



**MINUTES**  
**REGULAR MEETING OF THE PLANNING AND LAND USE COMMISSION**

Date: Wednesday, January 9, 2019

Time: 6:30 PM

Place: #2 CV Drive, Castle Valley Community Center

Present: Ryan Anderson, Pamela Gibson, Marie Hawkins, Bill Rau, Colleen Thompson

Absent: None

Others Present: Jazmine Duncan

**CALL TO ORDER REGULAR MEETING**

Rau called to order the Regular Meeting of the Planning and Land Use Commission on Wednesday, January 9, 2019, at 6:31 P.M.

Rau thanked Roth for her years of service as Building Permit Agent (BPA) and congratulated Colleen Thompson for assuming the BPA position.

**1. Discussion and possible action re: annual election of chair and vice-chair.**

Gibson moved to nominate Bill Rau as Chair and Ryan Anderson as Vice-Chair. Thompson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

**2. Open Public Comment**

Thompson announced that a digital, searchable, copy of the Castle Valley Times (1992-1998) is now available online and Rau added that a hard copy is available in the Castle Valley Library. Thanks were given to Susan Roche, who undertook this project.

**3. Approval of Minutes.**

**Public Hearing and Regular Meeting of December 5, 2018.**

Gibson moved to approve the Minutes of the Regular Meeting of December 5, 2018, as presented. Anderson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

It was noted that no public hearing was held at the December 5, 2018, Meeting.

**4. Reports**

**Correspondence.**

**Town Council Meeting**

Thompson presented a Report summarizing the December Town Council (TC) Meeting. She stated that the TC approved the Non-Permanent Conditional Use Permit (CUP) for the installation of exclusionary fencing on Lots 54 and 55 with the conditions that: 1) the fence be no more than five (5) feet in height with a wire fence at four (4) feet and a top bar at five (5) feet; 2) the fence be reduced in height to four (4) feet within 90 days of failure to renew the annual CUP; 3) the corral on Lot 54 is not included in this CUP; 4) any public safety incidents will be considered with each annual renewal. Thompson also reported that the Town Office will now be closed to the public on Thursdays.

- **Permit Activity.**

Roth reported that no permits were issued during December 2018. She said that Thompson would assume reporting on building permit activity at the next PLUC Meeting. Thompson added that her training has begun and that she responded to one letter questioning the height of the new fence on the lot at the entrance to the Town. She said she measured and confirmed that the fence was four feet and responded to the query.

- **Updates on Recent Applications** - none.

**Procedural Matters.**

- **General Plan Survey Review**

PLUC Members reviewed a revised copy of the General Plan Survey reflecting decisions made at the last PLUC Meeting. They limited their discussion to Comments included on the current draft. The following decisions and discussions are described below:

Section A – “STATISTICS” title changed to “COMMUNITY PROFILE.”

Section D (Livestock) – Changed the last question to reflect the Town’s role in regulating the impacts of best management practices (such as management of manure, flies, odors, etc.) on neighbors rather than direct enforcement of the best management practices.

Section F (Roads) – Question regarding satisfaction with road conditions moved to Infrastructure Section.

Section H (Ordinances & Enforcement) – Clarified question to obtain input on alternate ways to structure the complaint process.

Section J (Community Life) – Deleted question #3 regarding associations with other entities in the area regarding regional issues, one of which was dark skies.

Section K (Government) – 1) Rau will consult with the Grand County Treasurer to determine the relative proportion of Castle Valley taxes to Grand County taxes. The PLUC will use the information to better phrase a question regarding attitudes towards the amount of tax paid by CV residents. 2) a question asking residents to weigh in for budget increases to cover special services like legal advice, water studies, EMT training was deleted because Mayor Duncan confirmed that these items are already budgeted at the target amount. 3) Rau will consult Bruce Keeler to better determine Keeler’s intent for a question regarding support for non-fossil fuel energy.

New section for Infrastructure added which includes the question regarding satisfaction with roads from above.

Rau will prepare a new draft for review at the next PLUC Meeting and says his goal is to have the survey in the mail by July 2019.

**NEW BUSINESS**

**5. Discussion and possible action re: solar permit applications for 48 kW on Lot 54 and 75 kW on Lot 55.**

Rau reviewed the history of these applications: They were received about one and one-half years ago and underwent much discussion back and forth between Town government and lawyers. They were eventually referred to the State Office of the Property Rights Ombudsman (PRO). On November 8, 2018, attorneys at the Ombudsman’s office issued an advisory opinion stating the application was complete in form and should have received a



substantive review at the time of submission. According to Rau, the PRO advisory opinions carry a lot of weight in court. The opinion stated that “Utah Law provides that an application is complete and entitled to subsequent substantive review by the Land Use Authority when the application has been submitted in a form that complies with the requirements of applicable ordinances and pays all applicable fees.” In summary Rau said that the PRO opinion states that despite the questions raised by the Town these applications were entitled to substantive review by the PLUC as submitted.

Anderson requested postponement of review of the applications to allow the opportunity to ask questions of the applicants face to face. Rau noted that several sets of questions have already been submitted to the applicants but he thinks there are still legitimate questions to ask of the applicants. Roth told PLUC Members that the documents in their binders include the six questions asked previously of the applicants and four additional requests for clarifying information along with responses submitted by the applicants.

Rau confirmed that the Ordinance in effect at the time the application was received only covered setbacks, which was why the PLUC had worked to create amendments to regulate solar installations.

Thompson reported that her review of the applications showed that the setbacks met the Ordinance requirements but said there were energy storage buildings included on the plans which may require permitting, and be subject to the 7000 S.F. limit.

Rau requested clarification of whether the system will be grid tied or use battery storage. He also stated that public safety and impact on the Town’s infrastructure should be considered. He added that the PLUC does not know what limits Rocky Mountain Power (RMP) has on the size of solar systems.

Roth confirmed that the Grand County application form submitted by the applicants marked “none” on the RMP Work Order # line.

Thompson acknowledged that PLUC Members are not technical experts and not responsible for these provisions which are regulated by Grand County and RMP. It was agreed that the use of the phrase “grid tie” should be clarified.

Anderson asked about the building height of 30’6” on Lot 54. Roth explained that she could not determine the actual height from the plans but it was in the range of 30’ to 30’6”. She said that the elevation drawings for the roof mount panels showed the panels could be installed with up to a 6” gap between roof surface and panels. She noted, however, that building code does not allow panels to exceed the height of the ridge of the roof so the panels would not exceed the current building height.

Thompson also asked for clarification on whether the applicant is applying for net metering. The application says they “might”.

To put this request in context, PLUC Members recalled that the largest solar system in place in Castle Valley was around 19 kW with an average size of 11 kW. The applicants plan to use their system for household and irrigation. Anderson will consult with Peter Lawson in Professor Valley to learn what size system he has to run his irrigation needs.

Rau encouraged PLUC Members to review the full application and generate questions for the applicants.



Roth added that the energy storage building on Lot 54 could put the applicants in excess of the maximum square footage allowed on a lot unless one of their outstanding building permits was voided.

A summary of questions and clarifications requested follows here:

- 1) The four requests from the letter of June 14, 2017 (in binder and application box).
- 2) The six questions from the letter of July 25, 2017 (in binder and application box).
- 3) Size and permitting of two energy storage buildings.
- 4) Clarification on plans for grid tie, net metering, and battery storage.
- 5) Identify any public safety issues.
- 6) Identify any impacts on Town infrastructure.
- 7) Determine whether the size of the proposed systems would be permitted by RMP.

Anderson moved to table Item 5. Gibson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

#### **6. Discussion and possible action re: amendment to Ordinance 85-3, Section 4.9.1 to clarify livestock best management practices and control of livestock.**

Rau stated that the amendments proposed here are suggested in response to advice from the Town's lawyer and from lawyers in the Utah Property Rights Ombudsman's office and from training sessions attended by PLUC Members informing them of the importance of setting standards in ordinances that are clear and avoid ambiguity as much as possible in order to make them enforceable.

Rau referred to proposed changes to clarify and add basic standards to allow the Town to deal with issues related to animals in Section 4.9: Permitted Livestock Requirements by establishing a basis for determining the best management practices referred to in its introduction. His proposal splits the second paragraph of the introduction and adds the underlined words below:

*Livestock shall be maintained in such a way as to adhere to best management practices and standards as recommended by Utah State University Extension, the Utah Department of Agriculture, the federal Environmental Protection Agency (relating to air quality and water protection), and other county, state and for best management practices for livestock in the Town of Castle Valley listed in sections 4.9 and 4.10, below, are the following standards for raising and keeping of livestock within the Town:*

The proposed changes then convert the list of best management practices in the current ordinance to bullet points.

Rau also suggests a new third paragraph that prohibits livestock from roaming or being herded upon or across Town streets or the premises of other persons without "their" permission. Groups of less than five horses are exempted if ridden or led by rein.

According to Rau, the basis for this amendment is safety on the roads. Gibson agreed that there is no reason for livestock to be herded on the roads. Gibson noted that the proposed amendments address potential issues before they arise, rather than the Town reacting to new situations. Mayor Duncan observed that there is grazing range established within the Town boundary.

Gibson suggested restricting the prohibition to streets and roads since crossing another property without permission of the owner would be considered trespassing. She suggested



leaving the exemption for horses. Thompson suggested saying “four or fewer” horses rather than “less than five.”

PLUC Members agreed to drop this item from the Agenda as identified and to incorporate it with proposed changes being considered under Item 8.

Anderson moved to change the order of business and untable Item 8. Thompson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

**8. Discussion and possible action re: amendments to Ordinance 85-3, Section 4.9 to include the specific operating requirements described in Section 4.10.1 (A – L) (tabled).**

Anderson untabled Item 8 in the previous Motion. Thompson submitted a revised draft that incorporates suggestions earlier proposed by Mary Beth Fitzburgh and some of the suggested changes proposed in the previous discussion. PLUC Members discussed how much supporting information to provide with each best management practice and agreed that any changes made to best management practices in Section 4.9 should also be changed in Section 4.10.1 regarding specific review criteria for conditional use permits for livestock in excess of the permitted number. Thompson will research best management practices regarding how much outdoor area should be provided for large animals.

PLUC Members agreed to drop this item from the Agenda as identified and to incorporate it with proposed changes being considered under Item 6. Thompson and Roth will consult with one another to develop the wording for the new Agenda item that states the intent to “establish consistency” between the two sections (4.9, 4.9.1, 4.9.2 and 4.10.1).

**UNFINISHED BUSINESS**

**7. Discussion and possible action re: amendments to Ordinance 95-6: An Ordinance regarding the Building Permit and Other Land Use Permit Processes to align it with proposed amendments proposed to Ordinance 85-3 (tabled).**

Anderson moved to untable Item 7. Gibson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

Rau and Roth reported that they had met with Orion Rogers and Jonathan Dutrow of the Southeast Utah Health Department (SEUHD) to discuss the septic permitting process in Castle Valley. They reported that SEUHD has agreed to honor Castle Valley setbacks when possible but say they have the priority under Utah State Law to decide where the septic system will be located. SEUHD is required by law to adhere to minimum distances between septic systems and between septic systems and wells. SEUHD wants Castle Valley to drop its septic permit as a requirement for theirs. According to Mayor Duncan, the Town’s attorney says that the Town can still require its own septic permit, but Roth and Duncan agreed that it was difficult to fit our permit into the process. If CV requires its permit first, then the property owner will not know where the system will be located. If CV requires its permit after the SEUHD permit is approved, there is no reason for the permit.

Rau and Roth suggested that the Town Council or Mayor take the role in negotiating the process with SEUHD. Mayor Duncan suggested that the Town’s ordinance might describe when an exemption from setbacks would be allowed. It was also suggested that a septic



information sheet be required as an acknowledgement sign-off before approving a building permit.

Rau also reported on the SEUHD response to annual septic inspections of the Castle Valley Inn. According to Rau, Rogers had suggested the CV BPA could inspect the septic field by walking across it to determine if it were “mushy.”

Roth explained that the septic permitting issue was holding up a recommendation from the PLUC to the TC to adopt proposed amendments to Ordinance 95-6: an ordinance regarding the building permit and other land use permit processes.

Thompson moved to recommend the Town Council adopt the amendments to Ordinance 95-6 as presented with a recommendation that the Town Council negotiate specific details regarding the septic permitting process with the Local Health Department. Anderson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

**9. Discussion and possible action re: proposed amendments to Ordinance 2003-3 (tabled).**

Gibson moved to untable Item 9. Anderson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

Both Rau and Thompson submitted proposed changes that eliminates a commercial designation as a requirement, replaces it with the growing of crops or orchards, limits maximum exclusionary fencing to an area of one acre, lowers the maximum height to six feet, acknowledges double fencing as exclusionary, creates a setback for exclusionary fences, and clarifies the type of repairs that can be made on non-complying fences. Other suggestions included better definitions for solid fences, corral fences, and electrified fences, establishing that the setback be measured from the road easement, and encouraging property owners to remove “grandfathered” exclusionary fences.

Mayor Duncan suggested that the PLUC contact Department of Wildlife Resources (DWR) biologist Dustin Mitchell for ideas about the Town deer and how to create a fencing ordinance that would address some of the deer migration issues such as setbacks that they face, including how narrow a corridor deer would move through. Thompson will contact Mitchell. Duncan added that, according to DWR, the Town deer herd is showing signs of chronic wasting disease which creates a concern for DWR regarding the effect of the migratory deer mingling with Town deer.

Hawkins moved to retable Item 9. Thompson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

**10. Discussion re: storage of fuels and hazardous materials within the Town (tabled).**

Anderson moved to untable Item 10. Gibson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

PLUC Members agreed to drop Item 10 from the Agenda.

**11. Discussion re: future amendments to Ordinance 85-3 (tabled).**

Anderson moved to untable Item 11. Thompson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.



PLUC Members agreed to drop Item 11 from the Agenda.

12. **Closed Meeting** - none.

**ADJOURNMENT**

Gibson moved to Adjourn the Meeting. Hawkins seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

Rau adjourned the Meeting at 8:55 P.M.

**APPROVED:**

**ATTESTED:**

\_\_\_\_\_  
Bill Rau, Chairperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Faylene Roth, PLUC Clerk

\_\_\_\_\_  
Date

**APPROVED**