Elkhorn Lodge property. Planning Commission review began on

April 15, 2008 and continued at a special meeting on April 17, 2008. An entire overview of the proposal was presented during the April meetings.

The Planning Commission must act on these requests at today's meeting unless the applicant agrees in writing to a continuance; it is staff's understanding that the applicant wants the Commission to act. The proposal would then be presented to the Town Board, which is the decision-making body.

Today's report focuses on revisions that are needed to ensure compliance with Estes Valley Development Code (EVDC) regulations. Staff strongly supports elements of the application, including construction of a key section of the proposed bypass road, pedestrian-scale development of the lower 20 acres, river restoration and riverwalk extension, provision of affordable/attainable housing, and trail access into Rocky Mountain National Park.

The applicant has made revisions to the proposal since the April meetings, including reduction of the single-family residential lots on the upper 40 acres from 57 lots to 55; reduction of private open-space from 13.8 acres to 13.3 acres; submittal of a forest stewardship and fire mitigation plan, which is supported by Larimer County and the State Forest Service; submittal of draft design guidelines; continuation of work on the bypass road design in conjunction with the Public Works department; revision of the location of the Range View Road realignment; and proposal of increased setbacks for Lots B-1 and F-4 to provide a greater buffer for the adjacent residential neighborhood. Additional comments have been received from affected agencies and from the public.

EVDC §9.1 states one of the purposes of a planned unit development (P.U.D.) is to ". . . relate the type, design, and layout of residential and commercial development to the particular site, thereby encouraging the preservation of the site's natural characteristics, and to encourage integrated planning . . ." EVDC §10.4.A.1 also requires that "the lot area/size, width, depth, shape, and orientation shall be appropriate for the location of the subdivision and type of development and use contemplated . . ." This includes avoidance of steep slopes, preservation of native trees, rock outcroppings, and scenic natural resources, including steep slopes and ridgelines. Many of staff's recommendations regarding the single-family residential subdivision on the upper 40 acres relate to these requirements.

It is appropriate to review the single-family residential development for compliance with single-family zoning regulations found in the EVDC. Staff used R-*Residential* zoning district standards, which provides the smallest lot sizes for single-family market-rate development. Staff is concerned about the proximity of the single-family residential development to the adjacent I-1-*Industrial* area and has recommended conditions to help minimize impacts. Staff is also concerned about the proposed density of development on Lot B-1; the contemplated thirty units on a slope of 20% are not appropriate. Staff understands the applicant is proposing revisions to address this concern.

Per the EVDC, local and sub-local streets may have a maximum grade of 10%, with 11% stretches for no more than 200 feet. Bear Paw Circle is proposed with a 12% grade for approximately 600 feet, which would entail approximately five- to ten-foot cuts on the uphill side of that section of road and would require a waiver from the Director of Public Works. Bear Run Court is proposed with a 12% grade for approximately 450 feet, which entails five- to ten-foot fill slopes on the downhill side of the road. Staff recommends the applicant work to reduce the amount of fill and reduce the grade at the intersection of Bear Run Court and Bear Rock Court (currently proposed as 8%) and the southern intersection of Bear Paw Circle and Bear Crossing Road (currently proposed as 6%); the EVDC requires grades of 3% to 4% at intersections for safety reasons. Waiver from the Director of Public Works would be required to construct the intersections as proposed.

Cul-de-sacs are limited in length to 1,000 feet and no more than 120 vehicle trips per day, which equates to approximately 12 homes. The applicant proposes a cul-de-sac approximately 1,550 feet in length, which would provide access for 27 lots within the subdivision and additional existing lots to the west. It may be possible to provide a conforming cul-de-sac in the future by providing a connection to the west. Approval of the cul-de-sac as proposed would require a waiver from the Director of Public Works. The

Fire Chief has required provision of a secondary emergency access—the current Elm Road connection, which is within proposed open space, could be utilized for this purpose.

Bear Run Court, as proposed, would go through a rock outcropping, with sidewalk on the uphill side. Staff recommends redesign of the road with the goal of avoiding the rock outcropping altogether.

Significant fill slopes and cut slopes are proposed in the most visually sensitive portion of the site and would be visible from Highway 34 (both Wonderview Avenue and Big Thompson Avenue). As many existing trees should be preserved as possible to screen views of the cut and fill; this would require revisions to some building envelopes and realignment of a portion of proposed sewer line.

A shared private driveway with a 13% grade is proposed to serve Lots 30 through 33. The EVDC limits single-family driveway slopes to 12%. The proposed driveway would require a five-foot cut for 150 feet and a seven-foot cut near the driveway intersection with Bear Paw Circle. Staff does not support a waiver to allow the proposed 13% driveway grade. Reducing the grade of the driveway would require an even greater amount of cut. Staff recommends redesign of these lots and the proposed driveway.

The proposed preliminary subdivision plat encompasses the entire property, including the single-family residential subdivision on the upper 40 acres. However, if the final plat is approved by the Town Board, only a portion of these single-family lots would be created at this time (the first filing). Many of the lots for which staff has concerns would be recorded with the second filing, which would allow the applicant to revise the design of these lots to address staff's concerns provided the Town Board chooses to place those conditions on the application. This would allow further review by the Planning Commission and additional public comment to be received.

On the upper 40 acres, the waivers required for areas of the proposed road and/or driveways combined with areas of steep slopes, trees, and/or rock outcroppings result in some lots that could not be developed in compliance with Code standards. Staff's concerns about specific proposed lots are identified in the staff report, a portion of which are summarized as follows:

- Lot 17—0.38 acre; slope just under 36%; vast majority of the lot is rock outcropping; most of the proposed building envelope is on top of the rock outcropping; many trees on site. EVDC standards require most of the proposed lot to be placed within limits of disturbance due to slope and trees; staff recommends the lot be removed due to noncompliance with EVDC standards.
- Lot 22—0.27 acre; slope just under 39%; within a ridgeline protection area; visible from Big Thompson Avenue and Wonderview Avenue; EVDC requires placement in limits of disturbance or open space; the lot would need to be 0.8 acre in size to meet the requirements of the R-*Residential* zoning district; staff recommends the lot be removed.
- Lot 18—0.31 acre; steeply sloped and heavily treed; significant fill required to access; this combination of conditions results in a non-compliant lot; staff recommends the lot be removed.
- Lot 36—0.66 acre lot proposed for 2nd filing; originally proposed as two lots; approximately 26% slope; road approximately 10 feet below lot; rock cut and site disturbance required to provide access to lot, including approximately 170-foot-long driveway with 14-foot cut at entrance and six-foot cut along remainder of driveway; site impact necessary to access the proposed building envelope is greater than permitted by Code; staff recommends the lot be removed.
- Lot 37—0.37 acre: 26% slope; access and construction would result in more site impact than permitted by Code; if zoned R-*Residential* minimum lot size would be 0.577 acres; lot size could be increased by moving lot line to the west but that portion of the site is steeply sloped; staff recommends the lot be removed.
- Lot 20—0.31 acre; contains two juniper trees that should be preserved; the building envelope should be redesigned to avoid impact to one juniper and the proposed utility line location should be revised to protect the other.

- Lots 27 & 28—contain a rock outcropping that should be shown on the plat; driveway and building envelopes should be designed to minimize impact to the rock outcropping.
- Lots 12, 14, & 23—proposed building envelopes should be revised to minimize impacts to rock outcroppings.
- Location of the proposed sewer main running west from Lot 32 should be revised to minimize impact to the rock outcropping and revised such that it does not run through a steeply sloped portion of the property. Staff recommends the main be placed in the road right-of-way.

Grading for the proposed roads and driveways would create areas of cut and fill of ten to twelve feet, with greater amounts of cut and fill for the proposed bypass road. Staff recommends requiring revegetation and rock staining in order to help screen these areas. Additionally, all retaining walls should be designed per EVDC §7.2.A.6; staff recommends no manmade materials be allowed on the face of retaining walls. Planner Chilcott showed photos illustrating examples of appropriate and inappropriate cut slopes and retaining walls.

To mitigate the impact of tree removal, staff recommends that trees, including seedlings, be planted to screen cut and fill slopes. Landscaping should also be installed to buffer impacts of the proposed development from adjacent single-family residential areas. Off-site intrusion should also be minimized via design guidelines, which could allow larger homes on less steeply sloped lots with bigger building envelopes. House design should vary from lot to lot. The Planning Commission and Town Board should review and approve design guidelines for the upper 40 acres prior to issuance of building permits for that portion of the property.

The applicant has requested a waiver from the requirement to construct sidewalk along the length of the bypass road, which would be more difficult to construct in areas with significant cut and fill. The applicant proposes to use a combination of sidewalk and trail to provide access from the upper 40 acres to the lower portion of the property. Some revision is needed to ensure access from Elm Road to the portion of the property adjacent to West Elkhorn Avenue. Staff notes the trail may be covered by snow in winter and spring; sidewalk would provide better year-round access. Additionally, a trail easement should be dedicated on Outlot A of the Sallee Resubdivision (a small portion of land that is adjacent to the UNC property at the top of Old Ranger Road) to connect to the “Women’s Club” trail. There is some existing trail in that general area; staff recommends maintaining that historic use.

On proposed Lot B-1 the sewer main location should be revised to minimize tree removal and disturbance to the rocky area at the southwest corner of the lot.

Staff has received a number of public comments regarding the impact of lighting. Staff recommends that lighting studies be submitted for Town review and approval with each future development plan application for the property in order to minimize off-site impacts of lighting.

Staff recommends a condition of approval be acquisition of road right-of-way from Larimer County. This right-of-way is needed for a portion of the proposed bypass road, realignment of the Range View Road intersection, and some detention facilities.

EVDC §7.12 requires that all subdivisions meet adequate public facilities requirements, which includes on- and off-site transportation/road improvements. Until the Town Board makes a decision on the alignment of the proposed bypass road with West Elkhorn Avenue, the improvements required are unknown. Following this decision, staff recommends a revised application be submitted for review by the Planning Commission and Town Board to determine off-site impacts and required mitigation of those impacts. The Town Board may choose to participate in the financing of some of the required improvements.

If the central (Far View Drive) alignment is chosen, staff recommends the road right-of-way be shifted approximately 10 to 20 feet to the west to provide a greater buffer for the adjacent Elkhorn Plaza Condominiums, to minimize impact to existing wetlands, and to

provide a safer alignment with Far View Drive. Access via the existing Elkhorn Lodge entrance driveway should be limited or prohibited. The proposed shuttle bus stop should also be relocated to minimize impact to Elkhorn Plaza Condominiums.

The proposal involves revisions to parking, vehicular and pedestrian access, and utilities serving Elkhorn Plaza Condominiums. The applicant should ensure that adequate parking, access, and utility service is maintained for the condominiums throughout construction. The design of the proposed bypass road will also result in changes to access for some properties accessed via Elm Road; access to these properties should be maintained throughout the entire construction period.

Staff recommends that additional review of the wetland restoration plan, river restoration plan, riparian habitat restoration plan, and plans for the proposed river lowering (CLOMR) take place, with further review by the Planning Commission and Town Board. Staff has reviewed much of this information in detail; however, until a decision is reached by the Town Board regarding the road alignment, the review cannot be finalized. For that reason, staff recommends the applicant submit amended applications.

Staff recommends that there be no permitted uses-by-right. All uses should be subject to discretionary development plan review and approval. There is no guarantee that the maximum densities or bulk shown on the current application could be achieved.

Staff recommends requiring compliance with all of the conditions found in staff report if the Planning Commission chooses to recommend approval of the submitted applications.

Planning Commission/Staff Discussion:

Commissioner Amos thanked Planner Chilcott for her efforts to present all the details of this large development project.

Commissioner Hull referenced pages 28 and 30 of the staff report and questioned whether there are drainage problems. Planner Chilcott stated as additional revisions are made to the application, revisions will be needed to the drainage report. Commissioner Hull noted staff recommends removal of six of the proposed 55 lots on the upper 40 acres. Planner Chilcott stated proposed Lots 18 and 19 could be combined. Commissioner Hull referenced the single-family lot size analysis for the upper 40 acres prepared by staff and questioned Lot 36, which staff has recommended be removed. Planner Chilcott stated the lot would exceed the minimum lot-size requirement for the R-*Residential* zoning district; however, staff recommends removal of the lot for the reasons outlined above.

Commissioner Amos apologized to Celine LeBeau/Van Horn Engineering for comments made at the April 17, 2008 Planning Commission meeting and stated he holds the Van Horn Engineering organization in the highest esteem.

Applicant Presentation:

Frank Theis/CMS Planning & Development Co. representing Rock Castle Development Co. stated that all lots proposed with the plat, with the exception of the 25 lots contained in the first filing of the residential subdivision, will be re-reviewed by the public, Planning Commission, and Town Board via future development plans. Proposed Lot 22 was the only lot in the first filing that the applicant and staff were not in agreement on. Mr. Theis stated he met with Director Joseph regarding this lot, who agreed that the proposed lot could be built upon. All lots in the second filing would be subject to staff-level or Planning Commission development plan review and approval. If an individual lot cannot meet applicable standards, it cannot be built on. Mr. Theis stated preliminary discussions regarding the annexation agreement, which will be reviewed by the Town Board, have dealt only with financial issues. There has been long-standing interest at the Town level for providing a bypass road in this area; the Elkhorn Lodge property is the only place left to make a connection from Highway 34 to Highway 36. The Town Engineer and Colorado Department of Transportation have recommended bypass road alignment with Far View Drive. The applicant initially thought the alignment should be constructed farther west and has provided for road alignment in either location. Certain details of the development cannot be finalized until a decision is made regarding the final road alignment; however,

no changes to the plat currently before the Planning Commission would be made as a result of the road alignment decision. If changes to the concept plan for the lower 20 acres are required, all lots in this area would be re-reviewed by the Planning Commission. Mr. Theis stated a community develops around its infrastructure and construction of a collector road (the proposed bypass road) on the property warrants a certain amount of density. The applicant proposes clustering of density as recommended under P.U.D. guidelines and was operating under the assumption that details regarding slopes of individual lots would not be required so long as the proposed lots "worked." Mr. Theis contended using the minimum lot size requirements of the R-Residential zoning district as a basis of comparison isn't right because of the concept of clustering, which reduces lot sizes. Due to the provision of building envelopes on the proposed lots, over 50% of the property will not be developed. Many of the issues raised by staff regarding slopes, roads, outcroppings, and so forth will be addressed with the second filing.

Amy Plummer/Van Horn Engineering stated they have been working diligently with staff to design roads on a very tough site. She stated her belief that they could continue to tweak grades and curves to address some of staff's requests and will continue to work with Public Works Director Zurn to ensure he is satisfied with the plans.

Mr. Theis reiterated that the lots staff has recommended for removal will be reviewed again by staff and by the Planning Commission as staff determines is appropriate, at the time of the second filing. The applicant does not think these lots should be removed and will attempt to prove that all proposed lots are perfectly buildable and don't exceed EVDC limits for cut, grades, limits of disturbance, and tree removal. Mr. Theis stated the applicant is requesting the Planning Commission to vote on the requests today.

The Commissioners proceeded with questions for Mr. Theis, whose responses are summarized as follows:

- The open-space area proposed in the northwest portion of the upper 40 acres is unbuildable because it is steep and heavily wooded.
- A "conventional development" with larger lots could be proposed, but the bypass road would not be built. There would not be justification for the proposed density without the bypass road. If larger lots were proposed, infrastructure costs would remain; the associated cost per lot would be "horrendous."
- The applicant believes it is highly unlikely the six lots staff has recommended be removed will be.
- If financial negotiations between the Town and the applicant fail, the applicant would withdraw the entire project.
- If the plat is approved, the applicant will do rough grading for utilities for Phase I in certain areas that are located within the proposed second phase.
- Staff has recommended that fencing be removed; however, boundary fence that belongs to adjacent property owners cannot be removed by the applicant.
- The applicant has already tried to realign proposed Bear Run Court to avoid the rock outcropping but has found it cannot be avoided entirely.
- The applicant would prefer to be allowed to use manmade materials on retaining wall surfaces.
- The applicant and property owner (J. Zahourek) object to staff's recommended condition of approval requiring a minimum setback of fifteen feet between the private access easement and the church building and the coach house on proposed Lots F-2 and F-3; Mr. Theis requested this condition be removed.
- Mr. Theis also objected to recommended condition of approval 15.f, which requires construction of sidewalk in cul-de-sac bulbs.
- The applicant has promised Elkhorn Plaza Condominium unit owners that the "stables bridge" and temporary access off Elm Road will be used during construction rather than the current driveway entrance to the lodge.
- The applicant is now proposing to combine Lots B-1 and B-2 into a single lot (Lot B) with the same overall density of up to 30 apartments and 24 condominiums or townhomes. There may be "a dozen" townhomes near the western property line of Lot B; the applicant is considering moving the proposed affordable housing to the other side of the lot to provide a greater buffer to the adjacent single-family neighborhood. The applicant is willing to provide a setback in the area that is

currently shown as Lot B-1 of 120 feet from adjoining property owner John Spahnle's house, which would be approximately 100 feet from the property line; the applicant recommends this be a condition of approval.

- When asked about trailhead parking, Mr. Theis indicated there is plenty of parking on the proposed lot based on 60 parking spaces for 30 apartments and shared parking use, as shown on the concept plan for commercial/retail use.
- Proposed Phase I development of the lower 20 acres will entail renovation of the existing lodge with 20 hotel rooms, restaurant/bar/banquet facilities, and renovation of the lobby. Some existing buildings will be removed and landscaping, parking, and curb and gutter will be installed. The next phase entails construction of the new hotel wing. At that time the entire central lot will be developed with a courtyard and additional parking. Lot B is proposed to be developed next, with additional commercial development along the river to follow.

Mr. Theis stated the applicant proposes additional conditions of approval to address concerns expressed by neighbors and submitted the following list:

1. Remove the section of right-of-way shown on the plat between the Coach House and the Elkhorn Condominiums (existing entrance to the Lodge).
2. Change the Concept Plan to remove any physical road connection to Old Ranger Road and the proposed trailhead.
3. Change the Concept Plan to remove the proposed trailhead on Town property.
4. Change the phasing plan to clearly indicate that no permanent connection will be made from Elm Road to the new Bear Crossing Road until the permanent connection is made to West Elkhorn Avenue.
5. Recommend to the Town Board of Trustees that the existing right-of-way between the Elkhorn Lodge property and Old Ranger Road be vacated by the Town concurrent with final plat approval and filing.

Bob Koehler/President, Rock Castle Development Co. (Applicant) stated they have demonstrated to the Town Board that additional sales tax revenues generated by development of this property (construction, operations of remodeled lodge/hotel, and retail) will more than pay for any Town contributions to costs of bypass road construction.

Public Comment:

Barbara Penney/Neighboring Property Owner expressed concerns about potential impacts to Far View Drive, including losing some of her front yard to right-of-way. Also concerned that people will be routed away from the downtown area; does not want that to happen.

Linda Farrell/Adjoining Property Owner expressed concerns about proposed lowering of Fall River (floodplain revisions) and bypass road alignment, including impacts to wetlands on the north end of the lodge property and impacts to the waterfall adjacent to her property. Stated the sanitation district has indicated the waterfall need not be removed. Requested conditions of approval be that the river be lowered no more than two feet and the western alignment be chosen for the bypass road alignment. Expressed concerns about impacts to Elkhorn Plaza Condominiums, Far View neighborhood, Filbey Court neighborhood, the Willows Condominiums, and large cost to the Town for improvements to Far View Drive if that road alignment is chosen.

Judy Schreiber/Adjoining Property Owner thanked Mr. Theis and Rock Castle Development for neighborhood meetings and attempts to respond to neighbor concerns. Requested there not be a road connection from the development to Old Ranger Drive. Suggested signage be used to direct traffic west on Elkhorn Avenue to access Wonderview Avenue rather than routing traffic up Far View Drive or James Street.

Dave Albee/Town Resident expressed concern about proposed alteration of the 100-year floodplain, which would reduce floodwater storage capacity provided by the floodplain. Questioned need for an additional banquet facility as proposed by applicant, noting it will conflict with the "Town-owned" banquet facility. Urged bypass road be routed through existing Rock Ridge Road, as suggested by area residents 25 years ago. Stated applicant

should contribute to cost of necessary traffic signal lights as required by almost every P.U.D. in the state.

Bill Van Horn/Area Resident stated the Elkhorn Lodge is one of the oldest structures in the area and is worth saving. Cited the redevelopment of Mary's Lake Lodge as a good example of the way to do so.

John Spahnle/Adjoining Property Owner requested the Old Man Mountain Lane right-of-way be vacated. Requested minimum of 250-foot separation between the bypass road/West Elkhorn Avenue intersection and the existing Old Ranger Drive/Elkhorn intersection so the Old Ranger Drive connection to Elkhorn Avenue would not have to be removed. Stated the adjoining neighborhood does not want right-of-way from the applicant's property to Old Ranger Drive. Requested public trail access via the road rather than across the Town-owned lot and behind his lot. Expressed concern regarding 15-foot setbacks for Lot B-1 as shown on the current plat drawings; requested condition of approval provide for much larger setbacks to buffer his property.

Bob Dekker/Town Resident/Former Mayor provided accolades to Planner Chilcott, stating her staff report is the best he's seen. Expressed support for a bypass road and provided some history of location options considered in the past. Noted the Town can work with the developer; it had not been able to complete negotiations with the property owner(s) or pay for the costs of bypass road construction in the past. The proposed subdivision will result in parcels that can be further reviewed in the future to ensure compatibility with town planning. Expressed general support for the proposal and the developer.

Tom Hochstetler/Town Resident/Business Owner stated the proposed bypass road is very important for emergency access/fire fighters, particularly given the pine beetle epidemic. Urged approval of the proposal with as few conditions as possible. Commended staff for excellent job.

Ron Norris/Town Resident stated he is strongly in favor of some aspects of the proposal and very concerned about others. Questioned whether there is a way to proceed with the beneficial aspects of the development without permanently destroying the peace and quiet of neighbors; preserve most or all of the historic ranch buildings; build affordable housing without constructing it on a steep slope with inadequate buffering from existing development; proceed without burdening the developer with additional road expense and requiring him to build higher density development on the upper 40 acres in order to make a reasonable profit; and whether there is a way to proceed without being held hostage to a road location that has a number of flaws.

Johanna Darden/Town Resident stated her disagreement with Mr. Hochstetler's remarks and her agreement with Mr. Norris's remarks. Urged resolution of issues now rather during future reviews so as to avoid becoming "hemmed in" and accepting things that would not ordinarily be accepted.

Eileen Albritten/Neighboring Property Owner expressed concern regarding the impact of increased traffic and speeding on Old Ranger Drive; questioned necessity for entrance from the proposed development onto this residential street. Expressed concern about impacts of lighting and noise, both during and after construction. Bypass road alignment at the western end of the property will have a negative impact on Elkhorn Club Estates and James Street residents; urged alignment at east side of property.

Margaret Scott/Adjoining Property Owner stated a bypass road is important to Estes Park and she doesn't oppose having a bypass road; however, expressed strong opposition to bypass traffic being routed onto Old Ranger Drive, James Street, or Far View Drive, which would impact old, established, estate-zoned properties. Signage should be used to direct traffic to the west to access Wonderview Avenue or to the east to access downtown. A western alignment for the bypass road would create a very dangerous intersection; Old Ranger Drive and James Street are already located within 500 feet of one another. Requested that traffic traveling east on West Elkhorn Avenue be prohibited from turning left onto James Street. Bypass road traffic should be kept on West Elkhorn Avenue.

Verd Bailey/Adjoining Property Owner stated primary consideration of this project should be to minimize impacts to neighbors as much as possible. Expressed appreciation for the applicant's willingness to change plans to address concerns about use of the current lodge driveway as a bypass road entrance. Supports the western bypass road alignment with West Elkhorn Avenue because it will minimize impact to the waterfall. Stated the Town Board should decide as quickly as possible on the road alignment to provide fair disclosure to those who may want to sell their property. Expressed concern about development of proposed Lot F-1, which elk frequent; impacts should be minimized to wetlands in this area and others. Expressed appreciation for the service of Planning Commission members and for neighborhood meetings held by Theis and Koehler.

Kristin Edgar/Attorney with Caplan & Earnest, LLC addressed the Commissioners on behalf of the Chamberlain, Cravens, and Arcidiacono families/Adjoining Property Owners. Stated although her clients have physical limitations or career obligations that prevent their attendance at the meeting, they have extensive history here, care deeply about the community, and have concerns about how the proposed development will affect them and future generations. Her clients' property has been placed in a conservation easement and will be most impacted by the single-family residential development on the upper 40 acres. The proposed density is a result of the bypass road, which will impact the wildlife corridor and result in huge traffic increases. Drainage, noise, and dust will directly impact her clients' property. Expressed concern that there has been complete disregard of the historic context of the Elkhorn Lodge property as a whole. Stated the proposed development will affect the vitality of the existing business district. Requested denial.

Chair Eisenlauer called at recess at 3:38 p.m.; the meeting reconvened at 3:51 p.m.

Judy Ayres/Adjoining Property Owner stated her condominium building will be closest to the bypass road if the Far View Drive alignment is chosen; the condo has been in her family since it was constructed in 1968. The condo can't be moved but the road can; the additional 10- to 20-foot road setback recommended by staff is not enough; the proposed bypass will devastate her property. Stated she spoke with a CDOT traffic engineer, who told her the bypass road alignment with Far View Drive is not a CDOT requirement, nor will an alternate alignment jeopardize future CDOT funding for the town. Urged consideration of other options for the bypass road alignment.

Eli Feldman/Attorney with Caplan & Earnest, LLC addressed the Commissioners on behalf of the Corley and Hurley families/Adjoining Property Owners. Expressed his clients' concerns regarding impact of the development on the elk corridor, stating it will "close the door" on the elk corridor from Rocky Mountain National Park through their properties and into town, which will impact tourism. Expressed concern about the number of unknowns, stating the plan should not be approved until issues such as the slope of the proposed lots, the number of lots, final alignment of the bypass road, and the annexation agreement and development agreement are finalized. Stated the Planning Commission is responsible for planning the future of the town; requested denial.

Chair Eisenlauer closed the item to public comment at 3:58 p.m.

Planning Commissioners' Comments:

Commissioner Amos — Complimented Mr. Norris on the thoughtfulness of the five steps he outlined and stated his questions should be answered by the Town Board in arriving at their decision on this proposal. Stated his "analysis of the road is that it is two bottlenecks with a disaster in between." There will be problems at each end of the road. The Estes Valley Comprehensive Plan adopted 12 years ago and the transportation study completed five years ago recommended a bypass road; no progress toward developing the road has been made; the Town Board has not tried to fund the bypass and has not studied it except for installation of a 12-inch water line with the understanding that it would be the future location of the bypass road. After this lengthy period of time, the road is suddenly very important and essential to fire fighting, ambulances, and traffic movement from one side of town to the other. If the Town Trustees feel the bypass road is the most important thing that should be developed now with the funds they have, it should be developed without the effects of putting in another development that does not appear to be in the right

position. Regarding the proposed rezoning—except for Elkhorn Club Estates, all the surrounding zoning is 2.5 acres or larger. Quoted from the Master Plan of 1996, which states “undeveloped land close to the Park is generally proposed to have lower densities corresponding to natural features and providing a transition to National Park Service land. In summary, the Plan proposes more intense development in the core of the community transitioning to lower density development as one moves out from the center. The Plan also recognizes the relationship between the Valley and the Rocky Mountain National Park as it relates to access and land-use transitions.” At the April 17th Planning Commission meeting, Mr. Theis stated the 142 acres within a conservation easement east of the proposed development on the upper 40 acres is an anomaly; Commissioner Amos agreed that land set aside for wildlife habitat is an anomaly, as is the Knoll/Willows property (19 acres) and the nine-acre Town-owned property on the hillside adjacent to the Big Thompson River immediately south of East Elkhorn Avenue. There are over 100 more “anomalies” throughout the Valley protected through the Estes Valley Land Trust. Regarding the single-family residential subdivision proposed on the upper 40 acres—all roads proposed in this area have problems with cut and fill. Individual lots have problems accessing the roads from the building site, resulting in the need for additional cut and fill. The Estes Valley Development Code calls for ridgeline protection. If the proposed 55 lots in this area are developed, with all the proposed roads put in, the resulting scarred area will be visible from many areas in the Estes Valley. Stated his desire to see the Town take the stance of putting the bypass road in properly, without winding around as proposed. Development of the upper 40 acres should proceed in accordance with existing zoning of the lot. Stated he cannot support the proposed rezoning.

Commissioner Hull — Stated she is troubled because the proposal seems like two developments: the lower 20 acres proposed for accommodations/commercial/retail/multi-family development and the upper 40 acres proposed for single-family residential use. Expressed concerns about all the unknowns the Commission is being asked to accept, including the annexation agreement. A traffic signal is currently needed at the Elm Road/Moraine Avenue intersection, without additional traffic from 55 new residences, yet Commissioners have been told not to worry about that because CDOT will take care of it in 2035. She referenced the staff report, which states the developer is working with Public Works on a more workable bypass road design, which will “require some revisions to the design of the lots adjacent to the bypass.” The applicant just stated at today’s meeting that proposed Lots B-1 and B-2 will be combined to create Lot B. Expressed deep concern about the 20.1% grade on Lot B-1, which would violate Section 9.1 of the Development Code. Expressed concern that final alignment of the proposed bypass road with West Elkhorn Avenue has not been determined. Suggested that rather than the Town undertaking the expense and disrupting the property owners to widen and straighten Far View Drive to complete the access to Wonderview Avenue, traffic should be directed west one-quarter of a mile via signage to access Wonderview Avenue. Expressed concern that the Planning Commission does not have enough solid information to make a good recommendation to the Town Board regarding the proposed development. There are 22 pages of recommended conditions of approval found in the staff report, including several statements by staff of non-support of requested waivers; she is deeply troubled by this.

Commissioner Klink — Stated he shares many of Commissioner Amos’s and Commissioner Hull’s concerns. Stated the Commissioners’ concerns stem from two things. First, it feels as though the bypass road is forcing the whole development. Second, the proposed P.U.D. is not being used in an appropriate manner and is creating additional problems, including increasing the density proposed on the upper 40 acres and allowing reallocation of density to the lower portion of the property. Quoted from EVDC Section 3.4.D.1.e, noting that a P.U.D. is intended to create “an improvement in quality over what could have been accomplished through strict application of the otherwise applicable district or development standards, including but not limited to improvements in open space provision and access; environmental protection; tree/vegetation preservation; efficient provision of streets, roads, and other utilities and services; or choice of living or housing environments.” Stated it doesn’t seem this has happened on the upper 40 acres; putting 55 lots on an area that is currently zoned for 12 lots is hardly aiding tree and vegetation preservation, open space, etc. Stated he finds this very troubling. If the Town believes the bypass road is important, it should pay for or participate in the cost of the road

construction. Stated the development is not appropriate for the environment it is proposed in, for all the technical reasons that have been brought forward, including slopes of roads, slopes of driveways, and slopes of lots. Requested separate motions on each of the applicant's requests so the Town Board will have Planning Commission input on each individual item.

Commissioner Tucker — Stated agreement with concerns expressed by the other Commissioners. Expressed concern that the proposed density on the upper 40 acres is substantially more dense than surrounding areas; this high-density area would then be the anomaly and would not be in keeping with this mountain community. The affordable housing proposed on Lot B-1 would be good for the community but not at the expense of neighboring property owners. The proposed bypass road would be good for the community but “the horse and the cart are mixed up.” If the road is important, the people of the community should help fund the cost of construction. The bypass road connection from West Elkhorn Avenue to Wonderview Avenue would have too much negative impact on neighboring property owners; traffic should be directed west to the existing intersection of West Elkhorn/Wonderview. Elkhorn Plaza Condominium unit owners will be equally as affected by seven or more years of construction of the proposed development as property owners in Elkhorn Club Estates. Use of the current driveway into Elkhorn Lodge as access is not feasible due to impacts to the condominium unit owners. He provided the following suggestions to the Town Board, stating these provisions are the only way he could support the applicant's proposal:

- One-acre lot sizes should be designated on the upper 40 acres; this is more than double what it is currently zoned for.
- Proposed Lot B-1 should be something slightly more dense than one unit per acre; it should provide transition to the lower commercial area.
- The bypass road alignment with West Elkhorn Avenue should be located as far as possible from Elkhorn Plaza Condominiums.
- There should be no connection to Wonderview Avenue via James Street or Far View Drive; too many homeowners would be affected.

Commissioner Kitchen — Expressed empathy for property owners along Rock Ridge Road. She stated there is a lot of land in the Estes Valley that has been “set aside,” so much that it's not even noticed. She stated the development plan has been working under great constraints; given these constraints, the applicant has done a wonderful job. She noted there must have been great objection by residents when Wonderview Avenue was constructed but the community now relies on it. Expressed strong support for preservation of the Elkhorn Lodge, stating her belief that if this proposal is not approved, another developer will come in who will not be concerned about saving the lodge. The concept of saving all the support buildings and small cabins associated with the lodge is idealistic. Expressed concern that some people using the proposed trail access to Rocky Mountain National Park will not respect private property, citing ongoing problems at MacGregor Ranch.

Commissioner Grant — Stated this is a bold plan and commended the developers for the plan's vision. Shares concerns expressed by fellow Commissioners regarding density and the use of the open space. Stated his belief a bypass road is needed based on his own experiences and from studies but is not sure this is the way to get the road. Expressed support for the affordable housing, river restoration, restoration of Elkhorn Lodge as a historic venue, increase of the tax base, and some of the open-space planning and design. Stated that the proposed development would help anchor the west end of town and the riverwalk, Expressed concern about the proposed density, noting it is a high-density development. Stated the P.U.D. concept provides flexibility in planning, noting that creating ¼-acre lots in order to preserve open space elsewhere is a tradeoff. Stated his desire to consider each motion separately, as suggested by Commissioner Klink.

Chair Eisenlauer — Stated the other Commissioners had said it all.

Closing Comments by Applicant:

Frank Theis/CMS Planning and Development — Stated the applicant understands the Commissioners' concerns; there are a lot of constraints and the applicant has been

working with staff for about a year to come up with the best plan possible. The plan provides for flexibility and will come back to the Planning Commission for further scrutiny. Stated there is a time limit for acquisition of the property and his belief that there will not be a better developer for the property who will work to save the lodge and to address neighbors' concerns.

Bob Koehler/Rock Castle Development Company — Thanked the Commissioners for their deliberations; stated this is a tough one—he would not design the project this way if he had a blank piece of paper. Expressed his belief that the Commissioners' legacy would be turning down an opportunity that would not come up again. The situation is imperfect, but it is a good alternative for the town. Acknowledged there is extra density "on top" and stated it will be turned into one of the premier home developments in the valley; the economics of the bypass road dictate the density. The lodge will be remodeled in a first-class manner rather than being torn down. The town now has an opportunity it has wanted for 25 years; he urged acceptance of the plans even if there are flaws. Stated they are thoughtful developers who take pride in what they do. Stated the opportunity will not come back. Expressed disappointment that planning staff came up with such a negative analysis of the project. Reiterated that the Planning Commission should accept the proposal with flaws and try to make it better as it is re-reviewed; all portions of the project except the single-family residential subdivision would be subject to additional future review. Thanked the Commissioners for considering the proposal over the last four meetings.

Jerry Zahourek/Owner — Stated two developers have made previous offers for the main lodge; both wanted to tear down everything. Expressed his opinion that this is the last chance, noting he has had another offer for purchase of the upper 40 acres that is double what Mr. Koehler has offered. Stated his belief the town will have to wrestle with whether there will be a conservation easement on that 40 acres and his belief that if that happens, there will not be a bypass road. Encouraged the Commissioners to vote in favor of the applicant's proposal.

Attorney White stated the order of the vote should be as follows: Rezoning, Preliminary P.U.D., and Preliminary Subdivision Plat.

Motion Regarding Rezoning Request:

It was moved and seconded (Klink/Amos) to recommend DISAPPROVAL of the request for Rezoning of two Metes and Bounds parcels (parcel identification #35261-00-001 & #35261-05-046) and Outlot A, Sallee Resubdivision, to the Town Board of Trustees, finding that the submitted application does not comply with the standards for review found in Estes Valley Development Code Section 3.3.D, and with the recommendation that any Town Board motion to approve the application include adoption of the findings and conditions recommended by staff on page 9 of the staff report prepared for the May 20, 2008 Estes Valley Planning Commission meeting for the Elkhorn Lodge Redevelopment/Big Bear Estates applications, and the motion PASSED.

Those voting in favor of recommending disapproval: Amos, Grant, Hull, Klink, and Tucker.

Those voting against: Eisenlauer and Kitchen.

Commissioner Hull stated the reason for her vote is her belief that the top 40 acres of the proposed development ignores EVDC Section 9.1.C, which states one of the purposes of the P.U.D. is to preserve the site's natural characteristics, and Sections 7.2.D.2.c and 7.2.D.2.h, which refer to limits of site disturbance. She stated that when the Planning Commission visited the site, Mr. Theis stated that one-third of the trees would be removed for construction of the bypass road and streets. She noted this is a multi-species forest, which gains new importance given the present pine beetle threat; it is also a multi-age forest, which is vital to continued healthy growth.

Motion Regarding Preliminary P.U.D. 08-01:

It was moved and seconded (Klink/Hull) to recommend **DISAPPROVAL** of the Preliminary P.U.D. 08-01, Elkhorn Lodge Redevelopment/Big Bear Estates Subdivision, consisting of four Metes and Bounds parcels (parcel identification numbers 35261-00-001, 35261-05-046, 35261-06-001, 35252-53-018, Portion of 35261-06-001) and Outlot A, Sallee Resubdivision, to the Town Board of Trustees, finding that the proposed use of the P.U.D. does not comply with the provisions of the Estes Valley Development Code regarding an improvement in quality over what could have been accomplished through the existing zoning, and the motion **PASSED UNANIMOUSLY**.

Motions Regarding Preliminary Subdivision Plat:

It was moved (Kitchen) to recommend **APPROVAL** of the Preliminary Subdivision Plat, Elkhorn Lodge Redevelopment/Big Bear Estates Subdivision, consisting of four Metes and Bounds parcels (parcel identification numbers 35261-00-001, 35261-05-046, 35261-06-001, 35252-53-018, Portion of 35261-06-001) and Outlot A, Sallee Resubdivision, to the Town Board of Trustees, with the findings and conditions recommended by staff and with the five conditions of approval suggested by Mr. Theis, as outlined in the *Applicant Presentation* above.

Director Joseph expressed concern about a disconnect between this motion and prior actions, noting the preliminary plat cannot be approved without approval of the other applications, particularly the rezoning. Attorney White stated this is a recommendation to the Town Board, which would have to approve the rezoning and annexation applications in order to approve the preliminary subdivision plat. Commissioner Kitchen expressed her desire to have Mr. Theis's suggested conditions of approval included in any future approval of the preliminary subdivision plat.

The motion FAILED for lack of a second.

It was moved and seconded (Amos/Tucker) to recommend **DISAPPROVAL** of the Preliminary Subdivision Plat, Elkhorn Lodge Redevelopment/Big Bear Estates Subdivision, consisting of four Metes and Bounds parcels (parcel identification numbers 35261-00-001, 35261-05-046, 35261-06-001, 35252-53-018, Portion of 35261-06-001) and Outlot A, Sallee Resubdivision, to the Town Board of Trustees, finding that the submitted application does not comply with the standards for review found in Estes Valley Development Code Section 3.9.E, and with the recommendation that any Town Board motion to approve the application include adoption of the findings and conditions recommended by staff on pages 11 through 32 of the staff report prepared for the May 20, 2008 Estes Valley Planning Commission meeting for the Elkhorn Lodge Redevelopment/Big Bear Estates applications, and the motion **PASSED**.

Those voting in favor of recommending disapproval: Amos, Eisenlauer, Grant, Hull, Klink, and Tucker.

Those voting against: Kitchen.

Chair Eisenlauer called a recess at 4:47 p.m.; the meeting reconvened at 4:55 p.m.

4. DEVELOPMENT PLAN 07-13, WAPITI CROSSING CONDOMINIUMS, Lot 22, S. St. Vrain Addition, 1041 S. St. Vrain Avenue, The Mulhern Group, Ltd./Applicant

Planner Shirk summarized the staff report. This development plan request was reviewed by the Planning Commission at the meeting held November 20, 2007 and was disapproved by a four to one vote based on significant impact to wildlife. The applicant appealed this determination to the Town Board, as provided for in Estes Valley Development Code (EVDC) Section 12.1.B. On January 8, 2008, the Town Board voted unanimously to remand the development plan to the Planning Commission due to the Colorado Division of Wildlife's (CDOW) finding of a significant adverse impact to wildlife and for Planning Commission review of a wildlife conservation plan.

The property is located at the corner of Lexington Lane and Highway 7. It is zoned RM – *Multi-Family Residential* and the proposed use is a use-by-right. The property consists of approximately six gently sloping acres and is largely open meadow; there are trees and rock outcroppings on the southern end of the site, with an existing cabin in this area.

EVDC Section 7.8 does not provide for denial of an application based on significant impact to wildlife; it requires provision of a wildlife conservation plan. Per Section 7.8.H, wildlife conservation plans must include a description of the populations of wildlife and wildlife habitat, analysis of potential adverse impact on wildlife and habitat, a list of mitigation measures and probability of success, a plan for implementation, a plan for any relevant restoration, and demonstration of an applicant's ability to successfully execute the plan. Staff has reviewed the wildlife conservation plan prepared by Chris Roe of Roe Biological Services and provided by the applicant; staff finds the plan complies with these requirements. In conjunction with the CDOW, staff has determined that Chris Roe is qualified to prepare this plan.

The wildlife conservation plan suggests the following mitigation techniques: a phased development schedule; timing restrictions on construction activities; limited landscaping recommendations; and household pet management considerations. The proposed timing restrictions on construction activities would prohibit construction beginning in May or June, during fawning/calving time. Mr. Roe provided a number of photo examples of the manner in which protective fencing around landscaping restricts wildlife movement; staff suggests the Planning Commission approve a waiver to the landscaping requirements for shrub planting set forth in the development code. Staff also recommends the applicant be required to provide the required number of street-frontage and district buffer trees, with all required conifers at least eight feet tall and all deciduous trees a minimum four-inch diameter at breast height. All dogs and cats shall be kept indoors unless under the direct control of an owner.

Some changes have been made to the original site plan. The southern wildlife corridor originally proposed has been shifted farther south and narrowed in order to provide an 80-foot-wide corridor on the northern portion of the lot. The stand-alone unit originally proposed north of the multi-family building has been removed. The access drive for the multi-family building has been moved to the north to reduce impact and activities in the habitat on the southern portion of the lot. Floor-area ratio and impervious coverage have also been reduced. Stand-alone units are proposed fronting S. St. Vrain Avenue and Lexington Lane; the multi-family structure is proposed at the rear of the lot; the southern portion of the lot would remain undisturbed; the general road and stormwater management portions of the proposal would remain the same.

Staff has reviewed the proposal to ensure compliance with zoning requirements such as density, impervious coverage, floor area ratio, setbacks, and height. Items yet to be reviewed include final grading, revised landscaping, revised stormwater pond size, driveway width, parking stall length/width, and other site design details. Staff recommends that the Planning Commission grant staff the authority to review and approve the final site design, which would include engineering details such as water and sewer line routes from the mains to individual units, sidewalk, provision of ADA ramps, etc. Items such as the building layout and road layout would not change.

Planner Shirk read aloud for the record the staff findings and six recommended conditions of approval as shown in the staff memo. Staff recommends approval of the proposed Development Plan 07-13.

Planning Commission/Staff Discussion:

Commissioner Klink requested it be made clear whether the applicant was requesting any variances, whether the proposed use is a use-by-right, and whether any zoning changes are requested. Planner Shirk verified that the applicant is requesting a variance to landscaping requirements (per the mitigation plan) but no other variances; the proposed use is a use-by-right; and no zoning changes are requested or required.

Commissioner Hull questioned whether the wildlife conservation plan is complete if it includes all items shown in EVDC Section 7.8.H.a – g. Planner Shirk confirmed that is

correct. Commissioner Hull also questioned whether it is then within the purview of the Planning Commission to review the conservation plan. Attorney White stated the role of the Planning Commission is to review the plan to ensure that it complies with the provisions of the Code, which are listed in EVDC Section 7.8.H.2.a – g (*Wildlife Conservation Plans, Plan Content*).

Commissioner Tucker questioned whether any verbal or written documentation had been received from the CDOW regarding the wildlife conservation plan. Director Joseph noted representatives of the CDOW are in attendance and can address the Planning Commission directly.

Applicant Presentation:

Steve Loos, Project Architect for the Wapiti Crossing development plan, was present to represent the Mulhern Group/Applicant. He stated Planner Shirk had provided a very good overview of the wildlife conservation plan prepared by Chris Roe of Roe Biological Services, who is a certified wildlife biologist by virtue of training and experience. He stated Mr. Roe was very workmanlike in terms of his efforts to address the issues related to this property and used current, state-of-the-art planning for how they might be mitigated. The 25-page analysis provided by Mr. Roe is comprehensive and reviews point by point all the mitigation efforts the applicant intends to put in place. The applicant's submitted plan is intended to focus attention on the revisions proposed, which reflect significant changes to mitigate impacts to wildlife. Most significantly, the primary lines of elk movement have been preserved on the site; elk move across the property to points elsewhere in the community. A residential unit previously planned in the center of that route has been removed. Additionally, the existing cabin on the southern portion of the site is no longer proposed for full-time residential use. The applicant now proposes to use the cabin as an accessory/community building for recreational activities of residents of the multi-family building. Mr. Roe had indicated that full-time residential use of the cabin would create a potential point of conflict with wildlife. The cabin will be managed so as not to interfere with elk/deer calving/fawning. The revised plan addresses all the established issues the applicant needed to contend with.

The Commissioners proceeded with questions for Mr. Loos, whose responses are summarized as follows:

- Parking for the cabin/clubhouse would be accommodated through the use of parking at the multi-family residential building. The applicant wished to ensure there would not be a traffic lane near the cabin; access to the cabin would be via a sidewalk.
- The multi-family building "turns its end" toward the southern portion of the lot, the patio has been shifted back, and access to the first-level parking area has been shifted to the north of the building. These are all measures intended to preserve the peace and quiet of the southern portion of the lot when it is important to do so. Mr. Roe indicated this is the primary calving/fawning habitat on the site.
- Use of the cabin can be managed such that disruptive activities will not take place during sensitive times of the year for wildlife.
- The applicant will make the cabin handicapped-accessible.
- Mr. Roe is not present at the meeting because he is on a trip in Africa.
- The applicant has worked to address concerns regarding impact of the cabin to the calving/fawning area on the southern portion of the site.
- In response to Commissioner Amos's concerns regarding Mr. Roe's use of qualifiers in his report (terms such as "likely reduce," "highly unlikely," and "slight to moderate"), Mr. Loos stated Mr. Roe used the terms because judging what elk will do is not an exact science. The applicant has made efforts to accommodate the wildlife "doing what they do."
- The applicant has provided a route for elk movement in the location currently used by elk; the elk are very acclimated to people.
- The applicant will provide the full complement of parking, as required by Code.

Commissioner Hull expressed concerns regarding comments found in Mr. Roe's wildlife conservation plan that indicate that options for mitigation of impacts to wildlife could not be fully realized or are limited, concern that the two 60-foot wildlife corridors

(a total of 120 feet) previously proposed have been reduced to one 22-foot corridor and one 80-foot corridor (102 feet), concern that some of the proposed development has been shifted farther to the south, and concern that more significant changes to the applicant's plans have not been proposed. In response to these concerns, Mr. Loos provided the following information:

- The elk filter through the southern portion of the site from surrounding residential development to the south. The proposed wildlife corridors have been revised in accordance with the advice of a certified wildlife biologist (Mr. Roe). The applicant has provided one major corridor, which Mr. Roe fully believes will retain elk movement across the property.
- Changes to the applicant's plans include the preservation of the open quality of the Highway 7 frontage. Wildlife viewing will be preserved and elk will not run out on the highway "unannounced."
- With the removal of some circulation, removal of one unit, and diminution of some of the circulation near the multi-family building, 64% of the property will be in open space. The majority of the property will remain in vegetation that provides natural forage.
- Wildlife corridors have been widened to approximate the current wildlife circulation paths.
- The southern portion of the property will remain as it is today. The applicant has preserved the best calving and fawning location on the site.
- Development of the property will be phased to allow the wildlife to acclimate over time.
- Use of shrubbery has been restricted to ensure that wildlife corridors, unlike the rest of the neighborhood, will remain unrestricted by landscaping and fencing that would neck down the wildlife circulation paths.
- The applicant proposes restrictions to minimize nuisance-type problems with wildlife (such as raccoons, bears, cougars) and will implement the full measure of efforts to mitigate that type of wildlife interaction.
- The applicant has sought to eliminate human/animal conflicts to the maximum extent possible by virtue of the site design.
- All proposed changes are based on the advice and counsel of a certified wildlife biologist.

Colorado Division of Wildlife Comment:

Rick Spowart/Colorado Division of Wildlife Estes Park District Wildlife Manager summarized his credentials, which include 30 years experience as a wildlife research biologist and manager and a Ph.D. in wildlife biology. Stated there has been some misunderstanding of CDOW's role in this process. Planner Shirk stated the plan was remanded to the Planning Commission because CDOW found significant impacts. The Division of Wildlife made the statement that they believe there will be significant impacts because of this development, but provisions found in the Development Code required the applicant to submit a conservation plan due to use of the site as a fawning/calving habitat. Stated fawns/calves are born in the area south and east of the cabin. Elk especially are very adaptable and can become very human-habituated. Stated his concern is not so much for the calving habitat. The site is very heavily used by wildlife, elk in particular. The property provides the last natural meadow in the area; 200 or more elk can be seen there at one time. The proposed development is aptly named because elk use the site to cross Highway 7 to access the 18-hole golf course and feed on Kentucky bluegrass, their preferred diet in Estes Park. Mr. Spowart stated he had worked with Mr. Roe when he prepared the wildlife conservation plan, noting many of the less-than-precise verbs he used are standard in wildlife biology because animals are adaptable. Mr. Spowart's experience has been that elk use the area of least resistance when moving from one point to another. He suggested to Mr. Roe that larger trees be planted rather than fencing smaller trees, and that use of the cabin on the southern end of the property be eliminated or limited due to existing use of that area for fawning and calving. He stated the biggest impact would be loss of the open meadow for elk to stage on during the rut and carry on a normal social interaction during that time of year, as well as loss of opportunity for people to watch that interaction. He noted Highway 7 is lined with vehicles every fall as elk put on

a show and stated his belief that will not happen with this development. He stated his belief that the conservation plan has addressed some concerns, but there will still be a significant negative impact because of the proposed use of the property. Without an extremely different type of development on the property, a plan could not be proposed that would remove that negative impact.

Commissioner Amos questioned whether every development in Estes Park restricts the movement of elk. Mr. Spowart stated elk are very adaptable and will move around buildings, cross parking lots, and so forth. They are most impacted by development during the winter when they are in large herds. They have difficulty moving through areas where there are lots of buildings or houses at this time of year due to their need to maintain visual contact with one another. He noted the applicant's property gets extreme use, with wildlife moving across it and grazing on the native vegetation.

In response to Commissioner Grant's question whether his findings would be significantly different than Mr. Roe's if he had written the study, Mr. Spowart stated they are in agreement on certain things proposed that would limit some of the impacts; however, you "can't make a silk purse out of a sow's ear." In his opinion, 41 condominiums cannot be constructed on the site without having a significant impact.

Commissioner Hull questioned whether newborn elk would be abandoned due to construction/heavy equipment noise. Mr. Spowart stated it would be possible but indicated it is unlikely; he has seen elk calves born in neighborhoods such as this and the mothers area very protective—people are sometimes charged and injured. He noted there are a number of other wildlife species that use the area, noting a bear had recently broken into a car just up the road. Stated his concern with new developments in Estes Park is conflicts between bears and humans. If developments require bear-resistant dumpsters, people don't always use them. There is no town ordinance to enforce this requirement; enforcement falls to the CDOW and its volunteers and has proved very challenging in recent years.

Commissioner Tucker questioned whether the wildlife that use the applicant's property do so because the entire surrounding area is populated. Mr. Spowart stated that is definitely true for elk. It is the last meadow/open area until they reach the golf course. Elk seek out open areas, especially during rut; there is very high use of the neighborhood and the meadow on the applicant's property, particularly by elk. Commissioner Tucker questioned whether calving and fawning activities would be moved to surrounding areas if the property is developed. Spowart stated elk are very adaptable; there would probably be increased use of the golf course for elk calving.

Commissioner Amos requested Mr. Spowart's reaction to a statement in Mr. Roe's report: "Although Lot 22 may have occurrences of calving and/or fawning activity, it may be better for the regional population as a whole to reduce the overall effectiveness of this site within town to preserve and encourage future use of more adaptable elk habitats outside of town. The question here becomes one of helping manage the population of elk within Estes Park and the greater Estes Valley or protecting a wildlife viewing area of habituated elk and deer within the town of Estes Park." Commissioner Amos noted the town trumpets the Valley as a wildlife viewing area.

Mr. Spowart stated the CDOW manages elk and hunting seasons, not condominiums. The idea that development that pushes elk outside the Valley where hunters can shoot them is a good thing seems like a "stretch." Stated he doesn't think constructing condominiums on the applicant's property would help with elk management.

Commissioner Klink questioned whether any of the animals that use the applicant's property are endangered or suffering population declines. Mr. Spowart stated there are none to his knowledge. Commissioner Klink questioned whether there are habitats on the property unique enough that Mr. Spowart would feel the development would have a significant impact on whether or not any of those animals are endangered in this area. Mr. Spowart stated no, not to endangered species. He noted the meadow is unique, not only because of its location but because it contains native grasses; however, in terms of endangered or threatened wildlife, the lot could be paved over without impacting any of those species.

Larry Rogstad/Colorado Division of Wildlife Area Wildlife Manager for Area 2 addressed the Commissioners. He stated he recently accepted his current position; he has 27 years experience as a wildlife manager in the Greeley North District and Area 4 and is an

aquatic invertebrate zoologist. In response to Commissioners' questions, he stated the following:

- There is a potential for large ungulates such as elk and deer to charge large windows on either sides of corridors when they see their reflection during rut or when they are panicked and see the window as a means of escape.
- It is possible the 80-foot-wide corridor for wildlife movement could be used as a recreational area for people. Providing an adequate setback with an adequate visual field for large ungulates and people is essential to creating a successful corridor for wildlife movement. This is also true where wildlife will cross highways/roads—adequate setbacks and landscaping that provides a broad visual field are needed for the safety of humans and wildlife.
- There is a \$.25 cent surcharge on licenses issued by the CDOW to pay for the advertising necessary to educate the public about who/what the Division does. Mr. Rogstad will convey to his supervisor Commissioner Grant's and Commissioner Hull's concerns about over-saturation of advertising by the CDOW.
- One of the huge issues that is a difficult part of the planning process is that the impact of each individual development is not necessarily as important as the cumulative impacts of development on the entire neighborhood system. At what point are the impacts of development pushing wildlife back onto neighboring properties in order to allow higher densities? It is difficult to deal realistically with the cumulative impacts of development on wildlife resources.

Commissioner Tucker questioned whether the current landowner should bear the burden of the cumulative impacts of neighborhood development, indicating he did not require an answer.

Commissioner Grant noted many recent development proposals have involved wildlife issues and expressed appreciation for the presence of Mr. Spowart and Mr. Rogstad at today's meeting.

Commissioner Klink asked Attorney White if the Planning Commission voted to disapprove the development plan and the applicant chose to appeal, what part of the Code would the Commission have to stand on? Attorney White stated the question is what grounds do you have to deny this development based upon provisions of the Code, and further stated, in his legal opinion, the Commission has none.

Public Comment:

Ron Norris/Town Resident stated his opposition to the proposal; the original proposal was for the maximum density of buildings in a calving/fawning area; the buildings are still proposed in this area. Stated no steps have been taken to mitigate impact on habitat; the applicant's own biologist has stated mitigation efforts cannot be fully realized and the CDOW has not signed off on this proposal. Stated nothing changed since the proposal was rejected last fall. The applicant was informed of significant wildlife issues prior to purchasing the property and shows a lack of respect by informing neighbors they could not stop him, by failing to conduct a wildlife study or prepare a wildlife plan until required to do so by the Town Board. Proposed changes are minimal and superficial. Urged the Commissioners to reject the proposal.

Dick Coe/Neighboring Property Owner stated he was a seasonal ranger in Rocky Mountain National Park for 13 seasons but is not a wildlife expert. Stated wildlife are unpredictable. Elk have been calving on the applicant's property; cows will protect their calves long after they are born and can and have injured people in doing so. Estes Park and Rocky Mountain National Park were recently designated at the national level as a wonderful place to vacation with opportunities to see wildlife in town and in the Park. Tourists are drawn here because of the wildlife. Commended the investment made in the Hermit Park property; expressed appreciation that other open-space possibilities are being considered in the Estes Valley.

Marlene Bell/Neighboring Property Owner stated she walks along Highway 7 every day and has yet to see elk in the southern portion of the applicant's property; they are always

in the meadow grazing and resting. Questioned whether Mr. Roe was present when elk were on the property.

Johanna Darden/Town Resident expressed concern about development impacts on elk; stated she would leave Estes Park if the elk disappear. Stated elk have fewer and fewer places in town to “hang out.” Expressed concern that children will use the proposed wildlife corridor as a play area. Urged that the whole area be kept free of housing and that the Commissioners vote to keep the land free.

Sandy Osterman/Town Resident stated she is a concerned citizen who has studied the EVDC and Mr. Roe’s wildlife conservation plan. Ms. Osterman cited numerous specific statements in the wildlife conservation plan and sections of the Code, stating the wildlife plan indicates there will be adverse impacts to wildlife and habitat or shows the applicant’s proposal is questionable as to whether it meets EVDC standards. Expressed opposition to the applicant’s proposal.

Joan Hawbeck/Adjoining Resident stated the biologist’s indication that this is the “last natural meadow” is alarming. Estes Park needs to continue to ensure that the last natural anything is not lost.

Dirk Knobel/Neighboring Property Owner cited EVDC Section 7.8.F.3 and expressed concern that emphasis has been shifted to provision of a wildlife movement corridor rather than impacts to a calving, lambing, or fawning area. Noted wildlife other than elk use the site. Expressed concern regarding impacts to wildlife regardless of proposed phasing; stated use of the cabin as a community building will make matters worse. Stated the EVDC gives the Planning Commission grounds for denial of the application; requested disapproval.

Kathleen Murray/Area Resident questioned why the Commissioners would approve the proposal, noting the property is the last open area in that neighborhood. Questioned whether people would not be happy until every single square foot of town is developed. Wildlife is the main draw for tourists, as shown by surveys. Local residents hate to see everything developed.

Fred Mares/Neighboring Property Owner stated the EVDC does not include provision for denial of a plan based on wildlife impact; it is not anywhere in the Code. However, staff provides an interpretation and the Commissioners provide a reality check—that is what is intended by the Code. Stated the Code defines five areas of habitat that warrant special consideration; the CDOW has identified one of these on the applicant’s property and stated there will be significant impact. Questioned whether the revised site plan removes that impact, noting the CDOW has stated it will not. Mr. Roe’s wildlife conservation plan states that mitigation efforts cannot be fully realized. Urged denial of the proposal.

Jayne Zmijewski/Neighboring Property Owner stated she is a volunteer for Rocky Mountain National Park, Larimer County Search and Rescue, and CDOW and has participated in bear and mountain lion research—the applicant’s property is within her research area. Stated the 80-foot wildlife corridor will be seen as a cattle shoot for elk, which currently have options for crossing the road in several areas. Noted bears and mountain lions also cross the road and will be all be funneled into one 80-foot corridor. Stated the buildings next to the corridor will be viewed as cliffs by the wildlife, which will be panicky running through there. Provided information about bears and mountain lions in the area; bears get into trash containers and there will be more attractants for mountain lions with the proposed development. Stated the developer has options; the animals don’t.

Cheri Pettijohn/Town Resident stated there were no elk in the Valley when she was a child. Elk, deer, bear, mountain lion, and human populations have all exploded together. Noted all live together, this is not something new; the animals are very adaptable. Regarding Ms. Zmijewski’s statement that animals would panic in the corridor between buildings on the applicant’s property, she stated she does not see animals panicking anywhere else; they meander among houses and buildings throughout the area. She stated there are approximately 100,000 acres in national park, national forest and BLM lands; the applicant’s property cannot be the last open area. Stated the Planning Commission cannot deny the applicant’s request without taking the applicant’s property

rights and that, as a taxpayer, she would just as soon not have to contribute financially to support a lawsuit regarding this property.

Chair Eisenlauer closed this item to public comment at 6:30 p.m.

Planning Commissioners Comments and Discussion:

Commissioner Amos — Stated when he moved to Estes Park in 1981 there were no elk within the Valley; they began staying in town to browse on landscaping and lawns as properties developed and the herd has grown ever since. Stated the former owners of the property had contacted the Land Trust about placing a conservation easement on the property, but the financial gain in doing so was apparently not enough for all the siblings and the property was sold. Stated his opinion that proposed changes to the applicant's plan are not enough to protect calving and do not provide enough area for wildlife corridors. Motioned to disapprove the development plan, as shown below.

Commissioner Tucker indicated he is struggling with this because the primary issue when this application was reviewed at the November 20, 2007 Planning Commission meeting was calving and fawning on the site, based on EVDC guidelines, not so much the provision of wildlife corridors. He noted he had just observed an elk coming out of the drive-through lane at the bank across the street during a meeting break. Many people have stated that the elk adapt; they will have their calves regardless. The question is whether the calving will take place on the applicant's lot or in the neighboring subdivision. Questioned whether the Commissioners can deny the application when the applicant has the zoning rights to build what is proposed; the applicant purchased the property based on its current zoning. No one discussed using the property for anything other than multi-family use prior to the time it was purchased by the applicant. Wildlife use the applicant's property because of surrounding development. Questioned whether it is right to take away property rights based on existing development. Commissioners have been advised that if the development is denied, the town would lose to an appeal if the property owner chose to take legal action; questioned whether the Planning Commission should subject the community to legal fees. Stated his belief that the Commission cannot take away the applicant's property rights based on what they know.

Chair Eisenlauer — Expressed his agreement regarding the applicant's property rights. Stated the Commission should not deny the rights of a property owner who wants to develop their property in accordance with applicable codes and regulations.

Commissioner Klink — Expressed his sympathy for all those who view this as valuable property; stated the question is whether anyone is willing to tear their house down, move elsewhere, and plant native grass on their property in order to create a place for the elk to calve. There is no question that the elk use the applicant's property to calve, and the developer was aware of wildlife activity on the site. Stated his belief this is not sufficient to stop the development, nor is it grounds to take away the applicant's property rights. The CDOW has not indicated that endangered species use the property and did not indicate the habitat cannot be found elsewhere.

Commissioner Kitchen — Stated her belief the Planning Commission would be legally irresponsible to deny the application. Indicated the development will have impacts but not significant impacts in the context that the word "significant" was intended in the Code.

Commissioner Grant — Stated he is a neighboring property owner and does not like the proposed density or wildlife impacts, but all development inevitably reduces wildlife habitat. The developer was initially nonresponsive and disrespectful to the neighborhood concerns but has since done his best to mitigate these concerns by preparing a wildlife study. Stated regrettably, he must support the plan.

Commissioner Hull — Questioned whether the lot must be developed with 41 units or left as blank land. Suggested the developer should propose less density; the proposal could work if there was less impact. Stated her disagreement with Town Attorney White's opinion that the Commission does not have grounds to deny the application based on EVDC Section 7.8.F, which provides that the CDOW will determine whether the proposal will result in significant adverse impact to wildlife or wildlife habitat. The CDOW has

indicated it will. Stated she cannot support the application based on guidelines of the EVDC and will vote no.

Commissioner Grant stated he read the same thing and came up with an entirely different view of his charter. Requested Town Attorney White's interpretation.

Town Attorney White provided his interpretation of the Code as follows: "The Code gives the Division of Wildlife the requirement to find significant adverse impact on specific areas. They did not find significant impact until they appeared before the Town Board on the appeal. And that is significant adverse impact on a calving, lambing, or fawning area. Based upon that representation by the Division of Wildlife, the Town Board asked for a wildlife conservation plan. That is the requirement for that finding. That is the only requirement for that finding and there's a statement that says what a wildlife conservation plan is, which they have complied with."

Commissioner Amos expressed his strong support of private rights. He stated there are some things that transcend private rights; some things are "community rights"—this is one. The town receives income from sales tax that is intended for open space and trails; the town has chosen to devote to the funds to trails. If the town is advertising Elk Fest, Elktober, "come view the elk and listen to the bugles," then the town might want to consider supporting the elk in some fashion since they generate income for the town. These funds could be devoted to open space. If the town were looking at open space areas, it might believe this property has a high priority for protection because the tourists and residents want to see the elk and their movements.

Commissioner Hull noted the developer's own wildlife impact assessment states on page 12, "Reportedly 15% of Estes Park sales tax revenues or approximately one million dollars per year is manifested by the ability of visitors to readily view elk within the town limits."

Commissioner Klink noted the town spent \$400,000 to help with the purchase of Hermit Park and voted to spend \$217,000 per year to subsidize the performing arts center, as well as providing the land for art center to be built on. It is not right to take away the applicant's property rights because the Planning Commission has decided open space is a priority. It needs to be a community decision; people of the town should put their money where their mouth is.

Commissioner Amos pointed out that the Town, in conjunction with the Land Trust, purchased the nine-acre property "across the river" and devoted several million dollars to purchase the Knoll/Willows property. However, there is not a coordinated effort toward preserving land. Expressed appreciation for Town participation in the purchase of the Hermit Park property.

Commission Grant stated a better approach to open-space planning is needed. Estes Park is a rich town given its budget relative to its 8,000 residents.

It was moved (Amos) to DISAPPROVE Development Plan 07-13, Wapiti Crossing Condominiums, based on the fact that proposed changes to the plan are not significant enough to mitigate problems in the calving area or to provide sufficient corridors for the elk.

The motion was not seconded and was WITHDRAWN by Commissioner Amos.

Commissioner Amos requested that Town Trustee Homeier convey to the Town Board his request that a concerted effort toward open space be made in the future. He noted the Town's ongoing wildlife study, stating it could include recommendations for future protection of some areas. Requested the town move forward on that.

Commissioner Klink suggested interested members of the public contact the Town Board, noting it may not be too late to purchase the property from the developer.

Commissioner Tucker requested Town Trustee Homeier convey a request from the Planning Commission and from staff that the effort to protect wildlife be placed on a fast track, stating he did not want to have the same conversation again about another piece of

property. Expressed his desire for a Code change to provide the Commissioners the ability to make more black-and-white decisions.

Commissioner Grant stated his agreement and his desire for better clarification.

It was moved and seconded (Klink/Kitchen) to approve Development Plan 07-13, Wapiti Crossing Condominiums, Lot 22, S. St. Vrain Addition, with the findings and conditions recommended by staff; and the motion PASSED.

Those voting in favor: Eisenlauer, Grant, Kitchen, Klink, and Tucker.

Those voting against: Amos and Hull.

CONDITIONS:

1. Compliance with mitigation techniques set forth in the Wildlife Conservation Plan for the Wapiti Crossing Condominiums Development, prepared by Roe Ecological Services. The phasing plan mitigation technique shall be further refined to graphically outline phasing areas.
2. The landscaping plan shall include the required number of street frontage and district buffer trees (per Section 7.5.F), which shall not be located within the proposed 80-foot wildlife corridor and shall provide a movement corridor through the southwest corner. All required conifers trees shall be eight (8) feet tall, and all required deciduous trees shall be 4" DBH. Because of the tree size, shrubs shall not be required.
3. Staff shall approve final site design, provided revisions fall within parameters set forth in Section 3.7.A1 "Staff Minor Modifications to Approved Final Plans" and Staff finds compliance with the Estes Valley Development Code. The applicant shall submit a complete site plan, containing all submittal requirements outlined in Appendix B, no later than July 23, 2008.
4. All dogs and cats shall be kept inside of the units, except that the dog or cat may be out of doors if it is under the effective control of a person, as defined in the Estes Park Municipal Code. This condition shall be included in future condominium declarations.
5. Final construction plans shall be approved by the Public Works Department prior to issuance of any permits.
6. Compliance with the following memos (as may be amended to address changes to the site design):
 - a. From Jeff Boles to Bob Goehring dated August 22, 2007.
 - b. From James Duell to Dave Shirk dated August 16, 2007.
 - c. From Will Birchfield to Dave Shirk dated August 24, 2007.

5. REPORTS

No reports were presented.

Chair Eisenlauer adjourned the meeting at 6:55 p.m.

 Ike Eisenlauer, Chair

 Julie Roederer, Recording Secretary