

**MINUTES**  
**PUBLIC HEARING ON PROPOSED AMENDMENTS TO ORDINANCE 85-3 REGARDING:**  
**ENFORCEMENT, PENALTIES AND FINES BY THE PLANNING AND LAND USE**  
**COMMISSION OF THE TOWN OF CASTLE VALLEY, UTAH**  
**and**  
**REGULAR MEETING OF THE PLANNING AND LAND USE COMMISSION**

Date: Wednesday, February 6, 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: Ron Drake, Darrell Meyer, Tory Hill, Ryan Hablitzel, Pamela Gibson, Ted Bright, Cris Coffey, Leta Vaughn, Mark Roth, Jayne May, Kathy Russell, Bob Russell, Randy Jorgen, Bill Morck, Kathe Morck, Ed Derderian, Skip Ambrose, Chris Florian, Alice Drogin, Ann Goodenough, Ronald Daily, Dave Erley, Susan Roche, Bill Rau, Tyler Rhoads, David Rhoads, Danny Prickett, Patty Jackson, Jeffrey Fink, Jazmine Duncan, John Lucas, Greg Child, Pam Hackley, Warren Scott

Clerk/Recorder: Faylene Roth

**PUBLIC HEARING**

1. Call to Order at 7:01 P.M.
2. PUBLIC HEARING ON PROPOSED AMENDMENTS TO ORDINANCE 85-3 REGARDING: ENFORCEMENT, PENALTIES AND FINES BY THE PLANNING AND LAND USE COMMISSION OF THE TOWN OF CASTLE VALLEY, UTAH.

Ed Derderian asked if the purpose of these amendments were to raise money to enforce Town Ordinances and Codes that protect property value and quality of life for local residents. Fitzburgh explained that the Town was currently dealing with an enforcement issue and wanted to ensure that our Ordinances on enforcement are adequate. Fitzburgh informed those present that the Town Council will hold a hearing on these amendments at their February 20, 2013, Meeting.

3. Adjournment of Public Hearing.

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

The Meeting was adjourned at 7:04 P.M.

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

CALL TO ORDER: 7:05 P.M.

1. Open Public Comment.

None.

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

8. 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 conducted the discussion as follows:

Report on Research: According to Fitzburgh, Craig Barker, City Planner, North Ogden City, Utah, approved an auto repair shop two years ago as a home/premises occupation in an upscale residential neighborhood. Barker told Fitzburgh that the decision was controversial: neighbors were concerned about noise, traffic, etc. He said that the Building Inspector did the initial inspection, but there has been no ongoing monitoring. According to Barker, there have been no complaints filed against the auto repair shop.

Fitzburgh reported consulting the Utah Health Department, Price Office, about inspections of auto repair shops. She learned that the Environmental Health Officer from the Moab Office does cursory inspections for Moab auto repair shops. It appears that Castle Valley could hire the Moab Office EHO for inspections here. Current thinking, according to Fitzburgh, is that the applicant (shop owner) would pay for the inspections.

Fitzburgh reviewed a news article about the Woods Cross/North Salt Lake community where four of five municipal wells have been contaminated by a chemical called PCE or PERC, or P Tetrachloroethylene which was used by a dry cleaning business. PCE is a solvent used by auto repair shops, as well as by dry cleaning businesses and military installations. According to the news article, officials estimate a cost of \$4 million dollars to clean up the water. Fitzburgh asked whether it is better to have people doing auto repair as a business which can be regulated or doing it illegally without oversight. She also asked that if we allow repair shops, are we increasing the amount of hazardous waste stored in the valley and thereby increasing our risk for higher levels of contamination to our aquifer. She referred to a letter from Tom Noce, a geologist for the USGS who has worked at Superfund sites, who said, that once these chemicals reach the water table, it is virtually impossible to remove them. Fitzburgh noted that she needs to research whether the Town would be liable for clean-up costs if there were a spill.

Background Information on How Amendments Came About: Last fall, Fitzburgh reported, the Town received a few complaints about David Rhoads doing auto repair on his lot. He currently holds a permit for mobile auto repair service. The complainants asked the Town for a moratorium on issuance of conditional use permits for on-site auto repair shops. The Town did not initiate a moratorium. Instead they initiated amendments to the Land-Use Ordinance which would prohibit auto repair shops, as well as other types of businesses that are commonly prohibited by cities and towns for home occupations. According to Utah State Law, once amendments are under consideration, the Town has a six-month period to review the amendments, during which they can deny any application that would be prohibited if the amendments were to pass. Fitzburgh said that Rhoads has said he would like to build a shop on his lot for on-site auto repair, but no application has been made.

Process for Review and Consideration: Fitzburgh explained that after initiation of an amendment, the PLUC researches the issues, determines what other cities/towns have done, and seeks input from the community. After review, they submit a recommendation to the Town Council who makes the final decision.

Framework for Focusing the Discussion: Fitzburgh presented the following focus: should anyone have the types of businesses prohibited in the proposed amendments to Ordinance 85-3. She noted that home-based businesses are not considered commercial use. She said that the PLUC considers impacts created by each business then looks for mitigations for the impacts before deciding whether to approve or not approve a home-based business.

Ground Rules for Discussion: Fitzburgh asked for each person to stand and give their name before making a comment. She asked that comments be directed to PLUC Members and that no personal comments be directed to others in the room. A two-minute timer will be used to allow time for everyone to comment.

Skip Ambrose expressed support for the proposed amendment. He feels that the businesses prohibited are detrimental to the Valley's rural lifestyle, property values, and pose a potential for watershed contamination. He referred to the Town's General Plan which promotes a peaceful, quiet, rural residential atmosphere. The prohibited occupations seem to him to be in violation of the General Plan. He does not want any industrial-type businesses.

Bill Morck stated that he is not in favor of the proposed amendment. According to him, auto repair goes on informally in Castle Valley—even if it is not necessarily a primary source of income. He supports the convenience of having some resources like this available in Castle Valley. He did not think that the Town should tie its hands by a total prohibition. He feels that the Town can maintain its rural atmosphere without the prohibition. He supports the proposed auto repair shop and feels it would mitigate noise and other concerns expressed, and it would provide the Town the opportunity to regulate the business.

John Lucas expressed support for Rhoads auto repair activity. According to Lucas, Rhoads is able to provide some services that are not available here or in Moab. He supports Rhoads's activity because it saves him from hauling his equipment to Grand Junction. He does not see any negative environmental impact. He also noted that the proposed prohibition on certain businesses excludes a "certain class of people" who want to live and work in Castle Valley. The prohibition pushes them out of the Valley, forces them to commute, or means that residents have to have money to live here.

Darryl Meyer said that he was much in favor of the rural, agricultural/residential atmosphere in Castle Valley, but the people he has spoken with seem to be supportive of Rhoads having his business. He noted that he was in favor of people being able to do their work where they live, as was his father in Germany, who, as a horse doctor, was not required to move in order to do his work.

Bob Russell said that it seemed like a good idea to him for a professional auto repair service to be available in the Valley. He noted that Rhoads seems to have taken the right steps in pursuing the business and that the PLUC seems to have been responsive. In his opinion, he felt that the mechanisms were in place to regulate the proposed business.

Jayne May said that her husband, Mitchell May—had asked her to speak on his behalf in support of the proposed amendments; but, that he requested that motor vehicle repair be removed from the proposed amendments. She expressed support for safe businesses and cottage industry. She felt that a safely run

auto repair shop would protect the interests of the people and the property values in Castle Valley. She asked: “isn’t the community about more than just artists and writers?”

Ron Daily stated that he was in limited favor of the auto repair shop but would ask that the owner post a bond based upon the risk.

Randy Jorgen said he wants Castle Valley to be a place where people do lots of different things with their minds and bodies. As a former PLUC Member, he thought the current law was deliberately vague in order to consider applications for home/premises businesses individually, and to let applicants offer mitigations. According to him, the proposed amendment creates a pre-emptive strike against a lot of people. He thinks the burden of proof should be on the Town to prove that these impacts cannot be mitigated. He considers it a matter of fairness that the Town hear our citizens out and not cut them out. He said the proper conditions and the law for this approach is already written.

Ed Derderian said that the term “mitigate” doesn’t mean to eliminate or to fix. It means to lessen or to reduce. He said that he finds it hard to imagine that anyone wants to mitigate their property value or to drink a glass of mitigated water.

Kathe Morck said she does not believe that there should be a blanket outlaw against an auto repair shop. She feels it is better to have auto repair regulated and will take the Town less time than trying to monitor it when we don’t know who is doing it.

Mark Roth noted that we have people who work in this community—contractors, artists, people who moved here because they could do “their own thing.” According to him, if there are pollution problems with these activities, it is better when someone has the proper place to work and it can be regulated.

Ron Drake, as Castle Valley Fire Department Chief, said that the Fire Department has called upon Rhoads a lot to do repairs on their vehicles. He noted that many are old and that there are difficulties in transporting them for repair. He feels that Rhoads will mitigate the impacts and guard against pollution. He felt that Rhoads was conscious of his neighbors and their feelings. He expressed his support for his auto repair business.

Jazmine Duncan expressed her feeling that many in the community would be better served by someone who knows how to keep a clean shop than trying to do the work themselves.

David Rhoads thanked members of the community for attending the Meeting. He said he is not here to ruin the viewshed, pollute the environment, or to produce noise. He wants to build a place to mitigate noise and contain contaminants. He noted that he has been reducing what he has on his property and wants to simplify his business. He expressed his appreciation for the comments expressed—both negative and positive.

Jayne May asked how the proposed definition for junkyards and the proposed amendment regarding junkyards related to accumulation on private property. Fitzburgh responded that, since the proposed amendments prohibit junkyards as a home/premises occupation, a definition for junkyards is required. She explained that the definition adds to the language already in Ordinance 85-3 and will not preclude what is already permitted in Section 8.2 of the Land-Use Ordinance.

May also disagreed with the idea that the person making the request should not be a factor in approving a request for a conditional use permit. She felt that knowing the person was an important part of the

approval process when she had served on the PLUC and the Town Council and cited examples of a goat farm and fireworks storage. In reference to noise from the proposed auto repair shop, she noted that “we can all run our compressors all day long if we want [within hours].”

Randy Jorgen commented that the discussion about prohibiting certain home/premises businesses had focused only on auto repair shops. He wondered why there was no discussion about the negative impacts of boat repair, fender repair, or trailer repair. Jorgen also disagreed with the idea that the acceptable level of mitigation had to be zero. He disagreed with the expectation that residents would not even know that the business existed. He said that mitigation was intended to decrease the impact to no more than residents would make in living here. He acknowledged the excess noise and excess equipment that was associated with Rhoads business, but observed that Rhoads seemed committed to correcting these problems. In summary, Jorgen stated that he was opposed to the proposed amendments. He also did not understand why these other things were on the list. He did not think they should be included on the list unless it could be shown that their impact could not be properly mitigated.

Mayor Erley expressed his belief that decisions for conditional use permits should not be based on the individual. He felt that could lead to “capricious and malicious” decisions in the future. He felt that it was important that everyone ask themselves whether they would want this home/premises occupation next door to them. He also wondered what the effects would be if the Town later determined they had to shut down this conditional use due to its negative effects. Mayor Erley acknowledged that he, personally, as well as both the Town and the Fire Department have taken vehicles to Rhoads’s place for repair. He noted that the Town and Fire Department are now set up so that Rhoads could work on the vehicles at the Town Lot.

Chris Florian agreed with Mayor Erley’s comments. She said she did not want to live in town; she wanted to live in a rural residential area. She did not imagine that it would mean an auto repair shop next door. She said she would not have bought her property if one had been next door. She also noted that there is an enforcement issue. She stated that an auto repair shop on a creek would need to be monitored. She asked who would pay for that and how any [contamination] could be corrected.

Ted Bright referred to the comments made about needing an auto repair shop because of concerns about people repairing their own cars on their property. If that is a concern, he said, then research that. He also did not agree with the argument that the distance to auto repair shops in Moab was a disadvantage to Castle Valley residents.

Skip Ambrose said that work from Rhoads’s place was noisy this past summer. He noted that he called Rhoads to let him know and observed that Rhoads did respond and reduced the noise. However, he said that his major concerns had to do with the effects referred to by Mayor Erley.

Ron Daily said that he has worked with environmental damage and noted that one inspection a year is not adequate monitoring. In response to a question from Fitzburgh about responsibility for an accident that contaminated the watershed or private wells, Daily felt that the Town would be liable.

John Lucas observed that granting a permit for Rhoads to operate an auto repair shop does not necessarily mean that everyone else will want to do it.

Bill Morck commented that his neighbor uses heavy equipment and said that he hears it but accepts it and feels that he has a good neighbor. He expressed his opinion that requiring Rhoads to have an appropriate

building would eliminate most of the impacts presented. He, too, agreed that the Valley was not large enough to support many auto repair shops.

Cris Coffey mentioned many issues that were of concern to her: size and development of the town, operating expenses of the Town government, maintaining the Town's diversity, sympathy for those who want to make a living here and for those who must enforce the Town's decisions, failure to keep agreements, punishments, increased taxes, increasing costs of living here.

Tory Hill, Town Council Member and Treasurer, expressed her concern that the Town was not prepared to take on responsibility for enforcement and inspections. Fitzburgh offered to inquire about the cost of hiring an Environmental Health Officer for inspections.

Jazmine Duncan, Town Council Member, agreed that the Town probably didn't have the money for inspections. She suggested passing the cost for inspections to the business owner and observed that the expense could limit the number of people who would want to have that type of business.

Ed Derderian noted that future requests might not be for another auto repair shop but from someone who wants to manufacture something.

Ryan Hablitzel said he would accept a business next door to him as long as it didn't have a direct negative effect on his lifestyle. He said that he was not bothered by occasional machinery noise; he observed that he occasionally uses machinery himself. He did not feel that we should try to control so much.

Pamela Gibson expressed her concerns about opening the door for other auto repair shops and the difficulties that the Town currently faces with enforcement issues, such as rentals.

Dan Prickett observed that a conditional use permit means that it is conditional. If you break the boundaries, he said, then it's your responsibility if you lose your business—not the Town's. He noted that even an artist could contaminate the watershed.

Randy Jorgen did not agree that issuing a conditional use permit would open floodgates. He said that someone cannot get less stringent requirements than the first applicant would get. He also noted that if conditions were found to be inadequate, the Town can establish more stringent conditions. He restated his opposition to the proposed amendment. He also suggested that the use of the chemical PERC could be forbidden in the mitigations.

Mayor Erley expressed his concern about adding additional burdens to the Town's enforcement responsibilities.

Jayne May related her experience with a business in Castle Valley that became too large to continue in Castle Valley. She said that the community worked it out. She also expressed appreciation for the PLUC's research on chemical hazards. She felt that if the PLUC decided to recommend approval for Rhoads's application for an auto repair shop, then the community would be involved and the burden would be upon the applicant to meet the conditions.

Fitzburgh stated that the EPA provides a lot of information regarding regulations for hazardous waste but it's a huge learning curve. She said that solvents are a big hazard and noted that Rhoads is aware of these regulations, but someone with less experience might not be. She agreed with Randy Jorgen that the burden of proof is on the Town. According to Fitzburgh, Utah State Law essentially says that unless we



can prove that we cannot mitigate the impacts by the setting of reasonable conditions, then we have to approve the conditional use permit if it's not prohibited outright in our land use ordinance. She commented on the amount of knowledge necessary to make these decisions.

John Lucas asked that the Town find out what the cost of enforcement would be.

Tory Hill suggested that they also research the cost of clean-up if the water table were contaminated.

Ed Derderian asked if the PLUC were considering establishment of an industrial/commercial zone. Fitzburgh said that home/premises occupations were considered residential use rather than industrial or commercial use. She said that mitigations were used to make them compatible with residential areas.

Fitzburgh announced that a Public Hearing on this issue will be held at the March 6, 2013, PLUC Meeting followed by a Public Hearing at the March 20, 2013, Town Council Meeting.

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

#### APPROVAL OF MINUTES

2. Regular Meeting January 9, 2013.

Hawkins motioned to approve the Minutes as presented. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

#### REPORTS

3. Correspondence

Fitzburgh reported that correspondence to the PLUC and Town Council regarding the amendments proposed to Ordinance 85-3 are considered public records.

4. Town Council Meeting – Chair.

None.

5. Building Permit Agent.

Roth presented the Building Permit Report for January 2013 which included two building permits.

6. Procedural Matters.

Following discussion, PLUC Members agreed to post the proposed amendments to Ordinance 85-3 prohibiting specific occupations on the Town website along with a notice for a Public Hearing on the amendments at its March 6, 2013, Meeting. Pam Hackley, member of the Grand County Planning Commission, noted that the County makes their pre-meeting documents (including correspondence) available to the public upon request prior to each Meeting. No decision was made by PLUC Members regarding posting correspondence on the Town website but Fitzburgh will summarize their contents at the

next Meeting. PLUC Clerk Roth suggested posting the Working Draft Minutes of the current PLUC Meeting on the website at the same time the proposed amendments are posted.

#### NEW BUSINESS

7. Discussion and possible action re: proposed amendments to Ordinance 85-3 regarding: enforcement, penalties and fines by the Planning and Land Use Commission of Castle Valley, Utah.

Fitzburgh reviewed the Memorandum from Christina Sloan in which Sloan responds to questions submitted by Fitzburgh and Mayor Erley since the last PLUC Meeting. Sloan stated that each and every day that a violation continues is considered a separate offense. However, she pointed out that property owners often settle for something less than the maximum fine. Sloan also noted that if the property owner does not pay the fine and the Town then sues for payment, it could do that in one civil lawsuit.

PLUC Members discussed other options; such as, property liens or garnishment of wages, in situations where the fine was not paid and whether such steps should be included in the amendments. Fitzburgh thought those options would be court decisions. Mayor Erley said they could ask the attorney about this.

PLUC members reviewed the final version of the proposed amendments. They agreed to the following changes:

9.1.F—add the following phrase before the “and” at the end of the second item, fourth bullet: “...as disclosed by the records of the Grand County Assessor;”

9.2.E—in the first line, delete “first class” and substitute “certified and registered...;” in the second line, change “his last known address” to “his/her last known address or place of business...”

Cameron motioned to approve the proposed amendments as amended tonight to Ordinance 85-3 regarding: enforcement, penalties and fines. Hawkins seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

Fitzburgh will submit the proposed amendments, as approved, to Town Council Members and to the Town Clerk for their February 20, 2013, Meeting.

#### UNFINISHED BUSINESS

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

Cameron motioned to untable Item 9. Hawkins seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

Cameron reported that Jeff Fink has built a database for the Town Survey and has entered all survey results into the database. According to Cameron, Fink is ready to demonstrate the database and instruct PLUC and Town Council members in its use. A joint PLUC/TC workshop is scheduled for Wednesday, February 13, 2013, at 6:00 P.M. at the Town Building.



According to Fitzburgh, the workshop is a public meeting, but a public comment period will not be included.

Hawkins motioned to retable Item 9. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

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

Left tabled.

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

Left tabled.

12. Closed Meeting (if needed).

None.

#### ADJOURNMENT

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

The Meeting was adjourned at 9:07 P.M

**APPROVED:**

**ATTESTED:**

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**Mary Beth Fitzburgh, Chairperson**    **Date**

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**Alison Fuller, Town Clerk**                      **Date**