

RECORD OF PROCEEDINGS

Regular Meeting of the Estes Valley Planning Commission

May 19, 2009, 1:30 p.m.

Board Room, Estes Park Town Hall

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

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

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

Absent: Commissioners Lane and Amos

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

Chair Klink called the meeting to order at 1:30 p.m. Today's meeting will recess prior to the agenda item on Wildlife Habitat Code Revisions, and reconvene at 7:00 p.m. to discuss this item.

Director Joseph noted that Commissioner Wendell Amos has resigned from the Planning Commission, effective immediately. His replacement should be named prior to next month's meeting. Commissioner Amos held a seat for the county, and his replacement will be named by the Larimer County Commissioners.

1. PUBLIC COMMENT

Tom Ewing/Town Resident was present at today's study session and wants to respond to the memo from the Planning Commission to the Town Board about Accessory Dwelling Units. He noted in addition to Trustee Homeier, the town Staff also has the ability to communicate with the Town Board. From past history, he has observed that the Planning Commission and Town Board are not always on the same page, and that staff could do a better job of communicating the Planning Commission's decision-making process. He believes part of the problem is addressed in his letter to the editor in December, 2008.

2. CONSENT AGENDA

Estes Valley Planning Commission minutes dated April 21, 2009.

DEVELOPMENT PLAN 09-03 BLACK CANYON INN CONDOMINIUMS MASTER PLAN

– The Lodges at Black Canyon Inn Condominiums located in the east ½ of section 24, T5N, R73W, 800 MacGregor Avenue

Owner/Applicant Jim Sloan has requested this item be continued to the next regularly scheduled Planning Commission meeting.

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

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

- a. **SHORT-TERM RENTALS** – revisions to vacation home regulations, including revisions to the definition of accommodation use, guest room, guest quarter, household living, and nightly rental in the Estes Valley Development Code Chapter 13, and revisions to distinguish between Bed & Breakfasts and vacation home uses and the districts in which these uses are permitted.

Staff Report: Planner Chilcott noted these revisions were drafted approximately two years ago at the direction of Town Board to address concerns about vacation home rentals and B&Bs in residential areas. She indicated that vacation homes are proposed to have more

limitations than B&Bs as to what activities can occur on the property. This proposal moves some of the regulations from the Municipal Code into the Estes Valley Development Code.

After last month's meeting and at the request of the Planning Commission, Planner Chilcott made one change on page 4 of the proposed code, exempting the CD-Commercial Downtown zoning district from the "residential character" clause in Section 5.1.B.1.d.1. Vacation homes are proposed to be a principal use in all residential districts rather than the current accessory use. Planner Chilcott commented she did not think it was Town Board's intention to require compliance with adequate public facilities regulations (rights-of-way, fire hydrants, etc) in order to have a vacation home. Therefore, language needs to be written to exempt vacation homes from this requirement. Director Joseph explained the concept of the vacation home use allowance, along with limitations on the number of people allowed to stay in one home is geared to be in line with single-family use, which would not change the demand on water, sewer, etc. Town Attorney White responded to questions about property taxes on these dwellings, stating Town Board accepts the fact that there will be some inequities due to the Gallagher Amendment. Attorney White also noted that the Town does try to level the playing field between vacation homes and commercial accommodations properties by charging commercial utility (water and electricity) rates for vacation homes.

Public Comment:

Cindy Oliver /Town Resident owns a seven-bedroom home and would like to be able to rent it to more than the maximum limit of eight individuals. Director Joseph noted this portion of the code is to provide for the use while protecting the compatibility with the neighborhood. If this regulation is too permissive, the integrity of the entire program is at risk. This number has been in place for quite some time. According to the U.S. census, the average occupancy in the Estes Park area is 2.25 people per dwelling.

Frank Theis/County Resident/B&B Owner would like to see the occupancy limitations be the same as the single-family household definition of eight unrelated individuals or unlimited number of related individuals.

Bill Ellzey/Town Resident/B&B Owner is concerned this proposal would limit his ability to rent to more than one family at the same time, and asked for clarification about grandfathering. Planner Chilcott noted his business would be grandfathered in, and as long as it continues to be a Bed & Breakfast, the current use could continue. If he stopped the use for 12 months or more, the grandfathering would be null and void.

Closed public comment.

Commissioner Tucker noted there is a demand for vacation homes and B&Bs, and feels we are doing harm to the overall community of Estes Park if we do not allow this code change. He stated these regulations are being implemented to minimize the impact in single-family neighborhoods.

It was moved and seconded (Norris/ Hull) to APPROVE the proposed Block 12 Amendments to the Estes Valley Development Code regarding Short-Term Rentals, with staff authorized to revise the draft code language to add an exemption stating a vacation home classification does not trigger the property owner to make improvements to existing adequate public facilities. The motion passed unanimously with two absent.

4.DEVELOPMENT PLAN 6-01B – THE MEADOW REPLAT AND PRELIMINARY CONDOMINIUM MAP & MARY'S MEADOW AMENDED DEVELOPMENT PLAN – Lot 4A, Mary's Lake Replat of Mary's Lake Subdivision – 341 Kiowa Drive

Staff Report: Planner Shirk stated this is a request to amend the existing approved development plan, amend an existing subdivision plat, to subdivide two existing lots into four lots (three buildable and one non-buildable outlot), and submission of a preliminary condominium map. The existing 35-unit plan was approved by the Planning Commission in April 2006, with a minor modification approved at the staff level in February, 2009. The

current request is to amend this development plan by separating into two lots, add eleven more units, and adjust the boundary line with the undeveloped lot to the north. The drainage facilities would be put in a non-buildable outlot, with a joint maintenance agreement. Because the issues of this proposal are all inter-related, the report will outline all three requests, concluding with three separate recommendations.

Planner Shirk continued by stating Lot 2A, the northernmost lot, has no development currently proposed although the property is zoned A–Accommodations. Lot 4A, the middle lot, is proposed for short-term accommodations use (less than 30 days), with property management operated through Ponderosa Lodge. Lot 4B, the southern lot, is proposed for multi-family residential. This does not preclude short-term or nightly rentals.

Director Joseph commented this proposal is reallocating the same allowable density as the approved plan. The density has not been expanded, only reconfigured. The Development Code encourages open space outlots to protect the natural character of the area. One of the trade-offs in protecting the lower part of the meadow is to add some density to the other portions of the lots. Planner Shirk clarified this current transfer in density takes some of the density away from the existing single-family dwellings and moves it closer to the church where the neighbors will not be as strongly affected. This particular outlot is proposed to be the stormwater drainage area. Planner Shirk is recommending the following statement be added on the plat: “Outlot A land area shall be applied to Lot 2A for density calculation purposes. Maximum density is not guaranteed.”

Planner Shirk briefly discussed the staff-level minor modification where the former quad units were changed to duplexes. The current proposal requests removing the community building on the southwest corner and adding another duplex in its place. Also, remove the single-family dwellings and the duplexes from the lower part of the meadow and construct build four 9-unit buildings on the west side of the lot. Architectural plans indicate a limited kitchen, which is an allowed use.

Planner Shirk noted 36 accommodations units are proposed for Lot 4A, which is less than the 39 allowed for the net land area involved. It is an increase from the original development plan. Concerning Lot 4B, 10 duplex units are proposed on an area where a maximum of 12 units would be allowed.

According to Planner Shirk, this proposal complies with impervious coverage limits, as well as the provision for pedestrian linkages. This new plan is less fragmented, which has benefits. The parking stalls have proposed curbs instead of wheel stops, which will take up some of the sidewalk space. A minor modification to the code requirement is being requested by the applicant which will result in an 8.5 foot-wide sidewalk. Straight in parking is planned in order to allow traffic from both directions.

Planner Shirk reviewed the floor plans, which included discussion about building height. Also discussed was site disturbance, particularly in what some people believe to be a wetlands area. Planner Shirk pointed out there are three conditions for wetlands – soil type, water, and vegetation. The meadow on the east side did not have wetlands soil. It was declassified after an investigation by a wetlands consultant.

Concerning the preliminary condominium map, Planner Shirk noted it is Staff’s opinion the subdivision review and development plan review combine to provide adequate review of the preliminary condominium map. A final condominium map would be submitted when at least one unit is substantially complete. Planner Shirk indicated the proposed Limits of Disturbance meet the criteria required.

Planner Shirk stated there has been some interest and concern from adjacent property owners in the area, which has been included in the reading materials. The concerns vary from increase in density to exterior materials being used. Others are concerned about wind turbines and solar panels being proposed and installed. Other concerns mentioned height, blocked views, and a change in character of the neighborhood by allowing short-term residents.

Planner Shirk then reviewed the Staff Findings and Recommendations as listed in the Staff Report. He pointed out the condition from Will Birchfield concerning the accessibility plan to meet the requirements of the Americans with Disability Act.

Commissioner Hull questioned why there were no comments from the Fire District. Director Joseph noted the current development plan does not have driveways, which resulted in concern with the prior proposal. The proposed plan removes those buildings from the meadow, and thus, removes the fire access concern. Planner Shirk stated the application includes ISO calculations and would be in compliance.

Public Comment:

Jim Tawney/Property Owner stated his opinion that the wetlands area being discussed was not a wetlands area until the state put the highway in without sufficient drainage.

Frank Theis/Project Developer noted the wetlands study was reviewed by the Corps of Engineers. The original co-housing plan never received the community support that was needed in order to break ground on the project. This new project will be certified "green." Staff supported moving the project out of the meadow and pulling units up on the west side of the lot. If the current proposal is not accepted, they will continue to build the approved plan. There have been many adjustments to the proposed plan in order to appease the neighbors.

Chair Klink called a 10-minute recess at 3:23 p.m. The meeting reconvened at 3:30 p.m.

Commissioner Hull questioned the non-alignment of this project with the Comprehensive Plan, and opposes this development plan for that reason and also due to neighbor concerns. If approved, she would like to see the project designed in a western rustic architectural style. Commissioner Klink reminded those in attendance that the Comprehensive Plan is not a code, but a recommendation.

Planner Shirk recommends approval of "The Meadow" Development Plan 06-01B with the conditions outlined in the Staff Report.

Public Comment:

Ken Sibilia, speaking on behalf of the Mary's Lake Lodge Condominium Board, believes the level of communication is deficient. Mr. Sibilia believes this plan is intrusive to the current property owners, and the new structures do not fit with the historic landmark.

Dave Shultz/Town Resident questioned the final height of the project, as well as whether or not the wetlands area was correctly declassified. He opposes this development plan based on belief it will change the character of the neighborhood, damage wildlife and riparian corridors, and deprive him of views of Mary's Lake and the meadow. Mr. Schultz questioned the density calculations and allowance of limited kitchens in the units. Noting the proposed solar panels that would face his home, he thinks the impacts of going "green" should be placed on the people that are benefiting, not their neighbors. Mr. Schultz questioned landscaping requirements determined by the planning department, thinking the trees and shrubs should be larger. It is his opinion to not issue a certificate of occupancy until all landscaping is complete or guaranteed.

Planner Shirk clarified density calculations.

Tom Greslin/Town Resident believes the drawings in the application are not accurate, and would like staff to review the construction plans. Also, Staff directed the designers to change the configuration of the driveway in order to avoid headlight disturbance at his home, and he does not think this was accomplished.

Kent Snapp/Town Resident commended Frank Theis for saving Mary's Lake Lodge. He believes the density in the Mary's Lake areas has changed, and thinks there is too much property allocated to accommodations. He opposes the development.

Tiffany Gordon/Town Resident bought her condo because of views, and opposes the development.

Closed public comment.

Commissioner Klink indicated a continuance was in order to review the plan in light of the public comment received today. Applicant Jim Tawney reluctantly agreed to a continuation.

Commissioner Norris' primary concern is the visual impact, and he wants to make sure the Commission has the most up-to-date construction drawings. Commissioner Tucker noted this type of development is allowed in this zoning district. He suggested the commission taking a tour of the area to gain a better understanding. Commissioner Klink reminded the other Commissioners that there is an approved plan they can build. Commissioner Fraundorf is concerned with the visual impact and how this development compares to recommendations in the Comprehensive Plan.

Commissioner Klink asked Town Attorney White to explain in the next study session how the Comprehensive Plan relates to the Estes Valley Development Code.

Applicant Tawney reminded Commissioners that although Mary's Lake Lodge is a historic property, it is not classified as a historic district.

It was moved and seconded (Hull/Fraundorf) to CONTINUE The Meadow Amended Development Plan 06-01B to the next regularly scheduled Planning Commission meeting. The motion passed unanimously with two absent.

It was moved and seconded (Hull/Fraundorf) to CONTINUE The Meadow Replat to the next regularly scheduled Planning Commission meeting. The motion passed unanimously with two absent.

It was moved and seconded (Hull/Fraundorf) to CONTINUE The Meadow Preliminary Condominium Map to the next regularly scheduled Planning Commission meeting. The motion passed unanimously with two absent.

The meeting recessed at 4:45 p.m. Chair Klink reconvened the meeting at 7:00 p.m.

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

- a. **WILDLIFE HABITAT PROTECTION** – proposed changes to §7.8 *Wildlife Habitat Protection*, to provide review standards for land identified as critical wildlife habitat, require preparation of a wildlife habitat conservation plan for land identified as critical wildlife habitat, and provide for Planning Commission review of said conservation plan.

Staff Report:

Planner Chilcott gave a brief overview of the history behind the proposed code revisions, noting discussion at Planning Commission and Town Board meetings began in September, 2008. The current proposal would trigger a wildlife habitat assessment on land identified as containing critical habitat, based on the Estes Valley Wildlife Habitat Assessment produced by EDAW. Planner Chilcott noted 75% of all species in this area are dependent on riparian habitat, which makes up 1% of the land. Staff recommended that setbacks be increased to 50 feet, with some of the reasons being wildlife habitat protection, water quality, stream stabilization, and flood protection. Director Joseph noted Staff received clear direction from the Commission there should be a two-tiered system, one for rivers and separate tier for streams and drainages, which is less restrictive. It was also proposed to make setback decisions on a building-by-building basis; for example, if there was a building 30 feet from the river, it could be maintained, expanded vertically, or removed and rebuilt in the same footprint without going through a variance process and the building would be grandfathered in with the

existing setback. Director Joseph clarified that any new construction would have to conform to the setback. If you want to expand the building, you could not exceed the degree of encroachment or nonconformity without getting a variance.

Public Comment:

Lloyd Claypool/Local property owner does not want the value of his property decreased due to Planning Commission decisions.

Jim Tawney/Town Resident opposes any setback changes.

Gary Coleman/Local business owner opposes any setback changes. His business is on the river.

Elizabeth Repola/Town Resident opposes the proposed setbacks. Appreciates wildlife, but thinks there is enough surrounding land for them. Before setbacks are changed we need to look at the economic analysis of new restrictions and seek additional input from property owners.

Thomas Beck/County Resident opposes any changes. He thinks it would be very difficult to write language and have it interpreted the same every time. He is questioning where the edge of the river and riparian habitat is.

Mike Wallace does not think setbacks should be changed, except possibly for new developments.

Ray Duggans/Local Builder believes changes in setbacks could affect building envelopes. If setbacks are changed, they should be changed across the board, including downtown.

Frank Theiss/Local Builder is concerned about adding the term aquatic habitat, which could include seasonal streams. The definitions are unclear to him.

Shelly Powers & Wendy Sykes/Local Business Owners opposes setbacks, which would render much of her property unbuildable.

Michael Menard/Estes Valley Contractor's Association (EVCA) President believes all affected property owners should be notified by mail. EVCA agrees that if setbacks are changed, they should be from the high water mark and not the riparian setback. He commended the Planning Commission and Staff for taking on this challenging subject. Supports the idea, "if it's not broken, don't fix it."

Lonnie Sheldon/Local Business Owner feels uncomfortable about the town restricting development, when he believes there are paths and trails installed by the Town that are more destructive than a building.

Ken Arnold/Local Resort Owner on the river wants to be assured his business can compete with others in the industry if changes are made.

Dave Albee/Town Resident suggests requesting open space designations on newer properties with significant amounts of land between the home and the river. He believes the wildlife habitat revisions should go hand in hand with an open space plan.

Cheri Pettyjohn/Town Resident believes all affected property owners should be notified before any changes are made, and also questioned the mapping process.

Sandy Lindquist/Town Resident would like to see an open space study completed and then integrate the wildlife study into it before too many changes are made to this code.

Jim Tawney/Town Resident thinks there are too many variables in order to make a decision.

Closed public comment.

Commission and Staff Discussion:

Commissioner Norris likes the suggestion about integrating an open space plan into the wildlife habitat code revisions. Commissioner Tucker believes we need a commitment from the Town Board to complete an open space plan.

Upon request, Planner Chilcott again reviewed the chart that listed current and proposed setbacks. She noted if this item is tabled, there would be no triggers for a wildlife assessment for any review processes and the Colorado Division of Wildlife's role in the decision-making process would still be in the code.

Director Joseph stated the difficult issues we have been dealing with the last few years are similar to those in other communities, including the frustrations. He believes a successful program would be where habitat protection is judged to be important enough to pass

regulations and assessments of land or sales tax combined with an open space program. For some, an open space program would be too restrictive, and for others not restrictive enough. He pointed out that typically there is a blend between an open space plan and regulations.

Discussion between the Commissioners revolved around the idea of tabling the code revisions, requesting an open space plan, and taking more time to reach a conclusion on this topic. Director Joseph reminded the Commissioners that this Commission initiated the directive to Staff to draft these wildlife habitat code revisions. Also, he believes than an open space plan will not make the tough decisions any easier.

The Commission directed Staff to revise those portions of the code that would remove the Colorado Division of Wildlife from the review process and update the wildlife habitat maps.

It was moved and seconded (Klink/Norris) to TABLE the proposed amendments to Block 12 of the Estes Valley Development Code concerning Wildlife Habitat Protection until there is an open space study completed. The motion passed with Commissioners Norris, Tucker, and Klink voting in favor, and Commissioners Hull and Fraundorf voting against. There were two absent.

2. ADOPTION OF THE 2008 ESTES VALLEY HABITAT

It was moved and seconded (Tucker/Norris) to TABLE the proposed 2008 Estes Valley Habitat Assessment until there is an open space study completed. The motion passed with Commissioners Norris, Tucker, and Klink voting in favor, and Commissioners Hull and Fraundorf voting against. There were two absent.

3. REPORTS

Director Joseph reported there have been three permits issued to construct helix-type wind turbines on monopoles that meet all height limits and setback requirements. He would like to facilitate another public forum on wind turbines. This technology is unproven in the Estes Valley, and it is important to gain as much knowledge as possible prior to regulating this energy alternative.

Director Joseph also reported on pre-application meetings with land owners and developers. One project is a new fueling facility, while the other is a development plan for a small assisted-living facility. If the owners choose to continue with the proposals, both of these reviews will be conducted at the staff level, as required by the EVDC.

Planner Shirk provided an update on the Sunfield Development Plan, stating FEMA wants to reevaluate their conditional letter of approval and issue a revised decision. The pre-application meeting to subdivide the lots has been postponed until the new letter is received.

YMCA is almost finished with the Grand Lodge, and will soon be requesting their certificate of occupancy.

Della Terra is almost complete, and will also be requesting their certificate of occupancy.

There being no further business, Chair Klink adjourned the meeting at 8:35 p.m.

 Doug Klink, Chair

 Karen Thompson, Recording Secretary