

# RECORD OF PROCEEDINGS

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## Regular Meeting of the Estes Valley Planning Commission

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

Board Room, Estes Park Town Hall

**Commission:** Chair Doug Klink; Commissioners Wendell Amos, Alan Fraundorf, John Tucker, Betty Hull, Joyce Kitchen, and Ron Norris

**Attending:** Chair Doug Klink; Commissioners Alan Fraundorf, Betty Hull, Joyce Kitchen, and Ron Norris

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

**Absent:** Commissioners Wendell Amos and John Tucker

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

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

### 1. PUBLIC COMMENT

Chair Klink recognized Joyce Kitchen for her years of service on the Planning Commission. Commissioner Kitchen has resigned her position and will be replaced by county resident Steve Lane beginning in March, 2009.

Milt Garrett/Town Resident – As a representative of the Book Buddies study group from the United Methodist Church, Mr. Garrett distributed copies of Hot, Flat, and Crowded by Thomas Friedman to each Commissioner and Staff member, and suggested they read it and use it as reference material.

Commissioner Hull has been impressed by and appreciative of the amount of public comment received on the current issues.

Sandy Osterman/Town Resident – Ms. Osterman requested the group meeting between the Town Board and the Planning Commission be open to the public for a question/answer period. Her request will be forwarded to Mayor Pinkham.

### 2. CONSENT AGENDA

**Estes Valley Planning Commission minutes dated January 20, 2009.**

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

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

#### a. SHORT-TERM RENTALS

**It was moved and seconded (Hull/Fraundorf) to recommend CONTINUANCE of the proposed Block 12 Amendments to the Estes Valley Development Code regarding Short-Term Rentals to the next regularly scheduled Planning Commission meeting.**

#### b. ACCESSORY DWELLING UNITS (ADU)

Planner Shirk focused on issues raised via public comment. After reviewing the history of the proposed code revisions, Planner Shirk centered on the issues with the most concerns:

**Requests:** The overwhelming majority of requests has been for guest quarters, caretaker quarters, or mother-in-law suites.

**Use by right:** It is being suggested that every ADU be required to go through a review process prior to approval, including notification of adjacent property owners.

**Setbacks:** If detached, regardless of lot size, the unit would have to be closer to the primary dwelling than any property line.

**Size:** Cannot exceed 49% of primary unit, and not to exceed 1000 square feet total. Existing accessory buildings could cut into the 1000 square foot limit.

**Parking:** The standards in the current code would apply; no increase in total allowed vehicles.

**Increased traffic:** Using data from the Institute of Traffic Engineers, it is estimated one ADU would bring an additional seven trips per day. It is estimated that one ADU would add .5 trips per day during peak hours.

**Infrastructure:** The standards in the current code would apply.

**Water Wells:** The state will not allow any ADU to be added to an existing well unless the well is already permitted for multiple dwellings.

**Septic Systems:** These would need to be reviewed on a case-by-case basis. If connection to the sewer system is available, it would be required. If sewer connection is not an option, the applicant would need county approval to build.

**Increase in Density:** Based on information from other jurisdictions, it is estimated the Estes Valley would see 5-6 applications per year, which would be dispersed over the 32 square mile area. Visual, traffic or general effects of density are issues that still need to be discussed.

**Lot Size vs. Zone District:** Proposed code would allow detached units in any zone district, with minimum lot size requirements: ½ acre minimum for attached, ¼ acre minimum for integrated units, one acre minimum for detached. In R, E and E-1 districts, detached ADUs would require twice the minimum lot size. In RE and RE-1 districts, ADUs would require a minimum of 2.5 acres.

**Guest Quarters:** Detached or attached units without kitchen facilities for specific use by guests. No rentals would be allowed. Definition of limited kitchen includes: not contained in a separate room and being limited to a sink, refrigerator no larger than 3.5 cubic feet, stove/oven no larger than 20 inches, and/or a microwave oven. The most common request seen by Staff is for a wet bar. Staff would appreciate more direction from the Planning Commission. It is suggested that if there is an ADU on the property, additional Guest Quarters would not be allowed. Director Joseph indicated by allowing guest quarters as such, it would bring into compliance the many existing structures that have been non-compliant since the adoption of the current EVDC. As proposed, the limited kitchen would be added to the current code on guest quarters. Planner Chilcott indicated that if limited kitchens were allowed in guest quarters, it would essentially be a fourth type of ADU.

**Definition of Kitchen:** The definition in the proposed code is from the current building code. It is suggested to change to language to include installed appliances with 220/40 volt or natural gas for the preparation of food, and also containing either or both a refrigerator and sink.

Development Plan Review: It is recommended to include “approval” of the review.

Limit on Tenancy: Language about long-term rentals was struck. Language needs to be clarified as to whether or not rentals will be allowed.

Type: It is recommended that detached ADUs have no more than 2 bedrooms. If the ADU is integrated, specific code should be written as to where the main unit ends and the ADU begins.

Road Standards: The standards in the current code would apply. Appendix D would apply for driveways.

Architectural Requirement: This section was consolidated to state the architecture will be similar to the principal dwelling. The proposed code contains a higher lighting standard than the current code. All other architectural standards would apply.

Entrance: The ADU entrance cannot face the front of the lot, and cannot be visible from the street.

Land Use Affidavit: As proposed, the property owner would sign this document, which would travel with the deed to the property. It would state they owners understand the conditions on the property and will be required to comply with the code.

Rentals: Commissioner Klink noted that due to a variety of issues, Planning Commissioners suggested at the study session to NOT include rentals in this current ADU topic, but rather keeping the affordable housing use and rentals of ADUs a separate item.

Review: Commissioner Klink suggests that the code require review of all ADUs, which can be changed at a later date if applicable.

A Commissioner suggested a change to §14.d to include “to the architectural requirements” so the sentence will not be taken out of context. Commissioner Fraundorf questioned screening for parking areas.

**PUBLIC COMMENT**

Sheila Brennan/Town Resident – Has the opinion that allowance of ADUs should only apply to undeveloped lots.

Rita Kurelja/EstesPark Housing Authority – Ms. Kurelja gave a brief presentation in support of ADUs and the subsequent rentals of the units. She referred to information from the Colorado Division of Housing, the Estes Valley Comprehensive Plan, and information from other Colorado communities as a basis for this support. She also referred to the 2008 Housing Needs Assessment that was completed for the Estes Valley area. Commissioners Hull and Klink requested more statistical information from Ms. Kurelja, and asked that she make another presentation when affordable housing and ADU rentals are on the agenda.

Carroll Mock/County Resident – Has the opinion that it is unfair to change zoning rules through the allowance of ADUs. He believes rentals should not be allowed.

Rick Stiens/Town Resident – Believes ADUs would decrease local property values and have a deteriorating effect on the real estate market and tax receipts. Planner Shirk commented that he met with the Estes Park Board of Realtors, and no one in attendance thought ADUs would have a negative impact.

David Myers/Town Resident – Does not want zoning changed.

Robert Ernst/Town Resident – Believes that language in the proposed code should include owner-occupancy to reduce the potential for neighbor/tenant conflicts. He also feels the proposed code is being too generous on the square footage limits. Mr. Ernst also questioned the enforcement of the ADU regulations, and suggested periodic reports on ADU applications in order to keep the public informed. Mr. Ernst provided a copy of the AARP and the MRSC models on ADUs to the recording secretary. Commissioner Norris requested the AARP and MRSC models be made available to the Commissioners for review.

Rick Warren/Town Resident – Does not support rentals of ADUs.

Jay Heineman/County Resident – Is against ADUs changing the neighborhood, and believes the rental and/or other ADU use issue goes hand-in-hand with the ADU approval issue.

Eric Waples/Town Resident – Believes more research should be done prior to any decisions. Questioned if there is a threshold density for the future, and encouraged the Planning Commission to plan ahead now for the future of the Estes Valley. Mr. Waples supports review of applications by the Planning Commission.

Joe Hladick – Presented a letter to the Commission recommending a citizen's committee to refine the final code language using a round-table approach.

Johanna Darden/Town Resident – Against detached ADUs, and questions the enforceability if rentals are allowed.

**A 10-minute recess was announced at 3:10 p.m. The meeting reconvened at 3:20.**

Commissioner Klink suggested to eliminate detached units from the proposed code, allowing only integrated and attached ADUs. This not only would remove most of the concerns currently on the table, but would also reduce negative effects on neighbors. Commissioner Kitchen stated that due to the topography of the area, it may be easier to have a detached unit, and would like to see detached ADUs remain a possibility.

Dave Schultz/Town Resident – Believes that allowing only attached units makes sense from the zoning aspect. He also thinks owner-occupancy is extremely important, and could possibly be used with a deed restriction. The rental issue will still need to be addressed. He agrees with the permitting of ADUs on an annual basis, with the permit expiring if the dwelling goes out of compliance with any other code.

Cheri Pettyjohn/Town Resident – Wants to see bunkhouses allowed soon. Director Joseph stated the bunkhouse issue and ADUs are too closely intertwined to take them as separate issues. Commissioner Klink reminded everyone that the current non-conforming structures can be maintained and repaired, but not improved or expanded with bathrooms, kitchens, etc. Planner Shirk indicated if we removed detached ADUs from the proposed code, the existing non-conforming guest quarters will still be out of compliance.

Joe Coop/County Resident – Referred to the letter submitted to the EVPC from the Estes Valley Contractor's Association (EVCA). Stated most ADU requests are for guest or caretaker's quarters. It is his opinion that rentals were not prohibited prior to the adoption of the Estes Valley Development Code (EVDC). Commissioner Klink stated the Commission would like to hear from people whose lots and possible ADUs were directly affected by the adoption of the EVDC. Commissioner Norris would like to see hard data concerning ADU requests.

Arleta Bell/Town Resident – Asked for clarification about ADUs prior to the adoption of the EVDC.

Bob Rising/County Resident – Being the president of the home owners association for Carriage Hills, Mr. Rising had concerns about how ADUs would affect covenants. Attorney While indicated covenants would supercede code changes, depending on how they are written, have been enforced, etc.

Mike Richardson/Town Resident – As a long-time resident of Estes Park, he is tired of hearing the politics of fear. He stated that because of covenants, neighborhoods can still make the rules about adus.

Commissioner Klink closed the meeting to public comment.

In giving direction to Staff, Commissioner Klink stated the Planning Commission does not support rentals of ADUs. They would like to see detached units removed from the proposed code, allowing only integrated and attached units. The Planning Commission supports reviewing the application prior to approval, and thinks owner-occupancy is an important consideration. Planner Shirk reminded the Commissioners that if the owner chooses, he could rent the entire lot as a single-family dwelling, as long as the primary residence and the ADU met the requirements for a “household”. The Commissioners believe owner-occupancy is more important with detached units rather than attached. Director Joseph suggested making a decision on the allowance of detached ADUs prior to visiting the guest quarters issue.

**It was moved and seconded (Hull/Norris) to CONTINUE the proposed Block 12 Amendments to the Estes Valley Development Code regarding Accessory Dwelling Units to the next regularly scheduled Planning Commission meeting. The motion passed unanimously with two absent.**

**c. WILDLIFE HABITAT PROTECTION**

Planner Chilcott stated this month’s focus would be on setbacks. It is proposed that the setback from aquatic and riparian habitat be 50 feet, using the same measurement guidelines as for wetland setbacks. Maps would also be used as a guide, and these maps would be made available to the public. It is being proposed to require the 50-foot setback for all lots, developed and undeveloped, and would apply to all development types. Planner Chilcott reiterated that although no wildlife assessment would be required on a single-family lot, the setbacks would apply. It was clarified that property owners could apply for variances if the required setback made their lot unbuildable. Commissioner Fraundorf questioned the current setbacks in the Commercial areas of town. Director Joseph stated there has been legitimate debate concerning passive and active recreational uses in wildlife areas. The Town has experienced that debate and compromises have been made. It is thought that most areas that are inheritantly attractive to people and wildlife should be structured in order to maintain a balance between the two. It is very possible to have multiple standards for different zoning districts. It was discussed among the Commission and Staff the fairness of establishing different river setbacks for different types of zoning districts, such as the CD district, and the possible unintended consequences that could occur.

Planner Chilcott provided a chart indicating 36% of the Estes Valley under this proposal would be considered critical habitat. Of the mapped critical habitat, 35% is already protected as open space and 15% is too steep to develop. For the next meeting, Planner Chilcott will present several types of impacts on river and stream corridors and how they relate to the proposed setbacks.

**Public Comment:**

Ed Kitchen/County Resident – Lives adjacent to Fish Creek Road and stated many homes are already located within the proposed setback. He does not think wildlife are affected in areas with small creeks, and would not support the proposed setbacks.

Dave Albee/Town Resident – Thinks 50 feet would be best for wildlife corridors. Mr. Albee was concerned about mitigation in both critical and important habitat areas. Planner Chilcott clarified that these proposed code revisions will apply to all of the Estes Valley, not just critical habitat areas. After some discussion, Planner Chilcott noted a list of qualified biologists has not yet been created.

Sandy Osterman/Town Resident – She is concerned about the role the qualified biologist will play in the decision-making process, and requests assurance from the Commission that these biologists will indeed be qualified. She stressed her opinion about how important the wildlife is to the Estes Park economy.

Fred Mares/Town Resident – Referred to his letter submitted to the Planning Commission dated February 17<sup>th</sup>. He believes Draft 4 is a step backwards. Mr. Mares cited four issues he would like to address: 1) Language allowing the Planning Commission to deny an application has been removed; 2) §7.8.H should have a goal of no significant adverse impact in critical habitat areas; 3) He feels that two documents should be submitted as part of the habitat assessment process, one being the biologist's independent assessment of the property and the effect of the mitigation plan, and the other being the developer's plans for mitigation; 4) No language in Draft 4 stating a mitigation plan must be effective to be approved. After discussion between Mr. Mares, Staff, and the Commission, Attorney White assured the Commission and the public that an application will be deniable. Concerning Mr. Mares third issue, Planner Chilcott stated the biologist will be the most knowledgeable person to determine a mitigation plan. Hopefully, the biologist and the applicant will have discussed the habitat assessment before it is submitted to the Planning Commission, who will be the decision-making body.

Johanna Darden/Town Resident – It is her opinion that any new documents should error on the side of wildlife. She would support a public meeting during the pre-application process. She would also be in support of the town's purchase of certain areas to ensure open space.

Commissioner Klink closed public comment.

Commissioner Klink referred to an email from Celine LeBeau, suggesting a qualified biologist would be required to have either a master's degree or more than two years experience in the field. Ms. LeBeau also suggested that while certifications are an avenue for determining qualifications, they should not be required if the biologist has other adequate experience.

Commissioner Klink anticipates the Fall River and Big Thompson corridors and proposed setbacks being on the agenda for the joint meeting with Town Board and the County Commissioners. He feels strongly about notifying all affected property owners in areas where setbacks will change in order to allow comment before final decisions are made.

Commissioner Kitchen stated if the setbacks were changed as proposed, there would be many non-conforming structures, and suggested it apply only to undeveloped land. Director Joseph commented these setback proposals are a test of the commitment to make a change. Planner Chilcott suggested a possible higher level of grandfathering. Director Joseph suggested an automatic variance standard could be written and applied on narrow lots. Developers would not be allowed to artificially change the riverbed in order to meet the setback requirements. Commissioner Klink noted the difficulty lies with weighing the impact on wildlife versus the impact on property owners. He directed Staff to continue working on the code language.

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

**4. ADOPTION OF THE 2008 ESTES VALLEY HABITAT**

**It was moved and seconded (Hull/Fraundorf) to CONTINUE the proposed 2008 Estes Valley Habitat Assessment to the next regularly scheduled Planning Commission meeting on March 17, 2009. The motion passed unanimously with two absent.**

**5. REPORTS**

None.

**There being no further business, Chair Klink adjourned the meeting at 5:20 p.m.**

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Douglas Klink, Chair

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Karen Thompson, Recording Secretary