

MINUTES
REGULAR MEETING OF THE PLANNING & LAND USE COMMISSION

Date: Wednesday, January 9, 2013

Time: 7:00 PM

Place: #2 CV Drive, Castle Valley Community Center

Present: Chair Mary Beth Fitzburgh, Vice-chair Marie Hawkins, Member Laura Cameron

Absent: None

Others Present: Ed Derderian, Jazmine Duncan, Mayor Dave Erley, Chris Florian, Ryan Hablitzel, Tom Haraden, Kelly McGettigan, Chris Michaud, Bill Rau, David Rhoads, LaRetta Rhoads

Clerk/Recorder: Faylene Roth

CALL TO ORDER: 7:03 P.M.

1. Open Public Comment.

None.

APPROVAL OF MINUTES

2. Regular Meeting December 5, 2012.

Cameron suggested the following changes: In CORRESPONDENCE change the word “oversee” to “regulate” and in ITEM 3 change the word “initiated” to “introduced.” In the second paragraph of ITEM 10 Hawkins noted that the word “advice” should replace the term “advise.” All members agreed to the changes.

Hawkins motioned to approve the Minutes of December 5, 2012, as amended. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

REPORTS

3. Correspondence

None.

4. Town Council Meeting – Chair.

Fitzburgh reported that the Town Council appointed her to fill the remainder of the vacant PLUC term that ends June 30, 2014.

5. Building Permit Agent.

Roth reported that one Routine Conditional Use Permit was approved for a home office for Round Mountain Builders, LLC. The CUP and Business License will take effect January 1, 2013.

6. Procedural Matters.

Fitzburgh reported that Roth confirmed that Rebecca Martin had been provided information about the State of Utah's allowance of commercial composting operations in containers, tanks, or vessels. As a result, Fitzburgh decided that a follow-up letter to Martin would be redundant, so none was sent.

NEW BUSINESS

7. Discussion and possible action re: review of Decommissioning Contract for decommissioning of a pre-existing dwelling on Lot 411.

Fitzburgh emphasized the importance of adhering to the Town Ordinance that restricts property owners to one dwelling per lot. She reviewed a diagram of the floor plan of the temporary dwelling to be used by Chris Michaud and Kelly McGettigan on Lot 411 while they build a permanent residence. Michaud was asked to assist Fitzburgh in labeling all the plumbing and kitchen fixtures shown on the diagram: refrigerator, sink, range, bathtub, toilet. Michaud labeled the fixtures and he and McGettigan agreed to remove the refrigerator, range, and bathtub to meet the terms of the Decommissioning Contract.

Fitzburgh asked Roth to amend the Contract to include removal of the bathtub. She reviewed other Contract conditions with Michaud and McGettigan which include an inspection by the Town to confirm removal of the above-mentioned fixtures and suspension of use of the temporary dwelling as a dwelling and conversion of its use to a workshop within a time frame of thirty (30) days after occupancy of the new dwelling or receipt of a Certificate of Occupancy for the new dwelling, whichever occurs first.

Cameron motioned to approve the Decommissioning Contract with the added requirement of removing the bathtub. Hawkins seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

After Michaud and Fitzburgh sign the Contract with notary acknowledgment, the Building Permit Agent will issue the building permit.

Hawkins motioned to suspend the order of business and move to Item 9. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

UNFINISHED BUSINESS

9. Discussion and possible action re: formal initiation of amendments to 85-3 prohibiting the following for home and premises occupations: motor vehicle, trailer or boat repair shops; auto body and/or fender repair shops; manufacture, assembly or repair of heavy equipment, major appliances, engines or motors; junk yards; and mortuaries or crematoriums.

Fitzburgh thanked members of the community who were present for attending this Meeting in order to begin a discussion of whether an auto repair shop is an appropriate home/premises occupation within the Town of Castle Valley. She informed those present that residents who live near the lot on which the auto repair shop has been requested were invited to this Meeting. A general invitation, through Ron Drake's "Castle Valley Comments" column in the Times Independent, will be issued before the February 6, 2013, PLUC Meeting to hear views from a wider audience. A Public Hearing on the issue is planned for the March 6, 2013, PLUC Meeting.

Fitzburgh reviewed three handouts made available to the public in attendance: (1) EPA Requirements for Regulated Vehicle Maintenance Facilities; (2) A Checklist for Auto Repair Shops: Complying with Environmental, Fire, and Health & Safety Regulations with Tips for Auto Repair Shops: A Practical Guide to Reducing Toxic Hazards, Preventing Fires, and Minimizing Health & Safety Standards; and (3) an outline of federal hazardous waste codes and requirements for vehicle maintenance, entitled "Reduce or Minimize the Hazardous Wastes You Generate." She also reported that she believes the State of Utah Health Department provides inspections to auto shops in Moab. She will investigate the services provided by the Health Department and verify whether they could provide inspections for the Town of Castle Valley. She noted that any expense for the inspections could be charged to the auto repair shop.

Fitzburgh referred to the North Ogden, Utah, community which issued a conditional use permit for an auto repair shop as a home occupation in their community. Their Planning Commission restricted the type of repairs that would be performed by the shop. She queried David Rhoads about the types of repairs he wanted to do. Rhoads responded that he would want to do engine repairs that require engine removal, as well as repairs on brakes, water pumps, hoses, belts, oil leaks, etc., as allowed in the North Ogden decision. He noted that he was a metal fabricator and would want to do some welding. He stated however that he would do no auto body repair, no paint removal, and no painting. He would also like to include some trailer work, as well as repair on generators and small engines. He considers himself a gear specialist, so would like to include rear end repair, as well as front suspension problems. He said that he does not work on radiators. They would be sent to a radiator specialist. He would like to do some tire repair, but would not be opening a tire shop. He said that disposal of tires could be a necessity. He said that the shop he wanted to build would contain two work bays, and that he would be willing to restrict his work to two vehicles at a time. Both David and LaRetta Rhoads agreed that they wanted to keep the business small.

When asked how he currently deals with hazardous materials, Rhoads responded that he uses a self-contained solvent tank and double containment for storage of hazardous materials which consists of a drum inside another container. He currently transports used oils to Moab for disposal at Checkers, an auto parts store. He can also have it picked up by a commercial waste remover.

Ed Derderian expressed his opinion that Castle Valley should adopt the same restrictions that Grand County and Salt Lake County have enacted against auto repair shops as home occupations. He said that he came to Castle Valley to live in a quiet residential valley. He commented that an earlier issue in Castle Valley regarding single dwellings per lot was immediately resolved once Jeff Whitney stated Grand County's restriction against second dwellings on a single lot. He questioned why Grand County's restrictions of auto shops would not also apply to Castle Valley. He said that he had no objection to Rhoads operating a mobile mechanic service where the work is not concentrated in one spot.

Fitzburgh responded that towns are not all required to have the same restrictions. For example, most towns permit only home occupations which require the business to be within the boundaries of the home itself; whereas, Castle Valley permits premises occupations which allow an accessory building on the lot to be used for the business.

Cameron queried those in attendance about the initial problems that prompted concerns from neighbors in the area. Derderian noted that noise from pressure washing and grinding could be heard by many of the neighbors, sometimes on weekends as well as weekdays. He noted that some nearby neighbors did not report hearing noise due to the way sound travels through the valley. LaRetta Rhoads agreed that noise travels through the valley, noting that she also hears the noise of generators and air compressors from surrounding properties.

Cameron referred to a recent Conditional Use Permit for another type of business in Castle Valley which was required to mitigate the effects of noise produced by the business. She asked for the neighbors' opinions about the proposed auto repair shop if noise and other factors could be mitigated.

Many of those present wanted an amendment to the land-use ordinance that would preclude any auto shop. They did not want a piece-meal approach through mitigations to resolve their concerns.

Tom Haraden expressed his opinion that this was a commercial business and should be excluded from Castle Valley for that reason. He observed that he learned from his experience on the Springdale, Utah, Planning Commission that there is a tendency for change to trickle in. Both he and Chris Florian were concerned that allowing an auto repair shop would set a precedent for other types of commercial business, possibly even a gas station. Both noted that they bought their properties expecting a quiet, rural atmosphere. Florian also expressed her concerns about danger to the local watershed from hazardous materials.

Rhoads responded that once he heard of complaints about noise from his compressor, he had moved the equipment away from the original location and has made an effort not to make excessive noise. He has had no feedback from neighbors since this change.

Ryan Hablitzel, a nearby neighbor on Castle Valley Drive said that he did not hear noise from Rhoads's work at his residence. He observed, that in his opinion, Rhoads is responsible in his approach to his work and is responsible about compliance with laws regarding handling of hazardous waste materials. He noted that much of Rhoads's work involves long-term projects and observed that he has provided a service to the Town of Castle Valley and the Castle Valley Fire Department in maintaining their equipment and preventing the need for expensive transport to Grand Junction for repair.

Fitzburgh responded that conditional use permits are, by design, decided on a case by case basis. She noted that there is an open door here because we don't have a clear statement of what is allowed and what is not allowed. She observed that the PLUC considers the frequency and regularity of negative impacts from a business in making their decisions and in seeking mitigations for impacts upon the community. Fitzburgh also explained that a home occupation is considered a separate category from a commercial business. She said that premises occupations have been permitted in Castle Valley to allow residents to be creative in finding ways to make a living. She also said that sustainability is an important consideration in making decisions about what is appropriate in Castle Valley.

Jazmine Duncan commented that not all Castle Valley residents have come here to live. Some (such as herself) were born here and wonder if they can afford to continue to live here.

Fitzburgh read two letters submitted to the PLUC by email from Alice Drogin. Drogin felt that an auto repair shop could work with structured monitoring and inspections, but she had concerns about the accumulation of used vehicles on the lot. She also felt that others in the community who are operating similar businesses without a permit or license should be held accountable.

PLUC Members discussed the need to address the noncompliance of those who are operating similar businesses without permits. Some members felt that noncompliance should be considered after it was decided whether to allow this type of occupation. If so, then standards can be written that everyone would have to meet for this type of occupation.

Cameron referred to the General Plan Survey which is currently in the data input stage and will be considered in making these kinds of decisions. She noted that preliminary reading of the survey responses reveals different attitudes between long-time residents of the Valley and more recent residents on many issues including number of ordinances and enforcement. The PLUC will be looking at these surveys to find out what the community wants. Cameron acknowledged what she heard from residents tonight regarding their concern for a quiet rural atmosphere. She also expressed her concern that sustainability be a factor in meeting the future needs of the Town. PLUC Members hope to publish survey results in February or March.

Mayor Erley acknowledged this as a challenging issue. He noted that we all have used the services of backhoes and drilling rigs and need to be balanced in considering this issue. He expressed his thanks to Rhoads for coming forth to establish his business legitimately. He acknowledged the good work that Rhoads has done on Town vehicles. He confirmed that it has saved the Town and the Fire Department thousands of dollars by not having to ship equipment to Grand Junction.

Fitzburgh encouraged everyone to attend the next two PLUC Meetings. She said that letters can also be submitted, and that anonymous letters are acceptable.

Hawkins motioned to return to the regular order of business to discuss Item 8. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

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

Hawkins nominated Fitzburgh as chair of the PLUC for 2013. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

Fitzburgh nominated Hawkins as vice-chair of the PLUC for 2013. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

10. Discussion and possible action re: General Plan Review (tabled).

Hawkins motioned to untable Item 10. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

Cameron reported that she had spoken with Jeff Fink who is working on the database to be used in analyzing survey results. He told her that he is working on it daily and has completed the database and is currently entering survey data. He has set up the database to allow him to enter open-ended responses in list form below each question, as needed. Cameron reported that Fink told her it turned out to be a bigger job than he had anticipated. However, Fink said that he wanted to continue with the data entry because he felt there was less room for error with only one person doing the work. Cameron informed him that the PLUC hopes to have data entry completed by January 31, 2013. She will check with Fink in about 10 days. At that time, she can offer assistance in data entry as needed. Both Cameron and Fitzburgh said they would have time to help with data entry before the end of the month.

Fitzburgh reported that Mayor Erley had suggested that someone should do a check once the data entry is completed to ensure that data has been entered correctly.

PLUC Members decided to ask Fink to attend the February 6, 2013, PLUC Meeting to report on his work on the database. They suggested setting a date at that time to meet with him before the

February 20, 2013, Town Council Meeting in order to review the database before Fitzburgh's report to the Town Council. Fitzburgh proposed that both the PLUC and the Town Council initiate suggestions of what to query in the database.

Hawkins motioned to retable Item 10. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

11. Discussion and possible action re: Amending Town Ordinance to allow for the collection of fees and/or penalties for violating Town ordinances.

Fitzburgh referred to the memorandum in the PLUC binders from Christina Sloan, a local attorney. In the memorandum Sloan recommended additions to strengthen the Town Ordinance regarding collection of fees and/or penalties. Fitzburgh provided copies to PLUC Members of a draft of the suggested changes as they would apply to Ordinance 85-3.

The changes include the following: Sloan suggested that the last sentence in Section 9.1.A be changed to read: "The Town need only establish the violation to obtain the Injunction, as required by law." According to Sloan's memorandum, the addition of the phrase, "...as required by law." would be helpful to residents reading the Ordinance. She also recommended that Section 9.1.F be strengthened by stating that "...Mayor may, in addition to giving written legal notice, make initial contact by telephone..." Sloan's memorandum explains the importance of providing a paper trail by certified letter following verbal communication.

The draft provided by Fitzburgh also includes changes to Section 9.2 PENALTIES AND FINES. Sections 9.2.A and 9.2.B were deleted and rewritten to reflect Sloan's opinion that the Town would have more flexibility in treating violations of Town Ordinances as Class B misdemeanors rather than Class C misdemeanors. Changes in this Section also provide the Town with the option of pursuing violations as either a Criminal Penalty or a Civil Penalty. Other changes provide wording that entitles the Town to recover all costs of litigation; reinstatement of the Continuing Violations clause that deems every day that any violation continues to be a separate offense; a description that Notices be sent by first class mail, postage prepaid, and addressed to each violator at the last known address as disclosed by the Grand County Assessor; and the addition of the title "Cumulative Remedies" to 9.2.F which states that the "...penalties provided herein shall be cumulative of other remedies provided by [Utah] law..." with "Utah" being added.

In her memorandum, Sloan suggests two approaches the Town may use in setting and/or collecting fines and fees for violation of Town Ordinances. First, the Town may establish by Resolution an annual fee schedule that documents all Town fees and fines for penalties. The Town Council would review the fines and fees annually and could adjust them as needed. The City of Moab follows this procedure.

The second approach suggested by Sloan would be to assess penalties on a case-by-case basis. In this approach the Town would have flexibility to assess penalties based on factors particular to the case.

After discussion, PLUC Members generally agreed that the first approach would provide fairer enforcement. There was some concern that the first approach was heavy handed with pre-set fees that would apply to all violations. However, they, as well as Mayor Erley, expressed concerns that the second approach leaves penalty decisions open to interpretation and could result in arbitrary and capricious enforcement from one administration to another.

Fitzburgh and Erley reviewed the enforcement process as noted in the bulleted items on p. 40 of Ordinance 85-3. It notes that after a complaint has been filed with the Town and, after the owner, occupant, operator, lessee, agent, or other responsible party has been notified, then the Town Council or the Complaint Resolution Board (per Town Ordinance 2008-2) can seek a solution and produce a notarized written agreement. If a solution is not reached, the Mayor takes the case to District Court for litigation. If the Court rules in favor of the Town, an inspection would follow. If the violation has not been corrected, further legal action would be required. Mayor Erley noted that an additional step can take place before litigation: a lawyer could issue a cease and desist letter.

PLUC Members discussed whether violations would be pursued as civil cases or criminal cases. They also discussed Sloan's recommendation to reinstate language that would allow each day to be considered a continuing violation. Fitzburgh noted that the language was removed from the Town Ordinance because the Grand County Recorder had said repeated offenses would require separate litigation for each day's offense. In the above discussion PLUC Members questioned whether a single \$1,000 fine would have the necessary teeth to deter a violation if the business were making more than that in one day. They agreed that reinstatement of the Continuing Violation language would improve the Town's ability to deter future violations. Conversely, PLUC Members acknowledged that excessive fees could quickly accrue. PLUC Members questioned whether this would also apply in a civil case, as Sloan suggested in her memorandum that the Town would mostly enforce the code through civil cases.

Additional discussion focused on ambiguities in Utah State Law regarding land-use violations. The City of Moab follows Utah State Code 10-3-703 which designates any violation of a municipal ordinance as a Class B misdemeanor (\$1,000 fine). However, Grand County follows Utah State Code 10-9a-803 which designates a land-use violation as a Class C misdemeanor (\$750 fine). Sloan's opinion is that use of Code 10-3-703 would allow the Town to assess higher fines and would apply to all violations, including land-use violations.

Mary Beth will take steps to provide a Public Hearing on this issue for the February 6, 2013, PLUC Meeting.

She will also prepare a list of additional questions to present to Christina Sloan to clarify issues (or concerns) raised during this discussion.

Cameron motioned to table Item 11. Hawkins seconded the Motion. In further discussion, Fitzburgh noted that Item 11 will require rewording as a separate Agenda Item for the Public Hearing and later Discussion of Amendments proposed to Ordinance 85-3 so tabling would be unnecessary. Cameron, Fitzburgh, and Hawkins voted nay on the Motion. The Motion to table the item failed to pass.

12. Discussion and possible action re: regulations for solar panels, windmills, and other alternative energy structures (tabled).

Left Tabled.

13. Discussion and possible action re: reviewing and amending Ordinance 96-1: Watershed Protection Ordinance (tabled).

Left Tabled.

14. Closed Meeting (if needed).

None.

ADJOURNMENT

Hawkins motioned to adjourn the Meeting. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

The Meeting was adjourned at 8:45 P.M.

APPROVED:

ATTESTED:

Mary Beth Fitzburgh, Chairperson Date

Alison Fuller, Town Clerk Date