

RECORD OF PROCEEDINGS

Regular Meeting of the Estes Valley Planning Commission

January 20, 2009, 1:30 p.m.

Board Room, Estes Park Town Hall

Commission: Vice-Chair Klink, Commissioners Wendell Amos, Alan Fraundorf, Betty Hull, Joyce Kitchen, Ron Norris, and John Tucker

Attending: Commissioners Fraundorf, Hull, Kitchen, Klink, Norris, and Tucker

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

Absent: Planner Shirk, Commissioner Amos

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

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

1. PUBLIC COMMENT

Dave Albee/Town Resident – Mr. Albee introduced himself as the newly-elected president of the Association for Responsible Development (ARD). He spoke today to honor Enda Mills Kiley, daughter of Enos Mills and a founding member of ARD in 1985. Mrs. Kiley passed away last week. She was and will continue to be a big inspiration to the group, as her goals to preserve and protect the valley are a primary focus for ARD. Mr. Albee also introduced new officers Sandy Osterman, Buddy Mitchell, and Don Sellers. Mr. Albee suggested a gathering of ARD members, Planning Commissioners, Town Board members, and Larimer County Commissioners to discuss common issues. Director Joseph indicated that a joint meeting between Planning Commission, Town Board, and the Board of County commissioners is being discussed and will most likely occur this spring.

Sandy Osterman/Town Resident – As the new vice-president of ARD, she will see that ARD continues the quality of involvement that the Planning Commissioners have come to know and expect from ARD.

2. ELECTION OF OFFICERS

The positions being elected today must be as follows: The elected Chair must be a resident of the County, and the elected Vice-Chair must be a resident of the Town. That being said, Commissioner Doug Klink was nominated (Hull/Tucker) to serve as Chair for 2009. It was moved that nominations cease (Kitchen/Norris). The Commission voted unanimously to elect Commissioner Klink as Chair for 2009, with one commissioner absent.

Likewise, Commissioner Tucker was nominated (Hull/Norris) to serve as Vice-Chair for 2009. It was moved that nominations cease (Norris/Fraundorf). The Commission voted unanimously to elect Commissioner Tucker as Vice-Chair for 2009, with one commissioner absent.

Finally, it was moved and seconded (Hull/Tucker) to name the Administrative Assistant in the Community Development Department as Recording Secretary.

3. CONSENT AGENDA

- a. **Approval of meeting minutes dated December 16, 2008.**
- b. **ACCESSORY DWELLING UNITS**

Request to continue this item to the February Planning Commission meeting due to the absence of Planner Dave Shirk

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

4. PROPOSED AMENDMENTS TO THE ESTES VALLEY DEVELOPMENT CODE (EVDC), BLOCK 12 – WILDLIFE HABITAT PROTECTION

Planner Chilcott stated that she would like to focus the discussion today on proposed revisions to EVDC §7.8. This section addresses when a wildlife habitat impact assessment would be required, what would be contained in the assessment, and how it would subsequently be reviewed. After today's discussion, proposed code changes as well as proposed setback requirements will be drafted for presentation at February's Planning Commission meeting.

A habitat assessment would be required for development plan, subdivision plat, planned unit development, special review uses, and rezoning applications on property that contains critical wildlife habitat. Planner Chilcott indicated habitat assessments will not be required for construction of single-family homes built on lots zoned single-family residential.

According to the proposed code, critical status would apply to the following habitats: aquatic, wetlands, riparian vegetation, potential conservation areas as defined by the Colorado Natural Heritage Program, winter concentration areas of Big Horn sheep as defined by the Colorado Division of Wildlife, raptor nests and a one-half mile diameter buffer around the nest, and severe winter range for mule deer and elk. Another possible addition is migratory bird habitat associated with riparian vegetation and open water. Staff is proposing that a wildlife habitat map be adopted into the EVDC, rather than referencing the EDAW habitat assessment or the EDAW maps in the EVDC. Staff is using the EDAW assessment to assist in forming code language.

Planner Chilcott displayed the most recent version of the critical habitat maps, which are available on the Town website. She pointed out the areas that are considered critical and could potentially require a study prior to development.

When asked by Commissioner Tucker about the percentage of developable land in the valley and asked whether we should focus on the river corridors and the effect of wildlife conservation in those areas since this is where the bulk of development/redevelopment in areas mapped as critical wildlife habitat may occur in the future. Director Joseph stated the Estes Valley is approaching build-out and developers will begin looking at re-developing existing parcels rather than developing virgin land. Director Joseph concurred with Tucker about the focus on river corridors.

Planner Chilcott recommends any adopted maps be used as guides for further studies. There may be times when property owners question the presence of critical habitat on their property, and the proposed code has provisions for those challenges and possible updates to the maps. This would take place through a public process to allow for comment. Another new addition to the proposed code includes the ability to waive the impact assessment. If it was concluded there was no critical habitat on the property, a waiver could be submitted and reviewed by the Community Development Director, Planning Commission, County Commissioners, or Town Board. A determination about whether or not a wildlife impact assessment would be required could be requested prior to submittal of a development application. Commissioner's Klink and Norris stated that this

needed to be a transparent process. Planner Chilcott stated that she believed the process would be transparent.

Director Joseph indicated that staff routinely determines what information needs to be submitted as part of a complete application and that this could include a determination that a habitat impact assessment is not needed. This initial waiver does not mean that the subject is off-limits for discussion and does not prevent Planning Commission from requiring an assessment. Also, he said it is a common occurrence to ask developers for more information during the application review process, and staff always uses their best judgment to focus on pertinent information and tries to make the process flow smoothly.

Planner Chilcott stated that code language now includes criteria by which an assessment would be evaluated. Planner Chilcott indicated the review criteria for determining impacts on wildlife species should include human-related activities (domestic pets, etc.) that could threaten the health or viability of a species. Along this same line, impacts on wildlife habitat that threaten elimination, reduction, or fragmentation of said habitat should be considered, as well as movement patterns and the potential displacement of species over the long-term. Finally, cumulative impacts should be considered in order to determine how a development could impact adjacent properties and subsequent wildlife habitat. Planner Chilcott stated that she believes the language used in this code was originally prepared by Clarion for use in Summit County and has been adopted in several other Colorado counties. Staff and Planning Commission needs to determine if the criteria listed will work for the Estes Valley.

According to Planner Chilcott, the proposed code recommends the habitat study be conducted by a qualified biologist to determine what mitigation factors are needed in order to minimize impacts. The Estes Valley Contractors Association requested that staff maintain a list of qualified biologists so language requiring this was added to the code. This list would be non-exhaustive, and any applicant could bring the name of a qualified biologist to add to the list, which would be maintained in the Community Development Department. It is suggested each biologist have at least two years experience with habitat review in the Colorado Rockies or two years of comparable experience in another area with similar characteristics and species.

Each study would look at existing conditions, assess potential development impacts, review mitigation of impacts, and include an implementation-monitoring enforcement plan (possibly working with homeowners' associations). If a developer had approval to remove habitat from one area they would be required to enhance or restore an area close by. Any damaged habitat would require repair. Commissioner Norris would like to see the initiation of a database of documented wildlife sightings by public groups to track habitat and species in order to determine any wildlife trends.

Public Comment:

Burt Cushing/Town Resident – Being a retired stream ecologist, Dr. Cushing stated that it is well-known in his science that a river or stream reflects the valley that it drains because of the linkages between the terrestrial and aquatic environments. Any impacts to a stream's valley or environment will eventually impact the stream as well, and the closer the impact, the quicker it will change the stream. Dr. Cushing said the greater the magnitude of the impacts, the greater the impacts within the stream, and encouraged the Planning Commission to stay as far away as possible from streams in order to lessen the potential impacts. Concerning qualified biologists, Dr. Cushing stated many organizations now have "certified" ecologists, and these societies will often provide you with the names of those who have passed the criteria to be included on their lists. Commissioner Tucker asked Dr. Cushing's opinion on what damage, if any, has been done to streams in the Estes Valley. Cushing believes all been severely impacted, including some areas where the link between the terrestrial and aquatic environments has been completely destroyed.

Mark Elrod/Town Resident – Mr. Elrod has concerns about the qualifications of the biologists proposed to conduct the habitat assessments. According to the proposed code, the biologist must be mutually agreed upon by the applicant and the Community

Development Director. It is also proposed that the Community Development Director compile and maintain the list of biologists. Mr. Elrod's concern lies with the power of the Director to be the sole decision-maker of who is included on the list. Mr. Elrod believes the term "qualified biologist" should be defined by education, experience, years of service, etc. He suggests the code at §7.8.F.1.a be changed to state "The assessment should be prepared by a qualified biologist. The Community Development Department may maintain a list of qualified biologists known to it from time to time and from which selections may be made." Mr. Elrod thinks qualified biologists included on the list should have a minimum of a master's degree from a university in the United States, have a least two years work experience in the natural habitats of the Colorado Rocky Mountains. Because our environment is unique, he feels strongly that the biologists should have Colorado Rocky Mountain experience, rather than accepting "comparable" habitat experience.

Sandy Osterman/Town Resident – Ms. Osterman indicated that the words "significant adverse impact" are still undefined and with no clear meaning. She asked Commissioners to again refer to her letter dated January 14, 2009 and consider making the applicable changes, which would include establishing an escrow account as a way to reimburse a qualified biologist for his services.

Corey LaBianca/Local Resident – Ms. LaBianca suggested all habitat assessments, even those being waived, be brought before a public hearing.

Dave Albee/Town Resident – Mr. Albee had questions about some property on the north end not being categorized as critical habitat. Director Joseph stated at some point urbanization produces enough fragmentation of the habitat that it is no longer considered severe winter range. Commissioner Norris stated these areas are also recognized by the Colorado Division of Wildlife. Mr. Albee suggested reviewing Boulder County's open space database as an example of how the public can help in tracking certain animal species.

Fred Mares/Town Resident – Mr. Mares indicated this latest draft has no mention of reduced density or lessening of impervious coverage as a means to mitigate adverse impact. He also thinks it would be helpful to developers to list specifics on how the development footprint could be lessened. Mr. Mares feels "mitigation to maximum extent feasible" needs clearer definition. Planner Chilcott stated there is a definition in the current development code for "maximum extent feasible" and "maximum extent practical," and the final decision concerning mitigation would rest in the hands of the Planning Commission. Mr. Mares appreciates the work Staff and Planning Commission have completed thus far, and is pleased to see the single-family residential parcels taken out of contention for habitat assessments.

Mr. Mares would like to suggest a change in the development plan application process to include a concept phase that is addressed at a public forum. The need for a wildlife assessment could be determined at this point of the process. The current process informs the public after the official submission of the application, which comes after money and time have been invested. If the development application was made known to the public earlier, it is Mr. Mares opinion that many of the problems or concerns could be taken care of before the applicant goes before the Planning Commission.

Mr. Mares also suggests the wildlife habitat assessment, corresponding code revisions, and the open space study that is currently being proposed to the Town Board, be taken as a whole within a vision statement geared towards what our community is trying to achieve. Mr. Mares indicated the concern about financial loss to land owners if areas are labeled for open space, and wants the Planning Commission to be open to creative ideas to mitigate adverse impacts of development through an open space plan. If a purpose or vision statement is stated for the future of the Estes Valley, the citizens could follow that vision and be more accepting of Planning Commission decisions concerning development, habitat issues, and open space.

At this point, the meeting was closed to further public comment and opened to Planning Commission discussion of the proposed written code.

Commissioner Klink opened discussion on the proposed written code:

§7.8A – No comment

§7.8.B – Commissioners Klink and Hull commented they were pleased the single-family residence had been removed from potential habitat assessment. Commissioner Fraundorf questioned uses requiring special review, and Planner Chilcott indicated the possibility of an assessment waiver, noting that language needs to be included concerning the details of the waiver. Commissioner Norris requested more specific language concerning raptor nests, with Planner Chilcott clarifying the proposed ½ mile area is the diameter surrounding the nest (1/4 mile radius). Town Attorney White stated the need to include a definition of Critical Habitat in §13, which can then reference the map. With that in mind, §7.8.b would not include proposed items 1-8 because they would be listed in the definition in §13.

§7.8.C – No comment

§7.8.D – Commissioner Klink indicated the definition of a qualified biologist is not completely consistent throughout the proposed code. Commissioner Norris suggested the Commission review some professional society definitions to reach an agreement on what constitutes being a qualified biologist. Director Joseph noted the state of Colorado has a licensing process for biology professionals and should be able to provide the Commission with a list of those persons.

§7.8.E.3 – Concerning revisions to an adopted map, Commissioner Hull noted that Planning Commission should be involved in the decision-making process of said revisions. Attorney White asked about adding a time limitation to the revision, adding independent processes should contain qualifiers. Director Joseph commented that property owners have a right to know the status of the habitat on their property at a certain point in time. Commissioner Tucker suggested the process be the same for additions to or deletions from the map. Attorney White feels strongly about including a statement about time limits and suggested conducting the process similar to vested rights issued with development plans.

§7.8.F.1.a – Attorney White believes the applicant should be allowed to choose the qualified biologist. Planner Chilcott indicated this part of the code was written due to public request and assurance that a chosen biologist would be approved by the Planning Commission. Director Joseph noted the biologist may meet the qualifications, but the Planning Commission may or may not be impressed with his competence, which is similar to judging the expertise of engineers, surveyors, etc. Commissioner Kitchen hopes Planning Commissioners would take time to review each assessment to ensure its accuracy. It was mutually agreed upon by the Planning Commission to strike *mutually agreed to by the Community Development Director and the applicant*. It was decided by the Commission to review this section at a later date, giving Staff time to make improvements.

§7.8.F.1.b – Director Joseph clarified this portion for the benefit of the Commissioners.

§7.8.F.2 – Planner Chilcott stated this item concerning the Colorado Division of Wildlife (CDOW) was written due to the fact that although the CDOW may not comment, they still need to receive the information and be allowed the opportunity to respond.

§7.8.F.3 – Planner Chilcott indicated this item is for public guidance.

§7.8.F.4.a – After discussion about including a definition for significant adverse impact, Attorney White suggested adding “as defined in Section G below” to the end of the sentence of §7.8.F.4.a.

§7.8.F.4.b – No comment.

§7.8.F.4.c – Commissioner Klink stated this is the section of the proposed code that allows approval or disapproval of an application if Planning Commission believes there is significant adverse impact on wildlife habitat and species. If an application is denied, the applicant could appeal to either the Town Board or the Board of County Commissioners. Attorney White suggested the language for this item should read “In cases where the significant adverse impacts of a development are not adequately mitigated *to the maximum extent feasible* resulting in a significant adverse impact on wildlife habitat and/or wildlife species in the Estes Valley.” Attorney White added this is a provision not in the current code and is one of the difficulties we have with the current code, which does not give the Planning Commission, Town Board, or County Commissioners the right to deny an application if they feel in their judgment the development is not adequately mitigated to the maximum extent feasible. Attorney White also believes there should be leeway to approve a development that may not be able to mitigate the adverse impacts to wildlife. Commissioner Kitchen asked for examples of ways to mitigate impacts, some of which are listed in §7.8.G.1.d. Planner Chilcott reviewed those examples and will add others to the proposed code.

A 10-minute recess was given at 3:35. The meeting reconvened at 3:46.

Commissioner Hull wanted the citizens to know that public comment is extremely valuable and appreciated.

§7.8.G – Commissioner Klink noted this section is the attempt to define significant adverse impact. The Commissioners agree the words “or may” should be struck from the proposed language in order to read “will have.”

§7.8.G.1 – Planner Chilcott questioned whether or not the language in this paragraph was too strong. Director Joseph suggested writing the section as a goal, (i.e. the overall goal over time is to ensure the health and viability of a species). After discussion among the Commissioners, it was recommended to delete “individual” in §7.8.G.1.a and §7.8.G.1.b to give a broader definition to animals. It was agreed upon by the Commission to retain parts a-d in order to give guidance to the Commissioners and to be able to create a finding that will be defensible in court. It was also noted the wording should be meaningful in context so the developer will also have guidance.

Fred Mares/Town Resident – Mr. Mares suggested using the word “population” rather than “species” when referring to either animals or plants.

§7.8.G.1.d – Concerning lighting, Commissioner Fraundorf suggested “location” be used instead of “types”, as the building code is already in place for types of approved lighting.

§7.8.G.2 – Commissioner Tucker feels that including the entire Estes Valley in this paragraph is too broad a term to use, as he does not think any localized development in the Estes Valley will eliminate a species. Commissioner Kitchen commented that many people have the perception that the new wildlife code will slow down or stop development in the valley. She feels the big picture with this proposed code is about growth. Commissioner Klink indicated this proposed code is trying to uncover significant impacts on wildlife that wildlife can or cannot adapt to. His opinion is this code is an attempt to establish a balance that takes into account the importance of wildlife while still allowing development and growth. Director Joseph stated no individual development would wipe out a species, but we need to deal with the cumulative effect development could have on at-risk species. Commissioner Norris would like the Commission to consider deleting *to the extent that the viability of an individual species is threatened in the Estes Valley and the diversity of wildlife species occurring in the Estes Valley is reduced*, and retaining items a-e as a basis for making a reasonable judgment. Commissioner Klink feels items a-e are too broad and should have a context of severity. Planner Chilcott suggested using language that would hopefully prevent getting to this level of severity before some level of mitigation was considered. Commissioner Klink suggested language that brackets the

severity but is less than wiping out the species. Director Joseph directed Staff to continue to fine-tune this section.

Fred Mares/Town Resident – Again, Mr. Mares suggested the use of “population” instead of “species.”

§7.8.G.3 – Planner Chilcott believes this section is probably more important in larger developments where there is more infrastructure. As an example, the road constructed through the wetlands area at the Good Samaritan Village could have been rerouted had there been a habitat assessment completed. Commissioner Tucker added this portion of the code may not apply at the golf course, but could be very applicable in the bighorn sheep area of the Fall River corridor. Commissioner Klink would like to read a wildlife biologist’s definitions of “population” and “species” before changing these terms in the code, and would also be interested to hear what local wildlife professionals think of this proposed code. Attorney White would like see a review by biologists from a financial standpoint based on the criteria being requested. Commissioner Klink added that putting all development plans on the same level for habitat assessments may not be economically feasible to the developers, due to the variables of each development.

§7.8.G.4.b – After discussion among the Commission, it was suggested to delete this section. Commissioners will review it again before making a final decision on the deletion.

§7.8.G.5 – Attorney White noted this section would be forcing a developer to address cumulative impacts when the impacts have not previously been addressed. Commissioner Norris would appreciate knowing why Summit County included this section in their development code. It was tentatively agreed upon by the Commission to delete this section.

§7.8.H.4 – Attorney White stated this is a statement to maintain active mitigation through homeowners associations, Planning Staff, or both. Commissioner Norris suggested the creation of a database to track wildlife trends, and Attorney White responded by stating if the data is relevant, it will most likely be included in the study.

§13.3 – After discussion, the *Qualified Biologist* definition may be modified and brought back before the Commission.

It was moved and seconded (Tucker/Hull) to CONTINUE discussion of the proposed AMENDMENTS TO THE ESTES VALLEY DEVELOPMENT CODE, BLOCK 12, WILDLIFE HABITAT PROTECTION to the February meeting. The motion PASSED unanimously with one absent.

5. ADOPTION OF THE 2008 ESTES VALLEY HABITAT ASSESSMENT

It was moved and seconded (Norris/Hull) to CONTINUE agenda item 5, ADOPTION OF THE 2008 ESTES VALLEY HABITAT ASSESSMENT to the February meeting. The motion PASSED unanimously with one absent.

6. REPORTS

STONEWOOD SUBDIVISION DEVELOPMENT PLAN 08-10

In the absence of Planner Shirk, Planner Chilcott reported this was a staff-level review for a proposed single-family dwelling. When the plat of the Kingswood subdivision was approved, this lot included four separate Limits of Disturbance areas, which fragmented the buildable area of the lot. With this understanding, Staff suggested the note “Limits of Disturbance shall apply unless modified by a site-specific development plan” be included on the plat, which was approved by the Town Board. This request was to amend the platted Limits of Disturbance in order to allow construction of the structure.

Staff suggests that even though this particular building would encroach into some rock outcroppings and remove three significant pines, Limits of Disturbance (LOD) criteria would not be compromised. This is because additional LOD would be dedicated, twelve new Blue Spruce (each at least six-feet tall and guaranteed) would be planted, and the disrupted rocks would be re-used as landscape features on site. Staff suggests these factors mitigate the disturbance in the planted LOD.

Neighbors have been notified and subsequent comments addressed. It was determine the drainage swale will change after construction, so minor revisions to the drainage plan will be required.

Staff has approved the proposed development plan with numerous conditions that are listed in the staff report dated January 2, 2009. Staff will follow-up on the conditions to ensure they are met.

Commissioner Klink would like to see Staff keep the following items in mind when creating the agendas in the next several months: Bunkhouses, Existing ADUs before 2000 that are no longer compliant, Guest Quarters, ADUs, and discussion about changing the development process to allow a public concept phase. It was recommended to table these items for the February meeting, but possibly begin discussion during Study Sessions. Commissioner Norris suggested also discussing the Comprehensive Plan. Planner Chilcott thinks that would be a good topic for the joint meeting between all the governing agencies.

7. ADJOURN

Chair Klink adjourned the meeting at 5:03 p.m.

Douglas Klink, Chair

Karen Thompson, Recording Secretary